

# Whadjuk People Indigenous Land Use Agreement

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Clive Davis, Noel Morich, Nigel Wilkes, Trevor Nettle, Dianne Wynne and such other persons as are duly authorised by the Native Title Agreement Group (Representative Parties)

South West Aboriginal Land & Sea Council Aboriginal Corporation  
(SWALSC)

State of Western Australia  
(State)

Minister for Aboriginal Affairs

Minister for Lands

Minister for Mines and Petroleum

Minister for Environment

Minister for Water

Conservation Commission of Western Australia

Conservation and Land Management Executive Body

Housing Authority

Marine Parks and Reserves Authority

Water Corporation

Western Australian Land Authority  
(LandCorp)

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## Execution Date

THIS AGREEMENT is made on

## Parties

**Clive Davis, Noel Morich, Nigel Wilkes, Trevor Nettle, Dianne Wynne and such other persons as are duly authorised by the Native Title Agreement Group (Representative Parties)** for and on behalf of the Native Title Agreement Group

**South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832 (SWALSC)**

**State of Western Australia (State)**

Each of the following **Government Parties** (each being a **Government Party**)

**Minister for Lands**, a body corporate continued under section 7(1) of the *Land Administration Act 1997 (WA)* (**Minister for Lands**)

**The Honourable W.R. Marmion MLA, Minister for Mines and Petroleum**, being the Minister in the Government of the State for the time being responsible for the administration of the *Mining Act 1978 (WA)* and the *Petroleum and Geothermal Energy Resources Act 1967 (WA)* (**Minister for Mines and Petroleum**)

**The Honourable Albert P. Jacob MLA, Minister for Environment**, being the Minister in the Government of the State for the time being responsible for the Department of Parks and Wildlife and the Conservation Commission of Western Australia (**Minister for Environment**)

**The Honourable Mia J. Davies MLA, Minister for Water**, being the Minister in the Government of the State for the time being responsible for the Department of Water (**Minister for Water**)

**The Honourable Peter C. Collier MLC, Minister for Aboriginal Affairs**, being the Minister in the Government of the State for the time being responsible for the Department of Aboriginal Affairs (**Minister for Aboriginal Affairs**)

**Conservation Commission of Western Australia**, a body corporate established by section 18 of the *Conservation and Land Management Act 1984 (WA)* (**Conservation Commission of Western Australia**)

**Conservation and Land Management Executive Body**, a body corporate established by section 36 of the *Conservation and Land Management Act 1984 (WA)* (**Conservation and Land Management Executive Body**)

**Housing Authority**, the body corporate established by section 6(4) of the *Housing Act 1980 (WA)* (**Housing Authority**)

**Marine Parks and Reserves Authority**, an authority established by section 26A of the *Conservation and Land Management Act 1984 (WA)* (**Marine Parks and Reserves Authority**)

**Water Corporation**, a body corporate established by section 4 of the *Water Corporations Act 1995 (WA)* (**Water Corporation**)

**Western Australian Land Authority**, a body corporate established by section 5(1) of the *Western Australian Land Authority Act 1992 (WA)* (**LandCorp**)

## Background

- A. The Noongar people and the State of Western Australia have reached a full and final settlement of all current and future applications made or to be made by Noongar people, under the NT Act, for:
- (a) the determination of Native Title over the Settlement Area; and
  - (b) the determination of the compensation that will be payable by the State, on just terms, to compensate the Noongar people for the loss, surrender, diminution, impairment and other effects on their Native Title Rights and Interests of all acts affecting Native Title that have been done in relation to the Settlement Area.
- B. The Parties acknowledge that the Settlement is unprecedented in Australia.
- C. The Settlement provides a significant opportunity for the Noongar people to achieve sustainable economic, social and cultural outcomes. The State recognises that such outcomes are in the long term interest of both the State and the Noongar community.
- D. The Parties agree that the arrangements put in place under the Settlement will only reach their full potential if all Parties engage in the implementation of the Settlement in a spirit of cooperation.
- E. In exchange for the payment and provision of the benefits under this Agreement, including those referred to in paragraph G of this Background, the Noongar people will agree:
- (a) to a surrender of Native Title Rights and Interests in respect of the Settlement Area; and
  - (b) to the validation of all acts that, historically, may have been done invalidly in relation to the Settlement Area.
- F. The payment and provision of the benefits under this Agreement, including those referred to in paragraph G of this Background, will also compensate the Noongar people for any other loss, surrender, diminution, impairment or other effects on their Native Title Rights and Interests of all acts affecting Native Title that have been done in relation to the Settlement Area.
- G. The benefits to be provided to the Noongar people under the Settlement include the following:
- (a) the introduction of the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill* into the Western Australian Parliament;
  - (b) the establishment of a "Noongar Boodja Trust" to receive, hold and apply (for the benefit of Noongar people generally) the benefits to be provided to the Noongar people under the Settlement;
  - (c) financial contributions to the Noongar Boodja Trust "Future Fund" to establish a perpetual fund for Noongar social, cultural and economic development;



- (d) financial contributions to the Noongar Boodja Trust "Operations Fund" for the establishment and operation of a Central Services Corporation and up to 6 Regional Corporations;
- (e) the establishment of:
  - (i) the Noongar Land Estate;
  - (ii) co-operative and joint management arrangements with the Department of Parks and Wildlife;
  - (iii) a State-administered Noongar Land Fund to assist in implementing the Settlement as it relates to land;
  - (iv) a uniform Aboriginal cultural heritage management regime that will assist in the protection of Noongar cultural heritage;
  - (v) land access arrangements for unallocated Crown land and unmanaged reserves for Noongar people and their children;
  - (vi) modified water catchment area by-laws to allow Noongar people to undertake certain activities in those sensitive areas;
- (f) the transfer of housing properties to the Trust with funding for the refurbishment or demolition of existing housing stock;
- (g) the implementation of a Community Development Framework in partnership with the State;
- (h) the implementation of a Noongar Economic Participation Framework to increase commercial participation by Noongar people in South West development through increased communication about government opportunities;
- (i) the delivery of a capital works program that includes the provision of funding for Noongar corporation offices and seed funding for a Noongar Cultural Centre.

H. The Settlement Area comprises all the land and waters contained within the outer boundaries of the following "Noongar Claims":

- (a) Ballardong People (WAD 6181/98);
- (b) Gnaala Karla Booja (WAD 6274/98) (including the Harris family claim (WAD 6085/98));
- (c) South West Boojarah (WAD 253/06) (including the Harris family claim);
- (d) Wagyl Kaip (WAD 6286/98) (including the Southern Noongar claim (WAD 6134/1998));
- (e) Whadjuk People (WAD 242/11);
- (f) Yued (WAD 6192/98) (but only to the extent that this claim relates to land and waters landward of the 3 nautical mile limit)

and also includes:

- (g) any island that; and
- (h) as much of the sea area (if any) within the 3 nautical mile limit as, is adjacent to those areas and that is not included in a relevant claim area.
- I. For the purpose of implementing the Settlement, the Settlement Area is divided into 6 "Agreement Areas" that together reflect the areas of land and waters described in paragraph H of this Background.
- J. It is intended that the traditional owners for each of these Agreement Areas, called "Native Title Agreement Groups" under the terms of the Settlement, will separately enter into an Indigenous land use agreement under the NT Act (**Agreement**) with the State, the Government Parties and South West Aboriginal Land and Sea Council Aboriginal Corporation (**SWALSC**).
- K. Each Native Title Agreement Group comprises the members of the Native Title Claim Group for each Noongar Claim that overlaps with the Agreement Area in question, plus all additional people who, as a result of further research conducted by SWALSC, have been identified as people who hold or may hold Native Title in each Agreement Area.
- L. This document comprises the Agreement made between the State, the Government Parties, SWALSC and the Whadjuk People Native Title Agreement Group. There will be a further 5 "Related Agreements", to be made between the State, the Government Parties, SWALSC and the "Related Native Title Agreement Groups" for the Agreement Area or Related Agreement Area relating to each of the other Noongar Claims.
- M. Many of the benefits to be provided to the Noongar people under the Settlement and some of the structures to be set up to implement the Settlement are for the benefit of the Noongar people generally, and not for the members of each Native Title Agreement Group separately. These common settlement provisions, which relate to this Agreement and to each of the Related Agreements taken together, are set out in the common "Settlement Terms" that form part of this Agreement and each of the Related Agreements.
- N. The Parties intend that this Agreement (as with each of the Related Agreements) will be registered as an Indigenous land use agreement (area agreement) under Subdivision C of Division 3 of Part 2 of the NT Act.

The Parties agree as follows:

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## 1. Defined terms and interpretation

### 1.1 Definitions by reference to the NT Act

In this Agreement, any capitalised term for which a definition is not included in clause 1.2 of this Agreement will, where the term is defined in the NT Act, have the same meaning as given to it in the NT Act, as at the Execution Date.

### 1.2 Other definitions

In this Agreement:

**ADJR Act** means the *Administrative Decisions (Judicial Review) Act 1997* (Cth).

**Agreement** means this document.

**Agreement Area** means the land and waters that are described in Part 1 of Schedule 1 to this Agreement and shown on the map in Part 2 of Schedule 1 to this Agreement.

**Allocate** has a meaning that corresponds with **Allocation**, as that term is defined in clause 1.3 of the Settlement Terms.

**Applicant** means the person or persons who, from time to time, are the "applicant" (within the meaning of section 253 of the NT Act) for the Claim.

**Business Day** has the meaning given in the Settlement Terms.

**CATSI Act** has the meaning given in the Settlement Terms.

**CATSI Corporation** has the meaning given in the Settlement Terms.

**Central Services Corporation** or **CSC** has the meaning given in the Settlement Terms.

**Claim** means the Native Title determination application WAD 242/2011 (Clive Davis & Ors v State of Western Australia (Whadjuk People)).

**Clause 9.6 Terminated Agreement** has the meaning given in clause 9.6(e) of this Agreement.

**Community Development Framework** means the document referred to at clause 17(a) of the Settlement Terms.

**Compensation** has the meaning given in the Settlement Terms.

**Conclusively Registered** means, in respect of the Registration of this Agreement or a Related Agreement, the Agreement or Related Agreement in question remaining Registered:

- (a) at a date that is 60 Business Days after the date on which a decision is made to Register this Agreement or a Related Agreement provided that no Legal Proceedings have been commenced in respect of such Registration; or

- (b) otherwise, at a date that is 40 Business Days following the exhaustion and determination of the final available Legal Proceedings in respect of such Registration,

and **Conclusive Registration** has a corresponding meaning.

**Conditions** has the meaning given in the Settlement Terms.

**Confidential Information** means all information provided by any of the Parties under or for the purposes of this Agreement:

- (a) during negotiations preparatory to the execution of this Agreement; and  
(b) during the term of this Agreement,

that is identified as confidential by the Party providing the information.

**CPI** has the meaning given in the Settlement Terms.

**Deemed Settlement Effective Date** means the date that is 40 Business Days after the date of a Deemed Settlement Effective Date Notice.

**Deemed Settlement Effective Date Notice** means a notice, which may be given by the State to SWALSC in the circumstances set out at clause 3.4 of this Agreement, of the State's decision that there will be a Deemed Settlement Effective Date in respect of this Agreement.

**Determination Date** means the date on which the Federal Court makes the Determination of Native Title contemplated by clause 6.3(c)(vi) of this Agreement and, where more than one Determination of Native Title is made in relation to different parts of the area covered by the Claim, the date on which the last of those Determinations of Native Title is made fully finalising the Claim.

**DPC** has the meaning given in the Settlement Terms.

**Eligible Noongar Entity** has the meaning given in the Settlement Terms.

**Execution Date** means the date of the execution of this Agreement by the State.

**Federal Court** means the Federal Court of Australia.

**Future Fund Payment** has the meaning given in the Settlement Terms.

**ILUA** has the meaning given in the Settlement Terms.

**ILUA Register** means the Register of Indigenous Land Use Agreements established under section 199A of the NT Act.

**ILUA Regulations** means the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

**Indemnified Amount** has the meaning given in clause 12.1(a) and (c) of this Agreement.

**Indemnified Amount Notice** has the meaning given in clause 12.1(e) of this Agreement.

**Invalid Act** has the meaning given in the Settlement Terms.

**LAA** has the meaning given in the Settlement Terms.

**Land Base Strategy** has the meaning given in the Settlement Terms.

**Land Sub** has the meaning given in the Settlement Terms.

**LEADR** means the dispute resolution organisation of that name. If LEADR ceases to exist as an organisation, then LEADR will be taken to mean any other dispute resolution organisation with similar objects agreed to by a majority of the Parties to the relevant dispute or if no majority agreement can be reached, decided by the Party that first notified the relevant dispute.

**Legal Proceedings** means:

- (a) an application (**Primary Proceedings**) made, pursuant (respectively) to sections 5 or 6 of the ADJR Act, by a person aggrieved by:
  - (i) a decision of the Native Title Registrar to Register this Agreement or a Related Agreement; or
  - (ii) conduct engaged, or proposed to be engaged, in by the Registrar for the purpose of making a decision to Register this Agreement or a Related Agreement,for an order of review in respect of (as the case may be) that decision or conduct;
- (b) an application (also **Primary Proceedings**) made, pursuant to section 39B of the *Judiciary Act 1903* (Cth), in reliance on the original jurisdiction of the Federal Court, for declaratory or other relief with respect to the decision of the Native Title Registrar to Register this Agreement or a Related Agreement; and
- (c) each appeal, rehearing or other court proceedings (**Secondary Proceedings**) that may be commenced in consequence of any judgment handed down in respect of:
  - (i) any Primary Proceedings; or
  - (ii) any prior Secondary Proceedings that are ultimately referable to such Primary Proceedings.

**Legislative Conditions** means the Conditions set out at paragraphs (a) to (c) of the definition of "Conditions" in clause 1.3 of the Settlement Terms.

**Native Title Agreement Group** means the people described in Schedule 2 to this Agreement, being all of the people who:

- (a) have been identified as people who hold or may hold Native Title in relation to land and waters within the Agreement Area; and
- (b) having been so identified, have (within the meaning of section 251A of the NT Act) authorised the making of this Agreement.

**Noongar Claims** means:

- (a) the Claim; and
- (b) the following other Noongar Native Title determination applications:
  - (i) WAD6181/1998 (Alan Jones & Ors and State of Western Australia & Ors (Ballardong People));
  - (ii) WAD 6274/1998 (Lorraine Belotti & Ors and State of Western Australia & Ors (Gnaala Karla Booja));
  - (iii) WAD 6085/1998 (Minnie Edith Van Leeuwen & Ors -v- State of Western Australia & Ors (Harris Family));
  - (iv) WAD 253/2006 (William Webb & Ors and State of Western Australia & Ors (South West Boojarah #2));
  - (v) WAD 6286/1998 (Hazel Brown & Ors -v- the State of Western Australia & Ors (Wagyl Kaip));
  - (vi) WAD 6134/1998 (Dallas Coyne & Ors and State of Western Australia & Ors (Southern Noongar)); and
  - (vii) WAD 6192/1998 (Malcolm Ryder & Ors and State of Western Australia & Ors (Yued)) (but only to the extent that this application relates to land and waters landward of the 3 nautical mile limit).

**Noongar Cultural Centre** means the building referred to at clause 15(b) of the Settlement Terms.

**Noongar Future Fund** has the meaning given in the Settlement Terms.

**Noongar Land Estate** has the meaning given in the Settlement Terms.

**Noongar Economic Participation Framework** means the document referred to at clause 16(a) of the Settlement Terms.

**Noongar Land Fund** has the meaning given in the Settlement Terms.

**NT Act** has the meaning given in the Settlement Terms.

**Operations Fund** has the meaning given in the Settlement Terms.

**Operations Fund Payment** has the meaning given in the Settlement Terms.

**Party** means a party to this Agreement and **Parties** means any 2 or more of them as the case requires.

**Primary Proceedings** has the meaning given in paragraph (a) of the definition of "Legal Proceedings" in this clause 1.2.

**Principles** has the meaning given in the Settlement Terms.

**Regional Corporation** means the corporation that is to be:

- (a) established on behalf of the Native Title Agreement Group pursuant to clause 8 of this Agreement; and
- (b) appointed by the Trustee under clause 4 of the Trust Deed,

and includes any replacement corporation that may be appointed by the Trustee from time to time.

**Registered** means registered, pursuant to section 24CK(1) of the NT Act, on the ILUA Register, and **Registration** has a corresponding meaning.

**Related Agreement** means each of the five other ILUAs that is proposed to be entered into between the State and a Related Native Title Agreement Group with respect to the land and waters within the Settlement Area.

**Related Agreement Area**, with respect to a Related Agreement, means the land and waters that are described in Part 1 of Schedule 1 and shown on the map in Part 2 of Schedule 1, to that Related Agreement.

**Related Deemed Settlement Effective Date** means the date that is 40 Business Days after the date on which the State gives SWALSC a notice under clause 3.4 of a Related Agreement.

**Related ILUA Termination Event** means the termination of a Related Agreement under clause 10 of that Related Agreement.

**Related Native Title Agreement Group** means the people who have been identified as the people who hold or may hold Native Title in relation to land and waters within each Related Agreement Area, and **Related Native Title Agreement Groups** means any 2 or more of them as the case requires.

**Related Regional Corporation** means each of the corporations that is to be:

- (a) established on behalf of each Related Native Title Agreement Group pursuant to clause 8 of each Related Agreement; and
- (b) appointed by the Trustee under clause 4 of the Trust Deed,

and includes any replacement corporation that may be appointed by the Trustee from time to time.

**Representative Parties:**

- (a) means, subject to clause 6.4 of this Agreement, the people who (as mentioned in clause 5.2(a)(ii) of this Agreement) have been authorised by the Native Title Agreement Group to enter into this Agreement and to perform (on their behalf) the obligations of the Native Title Agreement Group under this Agreement; and
- (b) must include:
  - (i) in the period commencing on the Execution Date and concluding on the Determination Date, the people who from time to time are listed as the "Applicant" on the Claim; and

- (ii) thereafter, the people who were listed as the "Applicant" on the Claim immediately prior to the making of the Determination of Native Title on the Determination Date.

**Rulebook** has the meaning given in the Settlement Terms.

**Secondary Proceedings** has the meaning given in paragraph (c) of the definition of "Legal Proceedings" in this clause 1.2.

**Security Deed** has the meaning given in the Settlement Terms.

**Settlement** has the meaning given in the Settlement Terms.

**Settlement Area** has the meaning given in the Settlement Terms.

**Settlement Effective Date** has the meaning given in the Settlement Terms.

**Settlement Effective Date Notice** has the meaning given in clause 3.3(a) of this Agreement.

**Settlement Terms** means the document entitled "South West Settlement Terms", which is attached at Schedule 10 to this Agreement.

**State Party** has the meaning given in the Settlement Terms.

**Sunset Date** has the meaning given in the Settlement Terms.

**Surrender** means the surrender to the State of all Native Title Rights and Interests in relation to the Agreement Area.

**Trust** has the meaning given in the Settlement Terms.

**Trust Deed** has the meaning given in the Settlement Terms.

**Trustee** has the meaning given in the Settlement Terms.

**Trustee Recovery Limit** has the meaning given in clause 12.2 of this Agreement.

### 1.3 Interpretation – General

In this Agreement:

- (a) headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement;

and unless the contrary intention appears:

- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a recital, clause, schedule or annexure is, as applicable and as the context requires, a reference to:
  - (i) a recital or clause to or of either this Agreement or the Settlement Terms;
  - (ii) a schedule to this Agreement; or



- (iii) an annexure to the Settlement Terms,  
and a reference to this Agreement includes:
  - (iv) all recitals and schedules to it; and
  - (v) all annexures to the Settlement Terms;
- (d) a reference to a document (including this Agreement) is to that document as varied, amended, supplemented, or replaced from time to time;
- (e) a "person" includes a company, partnership, firm, joint venture (whether incorporated or unincorporated), association, authority, corporation or other body corporate, trust, public body or Government Party;
- (f) a reference to a "person" (including a Party to this Agreement) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including people taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporated) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or substantially similar function;
- (h) a reference to a department or agency of the State includes any future department or agency of the State pursuant to an Order under the *Alteration of Statutory Designations Act 1974 (WA)*;
- (i) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (m) a reference to "dollars" or "\$" is a reference to the currency of Australia;
- (n) a reference to a "day" is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to a "month" is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
- (p) references to time are to local time in Perth, Western Australia;

- (q) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (r) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day; and
- (s) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any recitals, schedules or annexures to this Agreement, the terms and conditions of the clauses of this Agreement will prevail to the extent of the inconsistency.

#### **1.4 Interpretation – liabilities and benefits**

In this Agreement, unless the contrary intention appears:

- (a) the members of the Native Title Agreement Group, including the Representative Parties who are signatories to this Agreement, are jointly (and not severally or jointly and severally):
  - (i) entitled to the benefits conferred on the Native Title Agreement Group under this Agreement; and
  - (ii) liable to perform the obligations of the Native Title Agreement Group under this Agreement;
- (b) neither the State nor a Government Party may bring proceedings in respect of this Agreement against a member of the Native Title Agreement Group, including any of the Representative Parties who are signatories to this Agreement, in his or her individual capacity. Any such proceedings may only be brought in a court of competent jurisdiction against the Representative Parties on behalf of the Native Title Agreement Group jointly; and
- (c) any agreement, representation, warranty or indemnity in favour of the State and a Government Party, or in favour of more than one Government Party, is for the benefit of them severally.

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## **2. Settlement Terms**

The Parties acknowledge and agree that:

- (a) the Settlement Terms are imported into and form an essential part of this Agreement;
- (b) each named Party is, on and from the Execution Date, entitled to the benefits, and will observe and be bound by the obligations, covenants, indemnities, terms and conditions that apply to that Party, set out in the Settlement Terms; and
- (c) in addition, on and from the date on which this Agreement is Registered, and while the Agreement remains Registered, all people who hold Native Title in relation to any of the land or waters in the Agreement Area will be entitled to the benefits, and will observe and be bound by the obligations, covenants, indemnities, terms and conditions, set out in the Settlement Terms.

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### **3. Term of this Agreement and exemptions**

#### **3.1 Commencement**

This Agreement commences on the Execution Date.

#### **3.2 Conditions to Settlement**

- (a) The obligations under clauses 6 and 7 of this Agreement are subject to:
  - (i) the occurrence of the Settlement Effective Date before (or, if clause 9.6(b)(ii) applies, after) the Sunset Date; or
  - (ii) the earlier occurrence of a Deemed Settlement Effective Date.
- (b) If the Conditions have not been satisfied by the date that is 40 Business Days before the Sunset Date, then as soon as practicable following that date, the State and SWALSC will convene at least one meeting (which may be conducted by teleconference or videoconference) to discuss whether or not to extend the Sunset Date by such period as they consider would allow adequate opportunity for the Conditions to be satisfied.
- (c) Where the State and SWALSC agree that it would be appropriate to extend the Sunset Date, the State will issue a notice to SWALSC confirming the agreed new Sunset Date.
- (d) The Parties must each use reasonable endeavours to procure the satisfaction of the Conditions as soon as reasonably practicable, including by:
  - (i) in a timely manner, doing (or causing to be done) all things, and executing (or causing to be executed) all documents, that are within their respective powers to do or execute (or cause to be done or executed, as the case may be) and that are reasonably necessary in order to procure, as soon as reasonably practicable, the satisfaction of the Conditions; and
  - (ii) providing all reasonable assistance to the other Parties in order to procure, as soon as reasonably practicable, the satisfaction of the Conditions.
- (e) The State and SWALSC must:
  - (i) keep each other fully informed in relation to progress towards the satisfaction of the Conditions; and
  - (ii) promptly notify each other in writing as soon as either becomes aware that a Condition is satisfied or becomes (or is likely to become) incapable of being satisfied.

### 3.3 Notice of Settlement Effective Date

- (a) Without limiting its obligations under clause 3.2(d) of this Agreement, the State must issue a notice (**Settlement Effective Date Notice**) to SWALSC either:
  - (i) within 20 Business Days after the fulfilment of the last of the Conditions to be fulfilled; or
  - (ii) at the same time as giving a notice under clause 9.6(b)(ii).
- (b) The Settlement Effective Date Notice must state the Settlement Effective Date.

### 3.4 Deemed Settlement Effective Date Notice

- (a) Provided all of the Legislative Conditions have been satisfied, at any time between:
  - (i) the Conclusive Registration of this Agreement; and
  - (ii) the Settlement Effective Date,the State may issue a Deemed Settlement Effective Date Notice.
- (b) If the State does issue a Deemed Settlement Effective Date Notice, clause 9.7 will apply.

### 3.5 Termination

- (a) This Agreement will terminate on the occurrence of any of the following events:
  - (i) any of the Legislative Conditions not being satisfied by the Sunset Date;
  - (ii) the State electing to terminate this Agreement under clause 9.6 of this Agreement;
  - (iii) SWALSC electing to terminate this Agreement under clauses 6 or 7 of the Settlement Terms;
  - (iv) all Parties agreeing in writing to terminate this Agreement at any time before the earlier of:
    - A. the first of the Deemed Settlement Effective Date and Related Deemed Settlement Effective Dates to occur; and
    - B. the Settlement Effective Date; or
  - (v) this Agreement being removed from the ILUA Register by the Native Title Registrar and remaining de-registered:
    - A. at a date that is 60 Business Days after the date on which this Agreement was removed from the ILUA

Register provided that no legal proceedings have been commenced seeking the re-instatement of this Agreement on the ILUA Register whether by application to the Federal Court at first instance or on appeal from a decision of the Federal Court ordering the Native Title Registrar to remove the Agreement from the ILUA Register (**Re-instatement Application**); or

- B. otherwise, at a date that is 40 Business Days following the exhaustion and determination of the final available legal proceedings in respect of the Re-instatement Application.
- (b) No Party may terminate this Agreement for any other reason, including by reason of breach or repudiation of this Agreement by any Party (although a Party may exercise any other right or remedy otherwise available to it in respect of such breach or repudiation).

### **3.6 Consequences of termination**

- (a) Unless otherwise agreed in writing by the State and SWALSC, if this Agreement is terminated in accordance with clause 3.5(a) of this Agreement:
- (i) where clause 9.6 or 10 applies, the consequences set out in the relevant provision will apply;
  - (ii) unless otherwise provided for in this Agreement, this Agreement will cease to have any force or effect on and from the date of termination;
  - (iii) any act done under, or in accordance with, this Agreement on or before the date of termination of this Agreement will remain, to the extent permitted by law, valid; and
  - (iv) all rights, obligations and remedies under this Agreement which accrued on or before the date of termination of this Agreement will remain binding and enforceable.
- (b) If this Agreement is terminated in accordance with clause 3.5(a) of this Agreement, the State and SWALSC will meet to discuss whether a replacement or alternative agreement should be negotiated and Registered.

### **3.7 Termination after registration on the ILUA Register**

- (a) If, at any time after this Agreement is Registered, this Agreement is terminated in accordance with any of clauses 3.5(a)(i) to (iii) of this Agreement, either the State or SWALSC may advise the Native Title Registrar in writing of the expiry of the Agreement in accordance with section 199C(1)(c)(i) of the NT Act and the other Parties must, upon the request of the State or SWALSC as the case may be, do such things as are reasonably required of them to have the details of the Agreement removed from the ILUA Register.

- (b) If, at any time after the Agreement is Registered, all Parties agree to terminate this Agreement under clause 3.5(a)(iv) of this Agreement, then all Parties must advise the Native Title Registrar in writing in accordance with section 199C(1)(c)(ii) of the NT Act.
- (c) Notwithstanding section 24EA(1) of the NT Act, the consequences set out in clause 3.6(a) of this Agreement apply upon termination of this Agreement.

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#### **4. Area to which this Agreement applies**

This Agreement applies to the Agreement Area.

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#### **5. Authority, representation and warranties**

##### **5.1 Representative Parties' representations and warranties**

The Representative Parties jointly and severally represent and warrant that:

- (a) they are authorised to enter into and to perform their obligations under this Agreement by the Native Title Agreement Group;
- (b) the terms of this Agreement are binding on the Native Title Agreement Group; and
- (c) they know of no impediment to them performing their obligations under this Agreement.

##### **5.2 Native Title Agreement Group representations and warranties**

The members of the Native Title Agreement Group jointly (and not severally or jointly and severally) represent and warrant that:

- (a) they have authorised:
  - (i) the making of this Agreement (within the meaning of section 251A of the NT Act);
  - (ii) the Representative Parties to enter into this Agreement and to perform on their behalf the obligations of the Native Title Agreement Group under this Agreement (including as envisaged by clause 6.4 of this Agreement); and
  - (iii) in performing the functions contemplated by clause 5.2(a)(ii) of this Agreement, where the Representative Parties are unable to achieve unanimity with respect to:
    - A. the making of any decision;
    - B. the taking of any course of action; or
    - C. the signing of any document,

that the Representative Parties may act by majority such that, the decisions, actions or signatures of a majority of the

Representative Parties will be deemed to constitute the decisions, actions or signatures of the Representative Parties;

- (b) the terms of this Agreement are binding on them; and
- (c) they know of no impediment to them performing their obligations under this Agreement.

### **5.3 State and Government Party representations and warranties**

The State and the Government Parties each represent and warrant, for the benefit of the Native Title Agreement Group, that:

- (a) they each have full power and authority to enter into this Agreement;
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable them lawfully to enter into, exercise their rights and perform their obligations under this Agreement have been fulfilled or done; and
- (c) they know of no impediment to them performing their obligations under this Agreement.

### **5.4 SWALSC representations and warranties**

SWALSC represents and warrants that:

- (a) as at the Execution Date, it is the only Representative Aboriginal/Torres Strait Islander Body in relation to the whole of the Agreement Area;
- (b) it is of the opinion that all reasonable efforts have been made to ensure that all persons who hold or may hold Native Title in relation to land and waters in the Agreement Area have been identified; and
- (c) it is of the opinion that all the persons so identified have (within the meaning of section 251A of the NT Act) authorised the making of this Agreement; and
- (d) it knows of no impediment to it performing its obligations under this Agreement.

### **5.5 Reliance on warranties**

Each Party acknowledges that the other Parties have entered into this Agreement in reliance on the warranties provided in clauses 5.1 to 5.4 of this Agreement (as applicable).

### **5.6 Acknowledgment regarding legal advice**

Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of all matters in this Agreement and the effect of the rights, obligations and liabilities of each of the Parties to it; and

- (b) been provided with an opportunity to consider that advice and all of the provisions of this Agreement before entering into it.

## **5.7 Application of this Agreement to the State and the Government Parties**

- (a) By entering into this Agreement, the State binds itself but not the Government Parties.
- (b) By entering into this Agreement, each Government Party binds itself, but not the State (except to the extent otherwise provided by law) or any other Government Party.

## **5.8 Ministers may act through authorised officers**

Where in this Agreement (including the Settlement Terms), reference is made to a Minister of the State, and the relevant Minister may, or is required to, give any notice or do any other act or thing, that notice may be given, and that other act or other thing may be done, by a duly authorised officer of the relevant Department in the name of and on behalf of the relevant Minister.

## **5.9 Administration of this Agreement and the Settlement Terms**

- (a) Other than as specified in this Agreement or the Settlement Terms, as at the Execution Date, responsibility for administration of this Agreement and the Settlement Terms for the State has been given to DPC. The State may from time to time by notice in writing to SWALSC give responsibility for administration of either the whole or parts of this Agreement and the Settlement Terms to a different State Party or different State Parties.
- (b) Other than as specified in this Agreement or the Settlement Terms, any provision in this Agreement or the Settlement Terms for an obligation to be discharged by, or a notice to be given to, SWALSC will be complied with where the obligation is discharged by, or the notice given to:
  - (i) before the establishment and appointment of the Central Services Corporation, SWALSC; and
  - (ii) after the establishment and appointment of the Central Services Corporation:
    - A. if the appointment of the Central Services Corporation remains in effect at the material time, the Central Services Corporation; or
    - B. otherwise, the Trustee.
- (c) In the circumstances described in clause 5.9(b)(ii), SWALSC will procure that any applicable obligations are discharged, and any relevant notices are received, by (as applicable) the Central Services Corporation or the Trustee.

## **5.10 SWALSC Obligations to be novated to Central Services Corporation**

If an entity other than SWALSC is appointed as the CSC under clause 5 of the Trust Deed, SWALSC must novate its rights and obligations under this Agreement



(other than in relation to clauses 6.3, 14.2 and 14.3 of this Agreement) to the CSC in accordance with the following process:

- (a) SWALSC will notify the State of the appointment of the CSC by the Trustee within 10 Business Days after such appointment;
- (b) within 20 Business Days after the receipt of the notice referred to in clause 5.10(a) of this Agreement, the State will prepare a deed of novation (**CSC Deed of Novation**) in the form set out in Schedule 3 to this Agreement and submit it to SWALSC to arrange for execution by SWALSC and the CSC;
- (c) within 20 Business Days after the receipt of the CSC Deed of Novation by SWALSC, SWALSC will:
  - (i) execute the CSC Deed of Novation;
  - (ii) use all reasonable endeavours to procure the CSC and the Representative Parties to execute the CSC Deed of Novation; and
  - (iii) provide the executed CSC Deed of Novation to the State;
- (d) the State will then execute the CSC Deed of Novation, have it stamped if necessary, and provide copies of the fully executed (and stamped if necessary) CSC Deed of Novation to SWALSC, the CSC, the Regional Corporation and the Trustee.

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## **6. Resolution of Native Title in the Agreement Area**

### **6.1 Validating of Invalid Acts**

- (a) The Parties agree to and consent to, on and from 11.59pm on the day before the date on which the Surrender will take effect under clause 6.2 of this Agreement, the validating of all Invalid Acts that have been, or are being, carried out by the State or any State Party in relation to any part of the Agreement Area.
- (b) Clause 6.1(a) of this Agreement is a statement for the purposes of section 24EBA(1)(a)(i) of the NT Act and regulation 7(5)(d) of the ILUA Regulations.

### **6.2 Surrender of Native Title Rights and Interests**

- (a) The Parties agree to and consent to the Surrender.
- (b) The Surrender will take effect:
  - (i) on the date that is 30 Business Days after the earlier of:
    - A. the Deemed Settlement Effective Date; and
    - B. the Settlement Effective Date; or

- (ii) immediately before the State and SWALSC file with the Federal Court executed Consent Orders, together with supporting affidavits and supporting joint submissions, in accordance with clause 6.3(c)(v) of this Agreement,

whichever is the earlier.

- (c) The Parties agree that the Surrender is intended to extinguish all Native Title Rights and Interests that exist in relation to the Agreement Area at the time of the Surrender.
- (d) Clause 6.2(c) of this Agreement is a statement for the purposes of:
  - (i) section 24EB(1)(b)(i) and 24EB(1)(d) of the NT Act; and
  - (i) regulation 7(5)(a) and 7(5)(c) of the ILUA Regulations.

### **6.3 Determinations of Native Title**

- (a) The Applicant and the other members of the Native Title Claim Group for the Claim authorise and instruct the lawyer representing the Applicant in relation to the Claim (**Applicant's Lawyer**) to execute the Minute of Proposed Consent Orders prepared in accordance with this clause 6.3 and in the terms set out in Annexure I to the Settlement Terms (**Consent Orders**).
- (b) The Consent Orders will apply to the entire area of land and waters covered by the Claim (**Claim Area**) unless there is an area of land or waters within the Claim Area which is also covered by a Native Title Determination Application for which consent orders in the same terms as the Consent Orders cannot be executed (**Third Party Claim**) and in that case the Consent Orders will apply only to that part of the Claim Area that is not overlapped by the Third Party Claim.
- (c) Subject to clause 6.3(e) of this Agreement, the Parties agree that:
  - (i) within 20 Business Days after the earlier of:
    - A. the Deemed Settlement Effective Date; and
    - B. the Settlement Effective Date,

the State will prepare the Consent Orders and will circulate the Consent Orders to all of the parties to the Claim for execution;
  - (ii) SWALSC will use all reasonable endeavours to cause the Applicant's Lawyer to execute and return the Consent Orders to the State within 10 Business Days of their receipt;
  - (iii) if the Applicant's Lawyer fails to execute the Consent Orders within the period specified in clause 6.3(c)(ii) of this Agreement, the Applicant will execute and return the Consent Orders to the State within 20 Business Days after the end of that period;

- (iv) the State will use all reasonable endeavours to have the other parties to the Claim execute and return the Consent Orders within 20 Business Days of their receipt;
  - (v) within 20 Business Days after receipt of the last of the executed Consent Orders, the State will execute the Consent Orders and the State and SWALSC will file in the Federal Court:
    - A. the executed Consent Orders;
    - B. affidavits in support of the making of the Consent Orders; and
    - C. joint submissions in support of the making of the Consent Orders; and
  - (vi) the State and SWALSC will jointly request the Federal Court to list the Claim for the making of a Determination of Native Title in accordance with the Consent Orders as soon as possible following the filing of the documents referred to in clause 6.3(c)(v) of this Agreement.
- (d) The members of the "applicant" (within the meaning of section 253 of the NT Act) for WAD6006/2003 (Single Noongar Claim (Area 1)) (**Single Noongar Claim**) and the other members of the Native Title Claim Group for the Single Noongar Claim authorise and instruct the lawyer representing that applicant in relation to the Single Noongar Claim (**SNC Applicant's lawyer**) to execute consent orders in the same terms as set out in Annexure I to the Settlement Terms (**SNC Consent Orders**) and prepared in accordance with this clause 6.3 as though a reference to the Claim, the Claim Area and the Applicant's Lawyer in this clause 6.3 were a reference to the Single Noongar Claim, that part of the Single Noongar Claim area that is within the Agreement Area (**SNC Area**) and the SNC Applicant's lawyer respectively.
- (e) Where the State, acting reasonably, considers that the Consent Orders and, if applicable the SNC Consent Orders, cannot legally be executed in respect of the whole of the Claim Area and the SNC Area:
- (i) the State will give notice in writing of its opinion to SWALSC;
  - (ii) the State and SWALSC will meet within 10 Business Days of when that notice is given to discuss how to proceed in relation to obtaining from the Federal Court one or more Determinations of Native Title in substantially the terms set out in the Consent Orders (under section 87 or section 87A of the NT Act or otherwise) that in total will cover the whole of the Claim Area and the SNC Area;
  - (iii) the State, SWALSC, the members of the Applicant and (if applicable) the members of the applicant for the Single Noongar Claim, with a view to procuring from the Federal Court as many Determinations of Native Title (in substantially the terms set out in the Consent Orders) as will be required to

cover all of the land and waters in the Claim Area and the SNC Area, must each (in a timely manner) use all reasonable endeavours to:

- A. do (or cause to be done) all things; and
- B. execute (or cause to be executed) all documents,

that are:

- C. within their respective powers to do or execute (or cause to be done or executed, as the case may be); and
- D. reasonably necessary in order to procure, as soon as reasonable practicable, those Determinations of Native Title from the Federal Court,

with such reasonable endeavours to include (as the case requires) filing in the Federal Court:

- E. Consent Orders and SNC Consent Orders prepared and executed in accordance with clause 6.3(c) of this Agreement for the purposes of section 87A of the NT Act in relation to part or parts of the Claim Area and the SNC Area;
- F. interlocutory applications;
- G. affidavits in support of the making of Determination(s) of Native Title in substantially the terms set out in the Consent Orders; and
- H. joint submissions in support of the making of Determination(s) of Native Title in substantially the terms set out in the Consent Orders.

- (f) Without limiting clauses 6.3(c)(vi) and 6.3(e)(iii) of this Agreement, the Parties must not (and in the case of SWALSC, will use all reasonable endeavours to ensure that the members of the Native Title Agreement Group do not):
  - (i) file or make submissions opposing the making of Determinations of Native Title in substantially the terms set out in the Consent Orders; or
  - (ii) provide to the Federal Court any information that opposes, or is otherwise adverse to, the Federal Court making Determinations of Native Title in substantially the terms set out in the Consent Orders.

#### **6.4 Status of Representative Parties**

- (a) The Parties acknowledge and agree that the Representative Parties will continue to be Parties to this Agreement, both on their own behalf and on

behalf of the Native Title Agreement Group, following the Determination Date.

- (b) If any of the Representative Parties:
  - (i) is or becomes unwilling or unable to perform his or her role under this Agreement; or
  - (ii) dies,

he or she will cease to be a Representative Party for the purposes of this Agreement and a reference in this Agreement to the "Representative Parties" will be a reference to the remaining Representative Parties.

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## **7. Compensation**

- (a) Subject to clauses 9.6, 9.7 and 10, the State will make the payments and provide the benefits described in the Settlement Terms, in accordance with the provisions of the Settlement Terms, in consideration for the giving by the Native Title Agreement Group and the Related Native Title Agreement Groups of the consents and agreement mentioned in clauses 6 and 13 of this Agreement and of each of the Related Agreements.
- (b) The Parties acknowledge that the Compensation provided for in the Settlement Terms includes compensation for the purposes of sections 24EB(5) and 24EBA(5) of the NT Act.
- (c) The Parties acknowledge that the Settlement Terms, including the provisions of the Trust Deed, have been designed to ensure that the Compensation is to be applied for the benefit of the members of both the Native Title Agreement Group and the Related Native Title Agreement Groups generally.

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## **8. Native Title Agreement Group to establish Regional Corporation**

### **8.1 Establishment and name**

- (a) The Representative Parties must, on behalf of the Native Title Agreement Group and as soon as practicable after the Execution Date, incorporate a body corporate in accordance with this clause 8 that is eligible to be appointed (in accordance with clause 4 of the Trust Deed) as a Regional Corporation by the Trustee.
- (b) The Parties acknowledge and agree that:
  - (i) the Regional Corporation may only be so appointed by the Trustee if:
    - A. it has been incorporated as a CATSI Corporation;
    - B. it meets the eligibility requirements prescribed in the Trust Deed for an Eligible Noongar Entity; and

- C. its Rulebook complies with the applicable Principles;
- (ii) the Regional Corporation must:
  - A. adhere to the criteria stipulated in clause 8.1(b)(i)A and B of this Agreement; and
  - B. comply with the applicable Principles,
    - at all times during the currency of its appointment.
- (iii) subject to clause 8.1(b)(i) of this Agreement, the Regional Corporation must be incorporated on terms and conditions first approved by the State, which approval must not be unreasonably withheld.
- (c) Subject to the CATSI Act, the Regional Corporation may have any name chosen by the Native Title Agreement Group.

## 8.2 Agreement to be novated to Regional Corporation

The Native Title Agreement Group must novate their rights and obligations under this Agreement to the Regional Corporation in accordance with the following process:

- (a) SWALSC will notify the State of the appointment of the Regional Corporation by the Trustee within 10 Business Days after such appointment;
- (b) within 20 Business Days after the receipt of the notice referred to in clause 8.2(a) of this Agreement, the State will prepare a deed of novation (**Original RC Deed of Novation**) in the form set out in Schedule 6 to this Agreement and submit it to SWALSC to arrange execution by the Representative Parties;
- (c) the Native Title Agreement Group authorises the Representative Parties to execute the Original RC Deed of Novation on their behalf and provide the Original RC Deed of Novation to SWALSC;
- (d) within 20 Business Days after the receipt of the Original RC Deed of Novation by SWALSC:
  - (i) SWALSC will execute the Original RC Deed of Novation and provide it to the Representative Parties for execution; and
  - (ii) the Representative Parties will:
    - A. execute the Original RC Deed of Novation;
    - B. use all reasonable endeavours to procure the Regional Corporation also to execute the Original RC Deed of Novation; and
    - C. return the fully executed Original RC Deed of Novation to SWALSC; and

- (iii) SWALSC will return the fully executed Original RC Deed of Novation to the State;
- (e) the State will then execute the Original RC Deed of Novation, have it stamped if necessary, and provide copies of the fully executed (and stamped if necessary) Original RC Deed of Novation to SWALSC, the Regional Corporation and the Trustee.

### **8.3 SWALSC to assume role of Regional Corporation**

Pending the incorporation of the Regional Corporation and its appointment by the Trustee as such under the Trust Deed, SWALSC agrees to perform those roles (if any) of the Regional Corporation that are prescribed under clause 18 of the Settlement Terms.

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## **9. Registration of this Agreement**

### **9.1 Registration on ILUA Register**

- (a) The Parties:
  - (i) acknowledge their intention that this Agreement be:
    - A. an Indigenous Land Use Agreement (Area Agreement) under Subdivision C of Division 3 of Part 2 of the NT Act; and
    - B. Registered, under section 24CK of the NT ACT, as soon as reasonably practicable after the Execution Date; and
  - (ii) agree to such Registration of this Agreement.
- (b) The Parties also agree that, upon such Registration of this Agreement, to the extent that any Native Title Rights and Interests that exist over the Agreement Area are affected by the Surrender and the validation of Invalid Acts, such Surrender and validation of Invalid Acts are valid pursuant to sections 24EB(2) and 24EBA(3) of the NT Act and section 12R of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)*.
- (c) Each Party undertakes to do all things in its power to ensure that this Agreement is Registered.

### **9.2 Application for registration**

- (a) The State is authorised on behalf of the Parties to, and will, prepare an application, in the form (or substantially in the form) provided in Schedule 4 to this Agreement, for this Agreement to be Registered.
- (b) The State will use reasonable endeavours to submit the application for Registration of this Agreement to the Native Title Registrar within 40 Business Days after the Execution Date.

- (c) The Parties must do all things necessary to provide the Native Title Registrar with, in support of the Registration application, a copy of this Agreement and any other prescribed documents or information required under section 24CG(2) of the NT Act.
- (d) Without limiting clause 9.2(c) of this Agreement, SWALSC and the Representative Parties will provide to the State, as soon as practicable following the Execution Date, such of the documents referred to in clause 9.2(c) of this Agreement as they have in their custody or under their control.

### **9.3 Further assurances**

Each Party undertakes to do all things in its power to ensure that this Agreement is Registered and will use reasonable endeavours, and do all things reasonably necessary, to maintain the Registration of the Agreement on the ILUA Register following Registration.

### **9.4 No objection**

- (a) Without limiting clauses 9.1 and 9.3 of this Agreement, the Parties must not (and, in the case of the Representative Parties and SWALSC, will use reasonable endeavours to ensure that the members of the Native Title Agreement Group do not):
  - (i) object to the Registration of this Agreement, on any grounds; or
  - (ii) provide to the Native Title Registrar any information that opposes, or is otherwise adverse to, the Registration of the ILUA.
- (b) If any Party becomes aware of an objection having been lodged (or any adverse information given) in relation to the Registration of this Agreement, then that Party must notify the State and SWALSC (or in the case of the State and SWALSC the other of them) and the State and SWALSC together will:
  - (i) request assistance from the National Native Title Tribunal to negotiate with the person making the objection with a view to having the objection withdrawn;
  - (ii) draft and provide to the Native Title Registrar one or more written submissions responding to any objection against Registration of the ILUA; and
  - (iii) provide to the Native Title Registrar information or material addressing or rebutting any adverse information received by the Native Title Registrar that opposes, or is otherwise adverse to, the Registration of the ILUA.

### **9.5 Written certification**

- (a) Having satisfied itself that the requirements of section 203BE(5) of the NT Act have been met, SWALSC agrees to provide written certification to the State as referred to in section 203BE(1)(b) of the NT Act for the



purposes of the Registration application as required by section 24CK of the NT Act.

- (b) The written certification will be in the form, or substantially in the form, set out in Schedule 5 to this Agreement.
- (c) SWALSC warrants that to the best of its knowledge, as at the Execution Date, it is not aware of any circumstance that would prevent it from providing written certification in accordance with this clause 9.5.

## **9.6 Consequences of non-Registration of, or Legal Proceedings being commenced with respect to, this Agreement and the Related Agreements**

- (a) The Native Title Agreement Group acknowledges and agrees that the Compensation payable or provided under this Agreement is part of a global settlement of the Noongar Claims reached with the State with respect to the whole of the Settlement Area on the understanding that, except as otherwise specified in this clause 9.6, this Agreement and all of the Related Agreements will become, and remain, Registered.
- (b) Subject to clause 9.6(c) and (d) of this Agreement, if either this Agreement or any one or more of the Related Agreements have not been Conclusively Registered by the Sunset Date (each, a **Time-Barred Agreement**), the State will in its absolute unfettered discretion (by notice to SWALSC, within 60 Business Days after the Sunset Date) choose either to:
  - (i) terminate this Agreement and all of the Related Agreements; or
  - (ii) terminate the Time-Barred Agreements only, in which case the State must at the same time also issue to SWALSC (in accordance with clause 3.3(a)(ii) of this Agreement) a Settlement Effective Date Notice with respect to those of this Agreement and the Related Agreements that are not Time-Barred Agreements.
- (c) Before exercising the State's discretion to choose between the options in clause 9.6(b)(i) and (ii) of this Agreement, the State and SWALSC must convene at least one meeting (which may be conducted by teleconference or videoconference).
- (d) Notwithstanding anything stated in clause 9.6 of this Agreement, the State cannot (in the exercise of the discretion accorded to it under clause 9.6(b)(i) of this Agreement) terminate:
  - (i) this Agreement, if there has been a Deemed Settlement Effective Date; or
  - (ii) any Related Agreement in respect of which there has been a Related Deemed Settlement Effective Date.
- (e) If the State chooses, in accordance with clause 9.6(b)(ii) of this Agreement, to terminate only any Time-Barred Agreement (**Clause 9.6 Terminated Agreement**), the consequence of such termination is that

the Compensation will not be provided in respect of the Native Title Agreement Group or Related Native Title Agreement Group, nor in respect of the Agreement Area or Related Agreement Area, that is the subject of the Clause 9.6 Terminated Agreement. Specifically:

- (i) the quantum of the total annual Future Fund Payment will be reduced by one sixth for each Clause 9.6 Terminated Agreement;
  - (ii) the quantum of the total annual Operations Fund Payment will be reduced by one seventh for each Clause 9.6 Terminated Agreement;
  - (iii) no land will be Allocated under clause 8 of the Settlement Terms in the area the subject of each Clause 9.6 Terminated Agreement;
  - (iv) the amounts and percentages of land to be Allocated under clause 8 of the Settlement Terms will be reduced by one sixth for each Clause 9.6 Terminated Agreement;
  - (v) the quantum of the payments to the Noongar Land Fund will be reduced by one sixth for each Clause 9.6 Terminated Agreement;
  - (vi) the Housing Authority will not transfer properties under clause 14 of the Settlement Terms in the area the subject of each Clause 9.6 Terminated Agreement;
  - (vii) the State will not provide funding for the regional office of the Regional Corporation or Related Regional Corporation referred to in each Clause 9.6 Terminated Agreement; and
  - (viii) clauses 9, 10, 11, 12, 13, 15, 16 and 17 of the Settlement Terms will not apply to land in the Agreement Area or Related Agreement Area the subject of each Clause 9.6 Terminated Agreement.
- (f) The Parties acknowledge and agree that where one or more of the Related Agreements has not been executed before the Sunset Date (each, a **Non-Executed Agreement**) each Non-Executed Agreement is deemed to be a Clause 9.6 Terminated Agreement.

## **9.7 Consequences of the issue of a Deemed Settlement Effective Date Notice**

- (a) Where:
  - (i) the State has issued a Deemed Settlement Effective Date Notice under clause 3.4 of this Agreement; and
  - (ii) as a result, there has been a Deemed Settlement Effective Date,

pending any Related Deemed Settlement Effective Date, or the Settlement Effective Date, applying to any Related Agreements (**Pending Agreements**) the Compensation (if any) that would otherwise have been payable had the Settlement Effective Date applied to this Agreement and all Related Agreements will be modified in the following respects:

- (iii) the quantum of the total annual Future Fund Payment will be reduced by one sixth for each Pending Agreement;
  - (iv) the quantum of the total annual Operations Fund Payment will be reduced by one seventh for each Pending Agreement;
  - (v) no land will be Allocated under clause 8 of the Settlement Terms in the area the subject of each Pending Agreement;
  - (vi) the quantum of the payments to the Noongar Land Fund will be reduced by one sixth for each Pending Agreement;
  - (vii) the Housing Authority will not transfer properties under clause 14 of the Settlement Terms in the area the subject of each Pending Agreement;
  - (viii) the State will not provide funding for the regional office of the Regional Corporation referred to in each Pending Agreement; and
  - (ix) clauses 9, 10, 11, 12, 13, 15, 16 and 17 of the Settlement Terms will not apply to land in the Agreement Area or Related Agreement Area the subject of each Pending Agreement.
- (b) If (because there have been one or more Related Deemed Settlement Effective Dates) this Agreement is a Pending Agreement for the purpose of clause 9.7(a) of those Related Agreements, this Agreement will cease to be a Pending Agreement for such purpose on and from:
- (i) the Deemed Settlement Effective Date for this Agreement (if applicable); or
  - (ii) otherwise, the Settlement Effective Date.
- (c) If clause 9.7(b) applies to this Agreement, the monetary Compensation payable under the Settlement will be re-evaluated on the assumption that the Deemed Settlement Effective Date or the Settlement Effective Date, as the case may be, occurred on the same date as the first Related Deemed Settlement Effective Date. The difference between the amount that was previously paid to the Trustee pursuant to clause 5 of the Settlement Terms as varied and applied under clause 9.7(a) of any Related Agreement, and the amount that would have been paid had the Deemed Settlement Effective Date or the Settlement Effective Date, as the case may be, in fact occurred on the same date as the first Related Deemed Settlement Effective Date, will be paid by the State to the Trustee within 60 Business Days following the Deemed Settlement Effective Date or the Settlement Effective Date, as the case may be.

- (d) The Parties acknowledge that if the State issues a Settlement Effective Date Notice under clause 9.6(b)(ii) of this Agreement, clause 9.7(b) and (c) of this Agreement will not apply to any Clause 9.6 Terminated Agreement.

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## 10. Termination after Settlement Effective Date – Failure of Consideration

### 10.1 Definitions

In this clause 10:

- (a) **Commonwealth Land** means land or waters within the Agreement Area in which the Commonwealth of Australia holds a legal or equitable interest;
- (b) **Conditional Period Expiry Date** means the 20th anniversary of the earlier of the Deemed Settlement Effective Date, if applicable, and the Settlement Effective Date;
- (c) **Failure of Consideration** means any of the following events occurring in relation to this Agreement after the Settlement Effective Date (or, if applicable, the Deemed Settlement Effective Date):
- (i) the Surrender provided for in clause 6.2 of this Agreement does not occur, has been undone or is invalid; or
  - (ii) the validation of all Invalid Acts in relation to the Agreement Area as provided for in clause 6.1 of this Agreement does not occur, has been undone or is ineffective; or
  - (iii) it is apparent, because of a final determination made by a Court of competent jurisdiction in circumstances to which clause 12 of this Agreement does not apply, that the Compensation does not constitute full and final compensation for the matters set out at clause 13.1(a), (b) and (c) of this Agreement;
- however, it is not a Failure of Consideration if:
- (iv) any or all of clauses 10.1(c)(i) to (iii) apply; and
  - (v) the Native Title Rights and Interests, the Invalid Acts, or the Compensation in question relate solely to Commonwealth Land;
- (d) **ILUA Termination Amount** means the amount calculated in accordance with 10.4 of this Agreement payable to the State by the Trustee under any ILUA Termination Notice.
- (e) **ILUA Termination Event** means:
- (i) this Agreement has terminated pursuant to clause 3.5(a)(v) of this Agreement after the Deemed Settlement Effective Date, if

applicable, or otherwise after the Settlement Effective Date;  
and

(i) there has been a Failure of Consideration,

provided both events occur before the Conditional Period Expiry Date.

- (f) **ILUA Termination Notice** means the notice, which must be based on the template at Annexure W to the Settlement Terms, that may be issued by the State pursuant to clause 10.2 of this Agreement.
- (g) **ILUA Termination Notice Date** means the date on which the State gives the ILUA Termination Notice to the Trustee.
- (h) **Interest Rate** means the rate prescribed in section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA) as at the date of the ILUA Termination Notice.
- (i) **Market Value** means the market value of the properties determined by or on behalf of the Housing Authority on or before the date of transfer of each property to the Land Sub.
- (j) **Related ILUA Termination Amount** means the amount calculated in accordance with 10.4 of a Related Agreement.
- (k) **Related ILUA Termination Event** means:
- (i) a Related Agreement has terminated pursuant to clause 3.5(a)(v) of that Related Agreement after the Related Deemed Settlement Effective Date applying to that Related Agreement, if applicable, or otherwise after the Settlement Effective Date;  
and
- (ii) there has been a Failure of Consideration,
- provided both events occur before the Conditional Period Expiry Date.
- (l) **Related ILUA Termination Notice** means a notice issued by the State pursuant to clause 10.2 of a Related Agreement.
- (m) **State Contribution** means all of the money and land provided by the State to the Trustee or the Land Sub, as the case may be, pursuant to this Agreement and all Related Agreements.
- (n) **State Contribution Condition** has the meaning given in clause 6.4 of the Trust Deed.
- (o) **Terminated Agreement** means this Agreement, following the issue of an ILUA Termination Notice, or a Related Agreement, following the issue of a Related ILUA Termination Notice.
- (p) **Trust Fund** has the meaning given in clause 1.1 of the Trust Deed.
- (q) **Value** means the value of the land as determined by Landgate's Valuation Services pursuant to clause 8.8 of the Land Base Strategy.

## 10.2 ILUA Termination Notice

Subject to clauses 10.5 and 10.8 of this Agreement, if an ILUA Termination Event occurs, the State may issue an ILUA Termination Notice as follows:

- (a) if the ILUA Termination Event occurs before all of the Regional Corporations have been appointed by the Trustee, to any Regional Corporation that has been appointed by the Trustee, SWALSC and the Trustee; and
- (b) if the ILUA Termination Event occurs after all of the Regional Corporations have been appointed by the Trustee, to all of the Regional Corporations and the Trustee.

## 10.3 Acknowledgement

- (a) The Native Title Agreement Group acknowledges and agrees that:
  - (i) the State Contribution is in consideration for the Native Title Agreement Group and all Related Native Title Agreement Groups surrendering all their Native Title Rights and Interests in relation to their Agreement Area or Related Agreement Area, any other loss, diminution, impairment and other effects on Native Title Rights and Interests in relation to the Agreement Area and each Related Agreement Area and the validation of any Invalid Acts done in relation to the Agreement Area and each Related Agreement Area;
  - (ii) the Trust Deed provides for the Trustee to accept the State Contribution on the basis that it is subject to the State Contribution Condition in that it may be required to make payment of an ILUA Termination Amount, and one or more Related ILUA Termination Amounts, to the State in future in the circumstances set out in clause 6.4 of the Trust Deed;
  - (iii) under the Trust Deed, the Trustee will be required to enter into the Security Deed;
  - (iv) the State may issue:
    - A. an ILUA Termination Notice if this Agreement suffers an ILUA Termination Event; and
    - B. a Related ILUA Termination Notice in respect of each Related Agreement that suffers a Related ILUA Termination Event;
  - (v) the Trustee is not bound to enquire whether or not any ILUA Termination Notice or Related ILUA Termination Notice was given in accordance with this Agreement or a Related Agreement; and
  - (vi) if the Trustee fails to pay any ILUA Termination Amount or Related ILUA Termination Amount as and when such amount becomes due and payable, the State may seek to enforce its security interest over the Noongar Future Fund in order to

satisfy the ILUA Termination Amount or Related ILUA Termination Amount pursuant to the terms of the Security Deed.

- (b) The State acknowledges and agrees that, if the Trustee fails to pay any ILUA Termination Amount or Related ILUA Termination Amount as and when such amount becomes due and payable, the State's only avenue of recourse will be to recover from the Trustee, including pursuant to the terms of the Security Deed, the lesser of the amount of such unpaid ILUA Termination Amount or Related ILUA Termination Amount and the amount of the Trust Fund, including any assets held by the Land Sub.

#### **10.4 ILUA Termination Amount**

- (a) Where this Agreement suffers an ILUA Termination Event, the ILUA Termination Amount in \$, in respect of that ILUA Termination Event, will comprise the sum of the following amounts:
- (i) one sixth of the total amount paid by the State to the Trustee pursuant to clause 5.1 of the Settlement Terms prior to the ILUA Termination Notice Date;
  - (ii) interest on the amount referred to in clause 10.4(a)(i) of this Agreement, calculated in accordance with the Interest Rate, for the period commencing on the date on which the State last made a payment to the Trustee pursuant to clause 5.1 of the Settlement Terms and finishing on the date when the Trustee pays to the State the ILUA Termination Amount;
  - (iii) one sixth of the Value of all land transferred in freehold to the Trustee or the Land Sub prior to the ILUA Termination Notice Date pursuant to clause 8 of the Settlement Terms;
  - (iv) one sixth of the Market Value of all properties transferred to the Land Sub prior to the ILUA Termination Notice Date pursuant to the Property Transfer Deed referred to in clause 14 of the Settlement Terms;
  - (v) the amount of money paid by the State to the Trustee prior to the ILUA Termination Notice Date pursuant to clause 15 of the Settlement Terms with respect to the purchase or lease of the administrative office for the Regional Corporation;
  - (vi) all of the unexpended funds remaining in the ENE Operations Account (as defined in the Trust Deed) of the Regional Corporation as at the ILUA Termination Notice Date,

and adjusted for CPI for the period between the date on which the relevant amounts were paid to the Trustee or the relevant land transferred to the Land Sub, as the case may be, and the date on which the Trustee is required to pay the ILUA Termination Amount to the State.

## **10.5 ILUA Termination Notice received prior to the Conditional Period Expiry Date**

The Parties acknowledge and agree that:

- (a) clauses 10.2 and 10.4 of this Agreement only apply to an ILUA Termination Notice or Related ILUA Termination Notice received by the Trustee prior to the Conditional Period Expiry Date; and
- (b) the State may not provide either an ILUA Termination Notice or a Related ILUA Termination Notice to the Trustee at any time after the Conditional Period Expiry Date.

## **10.6 Further consequences on an ILUA Termination Event**

The Parties acknowledge that a consequence of the termination of any Terminated Agreement is that the Compensation will cease to be provided in respect of the Agreement Group (or Related Agreement Group) and the Agreement Area (or Related Agreement Area) that are the subject of the Terminated Agreement. Specifically:

- (a) the quantum of the total annual Future Fund Payment will be reduced by one sixth for each Terminated Agreement;
- (b) the quantum of the total annual Operations Fund Payment will be reduced by one seventh for each Terminated Agreement;
- (c) the quantum of the payments to the Noongar Land Fund will be reduced by one sixth for each Terminated Agreement;
- (d) no further land will be Allocated under clause 8 of the Settlement Terms in the Agreement Area or the Related Agreement Area the subject of each Terminated Agreement;
- (e) the amounts and percentages of land to be Allocated as specified in clauses 6 and 7 of Annexure J to the Settlement Terms will be reduced by one sixth for each Terminated Agreement where the reduction in the minimum and maximum amounts of land to be Allocated pursuant to clause 6 of Annexure J to the Settlement Terms is to be calculated after deducting the land hectarage that has already been transferred to the Land Sub before the ILUA Termination Notice Date;
- (f) the Housing Authority will not transfer properties under the Property Transfer Deed referred to in clause 14 of the Settlement Terms in the area the subject of the Terminated Agreement;
- (g) the State will not provide funding for the regional office of the Regional Corporation referred to in each Terminated Agreement;
- (h) clauses 9, 10, 11, 12, 13, 15, 16 and 17 of the Settlement Terms will not apply to land in the Agreement Area or Related Agreement Area the subject of a Terminated Agreement;



- (i) any leases in land in the Agreement Area or Related Agreement Area the subject of a Terminated Agreement granted pursuant to clause 8 of the Settlement Terms will terminate according to their terms;
- (j) any Management Order in land in the Agreement Area or Related Agreement Area the subject of a Terminated Agreement made pursuant to clause 8 of the Settlement Terms may be revoked at the absolute unfettered discretion of the Minister for Lands; and
- (k) any Co-operative Management Agreement made in respect of land in the Agreement Area or Related Agreement Area the subject of a Terminated Agreement entered into under clause 11 of the Settlement Terms will be terminated according to its terms.

## **10.7 Acknowledgement**

The Parties acknowledge that the adjustments to the Compensation set out in clauses 10.4 and 10.6 of this Agreement are premised on the assumption that, after this Agreement is terminated under clause 3.5(a)(v) of this Agreement, all 5 of the Related Agreements will continue in force. If there:

- (a) were 5 or fewer Related Agreements in force before this Agreement is terminated; or
- (b) are fewer than 5 Related Agreements in force after this Agreement is so terminated,

the adjustments to the Compensation set out in clauses 10.4 and 10.6 of this Agreement will be modified commensurate with the actual number of Related Agreements in force.

## **10.8 Scope**

The Parties acknowledge and agree that if the Trustee is required to pay any ILUA Termination Amount in circumstances where the State Parties have already recovered one or more payments in respect of an Indemnified Amount with respect to the Agreement Area under clause 12 of this Agreement, the amount of these payments recovered under clause 12 of this Agreement will be deducted from the ILUA Termination Amount.

## **10.9 Effect of termination**

Termination of this Agreement or its removal from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NT Act does not affect the operation of this clause.

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## **11. No fettering of statutory powers or discretions**

Each Party acknowledges and agrees that nothing in this Agreement can fetter or control the exercise by any person (including a Minister in the Government of the State) of a statutory power or discretion otherwise than in accordance with the statute.

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## 12. Indemnities and release

### 12.1 Indemnities

- (a) If:
- (i) a declaration (including a determination) (**Declaration**) is made by a court of competent jurisdiction under which Native Title is determined to have existed in relation to all or part of the Agreement Area before the date on which the Surrender takes effect under clause 6.2(b) of this Agreement (**Former Rights**); and
  - (ii) the person or persons who held such Former Rights (**Actual Native Title Holders**) are not members of the Native Title Agreement Group,

then:

- (iii) subject to clauses 12.1(d), 12.2 and 12.3 of this Agreement, the Native Title Agreement Group jointly indemnifies the State Parties in respect of:
  - A. any compensation in respect of the Former Rights that is payable by the State Parties to the Actual Native Title Holders, provided that the liability to pay (and the quantum of) such compensation are:
    - 1) determined by a court of competent jurisdiction; or
    - 2) with the consent of the Native Title Agreement Group, otherwise agreed with the Actual Native Title Holders; and
  - B. such reasonable legal costs or expenses as are necessarily incurred by the State and the Actual Native Title Holders in connection with any claim for compensation by the Actual Native Title Holders in respect of Former Rights held in relation to the Agreement Area,

**(Indemnified Amount).**

- (b) In consideration of this Agreement, the Native Title Agreement Group releases and discharges the State Parties in respect of any loss or damage suffered or incurred by any one or more members of the Native Title Agreement Group arising from any claim for compensation by the Actual Native Title Holders with respect to any Former Rights.
- (c) If
  - (i) a Related Agreement suffers a Related ILUA Termination Event; and

- (ii) any of the acts done by the State to transfer land in freehold in that Related Agreement Area to the Trustee pursuant to clause 8 of and Annexure J to the Settlement Terms (**Transferred Land**) was invalidly done due to the existence of Native Title (**Invalid Act**),

then

- (iii) subject to clauses 12.1(d), 12.2 and 12.3 of this Agreement, the Native Title Agreement Group (jointly with the Related Native Title Agreement Groups) indemnifies the State Parties in respect of:
  - A. any compensation that is payable by the State Parties to the Native Title Holders in respect of the Transferred Land for the doing of the Invalid Act and the validation of the Invalid Act (as the case may be) provided that the liability to pay (and the quantum of) such compensation are:
    - 1) determined by a court of competent jurisdiction; or
    - 2) with the consent of the Native Title Agreement Group and the Related Native Title Agreement Groups, otherwise agreed with the Native Title Holders; and
  - B. such reasonable legal costs or expenses as are necessarily incurred by the State and the Native Title Holders in connection with any claim for compensation by the Native Title Holders in respect of the Invalid Acts and their validation,

(also an **Indemnified Amount**).

- (d) The rights of the State Parties in respect of the Indemnified Amount are limited to taking the actions specified in clauses 12.1(e), (f), (g) and (h), 12.2 and 12.3 of this Agreement.
- (e) The Native Title Agreement Group acknowledges and agrees that the State Parties may recover an Indemnified Amount from the Trustee as a debt owing by the Trustee to the State Parties and payable on demand by service of a notice to:
  - (i) until the Regional Corporation and all of the Related Regional Corporations have been appointed by the Trustee:
    - A. the Central Services Corporation;
    - B. the Trustee; and
    - C. any of the Regional Corporation and Related Regional Corporations that have been appointed by the Trustee; and

- (ii) after all of the Regional Corporations and Related Regional Corporations have been appointed by the Trustee:
  - A. the Trustee;
  - B. the Regional Corporation; and
  - C. all of the Related Regional Corporations

**(Indemnified Amount Notice).**

- (f) The Indemnified Amount Notice will contain:
  - (i) where an Indemnified Amount does not exceed the Trustee Recovery Limit a statement of the Indemnified Amount; and
  - (ii) where an Indemnified Amount exceeds the Trustee Recovery Limit, a statement of the Indemnified Amount and the Trustee Recovery Limit calculated in accordance with clause 12.2 of this Agreement.
- (g) The rights of the State Parties in respect of the Indemnified Amount are limited to:
  - (i) recovering from the Trustee an amount not exceeding the Trustee Recovery Limit; and
  - (ii) where an Indemnified Amount exceeds the Trustee Recovery Limit, reducing the Future Fund Payments according to the formula set out in clause 12.3 of this Agreement to recover the balance of the Indemnified Amount.
- (h) To avoid doubt, in the event that an Indemnified Amount is not paid as and when due, the State Parties may:
  - (i) have recourse to the Security Deed up to the Trustee Recovery Limit; and
  - (ii) where an Indemnified Amount exceeds the Trustee Recovery Limit, reduce Future Fund Payments according to the formula set out in clause 12.3 of this Agreement to recover the balance of the Indemnified Amount.

## **12.2 Trustee Recovery Limit**

In respect of one or more Indemnified Amount Notices issued under clause 12.1(f) of this Agreement, the maximum amount in \$ which the State Parties may recover directly from the Trustee under clause 12.1 of this Agreement (**Trustee Recovery Limit**) is to be calculated as at the relevant date of issuing an Indemnified Amount Notice as follows:

- (a) one sixth of the total amount paid by the State to the Trustee pursuant to clause 5.1 of the Settlement Terms;
- (b) interest on the amount referred to in clause 12.2(a), calculated in accordance with the Interest Rate, for the period commencing on the

date on which the State last made a payment to the Trustee pursuant to clause 5.1 of the Settlement Terms;

- (c) one sixth of the Value (as defined in clause 10 of this Agreement) of all land transferred in freehold to the Trustee or the Land Sub pursuant to clause 8 of the Settlement Terms;
- (d) one sixth of the Market Value (as defined in clause 10 of this Agreement) of all properties transferred to the Land Sub pursuant to the Property Transfer Deed referred to in clause 14 of the Settlement Terms,

and adjusted for CPI for the period between the date on which the relevant amounts were paid to the Trustee or the relevant land was transferred to the Land Sub, as the case may be, and the date on which notice is given under clause 12.1(f) of this Agreement.

### **12.3 Reduction of Future Fund Payments where an Indemnified Amount exceeds the Trustee Recovery Limit**

The Parties acknowledge and agree that where an Indemnified Amount exceeds the Trustee Recovery Limit in relation to this Agreement or any Related Agreements (each a **Clause 12.1 Agreement**), then, in respect of each Clause 12.1 Agreement, the following amounts will be deducted from the quantum of the Future Fund Payment to be provided to the Trustee each year in accordance with clause 5.1 of the Settlement Terms:

- (a) one sixth of the quantum of the total annual Future Fund Payment;
- (b) one sixth of the Value (as defined in clause 10 of this Agreement) of land that was Allocated under clause 8 of the Settlement Terms in the preceding year (but, in the first year following the date of issuing the Indemnified Amount Notice, excluding land that was Allocated prior to that date); and
- (c) one sixth of the Market Value (as defined in clause 10 of this Agreement) of properties that were transferred under clause 14 of the Settlement Terms in the preceding year (but, in the first year following the date of issuing the Indemnified Amount Notice, excluding properties that were transferred prior to that date),

until such time as either:

- (d) the Indemnified Amount is recovered in full; or
- (e) no further Future Fund Payments are payable by the State to the Trustee in accordance with clause 5.1 of the Settlement Terms.

### **12.4 Effect of termination**

Except where clause 10 of this Agreement applies, termination of this Agreement or its removal from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NT Act does not affect the operation of this clause.

## **12.5 Scope**

The Parties acknowledge and agree that, notwithstanding anything contained in this clause 12, or in clause 10 or any other provision in this Agreement, the State Parties may not recover any of the Indemnified Amount under clause 12.1(e) of this Agreement if the State has already issued an ILUA Termination Notice under clause 10.2 of this Agreement.

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## **13. No Further Compensation**

### **13.1 General**

The Native Title Agreement Group acknowledges and agrees that the Compensation constitutes full and final compensation in relation to:

- (a) the extinguishment, by the Surrender or otherwise, of their Native Title Rights and Interests in the Agreement Area up to and including the date on which the Surrender takes effect under clause 6.2(b) of this Agreement;
- (b) any impairment of their Native Title Rights and Interests in the Agreement Area up to and including the date on which the Surrender takes effect under clause 6.2(b) of this Agreement; and
- (c) the validation of all Invalid Acts in the Agreement Area.

### **13.2 Release**

The Native Title Agreement Group:

- (a) releases the State Parties from any liability for compensation, other than the Compensation provided for and delivered under this Agreement, in relation to the extinguishment and impairment of their Native Title Rights and Interests in the Agreement Area, and the validation of Invalid Acts in the Agreement Area, up to and including the date on which the Surrender takes effect under clause 6.2(b) of this Agreement; and
- (b) agrees that:
  - (i) they will not make or maintain any claim for compensation under the NT Act, the LAA or otherwise, nor will they authorise any other person to bring or maintain such a claim on their behalf, against the State or any State Party for the effects of any of the matters referred to in clause 13.1 of this Agreement; and
  - (ii) if any member of a Native Title Agreement Group makes or maintains a claim for compensation contrary to clause 13.2(b)(i) of this Agreement, the State and each State Party may each plead the terms of this Agreement in bar of that claim.

---

## 14. Default and Insolvency

### 14.1 Definitions

In this clause 14, a reference to:

- (a) a Clause 6.3 Default is a reference to a breach by SWALSC or the Native Title Agreement Group of any of their obligations under clause 6.3 of this Agreement; and
- (b) an Insolvency Event is a reference to a Regional Corporation:
  - (i) committing an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the CATSI Act; or
  - (ii) being placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or
  - (iii) being placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
  - (iv) in any event, being unable to pay all its debts as and when they become due and payable.

### 14.2 Clause 6.3 Default

- (a) Where a Clause 6.3 Default occurs, the State may serve on SWALSC a notice (**Default Notice**) specifying (and giving reasonable particulars of) that Clause 6.3 Default.
- (b) On receiving the Default Notice, SWALSC or the Native Title Agreement Group will use all reasonable endeavours to remedy the breach or breaches of their obligations under clause 6.3 of this Agreement that were the cause of the Clause 6.3 Default:
  - (i) within 20 Business Days (where practicable to do so); and
  - (ii) in any event, by no later than 3 months after receipt of the Default Notice.

### 14.3 Suspension of Obligations and Rights by the State for Clause 6.3 Default

If SWALSC or the Native Title Agreement Group fail to remedy the breach or breaches of their obligations under clause 6.3 of this Agreement that were the cause of a Clause 6.3 Default, within 20 Business Days after receipt of a Default Notice relating to that Clause 6.3 Default, the State and the Government Parties may by notice in writing to SWALSC, suspend the performance of their obligations and the defaulting Party's rights under this Agreement to the extent specified in the Default Notice until:

- (a) SWALSC or the Native Title Agreement Group do remedy the breach or breaches of their obligations under clause 6.3 of this Agreement that were the cause of the relevant Clause 6.3 Default; or

- (b) the Federal Court makes the Determination(s) of Native Title in accordance with the relevant Consent Orders or Other Claim Consent Orders or otherwise as contemplated in clause 6.3 of this Agreement.

#### 14.4 Insolvency Events

- (a) If an Insolvency Event occurs, the Native Title Agreement Group will, as soon as reasonably practicable, notify the State:
  - (i) that the Insolvency Event has occurred;
  - (ii) of the appointment of any administrator, receiver or manager to the Regional Corporation; and
  - (iii) if and when the relevant Insolvency Event ceases to exist.
- (b) Where the Insolvency Event results in an order to wind up the Regional Corporation:
  - (i) the Native Title Agreement Group will take all steps as are reasonably necessary to cause a replacement body corporate to be:
    - A. incorporated for the purposes of clause 8 of this Agreement:
      - 1) as soon as reasonably practicable;
      - 2) but, in any event, within 40 Business Days after the winding up of the Regional Corporation; and
    - B. appointed as a Regional Corporation by the Trustee under clause 4 of the Trust Deed;
  - (ii) SWALSC will notify the State of the appointment of the replacement Regional Corporation by the Trustee within 10 Business Days after that appointment;
  - (iii) The State will, within 20 Business Days after receipt of the notice referred to in clause 14.4(b)(ii) of this Agreement, prepare a deed (**Replacement RC Deed of Novation**) in the form set out in Schedule 6 to this Agreement and submit it to SWALSC;
  - (iv) Subject to clause 14.4(c), SWALSC will, within 20 Business Days after receipt of the Replacement RC Deed of Novation:
    - A. execute the Replacement RC Deed of Novation;
    - B. use its best endeavours to have the Replacement RC Deed of Novation executed by the outgoing Regional Corporation;
    - C. procure the replacement Regional Corporation to execute the Replacement RC Deed of Novation; and



- D. return the Replacement RC Deed of Novation to the State; and
- (v) the State will then execute the Replacement RC Deed of Novation, have it stamped if necessary, and provide copies of the fully executed (and, if applicable, stamped) Replacement RC Deed of Novation to SWALSC, the replacement Regional Corporation and the Trustee.
- (c) If SWALSC is unable to have a Replacement RC Deed of Novation executed by an outgoing Regional Corporation in the circumstances described in clause 14.4(b)(iv)B of this Agreement:
  - (i) SWALSC:
    - A. will be under no obligation to carry out any of the remaining steps prescribed under clause 14.4(b)(iv) of this Agreement; and
    - B. will instead:
      - 1) procure the replacement Regional Corporation appointed by the Trustee to become a party to this Agreement by executing a deed (**Accession Deed**) in the form set out in Schedule 8 to this Agreement;
      - 2) execute the Accession Deed;
      - 3) provide the Accession Deed to the State within 10 Business Days after the date on which the Accession Deed is executed by SWALSC; and
  - (ii) the State will then execute the Accession Deed, have it stamped if necessary, and provide copies of the fully executed (and, if applicable, stamped) Accession Deed to SWALSC, the replacement Regional Corporation and the Trustee.

#### **14.5 Duty to Mitigate**

A Party must take all reasonable steps open to it to mitigate the effects of any Clause 6.3 Default or Insolvency Event.

#### **14.6 Remedies exercised under this clause 14 do not prejudice any other rights a Party may have**

Any remedy exercised under this clause 14 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law (including the right to seek interlocutory relief and specific performance).

---

## **15. Dispute resolution**

### **15.1 No arbitration or court proceedings**

If a dispute arises under this Agreement, including a dispute in respect of this clause 15.1 (**Dispute**), a Party must comply with clauses 15.2 to 15.4 of this Agreement before commencing arbitration or court proceedings (except proceedings for urgent, including injunctive or declaratory, relief).

### **15.2 Notification**

A Party (**Disputant**) claiming a Dispute has arisen must give each other Party that is a party to the Dispute (each also a **Disputant**) a notice (**Dispute Notice**) setting out details of the Dispute.

### **15.3 Parties to resolve Dispute**

- (a) During the period of 20 Business Days after a Dispute Notice is given (or such longer period as the Disputants may agree in writing), each Disputant must use its reasonable endeavours to resolve the Dispute.
- (b) The reasonable endeavours for the purposes of clause 15.3(a) of this Agreement may include the convening of one or more meetings of the Disputants (which may be conducted by teleconference) to try to resolve the Dispute.
- (c) If the Disputants cannot resolve the Dispute within the period stated in clause 15.3(a) of this Agreement, any Disputant may request that the Dispute be referred to a mediator and, in such circumstances, the Dispute must be referred to mediation in accordance with clause 15.4 of this Agreement.

### **15.4 Mediation**

- (a) If the Disputants cannot agree on a mediator within 10 Business Days after a request under clause 15.3(c) of this Agreement, the chairman of LEADR will appoint a mediator at the request of any of the Disputants.
- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Disputant except if the Disputant agrees in advance in writing.
- (c) Any information or documents disclosed by a Disputant under this clause 15:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Disputant must pay its own costs of complying with this clause 15.4. The costs of the mediator will be borne equally between the Disputants.
- (e) The Disputants will engage in the mediation process in good faith and in an open and conciliatory manner and to endeavour to reach a mutually

acceptable compromise to the issues in Dispute. If the Disputants fail to achieve a resolution of the Dispute by mediation within 20 Business Days after the appointment of a mediator under this clause 15.4, or such further time as the Disputants may agree in writing, any Disputant may take such action as it considers appropriate, including (subject to clause 15.6 of this Agreement) referring the matter to arbitration or commencing legal proceedings.

## **15.5 Arbitration**

- (a) Where Disputants have complied with clauses 15.2 to 15.4 of this Agreement, and all agree in writing to do so, the Disputants may refer the Dispute to arbitration under the *Commercial Arbitration Act 2012 (WA)*.
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the Disputants.
- (c) The Disputants will appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Disputants fail to agree on a person to be the arbitrator under clause 15.5(c) of this Agreement, the Disputants will request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Any Disputant may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

## **15.6 Breach of this clause**

If a Disputant breaches any of clauses 15.1 to 15.5 of this Agreement, the other Disputants do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

## **15.7 Obligations continue**

Subject to clause 15.8 of this Agreement, if a Dispute is referred for mediation or arbitration under any part of this clause 15, or if court proceedings are started in respect of the Dispute, the Disputants as well as the other Parties (if any) must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

## **15.8 Extension of time**

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this Agreement, in order to preserve the rights of a Disputant, the Parties (or Disputants, as applicable) will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

---

## **16. Confidentiality**

### **16.1 Duty to preserve confidentiality**

Subject to the remainder of this clause 16 and to clause 17 of this Agreement, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in clause 16.2 of this Agreement.

### **16.2 Exceptions**

Subject to clause 16.3 of this Agreement, a Party receiving Confidential Information may disclose such information in any of the following circumstances:

- (a) if it has the prior written consent of the Party from whom it received the Confidential Information;
- (b) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;
- (c) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information
- (d) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information to comply with the law or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent that the disclosure of the information is reasonably necessary for any processes or applications related to any approvals;
- (f) in connection with any dispute or litigation concerning this Agreement and its subject matter;
- (g) to the receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
- (h) to a Regional Corporation;
- (i) to the Central Services Corporation;
- (j) to the Trustee;
- (k) to the legislative or executive arm of the Government of Western Australia;
- (l) to the extent required by law;
- (m) to a court or tribunal of competent jurisdiction; and
- (n) as otherwise permitted or required by this Agreement.

### **16.3 Disclosure requirement**

Before making any disclosure to a person under clause 16.2 of this Agreement, a Party (**Disclosing Party**) must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Agreement;
- (b) before making any disclosure (other than under clause 16.2(k), (l) and (m) and only if it is reasonably practicable and lawful to do so) notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 16.2(g), (h), (i) and (j) of this Agreement, procure that the person or entity executes a deed with the Disclosing Party, in form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 16 other than where the person or entity is under a statutory obligation of confidentiality.

### **16.4 Party may seek injunction**

Each Party acknowledges that:

- (a) it is aware that any breach of this clause 16 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 16, or of any obligation of confidentiality under this Agreement, any aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 16; and
- (c) clause 15 of this Agreement does not apply to this clause 16.4.

### **16.5 No waiver or transfer of intellectual property rights**

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights held by the disclosing Party in that Confidential Information.

---

## **17. Publication of executed Agreement**

The Parties agree to the publication of this Agreement as executed, and any subsequent variations to this Agreement, on the 'Agreements, Treaties and Negotiated Settlements' database maintained (as at the date of this Agreement) by the University of Melbourne at [www.atns.net.au](http://www.atns.net.au), and to make this Agreement available on relevant State and Government Party websites.

---

## **18. Assignment**

### **18.1 Generally**

- (a) Neither the State nor a Government Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Agreement in any circumstances.
- (b) Other than as required by clause 8.2 of this Agreement, the Native Title Agreement Group may not assign, transfer, novate or otherwise dispose of their rights, title, obligations or interests under or in respect of this Agreement in any circumstances.
- (c) Following the assignment to the Regional Corporation under clause 8.2 of this Agreement, the Regional Corporation may not (otherwise than to a Replacement Regional Corporation, including pursuant to clause 14.4 of this Agreement) assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under or in respect of this Agreement in any circumstances.
- (d) SWALSC may not (otherwise than pursuant to clause 5.10 of this Agreement) assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under or in respect of this Agreement in any circumstances.

### **18.2 No encumbrance**

No Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Agreement.

---

## **19. State Party benefits**

Even where not a party to this Agreement, for the purposes of section 11 of the *Property Law Act 1969 (WA)*, each State Party is declared to be a party that has the benefit of clauses 12 and 13 of this Agreement and clauses 13.4 and 21 of the Settlement Terms.

---

## **20. State may execute documents**

The Government Parties authorise the State to execute on their behalf:

- (a) the Accession Deed;
- (b) the CSC Deed of Novation, the Original RC Deed of Novation and the Replacement RC Deed of Novation;
- (c) any notice under this Agreement including but not limited to any:
  - (i) Deemed Settlement Effective Date Notice; and
  - (ii) notice of termination under clause 9.6 of this Agreement; and
- (d) any variation of this Agreement.

---

## 21. Costs and duties

- (a) The State:
  - (i) will bear any duties or fees or taxes of a similar nature, and any related fines and penalties, associated with this Agreement and the Registration of this Agreement;
  - (ii) is authorised to apply for and retain the proceeds of any refund due in respect of duty or other amounts paid under clause 21(a)(i) of this Agreement.
- (b) Each Party will bear their own costs including legal costs associated with the negotiation, drafting, execution and Registration of this Agreement.

---

## 22. Notices

Each communication (including each notice, consent, approval, request and demand) to be given under or in connection with this Agreement:

- (a) must be in writing and signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party; and
- (b) must be delivered by prepaid post or by hand to the address, or sent by fax to the fax number, or (if in pdf or other format that is a scanned image of the original communication, including a handwritten signature, and attached to an e-mail stating that the attachment is a communication under this Agreement) sent to the email address, of the intended recipient that is specified in Schedule 9 to this Agreement (or the address in Western Australia, fax number or email address last notified in writing by the intended recipient to the other Parties); and
- (c) is taken to be received by the intended recipient:
  - (i) in the case of delivery by hand, when delivered;
  - (ii) in the case of prepaid post, on the third day after the date of posting;
  - (iii) in the case of fax, at the time shown on a transmission report produced by the despatching machine that indicates that the correct number of pages were sent to the correct destination fax machine number without error; and
  - (iv) in the case of email, at the time that is 24 hours after the email was sent, unless the Party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address,

but if the communication is taken to be received on a day that is not a Business Day, or at a time that is later than 4:00 pm, it is taken to be received at 9:00 am on the next Business Day.

---

## **23. General**

### **23.1 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

### **23.2 Governing law and jurisdiction**

- (a) This Agreement is governed by, and must be construed according to, the law applying in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally:
  - (i) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 23.2(a) of this Agreement.

### **23.3 Severance**

- (a) If any provision of this Agreement is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the law of any jurisdiction:
  - (i) that will not affect or impair:
    - A. the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
    - B. the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement; and
  - (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.
- (b) If a part of this Agreement is severed in accordance with clause 23.3(a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.



#### **23.4 Waiver**

A right or power under this Agreement will only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

#### **23.5 Consents**

A consent required from a Party under this Agreement may not be unreasonably withheld, unless this Agreement expressly provides otherwise.

#### **23.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **23.7 Counterparts**

- (a) This Agreement may be executed in a number of counterparts and by the Parties on separate counterparts. Each counterpart of this Agreement will constitute an original of this Agreement and all counterparts together will constitute the one instrument.
- (b) Whether or not this Agreement is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one original of this Agreement.

#### **23.8 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give full effect to this Agreement and the matters contemplated by it.

#### **23.9 Relationship**

Nothing in this Agreement will be construed as creating a relationship of partnership, principal and agent or employer and employee between the Parties or any of them.

### **23.10 Survival**

Clauses 1, 2, 5, 6, 10, 12, 16, 22 and 23 of this Agreement and clause 13.4 of the Settlement Terms survive termination of this Agreement.

## **Schedule 1**

### **Agreement Area**

#### **Part 1 - Description of external boundary**

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## **Whadjuk People ILUA**

### **External boundary description**

The Agreement Area covers all the land and waters within the external boundary described as:

All those lands and waters commencing at the intersection of the 3 Nautical Mile Limit with the southern boundary of Native Title Determination Application WAD6192/1998 Yued (WC1997/071) and extending generally easterly along the boundaries of that native title determination application to the intersection with a western boundary of Native Title Determination Application WAD6181/1998 Ballardong People (WC2000/007). Then generally southerly along the boundaries of that native title application to the intersection with a northern boundary of Native Title Determination Application WAD6274/1998 Gnaala Karla Booja (WC1998/058). Then generally westerly along the boundaries of that native title determination application to the intersection with the northernmost northern point of the High Water Mark of Garden Island. Then west to the intersection with the 3 Nautical Mile Limit. Then generally north westerly, generally north easterly and generally northerly along that 3 Nautical Mile Limit back to the commencement point.

### **Note**

#### **Data Reference and source**

- Agreement boundary data compiled by National Native Title Tribunal based on data sourced from Native Title Spatial Services (WA)
- Native Title Determination Application WAD6192/1998 Yued (WC1997/071) as accepted for registration on the 22nd August 1997.
- Native Title Determination Application WAD6181/1998 Ballardong People (WC2000/007) as accepted for registration on the 3rd July 2008.
- Native Title Determination Application WAD6274/1998 Gnaala Karla Booja (WC1998/058) as accepted for registration on the 17th September 1998.
- High Water Mark sourced from Landgate's Spatial Cadastral Database dated 4 October 2013.
- 3 Nautical Mile Limit is based on and sourced from AMB data, 6<sup>th</sup> Edition released in February 2006.

#### **Reference datum**

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time

Prepared by Geospatial Services, National Native Title Tribunal (20 August 2014)


## **Agreement Area**

### **Part 2 - Map of Agreement Area**

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**INDIGENOUS LAND USE AGREEMENT**

**Whadjuk People ILUA**

 Whadjuk People ILUA

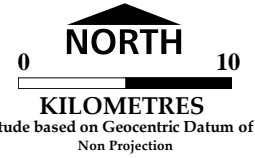
NOTE: To determine areas subject to claim within the external boundary, reference to the application description is necessary.

Map created by: Geospatial Services, National Native Title Tribunal (20/08/2014)

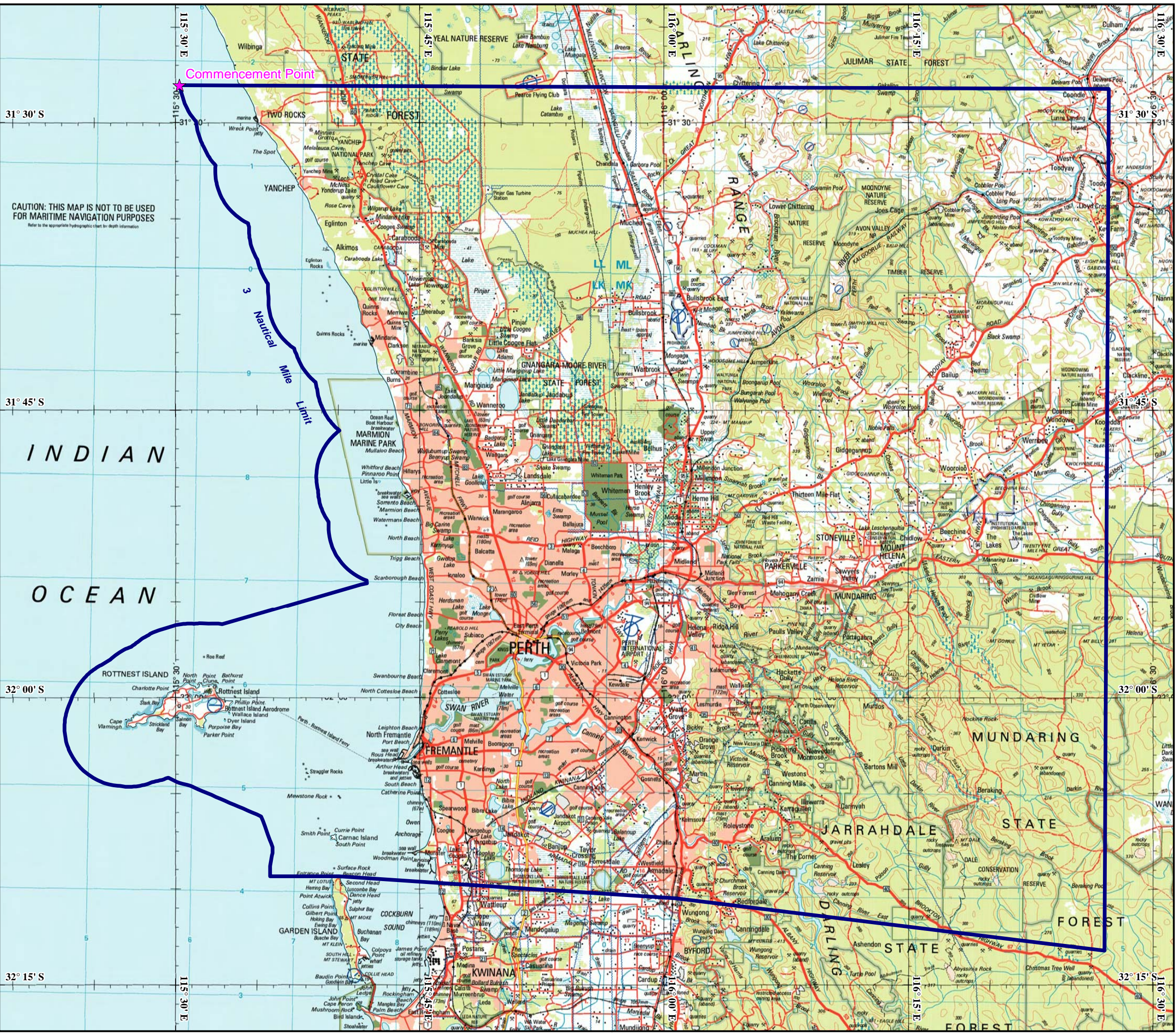
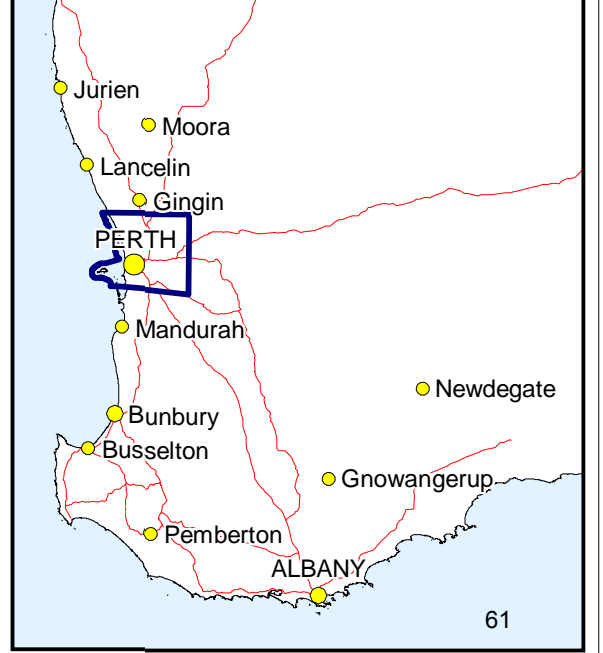
Application boundary data compiled by NNTT or sourced from Landgate (WA).

Topographic image data is © Commonwealth of Australia and is used under licence from Geoscience Australia 2008  
NOTE: Topographic images should be used as a guide only.

© Commonwealth of Australia 2014  
The Registrar, the National Native Title Tribunal and its staff, members and agents and the Commonwealth (collectively the Commonwealth) accept no liability and give no undertakings guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the information provided. In return for you receiving this information you agree to release and indemnify the Commonwealth and third party data suppliers in respect of all claims, expenses, losses, damages and costs arising directly or indirectly from your use of the information and the use of the information you obtained by any third party.



Location Diagram



CAUTION: THIS MAP IS NOT TO BE USED FOR MARITIME NAVIGATION PURPOSES  
Refer to the appropriate hydrographic chart for depth information

## **Schedule 2**

### **Native Title Agreement Group**

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The Native Title Agreement Group comprises those Noongar People who are:

- (a) the descendants of one or more of the persons listed below:
  - (i) Berejan (also known as Alice Taylor) and Nyeetill (also known as Thomas Nettle),
  - (ii) Boolabung and Weetang,
  - (iii) Cubican,
  - (iv) Doornong,
  - (v) Fanny, the mother of Cecilia Munderan,
  - (vi) John Bennell,
  - (vii) Juranang,
  - (viii) Kogan,
  - (ix) Maria Junnop,
  - (x) Mary Ann Bailapon,
  - (xi) Mother of James Shaw and Billy Shaw,
  - (xii) Mother of Mary Teresa Ah Sing,
  - (xiii) Tulbak,
  - (xiv) Wanetan;
- (b) persons who have been adopted according to Noongar laws and customs by any of the persons listed in paragraph (a) or their descendants;
- (c) the descendants of the persons specified in paragraph (b);
- (d) persons who are recognised by other members of the Native Title Agreement Group as belonging to the Native Title Agreement Group through possessing substantial knowledge of Noongar laws and customs in relation to the Agreement Area; and
- (e) other persons who are the descendants of an apical ancestor not listed in paragraph (a):
  - (i) where through further research it is apparent that the apical ancestor should have been included in the list in paragraph (a); and



- (ii) who are accepted by other members of the Native Title Agreement Group as belonging to the Native Title Agreement Group.

## **Schedule 3**

### **CSC Deed of Novation**

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# CSC Deed of Novation

**[Representative Parties] [If the "Original RC Novation" has already occurred, replace this reference with a reference to the Regional Corporation and make the required changes throughout this Deed]**

Representative Parties

**[Insert Name of Central Services Corporation]**

Central Services Corporation

South West Aboriginal Land & Sea Council Aboriginal Corporation  
SWALSC

State of Western Australia  
State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority  
Government Parties

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# CSC Deed of Novation

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Date **[Insert Date]**

Parties **[Insert Names of Representative Parties]** **[Insert addresses of Representative Parties]** (Representative Parties)

**[Insert Name of Central Services Corporation]** **[Central Services Corporation ICN]**  
**[Insert address of Regional Corporation registered office]** (Central Services Corporation)]

**South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**  
**[Insert address of SWALSC registered office]** (SWALSC)

State of Western Australia **[Insert State's address]** (State)

**Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)**

## Background

- A. The Representative Parties, SWALSC, the State and the Government Parties are parties to the ILUA.
- B. Clause 5.10 of the ILUA requires that if SWALSC is not appointed by the Trustee as the Central Services Corporation, which is the case, SWALSC will novate its rights and obligations under the ILUA to the Central Services Corporation by executing a "Deed of Novation".
- C. The Government Parties authorised, in the ILUA, the State to execute this Deed on their behalf.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

**Deed** means this document.

**Effective Date** means **[insert]**.

**ILUA** means the document titled "South West Indigenous Land Use Agreement (**[Amend title as appropriate for each ILUA]**)", which was dated **[insert]** and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties.

**Native Title Agreement Group** has the meaning given in the ILUA.

**Parties** means the Representative Parties, SWALSC, the Central Services Corporation, the State and the Government Parties.

**Trustee** has the meaning given in the ILUA.

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;
- (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;
- (e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) a reference to a clause is a reference to a constituent part of this Deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) **includes** in any form is not a word of limitation.

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## 2. Novation

### 2.1 ILUA (original agreement)

Subject to clause 2.2, and with effect from the Effective Date:

- (a) the Central Services Corporation is substituted for SWALSC as a party to the ILUA and will perform the terms and conditions of the ILUA applicable to SWALSC except for SWALSC's obligations under clauses 6.3, 14.2 and 14.3 of the ILUA;
- (b) the Central Services Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Central Services Corporation was a party to the ILUA in lieu of SWALSC; and
- (c) SWALSC is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the ILUA.

### 2.2 Liability

Notwithstanding clause 2.1:

- (a) SWALSC is not released, relieved or discharged from:

- (i) under clauses 6.3, 14.2 and 14.3 of the ILUA whether arising before or after the Effective Date; or
  - (ii) any breach of any provision of the ILUA that SWALSC may have committed before the Effective Date; and
- (b) the Central Services Corporation will not assume any obligation or liability that has accrued under the ILUA before the Effective Date.

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### **3. Affirmation of the ILUA**

The ILUA will be read and construed subject to this Deed, and in all other respects the provisions of the ILUA are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the ILUA will continue in full force and effect.

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## **4. General**

### **4.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in Western Australia.

### **4.2 Jurisdiction**

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

### **4.3 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

### **4.4 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

### **4.5 Expenses**

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

### **4.6 Duties**

The Regional Corporation:

- (a) must pay all duties and any related fines and penalties in respect of this Deed and the performance of this Deed; and

- (b) indemnifies each other Party against any liability arising from failure to comply with clause 4.6(a).

#### **4.7 Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

#### **4.8 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.



**Executed** as a deed.

**Executed** by **[Insert Name of Representative Party]** in the presence of:

\_\_\_\_\_  
Signature of Representative Party

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of Representative Party

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**[Either repeat this execution clause for each individual Representative Party, or replace with a suitable RC clause if the "Original RC Novation" has already occurred]**

**Executed** by **[Insert Name and ICN of Central Services Corporation]** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**  
in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Date

**Executed** for and on behalf of the **State of Western Australia** and of each of the **Government Parties** by **The Honourable [Insert name of the Premier]** in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Premier

\_\_\_\_\_  
Date

## **Schedule 4**

### **Form of Application for Registration**

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# Application Form

## Part A – Application details

<p><b>1. Short name of agreement</b></p>	<p>Whadjuk People Indigenous Land Use Agreement</p>
<p><b>2. Certified applications</b> (ss 24CG(3)(a), 203BE(1)(b) and (5) and 251A NTA and Reg 7(2)(f) ILUA Regulations)</p>	<p>Is the application for registration certified by all relevant Representative Aboriginal and Torres Strait Islander Bodies (RATSIBs)/Native Title Service Providers (NTSPs) for the agreement area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <hr/> <p>If yes, is a copy of all the required certifications attached to this application?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
<p><b>3. Non-certified applications</b> (ss 24CG(3)(b) and 251A NTA and Reg 7(2)(f) ILUA Regulations)</p>	<p>Have all reasonable efforts (including consulting all RATSIBs/NTSPs) been made to identify all holders and potential holders of native title for the agreement area and have all those identified authorised the making of the agreement?</p> <p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <hr/> <p>Please detail the grounds on which the Registrar should be satisfied that the above requirements have been met:</p> <p>N/A</p>

## Part B—Party details

4. First party details (s 24CG(1) NTA)	Name	Click to enter text
	Contact Name	Click to enter text
	Postal Address	Click to enter text
	Telephone number	Click to enter text
	Fax number (if available)	Click to enter text
	Email address (if available)	Click to enter text
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company Name	South West Aboriginal Land & Sea Council
	Contact Name	Glen Kelly Chief Executive Officer
	Postal Address	PO Box 585 Cannington WA 6987
	Telephone number	(08) 9358 7400
	Fax number (if available)	(08) 9358 7499
	Email address (if available)	glen.kelly@noongar.org.au
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>Second party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>South West Aboriginal Land &amp; Sea Council</b>
	Contact Name	<b>Glen Kelly Chief Executive Officer</b>
	Postal Address	<b>PO Box 585 Cannington WA 6987</b>
	Telephone number	<b>(08) 9358 7400</b>
	Fax number (if available)	<b>(08) 9358 7499</b>
	Email address (if available)	<b>glen.kelly@noongar.org.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	Click to enter text
	Contact Name	Click to enter text
	Postal Address	Click to enter text
	Telephone number	Click to enter text
	Fax number (if available)	Click to enter text
	Email address (if available)	Click to enter text
	Contact address for notification?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Contact address for Register entry?	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Third party details</b> (s 24CG(1) NTA)	Name	<b>State of Western Australia</b>
	Contact Name	<b>Peter Conran Director General, Department of the Premier and Cabinet</b>
	Postal Address	<b>Department of Premier and Cabinet Dumas House 2 Havelock St, West Perth WA, 6005</b>
	Telephone number	<b>(08) 6552 6777</b>
	Fax number (if available)	<b>(08) 6552 6733</b>
	Email address (if available)	<b>peter.conran@dpc.wa.gov.au</b>
	Is this party also the applicant?	<b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	<b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/>
Contact address for Register entry?	<b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/>	

<b>Fourth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Minister for Lands</b>
	Contact Name	<b>Sandra Flanagan Project Manager, South West Settlement</b>
	Postal Address	<b>Department of Lands Floor 11, 140 William Street Perth WA 6000</b>
	Telephone number	<b>(08) 6552 4724</b>
	Fax number (if available)	<b>(08) 6552 4417</b>
	Email address (if available)	<b>Sandra.Flanagan@lands.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	



<b>Fifth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Minister for Mines and Petroleum</b>
	Contact Name	<b>Jane Hartley Manager, Ministerial Coordination</b>
	Postal Address	<b>Department of Mines and Petroleum Mineral House, 100 Plain Street East Perth WA 6004</b>
	Telephone number	<b>(08) 9222 0432</b>
	Fax number (if available)	<b>(08) 9222 3862</b>
	Email address (if available)	<b>jane.hartley@dmp.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Sixth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Minister for Environment</b>
	Contact Name	<b>Simon Choo Native Title and Heritage Coordinator</b>
	Postal Address	<b>Department of Parks and Wildlife Locked Bag 104 Bentley Delivery Centre, Bentley, WA 6983</b>
	Telephone number	<b>(08) 9219 9799</b>
	Fax number (if available)	<b>(08) 9334 0498</b>
	Email address (if available)	<b>simon.choo@dpaw.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Seventh party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Minister for Water</b>
	Contact Name	<b>Nigel Mantle Manager, Water Source Protection Planning</b>
	Postal Address	<b>Department of Water 168 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 6364 6881</b>
	Fax number (if available)	<b>(08) 6364 7601</b>
	Email address (if available)	<b>nigel.mantle@water.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Eighth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Conservation Commission of Western Australia</b>
	Contact Name	<b>Carol Shannon</b>
	Postal Address	<b>Block 11, 17 Dick Perry Avenue Kensington WA 6151</b>
	Telephone number	<b>(08) 9219 9988</b>
	Fax number (if available)	Click to enter text
	Email address (if available)	<b>carol.shannon@conservation.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Ninth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Conservation and Land Management Executive Body</b>
	Contact Name	<b>Simon Choo Native Title and Heritage Coordinator</b>
	Postal Address	<b>Department of Parks and Wildlife Locked Bag 104, Bentley Delivery Centre Bentley WA 6983</b>
	Telephone number	<b>(08) 9219 9799</b>
	Fax number (if available)	<b>(08) 6467 5562</b>
	Email address (if available)	<b>simon.choo@dpaw.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Tenth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Housing Authority</b>
	Contact Name	<b>Genevieve Errey Director, Social Housing System/ Strategy and Policy</b>
	Postal Address	<b>Level 3, 99 Plain Street East Perth</b>
	Telephone number	<b>(08) 9222 8180</b>
	Fax number (if available)	<b>(08) 9221 1627</b>
	Email address (if available)	<b>genevieve.errey@housing.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Eleventh party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Marine Parks and Reserves Authority</b>
	Contact Name	<b>Melissa Evans</b>
	Postal Address	<b>Department of Parks and Wildlife Locked Bag 104, Bentley Delivery Centre Bentley WA 6983</b>
	Telephone number	<b>(08) 9219 9117</b>
	Fax number (if available)	<b>(08) 9334 0556</b>
	Email address (if available)	<b>melissa.evans@dpaw.wa.gov.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

<b>Twelfth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Water Corporation</b>
	Contact Name	<b>Patricia Gale Board &amp; Ministerial Liaison Manager</b>
	Postal Address	<b>629 Newcastle St Leederville WA 6007</b>
	Telephone number	<b>(08) 9420 2790</b>
	Fax number (if available)	Click to enter text
	Email address (if available)	<b>patricia.gale@watercorporation.com.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	



<b>Thirteenth party details</b> (Reg 7(3)(a) ILUA Regulations)	Name	<b>Western Australian Land Authority (LandCorp)</b>
	Contact Name	<b>John Clifton Manager, Program Strategy and Innovation</b>
	Postal Address	<b>40 The Esplanade, Perth WA 6000</b>
	Telephone number	<b>(08) 9482 7421</b>
	Fax number (if available)	<b>(08) 9481 0861</b>
	Email address (if available)	<b>john.clifton@landcorp.com.au</b>
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Representative's name, address and telephone number (if applicable)</b>	Company Name	<b>State Solicitor's Office</b>
	Contact Name	<b>Mr Rod Wahl</b>
	Postal Address	<b>State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace PERTH WA 6000</b>
	Telephone number	<b>(08) 9264 1888</b>
	Fax number (if available)	<b>(08) 9264 1440</b>
	Email address (if available)	<b>r.wahl@sso.wa.gov.au</b>
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

## Part C – Mandatory parties

<p><b>5. Native title group – registered native title claimant or registered native title body corporate (RNTBC)</b> (s 24CD(1) and (2)(a)–(b) NTA)</p>	<p>Is there one or more:</p> <ul style="list-style-type: none"> <li>• registered native title claimant(s) or</li> <li>• RNTBCs</li> </ul> <p>for <b>any</b> of the land or waters in the agreement area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <hr/> <p>If yes, are <b>all</b> such registered native title claimants and/or <b>all</b> RNTBCs parties to the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes please identify which party/parties:</p> <p><b>[INSERT NAME OF PARTIES PRIOR TO LODGEMENT]</b></p>
<p><b>6. Native title group – no registered native title claimant or RNTBC</b> (s 24CD(1), (2)(c) and (3) NTA)</p>	<p>If there is no registered native title claimant or RNTBC for <b>all or any part</b> of the agreement area, one or more of the following persons/bodies must be party to the agreement (there must be at least one):</p> <p>A person(s) who claims to hold native title in relation to an area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>A RATSIB/NTSP for the area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p><b>South West Aboriginal Land &amp; Sea Council Aboriginal Corporation</b></p>

<p><b>7. Government parties</b> (ss 24CD(5), 24EBA(1)(a)(i) and (ii), (b) and (c), 24EBA(2)–(4) NTA and Reg 7(3)(c) ILUA Regulations)</p>	<p>Does the agreement make provision for the extinguishment of native title rights and interests by surrendering them to the Commonwealth or a State or Territory government (relevant government)?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Does the agreement validate purportedly invalid future acts?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Does the agreement validate the purported past extinguishment of native title rights and interests by surrender to the relevant government?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If the answer to either of the above questions is yes, is the relevant government party to the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p><b>State of Western Australia</b></p>
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## Part D – Other parties

<p><b>8. Other native title parties</b> (s 24CD(4)(a) and (b) NTA)</p>	<p>Please identify any other party/parties who claims to hold native title in relation to the area who has not previously been identified in questions 5 or 6.</p> <p>N/A</p>
<p><b>9. RATSIBs or NTSPs for the area</b> (s 24CD(7) NTA and Reg 7(3)(b) and (4) ILUA Regulations)</p>	<p>Are there any RATSIBs/NTSPs for <b>any</b> of the area covered by the agreement not previously identified in question 6?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <hr/> <p>If yes, are any RATSIBs/NTSPs for any of the area a <b>party</b> to the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which RATSIB/NTSP:</p> <p>N/A</p>
<p><b>10. Government parties</b> (Reg 7(3)(c) ILUA Regulations)</p>	<p>If not previously identified in question 7, is the Commonwealth, State or Territory government a party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p>N/A</p>

## *Part E – Informing RATSIBs/NTSPs of intention to enter agreement*

<p><b>11. Informing RATSIBs or NTSPs of intention to enter agreement</b> (s 24CD(7) NTA and Reg 7(4) ILUA Regulations)</p>	<p>If there is one or more RATSIBs/NTSPs for any of the agreement area and none are parties to the agreement, has a person in the native title group informed at least one of those bodies of the groups' intention to enter into the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify which RATSIBs/NTSPs have been informed, how and when they were notified and by whom:</p> <p><a href="#">Click to enter text</a></p>
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## Part F – Agreement area

<p><b>12. Complete description of agreement area</b> (s 24CG(2) NTA and Reg 7(2)(d) and 5 ILUA Regulations)</p>	<p>Provide a ‘complete description’ of the agreement area, including any areas within the external boundary of the agreement area that are excluded from the agreement area (or refer to relevant section of agreement):</p> <p><b>See Schedule 1 of the attached Agreement.</b></p> <p><b>Note:</b> a map of the agreement area showing geographic coordinates must be attached to this application or be contained within the agreement.</p>
<p><b>13. Complete description of surrender area</b> (s 24CG(2) NTA and Reg 7(2)(e) and 5 ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title that is intended to extinguish native title rights and interests in the agreement area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please provide a ‘complete description’ of those areas (or refer to relevant section of agreement):</p> <p><b>See clause 6.2 of the attached Agreement and Schedule 1 of the attached Agreement.</b></p> <p><b>Note:</b> a map showing geographic coordinates which identifies any areas where the surrender of native title is intended to extinguish native title rights and interests must be attached to this application or be contained within the agreement.</p>

## Part G – Operating period

<p><b>14. Operating period</b> (Reg 7(3)(d) ILUA Regulations)</p>	<p>Does the agreement specify a time period during which it will operate?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If applicable, please provide the commencement date here (the commencement date may also be defined by reference to a specified event or activity, e.g. once a determination of native title is made by the Federal Court):</p> <p><b>The Agreement commences on the date of execution of the Agreement. The conditions relating to the surrender of native title and the validation of invalid acts and the payment of compensation only become effective after the registration of the Agreement and 5 Related Agreements.</b></p> <p>If applicable, please write the end date here (the end date may also be defined by reference to a specified event or activity, e.g. upon completion of a particular project):</p> <p><b>The Agreement will end within 60 Business Days of the Sunset Date (31 December 2016 or a later date agreed between SWALSC and the State) if it has not become effective before this date.</b></p> <p><b>After the Settlement Effective Date or the Deemed Settlement Effective Date, the Agreement continues indefinitely unless an ILUA Termination Event occurs.</b></p> <p>Please specify where in the agreement details of the operating period are located:</p> <p><b>Clauses 3.1, 3.2, 3.5(a), 9.6(b) and 10 and definitions.</b></p>
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## Part H—Statements in the agreement

<p><b>15. Consent to future acts</b> (s 24EB(1)(b) NTA and Reg 7(5)(a) ILUA Regulations)</p>	<p>Does the agreement contain any statement/s consenting to the doing of a particular future act, or class of acts, whether or not subject to conditions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (e.g. clause 5 and 6 plus definitions):</p> <p><b>See clause 6.2 and definitions.</b></p>
<p><b>16. Acts excluded from the right to negotiate</b> (s 24EB(1)(c) NTA and Reg 7(5)(b) ILUA Regulations)</p>	<p>Does the agreement include any statement/s to the effect that the right to negotiate provisions of the NTA (Part 2, Division 3, Subdivision P of the NTA) are not intended to apply to any or all of the future acts included in the agreement?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>Click to enter text</p>
<p><b>17. Surrender intended to extinguish native title</b> (s 24EB(1)(d) NTA and Reg 7(5)(c) ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title rights and interests in the future?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to extinguish native title rights and interests?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please also ensure that question 7 has also been completed):</p> <p><b>See clause 6.2 and definitions.</b></p>



<p><b>18. Validation of future acts that have already been done invalidly</b> (s 24EBA(1)(a)(i)–(ii) NTA and Reg 7(5)(d)–(e) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of future acts or class of future acts (other than intermediate period acts or the surrender of native title) that have already been done invalidly, whether or not subject to conditions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p><b>Clause 6.1 and definitions.</b></p>
<p><b>19. Intermediate period acts affected</b> (s 24EBA(1)(a) (iii) NTA and Reg 7(5)(f) ILUA Regulations)</p>	<p>Does the agreement provide for changing the effects on native title of the validation of an intermediate period act or class of acts?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>N/A</p>
<p><b>20. Validation of the previous purported surrender of native title</b> (s 24EBA(1)–(4) NTA and Reg 7(5)(g) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of the extinguishment of native title rights and interests by surrender which has already occurred invalidly?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to have extinguished those native title rights and interests?</p> <p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please ensure that question 7 has also been completed):</p> <p>N/A</p>

<p><b>21. Any other comments about required statements in the agreement?</b></p>	<p>N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/></p> <p>Click to enter text</p>
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### *Part I—Parts of the Register to be kept confidential*

<p><b>22. Confidential information</b> (s 199E(1)-(2) NTA)</p>	<p>Please indicate if there is any information or documents which you do not wish to be available for inspection by the public if the agreement is registered:</p> <p><b>No.</b></p> <p><b>Note:</b> the Registrar can only keep information confidential to the extent that the law allows.</p>
	<p>Is the agreement between the parties confidential?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>

*Part J – Document checklist* [COMPLETE PRIOR TO LODGEMENT]

<p><b>Documents that must accompany the application</b> (s 24CG(2) NTA, Reg 7(2) ILUA Regulations and Reg 9(1) PBC Regulations)</p>	<p>A copy of the agreement (the original is not required) including any attachments or appendices – s 24CG(2).</p>	<p>Yes <input type="checkbox"/></p>
	<p>A copy of each determination of native title for each party that is a RNTBC – Reg 7(2)(a).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p>
	<p>A statement by each party to the agreement, signed by or for the party, that the party agrees to the application being made – Reg 7(2)(b).</p>	<p>Yes <input type="checkbox"/></p> <p>Specify where in agreement/application:  <b>See clause 9.2.</b></p>
	<p>An extract from the Register of Native Title Claims giving details of each party that is a registered claimant – Reg 7(2)(c).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p>
	<p>A complete description of the agreement area (Reg 7(2)(d) and (5)) including:</p> <ul style="list-style-type: none"> <li>• any areas within the external boundary of the agreement area that are not included in the agreement area, and</li> <li>• a map showing geographic coordinates of that area.</li> </ul>	<p>Yes <input type="checkbox"/></p> <p>Specify where in agreement/application:  <b>See Schedule 1.</b></p>

	<p>If applicable:</p> <ul style="list-style-type: none"> <li>• a complete description of any areas where the surrender of native title is intended to extinguish native title rights and interests in the agreement area and any areas not included, and</li> <li>• a map showing geographic coordinates of that area— Regs 7(2)(e) and (5).</li> </ul>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>Specify where in agreement/application:</p> <p><b>See Schedule 1.</b></p>
	<p>If the application is certified, a copy of the certification— s 24CG(3)(a).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p><b>See Schedule 5.</b></p>
	<p>If the application is not certified, a statement setting out how the requirements for identification and authorisation have been met— s 24CG(3)(b).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p>
	<p>If:</p> <ul style="list-style-type: none"> <li>• a RNTBC is party to the agreement, and</li> <li>• the agreement gives effect to a ‘native title decision’, and</li> <li>• for any part of the agreement area there is one or more RATSIBs or NTSPs, and</li> <li>• none of them is party (or there is no RATSIB/ NTSP for the agreement area)— a document as mentioned in Reg 9(1) of the PBC Regulations (see Reg 7(2)(g) ILUA Regulations).</li> </ul>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>See possible format for such a document at Attachment A below</p>

	<p>If there is a RATSIB/NTSP for the agreement area and it is not a party, a statement signed by a party that is a member of the native title group (see s 24CD(1)–(3)) that at least one RATSIB/NTSP was informed of the native title group’s intention to enter into the agreement—Reg 7(4).</p>	<p>Yes <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>Specify where in agreement/application:</p> <p>N/A</p>
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## **Schedule 5**

### **Form of Certification of Application for Registration**

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**SOUTH WEST ABORIGINAL LAND & SEA COUNCIL ABORIGINAL CORPORATION (SWALSC) CERTIFICATION OF APPLICATION FOR REGISTRATION OF THE SOUTH WEST INDIGENOUS LAND USE AGREEMENT (WHADJUK PEOPLE) (AGREEMENT)**

**1. Certification**

**1.1 Background**

The SWALSC is of the opinion that, with respect to the making of the Agreement, the requirements of section 203BE(5)(a) and (b) of the *Native Title Act 1993* (Cth) (**NT Act**), namely that:

- (a) all reasonable efforts have been made to ensure that all persons who hold or may hold Native Title in relation to the Agreement Area (as specified in the Agreement) have been identified; and
- (b) all the persons so identified have authorised the making of the Agreement,

have been met.

**1.2 Certification**

In the light of the matters set out at paragraph 1.1 **above**, and in accordance with section 203BE(1) of the NT Act, the SWALSC certifies the application for registration of the Agreement.

**2. Reasons for Certification**

The SWALSC holds the opinion set out at paragraph 1.1 above for the following reasons:

- (a) [set out reasons for holding the opinion].
- (b) .....
- (c) .....

Certified by [insert name and position] for and on behalf of the SWALSC

.....  
Signature

.....  
Date

## **Schedule 6**

### **Original RC Deed of Novation**

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# Original RC Deed of Novation

## [Representative Parties]

Representative Parties

## [Insert Name of Regional Corporation]

Regional Corporation

South West Aboriginal Land & Sea Council Aboriginal Corporation

## [SWALSC may be replaced by the CSC]

SWALSC

State of Western Australia

State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority

Government Parties

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# Original RC Deed of Novation

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Date **[Insert Date]**

Parties **[Insert Names of Representative Parties]** **[Insert addresses of Representative Parties]** (Representative Parties) for and on behalf of the Native Title Agreement Group

**[Insert Name of Regional Corporation]** **[Regional Corporation ICN]** **[Insert address of Regional Corporation registered office]** (Regional Corporation)

**South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** **[Insert address of SWALSC registered office]** (SWALSC) **[SWALSC may be replaced by the CSC]**

State of Western Australia **[Insert State's address]** (State)

**Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)**

## Background

- A. The Representative Parties, SWALSC, the State and the Government Parties are parties to the ILUA.
- B. The Representative Parties entered into the ILUA for and on behalf of the Native Title Agreement Group.
- C. Clause 8.2 of the ILUA requires that the Regional Corporation, following its appointment by the Trustee, will replace the Representative Parties as a party to the ILUA (for and on behalf of the Native Title Agreement Group) by executing a "Deed of Novation".
- D. The Government Parties authorised, in the ILUA, the State to execute this Deed on their behalf.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

**Deed** means this document.

**Effective Date** means **[insert]**.

**ILUA** means the document titled "South West Indigenous Land Use Agreement (**[Amend title as appropriate for each ILUA]**)", which was dated **[insert]** and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties.

**Native Title Agreement Group** has the meaning given in the ILUA.

**Parties** means the Representative Parties, the Regional Corporation, SWALSC, the State and the Government Parties.

**Settlement Terms** has the meaning given in the ILUA.

**Trustee** has the meaning given in the ILUA.

## 1.2 Interpretation

In this Deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;

(c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;

(e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;

(f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;

(g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

(h) a reference to a clause is a reference to a constituent part of this Deed;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and

(j) **includes** in any form is not a word of limitation.

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## 2. Novation

### 2.1 ILUA (original agreement)

Subject to clause 2.2, and with effect from the Effective Date:

(a) the Regional Corporation is substituted for the Representative Parties as a party to the ILUA and will perform those terms and conditions of the ILUA binding upon the Native Title Agreement Group;

(b) the Regional Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Regional Corporation were a party to the ILUA in lieu of the Representative Parties on behalf of the Native Title Agreement Group; and

(c) the Native Title Agreement Group is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the ILUA.

## **2.2 Liability**

Notwithstanding clause 2.1:

- (a) the Native Title Agreement Group is not released, relieved or discharged from any representation, warranty, undertaking, acknowledgement, obligation or liability:
  - (i) under clauses 5, 6, 7, 9, 10, 12, 13 or 16 of the ILUA, or clauses 13 and 20 of the Settlement Terms, whether arising before or after the Effective Date; or
  - (ii) for any breach of any provision of the ILUA that the Representative Parties may have committed before the Effective Date; and
- (b) the Regional Corporation will not assume any obligation or liability that has accrued under the ILUA before the Effective Date.

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## **3. Affirmation of the ILUA**

The ILUA will be read and construed subject to this Deed, and in all other respects the provisions of the ILUA are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the ILUA will continue in full force and effect.

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## **4. General**

### **4.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in Western Australia.

### **4.2 Jurisdiction**

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

### **4.3 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

### **4.4 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

### **4.5 Expenses**

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

#### **4.6 Duties**

The Regional Corporation:

- (a) must pay all duties and any related fines and penalties in respect of this Deed and the performance of this Deed; and
- (b) indemnifies each other Party against any liability arising from failure to comply with clause 4.6(a).

#### **4.7 Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

#### **4.8 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

**Executed** as a deed.

**Executed** by **[Insert Name of Representative Party]** in the presence of:

\_\_\_\_\_  
Signature of Representative Party

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of Representative Party

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**[Repeat this execution clause for each individual Representative Party]**

**Executed** by **[Insert Name and ICN of Regional Corporation]** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**  
in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

**Executed** for and on behalf of the **State of Western Australia** and of each of the **Government Parties** by **The Honourable [Insert name of the Premier]** in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of Premier

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



## **Schedule 7**

### **Replacement RC Deed of Novation**

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# Replacement RC Deed of Novation

[Insert Name of Insolvent Corporation]

Insolvent Corporation

[Insert Name of Replacement Corporation]

Replacement Corporation

South West Aboriginal Land & Sea Council Aboriginal Corporation

[SWALSC may be replaced by the CSC]

SWALSC

State of Western Australia

State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority

Government Parties

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  - 4.8 Entire agreement ..... 4

# Replacement RC Deed of Novation

---

Date

[Insert Date]

Parties

[Insert Name of Insolvent Corporation] [Insolvent Corporation ICN] [Insert address of Insolvent Corporation registered office] (Insolvent Corporation)

[Insert Name of Replacement Corporation] [Replacement Corporation ICN] [Insert address of Replacement Corporation registered office] (Replacement Corporation)

South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832 [Insert address of SWALSC registered office] (SWALSC) [SSO: note SWALSC may be replaced by the CSC]

State of Western Australia [Insert State's address for notices] (State)

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)

## Background

- A. The Insolvent Corporation, SWALSC, the State and the Government Parties are parties to the ILUA.
- B. Clause 14.4(b) of the ILUA envisages that the Replacement Corporation, following its appointment by the Trustee, will replace the Insolvent Corporation as a party to the ILUA by executing a "Deed of Novation".
- C. The Insolvent Corporation has agreed to enter into this Deed for substitution of the Replacement Corporation for the Insolvent Corporation as a party to the ILUA, on the terms and conditions contained in this Deed, in consideration of the Replacement Corporation accepting in all respects the obligations of the Insolvent Corporation under the ILUA.
- D. The Government Parties authorised, in the ILUA, the State to execute this Deed on their behalf.

## Operative provisions

---

### 1. Definitions and interpretation

#### 1.1 Definitions

**Deed** means this document.

**Effective Date** means [insert].

**ILUA** means the document titled "South West Indigenous Land Use Agreement ([Amend title as appropriate for each ILUA])", which was dated [insert] and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties.

**Native Title Agreement Group** has the meaning given in the ILUA.

**Parties** means Insolvent Corporation, the Replacement Corporation, SWALSC, the State and the Government Parties.

**Representative Parties** has the meaning given in the ILUA.

**Trustee** has the meaning given in the ILUA.

## 1.2 Interpretation

In this Deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;

(c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;

(e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;

(f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;

(g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

(h) a reference to a clause is a reference to a constituent part of this Deed;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and

(j) **includes** in any form is not a word of limitation.

---

## 2. Novation

### 2.1 ILUA (original agreement)

Subject to clause 2.2, and with effect from the Effective Date:

(a) the Replacement Corporation is substituted for the Insolvent Corporation as a party to the ILUA and will perform the terms and conditions of the ILUA;

(b) the Replacement Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Replacement Corporation were a party to the ILUA in lieu of the Insolvent Corporation; and

- (c) the Insolvent Corporation is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the ILUA.

## **2.2 Liability before Effective Date**

Notwithstanding clause 2.1:

- (a) the Insolvent Corporation is not released, relieved or discharged from any obligation or liability that it may have incurred under the ILUA before the Effective Date; and
- (b) the Replacement Corporation will not assume any obligation or liability that has accrued under the ILUA before the Effective Date.

---

## **3. Affirmation of the ILUA**

The ILUA will be read and construed subject to this Deed, and in all other respects the provisions of the ILUA are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the ILUA will continue in full force and effect.

---

## **4. General**

### **4.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in Western Australia.

### **4.2 Jurisdiction**

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

### **4.3 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

### **4.4 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

### **4.5 Expenses**

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

#### **4.6 Duties**

The Replacement Corporation:

- (a) must pay all duties and any related fines and penalties in respect of this Deed and the performance of this Deed; and
- (b) indemnifies each other Party against any liability arising from failure to comply with clause 4.6(a).

#### **4.7 Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

#### **4.8 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

**Executed** as a deed.

**Executed by [Insert Name and ICN of Insolvent Corporation]** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by [Insert Name and ICN of Replacement Corporation]** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**Executed** for and on behalf of the **State of Western Australia** and of each of the **Government Parties** by **The Honourable [Insert name of the Premier]** in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of Premier

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

## **Schedule 8**

### **Accession Deed**

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# Deed of Accession

South West Aboriginal Land & Sea Council Aboriginal Corporation

[SWALSC may be replaced by the CSC]

SWALSC

[Insert Name of Incoming Corporation]

Incoming Corporation

State of Western Australia

State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority

Government Parties

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  - 2.1 ILUA (original agreement) ..... 3
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  - 3.6 Duties ..... 3
  - 3.7 Severability ..... 4
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# Deed of Accession

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Date **[Insert Date]**

Parties **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**  
**[Insert address of SWALSC registered office] (SWALSC) [SWALSC may be replaced by the CSC]**

**[Insert Name of Incoming Corporation] [Incoming Corporation ICN] [Insert address of Incoming Corporation registered office] (Incoming Corporation)**

**State of Western Australia [Insert State's address] (State)**

**Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)**

## Background

- A. SWALSC, the Insolvent Corporation, the State and the Government Parties are parties to the ILUA.
- B. Clause 14.4(d) of the ILUA provides for a replacement Regional Corporation appointed by the Trustee to become a party to the ILUA by executing an "Accession Deed".
- C. The Parties wish to enter into this Deed, as the "Accession Deed" referred to in clause 14.4(d) of the ILUA, to reflect the accession of the Incoming Corporation to the ILUA.
- D. The Government Parties authorised, in the ILUA, the State to execute this Deed on their behalf.

## Operative provisions

---

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Agreement Area** has the meaning given in the ILUA.

**Deed** means this document.

**Effective Date** means **[insert]**.

**ILUA** means the document titled "South West Indigenous Land Use Agreement (**[Amend title as appropriate for each ILUA]**)", which was dated **[insert]** and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties.

**Insolvent Corporation** means a body corporate that:

- (a) was appointed by the Trustee, in accordance with clause 4 of the Trust Deed, as the Regional Corporation for the Agreement Area;
- (b) became a party to the ILUA in the circumstances described in either clause 8.2 or clause 14.4 of the ILUA; and
- (c) subsequently committed, or otherwise suffered, an Insolvency Event.

**Insolvency Event** has the meaning given in the ILUA.

**Native Title Agreement Group** has the meaning given in the ILUA.

**Parties** means SWALSC, the Incoming Corporation, the State and the Government Parties.

**Regional Corporation** has the meaning given in the ILUA.

**Representative Parties** has the meaning given in the ILUA.

**Trust Deed** has the meaning given in the ILUA.

**Trustee** has the meaning given in the ILUA.

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;
  - (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - (d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;
  - (e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
  - (f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
  - (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
  - (h) a reference to a clause is a reference to a constituent part of this Deed;
  - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (j) **includes** in any form is not a word of limitation.

---

## **2. Accession to ILUA**

### **2.1 ILUA (original agreement)**

Subject to clause 2.2:

- (a) the Parties agree that, with effect from the Effective Date, the Incoming Corporation is joined as a party to the ILUA; and
- (b) the Incoming Corporation will be bound by the ILUA, and be entitled to the benefit of the ILUA, as if the Incoming Corporation were a party to the ILUA in lieu of the Insolvent Corporation.

### **2.2 Liability before Effective Date**

Notwithstanding clause 2.1, the Incoming Corporation will not assume any liability that has accrued under the ILUA before the Effective Date.

---

## **3. General**

### **3.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in Western Australia.

### **3.2 Jurisdiction**

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 3.2(a).

### **3.3 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

### **3.4 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

### **3.5 Expenses**

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

### **3.6 Duties**

The Incoming Corporation:

- (a) must pay all duties and any related fines and penalties in respect of this Deed and the performance of this Deed; and
- (b) indemnifies each other Party against any liability arising from failure to comply with clause 3.6(a).

### **3.7 Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

### **3.8 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.



**Executed** as a deed.

**Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832**  
in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by [Insert Name and ICN of Incoming Corporation]** in accordance with its constitution in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed** for and on behalf of the **State of** )  
**Western Australia** and of each of the )  
**Government Parties** by **The Honourable** )  
**[Insert name of the Premier]** in the presence )  
of: )  
 )  
 )

\_\_\_\_\_  
Signature of Premier

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

## **Schedule 9**

### **Addresses for Notices**

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[Clause 22(b)]

<b>Native Title Agreement Group</b> Notice details	Address: c/o- South West Aboriginal Land & Sea Council Aboriginal Corporation HomeTown Centre 1490 Albany Highway Cannington WA 6107 Fax No. (08) 9358 7499
<b>South West Aboriginal Land &amp; Sea Council Aboriginal Corporation</b> Notice details	Address: HomeTown Centre 1490 Albany Highway Cannington WA 6107 Fax No. (08) 9358 7499
<b>State of Western Australia</b> Notice details	Address: c/- Department of the Premier and Cabinet Dumas House, 2 Havelock Street West Perth WA 6005 Fax No. (08) 6552 5001
<b>Minister for Aboriginal Affairs</b> Notice details	Address: c/- Department of Aboriginal Affairs Ground Floor, 151 Royal Street East Perth WA 6004 Fax No. (08) 6551 8088
<b>Minister for Lands</b> Notice details	Address: c/- Department of Lands Level 2, 140 William Street Perth WA 6000 Fax No. (08) 6552 4417
<b>Minister for Mines and Petroleum</b> Notice details	Address: c/- Department of Mines and Petroleum Mineral House, 100 Plain Street East Perth WA 6004 Fax No. (08) 9222 3862

**Minister for Environment**  
Notice details

Address: c/- Department of Parks and Wildlife  
17 Dick Perry Avenue  
Technology Park, Western Precinct  
Kensington WA 6151  
Fax No. (08) 9334 0498

**Minister for Water**  
Notice details

Address: c/- Department of Water  
The Atrium, 168 St Georges Terrace  
Perth WA 6000  
Fax No. (08) 6364 7601

**Conservation Commission of  
Western Australia**  
Notice details

Address: c/- Department of Parks and Wildlife  
Block 11, 17 Dick Perry Avenue  
Technology Park, Western Precinct  
Kensington WA 6151

**Conservation and Land  
Management Executive Body**  
Notice details

Address: c/- Department of Parks and Wildlife  
17 Dick Perry Avenue  
Technology Park, Western Precinct  
Kensington WA 6151  
Fax No. (08) 6467 5562

**Housing Authority**  
Notice details

Address: c/- Department of Housing  
Level 2, 99 Plain Street  
East Perth WA 6004  
Fax No. (08) 9221 1627

**Marine Parks and Reserves  
Authority**  
Notice details

Address: c/- Department of Parks and Wildlife  
17 Dick Perry Avenue  
Technology Park, Western Precinct  
Kensington WA 6151  
Fax No. (08) 9334 0556

**Water Corporation**

Notice details

Address: 629 Newcastle Street

Leederville WA 6007

Fax No. (08) 9420 3227

**Western Australian Land  
Authority (LandCorp)**

Address: Level 6, Westfarmers House

40 The Esplanade

Perth WA 6000

Fax No. (08) 9481 0861

## Schedule 10

### South West Settlement Terms

#### Background

- A. The Noongar people together assert that they hold Native Title Rights and Interests in relation to the Settlement Area, including pursuant to the "Noongar Claims".
- B. The Noongar people have agreed with the State of Western Australia to settle all current and future claims of the Noongar people for determinations both of Native Title and for compensation in respect of their traditional country around the south west of Western Australia.
- C. Under the terms of that Settlement, in exchange for the payment and provision of the benefits to be provided in accordance with these Settlement Terms, the Noongar people have entered into 6 separate Agreements with the State dealing with the surrender of Native Title Rights and Interests in the Settlement Area, the validation of acts that may previously have been done invalidly in the Settlement Area and the loss, diminution, impairment, and other effects on Native Title Rights and Interests in relation to the Settlement Area.
- D. In other words, while the separate Native Title Agreement Groups comprising the Noongar people have given their consent to the surrender and the validation of invalid acts, and the loss, diminution, impairment, and other effects on Native Title Rights and Interests in relation to the Settlement Area, in their separate Agreements, all Parties have agreed that the benefits to be paid or provided by the State to the Noongar people under those Agreements are as recorded in this document.
- E. Accordingly, these Settlement Terms form part of each of the Agreements, have been adopted as such by each of the Parties to each of the Agreements and are binding on each of the Parties to each of the Agreements.

#### Operative Provisions

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### 1. Defined terms and interpretation

#### 1.1 Definitions by reference to statute

In these Settlement Terms, any capitalised term for which a definition is not included in clause 1.3 of these Settlement Terms will:

- (a) where the term is defined in the NT Act, have the same meaning as given to it in the NT Act, as at the Execution Date;
- (b) where the term is defined in the LAA, have the same meaning as given to it in the LAA, as at the Execution Date; and

- (c) where the term is defined in the TLA, have the same meaning as given to it in the TLA, as at the Execution Date.

## 1.2 Definitions by reference to Trust Deed and Security Deed

In clauses 2, 3 and 5 of these Settlement Terms, any capitalised term for which a definition is not included in clause 1.3 of these Settlement Terms will, where the term is defined in the Trust Deed and the Security Deed, have the same meaning as given to it in the Trust Deed and the Security Deed.

## 1.3 Other definitions

In these Settlement Terms:

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Regional Corporation or Native Title Agreement Groups are required to attend or that prevents the members of the Regional Corporation or Native Title Agreement Groups from attending to day-to-day business.

**Aboriginal Heritage** means the cultural heritage value of an Aboriginal Site or an Aboriginal Object.

**Aboriginal Heritage Due Diligence Guidelines** means the document of that name that is referred to in the NSHA and a copy of the current guidelines is attached at Annexure D to these Settlement Terms.

**Agreement** means each of the 6 ILUAs that is proposed to be entered into by the State and a Native Title Agreement Group with respect to the land and waters within the Settlement Area.

**Agreement Area**, with respect to an Agreement, means the land and waters that are described in Part 1 of Schedule 1, and shown on the map in Part 2 of Schedule 1, to the Agreement in question.

**Allocation** has the meaning given in the Land Base Strategy set out at Annexure J to these Settlement Terms, and Allocate has a corresponding meaning.

**Business Day** means a day that is not a Saturday, Sunday or public holiday, and on which banks are open for business generally, in Western Australia.

**By-laws** means the by-laws under section 34 of the *Water Agencies (Powers) Act 1984* (WA) that are attached at Annexure R to these Settlement Terms.

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**CATSI Corporation** means an Aboriginal and Torres Strait Islander corporation as that term is defined in section 16-5 of the CATSI Act, namely a corporation registered under the CATSI Act.

**Central Services Corporation** or **CSC** means the corporation that is to be established pursuant to clause 4 of these Settlement Terms, and appointed by the



Trustee under clause 5 of the Trust Deed, and includes any replacement corporation that may be appointed by the Trustee from time to time.

**Compensation** means the total of the benefits and compensation (including monetary payments) to be paid or provided to or for the benefit of, or derived by or on behalf of, all Native Title Agreement Groups, including through the Trust, under all Agreements in consideration for:

- (a) the extinguishment of Native Title by the surrender of Native Title in relation to the Settlement Area;
- (b) any loss, diminution, impairment and other effects on Native Title Rights and Interests in relation to the Settlement Area; and
- (c) the validation of any Invalid Acts in relation to the Settlement Area.

**Conclusively Registered** has the meaning given in each Agreement.

**Conditions** means:

- (a) the Recognition Bill as enacted being proclaimed in the *Gazette* to come into operation;
- (b) either the Enabling Bill as enacted being proclaimed in the *Gazette* to come into operation or other measures being adopted that the State and SWALSC (acting reasonably) agree in writing are sufficient to enable the State to comply with its obligations under clauses 8 and 13.1 of these Settlement Terms;
- (c) the By-laws being published in the *Gazette* or other measures being adopted that the State and SWALSC (acting reasonably) agree in writing provide for a substantially similar range of customary activities in Public Drinking Water Source Areas to that provided for in the By-laws; and
- (d) all of the Agreements being Conclusively Registered.

**Conservation Estate** has the same meaning as 'land to which this Act applies' in section 5(1) of the CALM Act.

**CPI** means the Consumer Price Index (Perth) (All Groups) as determined by the Australian Bureau of Statistics, and if that index is discontinued, then such other index in substitution for that index:

- (a) as may be provided by the Australian Bureau of Statistics; or
- (b) if no index is provided by the Australian Bureau of Statistics, as may be agreed by the Parties; or
- (c) if no index is provided by the Australian Bureau of Statistics and the State and SWALSC are unable to agree within 20 Business Days, as may be provided, at the request of either of the Parties, by the President for the time being of the Institute of Actuaries of Australia, or by that person's nominee,

provided that:

- (d) such substituted index provides a basis for comparison equivalent to the Consumer Price Index (Perth) (All Groups); and
- (e) any CPI adjustment will exclude from the application of the CPI, the one-off effects of a reset of the index numbers for any index referred to in this definition or of any similar change event determined or published by the Australian Bureau of Statistics or other person or body referred to in this definition.

**CPI Calculation** means:

$$A \times \frac{CPI_n}{CPI_{base}}$$

where:

*A* = the current amount, from time to time, of a payment under this Agreement;

*CPI<sub>n</sub>* = the latest published quarterly CPI number immediately preceding the due date of the payment;

*CPI<sub>base</sub>* = the CPI number applicable as at the Trust Effective Date.

**DAA** means the Department of Aboriginal Affairs.

**DAFWA** means the Department of Agriculture and Food WA.

**Deemed Settlement Effective Date** means the Deemed Settlement Effective Date of any of the Agreements.

**DMP** means the Department of Mines and Petroleum.

**DoL** means the Department of Lands.

**DoP** means the Department of Planning.

**DoW** means the Department of Water.

**DPaW** means the Department of Parks and Wildlife.

**DPC** means the Department of the Premier and Cabinet.

**Eligible Noongar Entity** has the meaning given in the Trust Deed.

**Enabling Bill** means the bill referred to in clause 7 of these Settlement Terms containing the features described in Annexure B to these Settlement Terms.

**Execution Date**, when used:

- (a) in relation to a specific Agreement, means the date of the execution of the Agreement in question by the State; and
- (b) generally, mean the date on which the State executes the last of the Agreements.

**Force Majeure** means an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under these Settlement Terms and which is unforeseeable and beyond the reasonable control of the affected Party including but not limited to (provided that the foregoing criteria are satisfied):

- (a) explosion or fire;
- (b) storm or cyclone (of any category);
- (c) flood;
- (d) landslides;
- (e) earthquake or tsunami;
- (f) volcanic eruption;
- (g) impact of vehicles or aircraft;
- (h) failure of a public utility;
- (i) epidemic or pandemic;
- (j) civil unrest;
- (k) industrial action (other than industrial action limited to the affected Party);
- (l) war (including civil war);
- (m) acts of terrorism;
- (n) radioactive or biological contamination;

but does not include:

- (o) lack of or inability to use funds for any reason;
- (p) any occurrence which results from the negligent or wilful act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (q) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- (r) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of the matters set out in paragraphs (a) to (n) above;
- (s) any act or omission of an agent of the affected Party.

**Future Fund Payment** means the annual payment referred to in clause 5.1 of these Settlement Terms.

**Gazette** has the meaning given in the *Interpretation Act 1984* (WA).

**Government Party** means any one of the Government Parties to the Agreements.

**Government Proponent** means:

- (a) the State;
- (b) a Government Party; or
- (c) any other agency or instrumentality of the State that the State at any time during the currency of this Agreement notifies the Regional Corporation (or, if there is no Regional Corporation at the relevant time, notifies SWALSC) is to be regarded (whether during the remaining currency of this Agreement or for a more limited time) as falling within this definition.

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

**GST Rate** means that rate of GST payable from time to time under the GST Act.

**ILUA** has the meaning given to "Indigenous Land Use Agreement" in section 24CA of the NT Act.

**Invalid Act** means any Future Act (other than an Intermediate Period Act) that:

- (a) was, or is, carried out by the State or any State Party prior to the Settlement Effective Date in relation to any part of the Settlement Area; and
- (b) to the extent that such Future Act affects Native Title, is invalid as a result of section 24OA of the NT Act.

**LAA** means the *Land Administration Act 1997* (WA).

**Land Base Strategy** means the strategy set out at Annexure J to these Settlement Terms.

**Land Sub** means the subsidiary company to be established by the Trustee under clause 22.1 of the Trust Deed to hold any interest in land and with which the care, control and management of reserves will be placed.

**Native Title Agreement Group**, with respect to each Agreement, means the people who have been identified as people who hold or may hold Native Title in relation to land and waters within the Agreement Area in question.

**NLE** (or **Noongar Land Estate**) means the land Allocated to the Noongar people pursuant to clause 8 of these Settlement Terms.

**Noongar Corporations Committee** has the meaning given in the Trust Deed.

**Noongar Future Fund** has the meaning given in the Trust Deed.

**Noongar Land Fund** has the meaning given in clause 9(a) of these Settlement Terms.

**NSHA** means an agreement entered into by a Regional Corporation (or, if there is no Regional Corporation at the relevant time, a Native Title Agreement Group) on or after the applicable Execution Date with any Government Proponent and other third parties that is, or is substantially, in the form of the "Noongar Standard Heritage Agreement" attached at Annexure C to these Settlement Terms.

**NT Act** means the *Native Title Act 1993* (Cth).

**Operations Fund** has the meaning given in the Trust Deed.

**Operations Fund Payment** means the annual payment referred to in clause 5.2 of these Settlement Terms.

**Parliament** has the meaning given in the *Interpretation Act 1984* (WA).

**Party** means a party to any of the Agreements, and **Parties** means any 2 or more of them as the case requires.

**Principles** means the principles relevant to the incorporation and operation of the Regional Corporation and Central Services Corporation that are referred to in clause 8 of the Agreement and clause 4 of these Settlement Terms, and which are set out at Annexure E to these Settlement Terms.

**Public Drinking Water Source Areas** means water reserves and catchment areas constituted from time to time under section 9 of the *Country Areas Water Supply Act 1947* (WA) or section 13 of the *Metropolitan Water Supply Sewerage and Drainage Act 1909* (WA).

**Recognition Bill** means the bill entitled *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014* that is referred to in clause 6 of these Settlement Terms, a copy of which is attached at Annexure F to these Settlement Terms.

**Regional Corporation** means each corporation that is to be:

- (a) established on behalf of the Native Title Agreement Group pursuant to clause 8 of each Agreement; and
- (b) appointed by the Trustee under clause 4 of the Trust Deed,

and includes any replacement corporation that may be appointed by the Trustee from time to time.

**Rulebook** means the rulebook for the CATSI Corporation that constitutes a Regional Corporation or the CSC, as mentioned in the Trust Deed.

**Secured Property** has the meaning given in the Security Deed.

**Security Deed** means the security deed that is to be granted by the Trustee in favour of the State pursuant to clause 3 of these Settlement Terms, a copy of which is attached at Annexure H to these Settlement Terms.

**Settlement**, as between the State and the members of the Native Title Agreement Groups for all of the Agreements to which the Settlement Effective Date or a Deemed Settlement Effective Date applies (**Settlement Effective Agreements**), means the settlement of all current and future native title and compensation

applications under the NT Act relating to the combined area of the Settlement Effective Agreements.

**Settlement Area** means the area shown on the map at Annexure A to these Settlement Terms, which comprises the aggregate of all of the Agreement Areas.

**Settlement Effective Date** means the date that is 20 Business Days after the date of a Settlement Effective Date Notice or, if the State fails to issue a Settlement Effective Date Notice under clause 3.3(a)(i) of each Agreement where it is required to do so, the date that is 40 Business Days after the last of the Conditions are satisfied.

**Settlement Effective Date Notice** has the meaning given in clause 3.3(a) of each Agreement.

**Settlement Terms** means this document, which is attached at Schedule 10 to each Agreement.

**State Party** means the State of Western Australia and all of its Ministers, departments, agencies, instrumentalities and bodies corporate expressed to be agents of the Crown, and those entities listed in Schedule 1 to the *Public Sector Management Act 1994 (WA)*.

**Sunset Date** means 30 December 2016, or such later date or dates as, from time to time, may be agreed in writing between the State and SWALSC in accordance with clause 3.2 of each Agreement.

**TLA** means the *Transfer of Land Act 1893 (WA)*.

**Transition Principles** means the transition principles set out in Annexure Y.

**Trust** means the Noongar Boodja Trust established by the Trust Deed.

**Trust Deed** means the trust deed that establishes the Trust, a copy of which is attached at Annexure G to these Settlement Terms.

**Trust Effective Date** means the date of the declaration of the Trust under clause 2 of these Settlement Terms.

**Trustee** means the trustee of the Trust from time to time.

## 1.4 Interpretation – General

In these Settlement Terms:

- (a) headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of these Settlement Terms;

and unless the contrary intention appears:

- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a recital, clause, schedule or annexure is, as applicable and as the context requires, a reference to:

- (i) a recital or clause to or of either these Settlement Terms or any of the Agreements;
  - (ii) a schedule to any of the Agreements; or
  - (iii) an annexure to these Settlement Terms,
- and a reference to these Settlement Terms includes all recitals and annexures;
- (d) a reference to a document (including these Settlement Terms) is to that document as varied, amended, supplemented, or replaced from time to time;
  - (e) a "person" includes a company, partnership, firm, joint venture (whether incorporated or unincorporated), association, authority, corporation or other body corporate, trust, public body or Government Party;
  - (f) a reference to a "person" (including a Party to any of the Agreements) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including people taking by permitted novation);
  - (g) a reference to a person, statutory authority or government body (corporate or unincorporated) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or substantially similar function;
  - (h) a reference to a department or agency of the State includes any future department or agency of the State pursuant to an Order under the *Alteration of Statutory Designations Act 1974 (WA)*.
  - (i) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
  - (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (k) "includes" in any form is not a word of limitation;
  - (l) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
  - (m) a reference to "dollars" or "\$" is a reference to the currency of Australia;
  - (n) a reference to a "day" is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
  - (o) a reference to a "month" is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;

- (p) references to time are to local time in Perth, Western Australia;
- (q) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (r) if the day on or by which a person must do something under these Settlement Terms is not a Business Day, the person must do it on or by the next Business Day; and
- (s) if any conflict arises between the terms and conditions contained in the clauses of these Settlement Terms and any recitals, schedules or annexures to these Settlement Terms, the terms and conditions of the clauses of these Settlement Terms will prevail to the extent of the inconsistency.

## **1.5 Interpretation – liabilities and benefits**

In these Settlement Terms, unless the contrary intention appears:

- (a) the members of each Native Title Agreement Group, including the Representative Parties who are signatories to each Agreement, are jointly (and not severally or jointly and severally):
  - (i) entitled to the benefits conferred on the Native Title Agreement Group under the relevant Agreement; and
  - (ii) liable to perform the obligations of the Native Title Agreement Group under the relevant Agreement;
- (b) neither the State nor a Government Party may bring proceedings in respect of these Settlement Terms against a member of the Native Title Agreement Group, including any of the Representative Parties who are signatories to this Agreement, in his or her individual capacity. Any such proceedings may only be brought in a court of competent jurisdiction against the Representative Parties on behalf of the Native Title Agreement Group jointly; and
- (c) any agreement, representation, warranty or indemnity in favour of the State and a Government Party, or in favour of more than one Government Party, is for the benefit of them severally.

## **1.6 Interpretation – application of clauses 9.6, 9.7, 10, 12 and 14**

Any obligation under these Settlement Terms to make a payment, or to do any other act or thing, is subject to clauses 9.6, 9.7, 10, 12 and 14 of each Agreement.

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## **2. Trust to be Established**

- (a) The State and SWALSC must, within 60 Business Days after (but not before) the earlier of the:
  - (i) first of any Deemed Settlement Effective Dates; and
  - (ii) Settlement Effective Date,



procure that the Settlor and the Trustee declare the Trust (**Trust Effective Date**).

- (b) The Parties acknowledge and agree that the Trust Deed may be amended:
- (i) between the Execution Date and the date on which the Trust is declared, by agreement between the State and SWALSC (and following consultation between SWALSC and members of the Native Title Agreement Groups); and
  - (ii) after the date on which the Trust is declared, in accordance with the provisions of the Trust Deed,

without reference to the other Parties to this Agreement, and any such amendments may be made without the need to simultaneously amend the document attached at Annexure G to these Settlement Terms.

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### **3. Security Deed**

The Native Title Agreement Groups acknowledge that:

- (a) the Trustee will enter into the Security Deed with the State;
- (b) the State may call on the Security Deed on the occurrence of:
  - (i) an ILUA Termination Default (as defined in the Security Deed); or
  - (ii) an Indemnified Amount Default (as defined in the Security Deed),

and may have recourse to the Secured Property; and

- (c) the Security Deed may be amended:
  - (i) between the Execution Date and the date on which the Security Deed is executed, by agreement between the State and SWALSC (and following consultation between SWALSC and members of the Native Title Agreement Groups); and
  - (ii) after the date on which the Security Deed is executed, in accordance with the provisions of the Security Deed,

without reference to the other Parties to this Agreement, and any such amendments may be made without the need to simultaneously amend the document attached at Annexure H to these Settlement Terms.

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### **4. Establishment of Central Services Corporation**

The Parties acknowledge and agree that:

- (a) the Trustee will (in accordance with clause 5 of the Trust Deed) appoint an entity to be the CSC;

- (b) an entity may only be appointed by the Trustee to be the CSC if:
  - (i) it meets the eligibility requirements prescribed in the Trust Deed, including the eligibility requirements for an Eligible Noongar Entity; and
  - (ii) its Rulebook complies with the applicable Principles;
- (c) the CSC must:
  - (i) adhere to the criterion stipulated in clause 4(b)(i) of these Settlement Terms; and
  - (ii) comply with the applicable Principles,at all times during the currency of its appointment.

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## 5. State financial payments and funding

### 5.1 Future Fund Payment

- (a) No later than 60 Business Days after the Trust Effective Date, but subject to the Trustee having:
  - (i) entered into the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms; and
  - (ii) provided a tax invoice in accordance with clause 5.3(a) of these Settlement Terms,

the State will pay to the Trustee the amount of \$50,000,000 (**Future Fund Payment**), which must be deposited in the Noongar Future Fund.

- (b) Subject to clause 5.1(c) of these Settlement Terms, and to the Trustee having provided a tax invoice in accordance with clause 5.3(c) of these Settlement Terms, the State will pay to the Trustee, annually, 11 further payments each also of \$50,000,000 (each also a **Future Fund Payment**), each of which must also be deposited in the Noongar Future Fund.
- (c) The State will pay each of the 11 further Future Fund Payments referred to in clause 5.1(b) of these Settlement Terms to the Trustee within 60 Business Days after the anniversary of the payment of the Future Fund Payment for the preceding year.
- (d) The amount of each of the 11 further Future Fund Payments referred to in clause 5.1(b) of these Settlement Terms will be adjusted in accordance with the CPI Calculation, but never so as to reduce in any year the amount of a Future Fund Payment in comparison with the equivalent amount that was paid in the preceding year.

### 5.2 Operations Fund Payment

- (a) No later than 60 Business Days after the Trust Effective Date, but subject to the Trustee having:

- (i) entered into the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms; and
- (ii) provided a tax invoice in accordance with clause 5.3(a) of these Settlement Terms,

the State will pay to the Trustee the amount of \$10,000,000 (**Operations Fund Payment**), which must be deposited in the Operations Fund.

- (b) Subject to clause 5.2(c) of these Settlement Terms, and to the Trustee having provided a tax invoice in accordance with clause 5.3(c) of these Settlement Terms, the State will pay to the Trustee, annually, 11 further payments each also of \$10,000,000 (each also an **Operations Fund Payment**), each of which must also be deposited in the Operations Fund.
- (c) The State will pay each of the 11 further Operations Fund Payments referred to in clause 5.2(b) of these Settlement Terms to the Trustee within 60 Business Days after the anniversary of the payment of the Operations Fund Payment for the preceding year.
- (d) The amount of each of the 11 further Operations Fund Payments referred to in clause 5.2(b) of these Settlement Terms will be adjusted in accordance with the CPI Calculation, but never so as to reduce in any year the amount of an Operations Fund Payment in comparison with the equivalent amount that was paid in the preceding year.

### 5.3 Invoicing

- (a) No later than 20 Business Days before the due date for the payment of the:
  - (i) first of the Future Fund Payments, as referred to in clause 5.1(a) of these Settlement Terms; and
  - (ii) first of the Operations Fund Payments, as referred to in clause 5.2(a) of these Settlement Terms,the Trustee must submit to the State a tax invoice for the applicable amounts, to be transferred via an Electronic Funds Transfer to the approved bank accounts operated by the Trustee for, respectively, the Noongar Future Fund and the Operations Fund.
- (b) For each subsequent year in which the Future Fund Payment and the Operations Fund Payment are payable, on or before the anniversary of the payment made in the preceding year, the State must issue a notice (**Funds Payment Notice**) to the Trustee setting out the total amounts of each of the Future Fund Payment and the Operations Fund Payment for the year in question, as adjusted in accordance with the CPI Calculation.
- (c) No later than 20 Business Days before the due dates for the payment of each of the:
  - (i) remaining Future Fund Payments, pursuant to clause 5.1(c) of these Settlement Terms; and

- (ii) remaining Operations Fund Payments, pursuant to clause 5.2(c) of these Settlement Terms,

the Trustee must submit to the State a tax invoice for the amount of each payment for the year in question, to be transferred via an Electronic Funds Transfer to, respectively, the approved bank accounts operated by the Trustee for, respectively, the Noongar Future Fund and the Operations Fund.

- (d) The amount specified by the Trustee in each tax invoice issued in accordance with clause 5.3(c) of these Settlement Terms will be the amount that is either:
  - (i) set out by the State in the Funds Payment Notice issued for the year in question (with any dispute with respect to the quantum of such amount to be resolved in accordance with the procedure in clause 15 of each Agreement); or
  - (ii) (for any year in which the State fails to issue a Funds Payment Notice by the deadline stipulated in clause 5.3(b) of these Settlement Terms) assessed by the Trustee as being payable after having itself performed the required CPI Calculation.

#### **5.4 Overdue payments**

- (a) If the State has not paid a Future Fund Payment or an Operations Fund Payment as at the later of:
  - (i) the applicable due date for payment in accordance with this clause 5;
  - (ii) (where no tax invoice for the payment is received from the Trustee by the date that is 20 Business Days before the due date for payment) the date that is 20 Business Days after receipt of the tax invoice; or
  - (iii) (where the Trustee has not entered the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms) the date that is 20 Business Days after the date the State receives the Security Deed executed by the Trustee

##### **(Due Date),**

the State will pay interest on the outstanding amount at the interest rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004 (WA)*. Any such interest will be payable by the State into either (or both, as applicable) of the approved bank accounts operated by the Trustee for the Noongar Future Fund and the Operations Fund, on demand from the Trustee.

- (b) Any interest payable by the State under clause 5.4(a) of these Settlement Terms will:
  - (i) accrue daily from, and including, the Due Date up to, but excluding, the actual date of payment; and

(ii) be capitalised on the first day of each calendar month.

The accumulation of capitalised interest will continue until the relevant Future Fund Payment or Operations Fund Payment has been paid in full.

(c) The Trustee's right to require payment of interest under clause 5.4(a) of these Settlement Terms will not affect any other rights and remedies that any Native Title Agreement Group may have in relation to any failure by the State to pay a Future Fund Payment or an Operations Fund Payment in accordance with any of the Agreements or with these Settlement Terms.

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## **6. Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill**

- (a) As soon as reasonably practicable after the Execution Date, the State will introduce and sponsor the Recognition Bill in the Parliament.
- (b) The State will use all reasonable endeavours to secure the timely passage of the Recognition Bill.
- (c) If it is at all reasonably practicable to do so the State will consult with SWALSC on behalf of the Native Title Agreement Groups if any amendments (other than amendments that the State, acting reasonably, considers to be trivial or immaterial) are proposed to the Recognition Bill. Failure by the State to comply with this clause 6(c) for any reason does not constitute a breach of the Agreements.
- (d) If, other than in a manner that SWALSC (acting reasonably) considers to be trivial or immaterial, the Recognition Bill is amended, or once enacted is repealed, by the State Parliament of Western Australia before the first of the Deemed Settlement Effective Dates (if any), or otherwise the Settlement Effective Date, then within 20 Business Days of any such amended Recognition Bill being enacted, or once enacted being repealed, SWALSC on behalf of the Native Title Agreement Groups may by notice in writing to the State terminate the Agreements.

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## **7. Enabling Bill**

- (a) As soon as reasonably practicable after the Execution Date, the State will introduce and sponsor the Enabling Bill in the Parliament.
- (b) The State will use all reasonable endeavours to secure the timely passage of the Enabling Bill.
- (c) If it is at all reasonably practicable to do so the State will consult with SWALSC on behalf of the Native Title Agreement Groups if any amendments (other than amendments that the State, acting reasonably, considers to be trivial or immaterial) are proposed to the Enabling Bill. Failure by the State to comply with this clause 7(c) for any reason does not constitute a breach of the Agreements.
- (d) If an Enabling Bill is enacted by the State Parliament of Western Australia which SWALSC (acting reasonably) considers does not enable

the State to comply with its obligations under clauses 8 and 13.1 of these Settlement Terms, then within 20 Business Days of such Enabling Bill being enacted SWALSC on behalf of the Native Title Agreement Groups may by notice in writing to the State terminate the Agreements.

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## **8. Establishment of the Noongar Land Estate**

### **8.1 Principles underpinning the establishment of the Noongar Land Estate**

- (a) The State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar community.
- (b) The establishment of the NLE under this Agreement provides a significant opportunity for the Noongar community to achieve sustainable economic, social and cultural outcomes. The State recognises that the creation of an economic and culturally sustainable NLE is in the long term interest of both the State and the Noongar community.
- (c) The State, SWALSC and the Native Title Agreement Groups recognise that the creation of the NLE is a fundamental part of this Agreement and all parties commit to working together to maximise Noongar outcomes in regards to the NLE. It is the intention of all parties that the NLE reach the maximum hectare targets for transfer set out in the Land Base Strategy.
- (d) The State, SWALSC and the Native Title Agreement Groups acknowledge that the creation of the NLE is unprecedented in Australia, and will only reach its full potential if all Parties engage in the process in a spirit of cooperation. In particular, any concerns about inclusion of parcels of land in the NLE must be resolved in a timely and cooperative manner, with no Party placing unrealistic expectations on another.
- (e) The State commits to developing long-term and productive partnerships with the Trustee and the Regional Corporations to assist in achieving these outcomes.
- (f) The State recognises the role of the Trustee and the Regional Corporations in representing the interests of the Noongar people, who are the custodians and traditional knowledge holders of the Settlement Area.

### **8.2 Land Base Strategy**

- (a) The Parties agree that:
  - (i) the Land Base Strategy contains all of the arrangements that exist between the Parties with respect to the establishment and implementation of the Noongar Land Estate; and
  - (ii) in that regard, the Land Base Strategy is hereby imported into and forms part of each Agreement.
- (b) The Parties agree that, notwithstanding the terms of clause 8.2(a) of these Settlement Terms:

- (i) the Land Base Strategy is to be read and construed subject to each Agreement (including these Settlement Terms); and
  - (ii) in the event of any inconsistency between the provisions of any Agreement and the Land Base Strategy, the provisions of the Agreement will prevail.
- (a) The Parties agree that each of Annexure J, Annexure K and Annexure L to these Settlement Terms may only be amended after the establishment of the Noongar Corporations Committee by agreement between the Trustee, the Noongar Corporations Committee and the State. Such amendment may be agreed without reference to the other Parties and without the need simultaneously to amend the documents attached at Annexure J, Annexure K and Annexure L to these Settlement Terms.

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## 9. Noongar Land Fund

- (a) Within 60 Business Days after the Trust Effective Date the State will establish a Noongar land fund (**Noongar Land Fund**)
- (b) The purpose of the Noongar Land Fund is, to the extent the moneys in the Noongar Land Fund permit, to meet the land, joint management and heritage objectives set out in these Settlement Terms through the development of effective partnerships between the Regional Corporations and the State's key land agencies. These agencies comprise DoL, DPaW, DAA and DAFWA. In some regions, other State departments may be involved.
- (c) The State will distribute up to a maximum of \$46,850,000 from the Noongar Land Fund over a 10 year period.
- (d) External administrative costs will be paid out of the Noongar Land Fund distribution referred to in clause 9(c) of these Settlement Terms. Unallocated funds will be rolled over into subsequent years. The Noongar Land Fund will facilitate amongst other matters:
  - (i) the transfer of land from the Crown estate into the NLE;
  - (ii) site inspections for all parcels of land to be transferred into the NLE, including Aboriginal Heritage surveys where necessary;
  - (iii) land surveys required for the creation of certificates of title to allow transfer to occur;
  - (iv) remediation for those land parcels that may require the removal of any bio-security risks (e.g. feral animal control, invasive weeds), contaminant removal or the removal of rubbish, derelict buildings or sheds;
  - (v) assistance to joint management partnerships between DPaW and the Regional Corporations;
  - (vi) the development of Noongar land management capacity;

- (vii) land management programs in partnership with DAFWA on the NLE;
  - (viii) a priority program for the identification and protection of highly significant or "at risk" heritage sites across the South West region; and
  - (ix) other activities relevant to conservation, heritage and land management.
- (e) While the State may, at its discretion, outsource certain administrative and decision making functions to an external party, the State will retain final decision-making authority in order to progress the land and partnership objectives.
- (f) Access to annual funding will be determined by budget proposals submitted jointly by State Parties and individual Regional Corporations. If some budget lines are not fully used in any one year, the Noongar Land Fund will have the capacity to shift resources between budget lines to reflect priorities. The State will retain discretion over the movement of funds.
- (g) With respect to clause 9(d)(v) of these Settlement Terms, a sum of \$83,000 per annum (adjusted annually in accordance with the CPI Calculation) will be paid to each Regional Corporation from the Noongar Land Fund to facilitate joint management arrangements in relation to the Conservation Estate within each region. This amount is intended to cover the costs of the Regional Corporation's participation in the joint management governance arrangements and to provide for the funding of joint management projects agreed to by the Co-operative and Joint Management Committees.

The conditions for payment are as follows:

- (i) the Regional Corporation must invoice the State for the money which will be paid on a pro-rata basis for that part of a financial year that remains. Within 20 Business Days of the end of each financial year the Regional Corporation must report in a detailed manner acceptable to the State on the expenditure of the moneys provided to it;
- (ii) the Regional Corporation must keep the moneys received from the Noongar Land Fund separate from other moneys it receives and roll over any unexpended moneys into the same budget line item;
- (iii) the moneys received from the Noongar Land Fund must only be used to support the Regional Corporation's costs of its representatives participating in the Joint and Co-operative Management Committee meetings or for joint management projects which have been approved in writing by either the Co-operative Management Committee or a Joint Management Committee for any part of the Conservation Estate for the region; and



- (iv) where a Regional Corporation fails to comply with these conditions the State may by notice to the Regional Corporation suspend future payments to the Regional Corporation until it is satisfied that the conditions will be fully met. Once the suspension is lifted, the Regional Corporation will only be paid on a pro-rata basis for the remaining part of the relevant financial year (if any). Any moneys not paid to a Regional Corporation in such circumstances will be rolled into the Noongar Land Fund and may be allocated for other purposes.

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## 10. LandCorp Payment

- (a) In this clause 10:

**Approved Use** means either:

- (i) residential use; or
- (ii) light or general industrial use.

**Former UCL** means land that was UCL immediately before it was either leased or transferred in fee simple to LandCorp under Part 6 of the LAA.

**Pre-existing Native Title Agreement** means an agreement made:

- (i) under section 31 of the NT Act between the State, LandCorp or another Government Party and any members of the Native Title Agreement Group; or
- (ii) in relation to the withdrawal of an objection under section 26MD(6B) of the NT Act between the State, LandCorp or another Government Party and any members of the Native Title Agreement Group.

**Price** means the purchase price received by LandCorp for any Sale inclusive of GST.

**Sale** means the first sale of a parcel of Former UCL or UCL for an Approved Use by LandCorp in the Settlement Area after the date on which the Surrender takes effect under clause 6.2(b) of each Agreement.

**UCL** has the meaning given in section 3 of the LAA.

- (b) Within 60 Business Days of the settlement of each Sale LandCorp will pay to the Trustee 5% of the Price.
- (c) The Trustee must deposit the moneys received in accordance with clause 10(b) of these Settlement Terms using electronic funds transfer in the relevant ENE Operations Account (as defined in the Trust Deed) of the Regional Corporation for the Agreement Area, or if more than one Regional Corporation and more than one Agreement Area is involved, in the ENE Operations Account of each relevant Regional Corporation in shares to be agreed by LandCorp with the relevant Regional Corporations and, if no agreement is reached, as determined by the Trustee the decision of which is final. If there is no ENE Operations

Account for a Regional Corporation at the relevant time the Trustee must deposit the moneys in the Operations Account pending the relevant ENE Operations Account being established and once established the Trustee must then transfer the moneys to the relevant ENE Operations Account.

- (d) If the State, LandCorp or another Government Party:
- (i) has a Pre-existing Native Title Agreement with any members of the Native Title Agreement Group which it has entered into prior to the date on which the Surrender takes effect under clause 6.2(b) of each Agreement; and
  - (ii) that Pre-existing Native Title Agreement applies to land or waters to which this clause 10 would otherwise apply,

then the provisions of the Pre-existing Native Title Agreement will prevail over this clause 10.

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## 11. Co-operative Management Agreement

- (a) Within 40 Business Days after appointment of the Regional Corporation by the Trustee, the Conservation and Land Management Executive Body and the Regional Corporation will, unless otherwise agreed in writing, execute the document in the form of or substantially in the form of the document entitled "**Co-operative Management Agreement**" attached to this Agreement at Annexure M to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Co-operative Management Agreement to reflect changing circumstances, and accordingly the Co-operative Management Agreement may be amended by the Conservation and Land Management Executive Body and the relevant Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure M to these Settlement Terms.

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## 12. Joint Management Agreement

- (a) The document entitled "**Joint Management Agreement**" which is referred to in the Co-operative Management Agreement referred to in clause 11 of these Settlement Terms is attached at Annexure N to these Settlement Terms.
- (b) The Parties agree that their intent is that they will put in place:
  - (i) at least one Joint Management Agreement for land and waters in the Conservation Estate in the Agreement Area within five years of the Trust Effective Date; and
  - (ii) unless the parties agree otherwise, at least one further Joint Management Agreement in relation to another part of the Conservation Estate in the Agreement Area within ten years of the Trust Effective Date.

- (c) Unless clause 12(d) to these Settlement Terms applies, the Parties acknowledge and agree that a Joint Management Agreement for a particular part of the Conservation Estate should be in the form of or substantially in the form of the Joint Management Agreement at Annexure N to these Settlement Terms.
- (d) Where the Conservation and Land Management Executive Body and the relevant Regional Corporation agree, the Joint Management Agreement for a particular part of the Conservation Estate may be amended before or after its execution without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure N to these Settlement Terms.

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## **13. Land Access and activities**

### **13.1 Land Access Licence**

- (a) The document entitled "**Noongar Regional Corporations Land Access Licence**" attached to this Agreement at Annexure O to these Settlement Terms applies to this clause 13.
- (b) Within 60 Business Days after the appointment of the Regional Corporation by the Trustee, DoL will prepare and submit to the Regional Corporation the Noongar Regional Corporations Land Access Licence for execution. The Regional Corporation must execute and return the Noongar Regional Corporations Land Access Licence to DoL within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the State and the Regional Corporation in writing). DoL will then arrange for execution of the Noongar Regional Corporations Land Access Licence by the Minister for Lands, have it stamped if necessary, and provide a copy of the fully executed (and stamped if necessary) Noongar Regional Corporations Land Access Licence to the Regional Corporation.
- (c) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Regional Corporations Land Access Licence to reflect changing circumstances, and accordingly the Noongar Regional Corporations Land Access Licence may be amended by the Minister for Lands and the Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure O of this Agreement.
- (d) The Parties acknowledge and agree that the Minister for Lands must grant a further Noongar Regional Corporations Land Access Licence to a replacement Regional Corporation in circumstances where the Noongar Regional Corporations Land Access Licence terminates because the former Regional Corporation ceases to exist or to be appointed a Regional Corporation under the Trust Deed.

### 13.2 No assertion of Noongar Regional Corporations Land Access Licence

- (a) Where any person makes any application under any law for any lawful use of the Licence Area and the Surrounding Area (as those terms are defined in the Noongar Regional Corporations Land Access Licence), or any part thereof, neither a Native Title Agreement Group, SWALSC nor any person claiming under or through either of them may assert the terms of the Noongar Regional Corporations Land Access Licence as the basis of any objection to any such application.
- (b) Nothing in this clause 13.2 precludes a Native Title Agreement Group or SWALSC from making any other objection available to them at law.

### 13.3 No caveats

- (a) In this clause 13.3, **Encumbrance** means:
  - (i) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
  - (ii) right of set-off, assignment of income, garnishee order or monetary claim;
  - (iii) equity, interest or enforcement order; or
  - (iv) any other right or interest of any third party.
- (b) The Native Title Agreement Group and the Regional Corporation must not lodge a caveat or Encumbrance over any part of the Licence Area to protect any interest or purported interest of the Native Title Agreement Group or the Regional Corporation under or relating to the Noongar Regional Corporations Land Access Licence. If the Native Title Agreement Group or the Regional Corporation lodge any caveat in contravention of this clause, each of them appoints the Director General of the Department of Lands as their attorney for the purpose of executing a withdrawal of caveat.

### 13.4 Release

- (a) In this clause 13.4:
  - (i) **Indemnified Parties** means the State, the Government Parties, any State Party and all officers, employees, agents, contractors, workmen, licensees, consultants and invitees of any of them and any person entering into the Licence Area with the express or implied authority of any of them.
  - (ii) **Claims** means actions, claims, proceedings, suits, judgements, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand whether based in contract, statute, torts (including negligence), equity, indemnity or otherwise.

- (iii) **Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003 (WA)*.
  - (iv) **Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986 (WA)*.
  - (v) **Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permissions, permits or licences issued there under.
  - (vi) **Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.
  - (vii) **Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
  - (viii) **Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.
  - (ix) **Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986 (WA)*, which is not authorised under any Law.
- (b) The Native Title Agreement Group and the Regional Corporation release, to the fullest extent permitted by law, the Indemnified Parties from:
- (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Licence Area;
  - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Licence Area at any time throughout the duration of the Land Access Licence whether or not identified in an audit undertaken by the Native Title Agreement Group or the Regional Corporation; and
  - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Native Title Agreement Group or the Regional Corporation,  
 directly or indirectly caused by or arising out of or in connection with:
  - (iv) the use or enjoyment of the Licence Area or any part of the Licence Area by the Native Title Agreement Group or the Regional Corporation;
  - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Native Title Agreement

Group or the Regional Corporation under the Noongar Regional Corporations Land Access Licence;

- (vi) any Contamination Pollution or Environmental Harm in, on, under or to the Licence Area caused or contributed to by the Native Title Agreement Group or the Regional Corporation;
- (vii) any remediation required in respect of the Licence Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Native Title Agreement Group or the Regional Corporation;
- (viii) any default by the Native Title Agreement Group or the Regional Corporation in the due and punctual performance of or compliance with any of the conditions of the Noongar Regional Corporations Land Access Licence or any other Law that apply to the exercise of the Native Title Agreement Group or the Regional Corporation's rights in respect of the Licence Area; or
- (ix) any negligent or other tortious act or omission of the Native Title Agreement Group or the Regional Corporation,

except to the extent that such loss or damage is caused or contributed to by the negligence of the Indemnified Parties.

- (c) The release contained in this clause 13.4 continues in full force and effect notwithstanding the expiry or the termination of the Noongar Regional Corporations Land Access Licence for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or the termination of the Noongar Regional Corporations Land Access Licence.

### **13.5 Public Drinking Water Source Areas**

- (a) Before the Deemed Settlement Effective Date or the Settlement Effective Date whichever is earlier, the Minister for Water must make the By-laws to provide for certain customary activities to take place in Public Drinking Water Source Areas.
- (b) As soon as reasonably practicable after the Trust Effective Date, the Minister for Water must:
  - (i) if the Padbury and Mullalyup water reserve or catchment areas are not required for use as emergency drinking water sources after 2016, seek to have abolished the proclamation of those areas as water reserve or catchment areas;
  - (ii) ensure that the DoW advises the Minister on the possibility of de-proclamation of, or removal of access restrictions from the Deep River Water Reserve (WR), Warren River WR, Scotsdale Brook WR, Donnelly River WR and Kent River WR; and

- (iii) if there are other Public Drinking Water Source Areas identified in the future that are not needed for public drinking water supply, seek to have abolished the proclamation of any such areas as water reserve or catchment areas so that they are only subject to DPaW legislation and policy (in DPaW managed areas) with respect to customary purposes.

### 13.6 Water Corporation

As soon as reasonably practicable after the Trust Effective Date, the Water Corporation, recognising the need and benefit of working with the Noongar community and Regional Corporations in the Agreement Area, will work with the Regional Corporations to identify suitable persons to participate in its existing "National Water Industry Traineeship Program".

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## 14. Housing Program

- (a) In this clause 14:

**Housing Properties** means the properties the general particulars of which are set out in Part 2 of Annexure P to these Settlement Terms and any 'like to like' substitutes of those properties in accordance with the terms of the Property Transfer Deed.

**Property Transfer Deed** means the document attached at Part 1 of Annexure P to these Settlement Terms.

**Funding Agreement** means the document attached at Annexure Q to these Settlement Terms.

- (b) Subject to and in accordance with the terms of the Property Transfer Deed the Housing Authority agrees to transfer 121 Housing Properties to the Land Sub.
- (c) Within 60 Business Days after the later of the Trust Effective Date and the incorporation of the Land Sub, the Housing Authority will prepare and submit to the Trustee the Property Transfer Deed and Funding Agreement for execution. The Trustee must execute the Property Transfer Deed and Funding Agreement, cause them to be executed by the Land Sub, and return the Property Transfer Deed and Funding Agreement to the Housing Authority within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the Trustee and the Housing Authority in writing). The Housing Authority will then itself execute the Property Transfer Deed and Funding Agreement, have them stamped if necessary, and provide a copy of the fully executed (and stamped if necessary) Property Transfer Deed and Funding Agreement to the Trustee.
- (d) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Property Transfer Deed and Funding Agreement to reflect changing circumstances, and accordingly the Property Transfer Deed and Funding Agreement may be amended by the Housing Authority, the Trustee and the Land Sub without reference to the other Parties to this Agreement and any such amendments may be made

without the need to simultaneously amend the documents attached at Annexure P and Annexure Q to these Settlement Terms.

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## 15. Capital Works Program

The State will provide to the Trust:

- (a) \$6,500,000 of funding (**CW Funding**) over a two year period (which may be in instalments as determined by the State), commencing on the date being 60 Business Days after the Trust Effective Date, to establish administrative offices for the Regional Corporations and the Central Services Corporation subject to the following terms and conditions:
  - (i) all offers made for a potential property must include a condition that *"This offer is subject to the written approval of the Trustee of the Noongar Boodja Trust and the Department of the Premier and Cabinet within 60 days of acceptance."*;
  - (ii) any property must be owned or leased by the Land Sub;
  - (iii) approval for release of the CW Funding will require (for each Regional Corporation and the Central Services Corporation) the submission of a business case from the Trustee to the State - which must be submitted within 24 months of the Trust Effective Date (or such later date as may be agreed in writing by the State and the Trustee) in a standard format template to be provided by Building, Management and Works division of the Department of Finance (**BMW**) which must include as a minimum:
    - A. the address of the property;
    - B. the cost of the property – to construct, purchase and refurbish or to lease and fit out;
    - C. any stamp duty and other disbursements payable;
    - D. a copy of the Offer and Acceptance document for the property;
    - E. current floor plan of the property and, if applicable, any proposed refurbishments required;
    - F. the relevant Corporation's staffing structure;
    - G. details of the programs and services that will be undertaken at the property;
    - H. suitability of the property (or proposed property) in terms of size, location and standard of services for current and future needs indicating value for money;
    - I. an asset management plan including provisions for life of the assets costs within the relevant Corporation's budget; and



- J. for an existing property, a building condition report and building compliance assessment by an appropriately qualified provider,

**(Business Case);**

- (iv) assessment of the Business Case for each Regional Corporation and the Central Services Corporation's office accommodation will be undertaken on behalf of the State by BMW which will make a recommendation to the State. The assessment will include obtaining a market valuation by the State Valuation Services;
- (v) if either the State or BMW requests further information from the Trustee, that information must be provided within 5 Business Days of receipt of the request;
- (vi) if the State is satisfied that the Business Case:
- A. has included all of the relevant information specified in clause 15(a)(iii) of these Settlement Terms; and
- B. demonstrates that the properties (or proposed properties) will provide the Noongar community with value for money and suitable facilities to provide programs and services as identified in the relevant Corporation's strategic plan,
- it will provide written confirmation to the Trustee within 20 Business Days of receipt of the Business Case that the transaction may proceed;
- (vii) the State's decision is final;
- (viii) it is acknowledged that different amounts may be allocated to each Regional Corporation and the Central Services Corporation;
- (ix) the State will engage a property consultant to assist it in the assessment of the Business Case the costs of which will be paid out of the CW Funding;
- (x) the Trustee must submit to the State tax invoices for any amounts to be paid out of the CW Funding via an Electronic Funds Transfer to a nominated bank account operated by the Trustee. Each tax invoice must set out in reasonable detail what the funds are to be used for;
- (xi) in the case of leasehold property, the amount to be paid will be the capitalised rent as agreed between the State and the Trustee and failing agreement as determined by the State;
- (xii) the State must transfer the relevant funds into the nominated Trust bank account within 10 Business Days of receiving the tax invoices from the Trustee; and

- (xiii) the Trustee must provide the State with a copy of any Certificate of Title or a copy of any lease for each property acquired or leased within 20 Business Days of the completion of the purchase or lease as the case may be.

If at the expiry of the two year period referred to in this clause 15(a), the CW Funding has not been fully expended the State in its discretion may elect to roll over the remaining moneys for a 3rd year or terminate the CW Funding.

- (b) \$5,300,000 (with up to \$300,000 to be allocated for development of a preliminary business case) and up to 2 hectares of land in the Perth metropolitan area towards the development of a "Noongar Cultural Centre", which is to be owned by the Land Sub and will be conditional upon external funding (i.e. Commonwealth Government and/or private sector), to meet the Centre's full construction costs and ongoing maintenance and otherwise on terms and conditions (including as to timing) to be agreed by the State, the Trustee, the Regional Corporations and the Central Services Corporation.

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## 16. Noongar Economic Participation Framework

- (a) The State and the Native Title Agreement Groups will as soon as reasonably practicable after the Trust Effective Date give effect to the document entitled "**Noongar Economic Participation Framework**" attached at Annexure S to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Economic Participation Framework to reflect changing circumstances, and that the Noongar Economic Participation Framework may be amended by the State and the Central Services Corporation (after consultation with the Regional Corporations) without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure S to these Settlement Terms.

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## 17. Community Development

- (a) The State and the Native Title Agreement Groups will as soon as reasonably practicable after the Trust Effective Date give effect to the document entitled "**Community Development Framework**" attached to this Agreement at Annexure T to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Community Development Framework to reflect changing circumstances, and that the Community Development Framework may be amended by the State and the Central Services Corporation (after consultation with the Regional Corporations) without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure T to these Settlement Terms.

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## 18. Recognition and protection of Aboriginal Heritage

### 18.1 NSHAs

- (a) This clause 18 operates from the Execution Date.
- (b) In this clause 18:
  - (i) **Aboriginal Heritage Agreement** means an agreement between a Proponent and a Native Title Agreement Group (or, following an assignment under clause 8 of an Agreement, a Regional Corporation) concerning Aboriginal Heritage Surveys in the relevant Agreement Area. To avoid doubt, the NSHA is a form of Aboriginal Heritage Agreement.
  - (ii) **Aboriginal Heritage Survey** means a survey conducted to assess the potential impacts of an Activity on Aboriginal Heritage, whether or not conducted under an Aboriginal Heritage Agreement and may include anthropological, ethnographic or archaeological investigations as appropriate.
  - (iii) **Aboriginal Object** means an object to which the AHA applies by operation of section 6 of the AHA.
  - (iv) **Aboriginal Site** means a place to which the AHA applies by operation of section 5 of the AHA, including sites that are not on the Aboriginal Heritage Register established and maintained under section 38 of the AHA.
  - (v) **Access Authority** means:
    - A. a miner's right or a permit under the Mining Act;
    - B. a special prospecting authority under section 105 of the PGER Act; and
    - C. an access authority under section 106 of the PGER Act.
  - (vi) **Activity** means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).
  - (vii) **AHA** means the *Aboriginal Heritage Act 1972 (WA)*.
  - (viii) **Mining Tenement** has the meaning given in the Mining Act.
  - (ix) **Mining Act** means the *Mining Act 1978 (WA)*.
  - (x) **PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*.
  - (xi) **PGER Tenement** means a permit, drilling reservation, retention lease, production licence, petroleum title, and geothermal title granted under the PGER Act.

- (xii) **Proponent** means the registered holder, other than any Government Party, at the relevant time or from time to time as the case may be of a Mining Tenement, a PGER Tenement or an Access Authority granted in respect to any part of the Agreement Area after the Execution Date.
- (c) The State and the Government Parties agree that they will, when conducting Aboriginal Heritage Surveys in an Agreement Area (and when required), enter into a NSHA with SWALSC on behalf of the relevant Native Title Agreement Group or, following an assignment under clause 8 of the relevant Agreement, with the relevant Regional Corporation.
- (d) The State and the Native Title Agreement Group acknowledge their intention that Government Proponents when conducting Aboriginal Heritage Surveys in an Agreement Area (and when required), also enter into Aboriginal Heritage Agreements in the form of an NSHA with SWALSC on behalf of the relevant Native Title Agreement Group or, following an assignment under clause 8 of the relevant Agreement, with the relevant Regional Corporation.
- (e) In respect of the grant to a Proponent of a Mining Tenement, a PGER Tenement or of an Access Authority, the Minister for Mines and Petroleum in granting such tenure must impose the following condition on such tenure (subject to any necessary modifications of terminology as required for the relevant tenure):

*"As the [XX ILUA] (**relevant ILUA**) applies to this [type of tenement. e.g. exploration licence], the [tenement holder, e.g. licensee] must before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the relevant ILUA:*

- (i) *subject to paragraph (ii), execute and enter into in respect of this [type of tenement] an Aboriginal Heritage Agreement (as defined in the relevant ILUA) with the Native Title Agreement Group or Regional Corporation (as the case requires) for the relevant ILUA on terms and conditions agreed by the [tenement holder, e.g. licensee] and the Native Title Agreement Group or Regional Corporation (as the case may be) for the relevant ILUA (**the Parties**) or, failing such agreement being reached between the Parties within 20 Business Days of the commencement of negotiations, execute and enter into a NSHA subject only to any necessary modifications in terminology required for the tenure;*
- (ii) *where:*
  - A. *the Parties have been unable to reach agreement on the terms and conditions of an Aboriginal Heritage Agreement under paragraph (i); and*
  - B. *the [tenement holder] executes a NSHA (subject only to any necessary modifications in terminology required for the tenure); and*

C. *the [tenement holder] provides a copy of the NSHA to the Native Title Agreement Group or Regional Corporation (as the case requires) for the relevant ILUA for execution;*

*if the Native Title Agreement Group or Regional Corporation (as the case requires) does not execute the NSHA and provide a copy of the executed NSHA to the [tenement holder] within 20 Business Days of receipt of the NSHA, the requirements of paragraph (i) do not apply; and*

(iii) *provide to the Department of Mines and Petroleum a statutory declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf)] in the form contained in Annexure U to the Settlement Terms (as defined in the relevant ILUA), as evidence that the [tenement holder] has complied with the requirements of paragraph (i) of this condition or that paragraph (ii) of this condition applies."*

(f) A Native Title Agreement Group (or, once assigned under clause 8 of an Agreement, a Regional Corporation) will use best endeavours to execute and provide to the Government Party or Proponent as the case may be a copy of the executed:

(i) NSHA with any Government Party; or

(ii) Aboriginal Heritage Agreement with any Proponent or, failing agreement being reached between those parties within 20 Business Days of the commencement of negotiations on the terms and conditions of the Aboriginal Heritage Agreement, a NSHA subject only to any necessary modifications in terminology required for the tenure,

within 20 Business Days of receipt of an Aboriginal Heritage Agreement or NSHA executed by a Government Party or Proponent for the purpose of conducting Aboriginal Heritage Surveys in their Agreement Area.

(g) The Native Title Agreement Groups authorise SWALSC and, once assigned to the Regional Corporation under clause 8 of the relevant Agreement, the Regional Corporations to execute any Aboriginal Heritage Agreement or NSHA on their behalf.

(h) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the NSHA to reflect changing circumstances, and accordingly the NSHA may be amended by the State and the Regional Corporations or, if there are no Regional Corporations at the relevant time, by the State and SWALSC without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure C to these Settlement Terms.

## **18.2 Noongar Heritage Partnership Agreement**

- (a) Within 40 Business Days after appointment of the Regional Corporation by the Trustee, the Minister for Aboriginal Affairs and the Regional Corporation will, unless otherwise agreed in writing, execute a document in the form of or substantially in the form of the document entitled "**Noongar Heritage Partnership Agreement**" that is attached at Annexure V to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Heritage Partnership Agreement to reflect changing circumstances, and accordingly the Noongar Heritage Partnership Agreement may be amended by the Minister for Aboriginal Affairs and the relevant Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure V to these Settlement Terms.

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## **19. Review and variation of this Agreement**

### **19.1 General principle**

The Parties recognise the importance of engaging in regular dialogue regarding the various matters arising under the Agreements to promote their effective implementation and, where appropriate, their variation, to meet their shared and individual objectives in a spirit of partnership and of building long-term relationships.

### **19.2 Review Committee**

- (a) The Parties will establish a Review Committee comprising representatives of the State, the Government Parties, the Regional Corporations and the Central Services Corporation as follows:
  - (i) 6 representatives nominated by the State and Government Parties;
  - (ii) 2 representatives nominated by each Regional Corporation (or, pending the establishment of each Regional Corporation, by each of the Representative Parties);
  - (iii) 2 representatives nominated by the Central Services Corporation; and
  - (iv) 1 representative of the Trustee.
- (b) The Review Committee will maintain minutes of its meetings.
- (c) The quorum for a meeting of the Committee will be a simple majority of people entitled to attend, and must include at least one representative from each of the State and the Government Parties, each of the Regional Corporations (or, as the case may be, the Representative Parties), the Central Services Corporation and the Trustee.

### **19.3 Purpose of review**

The Review Committee will meet on or about the 3<sup>rd</sup> anniversary of the Trust Effective Date, and every 5 years thereafter, to review the implementation of the Agreements, and in particular to consider any:

- (a) recommendations made by the Review Committee in previous years, including recommendations concerning proposed amendments to the Agreements;
- (b) changes to the law that directly or indirectly affect the Agreements;
- (c) submissions made by the Regional Corporations and the Central Services Corporation, the State, a Government Party or the Trustee concerning proposed variations of the Agreements; and
- (d) variations of the Agreements necessitated by changes in political or economic circumstances.

### **19.4 Decisions not binding**

Recommendations and decisions of the Review Committee are not binding on the Parties.

### **19.5 Variation**

- (a) Subject to clause 19.5(e), each of the Agreements may be varied, but only by an agreement in writing that is executed by or on behalf of all of the Parties to it.
- (b) If an Agreement has been Registered, the Parties to it each agree that they will not, without the written consent of each of the other Parties to it first had and received, make any application to revoke or vary the Registration of the Agreement.
- (c) If the Parties to an Agreement that has been Registered agree to vary any of the details of that Agreement that are included on the ILUA Register (other than the details required by section 199B(1)(b) of the NT Act), the agreed variation will only take effect upon the entry of those varied details on the ILUA Register.
- (d) If the Parties to an Agreement that has been Registered agree to vary that Agreement, then each of those Parties also agrees to do all things necessary to vary the details of the Agreement that are included on the ILUA Register including, if necessary, having the Agreement removed from the ILUA Register and replaced with a varied Agreement.
- (e) Except as expressly provided in these Settlement Terms, these Settlement Terms may only be varied by an agreement in writing that is executed by or on behalf of:
  - (i) the State;
  - (ii) each of the Government Parties;
  - (iii) in relation to each Agreement:

- A. the Regional Corporation, if there has been an assignment to it under clause 8 of an Agreement; or
  - B. otherwise, the relevant Native Title Agreement Group; and
- (iv) if the variation is to occur:
- A. before the establishment and appointment of the Central Services Corporation, SWALSC; or
  - B. after the establishment and appointment of the Central Services Corporation:
    - 1) if the appointment of the Central Services Corporation is in effect at the material time, the Central Services Corporation; or
    - 2) otherwise, the Trustee.

## **20. Transition Principles**

- (a) Subject to clause 20(b) of these Settlement Terms, the State and SWALSC will as soon as reasonably practicable after the Execution Date give effect to the document entitled "**Transition Principles**" attached at Annexure Y to these Settlement Terms.
- (b) The obligations in clause 20(a) are subject to the State and SWALSC each receiving adequate funding for the implementation of the Transition Principles.

## **21. State, Government Parties and State Parties not liable for acts and omissions of the Trustee**

- (a) The Trustee is solely responsible for administration and operation of the Trust.
- (b) The State, the Government Parties and each State Party are under no duty, liability or obligation to the Native Title Agreement Groups, SWALSC, the Regional Corporations, the Central Services Corporation or any person who is, or may be, entitled to benefit from the Trust, whether arising expressly or impliedly under any of the Agreements, these Settlement Terms, the Trust, by statute, at common law or in equity, in connection with or arising out of the administration and operation of the Trust by the Trustee.
- (c) If any person makes a claim for compensation or otherwise that is inconsistent with clause 21(b) of these Settlement Terms, the State, each Government Party and each State Party may each plead the terms of this clause 21 in bar of that claim.



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## **22. Goods and Services Tax**

### **22.1 General**

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

### **22.2 GST payable**

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this Agreement (whether that amount is specified or can be calculated in accordance with this Agreement), it does not include GST and must be increased by the GST Rate. The Party making a Taxable Supply under this Agreement must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act.
- (b) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this Agreement, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (c) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

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## **23. Force Majeure and Aboriginal Cultural Business**

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this Agreement will nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Parties as a result of its failure to carry out its obligations under this Agreement.

## **Annexure A**

### **Map of Settlement Area**

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## Annexure B

### Features of the Enabling Bill

1. The Enabling Bill must contain the following provisions:
  - (a) To empower the Minister for Lands to implement the State's obligations under the Land Base Strategy.
  - (b) To provide that the Minister for Lands may implement the terms of the Land Base Strategy despite any inconsistency with the provisions of the *Land Administration Act 1997* (WA) (**LAA**).
  - (c) To exempt the transfer of land as set out in the South West ILUA and Land Base Strategy to the Noongar Boodja Trust from transfer duty under the *Duties Act 2008* (WA).
  - (d) To authorise the Minister for Lands to grant licences to the Regional Corporations in terms of Annexure O to the Settlement Terms and related amendments including to provide that:
    - (i) the Licences are deemed to be licences granted under section 91 of the LAA;
    - (ii) section 48 of the LAA does not apply to the Licences;
    - (iii) the approval required under section 91(5) of the LAA as it is from time to time is not to apply in respect of the Licence area;
    - (iv) the power to create, grant or exercise any interest, right, title or power in relation to any part or all of the Licence areas under any enactment is not affected by the grant of the Licence;
    - (v) the Licence may be amended and terminated by the Minister only in accordance with the terms of the Licence, and the Licence may not be terminated under section 91(3) of the LAA; and
    - (vi) there are necessary legal formalities so that any amended Licence (other than an amendment which reduces or changes the areas of land covered by the Licence brought about by operation of clauses 2.3, 2.4, 2.5 and 2.8 of the Licence) and any replacement Licence can be tabled in Parliament, subject to a resolution disallowing the amended Licence.
  - (e) To provide that Unallocated Crown Land (**UCL**) does not cease to be UCL by virtue of the grant of the Licence.
2. The Enabling Bill may contain the following provisions:
  - (a) To provide that the grant of a Licence or the doing of anything under the Licence is not an act of the Crown or an activity undertaken by the Crown, for the purposes of section 264(2)(a) of the LAA; members of the agreement groups who enter and use the Licence Area do so entirely at their own risk; and the Licence is not to be taken into account in determining whether the Crown is an occupier of relevant land under the *Occupiers Liability Act 1985*, the common law or otherwise, or whether a risk is foreseeable under section 5B(1)(a) of the *Civil Liability Act 2002* (WA).

- (b) Any other measures that the State considers necessary to implement its obligations under clause 8 and 13.1 of the Settlement Terms.

## **Annexure C**

### **Noongar Standard Heritage Agreement**

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# Noongar Standard Heritage Agreement

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[XX – Insert name of RC/s]

[XX – Insert name of Proponent]

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# Date

THIS AGREEMENT is made on [XX – last party to execute - insert date ]

# Parties

[XX - Insert name of RC] [insert ICN] (RC)

[XX - Insert name of Proponent] [insert ABN or ACN] (Proponent)

# Recitals

- A. The RC represents the Noongar People in relation to Aboriginal Heritage matters in the Agreement Area.
- B. The Proponent wishes to conduct Activities in the Agreement Area.
- C. The Parties have entered into this Agreement to ensure that the Activities are carried out in a manner that protects Aboriginal Sites and Aboriginal Objects to the greatest extent possible.
- D. Under the *Aboriginal Heritage Act 1972* (WA) the Minister for Aboriginal Affairs and his delegated officers have the responsibility for recording, preserving and protecting places that are of significance in Western Australia. Officers in DAA may provide the Parties with information about the evaluation and recording of sites upon request to assist with the processes set out in this NSHA.

The Parties agree as follows:

# Agreed Terms

## 1. Definitions and interpretation

### 1.1 Definitions

In this NSHA, unless the contrary intention appears:

**Aboriginal Consultants** means:

- (a) those members of the RC or Noongar persons who have been identified by the RC as persons who can speak about the Survey Area; and, where applicable

- (b) persons identified by DAA in consultation with the RC who have previously been recorded on the Aboriginal Heritage Act Register in relation to particular sites in the Survey Area.

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the RC or Noongar People are required to attend or that prevents the members of the RC or Noongar persons from attending to day to day business.

**Aboriginal Heritage** means the cultural heritage value of an Aboriginal Site or of an Aboriginal Object.

**Aboriginal Heritage Act** means the *Aboriginal Heritage Act 1972* (WA).

**Aboriginal Heritage Act Minister** means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Register** means the register of places and objects established and maintained under section 38 of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Registrar** means the ‘Registrar of Aboriginal Sites’ appointed under section 37(1) of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Section 16 Application** means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove anything on or under the site.

**Aboriginal Heritage Act Section 18 Application** means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

**Aboriginal Heritage Agreement** means an agreement with the RC concerning Aboriginal Heritage Surveys in the Agreement Area. To avoid doubt, this NSHA is a form of Aboriginal Heritage Agreement.

**Aboriginal Heritage Liaison Officer** means the person appointed under clause 10.1(a)(ii).

**Aboriginal Heritage Service Provider** means the person or company engaged by the RC, or by the Proponent, to plan and carry out a Survey or Surveys in the Agreement Area. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity or person. The Aboriginal Heritage Service Provider may also be the RC.

**Aboriginal Heritage Survey** means a survey conducted to assess the potential impacts of Activities on Aboriginal Heritage, whether or not conducted under this NSHA and may include anthropological, ethnographic or archaeological investigations as appropriate. To avoid doubt, an **Aboriginal Heritage Survey** includes a Survey.

**Aboriginal Object** means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

**Aboriginal Site** means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act, including sites that are not on the Aboriginal Heritage Act Register.

**ACMC** means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

**Activity** means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).

**Activity Notice** means a notice issued by the Proponent to the RC under clause 8.2.

**Activity Notice Response** means notice given by the RC to the Proponent under clause 8.3(a).

**Activity Program** means all Activities described in an Activity Notice.

**Agreement Area** means the area to which this NSHA applies, being the land and waters described in Schedule 3.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Confidential Information** has the meaning given in clause 19.1.

**CPI** means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then **CPI** shall mean such other index as represents the rise in the cost of living in Perth, Western Australia, as the State reasonably determines after consulting with the RC.

**CPI Calculation** means:

$$A \times \frac{CPI_n}{CPI_{base}}$$

where:

$A$  = the initial base payment under this NSHA as set out in Schedule 5;

$CPI_n$  = the latest June quarterly CPI number as published each year by the Australian Bureau of Statistics;

$CPI_{base}$  = the June 2014 quarterly CPI number as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

**DAA** has the meaning given to **Department** in section 4 of the Aboriginal Heritage Act and as at the Effective Date is the State's Department of Aboriginal Affairs.

**DAA Guidelines** means the Guidelines with respect to preparing Aboriginal Heritage Survey reports and applications to the ACMC under section 18 of the Aboriginal Heritage Act published on the DAA website as modified from time to time.

**Due Diligence Guidelines** means the Aboriginal heritage due diligence guidelines issued by the Department of the Premier and Cabinet and DAA dated [insert date of DDG as at date of execution of NSHA].

**Effective Date** means the date on which this NSHA comes into force and effect as an agreement between the Parties, as more particularly described in clause 4.1.

**Estimated Survey Costs** has the meaning given in clause 9.5(b).

**Event of Default** means any of the events described in clause 17.1(b).

**Force Majeure** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by a government authority or official by law.

**Government Proponent** includes a department, agency or instrumentality of the State which is proposing to conduct Activities in the Agreement Area.

**GPS** means a global positioning system device.

**Ground Disturbing Activity** means any Activity that is not Low Ground Disturbance Activity or Minimal Impact Activity.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

**Heritage Information Submission Form** means the form referred to in Schedule 7 and, if that form is up-dated by DAA, that form as set out at the relevant time on the DAA website.

**ILUA** means the Indigenous Land Use Agreement described in items 1 to 4 of Schedule 2.

**Insolvency Event** means where a Party:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

**Last Fieldwork Day** has the meaning given in clause 12.1.

**Low Ground Disturbance Activity** means any Activity that involves only minor ground disturbance. **Low Ground Disturbance Activity** includes the following:

- (a) sampling using hand methods (including hand augering); and
- (b) geophysical, biological, environmental or conservation surveys, including installing monitoring plots and marker posts; and
- (c) establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle and only on cleared tracks; and
- (f) drilling using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots); and

- (g) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
- (h) removing soil and flora samples and cores up to 20 kilograms, and up to a depth of two metres from the natural surface; and
- (i) collecting and removing loose rocks, firewood, flora or fauna; and
- (j) fossicking for rocks and gemstones; and
- (k) conducting tests for water, site contamination, or other scientific or conservation purposes; and
- (l) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (m) maintaining but not widening existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (n) erecting signage and barriers using hand and mechanical augers; and
- (o) revegetating of degraded areas, including fencing areas of vegetation; and
- (p) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (q) carrying out species recovery programs; and
- (r) erosion control activities around existing roads, infrastructure or facilities; and
- (s) weed control using hand, mechanical and chemical methods of control excluding excavation or furrowing of soil; and
- (t) conducting tourism operations that:
  - (i) are based in established facilities; or
  - (ii) require the establishment of new facilities that require no, or only minor, ground disturbance; and
- (u) any other use of hand-held tools, not referred to in the preceding paragraphs; and
- (v) events such as car rallies and marathons using existing roads, stock routes or pastoral lease tracks; and
- (w) walking, driving or riding tours using existing roads, stock routes, pastoral lease tracks or historical trails (official or unofficial); and
- (x) exercise of grazing rights permitted under Division 3, Subdivision G of the *Native Title Act 1993*; and
- (y) the laying of water pipelines across the ground where no excavation is required; and



- (z) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

**Members** means members of the RC and all of those persons who are eligible to be members in accordance with the membership criteria.

**Minimal Impact Activity** means any Activity that involves minimal or no ground disturbance. **Minimal Impact Activity** includes the following:

- (a) Walking, photography, filming; and
- (b) Aerial surveying and magnetic surveys; and
- (c) Use of existing tracks and water courses; and
- (d) Environmental monitoring; and
- (e) Water and soils sampling; and
- (f) Fossicking using hand held instruments; and
- (g) Spatial measurement; and
- (h) Scientific research, using hand held tools; and
- (i) Cultivation and grazing in previously cultivated/grazed areas; and
- (j) Maintenance of existing paths, walls, fences, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas; and
- (k) Feral animal eradication, weed, vermin and pest control, vegetation control and fire prevention; but excluding construction of fences, infrastructure and clearing of native vegetation; and
- (l) Light vehicular access and camping using existing tracks and involving no clearance of vegetation.

**Noongar Boodja Trust Deed** means the Trust Deed as defined in the ILUA.

**Noongar Boodja Trustee** means the Trustee appointed under the Noongar Boodja Trust Deed from time to time.

**Noongar People** for the purposes of this NSHA means the Native Title Agreement Group as defined in the ILUA.

**NSHA** means this Noongar Standard Heritage Agreement.

**Party** means a party to this NSHA and **Parties** mean any 2 or more of them as the case requires.

**Preliminary Advice** means advice, in writing, complying with clause 12.3(a).

**Principal Aboriginal Heritage Consultant** means the anthropologist, archaeologist or other appropriately qualified professional nominated and agreed under clauses 8.3(d) or 9.6.

**Program of Proposed Works** means the program of proposed works for a specified period prepared by a Proponent that will be carried out, wholly or partially, in the Agreement Area.

**Regional Corporation** has the meaning given in the Noongar Boodja Trust Deed.

**Sensitive Heritage Information** means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by the Aboriginal Consultants during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

**Site Avoidance Model** means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site within that area.

**Site Avoidance Survey** means a Survey carried out using the Site Avoidance Model.

**Site Identification Model** means a Survey methodology involving the identification of Aboriginal Sites.

**Site Identification Survey** means a Survey carried out using the Site Identification Model.

**Survey** means an Aboriginal Heritage Survey conducted under this NSHA.

**Survey Agreement Date** has the meaning given in clauses 9.1(a) or 9.1(b).

**Survey Agreement Period** has the meaning given in clause 9.1(d).

**Survey Area** means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

**Survey Methodology** means either a Site Avoidance Model or a Site Identification Model.

**Survey Report** means a report of the results of a Survey, containing the information set out in clause 12.4 and Schedule 6.

**Survey Team** has the meaning given in clause 10.1.

## **1.2 Interpretation – general**

In this NSHA, unless the contrary intention appears:

- (a) the headings and subheadings in this NSHA are inserted for guidance only and do not govern the meaning or construction of any provision of this NSHA;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this NSHA and a reference to this NSHA includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this NSHA) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (e) a ‘person’ includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Proponent;
- (f) a reference to a ‘person’ (including a Party to this NSHA) includes a reference to the person’s executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) ‘including’ means ‘including but not limited to’;
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this NSHA is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this NSHA and any recitals, schedules or annexures to this NSHA, the terms and conditions of the clauses of this NSHA shall prevail.

### **1.3 Interpretation – liabilities and benefits**

In this NSHA, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity set out in this NSHA which is in favour of the RC and the Members is for the benefit of them jointly and severally; and
- (b) any agreement, representation, warranty or indemnity in favour of the Proponent, where the Proponent comprises more than one entity, is for the benefit of them jointly and severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the Proponent, where the Proponent comprises more than one entity, binds them jointly and severally.

## **2. No Application of this NSHA to Emergency Activities**

This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person.

### 3. Execution and effect of this NSHA

- (a) Execution of this NSHA may take place by the RC and the Proponent executing any number of counterparts of this NSHA, with all counterparts together constituting the one instrument.
- (b) If this NSHA is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
- (c) Notwithstanding the prior provisions of this clause 3, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).

### 4. Term and termination

#### 4.1 Commencement

This NSHA comes into force and effect as between the Proponent and the RC on the date that the last of those Parties executes this NSHA.

#### 4.2 Termination

This NSHA shall terminate on the occurrence of whichever of the following events is first to occur:

- (a) all Parties agree in writing to end this NSHA;
- (b) as referred to in clause 17.2(d), a court order is made to wind up either Party as the result of an Event of Default.

#### 4.3 Termination or de-registration of ILUA does not affect NSHA

Notwithstanding the termination or de-registration of the ILUA, this NSHA shall continue to apply to the Parties with full force and effect, to the extent that this NSHA has commenced under clause 4.1.

#### 4.4 Survival of provisions and entitlements upon termination

This NSHA ceases to have any force or effect on and from the date of termination, save that:

- (a) any entitlements, obligations or causes of action which accrued under this NSHA prior to termination survive termination;
- (b) clauses 1, 4.4, 6, 12.7, 13, 18, 19, 21, 22, 25.2, 25.3, 25.4 and 25.6 survive termination.

## 5. Area to which this NSHA applies

This NSHA applies to the Agreement Area.

## 6. Authority, representations and warranties

### 6.1 RC representations and warranties

The RC represents and warrants, for the benefit of the Proponent, that:

- (a) it is the Regional Corporation for the Agreement Area; and
- (b) it represents its Members in respect of Aboriginal Heritage matters within the Agreement Area; and
- (c) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under, this NSHA have been fulfilled or done; and
- (d) it knows of no impediment to it performing its obligations under this NSHA.

### 6.2 Proponent representations and warranties

The Proponent represents and warrants, for the benefit of the RC and its Members, that:

- (a) it is authorised to enter into this NSHA; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Proponent lawfully to enter into, exercise its rights and perform its obligations under, this NSHA have been fulfilled or done; and
- (c) it knows of no impediment to the Proponent performing its obligations under this NSHA.

### 6.3 Reliance on warranties

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 6.1 or 6.2 (as the case may be) to enter into this NSHA.

### 6.4 Acknowledgement regarding legal advice

Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of this NSHA and the effect of it on the rights, obligations and liabilities of each of the Parties to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this NSHA before entering into it.

## **7. Cooperation regarding Aboriginal Sites and proposed Activities**

### **7.1 Early exchange of information – Program of Proposed Works**

The Parties acknowledge the importance of an early exchange of information between the Proponent and the RC about proposed Activities in the Agreement Area to enable informed decisions to be made. In accordance with this objective:

- (a) wherever practical, the Proponent shall provide the RC with a Program of Proposed Works for which Activity Notices are likely to be provided in the foreseeable future; and
- (b) where, as a result of receiving the Program of Proposed Works the RC becomes aware of any particular cultural heritage concern arising from a proposal to conduct an Activity (including concerns as to the extent of the proposed Activity and the number of sites that may be affected), the RC will use its best endeavours to raise those concerns with the Proponent as soon as practicable after receipt of the Program of Proposed Works.

### **7.2 Due Diligence Guidelines**

- (a) The Parties acknowledge the application of the Due Diligence Guidelines as part of the assessment process for considering the impact of any proposed Activity on Aboriginal Heritage; and
- (b) Following the issuing of the Activity Notice if there is any doubt as to the impact of any proposed Activity on Aboriginal Heritage after considering the Due Diligence Guidelines, the Parties may seek the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA, with respect to the provision of further information if appropriate.

### **7.3 No breach of Heritage Act**

- (a) Nothing in this NSHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (b) If the Proponent carries out any Activities through contractors, then the Proponent shall ensure that such contractors are made aware of the obligations of the Aboriginal Heritage Act and of this NSHA.

## 8. The Activity Notice

### 8.1 Circumstances where no Activity Notice needs to be given

- (a) If the Proponent has reasonable grounds to form the opinion that no Survey is required (taking into account the matters referred to in clause 8.1(b) and the Due Diligence Guidelines), the Proponent may elect not to issue an Activity Notice in respect of a proposed Activity Program.
- (b) The Proponent does not have to issue an Activity Notice where the Activities proposed to be conducted consist entirely of:
  - (i) Minimal Impact Activities; or
  - (ii) Low Ground Disturbance Activities of a class that the RC has notified in writing to the Proponent need not be the subject of an Activity Notice.
- (c) If the Proponent has any doubt, including because of consideration of the Due Diligence Guidelines, as to whether clauses 8.1(a) and 8.1(b) operate to exempt the Proponent from issuing an Activity Notice, then the Proponent shall issue the Activity Notice in any event.

### 8.2 Giving the Activity Notice

- (a) Except where clause 8.1(a) or (b) applies, if the Proponent intends to undertake an Activity in the Agreement Area, it shall issue a notice in writing to the RC in accordance with this clause 8.2 (**Activity Notice**).
- (b) The main purposes of an Activity Notice are:
  - (i) to provide adequate information to assist the RC to make an assessment as to whether a Survey is required and if so, whether a Site Identification Survey or a Site Avoidance Survey; and
  - (ii) if a Survey is required, to provide information relevant to the conduct of that Survey.
- (c) The Activity Notice:
  - shall contain:
    - (i) the basic information specified in part 1.1 of Schedule 4; and
    - (ii) the key statements and nominations specified in part 1.2 and the detailed contents specified in part 1.3 of Schedule 4; and
  - may also contain:
    - (iii) the additional contents specified in part 2 of Schedule 4.



- (d) If the Proponent omits to specify or nominate, in an Activity Notice, any of the particular items referred to in parts 1.2 and 1.3 of Schedule 4, then the default provisions provided in part 3 of Schedule 4 shall apply.
- (e) The Parties acknowledge that the Proponent may require compliance with the DAA Guidelines where the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application.
- (f) The RC acknowledges that the inclusion in an Activity Notice of the matters described in parts 1.2(c) to (f) of Schedule 4 does not prejudice any statement by the Proponent that it considers that no Survey is required.
- (g) To avoid doubt, the Proponent may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Parties but, acting reasonably, the RC shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. If a fresh Activity Notice is issued the time limits in clause 16.1(a) shall apply as if that were a new Activity Notice. The Proponent may also request any of the items referred to in part 1.2(f) of Schedule 4 at any later time, in accordance with clause 12.2.

### **8.3 Considering the Activity Notice and deciding whether a Survey is required**

- (a) The RC will consider the Activity Notice and shall, within 15 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Proponent in writing as to whether the RC considers that a Survey is required (**Activity Notice Response**). In coming to its decision the RC shall take into account:
  - (i) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; and
  - (ii) the extent to which the land and waters the subject of the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, the RC will consider whether it is clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without damaging Aboriginal Heritage; and
  - (iii) any relevant previous decisions by the RC under clause 8.3(b); and
  - (iv) any other matter the RC reasonably considers relevant, including if appropriate a visit to the Agreement Area with representatives from the Proponent and from DAA.

- (b) The Proponent shall be free to carry out any Activity in the Agreement Area without conducting a Survey where:
- (i) the RC so agrees in writing; or
  - (ii) the RC waives its right under this NSHA to require a Survey of the proposed Activity;
- whether in an Activity Notice Response or otherwise.
- (c) Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response the RC indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
- (i) if different to the opinion given by the Proponent in the Activity Notice in accordance with part 1.2(a) of Schedule 4 a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the RC's opinion; and
  - (ii) if different to the nomination by the Proponent in the Activity Notice in accordance with part 1.2(c) Schedule 4, a nomination of the RC's proposed Survey Methodology; and
  - (iii) if different to the date or dates nominated by the Proponent in the Activity Notice in accordance with part 1.2(e) of Schedule 4, a nomination of a proposed Survey start date or finish date taking into account the availability of the Aboriginal Heritage Service Provider, if contracted by the RC; and
  - (iv) if practicable, and subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
  - (v) an election, or not, by the RC as to whether it will:
    - (A) contract the Aboriginal Heritage Service Provider; or
    - (B) perform the functions of the Aboriginal Heritage Service Provider itself and, if so, whether it will need to contract a Principal Aboriginal Heritage Consultant; and
  - (vi) if electing to contract the Aboriginal Heritage Service Provider, a nomination of the RC's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
  - (vii) if the RC does not elect either to be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Survey Provider under clause 8.3(d)(v), the names and contact details of the proposed Aboriginal

Consultants for the Survey. If these details are not provided to the Proponent either in the Activity Notice Response or within 10 Business Days after the Survey Agreement Date, the Proponent may contact DAA for details of persons identified by DAA who have previously been recorded on the Aboriginal Heritage Register in relation to particular sites in the Survey Area.

#### **8.4 Disagreements following Activity Notice Response**

If, following receipt by the Proponent of the Activity Notice Response, the Parties are in disagreement on any matter concerning the conduct of a proposed Survey, the Parties shall then endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until the Parties have consulted under clause 9 during the period of 20 Business Days referred to in clause 9.1(d), no Party is entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8.

### **9. Survey agreement and planning**

#### **9.1 Operation of this clause 9 – Survey Agreement Date**

- (a) Subject to clause 9.1(b), the date on which agreement is reached on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.
- (b) If after receipt by the Proponent of the Activity Notice Response under clause 8.3(a) the Parties are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity Notice Response shall be deemed to be the Survey Agreement Date referred to in clause 9.1(a).
- (c) The Parties' discussions under this clause 9 shall be conducted reasonably and in good faith.
- (d) The Parties shall ensure that the Survey Agreement Date occurs within 20 Business Days after the date of receipt by the Proponent of the Activity Notice Response (**Survey Agreement Period**).
- (e) If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day after the expiry of the 20 Business Days comprising the Survey Agreement Period referred to in 9.1(d).

#### **9.2 Whether a Survey is required**

- (a) The Parties' discussions regarding whether a Survey is required will be guided by the matters in clauses 8.3(a), and 9.2(b).

- (b) The following provisions shall apply to the Parties' discussions about whether a Survey is required.
- (i) Where no previous Aboriginal Heritage Survey (whether under this NSHA or otherwise) has been undertaken in relation to the area of land and waters the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
  - (ii) Where this NSHA does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
  - (iii) Where a previous Aboriginal Heritage Survey (whether conducted under this NSHA or otherwise) has, or if not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Proponent must (if it is in their possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to the RC (if such copy has not already been provided with the Activity Notice).
  - (iv) Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Parties will have regard to the following matters:
    - (A) the nature of the Activities outlined in the Activity Notice; and
    - (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey; and
    - (C) the extent to which the land has been affected by previous ground disturbing activities; and
    - (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
    - (E) any relevant matters relating to Noongar practices, laws and customs; and
    - (F) any other relevant matters raised by any of the Parties.

### **9.3 Agreements regarding Low Ground Disturbance Activity**

- (a) The Parties' discussions to confirm the extent of Low Ground Disturbance Activity, and whether a Survey is required in respect of such Activity, will be guided by the definition of Low Ground Disturbance Activity in this NSHA.

- (b) If the RC considers that a Survey in respect of any Low Ground Disturbance Activity is required, then the RC and the Proponent will each use their reasonable endeavours to address the concerns of the RC, by modifying the proposed Low Ground Disturbance Activity to limit the impact it may have on Aboriginal Heritage to the extent necessary to remove the need to conduct a Survey.

#### **9.4 Selection of Survey Methodology**

The discussions between the RC and the Proponent about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to the RC's concerns for the Survey Area and the Activities proposed by the Proponent.

#### **9.5 Estimate of costs of Survey when RC is contracting Aboriginal Heritage Service Provider**

Where the RC has elected to be the Aboriginal Heritage Service Provider or to contract an Aboriginal Heritage Service Provider under 8.3(d)(v), the following provisions apply:

- (a) the Parties acknowledge that it may not always be possible for the RC or the RC's nominated Aboriginal Heritage Service Provider to provide an accurate cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.
- (b) if an estimate of Survey costs has not been provided earlier, then the RC must ensure that by the end of the Survey Agreement Period, the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Proponent for approval by the Proponent (the **Estimated Survey Costs**).

#### **9.6 Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant**

- (a) If the RC is contracting an Aboriginal Heritage Service Provider, and the RC's Activity Notice Response does not identify the RC's nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) the Principal Aboriginal Heritage Consultant, then the RC will advise the Proponent of these nominations during the Survey Agreement Period.
- (b) The Parties acknowledge that, if the RC is contracting an Aboriginal Heritage Service Provider, the Proponent will not usually have any role in nominating an Aboriginal Heritage Service Provider or a Principal Aboriginal Heritage

Consultant (if different), subject however to the rights of the Proponent under clause 16.1(e) in the event of delays.

- (c) If the Proponent or the RC has reasonable concerns about the expense, competence or impartiality of the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by the RC or the Proponent (as the case may be), it may request the other Party to consider another anthropologist, archaeologist or appropriately qualified professional to act as Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).
- (d) If the Parties cannot reach agreement on the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by the RC or the Proponent within the Survey Agreement Period, then in addition to and without limiting the Proponent's general rights under clause 16.1(e), the RC or the Proponent (whichever is the non-contracting party) may nominate an alternative proposed Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant and the other Party shall promptly respond to any such nomination and shall ensure that it does not unreasonably withhold its approval to appointing such nominee as the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).

## **9.7 Estimate of time for Survey commencement or completion**

If following the Activity Notice Response and where the RC is contracting the Aboriginal Heritage Service Provider the Parties are not in agreement about the date of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, the Parties shall agree on such date or dates.

## **10. Survey Team and commencement of Survey**

### **10.1 Survey team**

- (a) As soon as possible after the Survey Agreement Date, and where either the RC or the Proponent is contracting the Aboriginal Heritage Service Provider, the Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant if appointed, after receiving names and contact details of the Aboriginal Consultants from the RC in accordance with 8.3(d)(vii), will organise a Survey Team (**Survey Team**), which shall consist of:
  - (i) up to 8 Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage

Service Provider in consultation with the RC, to examine the Survey Area and assist in the Survey; and

- (ii) if considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
  - (iii) where considered necessary by the Aboriginal Heritage Consultants, the RC or the Aboriginal Heritage Service Provider, and agreed to by the Parties, another anthropologist of a specific gender; and
  - (iv) where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, including during the course of the Survey, an archaeologist.
- (b) Where considered necessary by the Aboriginal Heritage Service Provider and agreed to by the RC and the Proponent, more than one archaeologist may be appointed to the Survey Team.
- (c) The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i) unless particular circumstances can be demonstrated to exist including, for example:
- (i) a large number of registered Aboriginal Sites are known to exist within a Survey Area and the number of Aboriginal people who have authority to speak for those Aboriginal Sites and should be consulted about them is greater than 8; and/or
  - (ii) the Survey Area crosses the boundaries of two or more RCs.

In these circumstances the Proponent and the RCs must agree on the number of additional Aboriginal Consultants for the Survey Team.

- (d) Additional Aboriginal Consultants may accompany the Survey Team but the Proponent will not be liable for additional costs.
- (e) The Proponent may send one or two nominees with appropriate authority on the Survey to assist the Survey Team conducting the Survey with provision of information and requests where required.

## **10.2 Commencement and conduct of Survey**

- (a) If the RC is contracting the Aboriginal Heritage Service Provider, the RC will use its, and must ensure that the Aboriginal Heritage Service Provider and the Principal Aboriginal Heritage Consultant (if different to the Aboriginal Heritage Service Provider) each uses its best endeavours to commence the

Survey within the time agreed by the Parties, or in the absence of agreement within 30 Business Days after the Survey Agreement Date unless clauses 11(c) and 18.9 apply, in which case the time for commencement of the Survey will be extended in accordance with the timeframes set out in the relevant clauses if the Dispute is resolved.

- (b) The RC and/or the Proponent (depending upon which is contracting the Aboriginal Heritage Service Provider) will ensure that the Survey Team observes and complies with any safety and other procedures and policies implemented from time to time by the Proponent over the Survey Area. The Proponent will provide the RC with details of and explain these procedures and policies in order for the RC to provide these details and explain the procedures and policies to the Aboriginal Consultants before the Survey commences. The Proponent will also provide members of the Survey Team (and any other attending members of the RC) with protective clothing and equipment if reasonably necessary in all the circumstances. To the extent that the Proponent has control of the Survey Area, the Proponent shall take such measures as are practicable to ensure that the members of the Survey Team are not exposed to hazards.
- (c) The RC acknowledges that the members of the Survey Team are not employees of the Proponent, and that the Proponent is not required to have insurance in place for the protection of Survey Team members. The onus is on the Party contracting the Aboriginal Heritage Service Provider to ensure that the Aboriginal Heritage Service Provider has insurance in place to adequately cover the Survey Team.
- (d) The Survey Team will as appropriate in the circumstances:
  - (i) visit the Survey Area; and
  - (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and
  - (iii) provide sufficient information to the Aboriginal Heritage Service Provider, or any other heritage consultant accompanying the Survey Team, to enable them to:
    - (A) record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using a GPS; and
    - (B) record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided, on a Heritage Information Submission Form; and



- (C) mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map; and
  - (D) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
  - (E) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to Aboriginal Heritage concerns raised by the Aboriginal Consultants, the representatives of the Proponent nominated under clause 10.1(e):
- (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information or other information pertaining to Aboriginal Sites; and
  - (ii) may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.

## 11. Payment for Surveys when the RC is contracting the Aboriginal Heritage Service Provider

Where the RC has elected to contract an Aboriginal Heritage Service Provider or to perform the functions of the Aboriginal Heritage Service Provider under clause 8.3(d)(v), the following provisions apply:

- (a) The Proponent shall pay the costs and expenses of the Survey at the rates set out in Schedule 5.
- (b) The Proponent agrees to pay 100% of the approved Estimated Survey Costs to the RC:
  - (i) within 10 Business Days before the commencement of the Survey, or
  - (ii) within 10 Business Days after the approval of the Estimated Survey Costs under clause 9.5(b),whichever is the earlier (the **Relevant Period**).
- (c) If the Proponent fails to pay the Estimated Survey Costs within the Relevant Period the RC may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day following the end of the Relevant Period.
- (d) The monies constituting the Estimated Survey Costs must be:
  - (i) held by the RC in an account established specifically for survey costs at a bank and must be kept separate from all other bank accounts of, or monies received or held by, the RC; and
  - (ii) used only for the payment of the Estimated Survey Costs and any repayment to the Proponent under clause 11(e) or 11(g).
- (e) If the Survey is cancelled by the Proponent before it is completed, the part of the Estimated Survey Costs that has been expended and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Proponent.
- (f) The RC must provide a tax invoice of the Survey costs to the Proponent that reconciles the Estimated Survey Costs with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by the chief executive officer of the RC or their delegate.

- (g) If the costs incurred are less than the Estimated Survey Costs, the RC shall refund the balance of the monies paid in accordance with clause 11(b) to the Proponent.
- (h) If the costs incurred exceed the Estimated Survey Costs by 5% or less, the Proponent shall pay the additional amount to the RC within 20 Business Days of receiving a tax invoice (accompanied by all relevant receipts and invoices and any other relevant supporting documentation) that must be certified as correct by the chief executive officer of the RC or their delegate.
- (i) If the Proponent receives notification of revised costs from the RC under clause 12.2(b), the Proponent will pay 100% of any additional costs to the RC within 10 Business Days of their approval by the Proponent. Once paid, these monies will be added to the Estimated Survey Costs and dealt with in accordance with (c) – (h) above.

## 12. Survey Report

### 12.1 Timing of Preliminary Advice and Survey Report

After the last day of fieldwork for a Survey (**Last Fieldwork Day**) if either the Proponent or the RC is contracting the Aboriginal Heritage Service Provider, the Proponent or the RC, as the case may be, will ensure that Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant provides the Parties with:

- (a) Preliminary Advice (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to the RC within 5 Business Days after the Last Fieldwork Day and, after taking into account any comments from the RC, to the Proponent within 12 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to the RC within 15 Business Days after the Last Fieldwork Day, to enable the RC to comment on it; and after taking into account any comments from the RC, to the Proponent within 25 Business Days after the Last Fieldwork Day;
- (c) a final Survey Report, taking into account any comments from the Proponent about any identified technical, factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of Schedule 6, within 35 Business Days after the Last Fieldwork Day.

## 12.2 Requests for reports and compliance with DAA Guidelines at any time

- (a) Notwithstanding the relevant nominations by the Proponent in the Activity Notice under:
- (i) part 1.2(f)(i) and (ii) of Schedule 4 the Proponent may by notice in writing at any time ask that the RC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to provide a Preliminary Advice or draft Survey Report.
  - (ii) part 1.2(f)(iii) of Schedule 4, the Proponent may by notice in writing at any time advise the RC that it has become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made and ask that the RC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. The Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
  - (iii) part 1.2(f)(iii) of Schedule 4, if the party contracting the Aboriginal Heritage Service Provider is notified by the Aboriginal Heritage Service Provider that they have become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made, the contracting Party shall by notice in writing advise the other Party, and the Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
- (b) The Proponent acknowledges that a notification under clause 12.2(a)(i) – (iii), may impact on the times and costs for the Survey, and, if the RC is contracting the Aboriginal Heritage Service Provider, the RC shall ensure that any revised times and costs (together with supporting documentation) are notified promptly to the Proponent.

### 12.3 Preliminary Advice

- (a) The Preliminary Advice should provide sufficient information (without disclosing any Sensitive Heritage Information) to allow the Proponent to know whether to proceed or not with any Activities, with or without conditions.
- (b) Upon receipt by the Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Proponent may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).

### 12.4 Contents of Survey Report

The Party contracting the Aboriginal Heritage Service Provider must ensure the following:

- (a) that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will, in consultation with the Survey Team, prepare a Survey Report in accordance with the guidelines:
  - (i) in part 1 and part 2 of Schedule 6, where the Survey being conducted is a Site Avoidance Survey; or
  - (ii) in part 1 and part 3 of Schedule 6, where the Survey is a Site Identification Survey.
- (b) where the Proponent has requested in writing (whether in the Activity Notice or at any other time allowable under clause 12.2) that the Survey Report complies with the DAA Guidelines and the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application, that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant includes sufficient information in the Survey Report to assist:
  - (i) the ACMC in considering an Aboriginal Heritage Act Section 18 Application; or
  - (ii) the Aboriginal Heritage Act Registrar in considering an Aboriginal Heritage Act Section 16 Application.
- (c) that in addition to the matters described in Schedule 6, the Survey Report:
  - (i) describes which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, would be likely to result in a breach of the Aboriginal Heritage Act;
  - (ii) records sufficient information to enable the Proponent to plan and, subject to the law and this NSHA to comply with the Aboriginal Heritage Act in

the course of undertaking the things that are the subject of the Activity Notice; and

(iii) complies with the DAA Guidelines.

## **12.5 Provision of Aboriginal Heritage Information to DAA**

Following the preparation of the Survey Report:

- (a) if the RC is the Aboriginal Heritage Service Provider it must provide: or
- (b) if the RC is not the Aboriginal Heritage Service Provider the Party contracting the Aboriginal Heritage Service Provider must ensure that the Aboriginal Heritage Service Provider provides,

the following information to the Aboriginal Heritage Act Registrar:

- (c) a copy of the Survey Report; and
- (d) if Aboriginal Sites have been identified during the Survey, a Heritage Information Submission Form (as attached at Schedule 7, or as amended from time to time) with respect to each site.

## **12.6 Provision of Survey Information to DAA**

- (a) If the Proponent contracted the Aboriginal Heritage Service Provider, the Proponent must, within 15 Business Days after the preparation of the Survey Report, provide to the RC, in writing, the details required by items 24 and 25 of Schedule 8.
- (b) Subject to clause 12.6(a), following the preparation of the Survey Report the RC must ensure that the information set out in Schedule 8 is provided to the Aboriginal Heritage Act Registrar.

## **12.7 Reliance on Survey Report**

The Parties each acknowledge that they may rely upon the contents of a Survey Report.

# **13. Intellectual property**

## **13.1 Intellectual property of the Proponent to be assigned to the RC**

If the Proponent is contracting the Aboriginal Heritage Service Provider, the Proponent assigns all intellectual property rights it holds in the Survey Report to the RC upon its creation.

## **13.2 Licence to use Survey Report**

Subject to clause 19, the RC shall grant to the Proponent an irrevocable, transferable, non-exclusive, royalty-free licence to use any Survey Report for the purposes of the Proponent:

- (a) conducting its Activities as set out in the Activity Notice; or
- (b) seeking any necessary or desirable statutory approvals relevant to its Activities including under the Aboriginal Heritage Act; or
- (c) enforcing, defending or establishing its rights, including through court proceedings, and complying with its obligations, under this NSHA or any relevant statutory approvals.

## 14. Effect of NSHA on other Aboriginal Heritage Agreements

If the Proponent:

- (a) has one or more Aboriginal Heritage Agreements (other than this NSHA) with the RC or any of its Members, which were entered into prior to the Effective Date (including ones entered into prior to the ILUA, and which is or are specified in item 5 of Schedule 2; and
- (b) the pre-existing Aboriginal Heritage Agreement applies to an Activity to which this NSHA relates,

then the provisions of this NSHA shall prevail over the provisions of any such pre-existing Aboriginal Heritage Agreement unless otherwise provided in item 6 of Schedule 2.

## 15. Proponent must consult about Aboriginal Heritage Act applications

- (a) The Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application in respect of any area within the Agreement Area without first giving the RC at least 30 Business Days' notice of its intention to do so.
- (b) The Proponent must consult, including by making reasonable efforts to meet with the RC, about any proposal that is the subject of such an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application.
- (c) Prior to the APMC considering the Aboriginal Heritage Act Section 18 Application or the Aboriginal Heritage Act Registrar considering the Aboriginal Heritage Act Section 16 Application, as the case may be, the Proponent must give reasonable notice to the APMC (or the Aboriginal Heritage Act Registrar as the case may be) and to the Aboriginal Heritage Service Provider of the detail of the consultation that has taken place.

- (d) Subject to clause 15(a), nothing in this NSHA prevents the Proponent lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.

## 16. Time limits

### 16.1 Time for compliance and consequences of non-compliance

- (a) The Parties, as applicable, must each meet the time limits imposed under the following provisions of this NSHA:
  - (i) the receipt by the Proponent of an Activity Notice Response (clause 8.3(a)); and
  - (ii) subject to clauses 9.1(e) and 18.9, the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
  - (iii) the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clauses 8.3(d)(iii)) or 9.7; and
  - (iv) the receipt by the Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
  - (v) the receipt by the RC and by the Proponent of the draft Survey Report (clause 12.1(b));
  - (vi) the receipt by the Proponent of the final Survey Report (clause 12.1(c)).
- (b) The time limits on the steps referred to in clause 16.1(a) may be extended by agreement in writing between the Parties. Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.
- (c) To avoid doubt, any failure to comply with the time limits for the steps described in clause 16.1(a) does not give a Party a right to terminate this NSHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 16.1.
- (d) If the RC does not meet, or, if the RC is contracting the Aboriginal Heritage Service Provider, fails to ensure that the Aboriginal Heritage Service Provider meets, any applicable time limits on the steps listed in clause 16.1(a), then the Proponent may provide a written notice to the RC, with such a notice to nominate a date by which the non-compliance with the time limits must be rectified. The date nominated by the Proponent must allow a reasonable period, in all the circumstances, for rectification of the non-compliance with the time limits, and in any event the date must not be less than 10 Business Days after the date on which the notice of non-compliance is sent.



- (e) If the RC fails to comply with a notice sent by the Proponent under clause 16.1(d), then the Proponent may notify the RC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NSHA in respect of the relevant Activity Program with effect from the date on which the RC receives the latter notice. The Proponent may then at its election:
  - (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
  
- (f) If the Parties to a Dispute referred to mediation under clause 18.9 fail to resolve that Dispute, then the Proponent may notify the RC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NSHA in respect of the relevant Activity Program with effect from the date on which the RC receives the latter notice. The Proponent may then at its election:
  - (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
  
- (g) In the circumstances described in clauses 16.1(e) and (f), where the Proponent makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
  - (i) the Proponent shall inform the RC of the alternative arrangements made (including any advice and assistance obtained from DAA); and
  - (ii) the RC shall not have any claim against the Proponent arising from the making of those alternative arrangements.
  
- (h) To avoid doubt:
  - (i) the effect of this clause 16.1 is not limited by any dispute resolution processes under clause 18 of this NSHA other than those set out in clause 18.9, and in particular the time limits on the steps referred to in clause 16.1 continue to apply where a dispute resolution process is commenced under clause 18.1; and

- (ii) the dispute resolution provisions in clause 18 of this NSHA do not apply to any decision by the Proponent to issue a notice of non-compliance under clause 16.1(d). However, the Proponent may elect, by notice in writing to the RC, to allow use of the dispute resolution provisions in clause 18.
- (i) The Proponent will act reasonably in asserting its rights under this clause 16.1.

## 16.2 Justifiable delay

- (a) Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.1.
- (b) A Party asserting the existence of a delay to which clause 16.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

## 17. Default and enforcement

### 17.1 Interpretation

- (a) In this clause 17 a reference to a Party means a party to the default or dispute.
- (b) An **Event of Default** occurs where a Party:
  - (i) breaches an obligation under this NSHA; or
  - (ii) commits an Insolvency Event.

### 17.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default, the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 5 Business Days after receiving the Default Notice.
- (b) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the RC, then the RC shall as soon as possible notify the Proponent:
  - (i) that the Event of Default has occurred; and
  - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the RC; and
  - (iii) when the relevant Event of Default ceases to exist.

- (c) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the Proponent, then the Proponent shall as soon as possible notify the RC:
  - (i) that the Event of Default has occurred; and
  - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the Proponent; and
  - (iii) when the relevant Event of Default ceases to exist.
- (d) Where the Event of Default results in a court order to wind up either Party, this NSHA shall by force of this clause terminate with effect from the date of the court order.
- (e) The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this NSHA until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (f) Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this NSHA or otherwise at law (including the right to seek interlocutory relief and specific performance).

## 18. Dispute resolution

### 18.1 No arbitration or court proceedings

- (a) Subject to clause 18.1(b) and 18.9, if a dispute arises under this NSHA including a dispute in respect of this clause 18.1 (Dispute), a Party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 18 are subject to clause 8.4.

### 18.2 Notification

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

### 18.3 Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 18.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 18.4.

## 18.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chairman of LEADR will appoint a mediator at the request of either Party.
- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.4. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 18.6) referring the matter to arbitration or commencing legal proceedings.

## 18.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 18.2 to 18.4 then the Dispute may be referred to arbitration by either Party under the *Commercial Arbitration Act 2012* (WA).
- (b) The arbitration will be held within the Agreement Area or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

## **18.6 Breach of this clause**

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

## **18.7 Obligations continue**

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this NSHA so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

## **18.8 Extension of time**

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this NSHA, in order to preserve the rights of a Party to a Dispute, the Parties to the Dispute will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

## **18.9 Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)**

- (a) A Party claiming a Dispute has arisen in relation to any matter to be agreed under clauses 9, 11(b), or 12.2(a)(ii) and (iii) must give the other Parties to the Dispute notice setting out details of the Dispute, and at the same time as the notice is served upon the other Parties must request the chairman of LEADR to appoint a mediator within 5 Business Days.
- (b) The role of the mediator with respect to a Dispute arising in relation to any matter to be agreed under clauses 9, 11(b), or clause 12.2(a)(ii) and (iii), is to assist in negotiating a resolution of the Dispute. A mediator cannot make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18.9:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.9. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. To the extent possible, all issues

identified under clauses 9, 11(b), and 12.2(a)(ii) and (iii) should be dealt with and resolved in the one mediation.

- (f) If the Parties fail to achieve a resolution of the Dispute by mediation within 15 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, the provisions of clause 16.1(f) – (g) will apply.

## 19. Confidentiality

### 19.1 Confidential information

Each Party agrees that the following information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 19.2:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this NSHA, including any Sensitive Heritage Information; and
- (b) information given by the Proponent to the RC in respect of the Activities of the Proponent where the Proponent advises the RC that the relevant information is confidential; and
- (c) any other information disclosed by one Party to another under this NSHA which is identified by the Disclosing Party as confidential,

but not including information:

- (d) the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

### 19.2 Permitted disclosure

- (a) Subject to clauses 19.2(b) and 19.2(c), a Receiving Party may disclose Confidential Information:
  - (i) if it has the prior consent of the Party which provided the information;
  - (ii) to the extent required by any law or applicable securities regulation or rule;
  - (iii) to the extent that the information is reasonably necessary for any processes or applications or related to any statutory approvals;

- (iv) in connection with any dispute or litigation concerning this NSHA or its subject matter;
  - (v) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers, partners and related bodies corporate, or an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant appointed under this NSHA;
  - (vi) where the Receiving Party is the Proponent, to a *bona fide* proposed assignee of the Proponent's rights or obligations under this NSHA;
  - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
  - (viii) to a proposed registered native title body corporate assignee of the RC's rights, title and interests under this NSHA;
  - (ix) in accordance with clauses 12.5 and 12.6;
  - (x) where disclosure is required by the Proponent to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
  - (xi) as otherwise permitted or required by the terms of this NSHA.
- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Proponent may disclose that Confidential Information to the DAA and APMC, including for the purposes of the Proponent:
- (i) making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application;
  - (ii) providing a copy of each Survey Report to the DAA for DAA's collection of Aboriginal Heritage Survey reports; and
  - (iii) seeking any necessary or desirable statutory approvals or enforcing, defending or establishing its rights, including through court proceedings, under this NSHA or any relevant statutory approvals, including under the Aboriginal Heritage Act.
- (c) To avoid doubt, except for the circumstances described in clause 19.2(b), disclosure of Sensitive Heritage Information may only occur if the RC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) The RC must inform the Proponent of any information contained in a Survey Report, which comprises Sensitive Heritage Information.

### **19.3 Disclosure requirements**

Before making any disclosure to a person under clause 19.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this NSHA;
- (b) at least 10 Business Days before any disclosure, notify the Disclosing Party of its intention to disclose the Confidential Information and give the Disclosing Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clauses 19.2(a)(v), 19.2(a)(vi), 19.2(a)(vii), or 19.2(a)(viii), but with the exception of employees or officers of a Receiving Party, procure that the person or entity executes a deed with the Disclosing Party in such form acceptable to the Disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 19.

## **20. Assignment**

### **20.1 Generally**

Neither the RC nor the Proponent may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this NSHA except in accordance with this NSHA.

### **20.2 Assignment or Novation by Proponent**

- (a) The Proponent may from time to time assign or transfer all or part of its rights, title, and interests under this NSHA to any person (whether by farm out, joint venture, sale or otherwise) where the Proponent is assigning all or part of its interest in the tenure in the Agreement Area to which this NSHA applies.
- (b) Before such assignment or novation, the Proponent must:
  - (i) give the RC at least 20 Business Days' notice prior to the proposed assignment or novation;
  - (ii) provide a draft of the proposed deed of assignment or novation for the RC's approval, which approval must not be unreasonably withheld, and the Proponent must take into account any reasonable amendments put forward by the RC;
  - (iii) within 20 Business Days after receiving the RC's approval to the terms of the draft deed of assignment or novation provide to the RC either:



- (A) the deed of assignment in the form approved by the RC executed by the outgoing Proponent and the incoming proponent in favour of the RC by which the assignee agrees to be bound, alone or jointly with the Proponent, by the provisions of this NSHA and to assume, observe and perform (alone or jointly with the Proponent) the rights and obligations of the Proponent under this NSHA to the extent of the rights, title and interest assigned in accordance with clause 20.2(a); or
- (B) the deed of novation in the form approved by the RC executed by the outgoing Proponent and the incoming proponent in which the incoming proponent agrees to obtain the rights and obligations of the Proponent under this NSHA, the incoming proponent being bound by this NSHA and the outgoing Proponent being released from its obligations under this NSHA to the extent of the rights, title and interest transferred in accordance with clause 20.2(a); and
- (c) The RC will then execute the deed of assignment or the deed of novation as the case may be and return copies of the fully executed deed to both the outgoing Proponent and the incoming proponent.

### **20.3 Assignment by RC**

- (a) The RC must assign its rights, title and interests under this NSHA to a replacement Regional Corporation if:
  - (i) a replacement Regional corporation is appointed by the Noongar Boodja Trustee as the Regional Corporation for land and waters including the land and waters within the Agreement Area; and
  - (ii) the replacement Regional Corporation agrees to enter into a deed, in a form acceptable to the Proponent (each acting reasonably), by which it agrees to be bound by this NSHA and to assume all of the RC's obligations under this NSHA, and provides a copy of that deed to the Proponent.
- (b) If the requirements of clause 20.3(a)(i) and (ii) are satisfied, the Regional Corporation must do all other things necessary to give effect to the assumption by the replacement Regional Corporation of the obligations under this NSHA.

### **20.4 Effect of Assignment or Novation**

- (a) Once an assignment or novation by a Proponent of all or any part of its rights, title and interests under this NSHA has occurred under clause 20.2, then the assigning or outgoing Proponent will be deemed to have been released to the extent of the assignment or transfer from all claims and liabilities arising under

or in respect of this NSHA arising after the effective date of the assignment or novation, but without affecting any claim or liability arising prior to such date.

- (b) Once an assignment of this NSHA has occurred under clause 20.3, the assigning RC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this NSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 20 shall not affect the operation of this NSHA.

## **20.5 No encumbrance**

- (a) Except as permitted by clause 20.5(b), no Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NSHA.
- (b) The Proponent may with the prior written consent of the RC grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NSHA provided that clause 20.2 shall apply with necessary changes to any assignment upon enforcement of such encumbrance, mortgage or charge.

## **21. Notices**

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must be delivered to the intended recipient by registered post or by hand or fax to the intended recipient's address or fax number specified in Schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to the RC under clause 8.2);
- (c) will be taken to be received by the recipient:
  - (i) in the case of delivery in person, when delivered; and
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting; and
  - (iii) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of name of recipient and indicating that the transmission has been made without

error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

## 22. GST

### 22.1 Interpretation

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

### 22.2 GST payable

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this NSHA (whether that amount is specified or can be calculated in accordance with this NSHA), it does not include GST and must be increased by the GST Rate.
- (b) The Party making a Taxable Supply under this NSHA must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act. Notwithstanding any provision to the contrary in this NSHA, payment will be due within 20 Business Days of a Party receiving a Tax Invoice in accordance with this clause 22.
- (c) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this NSHA, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (d) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

## 23. Costs and duties

- (a) The Proponent shall bear any duties or fees or taxes of a similar nature associated with this NSHA.
- (b) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this NSHA.

## 24. Force Majeure and Aboriginal Cultural Business

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this NSHA as a result of an event of Force Majeure or Aboriginal

Cultural Business, it must promptly notify the other Party accordingly. The notice must:

- (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the delay caused by the Aboriginal Cultural Business.
- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this NSHA shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this NSHA as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this NSHA.

## **25. General**

### **25.1 Review and variation**

Where this NSHA is to be amended or varied, then this NSHA may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

### **25.2 Entire agreement**

Subject to clause 14, this NSHA constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **25.3 Governing law and jurisdiction**

- (a) This NSHA is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

#### **25.4 Severance**

If any provisions of this NSHA is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this NSHA to the extent necessary unless it would materially change the intended effect and objectives of this NSHA.

#### **25.5 Waiver**

A right or power under this NSHA shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

#### **25.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this NSHA. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **25.7 Further action**

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this NSHA and the matters contemplated by it.

# Schedule 1 – Party Details

(Clause 21 Notices)

[XX –Insert RC's name]  
Notice details

Address: [XX – Insert RC's address in  
Western Australia]

Fax No: [XX – Insert RC's fax details]

[XX –Insert Proponent's name]  
Notice details

Address: [XX – Insert Proponent's address in  
Western Australia]

Fax No: [XX – Insert Proponent's fax details]

## Schedule 2 – Details of ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
<b>Details of ILUA (as recorded on the Register of Indigenous Land Use Agreements)</b>		
Item 1	Short name of ILUA	[XX]
Item 2	National Native Title Tribunal file no.	[XX]
Item 3	Date registered	[XX]
Item 4	Local government region(s)	[XX]
<b>Pre-existing Aboriginal Heritage Agreements</b>		
Item 5	Details of all pre-existing Aboriginal Heritage Agreements to which clause 14 applies.	[XX – insert sufficient details of prior agreements]
Item 6	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this NSHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write ‘whole agreement’).	[XX – insert sufficient details of prior agreements]

## Schedule 3 – Agreement Area

(Clause 1.1 Definition of **Agreement Area**)

[XX] – Insert map and written description which clearly identifies the area to which this NSHA relates]



# Schedule 4 – Contents of Activity Notice

## Part 1 – Primary contents of Activity Notice

(Clause 8.2 Giving the Activity Notice)

### 1.1 Basic information

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this NSHA (by reference to the name of the ILUA as set out in item 1 of Schedule 2);
- (b) the name of the Proponent, and:
  - (i) an address in Western Australia for service of notices, under this NSHA, on the Proponent (if no address for service has previously been given by the Proponent); and
  - (ii) full contact details for a primary contact person within the Proponent (if a body corporate).

### 1.2 Key statements and nominations under clause 8.2

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(f), contain the following required key statements:

- (a) a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Proponent; and
- (b) a statement of whether the Proponent considers that a Survey is required (taking into consideration the matters referred to in clauses 8.1(b) and 8.3); and
- (c) a nomination, by the Proponent, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model; and
- (d) where a Site Avoidance Model is nominated, a statement of whether the Proponent requires any Survey to be conducted in respect of:
  - (i) only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice; or
  - (ii) a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice; and
- (e) a nomination, by the Proponent, of a proposed Survey fieldwork start date or end date; and

- (f) a nomination, by the Proponent, as to whether it requires:
  - (i) a Preliminary Advice (see clause 12.1(a));
  - (ii) a draft of the Survey Report (see clause 12.1(b));
  - (iii) an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application (if known at the relevant time) (see clause 8.2(e)).

Where any of those key statements are omitted, Part 3 of this Schedule 4 provides default provisions.

### **1.3 – Detailed contents of Activity Notice**

(Clause 8.2(c)(ii))

In accordance with clause 8 of this NSHA, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

- (a) a map showing clearly the area the subject of the Activity Notice, identifying the location of the area the subject of the Activity Notice within the Agreement Area and including scale, zone and north point, as well as nearby towns, roads and landscape features; and
- (b) aerial photographs (if available) or smaller scale maps of the area the subject of the Activity Notice which must contain UTM Grid Coordinates (eastings and northings), datum, north point and, where applicable, land tenure details such as parcel identifier, plan or lot, reserve numbers, and coordinates and/or polygon defining the area the subject of the Activity Notice; and
- (c) where applicable, identifying numbers (or other identifying information) of each tenure to which the Activity Notice relates; and
- (d) all known vehicular access routes to the area the subject of the Activity Notice; and
- (e) any ground disturbing notice provided to any government agency including (where mining exploration Activities are proposed) to the District Mining Engineer; and
- (f) details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
- (g) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and

- (h) the approximate number of personnel who will be involved in any proposed Activity; and
- (i) any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.
- (j) Where any of the detailed content is omitted, the default provisions of Part 3 of this Schedule 4 will apply.

## Part 2 – Additional contents of Activity Notice

(Clause 8.2(c)(iii))

An Activity Notice may also set out:

- (a) whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report; and
- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
- (d) any additional information which explains what sort of Survey outcome is being sought (if a Survey is required), including whether an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is intended to be made (if known at the relevant time) (see clause 8.2(e)); and
- (e) any other background material which will better help the RC to understand the potential impacts of what is proposed.

## Part 3 – Default provisions of Activity Notice

(Clauses 8.2(c)(ii) and 8.2(d))

For the purposes of clause 8.2(d), the following default provisions apply in respect of any item in part 1.2 of this Schedule 4 that is not specified or nominated in the Activity Notice.

### **Clause No.    Default Provision**

Item (a)	The Activity Program contains Ground Disturbing Activity.
Item (b)	A Survey is required.
Item (c)	Site Avoidance Model.
Item (d)	Only the areas of specific Activities described in the Activity Notice are required to be Surveyed.
Item (e)	Not applicable (Parties to discuss and agree proposed Survey fieldwork start date or end date).
Item (f)	There is no requirement for a Preliminary Advice or a draft of the Survey Report.

## Schedule 5 – Costs for conduct of a Survey

(Clauses 8.3(d)(iv), 9.5 and 11)

No.	Item	Rate	GST	Description
<b>Ethnographic Assessment</b>				
1.	Aboriginal Heritage Service Provider	At cost  [Usually \$900-\$1000 (Indexed to CPI)]  + Administration Fee of 15% of total expenditure capped at \$5,000 (Indexed to CPI)  + Disbursements  At cost	+GST	per person per day or pro rata for part thereof
2.	Principal Aboriginal Heritage Consultant	At cost  [Usually \$900-\$1000 (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
3.	Aboriginal Heritage Liaison Officer (if necessary and agreed)	\$500 (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Archaeological Assessment (if necessary and agreed)</b>				
4.	Archaeologist (archaeological team external contractors)	At cost  [Usually \$900 - \$1000] (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
5.	Fieldwork and reporting	At cost  [Usually \$900 - \$1000] (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Aboriginal Consultants</b>				

No.	Item	Rate	GST	Description
6.	Aboriginal Consultants – up to 8 unless otherwise agreed	\$500 (max) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Field Expenses</b>				
7.	Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
8.	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
9.	Aboriginal Consultants accommodation/meals	At cost	+GST	
<b>Travel Expenses</b>				
10.	Vehicle mileage (km)	\$ As per tax schedule for location	+GST	per km
11.	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel	+GST	
12.	Aboriginal Consultants travel expenses (if required)	Rate as per tax schedule for location	+GST	per km
13.	Airfares	At cost	+GST	
14.	Taxi travel (to and from airports or meetings)	At cost	+GST	
<b>Incidental Expenses</b>				
15.	Film, maps, report production and expendables	At cost	+GST	

Initials:                                  Aboriginal                  Heritage                  Service                  Provider

\_\_\_\_\_

Initials: Proponent/Authorised officer of the Proponent \_\_\_\_\_

**CPI Indexation**

Where a rate listed in this annexure is indicated to be "*Indexed to CPI*" it shall be varied annually on 31 August of each year in accordance with the CPI Calculation.

# Schedule 6 – Contents of Survey Report

(Clause 12.4)

## Part 1 – Guidelines for all Survey Reports

### 1.1 Copyright and confidentiality

Insert a statement to the effect that the report may only be copied in accordance with this NSHA and subject to any other restrictions agreed to, from time to time, by the Proponent and the RC on behalf of the RC.

### 1.2 Survey personnel

- (a) Author's name in full and occupation and author's business or company name.
- (b) Full name and gender of each Aboriginal Consultant, and the group they represent.
- (c) Full names and gender of other personnel participating in the Survey and their role.
- (d) Explanation as to how Aboriginal Consultants were selected.

### 1.3 Survey date(s)

Insert the date(s) on which fieldwork was conducted.

### 1.4 Spatial information

- (a) The general location of the area within which the Survey was undertaken (e.g. title numbers 'x' to 'z', or the 'abc' pastoral lease, or the area shown on a map contained in the Survey Report).
- (b) Grid references of the Survey Area.
- (c) A map of the Survey Area.

### 1.5 Other information

- (a) Summary of results of searches of the Aboriginal Heritage Act Register at the DAA including the site number and name, if given, and the reference number.
- (b) A general description of the fieldwork undertaken.
- (c) Details of ethnographic and (if relevant) archaeological work carried out during the Survey.



- (d) Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.
- (e) In respect of any Aboriginal Objects identified:
  - (i) a description of such Aboriginal Objects;
  - (ii) the location of any Aboriginal Objects so identified; and
  - (iii) the date on which each Aboriginal Object was identified.
- (f) Any discussion and recommendations.

## Part 2 – Additional guidelines for Survey Reports where Site Avoidance Model is used

### 2.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information

- (a) Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
- (b) Grid references of the area where Activity should not be carried out, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (c) Dimensions of the area, e.g. approximately 100m east-west and 50m north-south.
- (d) Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (e) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified, and date site identified.

## Part 3 – Additional guidelines for Survey Reports where Site Identification Model is used

### 3.1 Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information

- (a) Site name and number, if given to existing sites, and DAA reference number, if known.
- (b) Site type, e.g. archaeological or ethnographic or both.
- (c) Grid references of the site, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (d) Dimensions of the site, e.g. approximately 10m east-west and 5m north-south.
- (e) Location, i.e. where the site is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (f) Description, e.g. rock pool, granite outcrop.
- (g) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified and date site identified.
- (h) Significance, if known.

### 3.2 Recommendations and comments

Recommendations regarding the Aboriginal Site, e.g. whether the site is:

a place of importance or significance where persons of Aboriginal descent have, or appear to have left any object used for or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or

- (a) a sacred/ ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
- (b) a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or
- (c) a place where Aboriginal objects are traditionally stored; and

recommendations for how the Aboriginal Site(s) should be protected.

# Schedule 7 – DAA Heritage Information Submission Form

(Clause 12.5 Provision of Aboriginal Heritage Information to DAA)

Complete and submit the form entitled 'Heritage Information Submission Form' that is available for download on the DAA website at:

[http://www.daa.wa.gov.au/Documents/HeritageCulture/Aboriginal%20heritage/Heritage\\_Submission\\_Form.pdf](http://www.daa.wa.gov.au/Documents/HeritageCulture/Aboriginal%20heritage/Heritage_Submission_Form.pdf).

# Schedule 8 - Noongar Standard Heritage Process Information

(Clause 12.6 Provision of Survey Information to DAA)

The RC will report the following information to DAA:

## DETAILS OF THE PERSON FILLING IN THIS FORM

1. **Name:**
2. **Job Title:**
3. **Noongar Corporation Name:**

## ABOUT THE PROPONENT

4. **Proponent Name:**
5. **Contact phone number:**
6. **Brief summary of the project or activity:**
7. **Does the Project fall within more than one Regional Noongar Corporation's agreement area: Y/N**
8. **Please list any other affected Regional Corporation:**

## ACTIVITY NOTICE

9. **Did the Activity Notice contain all requisite information (As per Schedule 4): Y/N**
10. **If not did the Regional Corporation:**
  - (a) **Utilise the Default Provisions:**
  - (b) **Request a new notice:**
11. **When considering whether or not a survey was required did the RC seek advice from the DAA:**

## SURVEY

12. **Select the survey methodology used: Site ID/Site Avoidance**

#### COMPOSITION OF THE SURVEY TEAM

13. Name of the Aboriginal Heritage Service Provider:
14. Name of the Principal Aboriginal Heritage Consultant:
15. Number of paid Aboriginal Consultants (If more than eight, detail why):
16. Number of additional (unpaid) Aboriginal Consultants (detail why there was additional Consultants):
17. Was an Aboriginal Heritage Liaison Officer appointed: Y/N
18. Was an additional anthropologist/archaeologist or heritage specialist appointed:
19. Were there any proponent nominees on the survey team:

#### SURVEY REPORTING

20. If Preliminary Advice was requested was it received by the RC within the time period of 5 days after the last day of fieldwork:
21. Did the RC provide any additional comments about the Preliminary Advice:
22. If a draft Survey Report was requested was it received by the RC within 15 Business Days after the last day of Fieldwork:
23. Did the RC provide any additional comments:

#### COST AND PAYMENTS

24. What was the total cost paid to the Aboriginal Heritage Service Provider (if the RC was acting as the Aboriginal Heritage Service Provider or was contracting them):
25. What was the total cost of the Aboriginal Consultants:

#### OTHER CIRCUMSTANCES

26. Do you know if the proponent lodged or intended to lodge a section 16 or section 18 application under the *Aboriginal Heritage Act 1972*:
27. If yes, did the RC receive a Notice of this intention at least 30 days before the approval was lodged with the DAA:
28. During the process did either party access the dispute resolution process: Y/N

**29. Did the RC access the provisions under 'Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)':**

**ADDITIONAL COMMENTS**

**30. Please provide any additional details about the process worth noting. All comments welcomed.**

# Signing Pages

## EXECUTED as a deed

**Executed** in accordance with section 99-5 )  
of the *Corporations (Aboriginal and )*  
*Torres Strait Islander) Act 2006* (Cth) on )  
behalf of [XX –insert name of RC]: )

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Director or secretary (signature)  
(Delete whichever is not applicable)

\_\_\_\_\_  
Director (print full name)

\_\_\_\_\_  
Director or secretary (print full name)

\_\_\_\_\_  
Date

**Executed** by (XX – Insert name of )  
**Proponent**] ACN [XX – Insert ACN number] )  
in accordance with section 127(1) of the )  
*Corporations Act 2001* (Commonwealth): )

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Director/Secretary's signature

\_\_\_\_\_  
(print name)

**The Common Seal** of [XX – Insert name of Proponent] ACN [XX – Insert ACN number] was hereunto affixed by authority of its Directors in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Director/Secretary's signature

\_\_\_\_\_  
(print name)

**Executed** by [XX – Insert name of Proponent (if an individual)] in the presence of: )  
)

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
(print name)



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## **Annexure D**

### **Aboriginal Heritage Due Diligence Guidelines**

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Department of **Aboriginal Affairs**  
Department of the **Premier and Cabinet**

# **Aboriginal Heritage Due Diligence Guidelines**

**Version 3.0**

**30 April 2013**

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## About these Guidelines

These Guidelines and the Aboriginal Heritage Matrix are for general assistance only. Land users should always obtain independent advice on the application of the *Aboriginal Heritage Act 1972* (AHA) (WA) to their particular circumstances. When using these Guidelines the 'precautionary principle'\* should be applied to any circumstance where doubt exists, particularly about:

- the potential impact to Aboriginal heritage; and/or
- the nature and level of potential impact of the proposed activity(s).

If doubt exists the land user should contact the Department of Aboriginal Affairs in the first instance:

Telephone: 1300 651 077 or 08 6551 8004

Website: [www.daa.wa.gov.au/](http://www.daa.wa.gov.au/)

### \*The Precautionary Principle

To apply a precautionary approach to the assessment of risk to Aboriginal heritage ensures all aspects of potential risk are considered and appropriate steps are applied to avoid or minimise damage to Aboriginal sites.

## PART 1 - INFORMATION TO ASSIST IN USING THESE GUIDELINES

### Aboriginal Heritage Act 1972

- 1.0 The *Aboriginal Heritage Act 1972 (AHA)* (WA) was enacted to ensure that Aboriginal heritage to which the AHA applies could be appropriately protected and preserved.
- 1.1 Under section 10 of the AHA, the Minister's role is to ensure that, as far as reasonably practicable, all places in Western Australia which are traditionally or currently of sacred, ritual or ceremonial significance to Aboriginal people are properly recorded and their importance evaluated. This is to assist in determining priorities for the protection and preservation of Aboriginal heritage.
- 1.2 See **Appendix 1 – Definitions** for a list of terms and their definitions as used in the AHA or these Guidelines.

### Definition of an Aboriginal Site

- 1.3 As defined in section 5 of the AHA an Aboriginal site is:
  - (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;
  - (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
  - (c) any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; and
  - (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.
- 1.4 See **Appendix 2 – Types of Aboriginal Sites and Landscape features which may contain a site** – for a brief description of the various types of Aboriginal sites that can be found in Western Australia.

## Offences relating to Aboriginal Sites

- 1.5 Under section 17 of the AHA, a person who excavates, destroys, damages, conceals or in any way alters any Aboriginal site commits an offence, unless he or she acts with the authorisation of the Registrar of Aboriginal Sites (Registrar) under section 16 or the consent of the Minister of Aboriginal Affairs (Minister) under section 18.
- 1.6 All land users who wish to use land for a purpose which might contravene section 17 of the AHA must exercise due diligence in trying to establish whether or not their proposed activity on a specified area may damage or destroy an Aboriginal site.
- 1.7 Section 15 of the AHA provides that any person who has knowledge of any thing or place to which the AHA applies or might reasonably be suspected to apply has an obligation to report it to the Registrar. However, according to section 7(1)(b) Aboriginal people are not compelled to disclose information or otherwise act contrary to any prohibition of the relevant Aboriginal customary law or tradition.

## Administration of the AHA

### The Minister for Aboriginal Affairs

- 1.8 Responsibility for the administration of the AHA is vested in the Minister for Aboriginal Affairs under section 11A. The Minister is required to have regard to the recommendations of the Registrar for Aboriginal Sites and the Aboriginal Cultural Material Committee but is not bound by these recommendations.

### The Register

- 1.9 The Register is established under section 38 of the AHA and must, so far as is practicable, include:
  - (a) protected areas (section 19);
  - (b) Aboriginal cultural material; and
  - (c) Aboriginal sites and objects to which the AHA applies.
- 1.10 The Register lists all **known** Aboriginal sites reported to the Registrar pursuant to section 15 of the AHA and all areas currently protected under section 19.
- 1.11 The Register does not include undiscovered or unregistered sites. Irrespective of a site being either known, or assessed by the DAA, and/or on the Register,



importantly the AHA affords protection to **all Aboriginal sites** which can be determined to meet the section 5 definitions.

- 1.12 The Register is an essential reference tool which can assist land users in identifying locations where Aboriginal heritage is present.

### The Registrar

- 1.13 The Registrar of Aboriginal Sites (**Registrar**) is appointed to undertake various obligations under the AHA including the management of the Register of Aboriginal Places and Objects (often referred to as the Register of Aboriginal Sites).

### The Department of Aboriginal Affairs

- 1.14 The Department of Aboriginal Affairs (**DAA**) is responsible for administering the AHA. The DAA works with Aboriginal people to preserve and manage Aboriginal sites of importance and significance.

### The Aboriginal Cultural Material Committee

- 1.15 The Aboriginal Cultural Material Committee (**Committee**) also referred to as the APMC, evaluates on behalf of the community the importance or significance of Aboriginal places and objects and recommends to the Minister places and objects which are, or have been of special significance to Aboriginal people. The Committee's advice may include recommendations about the preservation or management of Aboriginal sites and objects.
- 1.16 The members of the Committee are drawn from various parts of Western Australia and are people who, in the opinion of the Minister, have special knowledge, experience or responsibility that will assist the Committee in the recognition and evaluation of the cultural significance of matters coming before the Committee.

### Distinction between Aboriginal heritage and native title

- 1.17 The *Native Title Act 1993* (Cwlth) (**NTA**) provides for the recognition and protection of native title rights and interests by which Aboriginal people have maintained a traditional connection to their land and waters since sovereignty. The NTA further provides that native title rights have been extinguished over land that has been subject to particular grants of land tenure (e.g. freehold and leasehold). By contrast, regardless of the underlying land tenure, the AHA applies to all land in Western Australia.

- 1.18 Where the Federal Court makes a native title determination that certain Aboriginal people hold native title rights, it will generally include rights to, for example, "visit, maintain and protect from physical harm, areas, places and sites of importance in the Determination Area" which are essentially rights to manage cultural heritage. In that regard, native title holders should be afforded primary authority for Aboriginal heritage within an area where native title rights have been determined.

### Further Information

- 1.19 Copies of the Western Australian *Aboriginal Heritage Act 1972* and the Regulations can be accessed online through the State Law Publisher website ([www.slp.wa.gov.au](http://www.slp.wa.gov.au)) and copies of the Commonwealth *Native Title Act 1993* can be accessed through the ComLaw website ([www.comlaw.gov.au](http://www.comlaw.gov.au)).
- 1.20 Any questions regarding the AHA or the Regulations can be referred to the DAA:  
**Department of Aboriginal Affairs**  
Telephone: 1300 651 077 or 08 6551 8004  
Website: [www.daa.wa.gov.au/](http://www.daa.wa.gov.au/)
- 1.21 Any questions about native title claims or Indigenous land use agreements in Western Australia can be referred to the Native Title Unit:  
**Department of the Premier and Cabinet – Land, Approvals and Native Title Unit**  
Telephone: 08 6552 5333  
Website: [www.dpc.wa.gov.au/LANTU](http://www.dpc.wa.gov.au/LANTU)

## **PART 2–ABORIGINAL HERITAGE– DUE DILIGENCE GUIDELINES**

### **Purpose of the Due Diligence Guidelines (Guidelines)**

- 2.0 All Aboriginal sites are protected by the AHA, whether or not they have previously been identified or registered, provided that the site can be determined to meet the section 5 definitions.
- 2.1 A land user is obliged to comply with the provisions of the AHA and failure to do so may result in prosecution. Section 17 of the AHA provides that it is an offence to excavate, destroy, damage, conceal or in any way alter an Aboriginal site. Therefore land users should carefully evaluate how a proposed activity may affect Aboriginal heritage.
- 2.2 In proceedings for an offence under the AHA, section 62 provides a ‘special defence of lack of knowledge’. Section 62 states that "it is a defence for the person charged to prove that he did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which [the AHA] applies".
- 2.3 The purpose of these Guidelines is to assist land users to be more aware of how their activities could adversely impact an Aboriginal site. Compliance with these Guidelines will not of itself guarantee compliance with the AHA. However, where the Guidelines are followed, it is less likely that Aboriginal sites will be harmed.
- 2.4 Due diligence may involve one or all of the following actions:
  - (a) assessing the landscape where an activity is to take place;
  - (b) assessing the proposed activity and the potential impact on the landscape;
  - (c) searching the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System;
  - (d) consulting with the relevant Aboriginal people;
  - (e) agreeing to an Aboriginal heritage survey; or
  - (f) other heritage management strategies.

### **Assessing the landscape where an activity is to take place**

- 2.5 The possibility of a landscape containing Aboriginal sites will differ between land which has had considerable previous land use, for example intensive land clearing or

development, and land which is largely in its natural state or is remote and undisturbed by previous development.

- 2.6 Similarly, some landforms are more likely than others to serve as an indicator of Aboriginal traditional activity than others. Landscape features which may contain Aboriginal sites and should be approached with some caution include, but are not limited to: rock outcrops, rock shelters, caves, alluvial terraces, foreshores and coastal dunes, ranges and hills, natural wetlands, waterholes, springs, gnamma holes, rivers, creeks, streams, swamps, hills and mound formations, or areas with potential archeological deposits.
- 2.7 An assessment of the area where an activity is proposed may reveal evidence (artefacts or other signs) about previous Aboriginal traditional activity. Please see **Appendix 2 – Types of Aboriginal sites & landscape features which may contain a site.**

### Assessing the proposed activity and the potential impact on the landscape

- 2.8 A land use activity can range in effect, from an activity unlikely to impact on Aboriginal sites to an activity highly likely to impact (i.e. damage and destroy) Aboriginal sites. For example, an aerial survey will not physically damage Aboriginal sites whereas blasting or ground excavation can cause extensive damage to an Aboriginal site.
- 2.9 **Schedule 1 – Land Activities by Category** – provides a brief list of land activities categorised by the level of likely disturbance. **Schedule 2 – The Aboriginal Heritage Matrix** – provides an indicative guide to the relationship between previous land use and the category of land activity.

### Major Development Projects

- 2.10 A major project which potentially involves multiple ground-disturbing activities over a large area (for example, a port with rail and road access) may require the preparation of an integrated plan to manage Aboriginal heritage, rather than applying a piecemeal approach to different activities within the total project area.
- 2.11 Aboriginal heritage is one compliance requirement a project developer should address as early as possible. Early consultation with Aboriginal people can help to identify how to minimise or avoid any disturbance of Aboriginal sites. Leaving heritage management to the later stages of project planning can risk delays whilst the relevant

information or approvals are obtained.

- 2.12 See the Department of State Development's website for general information about the range of project approvals linked to major projects ([www.dsd.wa.gov.au/6734.aspx](http://www.dsd.wa.gov.au/6734.aspx)).

### Searching the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System

- 2.13 Once a land user has identified the proposed activity and considered the level of previous land use, the next step is to establish the possible existence of an Aboriginal site. The key reference tool is the Register of Aboriginal Sites accessible online via the DAA's website. The Register is incorporated into the Aboriginal Heritage Inquiry System (AHIS).
- 2.14 The Register lists all **known Aboriginal sites** reported to the Registrar pursuant to section 15 of the AHA and all areas protected under section 19. See paragraphs 1.9-1.12 of these Guidelines for a fuller description of the Register.
- 2.15 The AHIS enables members of the public to search areas in Western Australia for identified Aboriginal sites and areas previously subject to heritage surveys processed by DAA. The surveys may indicate whether or not Aboriginal sites are present or whether some areas have been marked for avoidance.
- 2.16 The AHIS can be accessed online through DAA's website ([www.daa.wa.gov.au/AHIS/default.aspx](http://www.daa.wa.gov.au/AHIS/default.aspx)).
- 2.17 Please note: Land users should exercise caution in areas where no surveys have been completed, or where surveys have only been completed for parts of the area where the proposed activity is intended. Caution is required because heritage surveys over only part of the land may not have identified all possible sites. Sole reliance on information contained in the Register may not be sufficient and consultation in the first instance with the DAA is recommended, depending on the DAA's advice this consultation may extend to include the relevant Aboriginal people.

### Consulting with the relevant Aboriginal people

- 2.18 Information about the Aboriginal heritage for a particular area is best obtained through consultation with the relevant Aboriginal people. Whilst there is no definitive list of Aboriginal people who should be consulted for an area, the Committee suggests that the following people at least should be consulted:

- (a) determined native title holders;
- (b) registered native title claimants;

- (c) persons named as informants on Aboriginal site recording forms held in the Register at DAA; and
  - (d) any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area.
- 2.19 Consultation in this context means engaging meaningfully with the relevant Aboriginal people. The purpose of such consultation could be:
- (a) to provide easily understood information about the proposed land use and to seek responses from the relevant Aboriginal people;
  - (b) to identify sites in the area that may not have been registered;
  - (c) to assess whether the proposed land activity might damage Aboriginal sites; and
  - (d) to develop strategies for heritage management for the proposed land use and for any longer term disturbance that might occur as part of the activity (e.g. construction of power poles and later periodic maintenance).
- 2.20 Consultation might not lead to consensus but provide a basis upon which decisions can be made.
- 2.21 It should be noted that Aboriginal people are not obliged to divulge culturally specific or sensitive information and in some cases Aboriginal law and custom may prevent such disclosure. Nonetheless, heritage management strategies can be developed to protect sites even if details are limited.
- 2.22 If a land use activity is likely to impact upon Aboriginal heritage, it is best that heritage management strategies are implemented early in the planning process. **Early engagement and consultation** can help to identify ways to minimise and avoid damage to or disturbance of Aboriginal sites. Leaving heritage management to the later stages of project planning can potentially delay the land user whilst he/she obtains the relevant information or approvals.
- 2.23 Please note. Consultation with the relevant Aboriginal people is a pre-condition to the Committee's consideration of an application for consent or approval under the AHA.

### **Native Title Future Acts**

- 2.24 Where a license or permit application is submitted under a state law which triggers the 'future act' provisions (Division 3 of the NTA), particularly where a license proposes a significant ground disturbing activity, it is likely that an Aboriginal heritage survey of the area will be required.

- 2.25 An Aboriginal heritage agreement cannot dis-allow or modify the operation of the AHA. All parties are bound by the provisions and obligations of the AHA.

### Failure to reach agreement about conducting an Aboriginal Heritage Survey

- 2.26 Where agreement cannot be reached with the relevant Aboriginal people for the area to undertake an Aboriginal heritage survey, the land user continues to be bound by the provisions of the AHA. The land user is still obliged to either avoid the site or to apply for consent to impact the site.
- 2.27 If at any time it is likely that the proposed activity will in any way impact on a registered Aboriginal site, or a suspected Aboriginal site is uncovered and consent under section 16 or 18 has not been granted to impact the site, then the activity should cease immediately and the land user should contact the DAA and the relevant Aboriginal people.

### Strategies for managing Aboriginal heritage

#### Site avoidance strategies

- 2.28 If an Aboriginal site is on or close to an area where a land user proposes an activity which may damage, destroy or alter an Aboriginal site the land user should investigate strategies for avoiding the site or limiting disturbance to the site. The land user will consult with the relevant Aboriginal people to:
- (a) seek advice as to how best the activity may be managed to avoid damage;
  - (b) where necessary, conduct an Aboriginal heritage Survey;
- 2.29 The land user may seek authorisation or consent to the activity under either the AHA or the Regulations to proceed with the activity, ideally with the support of the relevant Aboriginal people.

#### Consent to an activity

- 2.30 Consent or authorisation is usually given in one of three ways:
- (a) **section 18** of the AHA provides that, in order to avoid committing an offence under section 17, a land owner may give notice to the Committee that he or she requires to use the land for a purpose that might impact on a heritage site

unless consent is given by the Minister to the use of the land for that purpose. The Committee considers the notice and makes a recommendation to the Minister for Aboriginal Affairs. The Minister then makes a decision whether or not to consent to the use of the land. If consent is granted, the Minister can also impose conditions;

- (b) **section 16** of the AHA provides that the Registrar, on the advice of the Committee may authorise entry upon and excavation of a site and removal of items from that site; or
- (c) **regulation 10** of the *Aboriginal Heritage Regulations 1974* (WA) (AHR) details particular activities that require written authorisation from either the Registrar or the Minister before any such activities can occur on land and/or property to which these Regulations apply.

### Limiting impact to an Aboriginal site

- 2.31 Particular care should be taken where a land user proposes to undertake activities that may potentially cause further disturbance inside the boundaries of a registered Aboriginal site, or where there are sites which are yet to be assessed by the Committee, or in areas which have not previously been surveyed and may include landscape features as set out under **Appendix 2 – Types of Aboriginal sites and landscape features likely to contain a site.**
- 2.32 It is important to be informed about the possibility of an area containing an Aboriginal site. Extra care must be taken prior to proceeding with any land activity that may cause disturbance to an Aboriginal site.

### Schedules 1 and 2 of these Guidelines

- 2.33 Schedules 1 and 2 are provided for general guidance only. In case of doubt a land user should contact the DAA for further information and/or assistance on 1300 651 077 or through their website: <http://www.daa.wa.gov.au/contact-us/>.



## SCHEDULE 1 – LAND ACTIVITIES BY CATEGORY

The below five lists are examples of typical development activities. Land users should apply the precautionary principle and use their own initiative to assess their intended activity with those described below. In cases where the activity does not correspond with those listed below, a land user should compare it as closely as possible with one or more of the listed activities.

Please note: The following lists of activities are not intended to be exhaustive. Their inclusion is to demonstrate the likely activities within the categories. If in doubt please seek advice from the DAA on 1300 651 077 or through the website: [www.daa.wa.gov.au/contact-us/](http://www.daa.wa.gov.au/contact-us/).

These categories are intended to be used in conjunction with the **Aboriginal Heritage Matrix (Matrix)** in **Schedule 2**.

### 1. Negligible Disturbance

Activities which are non-invasive and cause negligible or no impact to the land may include:

- walking, photography, filming;
- aerial surveying/magnetic surveys;
- use of existing tracks, water courses;
- environmental monitoring;
- water and soils sampling;
- fossicking using hand held instruments;
- spatial measurement; and
- scientific research, using hand held tools.

### 2. Minimal Disturbance

Activities that cause minimal disturbance to the land may include:

- cultivation/grazing in areas previously cultivated/grazed;
- maintenance of existing paths, walls, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas;
- feral animal eradication, weed, vermin and pest control, vegetation control and fire control; and
- light vehicular access and camping.

### 3. Moderate Disturbance

Activities that cause moderate disturbance to the land may include:

- work program clearance;
- sampling using hand held rig or rig mounted on a light vehicle;
- new fire breaks;

- re-vegetation;
- temporary power lines;
- temporary gravel or soil stockpile; and
- temporary camps.

#### **4. Significant Disturbance**

Activities that cause significant disturbance to the land may include:

- creation of new roads or tracks;
- new public access ways, bridges, culverts, flood remediation and erosion levies;
- land clearing over more than a small area;
- intensive soil/core sampling;
- new pipelines;
- significant reclamation works; and
- major landscaping/contouring.

#### **5. Major Disturbance\***

Activities that cause major and lasting disturbance to the land may include:

- large-scale land clearing;
- exploration drilling;
- bulk sampling, soil excavation;
- mechanical earthmoving, blasting;
- major construction works;
- open cut mining;
- large scale changes to waterways; and
- industrial development.

\*Major developments (for example a new freeway or a port) can create the need for comprehensive heritage management plans i.e. planning which amounts to more than an assessment of individual activities and their possible impact on Aboriginal heritage. For guidance on major development projects see section 2.10 – 2.12 of these Guidelines.

## SCHEDULE 2 – THE ABORIGINAL HERITAGE RISK MATRIX

Previous Land Use	LAND ACTIVITIES – CATEGORIES 1-5					
		1. Negligible disturbance	2. Minimal disturbance	3. Moderate disturbance	4. Significant disturbance	5. Major disturbance
	<b>Built Environment</b> - e.g. urban environment, towns, metropolitan region.	Low	Low	Low	Low	Medium
	<b>Significantly Altered Environment</b> - e.g. cultivated and cleared land.	Low	Low	Low	Medium	High
	<b>Moderately Altered Environment</b> - e.g. partially cleared lands, re-vegetated landscape.	Low	Low	Medium	Medium	High
	<b>Minimally Altered Environment</b> - e.g. urban bush land, regrowth areas	Low	Medium	Medium	High	High
	<b>Unaltered Environment</b> - e.g. protected areas or pristine environment.	Low	Medium	High	High	High
<b>Risk Assessment</b>	<b>Actions</b>					
Low Risk (Review)	Review the landscape and proposed activity (see sections 2.4 - 2.8 - assessing the landscape and the activity). Refer to the AHIS.					
Medium Risk (Review /Exercise Caution)	Review the landscape and proposed activity (as above). The precautionary principle (see page 2) applies. Refer to the AHIS and contact the DAA. A range of actions may be recommended, including: no action, consultation with the relevant Aboriginal people, an Aboriginal heritage survey or modification of the proposed activity to avoid or minimise site impact.					
High Risk (Consult / Survey / Approvals)	Refer to the AHIS. Consult with the DAA and the relevant Aboriginal people. Dependent on consultation outcomes you may need to include: an Aboriginal heritage survey, modification of the proposed activity to avoid or minimise (see sections 2.24 - 2.28) impact to the site and/or heritage management strategies. The land user may also need to apply for approval or consent (see section 2.26) to the activity.					
For major development projects refer to sections 2.10 - 2.12 for further advice.						

## Appendix 1 – Definitions

In addition to the definitions used in the AHA the following definitions are used within these guidelines:

**Aboriginal heritage** means the Aboriginal site or object as defined in sections 5 and 6 of the AHA.

**Aboriginal Heritage Risk Matrix** means the document attached at Schedule Two of these Guidelines (as amended from time to time).

**Aboriginal Heritage Survey** means a survey conducted by a suitably qualified archaeologist, ethnographer, anthropologist or other heritage professional who investigates the Aboriginal heritage of an area. For site identification, work area clearance or site avoidance surveys the relevant Aboriginal people will nominate Aboriginal consultants (usually 6 people) from their group who provide first-hand knowledge and guidance about the Aboriginal heritage of the area. There are several types of Aboriginal heritage surveys:

- desk top study, a preliminary investigation of Aboriginal heritage;
- site identification survey;
- work area clearance survey; and
- site avoidance survey.

**Aboriginal Heritage Survey Report** means a report by a suitably qualified archaeologist, ethnographer, anthropologist or other heritage professional, that communicates the results of the Aboriginal heritage survey. Aboriginal heritage survey reports constitute a significant portion of the Register of Aboriginal Sites. Guidance about the type of information to be included in the various types of Aboriginal Heritage Survey Reports is available from the DAA's website.

**Consultation** means a process of enquiry and response between a land user and relevant Aboriginal people to provide information or assistance in identifying any need for site identification, heritage survey and/or land use activity proposal modification. Consultation should include details of proposed land use activity.

**Disturbance** means any activity which will physically alter the surface or ground of the land or waters.

**Proposed activity** means any planned activity on the land or water that may result in varying degrees of disturbance.

**Native Title Claimant** means the Aboriginal people who have lodged a native title determination application over a particular area of land and waters.

**Native Title Holder** means there has been a determination by the Federal Court that a named group of Aboriginal people hold the native title rights and interests over a particular area of land and/or waters.

## Appendix 2 -Types of Aboriginal sites and landscape features which may contain a site

The following is an overview of the various types of sites that can be found in Western Australia. This list is not exhaustive.

**Artefacts:** An artefact site is a place where human activity is identifiable by the presence of a portable object/s (e.g., stone, glass, bone, shell) utilised or modified by Aboriginal people in relation to traditional cultural life past or present.

**Fish Trap:** A stone, wood, or other similar structure made by Aboriginal people for catching fish. Such structures are generally found on the coast of Western Australia, and in its lakes and rivers.

**Man-made structure:** The placement or arrangement, by Aboriginal people, of stone, wood or other material made into a structure for ceremonial or utilitarian purposes.

**Mythological:** A place that is connected to the great spirit ancestors, in their various manifestations, of the 'Dreamtime' which continues to be important and of special significance to persons of Aboriginal descent.

**Repository/Cache:** A place where cultural or utilitarian objects are/were taken, or stored, by Aboriginal people, either past or present.

**Ceremonial:** A place used for a formal act or series of acts prescribed by ritual, belief in a mythological manifestation, religious belief or observance, protocol or convention that is connected with the traditional cultural life of Aboriginal people past or present.

**Grinding patches/Grooves:** A place where grinding patches or grooves can be found. Grinding patches or grooves are smoothed areas or grooves on rock surfaces (non-portable) that have been created by grinding activity associated with food production such as seed milling, preparation of pigments, tool manufacture and/or maintenance and ritual.

**Midden:** A place where there is an accumulation of shell refuse that is derived from exploitation of a mollusc resource by Aboriginal people. Such sites may also contain artifacts, fireplaces, burnt shell and bones.

**Painting:** Places where Aboriginal people have painted on surfaces. Paintings (including daubings, drawings, stencils, prints) can be figurative or non-figurative markings or motifs on surfaces such as rocks, rock walls and trees at fixed locations that are produced by adding pigments and or mediums, such as ochre, blood, beeswax, animal fats, vegetable dyes, tree saps.

**Skeletal material/Burial:** A place where Aboriginal skeletal material is buried and/or where mortuary practices occurred.

**Engraving:** A motif (either figurative or non-figurative) on a rock surface produced by percussion or abrasion. Engravings are also often referred to as petroglyphs.

**Historical:** A place that has historical associations with Aboriginal people and may or may not contain physical evidence of those associations.

**Modified or Scarred tree:** A place with one or more tree(s), living or dead, that has been modified by Aboriginal people by removing the bark or wood resulting in the formation of a scar. This sort of modification was and is frequently done for the making of implements, tools or other materials that were used in traditional cultural practices.

**Quarry:** Places where there is evidence for the extraction of stone or ochre.

Landscape features, which possibly contain Aboriginal sites and should therefore be approached with care, include but are not limited to:

- (a) rock outcrops;
- (b) caves;
- (c) foreshores and coastal dunes; (d) ranges and hills;
- (d) areas of bio-geographical significance, such as natural wetlands;
- (e) permanent and semi-permanent waterholes, natural springs, gnamma holes, and watercourses;
- (f) some hill and mound formations; and
- (g) areas with potential archaeological deposit, such as rock shelters, caves, alluvial terraces, dune deposits and other relevant geo-morphological features.

The views of the relevant Aboriginal people are a key factor in identifying and assessing sites. Appropriately qualified persons such as anthropologists, archaeologists and historians can also provide valuable assistance.

### Appendix 3 – Contact Details for the Relevant Aboriginal People

Information about the Aboriginal heritage for a particular area is best obtained through consultation with the relevant Aboriginal people. Whilst there is no definitive list of Aboriginal people who should be consulted for an area, the Committee suggests that the following people at least should be consulted:

- (a) determined native title holders\*;
- (b) registered native title claimants;
- (c) persons named as informants on Aboriginal site recording forms held in the Register at Department of Aboriginal Affairs (DAA); and
- (d) any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area.

\*When a determination of native title is made, the NTA requires the native title holders to establish a prescribed bodies corporate (PBC), also known as a registered native title body corporate. PBC's hold in trust, or manage, the native title rights and interests of the native title holders.

The following contact details are subject to change. To confirm contact details please use the website of the 'Office of the Registrar of Indigenous Organisations' (ORIC).

Organisation Type	Name	Contact Details
Prescribed Body Corporate	Bardi and Jawi Niiimidiman Aboriginal Corporation	Postal Address: 36 Pembroke Street, via, Broome WA 6725  Phone Number: 08 91923483
Prescribed Body Corporate	Buurabalayji Aboriginal Corporation	Postal Address: PO box 55, Onslow WA 6710  Phone Number: 08 91846876
Prescribed Body Corporate	Bunuba Dawangarri Aboriginal Corporation	Postal Address: PO Box 5451 Cable Beach WA 6726  Phone number: 0431 350 620
Prescribed Body Corporate	Jidi Jidi Aboriginal Corporation	Postal Address: PO Box 128, Meekatharra WA 6642  Phone Number: 0899812021
Prescribed Body Corporate	Karajarri Traditional Lands Association Aboriginal Corporation	Postal Address: Kimberley Land Council, 36 Pembroke Road, Broome WA 6725  Phone Number: 08 91940142
Prescribed Body Corporate	Kunin (Native Title) Aboriginal Corporation	Postal Address: PO Box 1375, Broome WA 6725  Phone Number: 0891936651
Prescribed Body Corporate	Miriuwung and Gajerrong #1 and #4	Postal Address: PO Box 2110,

	(NTPBC) Aboriginal Corporation	Kununurra WA 6743 Phone Number: 08 91664800
Prescribed Body Corporate	Mungarlu Ngurrarankatja	Postal Address: C/- Central Desert Native Title Services, 170 Wellington Street, East Perth WA 6004 Phone Number: 0894252000
Prescribed Body Corporate	Ngarluma Aboriginal Corporation	Postal Address: PO Box 263, Roebourne WA 6718 Phone Number: 08 9182 1351
Prescribed Body Corporate	Nyangumarta Karajarri Aboriginal Corporation	Postal Address: C/- Kimberley Land Council, PO Box 2145, Broome WA 6725 Phone Number: 08 91940124
Prescribed Body Corporate	Nyangumarta Warrarn Aboriginal Corporation	Postal Address: C/- Pilbara Native Title Services, 3 Brand Street, South Hedland WA 6722 Phone Number: 0891725433
Prescribed Body Corporate	Parna Ngururpa Aboriginal Corporation	Postal Address: C/- Central Desert Native Title Services Ltd, 170 Wellington Street, East Perth WA 6004 Phone Number: 08 94252000
Prescribed Body Corporate	Pila Nguru Aboriginal Corporation	Postal Address: PO Box 1014, Kalgoorlie WA 6430 Phone Number: 08 90371147
Prescribed Body Corporate	Tjamu Tjamu Aboriginal Corporation	Postal Address: Central Desert Native Title Services Ltd, 170 Wellington Street, East Perth WA 6004 Phone Number: 08 94252000
Prescribed Body Corporate	Tjurabalan Native Title Land Aboriginal Corporation	Postal Address: PO Box 280, Halls Creek WA 6770 Phone Number: 0891688988
Prescribed Body Corporate	Wanjina-Wunggurr (Native Title) Aboriginal Corporation	Postal Address: PO Box 821, Kununurra WA 6743 Phone Number: 0891682298
Prescribed Body Corporate	Wanparta Aboriginal Corporation	Contact Officer: Colin McKellar Postal Address: 3 Brand Street,



		South Hedland WA 6722 Phone Number: 0891725433
Prescribed Body Corporate	Western Desert Land Aboriginal Corporation: Jamukurnu-Yapalikunu	Postal Address: The Secretary, WDLAC, 4 Clive St, West Perth WA 6005 Phone Number: 0894869797
Prescribed Body Corporate	Wintawari Gurama Aboriginal Corporation	Postal Address: 8/18 Hedland Avenue, Karratha WA 6714 Phone Number: 08 24757467
Prescribed Body Corporate	Wyamba Aboriginal Corporation	Postal Address: 12 Pincombe Street, Carnarvon WA 6701 Phone Number: 08 99413267
Prescribed Body Corporate	Yanunijarra Aboriginal Corporation	Postal Address: PO Box 2145, Broome WA 6725 Phone number: 08 9194 0100
Prescribed Body Corporate	Yarnangu Ngaanyatjarraku Parna Aboriginal Corporation	Postal Address: PO Box 644, Alice Springs NT 0872 Phone Number: 08 89501711
Prescribed Body Corporate	Yawuru Native Title Holders Aboriginal Corporation	Postal Address: 6A Coghlan Street, Broome WA 6725 Phone Number: 08 91925155
Prescribed Body Corporate	Yindjibarndi Aboriginal Corporation	Postal Address: PO Box 111, Roebourne, WA 6718 Phone Number: 08 9182 1497
Prescribed Body Corporate	Yungngora Aboriginal Corporation	Postal Address: PO Box 601, Applecross WA 6953 Phone Number: 0418912952
<b>Organisation Type</b>	<b>Name</b>	<b>Contact Details</b>
Native Title Representative Bodies	Central Desert Native Title Services	Postal Address: 76 Wittenoom Street, East Perth WA 6004 Phone Number: 08 9425 2000
Native Title Representative Bodies	Goldfields Land and Sea Council Aboriginal Corporation	Postal Address: PO Box 10006 Kalgoorlie, WA 6433 Phone Number: 08 9091 1661
Native Title Representative	Kimberley Land Council	Postal Address: PO Box 2145,

Bodies		Broome WA 6725 Phone Number: 08 9193 6199
Native Title Representative Bodies	South West Aboriginal Land and Sea Council Aboriginal Corporation	Postal Address: PO Box 585 Cannington WA 6987 Phone Number: 08 9358 7400
Native Title Representative Bodies	Yamatji Marlpa Aboriginal Corporation	Postal Address: PO Box 3072 Hay St, East Perth WA 6892 Phone Number: 08 9268 7000

#### Appendix 4 – Contact Details – Government Agencies with heritage and land management responsibilities

The following contact details are subject to change.

Agency	Contact Details
Department of Aboriginal Affairs	Postal Address: PO Box 3153, East Perth, Western Australia 6892  Phone number: 1300 651 077
Department of Housing	Postal Address: 99 Plain Street, East Perth, 6004  Phone number: 1800 093 325
Department of Lands	Postal Address: PO Box 1143, West Perth WA 6872  Phone number: 61 8 6552 4400
Department of Regional Development	Postal Address: PO Box 1143, West Perth WA 6872  Phone number: 08 6552 1800
Department of Mines and Petroleum	Postal Address: 100 Plain Street, East Perth, Western Australia 6004  Phone number:08 9222 3333
Department of Parks and Wildlife	Postal Address: 17 Dick Perry Avenue Technology Park, Western Precinct Kensington WA 6151  Phone number: 08 9219 9000
Department of Planning	Postal Address: Locked Bag 2506, Perth, Western Australia 6001  Phone number:08 6551 9000
Department of State Development	Postal Address: Level 7, 1 Adelaide Tce, East Perth, Western Australia 6004  Phone number:08 9222 0555
Department of Water	Postal Address: PO Box K822, Perth, Western Australia 6842  Phone number:08 6364 7600
Land, Approvals and Native Title Unit (Department of the Premier and Cabinet)	Postal Address: Locked Bag 3001, West Perth, Western Australia 6872  Phone number: 08 26552 5333
Main Roads	Postal Address: PO Box 6202,

	<p>East Perth, Western Australia 6892</p> <p>Phone number:138 138</p>
Water Corporation	<p>Postal Address: PO Box 100, Leederville, Western Australia 6902</p> <p>Phone number:08 9423 7777</p>
Western Power	<p>Postal Address: GPO Box L921 Perth, Western Australia 6842</p> <p>Phone number:131087</p>

## **Annexure E**

### **The Principles (Parts A and B)**

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**Part A**

**CSC Principles**

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# CSC Principles

Terms used in this Annexure are defined in either the ILUA or the Trust Deed.

## 1. Purpose of Principles

In order to be eligible to act as the CSC:

- (a) the corporation must act in accordance with these Principles at all times; and
- (b) the rule book of the corporation (**Rulebook**) must be consistent with these Principles and the corporation has the discretion to determine the manner in which the Rulebook satisfies the Principles.

## 2. Form of Rule Book

The Rulebook must be:

- (a) a comprehensive written document containing all of the internal governance rules (as that phrase is defined in section 63-1 of the CATSI Act) of the CSC;
- (b) substantially consistent with contemporary governance standards; and
- (c) consistent with the ILUAs, the Trust Deed and the CATSI Act.

## 3. Objects

The objects of the CSC must include, but are not limited to the following:

- (a) acting as the CSC if approved and appointed by the Trustee;
- (b) supporting the Regional Corporations and Noongar Community in the manner contemplated in the Trust Deed and ILUAs;
- (c) advancing and improving the situation of the Noongar Community with a view to overcoming disadvantage within the Noongar Community; and
- (d) assisting the Noongar Community in relation to the planning, management and use of land and waters to which they have a traditional connection or traditional responsibility,

provided that all of the objects must be for charitable purposes as defined in section 12 of the Charities Act 2013 (Cth).

## 4. Not for Profit

- (a) The CSC must be carried out without purpose of profit or private gain for its members.
- (b) In carrying out its objects, the CSC must ensure that no portion of its funds or property are paid or applied directly or indirectly by way of dividends, bonus or otherwise by way of profit to any member, except for the payment in good faith of reasonable and proper remuneration to any member, officer, agent, consultant, contractor or employee of the CSC for or in return for services rendered to the CSC.

- (c) The Rulebook must be structured in such a way that supports and maintains the CSC's eligibility for endorsement as a charity for tax purposes.

## 5. Prohibited Activities

- (a) The CSC is not permitted to be a Representative Body at any time whilst it is the CSC.
- (b) The CSC is not permitted to undertake Unrelated Commercial Activities unless those activities:
  - (i) are undertaken from within a separate legal entity; and
  - (ii) are not funded from Operations Funding sourced from the Trust.
- (c) The CSC is permitted to undertake Related Commercial Activities.
- (d) For the purposes of this item 5:
  - (i) **Representative Body** has the meaning effected by section 253 of the *Native Title Act 1993* (Cth);
  - (ii) **Related Commercial Activities** means activities that directly further the CSC's altruistic purposes, being the purposes for which the Commonwealth government grants the relevant income tax exemption (usually on the basis of the CSC's objects as outlined in its Rulebook); and
  - (iii) **Unrelated Commercial Activities:**
    - A. means activities that are not Related Commercial Activities; and
    - B. includes participation in commercial development or land development projects or activities.

## 6. Membership

- (a) Membership of the CSC must be open only to all members of the Noongar Community who are over the age of 18 years.
- (b) Eligibility of persons for membership must be determined by the board of directors.
- (c) There must be an appeals process for applicants in the event that the board of directors determines an applicant is not eligible for membership and refuses to accept their membership application.
- (d) There must be a mechanism for the board of directors to cancel a person's membership on the basis that their behaviour is contrary to the best interests of the CSC.

## 7. Board of Directors

- (a) The board of directors of the CSC must be between 6 and 8 persons who are confirmed as eligible in accordance with clause 7(d) and comprised of:
  - (i) not more than 6 directors who are members of the CSC and are elected by the members of each of the 6 Regions (**Wards**), by way of a postal voting system in accordance with a suitable election manual,



and confirmed by the members in a general meeting (**Member Directors**); and

- (ii) not more than 2 expert directors appointed by the Member Directors (**Expert Director**),

provided that:

- (iii) there shall not be a Member Director appointed in respect of a Ward which does not have a registered ILUA; and
  - (iv) a director of the CSC must not during their term of office also be a director of a Regional Corporation.
- (b) The CSC must have such minimum eligibility requirements for the directors that:
- (i) will ensure the board of directors comprises a mix of persons with appropriate skills, expertise, experience, integrity, commitment and standing within the Noongar Community; and
  - (ii) are otherwise consistent with contemporary governance standards.
- (c) 2 or more Directors cannot be family members of one another which in relation to a person means:
- (i) a child of the person (adopted or biological); or
  - (ii) a parent of the person (adopted or biological); or
  - (iii) a brother or sister of the person (adopted or biological); or
  - (iv) the spouse or de facto partner of the person.
- (d) The eligibility of director candidates must be assessed and confirmed (i.e. pre-qualified) by the Nominations Committee of the Trust and the CSC may rely upon a decision of the Nominations Committee as to eligibility.
- (e) The CSC must encourage all directors to undertake ongoing and appropriate governance training and provide them with necessary support.
- (f) As far as practicable, the election of the Member Directors must occur at the same time as the election of member directors of the Regional Corporations.
- (g) The CSC must have a procedure to resolve voting deadlocks in the board of directors.

## **8. Noongar Capacity Development**

- (a) The CSC is intended to play an important role in overcoming disadvantage within the Noongar Community and in progressing the Noongar Community towards successful self-governance and independence.
- (b) Having regard to item 8(a), the CSC must:
  - (i) develop and act in accordance with an Aboriginal employment strategy or policy;

- (ii) identify and engage with Noongar Community members that may be suitable for employment or committee positions within the CSC; and
- (iii) support strategies that will encourage capacity building within the Noongar Community including training and educational opportunities.

#### **9. Relationship with the Trust**

In recognition that the Trust is a primary source of the CSC's operational funding, the Rulebook must include provisions that will enable the board of directors to readily identify the CSC's obligations to the Trustee and the CSC's relationship with the Trust, as provided for in the Trust Deed, including but not limited to the following matters:

- (a) a Code of Conduct and Policy and Procedures Manual;
- (b) attendance by the Trustee at CSC meetings;
- (c) preparation and provision to the Trustee of annual reports, annual plans and budgets;
- (d) participation in the Noongar Relationship Committee; and
- (e) the manner in which the CSC will administer benefits and CSC Services amongst the Regional Corporations.

#### **10. Relationship with the Regional Corporations**

- (a) The CSC must establish and maintain a committee to be known as the Noongar Corporations Committee comprising from time to time:
  - (i) the following CSC representatives:
    - A. the chair of the board of directors; and
    - B. the chief executive officer; and
  - (ii) the following representatives from each Regional Corporation:
    - A. the chair of the board of directors; and
    - B. the chief executive officer.
- (b) The Rulebook must set out rules for the operation of the Noongar Corporations Committee including:
  - (i) a requirement that it undertake the specific functions included in the Trust Deed; and
  - (ii) guidance to the Noongar Corporations Committee on its additional purposes which may include consideration of ILUA implementation, policy development, partnership development, knowledge sharing, CSC Service provision, funding sources, cost/resource sharing and minimisation.

**11. Consultation on Cultural Matters**

The CSC and the Noongar Corporations Committee must jointly develop and maintain policies and procedures for the CSC to consult with relevant Noongar People regarding matters affecting Traditional Laws and Customs.

**12. Amending the CSC Principles**

Given the perpetual nature of the Settlement and the restrictions on amending this ILUA, the CSC Principles contained in this Annexure E may be amended or substituted by deed between the Trustee and the State following consultation with, and subject to the written consent of a majority of, the Regions which must comprise in respect of each Region:

- (a) written consent of the Regional Corporation; or
- (b) where there is no Regional Corporation, an Agreement Group Endorsement from the relevant Native Title Agreement Group.

**Part B**

**Regional Corporation Principles**

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# Regional Corporation Principles

Terms used in this Annexure are defined in either the ILUA or the Trust Deed.

## 1. Purpose of Principles

In order to be eligible to act as a Regional Corporation:

- (a) the corporation must comply with these Principles at all times; and
- (b) the rule book of the corporation (**Rulebook**) must be consistent with these Principles and the corporation has the discretion to determine the manner in which its Rulebook satisfies the Principles.

## 2. Form of Rule Book

The Rulebook must be:

- (a) a comprehensive written document containing all of the internal governance rules (as that phrase is defined in section 63-1 of the CATSI Act) of the CSC;
- (b) consistent with contemporary governance standards; and
- (c) consistent with the ILUAs, the Trust Deed and the CATSI Act.

## 3. Objects

- (a) A Regional Corporation must have objects that are substantially consistent with the following:
  - (i) to directly assist the Native Title Agreement Group to:
    - A. maintain, protect, promote and support their culture, customs, language and traditions;
    - B. manage and use the land and waters within the Region to which they have a traditional connection;
  - (ii) to directly assist and support the Native Title Agreement Group to manage their native title benefits arising under this ILUA including to:
    - A. exercise the rights and comply with the obligations of a Regional Corporation under this ILUA and the Noongar Boodja Trust Deed if the Regional Corporation is appointed by the Trustee to be the Regional Corporation for the Region;
    - B. if the Native Title Agreement Group assigns its contractual rights and obligations under this ILUA to the Regional Corporation, exercise its rights and comply with its obligations under the ILUA; and
  - (iii) to only act in a manner that is for charitable purposes.
- (b) In pursuing its objects, a Regional Corporation:

- (i) may work with the broader population of Noongar People across all Noongar Lands to achieve and advance the aspirations of the Noongar Settlement;
- (ii) may benefit members of the Noongar People other than the Native Title Agreement Group provided such benefits are incidental to and consistent with the objects; and
- (iii) must not pay or apply any of its funds or property in dividends, bonus or otherwise to any member, except for the payment in good faith of reasonable and proper remuneration to any member, officer, servant, agent, consultant, contractor or employees of the Regional Corporation.

#### 4. Not for Profit

- (a) A Regional Corporation must be carried out without purpose of profit or private gain for its members.
- (b) The Rulebook must be structured in such a way that supports and maintains a Regional Corporation's eligibility for endorsement as a charity for tax purposes.

#### 5. Prohibited Activities

- (a) A Regional Corporation is not permitted to undertake Unrelated Commercial Activities unless those activities:
  - (i) are undertaken from within a separate legal entity; and
  - (ii) are not funded from Operations Funding sourced from the Trust.
- (b) A Regional Corporation is permitted to undertake Related Commercial Activities.
- (c) For the purposes of this item 5:
  - (i) **Related Commercial Activities** means activities that directly further a Regional Corporation's altruistic purposes, being the purposes for which the Commonwealth government grants the relevant income tax exemption (usually on the basis of the Regional Corporation's objects as outlined in its rulebook); and
  - (ii) **Unrelated Commercial Activities** means activities that are not Related Commercial Activities.

#### 6. Membership

- (a) Eligibility of persons for membership must be determined by the board of directors having regard to the definition of the Agreement Group.
- (b) A Regional Corporation must not unreasonably refuse to accept an individual who is an adult member of the Native Title Agreement Group as a member of the Regional Corporation, provided that the individual applies for membership in accordance with the Rulebook and either:

- (i) the individual has not been previously removed as a member of the Regional Corporation in accordance with the Rulebook; or
  - (ii) where the individual has been previously removed as a member of the Regional Corporation, with the endorsement of the members by special resolution in a general meeting.
- (c) There must be an appeals process for applicants in the event that the board of directors determines an applicant is not eligible for membership and refuses to accept their membership application.
  - (d) Members are permitted to be members of other Eligible Noongar Entities.
  - (e) There must be a mechanism for the board of directors to cancel a person's membership on the basis that their behaviour is contrary to the best interests of the Regional Corporation.

## 7. Board of Directors

- (a) The board of directors of a Regional Corporation must comprise between 4 and 6 individuals comprised of:
  - (i) up to 4 members of the Regional Corporation nominated by the members by way of a postal voting system in accordance with a suitable election manual, and confirmed by the members in a general meeting (**Member Directors**); and
  - (ii) not more than two expert directors appointed by the Member Directors (**Expert Directors**),provided that a director of the Regional Corporation must not during their term of office also be a director of another Regional Corporation or the CSC.
- (b) The Regional Corporation must have such minimum eligibility requirements for the directors that:
  - (i) will ensure the board of directors comprises a mix of persons with appropriate skills, expertise, experience, integrity, commitment and standing within the Noongar Community; and
  - (ii) are otherwise consistent with contemporary governance standards.
- (c) 2 or more Directors cannot be family members of one another which in relation to a person means:
  - (i) a child of the person (adopted or biological); or
  - (ii) a parent of the person (adopted or biological); or
  - (iii) a brother or sister of the person (adopted or biological); or
  - (iv) the spouse or de facto partner of the person.
- (d) The Expert Directors should demonstrate such qualifications as set out in any relevant expressions of interest for Expert Director vacancies.
- (e) The eligibility of director candidates must be assessed and confirmed (i.e. pre-qualified) by the Nominations Committee of the Noongar Boodja Trust, and a

Regional Corporation may rely upon a decision of the Nominations Committee as to eligibility.

- (f) The Regional Corporation must encourage all directors to undertake ongoing and appropriate governance training and provide them with necessary support.
- (g) As far as practicable, the election of the Member Directors must occur at the same time as the election of member directors of all other Regional Corporations and the CSC.
- (h) The Regional Corporation must have a procedure to resolve voting deadlocks in the board of directors.

## **8. Noongar Capacity Development**

- (a) Each Regional Corporation is intended to play an important role in overcoming disadvantage within a Region and in progressing the Noongar Community towards successful self-governance and independence.
- (b) Having regard to item 8(a), the Regional Corporation must:
  - (i) develop and act in accordance with an Aboriginal employment strategy or policy;
  - (ii) identify and engage with Noongar Community members that may be suitable for employment or committee positions within the Regional Corporation; and
  - (iii) support strategies that will encourage capacity building within the Noongar Community including training and educational opportunities.

## **9. Relationship with the Trust**

- (a) In recognition that the Noongar Boodja Trust is a primary source of a Regional Corporation's operational funding, the Rulebook must include provisions that will enable the board of directors to readily identify the Regional Corporation's obligations to the Noongar Boodja Trustee and the Regional Corporation's relationship with the Trust, as provided for in the Noongar Boodja Trust Deed, including but not limited to the following matters:
  - (i) a Code of Conduct and Policy and Procedures Manual;
  - (ii) attendance by the Noongar Boodja Trustee at Regional Corporation general meetings;
  - (iii) preparation and provision to the Noongar Boodja Trustee of annual reports, annual plans and budgets; and
  - (iv) participation in the Noongar Relationship Committee and Noongar Corporations Committee.
- (b) In the interests of increasing efficiency and minimising unnecessary costs, each Regional Corporation must commit to utilising, as far as practicable, the CSC Services that have been funded by the Trust.



## **10. Relationship with the Eligible Noongar Entities**

- (a) Each Regional Corporation must provide the following representatives to sit on the Noongar Corporations Committee:
  - (i) the chair of the Regional Corporation's board of directors; and
  - (ii) the chief executive officer of the Regional Corporation.
- (b) In recognition that the CSC will, during its early stages, be a service provider to all Eligible Noongar Entities at the same time, each Regional Corporation must commit to working cooperatively and collaboratively with the other Eligible Noongar Entities to ensure that each Regional Corporation is able to reasonably access the CSC Services.

## **11. Cultural Land Access**

A Regional Corporation must develop appropriate policies and procedures for maintaining an interest in Cultural Land granted to it by the Noongar Boodja Trustee having regard to the:

- (a) protection, preservation and use of the Cultural Land as a place of cultural significance;
- (b) Title Protection Criteria; and
- (c) terms and conditions (if any) imposed by the Noongar Boodja Trustee on the grant of the interest in accordance with the Noongar Boodja Trust Deed.

## **12. Cultural Decisions**

- (a) A Regional Corporation must have a process providing for cultural decisions to be made in accordance with the advice and recommendations of persons who have traditional connection and cultural authority under Traditional Laws and Customs over the land and waters the subject of the proposed cultural decision.
- (b) A Regional Corporation must have a mechanism to resolve cultural decisions which must include:
  - (i) the process for determining those persons who should advise and make recommendations to the Regional Corporation in relation to cultural decisions;
  - (ii) a requirement that the Regional Corporation will make a cultural decision in accordance with advice of those persons determined under item 12(b)(i);
  - (iii) the timeframe for resolution of a cultural decision;
  - (iv) the default outcome if there is no resolution via the cultural decision process; and
  - (v) a requirement to notify the outcome of a cultural decision to the Regional Corporation of any adjacent Region that will be affected by a cultural decision.

- (c) Cultural decisions by a Regional Corporation on a matter the subject of an ILUA must comply with any relevant obligations and timeframes on the Regional Corporation under the ILUA.

**13. Amending the Regional Corporation Principles**

Given the perpetual nature of the Settlement and the restrictions on amending this ILUA, the Regional Corporation Principles contained in this Annexure E may be amended or substituted by deed between the Trustee and the State following consultation with, and subject to the written consent of a majority of, the Regions which must comprise in respect of each Region:

- (a) written consent of the Regional Corporation; or
- (b) where there is no Regional Corporation, an Agreement Group Endorsement from the relevant Native Title Agreement Group.

## **Annexure F**

### **Recognition Bill**

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**Noongar (Koorah,  
Nitja, Boordahwan)  
(Past, Present, Future)  
Recognition Bill 2014**

**DRAFT BILL AS AT 18 FEBRUARY 2014**

The Government intends to introduce into Parliament a Bill for the recognition of the Noongar people as the traditional owners of lands in the south-west of the State as part of the South West Settlement.

This draft Bill is published on the Department of the Premier and Cabinet's website as a public acknowledgement of the Government's intention.

Negotiations between the Government and the Noongar people about the South West Settlement are ongoing.

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**Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014**

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**Schedule 1 — Noongar recognition statement**

**Schedule 2 — Noongar lands: description**

**Schedule 3 — Noongar lands: map**

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Western Australia

**Noongar (Koorah, Nitja, Boordahwan) (Past,  
Present, Future) Recognition Bill 2014**

**A Bill for**

**An Act for the recognition of the Noongar people as the traditional  
owners of lands in the south-west of the State.**



**Preamble**

---

- 1                   **Preamble**
- 2                   A.    Since time immemorial, the Noongar people have
- 3                   inhabited lands in the south-west of the State; these
- 4                   lands the Noongar people call Noongar boodja (Noongar
- 5                   earth).
- 6                   B.    Under Noongar law and custom, the Noongar people are
- 7                   the traditional owners of, and have cultural
- 8                   responsibilities and rights in relation to, Noongar
- 9                   boodja.
- 10                  C.    The Noongar people continue to have a living cultural,
- 11                  spiritual, familial and social relationship with Noongar
- 12                  boodja.
- 13                  D.    The Noongar people have made, are making, and will
- 14                  continue to make, a significant and unique contribution
- 15                  to the heritage, cultural identity, community and
- 16                  economy of the State.
- 17                  E.    The Noongar people describe in Schedule 1 their
- 18                  relationship to Noongar boodja and the benefits that all
- 19                  Western Australians derive from that relationship.
- 20                  F.    So it is appropriate, as part of a package of measures in
- 21                  full and final settlement of all claims by the Noongar
- 22                  people in pending and future applications under the
- 23                  *Native Title Act 1993* (Commonwealth) for the
- 24                  determination of native title and for compensation
- 25                  payable for acts affecting that native title, to recognise
- 26                  the Noongar people as the traditional owners of the
- 27                  lands described in this Act.

The Parliament of Western Australia enacts as follows:

1 **1. Short title**

2 This is the *Noongar (Koorah, Nitja, Boordahwan) (Past,*  
3 *Present, Future) Recognition Act 2014.*

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act  
7 receives the Royal Assent;
- 8 (b) the rest of the Act — on a day fixed by proclamation,  
9 and different days may be fixed for different provisions.

10 **3. Noongar lands**

- 11 (1) For this Act, the Noongar lands are the lands described in  
12 Schedule 2.
- 13 (2) The map in Schedule 3 shows the location of the Noongar lands.

14 **4. Purpose**

15 The purpose of this Act is to recognise the Noongar people as  
16 the traditional owners of the Noongar lands.

17 **5. Recognition of the Noongar people**

- 18 (1) Parliament acknowledges and honours the Noongar people as  
19 the traditional owners of the Noongar lands.
- 20 (2) Parliament recognises —
- 21 (a) the living cultural, spiritual, familial and social  
22 relationship that the Noongar people have with the  
23 Noongar lands; and
- 24 (b) the significant and unique contribution that the Noongar  
25 people have made, are making, and will continue to  
26 make, to the heritage, cultural identity, community and  
27 economy of the State.

28 **6. Effect of this Act**

29 This Act does not —

- 30 (a) create any right, title or interest, whether in law or  
31 equity; or
- 32 (b) give rise to or affect any civil claim, action or  
33 proceeding; or

**s. 6**

---

- 1                   (c) give rise to or affect any right of review of an  
2                   administrative decision; or  
3                   (d) affect the interpretation of any law of, or that applies in,  
4                   the State.

---

**Schedule 1 — Noongar recognition statement**

[recital E]

***Noonakoort moort nitja burranginge noongar boodja***

***Noonakoort moort kwomba***

***Djinunge nitja mungarrt — koorah***

***Noonakoort moort yirra yarkinje kwomba noongar boodja***

***Koorah — nitja — boordahwan***

***Noonakoort moort yarkinje noongar boodja***

***Nyidiung koorah barmenje noonakoort moort***

***Wierrnbirt domberrinje***

***Noonakoort moort koort boodja***

***Nitja gnulla moorditj karrl boodja***

*All our Noongar people stand here on Noongar land.*

*Past, present and future.*

*We stand strong on our land.*

*The mungart tree symbolises our strength and survival.*

*All of our people stand firm on our land.*

*Our people are here to stay — we will always be.*

We, the Noongar people, are the traditional owners of South West Western Australia, and have been since before time immemorial. As the First People of South West Western Australia, we continue to practise the laws and customs of our culture. Through this culture, we continue to hold rights, responsibilities and obligations in relation to our people, traditional lands and waters.

We, the Noongar people, are the largest single Aboriginal cultural bloc on the Australian continent. We belong to one of the oldest surviving living cultures on this earth. As a people, we have a common ancestral language, and a similar history and spirituality. We know that our traditional country is south and west of a line that stretches from Geraldton in the north to Cape Arid in the south-east, and that the spirit of this place can never be conquered.

Noongar culture, spirit and economy have always depended on the resources of Noongar boodja. Families still return to the biddi (paths) of our ancestors. Our people continue to refer to natural landmarks, especially hills and waterways, when describing which families belong to different areas of Noongar boodja. Although barriers may exist, it is still in our hearts, in our blood, it is still our country.

**Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future)  
Recognition Bill 2014**

**Schedule 1** Noongar recognition statement

---

1 Our living culture, which is long and continuing in this part of the world,  
2 begins with Noongar people. This is the opportunity for all Western  
3 Australians to experience the ancient tradition of respect, relationships  
4 and reciprocity with Noongar people. We have survived.

5 Note:

6 The Noongar nation is made up of a number of different groups. Variations in  
7 pronunciation and spelling occur amongst the Amangu, Yued/Yuat, Whadjuk/Wajuk,  
8 Binjareb/Pinjarup, Wardandi, Balardong/Ballardong, Nyakinyaki, Wilman, Wirlomin,  
9 Ganeang, Bibulmun/Piblemen, Mineng, Goreng, Wudjari and Njunga. For instance, the  
10 word "Noongar" can also be spelled "Nyungar", "Nyoongar" and "Nyoongah".

---

**Schedule 2 — Noongar lands: description**

[s. 3(1)]

All the lands and waters contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark, being a point on a northern boundary of native title determination application WAD6192/1998 (WC97/71) as accepted for registration on the Register of Native Title Claims on 22 August 1997;
  - then continues generally easterly and generally south-easterly along the boundaries of that native title application to the intersection with native title determination application WAD6181/1998 (WC00/7) as accepted for registration on the Register of Native Title Claims on 3 July 2008;
  - then continues generally easterly, generally south-easterly and westerly along the boundaries of that native title application to the intersection with native title determination application WAD6286/1998 (WC98/70) as accepted for registration on the Register of Native Title Claims on 29 September 1998;
  - then continues generally southerly along the boundaries of that native title application to the intersection with the low water mark;
  - then continues generally south-westerly, generally north-westerly and generally northerly along the low water mark back to the starting point,
- other than any land or waters the subject of native title determination application WAD6193/1998 (WC97/72-6) as accepted for registration on the Register of Native Title Claims on 12 December 2011.

And all the islands landward of the low water mark that exist within the area contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark;
- then continues generally southerly, generally south-easterly and generally north-easterly along the low water mark to the intersection with longitude 120.465236;
- then continues southerly to the intersection of the 3 nautical mile limit with longitude 120.465236;

**Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future)  
Recognition Bill 2014**

**Schedule 2** Noongar lands: description

---

- 1     • then continues generally south-westerly, generally north-westerly and  
2       generally northerly along the 3 nautical mile limit to the prolongation  
3       westerly of the northern boundary of the Shire of Coorow;
- 4     • then continues easterly along that prolongation back to the starting  
5       point.

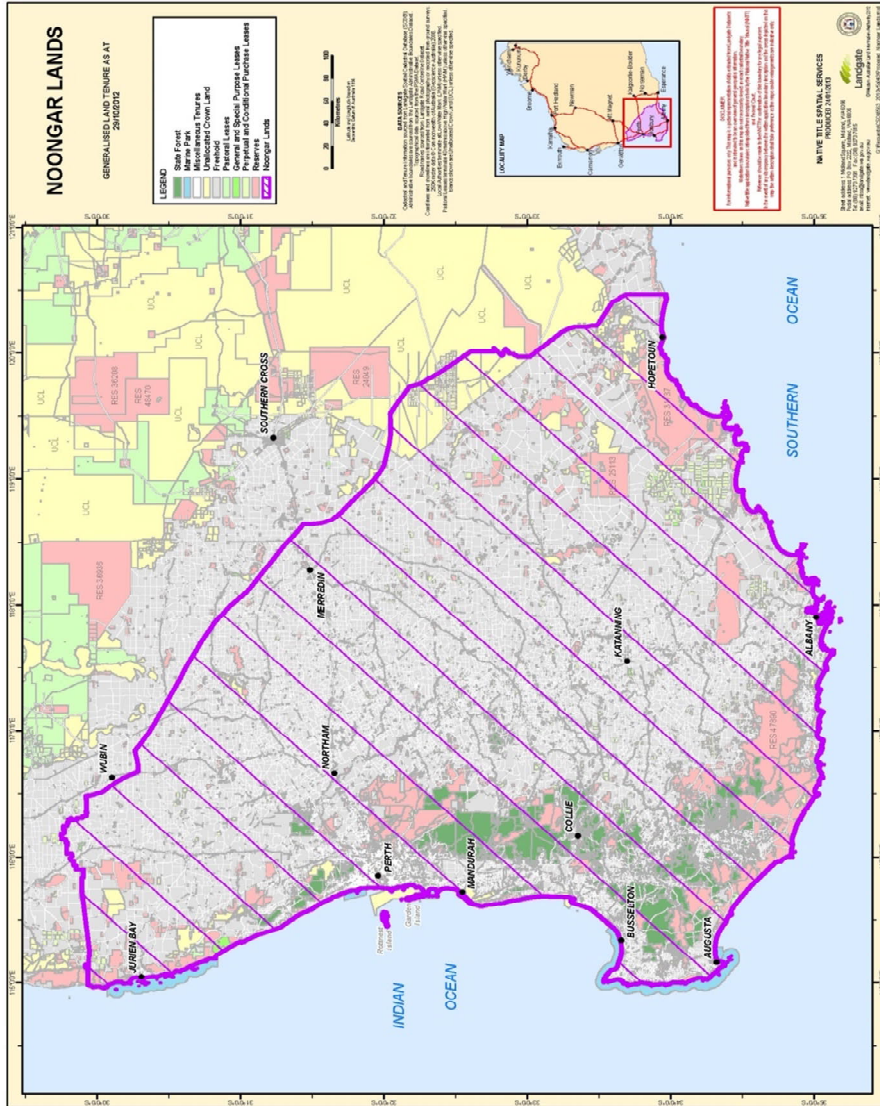
6     Notes:

- 7     1. The low water mark is sourced from the Spatial Cadastral Database maintained by  
8       the Western Australian Land Information Authority as at 29 October 2012.
- 9     2. Coordinate references are to Geocentric Datum of Australia 1994 (GDA94)  
10       coordinates in decimal degrees.
- 11    3. The 3 nautical mile limit is sourced from Australian Maritime Boundaries (AMB),  
12       6<sup>th</sup> edition, released in February 2006.

1  
2

Schedule 3 — Noongar lands: map

[s. 3(2)]



3



## **Annexure G**

### **The Trust Deed**

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## Noongar Boodja Trust

William Michael Gerard Lawrie  
(Settlor)

and

[insert name]  
(Trustee)

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## Noongar Boodja Trust

Date: 2014

### Parties

**William Michael Gerard Lawrie of  
(Settlor)**

**7 Douglas Street, Fremantle, Western Australia**

**[insert name]  
(Trustee)**

**[insert address]**

### Background

- A. The Noongar Community has reached a settlement with the State of Western Australia pursuant to six ILUAs, whereby native title rights and interests are dealt with in the manner envisaged in sections 24CB(e) and 24EB(1)(d) of the Native Title Act.
- B. Pursuant to the ILUAs the Noongar Community:
- (a) will receive a benefits package over a 12 year period consisting of a Noongar future fund, operations fund, cultural land fund, housing land fund and development land fund;
  - (b) has established this Trust to meet the requirements for a trust that will operate in perpetuity to receive, hold and Apply the benefits payable under the ILUAs to or for Eligible Noongar Entities;
  - (c) has or will establish a regional Aboriginal Corporation for the traditional owners in each of the six Regions within the Noongar Boodja Traditional Lands being an Aboriginal Corporation to provide community services to and support the growth and development of the traditional owners and their communities in their Region; and
  - (d) has or will establish one central services Aboriginal Corporation to assist the Noongar Community as a whole and provide administrative and other services to the Regional Corporations referred to above.
- C. In accordance with the terms of this Deed, the Trustee will provide financial support to the Eligible Noongar Entities that, in turn, will have corresponding reporting and other obligations to the Trustee.

# Agreement

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed, unless the context requires otherwise, the following expressions have the following meanings:

<b>Aboriginal Corporation</b>	means a corporation registered under the CATSI Act;
<b>Advisory Committee</b>	has the meaning given in clause 22.9;
<b>Agreement Group</b>	means the relevant “Native Title Agreement Group” as defined in an ILUA;
<b>Agreement Group Endorsement</b>	means an endorsement given by an Agreement Group in accordance with Schedule 6;
<b>Annual Budget</b>	means in each Financial Year, the budget determined by the Trustee under clause 18.2;
<b>Annual ENE Allocation</b>	has the meaning given in clause 18.2(a)(ii);
<b>Annual Operations Budget</b>	means in each Financial Year, the annual operations budget determined by the Trustee under clause 18.2;
<b>Annual Special Projects Budget</b>	means in each Financial Year, the annual special projects budget determined by the Trustee under clause 18.2;
<b>Apply</b>	includes, but is not limited to, paying, distributing, accumulating, setting aside, committing or crediting any part of the income or capital of the Trust Fund and the terms “ <b>Application</b> ” or “ <b>Applies</b> ” have a corresponding meaning;
<b>Appointors</b>	has the meaning given in clause 13.3;
<b>Associates</b>	has the meaning given to that term in section 318 of the <i>Income Tax Assessment Act 1936</i> (Cth) and the term “ <b>Associate</b> ” shall have a corresponding meaning;
<b>Attorney General</b>	means the person from time to time holding the Ministerial position of Attorney General of Western Australia;
<b>Auditor</b>	means a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;

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<b>Australian Financial Services Licence or AFS Licence</b>	means an appropriate Australian Financial Services Licence pursuant to Chapter 7 of the Corporations Act or such other licence pursuant to replacement or equivalent legislation;
<b>Ballardong Region</b>	means the lands the subject of the ILUA entered into by the State and the Ballardong native title claim group;
<b>Budget Principles</b>	means the principles described as the budget principles in clause 18.3;
<b>CATSI Act</b>	means the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth);
<b>Commissioner of Taxation</b>	means a Commissioner of Taxation (Federal), Second Commissioner of Taxation (Federal) and Deputy Commissioner of Taxation (Federal) as provided for in sections 4 and 7 of the <i>Taxation Administration Act 1953</i> (Cth);
<b>Code of Conduct</b>	has the meaning given in clause 3.2(c)(i);
<b>Conditional Period Expiry Date</b>	has the meaning given to the term “Conditional Period Expiry Date” in the ILUAs;
<b>Consumer Price Index</b>	means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index shall mean such other index as represents the rise in the cost of living in Perth, Western Australia as the State reasonably determines after consulting with the Trustee and the Noongar Relationship Committee;
<b>Contributor</b>	means any person, organisation, trustee of another trust, the State (otherwise than in respect of the State’s obligations under the ILUAs) or the Commonwealth that contributes money, investments, property or other assets to the Trust Fund from time to time;
<b>Contribution</b>	means money, investments, property or other assets of any kind from a Contributor;
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth);
<b>CSC</b>	means a corporation that is appointed by the Trustee as the Central Services Corporation in accordance with clause 5.1;
<b>CSC Core Services</b>	means the core services to be undertaken by the CSC to or for the benefit of the Noongar Community as determined in accordance with item S2.3 of Schedule 2 and as varied from time to time;
<b>CSC Optional</b>	means the optional services to be provided by the CSC to

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<b>Services</b>	the Regional Corporations as determined in accordance with item S2.5 of Schedule 2 and as varied from time to time;
<b>CSC Principles</b>	means the principles described as the “CSC Principles” as set out in Annexure E of Schedule 10 to the ILUAs;
<b>CSC Regional Services</b>	means the principal services to be provided by the CSC to the Regional Corporations as determined in accordance with item S2.4 of Schedule 2 and as varied from time to time;
<b>CSC Services</b>	means the CSC Core Services, CSC Regional Services and CSC Optional Services;
<b>Cultural Land</b>	means any estate, right, interest in land or Management Order held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Cultural Land;
<b>Cultural Land Development Decision</b>	<p>means a decision to do any of the following in relation to the whole or part of any Cultural Land in a Region:</p> <ul style="list-style-type: none"> <li>(a) granting an interest to a third party other than the Relevant Regional Corporation;</li> <li>(b) undertaking works that are, in the reasonable opinion of the Trustee, likely to involve significant ground disturbance; and</li> <li>(c) erecting any building or improvement;</li> </ul>
<b>Cultural Land Fund</b>	means the Sub Fund established under clause 10;
<b>Custodian Trustee</b>	means the custodian trustee of the Trust appointed under clause 13.2.3;
<b>Decision to Proceed</b>	<p>means a decision to enter into a binding agreement or arrangement to exploit land by any of the following:</p> <ul style="list-style-type: none"> <li>(a) selling;</li> <li>(b) leasing, licensing or otherwise granting a third party a right or interest to occupy or possess;</li> <li>(c) mortgaging, charging or otherwise granting any security or preferential interest of any kind; and</li> <li>(d) erecting one or more buildings or improvements, or renovating existing buildings or improvements, the aggregate cost of which in a financial year exceeds \$500,000 (indexed annually in accordance with the Consumer Price Index);</li> </ul>
<b>Dedicated Trustee</b>	means a Nominee Entity that meets the Dedicated Trustee Requirements and is appointed as Trustee by the Appointors under clause 13.4;

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<b>Dedicated Trustee Requirements</b>	means the requirements in Schedule 7;
<b>Deed</b>	means this trust deed as amended from time to time;
<b>Deed of Appointment</b>	means the deed of appointment referred to in clause 13.4(g);
<b>Default Investment Policy</b>	means the policy in Schedule 11 as Modified from time to time;
<b>Development Land</b>	means any estate, right or interest in real property held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Development Land;
<b>Development Land Fund</b>	means the Sub Fund established under clause 11;
<b>Dispute</b>	means a dispute referred to in clause 3.6;
<b>Dispute Notice</b>	means the notice described as the dispute notice in clause 3.6(c);
<b>Dispute Resolution Procedure</b>	means the procedure for resolving a Dispute, as set out in Schedule 12;
<b>Distribute</b>	means to distribute, pay, commit, credit, apply or otherwise expend and “ <b>Distribution</b> ” and “ <b>Distributes</b> ” have a corresponding meaning;
<b>Eligible Charity</b>	means a fund, institution or other entity endorsed by the Commissioner of Taxation as income tax exempt under Sub-division 50-B of the <i>Income Tax Assessment Act 1997</i> (Cth);
<b>Eligible Noongar Entities</b>	means the: <ul style="list-style-type: none"> <li>(a) CSC; and</li> <li>(b) Regional Corporations;</li> </ul>
<b>ENE Appointment Notice</b>	means a written notice from the Trustee to an entity nominated in an ENE Nomination appointing the nominated entity as: <ul style="list-style-type: none"> <li>(a) a Regional Corporation under clause 4.1(a); and</li> <li>(b) the CSC under clause 5.1(a),</li> </ul> as specified in the notice;
<b>ENE Default Notice</b>	means a written notice from the Trustee specifying an eligibility default and issued to: <ul style="list-style-type: none"> <li>(a) a Regional Corporation under clause 4.2(a)(i); or</li> </ul>

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	(b) the CSC under clause 5.2(a)(i), as specified in the notice;
<b>ENE Distribution Account</b>	has the meaning given in clause 17.6(b);
<b>ENE Nomination</b>	means a written notice to the Trustee from an entity seeking appointment as:  (a) a Regional Corporation under clause 4.1(a); or  (b) the CSC under clause 5.1(a), as specified in the notice;
<b>ENE Operations Account</b>	has the meaning given in clause 8.3;
<b>ENE Termination Notice</b>	means a written notice from the Trustee terminating the appointment of:  (a) a Regional Corporation under clauses 4.2(a)(iii) or 4.3(a); or  (b) the CSC under clause 5.2(a)(iii), as specified in the notice;
<b>Expert</b>	means a person having recognised qualifications and at least 5 years demonstrated experience that is appropriate and relevant to the matter for which the Expert is required;
<b>Facilitator</b>	means an entity who facilitates meetings of an Agreement Group and being either:  (a) nominated by the Trustee; or  (b) where the meeting of the Agreement Group takes place prior to this Deed, the legal representative of that Agreement Group;
<b>Financial Year</b>	means the period from the date of this Deed to 30 June and then each period of 12 months ending on 30 June in each year;
<b>First Year</b>	means the period from the date of this Deed to 30 June;
<b>Funding Guidelines</b>	means the funding guidelines established by the Trustee in accordance with clause 17.9;
<b>Funding Principles</b>	means the principles described as the Funding Principles in clause 17.10;

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<b>Future Fund Capital Base</b>	has the meaning given in clause 7.1(b);
<b>Gnaala Karla Booja Region</b>	means the Gnaala Karla Booja lands and that part of the Harris Family lands the subject of the ILUA entered into by the State and the Gnaala Karla Booja and Harris Family native title claim groups;
<b>Government Trading Entity</b>	means a body corporate which: <ul style="list-style-type: none"> <li>(a) is established by State legislation;</li> <li>(b) has a board of directors;</li> <li>(c) is expressed not to be an agent of the State; and</li> <li>(d) carries on business activities;</li> </ul>
<b>Housing Authority</b>	means the body corporate established by section 6(4) of the <i>Housing Act 1980 (WA)</i> ;
<b>Housing Land Development Activities</b>	has the meaning given in clause 12.2(d);
<b>Housing Land</b>	means any estate, right or interest in real property held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Housing Land;
<b>Housing Land Fund</b>	means the Sub Fund established under clause 12;
<b>ILUA</b>	means each of the Indigenous Land Use Agreements entered into by the State and the following native title claim groups: <ul style="list-style-type: none"> <li>(a) Whadjuk;</li> <li>(b) Yued;</li> <li>(c) Gnaala Karla Booja and Harris Family;</li> <li>(d) South West Boojarah and Harris Family;</li> <li>(e) Wagyl Kaip and Southern Noongar; and</li> <li>(f) Ballardong,</li> </ul> <p>which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs;</p>
<b>ILUA Commencement Date</b>	has the meaning given to the term “Commencement Date” in the ILUAs;

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<b>ILUA Termination Amount</b>	has the meaning given to the term “ILUA Termination Amount” in the ILUAs;
<b>ILUA Termination Notice</b>	has the meaning given to the term “ILUA Termination Notice” in the ILUAs;
<b>Indemnified Amount</b>	has the meaning given to the term “Indemnified Amount” in the ILUAs;
<b>Indemnified Amount Notice</b>	has the meaning given to the term “Indemnified Amount Notice” in the ILUAs;
<b>Independent</b>	means: <ul style="list-style-type: none"><li>(a) in the case of a person, the person is not (and a member of the person’s immediate family is not):<ul style="list-style-type: none"><li>(i) a member of an Agreement Group;</li><li>(ii) a lineal descendant of, or first cousin of, a member of an Agreement Group;</li><li>(iii) married to or in a de facto relationship with a member of an Agreement Group;</li><li>(iv) a parent or sibling of a person who is married to or in a de facto relationship with a member of an Agreement Group;</li><li>(v) currently, and has not within the period of 3 years prior to their appointment been:<ul style="list-style-type: none"><li>A. an employee, director, consultant, advisor, auditor or other service provider to the Noongar Community or any related or associated entity of an Agreement Group; or</li><li>B. an employee or director of a company or partner in a partnership, which is a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;</li></ul></li></ul></li><li>(b) in the case of an entity, the entity is not:<ul style="list-style-type: none"><li>(i) an entity in which an Agreement Group (or any member of an Agreement Group) has a material interest;</li><li>(ii) an entity which is controlled by an Agreement Group (or any member of an Agreement Group); or</li></ul></li></ul>

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- (iii) currently, and has not within the period of 3 years prior to its appointment been a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

<b>Insolvency Event</b>	means in respect of a company when: <ul style="list-style-type: none"> <li>(a) the company resolves to go into liquidation;</li> <li>(b) a liquidator, a provisional liquidator, receiver, receiver and manager, administrator, official manager, judicial manager or similar official is appointed to the company or over the company's assets or undertaking;</li> <li>(c) the company resolves to enter into a scheme, a composition or any similar arrangement or procedure with creditors; or</li> <li>(d) the company receives a statutory demand under section 459E of the Corporations Act, which the company fails to comply with or apply to set aside, within the period for compliance or have set aside under section 459G of the Corporations Act;</li> </ul>
<b>Interim CSC</b>	means an entity appointed by the Trustee as the "Interim CSC" under clause 5.1(b)(ii)A during the Interim Period to exercise such functions and deliver such services as determined by the Trustee under clause 5.1(b)(ii)B;
<b>Interim Period</b>	has the meaning in clause 5.1(b);
<b>Investment Committee</b>	means the investment committee established under clause 20;
<b>Investment Manager</b>	means an investment manager that at all times is Independent and: <ul style="list-style-type: none"> <li>(a) in respect of funds management:           <ul style="list-style-type: none"> <li>(i) holds a current relevant Australian Financial Services Licence (or is an authorised representative of such a licensee); and</li> <li>(ii) holds appropriate authorisations to permit it, in accordance with the Corporations Act, to give advice regarding the Investment Policy and the various categories of investments held by the Trust and to deal with those investments; and</li> <li>(iii) has at least 10 years investment management experience in relation to funds under management of greater than \$500 million</li> </ul> </li> </ul>

(indexed annually in accordance with the Consumer Price Index); or

(b) in respect of direct property investment:

- (i) has at least 10 years direct property management experience in relation to property assets under management of greater than \$500 million (indexed annually in accordance with the Consumer Price Index);

<b>Investment Policy</b>	means an investment policy for the Trust prepared in accordance with clause 19.4;
<b>Investment Principles</b>	means the investment principles set out in clause 19.3;
<b>Land Register</b>	means the register to be maintained in accordance with clause 22.1(b);
<b>Land Sub</b>	means the subsidiary company to be established by the Trustee and described as the Land Sub in accordance with clause 22.1;
<b>Management Order</b>	means an order by which care, control and management of a reserve are placed with a management body under section 46 of the <i>Land Administration Act 1997 (WA)</i> ;
<b>Mediation Guidelines</b>	means the rules or guidelines for mediation as adopted from time to time by the Institute of Arbitrators and Mediators Australia or an equivalent body;
<b>Mediator</b>	means a person who is a member of, and accredited as a mediator by, the Institute of Arbitrators and Mediators Australia or an equivalent body;
<b>Modify</b>	means to modify, vary, amend, alter, change or correct and the terms “ <b>Modified</b> ”, “ <b>Modifying</b> ” and “ <b>Modification</b> ” shall have a corresponding meaning;
<b>Native Title Act</b>	means the <i>Native Title Act 1993 (Cth)</i> ;
<b>Net Proceeds</b>	has the meaning given in clause 11.5(a);
<b>Nominations Committee</b>	means the committee established in accordance with clause 16;
<b>Nominee Entity</b>	means a company proposed to be appointed as a Dedicated Trustee under clause 13.2;
<b>Noongar Advisory Company</b>	means the Noongar advisory company established in accordance with clause 14;
<b>Noongar Appointor</b>	means the person appointed as such by the Noongar Corporations Committee from time to time in accordance with clause 13.3;

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<b>Noongar Boodja Development Corporation</b>	means a company incorporated under the Corporations Act (acting in its own right or as bare trustee for the Trust) the shares of which are wholly owned by the Trustee for the purpose of conducting development activities on Development Land;
<b>Noongar Boodja Traditional Lands</b>	means the lands the subject of the ILUAs;
<b>Noongar Community</b>	means the six Agreement Groups as constituted from time to time;
<b>Noongar Corporations Committee</b>	means the committee established by the CSC in accordance with the CSC's constitution and comprising representatives from the CSC and each Regional Corporation (if any);
<b>Noongar Future Fund</b>	means the Sub Fund established under clause 7;
<b>Noongar Housing Land</b>	means the properties to be transferred from the Housing Authority to the Land Sub pursuant to the ILUAs;
<b>Noongar Land Estate</b>	means the land allocated under the Noongar Settlement to the Noongar Community pursuant to the ILUAs;
<b>Noongar Person</b>	means a member of the Noongar Community;
<b>Noongar Relationship Committee</b>	means the committee established by the Trustee in accordance with clause 15;
<b>Noongar Settlement</b>	means the full and final settlement of native title in the South West of Western Australia as described in the ILUAs;
<b>Notifiable Event</b>	has the meaning given in clause 13.5(a);
<b>Notifiable Event Notice</b>	has the meaning given in clause 13.5(b);
<b>Notifiable Event Report</b>	has the meaning given in clause 13.5(c);
<b>Operations Fund</b>	means the Sub Fund established under clause 8;
<b>Operations Funding</b>	has the meaning given in clause 8.2(b);
<b>Payment Conditions</b>	has the meaning given in clause 17.5;
<b>Policy and Procedures Manual</b>	has the meaning given in clause 3.2(c)(ii);
<b>Professional Trustee Company</b>	means an organisation that: <ul style="list-style-type: none"> <li>(a) is a "trustee company" as that term is defined in section 601RAB of the Corporations Act;</li> </ul>

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- (b) holds a current relevant Australian Financial Services Licence:
  - (i) covering the provision of all or substantially all of the “traditional trustee company services” defined in section 601RAA of the Corporations Act; and
  - (ii) with appropriate authorisations as required to permit it to carry out functions under this Deed; and
- (c) has at least 5 years experience in carrying out the functions and providing the services similar to those required of the Trustee under this Deed;

**Property Development Activities**

has the meaning given in clause 11.1(d);

**Protected Property**

has the meaning given in item S10.1;

**Reconciliation Action Plan**

means a plan that identifies clear actions with realistic targets for the Trustee, and is developed in consultation with the Noongar Community that details the Trustee’s contribution to:

- (a) reconciliation;
- (b) creating respectful relationships between Indigenous persons, particularly the Noongar Community, and other Australians; and
- (c) creating opportunities for Indigenous persons, particularly the Noongar Community;

**Region**

means the following regions that comprise the Noongar Boodja Traditional Lands:

- (a) Whadjuk Region;
- (b) Yued Region;
- (c) Gnaala Karla Booja Region;
- (d) South West Boojarah Region;
- (e) Wagyl Kaip / Southern Noongar Region; and
- (f) Ballardong Region;

**Regional Corporation**

means a corporation that is appointed by the Trustee as a Regional Corporation in respect of a specific Region in accordance with clause 4.1;

**Regional Corporation**

means the core services to be undertaken by a Regional

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<b>Core Functions</b>	Corporation as determined in accordance with Schedule 3 and as varied from time to time;
<b>Regional Corporation Principles</b>	means the principles described as the “Regional Corporation Principles” as set out in Annexure E of Schedule 10 to the Relevant ILUA;
<b>Relevant ILUA</b>	means in respect of an Agreement Group, the ILUA relating to that Agreement Group;
<b>Relevant Regional Corporation</b>	means in respect of a Region, the Regional Corporation associated with that Region;
<b>Settled Sum</b>	means \$10.00;
<b>South West Boojarah Region</b>	means the South West Boojarah lands and that part of the Harris Family lands the subject of the ILUA entered into by the State and the South West Boojarah and Harris Family native title claim groups;
<b>Special Projects</b>	means a special project undertaken by an Eligible Noongar Entity in furtherance of its objects;
<b>Special Projects Fund</b>	means the Sub Fund established under clause 9;
<b>Special Projects Funding</b>	has the meaning given in clause 9.2(a);
<b>Special Project Guidelines</b>	has the meaning given in clause 9.1(d)(ii);
<b>Special Purpose Report</b>	means a report of, as the case may be: <ul style="list-style-type: none"> <li>(a) a Regional Corporation, prepared in accordance with clause 4.7(b); or</li> <li>(b) the CSC, prepared in accordance with clause 5.6(b);</li> </ul>
<b>Special Resolution</b>	means a resolution passed by at least 75 percent of all persons present and entitled to vote on the matter;
<b>Start-Up Period</b>	has the meaning given in clause S2.1(b);
<b>State</b>	means the State of Western Australia, acting through the Department of the Premier and Cabinet;
<b>State Contribution</b>	has the meaning given in the ILUAs;
<b>State Contribution Condition</b>	has the meaning given in clause 6.4;
<b>State Contribution Period</b>	means the period of time beginning on the ILUA Commencement Date and expiring on the date that is twelve (12) years from the ILUA Commencement Date;
<b>State Endorsement</b>	means the State’s written approval to the nomination of a

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	corporation as the CSC, a Regional Corporation or any other Eligible Noongar Entity as the case may be, which approval must not be revoked during any period in which the entity is otherwise eligible to act in the relevant position;
<b>Statutory Authority</b>	means a body corporate which: <ul style="list-style-type: none"> <li>(a) is established by State legislation; and</li> <li>(b) has a board of management or directors;</li> </ul>
<b>Strategic Plan</b>	means the strategic plan for the Trust prepared in accordance with clause 21;
<b>Strategic Review</b>	has the meaning given in clause 26(a);
<b>Sub Fund</b>	means a sub fund of the Trust Fund established by the Trustee in accordance with clause 6.2;
<b>Suspension Amount</b>	has the meaning given in clause 17.7(a);
<b>Suspension Event</b>	has the meaning given in clause 17.7(b)(i);
<b>Suspension Period</b>	has the meaning given in clause 17.7(a);
<b>Suspension Remedy</b>	has the meaning given in clause 17.7(b)(iii);
<b>Tax Law</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth), <i>Income Tax Assessment Act 1997</i> (Cth) and the <i>Taxation Administration Act 1953</i> (Cth) as amended from time to time;
<b>Title Protection Criteria</b>	has the meaning given in clause 10.3(c);
<b>Traditional Laws and Customs</b>	means the bodies of traditions, laws, customs and beliefs of the Noongar Community and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;
<b>Transition Principles</b>	means the principles described as the “Transition Principles” set out in Annexure Y of Schedule 10 to the ILUAs;
<b>Trust</b>	means the trust created by this Deed;
<b>Trust Fund</b>	has the meaning described in clause 6.1;
<b>Trust Purpose</b>	means the Trust Purpose set out in clause 2.2;
<b>Trustee</b>	means the initial trustee specified in clause 13.1 or the trustee of the Trust appointed under clause 13.4 from time to time;
<b>Trustee Expense Budget</b>	has the meaning given in clause 23.3(a);

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<b>Trustees Act</b>	means the <i>Trustees Act 1962 (WA)</i> ;
<b>Trustee's Annual Report</b>	has the meaning given in clause 25(a);
<b>Valid</b>	means, in respect of an endorsement under this Deed, that the endorsement is subsisting and unrevoked;
<b>Wagyl Kaip / Southern Noongar Region</b>	means the lands the subject of the ILUA entered into by the State and the Wagyl Kaip and Southern Noongar native title claim groups;
<b>Whadjuk Region</b>	means the lands the subject of the ILUA entered into by the State and the Whadjuk native title claim group; and
<b>Yued Region</b>	means the lands the subject of the ILUA entered into by the State and the Yued native title claim group;

## 1.2 Interpretation of Clauses

- (a) A word importing the singular number or plural number includes the plural and singular respectively.
- (b) If two or more persons by this Deed undertake an obligation or give any warranty they will be bound jointly and severally unless the context requires otherwise.
- (c) A word importing any gender includes every other gender.
- (d) A reference to a "spouse" includes a de facto spouse and a person who is considered to be a spouse in accordance with Traditional Laws and Customs.
- (e) The use of headings will not affect the interpretation or construction of this Deed.

## 1.3 Status of Schedules

- (a) A reference to this Deed includes a reference to any schedule to it.
- (b) The schedules form part of this Deed and are binding on the Trustee.
- (c) Unless otherwise specified in this Deed, a Modification to a schedule requires a Modification to this Deed in accordance with clause 27.



## 2. Trust Purpose

### 2.1 Declaration of Trust

- (a) The Trustee acknowledges that the Settlor has paid the Settled Sum to the Trustee and the Trustee receives the Settled Sum as trustee of the Trust.
- (b) The Settlor and the Trustee declare that the Trustee will hold the Trust Fund and the income of the Trust Fund for the Trust Purpose and otherwise on the trusts, with the powers and subject to the provisions in this Deed.
- (c) The Trustee may from time to time accept as an addition to the Trust Fund any Contribution paid or transferred to or vested in the Trustee and to be held by the Trustee as part of the Trust Fund.
- (d) The Trust name is **Noongar Boodja Trust** or such other name determined by the Trustee from time to time.

### 2.2 Trust Purpose

The Trustee must Apply the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Noongar Entities or for the establishment of Eligible Noongar Entities as the Trustee decides in the Trustee's absolute discretion.

### 2.3 Trust Activities

In support of the Trust Purpose, the Trustee must pursue the following activities:

- (a) support each **Regional Corporation** to represent the interests of and deliver services to the Noongar Community of that Region and undertake the Regional Corporation Core Functions in accordance with Schedule 3;
- (b) support the **CSC** to represent the interests of all the Noongar Community, deliver services to the Noongar Community and Regional Corporations and undertake the CSC Services listed in Schedule 2;
- (c) hold and manage **Cultural Land** under clause 10, in consultation with the Relevant Regional Corporations in a manner that has regard to the spiritual and cultural connection of the relevant Agreement Group and their Traditional Laws and Customs;
- (d) hold, manage, invest and develop the **Development Land** under clause 11, in consultation with the Investment Committee in a manner that aims to generate positive returns for the Trust Fund;
- (e) hold, manage and invest the **Noongar Future Fund** under clause 7 in a manner that aims to ensure adequate income to support the operations and projects of the Eligible Noongar Entities in the future;
- (f) hold, manage and invest the **Operations Fund** under clause 8, in consultation with the Noongar Advisory Company, in a manner that ensures, in the Trustee's opinion, adequate funds for the operations of the CSC and the Regional Corporations each year, on a fair and equitable basis;

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- (g) hold, manage, invest and develop the **Housing Land Fund** under clause 12, in consultation with the Investment Committee and the Noongar Advisory Company in a manner that aims to achieve improved housing outcomes for Noongar People;
  - (h) accept monies, land or other property from a Contributor, or allocations by the Trustee from the Trust Fund, to hold, manage and invest in the **Special Projects Fund** under clause 9 to provide funding for the CSC and the Regional Corporations for Special Projects from time to time;
  - (i) establish, manage and maintain the **Noongar Advisory Company** under clause 14 to provide advice and assistance to the Trustee in accordance with this Deed;
  - (j) establish, manage and maintain the **Noongar Relationship Committee** under clause 15 to facilitate and streamline a process for the Trustee and the Noongar Advisory Company to have direct, regular and meaningful engagement with the Eligible Noongar Entities who are the key beneficiaries of the Trust;
  - (k) support the CSC to maintain the **Noongar Corporations Committee**, which is the primary source for consultation as amongst the Eligible Noongar Entities;
  - (l) manage and maintain the **Investment Committee** under clause 20 to provide advice and assistance to the Trustee regarding the investment of the Trust Fund in accordance with this Deed;
  - (m) manage and maintain the **Nominations Committee** under clause 16 to “pre-qualify” candidates for positions on the CSC board, Regional Corporation boards and Noongar Advisory Company board, the Investment Committee or any other subcommittee of the Trust; and
  - (n) generally receive, hold, manage, invest and deal with monies, land or other benefits payable to the Trust for the benefit of the Eligible Noongar Entities to assist in the promotion and advancement of the Noongar Community, and manage and maintain other Sub Funds that the Trustee may establish from time to time, in accordance with this Deed.

## 2.4 Not for Profit

- (a) The Trust is to be carried out without purpose of profit or private gain for the Trustee, or a member, director, employee, agent or officer of the Trustee. No part of the Trust Fund or the income may be transferred or Applied directly or indirectly by way of dividend, bonus or other profit distribution to the Trustee, or a member, director, employee, agent or officer of the Trustee.
- (b) Clause 2.4(a) does not prevent the payment in good faith of any of the following in accordance with the terms of this Deed:
  - (i) the Trustee’s remuneration determined in accordance with clause 23;
  - (ii) reasonable costs, charges and expenses incurred in connection with the administration of the Trust;

- (iii) reimbursement to any person (including the Trustee and any member, director, employee, agent or officer of the Trustee) for any reasonable out of pocket expenses incurred in connection with the administration of the Trust;
- (iv) reasonable rental for any real or personal property leased to the Trustee as trustee of the Trust;
- (v) reasonable remuneration of any other person (including any member, director, employee, agent or officer of the Trustee) for services provided to the Trustee as trustee of the Trust.

## **2.5 No Fixed Interests**

- (a) The Eligible Noongar Entities have a right to be considered for a Distribution from the Trust Fund as conferred by this Deed but do not have any interest in any particular part of the Trust Fund or any investment made by the Trustee.
- (b) An Eligible Noongar Entity or Noongar Person is not entitled, other than as expressly provided, to:
  - (i) interfere with the exercise or non-exercise by the Trustee of its rights and powers;
  - (ii) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or
  - (iii) require the transfer of any of the assets of the Trust Fund to an Eligible Noongar Entity or Noongar Person.

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### 3. Noongar Community

#### 3.1 Recognition of Noongar Community

In exercising the Trustee's discretions pursuant to this Deed, and subject to clauses 22.1 and 22.4, the Trustee must have regard to:

- (a) the fundamental connection between the Trust Fund and the Agreement Groups and that the primary source of the Trust Fund is the settlement between the Noongar Community and the State whereby native title rights and interests are dealt with in the manner envisaged in subsections 24CB(e) and 24EB(1)(d) of the Native Title Act, pursuant to the ILUAs;
- (b) the connection between the Agreement Groups and the Regions,

and may rely upon the terms of the ILUAs for the purpose of determining:

- (c) the geographical areas that constitute the six Regions that, together, represent the Noongar Boodja Traditional Lands; and
- (d) the identity of the traditional owners who hold rights and interests under Traditional Laws and Customs in relation to part or all of each Region, who together may select an entity to be their Regional Corporation for their Region, and nominate their traditional elders in respect of land within that Region.

#### 3.2 Good Governance Practice

The Trustee must:

- (a) support initiatives to improve, enhance and assist the development of the corporate governance practices of the Eligible Noongar Entities;
- (b) ensure that meetings of each committee the Trustee is specifically required to form under this Deed and any other committees or subcommittees formed under this Deed, are convened (as to timing and number of meetings) and held in an efficient, responsible, cost effective and culturally appropriate manner; and
- (c) in consultation with the Noongar Relationship Committee, develop, approve and update from time to time the following documents to apply to the operations of the Trustee, the Noongar Advisory Company and each committee the Trustee is specifically required to form under this Deed:
  - (i) a code of conduct (**Code of Conduct**); and
  - (ii) a policies and procedures manual (**Policy and Procedures Manual**).

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### 3.3 Communications with the Noongar Community

- (a) The Trustee must support the Eligible Noongar Entities to develop appropriate mechanisms for participation, consultation and information dissemination regarding the Trust within the Noongar Community, through the Eligible Noongar Entities, which shall have regard to the following non exhaustive principles:
  - (i) effective participation by the Noongar Community in the operation of the Eligible Noongar Entities;
  - (ii) decision-making by the Eligible Noongar Entities to:
    - A. be in accordance with the principle that decisions about land are to be made by Noongar Persons who have a right to speak for that land under Traditional Law and Custom; and
    - B. take into account cultural sensitivities and values;
  - (iii) ensuring transparency and accountability in decision making; and
  - (iv) ensuring the operations of the Trust are just, fair and equitable (which does not necessarily require equal Distributions).
- (b) The Trustee must consult with the Noongar Community at least once in each Financial Year (excluding the first Financial Year) regarding the Trust's activities.
- (c) The Trustee must seek the recommendations of the Noongar Corporations Committee regarding the manner in which the Trustee will consult with the Noongar Community under clause 3.3(b).
- (d) All communications, reports, plans and other documentation required to be prepared by the Trustee that are provided to the Noongar Advisory Company, the Eligible Noongar Entities or the Noongar Community must be prepared using plain English in a culturally appropriate manner, form and style, including diagrams where appropriate.
- (e) Except to the extent required by law or by this Deed or reasonably required for the performance of the Trustee's obligations under this Deed, the Trustee must withhold culturally sensitive information from all communications, reports, plans and other documentation.

### 3.4 Consultations and Decision Making with Eligible Noongar Entities

- (a) The Trustee must seek to:
  - (i) develop and maintain a process for direct communications with each Eligible Noongar Entity; and
  - (ii) consult directly with each Eligible Noongar Entity regarding matters that relate solely to that Eligible Noongar Entity or its relevant Agreement Group or Region.

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- (b) Where the Trustee is required to consult with or obtain decisions from an Eligible Noongar Entity in accordance with the terms of this Deed:
- (i) if the Trustee has made at least 2 attempts by notice in writing to either obtain the decision of the Eligible Noongar Entity or consult with the Eligible Noongar Entity on the matter; and
  - (ii) the Eligible Noongar Entity has not made a valid decision on the matter or declined to consult with the Trustee (as the case may be),
- then the Trustee may act without the Eligible Noongar Entity's consent or may act without consulting with the Eligible Noongar Entity on that matter despite any clause in this Deed to the contrary; and
- (c) if an Eligible Noongar Entity has ceased to be a Relevant Regional Corporation under clause 4.2 at the relevant time, then the Trustee must consult with the CSC and, in doing so, sub-paragraph 3.4(b) applies.

### 3.5 Noongar Capacity Development

In exercising the Trustee's discretions pursuant to this Deed, the Trustee may take into consideration the Noongar Community's aspiration to develop the capacity of Noongar Persons and Noongar Community organisations, including by:

- (a) supporting the CSC and Regional Corporations to identify and engage with Noongar Persons that may be suitable for employment or committee positions in relation to the Trust; and
- (b) supporting the CSC and Regional Corporations to develop effective strategies that allow for and encourage capacity building, including promoting training and development within the Noongar Community, and good governance and administration of Noongar Community organisations.

### 3.6 Disputes

- (a) In order to support and encourage the effective and efficient resolution of disputes amongst the entities associated with the Noongar Settlement, the Trustee may invoke the Dispute Resolution Procedure.
- (b) For the purpose of this clause, a **Dispute** means a dispute between any two or more of the following:
  - (i) Regional Corporations;
  - (ii) CSC;
  - (iii) Noongar Advisory Company; and
  - (iv) Noongar Corporations Committee.

but does not include a dispute between any of the above parties and the Trustee.

- (c) In the event of a Dispute:

- (i) the parties to the Dispute may jointly give the Trustee written notice identifying the particulars of the Dispute in such form as the Trustee may prescribe (**Dispute Notice**); and
- (ii) having regard to the Dispute Notice, the Trustee may invoke the Dispute Resolution Procedure.

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## **4. Appointment of Regional Corporations**

### **4.1 Nomination and Appointment**

- (a) Subject to clause 4.1(c) and on receipt of an ENE Nomination, the Trustee must if it is satisfied the nominated entity is eligible under clause 4.5, appoint the nominated entity as the Regional Corporation for a Region by an ENE Appointment Notice.
- (b) If the Trustee in its absolute discretion considers that an initial Regional Corporation for a Region is unlikely to be appointed within 6 months of the date of this Deed then the Trustee may provide reasonable assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region.
- (c) At any one time, the Trustee may only support the establishment and operation of one entity as the Regional Corporation in respect of each Region.

### **4.2 Ceasing to be eligible to act as Regional Corporation**

- (a) Where a Regional Corporation ceases to meet one or more of the eligibility requirements under clause 4.5(a) for any reason, the Trustee must:
  - (i) issue an ENE Default Notice which must state the:
    - A. reasons the Regional Corporation has ceased to meet the eligibility requirements under clause 4.5(a);
    - B. actions the Regional Corporation must undertake to rectify or remedy the matters giving rise to the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion; and
    - C. latest time by which the Regional Corporation must satisfy the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion;
  - (ii) as far as is practicable and in its discretion, provide assistance to the Regional Corporation, an administrator appointed under the CATSI Act to the Regional Corporation or the CSC, to enable the Regional Corporation to comply with an ENE Default Notice, with a view to avoiding the need to establish and approve a replacement Regional Corporation; and
  - (iii) if the Regional Corporation fails to comply with an ENE Default Notice, terminate the appointment of the Regional Corporation by an ENE Termination Notice to the Regional Corporation.
- (b) Where a Regional Corporation has ceased to exist and until such time as a new Regional Corporation is appointed for that Region, the Trustee may:
  - (i) provide reasonable assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility



requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region;

- (ii) directly or through an entity engaged by the Trustee, perform such functions and deliver such services of a Regional Corporation as the Trustee determines in its absolute discretion is reasonably necessary to advance the vital operations of the Trust; and
- (iii) in giving effect to clauses 4.2(b)(i) and 4.2(b)(ii), Apply any part of the Operations Funding (including any funds held or previously held in an ENE Operations Account or ENE Distributions Account in respect of the Relevant Regional Corporation).

#### **4.3 Eligibility upon receipt of ILUA Termination Notice**

Where a Relevant Regional Corporation ceases to be eligible to act as a Regional Corporation for a Region under clause 4.5(b), the Trustee must:

- (a) terminate the appointment of the Regional Corporation by an ENE Termination Notice to the Regional Corporation; and
- (b) take all reasonable steps to ensure that the Trustee complies with the State Contribution Condition in accordance with clause 6.4.

#### **4.4 ENE Termination Notice**

Where the Trustee has terminated the appointment of a Regional Corporation by an ENE Termination Notice under clause 4.2(a)(iii) or 4.3(a), the Trustee must:

- (a) cease to maintain the ENE Operations Account for the Relevant Regional Corporation in accordance with clause 8.3(f);
- (b) suspend payment of all Distributions to the Relevant Regional Corporation in accordance with clause 17.7, and otherwise exercise the rights of the Trustee to ensure that the Relevant Regional Corporation does not receive Distributions;
- (c) take all reasonable steps to ensure that:
  - (i) the Relevant Regional Corporation's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7;
  - (ii) any interest in Cultural Land granted to the Relevant Regional Corporation terminates and reverts back to the Trustee in accordance with clause 10.3(c); and
  - (iii) any Special Projects Funding that has not been used by the Relevant Regional Corporation will be repaid to the Trustee in accordance with clause 9.2(e),

PROVIDED THAT the Trustee may (with prior written consent of the State) determine otherwise.

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#### **4.5 Eligibility to act as Regional Corporation**

- (a) Subject to clause 4.5(b), an organisation is and continues to be eligible to act as a Regional Corporation for a Region during the period that:
  - (i) it is an Aboriginal Corporation;
  - (ii) there is in place a Valid:
    - A. Agreement Group Endorsement;
    - B. State Endorsement; and
    - C. endorsement of the Commissioner of Taxation that the entity is an Eligible Charity (or is capable of being endorsed);
  - (iii) it is not suffering an Insolvency Event; and
  - (iv) it satisfies the requirements set out in the:
    - A. Regional Corporation Principles; and
    - B. Transition Principles (to the extent applicable).
- (b) An organisation ceases to be eligible to act as a Regional Corporation for a Region on the day the Trustee receives an ILUA Termination Notice with respect to the relevant Agreement Group of that Region.

#### **4.6 Regional Corporation Core Functions**

- (a) In order to qualify for a Distribution of Operations Funding each Financial Year, the Trustee must be satisfied that a Regional Corporation is in a position to offer and deliver the Regional Corporation Core Functions in accordance with Schedule 3.
- (b) Subject to clause 4.6(a) and having regard to the Annual Budget and the Annual ENE Allocation, the Trustee must Distribute Operations Funding to a Regional Corporation each Financial Year that in the opinion of the Trustee is sufficient to enable the Regional Corporation to offer and deliver the Regional Corporation Core Functions during that Financial Year in accordance with the requirements in Schedule 3.

#### **4.7 Regional Corporation Special Purpose Report**

- (a) Subject to clause 4.7(c), the Trustee may require a Special Purpose Report from the Regional Corporation, at the Regional Corporation's cost, in respect of a Financial Year.
- (b) The Special Purpose Report must include:
  - (i) the Regional Corporation's activities for the previous Financial Year;
  - (ii) details of the services provided by the Regional Corporation to the Noongar Community in the Region in the previous Financial Year;

- (iii) information as to how the funds received by the Regional Corporation from the Trust were used to advance the objects of the Regional Corporation and the Trust Purpose;
  - (iv) details of all Special Projects undertaken by the Regional Corporation in the previous Financial Year and whether or not those Special Projects have been completed;
  - (v) a statement from the Regional Corporation regarding the Regional Corporation's expenditure as against the Regional Corporation's budget for the previous Financial Year and, to the extent the expenditure exceeded the budget, a report on the steps that will be taken to reduce the Regional Corporation's expenditure; and
  - (vi) a copy of the Regional Corporation's financial statements for the previous Financial Year.
- (c) The Trustee may rely on the Regional Corporation's audited annual reports that, in the Trustee's reasonable opinion, adequately address the matters in clause 4.7(b).

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## 5. Appointment of CSC

### 5.1 Nomination and Appointment

- (a) Subject to clause 5.1(c) and on receipt of an ENE Nomination, the Trustee must if it is satisfied that the nominated entity is eligible under clause 5.4, appoint the nominated entity as the CSC by an ENE Appointment Notice.
- (b) If the Trustee in its absolute discretion considers that an initial CSC is unlikely to be appointed within 6 months of the date of this Deed then until such time as a CSC is appointed (**Interim Period**):
  - (i) the Trustee may establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 and to nominate for appointment as the CSC;
  - (ii) in order to advance the vital operations of the Trust:
    - A. the Trustee may with the consent of the State appoint an entity as the **Interim CSC**;
    - B. the Interim CSC will exercise such functions and deliver such services of the CSC as the Trustee in its absolute discretion determines, including facilitating the Noongar Corporations Committee;
    - C. the Trustee can meet its obligations under the Trust Deed to consult with or obtain the consent of the CSC, by consulting with and obtaining the consent of the Noongar Advisory Company; and
    - D. the Trustee may Apply any part of the Operations Funding in giving effect to this clause 5.1(b)(ii).
- (c) At any one time, the Trustee may only support the establishment and operation of one entity as the CSC.

### 5.2 Ceasing to be eligible to act as CSC

- (a) Where the CSC ceases to meet one or more of the eligibility requirements in clause 5.4 for any reason, the Trustee must:
  - (i) issue an ENE Default Notice which must state the:
    - A. reasons the CSC has ceased to meet the eligibility requirements under clause 5.4;
    - B. actions the CSC must undertake to rectify or remedy the matters giving rise to the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion; and
    - C. latest time by which the CSC must satisfy the ENE Default Notice, as determined by the Trustee (acting reasonably) in its absolute discretion;

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- (ii) as far as is practicable and in its discretion, provide assistance to the CSC or an administrator appointed under the CATSI Act to the CSC to enable the CSC to comply with an ENE Default Notice, with a view to avoiding the need to establish and approve a replacement CSC; and
  - (iii) if the CSC fails to comply with an ENE Default Notice, terminate the appointment of the CSC by issuing an ENE Termination Notice to the CSC.
- (b) Where the CSC has ceased to exist and until such time as a new CSC is appointed, the Trustee may:
- (i) provide reasonable assistance to the Agreement Groups (including through their Regional Corporations) to establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 and to nominate for appointment as the CSC;
  - (ii) directly or through an entity engaged by the Trustee, perform such functions and deliver such services of the CSC as the Trustee determines in its absolute discretion is reasonably necessary to advance the vital operations of the Trust;
  - (iii) in giving effect to clauses 5.2(b)(i) and 5.2(b)(ii), Apply any part of the Operations Funding (including any funds held or previously held in an ENE Operations Account or ENE Distributions Account in respect of the CSC); and
  - (iv) meet its obligations under the Trust Deed to consult with or obtain the consent of the CSC, by consulting with and obtaining the consent of the Noongar Advisory Company.

### 5.3 ENE Termination Notice

Where the Trustee has terminated the appointment of the CSC by an ENE Termination Notice under clause 5.2(a)(iii), the Trustee must:

- (a) cease to maintain the ENE Operations Account for the CSC in accordance with clause 8.3(f);
- (b) suspend payment of all Distributions to the CSC in accordance with clause 17.7, and otherwise exercise the rights of the Trustee to ensure that the CSC does not receive Distributions;
- (c) take all reasonable steps to ensure that:
  - (i) the CSC's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7; and
  - (ii) any Special Projects Funding that has not been used by the CSC will be repaid to the Trustee in accordance with clause 9.2(e),

PROVIDED THAT the Trustee may (with prior written consent of the State) determine otherwise.

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#### **5.4 Eligibility to act as CSC**

An organisation is and continues to be eligible to act as the CSC during the period that:

- (a) it is an Aboriginal Corporation;
- (b) there is in place a Valid:
  - (i) State Endorsement;
  - (ii) endorsement of the Commissioner of Taxation that the entity is an Eligible Charity (or is capable of being endorsed); and
  - (iii) endorsement from a majority of the Regions which must comprise in respect of each Region:
    - A. written endorsement of the Relevant Regional Corporation; or
    - B. where there is no Relevant Regional Corporation, an Agreement Group Endorsement from the relevant Agreement Group.
- (c) it is not suffering an Insolvency Event; and
- (d) it satisfies the requirements set out in the:
  - (i) CSC Principles; and
  - (ii) Transition Principles (to the extent applicable).

#### **5.5 CSC Services**

- (a) In order to qualify for a Distribution of Operations Funding each Financial Year, the Trustee must be satisfied that the CSC is in a position to deliver the CSC Core Services, and to offer and deliver the CSC Regional Services to the Regional Corporations in accordance with Schedule 2.
- (b) Subject to clause 5.5(a) and having regard to the Annual Budget and the Annual ENE Allocation, the Trustee must Distribute Operations Funding to the CSC each Financial Year that in the opinion of the Trustee is sufficient to enable the CSC to:
  - (i) deliver the CSC Core Services; and
  - (ii) offer and deliver the CSC Regional Services to the Regional Corporations during that Financial Year in accordance with the requirements in Schedule 2.
- (c) The Trustee must not Distribute Operations Funding to the CSC for the provision of the CSC Optional Services to the Regional Corporations.

#### **5.6 CSC Special Purpose Report**

- (a) Subject to clause 5.6(c), the Trustee may require a Special Purpose Report from the CSC, at the CSC's cost, in respect of a Financial Year.

- (b) The Special Purpose Report must include:
- (i) the CSC's activities for the previous Financial Year;
  - (ii) details of the CSC Core Services provided by the CSC to or on behalf of the Noongar Community in the previous Financial Year;
  - (iii) details of the CSC Regional Services provided by the CSC to each of the Regional Corporations in the previous Financial Year;
  - (iv) details of the CSC Optional Services provided by the CSC to each of the Regional Corporations and the Noongar Community in the previous Financial Year;
  - (v) a statement from the CSC regarding the CSC's expenditure as against the CSC's budget for the previous Financial Year and, to the extent the expenditure exceeded the budget, a report on the steps that will be taken to reduce the CSC's expenditure; and
  - (vi) a copy of the CSC's financial statements for the previous Financial Year.
- (c) The Trustee may rely on the CSC's audited annual reports that, in the Trustee's reasonable opinion, adequately address the matters in clause 5.6(b).

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## 6. Trust Fund

### 6.1 Meaning of Trust Fund

- (a) **Trust Fund** means:
- (i) the Settled Sum;
  - (ii) all Contributions, interests in land and Management Orders paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
  - (iii) all accretions to the Trust Fund;
  - (iv) all accumulations of income; and
  - (v) the money, investments, property, interests in land and Management Orders from time to time representing the above or into which they are converted,

and includes any Sub Fund and any part of the Trust Fund.

- (b) The State will make the **State Contribution** and transfer the Noongar Land Estate to the Trust Fund in accordance with the ILUAs and the Trustee agrees to accept the State Contribution and the Noongar Land Estate as part of the Trust Fund for the Trust Purpose and subject to the **State Contribution Condition**.
- (c) With the Trustee's consent, any Contributions, interests in land and Management Orders may be paid or transferred to, vested in and accepted by the Trustee as an addition to the Trust Fund and are to be held by the Trustee as part of the Trust Fund.

### 6.2 Trust Sub Funds

In accordance with clause 6.3, the Trustee must establish the following Sub Funds to hold that part of the State Contribution identified in the ILUAs for contribution to the relevant Sub Funds:

- (a) **Noongar Future Fund**, administered in accordance with clause 7;
- (b) **Operations Fund**, administered in accordance with clause 8;
- (c) **Cultural Land Fund**, administered in accordance with clause 10;
- (d) **Development Land Fund**, administered in accordance with clause 11; and
- (e) **Housing Land Fund**, administered in accordance with clause 12.

### 6.3 Sub Fund Administration

- (a) In addition to the Sub Funds established under clause 6.2, the Trustee:
- (i) must establish the **Special Projects Fund**, administered in accordance with clause 9; and



- 
- (ii) may in the Trustee's absolute discretion, establish a Sub Fund for any part of the Trust Fund and may determine a name for any Sub Fund for ease of management and identification provided that the Sub Fund:
    - A. is held and Applied by the Trustee at the sole discretion of the Trustee and exclusively for the Trust Purpose in accordance with the provisions of this Deed; and
    - B. forms part of the Trust Fund and does not form a separate fund.
  - (b) Any Sub Fund vested in or established by the Trustee forms part of the Trust Fund but, for the purposes of identification only, the Trustee may maintain separate management accounts for each Sub Fund, its income, any payments and the application of its income or capital.
  - (c) The Trustee must compile separate reports and audited accounts for each of the Sub Funds in a similar manner and at least in the same detail required for the Trust Fund.

#### 6.4 State Contribution Condition and Charge

- (a) The Trustee accepts the State Contribution subject to the condition (**State Contribution Condition**) that the Trustee will be required to repay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State in the circumstances set out in clause 6.4(b), in accordance with the terms set out in clauses 6.4(c) – 6.4(h).
- (b) If the Trustee receives:
  - (i) an ILUA Termination Notice at any time prior to the Conditional Period Expiry Date it will, by no later than the date that is 120 days after receipt (or if that date is not a Business Day, the next succeeding Business Day) pay to the State an amount (represented by cash or property) equal to the ILUA Termination Amount specified in that notice; or
  - (ii) an Indemnified Amount Notice at any time it will, by no later than 120 days after receipt (or if that date is not a Business Day, the next succeeding Business Day) pay to the State an amount (represented by cash or property) equal to the amount payable under the Indemnified Amount Notice.
- (c) Payments of cash made to the State under this clause 6.4 must be made in immediately available funds by 12 noon on the due date to the account of the State specified in the ILUA Termination Notice or Indemnified Amount Notice.
- (d) The Trustee acknowledges that there can be more than one ILUA Termination Notice or Indemnified Amount Notice on issue at any one time or from time to time.
- (e) The Trustee is not bound to enquire whether or not any ILUA Termination Notice was served in accordance with the terms of the Relevant ILUA (however this does not limit the Trustee's discretion to do so).

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- (f) The Trustee's obligations under this clause 6.4 are unconditional and irrevocable and the Trustee will be bound to comply with those obligations despite any instructions to the contrary from any person which is or purports to be an Eligible Noongar Entity.
  - (g) In support of its obligations under this clause 6.4, the Trustee must within 60 days of the date of this Trust Deed, or such other time as agreed in writing with the State, grant a security interest over its right title and interest in the Noongar Future Fund and the Operations Fund in favour of the State in a form acceptable to the State in its absolute discretion.
  - (h) The security interest pursuant to clause 6.4(g) must be expressed to be released automatically on the Conditional Period Expiry Date with respect to an ILUA Termination Amount, however it will not be released on the Conditional Period Expiry Date with respect to an amount payable under an Indemnified Amount Notice.

## 6.5 Role of the State

In accordance with the ILUAs, the State and the Agreement Groups have various rights and obligations to each other that relate to the Trust. The Trustee recognises the special role of the State in relation to the Trust and in particular that:

- (a) the Trustee must obtain the State's prior written **consent** in relation to the following matters:
  - (i) upon the issue of an ENE Termination Notice, determining whether the matters contained in clauses:
    - A. 4.4(a) – (c) will apply to the Relevant Regional Corporation; or
    - B. 5.3(a) – (c) will apply to the CSC;
  - (ii) Modifying the Future Fund Capital Base under clause 7.4;
  - (iii) accessing the Future Fund Capital Base under clause 7.5;
  - (iv) accessing the income or capital of the Noongar Future Fund under clause 7.2(b);
  - (v) appointing a Dedicated Trustee under clause 13;
  - (vi) approving that the Noongar Advisory Company is not required where the Trustee is a Dedicated Trustee under clause 14.3(a);
  - (vii) Modifying the Funding Guidelines under clause 17.11(d);
  - (viii) determining the minimum percentage of the State Contribution to the Operations Fund available for allocation to the Regional Corporations under clause 18.3(d)(vi);
  - (ix) Modifying this Deed under clause 27(c);
  - (x) winding up or terminating the Trust under clause 28.2(a)(ii); and

- (xi) applying any assets of the Trust Fund following winding up under clause 28.2(b)(ii); and
- (b) the Attorney-General, as one of the Appointors, must act jointly with the Noongar Appointor to appoint and remove the Trustee as provided in clause 13.4 of this Deed.

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## 7. Noongar Future Fund

### 7.1 General Purpose of the Noongar Future Fund

- (a) In accordance with clause 6.2 the Trustee must establish a Sub Fund of the Trust Fund to be called the Noongar Future Fund to be administered in accordance with this clause 7 and otherwise in accordance with this Deed.
- (b) The general purpose of the Noongar Future Fund is to grow the capital of the Noongar Future Fund to achieve and then maintain a sustainable capital value (**Future Fund Capital Base**) in order that the income of the Noongar Future Fund may be applied towards the Trust Purpose, in perpetuity, including but not limited to the Operations Fund.

### 7.2 Accumulation during State Contribution Period

- (a) During the State Contribution Period and subject to clause 7.2(b), the Trustee must accumulate and hold in the Noongar Future Fund:
  - (i) all of the State Contributions from time to time that are received by the Trustee specifically for allocation to the Noongar Future Fund in accordance with the ILUAs;
  - (ii) such other money, property or benefits received by the Trustee that the Trustee determines to hold in the Noongar Future Fund; and
  - (iii) all of the income (including any realised capital gains) of the Noongar Future Fund.
- (b) The Trustee may Distribute the income or capital of the Noongar Future Fund during the State Contribution Period:
  - (i) for payment of the Trustee's remuneration or reasonable costs and expenses under clause 23 relating to the Noongar Future Fund; or
  - (ii) if the Trustee determines that it is in the best interests of the Trust, having regard to the Trust Purpose and with the consent of the:
    - A. Noongar Advisory Company;
    - B. Noongar Relationship Committee;
    - C. Investment Committee; and
    - D. State.

### 7.3 Distributions after the State Contribution Period

In respect of each Financial Year following the State Contribution Period, the Trustee may, subject to clause 7.5, transfer so much of the income or capital of the Noongar Future Fund that exceeds the Future Fund Capital Base for that Financial Year to the Operations Fund or Special Projects Fund for Distribution by the Trustee in accordance with clause 17.

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#### **7.4 Future Fund Capital Base**

- (a) The Future Fund Capital Base for the first Financial Year commencing after the end of the State Contribution Period is 90% of the total value of the Future Fund as at the end of the State Contribution Period.
- (b) The Future Fund Capital Base must be adjusted at the end of each Financial Year from the end of the State Contribution Period by multiplying the Future Fund Capital Base at the end of the previous Financial Year by the current Consumer Price Index for that Financial Year and dividing it by the Consumer Price Index of the previous Financial Year.
- (c) Having regard to clause 7.1, the Trustee may Modify the Future Fund Capital Base if the Trustee determines it is in the best interests of the Trust having regard to the Trust Purpose and:
  - (i) in consultation with the:
    - A. Noongar Relationship Committee;
    - B. Investment Committee; and
    - C. Noongar Advisory Company;
  - (ii) with the consent of the State; and
  - (iii) provided that the details of the Modified Future Fund Capital Base are provided to the:
    - A. Noongar Relationship Committee;
    - B. Investment Committee;
    - C. State; and
    - D. Noongar Advisory Company.

#### **7.5 Restricted Access to Future Fund Capital Base after State Contribution Period**

Having regard to clause 7.1, and subject to clause 7.4, the Trustee must not Distribute the Future Fund Capital Base unless the Trustee determines that it is in the best interests of the Trust, having regard to the Trust Purpose and with the consent of the:

- (a) Noongar Advisory Company;
- (b) Noongar Relationship Committee;
- (c) Investment Committee; and
- (d) State.

#### **7.6 Investment of Noongar Future Fund**

The Trustee may only invest the Noongar Future Fund in accordance with the Investment Policy or Default Investment Policy having regard to the general purpose

of the Noongar Future Fund as set out in clause 7.1 and the borrowing restrictions set out in Schedule 5(e).

#### **7.7 Management Account for Sub Funds**

For the purpose of identification only, the Trustee may maintain separate management accounts within the Noongar Future Fund in order to identify State Contributions made in connection with the ILUAs from other funds received by the Trustee from time to time.

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## 8. Operations Fund

### 8.1 General Purpose of the Fund

- (a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Operations Fund to be administered in accordance with this clause 8 and otherwise in accordance with this Deed.
- (b) The Operations Fund is to be held and managed by the Trustee:
  - (i) for the purpose of providing funding to the Eligible Noongar Entities to ensure they are adequately resourced to pursue their constitutional objects and achieve their goals set out in annual plans; and
  - (ii) in such a way that the Trustee is in a position to provide funding to the Eligible Noongar Entities in perpetuity, recognising that the Trust Fund is intended to benefit both current and future generations of the Noongar Community through the successful operations of the Eligible Noongar Entities.

### 8.2 General Rules

- (a) The Operations Fund may be Distributed by the Trustee only for Operations Funding.
- (b) **Operations Funding** comprises:
  - (i) funding available for contributing towards the operational and administrative expenditure of the Eligible Noongar Entities, being the expenditure reasonably budgeted by an Eligible Noongar Entity to pursue its constitutional objects including the expenditure associated with the Eligible Noongar Entity's compliance with the ILUA; and
  - (ii) in the case of the CSC, the expenditure reasonably budgeted for the purpose of providing the CSC Core Services and CSC Regional Services (regardless of whether all of the CSC Regional Services are used by all of the Regional Corporations).

### 8.3 ENE Operations Account

- (a) The Trustee must establish and maintain a management account within the Operations Fund in respect of each Eligible Noongar Entity (**ENE Operations Account**) provided that each ENE Operations Account:
  - (i) is held and applied by the Trustee at the sole discretion of the Trustee and exclusively for the Trust Purpose in accordance with the provisions of this Deed;
  - (ii) forms part of the Trust Fund and does not form a separate fund; and
  - (iii) may be named by the Trustee so as to identify the ENE Operations Account with the relevant Eligible Noongar Entity.
- (b) When exercising the Trustee's discretion to make a Distribution under clause 17, Distributions of Operations Funding to an Eligible Noongar Entity must

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only be sourced from the relevant ENE Operations Account, except where clauses 4.2(b)(iii) or 5.2(b)(iii) apply.

- (c) Where at the end of a Financial Year there are funds remaining in an ENE Operations Account, those funds will accumulate in that ENE Operations Account and are otherwise held in accordance with this clause 8.3.
- (d) If an Eligible Noongar Entity is removed and replaced in accordance with clauses 4 or 5 with a replacement Eligible Noongar Entity, then the ENE Operations Account identified with that Eligible Noongar Entity shall be available for Distributions to the replacement Eligible Noongar Entity.
- (e) If at any time in respect of a Region there is an Agreement Group but no Relevant Regional Corporation;
  - (i) the Trustee may establish and maintain an ENE Operations Account with respect to that Agreement Group; and
  - (ii) the funds in the ENE Operations Account will accumulate and are otherwise held in accordance with this clause 8.3 to be available for future Distributions to the Relevant Regional Corporation.
- (f) Where the Trustee has issued an ENE Termination Notice in respect of an Eligible Noongar Entity, the Trustee will cease to maintain the ENE Operations Account for the Eligible Noongar Entity and any funds in that ENE Operations Account will be treated as unallocated Operations Funding.

#### **8.4 Applying for Operations Funding**

- (a) Applications for Distributions for Operations Funding from the Operations Fund are considered by the Trustee in its absolute discretion in accordance with clause 17 and no Eligible Noongar Entity is entitled to any guaranteed minimum annual Distribution.
- (b) Distributions for Operations Funding must be made annually and paid by instalments once every 3 months except:
  - (i) in exceptional circumstances; and
  - (ii) following consultation with the Noongar Advisory Company.



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## 9. Special Projects Fund

### 9.1 General Purpose of the Fund

- (a) In accordance with clause 6.3, the Trustee must establish a Sub Fund of the Trust Fund to be called the Special Projects Fund to be administered in accordance with this clause 9 and otherwise in accordance with this Deed.
- (b) Where the Trustee accepts a Contribution from a Contributor in accordance with clause 2.1(c), the Contribution may be held and managed in the Special Projects Fund, provided that the income or capital or both:
  - (i) will be held on the terms of this Deed; and
  - (ii) must be applied in furtherance of the Trust Purpose.
- (c) The Trustee must, when administering the Special Projects Fund, have regard to the requests or recommendations of a Contributor in relation to a Contribution.
- (d) The Trustee may from time to time develop:
  - (i) specific Special Projects to be funded by Distribution to one or more Eligible Noongar Entities from the Special Projects Fund; and
  - (ii) principles or guidelines that apply to those Special Projects (**Special Project Guidelines**).

### 9.2 General Rules

- (a) The Special Projects Fund may be Distributed by the Trustee for Special Projects Funding comprising funding of Special Projects to be undertaken by the Eligible Noongar Entities as identified:
  - (i) as being Special Projects that either the Eligible Noongar Entity or the Trustee have determined are outside of the Eligible Noongar Entity's usual operations or activities;
  - (ii) for which specific Special Project Guidelines may have been determined; and
  - (iii) taking into account the factors set out in clause S1.2.3,  
**(Special Projects Funding)**.
- (b) The Trustee shall determine the Annual Special Projects Budget and distributions from the Special Projects Fund in its absolute discretion in accordance with clauses 17 and 18 and no Eligible Noongar Entity is entitled to any guaranteed minimum annual Distribution.
- (c) Distributions of Special Projects Funding may be made at any time to the Eligible Noongar Entities in the Trustee's discretion.

- (d) Where an Eligible Noongar Entity receives a Distribution from the Special Projects Fund, the Trustee may require that an Eligible Noongar Entity undertake the Special Project in accordance with any relevant Special Project Guidelines.
- (e) Without limiting clause 9.2(d), where an Eligible Noongar Entity receives a Distribution from the Special Projects Fund, the Trustee must make that Distribution on the condition that where the Trustee has issued an ENE Termination Notice in respect of that Eligible Noongar Entity, any Special Projects Funding that has not been used by the Eligible Noongar Entity at the time of that event occurring will be repaid to the Trustee.

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## 10. Cultural Land Fund

### 10.1 General Purpose of the Cultural Land Fund

- (a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Cultural Land Fund to be administered in accordance with this clause 10 and otherwise in accordance with this Deed.
- (b) The Trustee acknowledges that the members of the Noongar Community remain the spiritual and cultural custodians of the Cultural Land and continue to practise their values, languages, beliefs and knowledge in relation to the Cultural Land.

### 10.2 Accepting Land into the Cultural Land Fund

- (a) Subject to clause 10.2(b), at the request of an Eligible Noongar Entity or an Agreement Group, or as required under an ILUA, the Trustee may accept any estate, right or interest in land or Management Order and hold and manage that land or Management Order as Cultural Land in the Cultural Land Fund in consultation with and on the recommendation of one or more Relevant Regional Corporations (if there is one).
- (b) In consultation with the Noongar Advisory Company, where the Trustee accepts any estate, right or interest in land or Management Order to be held in the Cultural Land Fund, the Trustee must clearly identify:
  - (i) the estate, right or interest in land or Management Order that is accepted by the Trustee as Cultural Land;
  - (ii) the Region or Regions in which that Cultural Land is located; and
  - (iii) the Relevant Regional Corporation or Corporations (if any) that is acting for the relevant Agreement Group or Agreement Groups in relation to that Cultural Land,

and must give written notice of those matters to the Noongar Relationship Committee.

### 10.3 Holding Cultural Land

- (a) The Trustee must, subject to the Title Protection Criteria and the conditions imposed by the Minister for Lands pursuant to section 46(1) of the *Land Administration Act 1997* (WA):
  - (i) at the request of a Relevant Regional Corporation and subject to clause 10.3(b), grant the Relevant Regional Corporation an interest over the whole or any part of the Cultural Land:
    - A. in the form of a lease or sublease, licence or other form of legal or equitable tenure;
    - B. in compliance with any applicable requirements under the *Land Administration Act 1997* (WA) and any conditions imposed by the Minister for Lands on the grant of the interest on the

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- Trustee or on the Land Sub in the case of a Management Order; and
- C. otherwise on such terms and conditions as the Trustee deems appropriate; and
- (ii) otherwise hold and manage the Cultural Land:
- A. in consultation with the Relevant Regional Corporation (if there is one); and
- B. by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and
- (iii) prior to making any Cultural Land Development Decision in relation to Cultural Land in a Region, consult with the Relevant Regional Corporation (if there is one).
- (b) In exercising its powers under clause 10.3(a)(i), the Trustee:
- (i) may consult with and consider the recommendations of the Noongar Advisory Company; and
- (ii) must be satisfied that the grantee of an interest in Cultural Land:
- A. complies with the Title Protection Criteria;
- B. can meet the outgoings and costs of maintaining the interest in the Cultural Land; and
- C. reports to the Trustee in such form and at such times as the Trustee determines in its discretion but at least once annually.
- (c) For the purposes of this clause 10.3, the **Title Protection Criteria** are:
- (i) the Cultural Land must be held by the Trustee and managed in consultation with the Relevant Regional Corporation;
- (ii) subject to clause 10.4, title to the Cultural Land will be held in perpetuity by the Trustee; and
- (iii) any interest in the Cultural Land granted under this clause 10.3 must:
- A. not be capable of alienation by sale, transfer, assignment or other disposal by the Relevant Regional Corporation or be made subject to any encumbrance, mortgage, charge or other security; and
- B. be granted on the condition that the interest will automatically terminate if an ENE Termination Notice is issued in respect of the Relevant Regional Corporation.

#### **10.4 Conversion to Development Land**

- (a) Notwithstanding the provisions of this clause 10, the Trustee may reclassify Cultural Land other than land the subject of a Management Order as Development Land:
  - (i) only at the request of the Relevant Regional Corporation;
  - (ii) following consultation with the Noongar Advisory Company; and
  - (iii) with an Agreement Group Endorsement.
- (b) Upon reclassification under this clause 10.4, the reclassified Cultural Land shall be treated as Development Land pursuant to clause 11.

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## 11. Development Land Fund

### 11.1 General Purpose of the Development Land Fund

- (a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Development Land Fund to be administered in accordance with this clause 11 and otherwise in accordance with this Deed.
- (b) The **Development Land Fund** includes any interest in land accepted by the Trustee as Development Land, including:
  - (i) any interest in land identified in the ILUAs or by the Agreement Groups in accordance with the ILUAs, as being land that is appropriate for Property Development Activities or passive property investment activities such as leasing; and
  - (ii) any interest in Cultural Land that is reclassified as Development Land under clause 10.4.
- (c) The Net Proceeds of Property Development Activities are returned to, and remain part of, the Development Land Fund to be Applied by the Trustee for the Trust Purpose, having regard to clause 11.5.
- (d) For the purpose of this clause 11, **Property Development Activities** means property development or redevelopment activities, commercial exploitation or sale in relation to Development Land (either sole purpose or multi purpose), but does not include passive property investment activities such as leasing.

### 11.2 Development Process

- (a) The Trustee must hold, manage, invest and exploit the Development Land as follows:
  - (i) in consultation with the Investment Committee (if there is one);
  - (ii) by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and
  - (iii) by ensuring that Property Development Activities are undertaken by one or more Noongar Boodja Development Corporations.
- (b) The Trustee is not permitted to Distribute the Development Land pursuant to clause 17 or otherwise.

### 11.3 Consultation with Regional Corporations

- (a) The Trustee:
  - (i) acknowledges that:
    - A. all Development Land forms part of the Noongar Boodja Traditional Lands associated with one or more Regions and one or more Regional Corporations;

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- B. all land, including Development Land, is important to the Noongar Community; and
  - (ii) will consult with the Relevant Regional Corporation (if there is one) at least once each Financial Year in relation to all Development Land within the Region.
  - (b) Prior to making any Decision to Proceed in relation to Development Land in a Region, the Trustee must consult with the Relevant Regional Corporation (if there is one).

#### 11.4 Noongar Boodja Development Corporations

- (a) Having regard to the Trust Purpose and the general purposes of the various Sub Funds, the Trustee is prohibited from undertaking Property Development Activities otherwise than by one or more separate entities.
- (b) The Trustee may in consultation with the Noongar Advisory Company establish one or more Noongar Boodja Development Corporations to undertake Property Development Activities.
- (c) The transfer, sale or making available of Development Land to a Noongar Boodja Development Corporation for Property Development Activities must be subject to the Investment Policy or Default Investment Policy (as the case requires) and clause 19.3(d).

#### 11.5 Net Proceeds of Property Development Activities

- (a) For the purpose of this clause, **Net Proceeds** means an amount calculated using the following formula:

$$GP - C = \text{Net Proceeds}$$

where:

**GP** is the gross proceeds of sale arising from the Property Development Activity; and

**C** means the costs and expenses of the Trustee related to the Property Development Activity (such as costs of conducting the development, agent's fees and any land tax etc.) but does not include the value of the land on which the Property Development Activity is conducted to the extent that the land is received by the Trustee as part of the Noongar Land Estate.

- (b) The Trustee must allocate some or all of the Net Proceeds as follows:
    - (i) 10% to remain in the Development Land Fund, if the Trustee considers in its absolute discretion that it is appropriate to do so;
    - (ii) to the Noongar Future Fund, where the Net Proceeds of the Property Development Activities have arisen from Development Land that was accepted by the Trustee specifically for the purpose of increasing the Noongar Future Fund;
    - (iii) to a specific Sub Fund, where the Net Proceeds are derived from land accepted by the Trustee pursuant to clause 6.1(c) from a Contributor
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for a particular purpose that is consistent with the Trust Purpose and held in that same Sub Fund for that purpose pursuant to clause 6.3(a)(ii);

- (iv) as the Trustee determines in consultation with the:
  - A. Noongar Advisory Company;
  - B. Noongar Relationship Committee; and
  - C. State, during the State Contribution Period; and
- (v) where the Property Development Activity relates to land located within a Region, and unless the Trustee determines otherwise in accordance with clauses 11.5(b)(i) – (iv):
  - A. 10% to the ENE Operations Account for the Relevant Regional Corporation of the Region;
  - B. 15% to be shared equally amongst the remaining ENE Operations Accounts; and
  - C. 75% to the Noongar Future Fund.



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## 12. Housing Land Fund

### 12.1 General Purpose of the Housing Land Fund

- (a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Housing Land Fund to be administered in accordance with this clause 12 and otherwise in accordance with this Deed.
- (b) The general purpose of the Housing Land Fund is for the Trustee to hold, manage, invest and develop the Housing Land in a manner that aims to achieve improved housing outcomes for the Noongar Community.

### 12.2 Housing Land

- (a) The Housing Land Fund consists of any interest in land accepted by the Trustee to be held in the Housing Land Fund, including the Noongar Housing Land.
- (b) The Trustee must hold, manage, invest and develop the Housing Land as follows:
  - (i) in consultation with the Investment Committee (if there is one) and the Noongar Advisory Company;
  - (ii) appointing one or more suitably qualified housing management companies to manage the housing stock under an appropriate service contract;
  - (iii) by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and
  - (iv) where the Trustee deems it appropriate, by ensuring that Housing Land Development Activities in the nature of commercial development are undertaken by one or more Noongar Boodja Development Corporations.
- (c) The net proceeds of the Housing Land Development Activities must be allocated to the Housing Land Fund to be administered in accordance with clause 12 and otherwise in accordance with this Deed.
- (d) **Housing Land Development Activities** means:
  - (i) refurbishment or redevelopment of dwellings on Housing Land;
  - (ii) sale or commercial exploitation of Housing Land; and
  - (iii) management of rental properties on Housing Land.

### 12.3 Consultation with Regional Corporations

- (a) The Trustee acknowledges that all Housing Land forms part of the Noongar Boodja Traditional Lands associated with one or more Regions and one or more Regional Corporations.

- (b) Prior to making any Decision to Proceed in relation to any interest in the Housing Land in a Region, the Trustee must consult with the Relevant Regional Corporation, if there is one.

#### **12.4 Role of CSC in Housing Land Fund**

The Trustee may engage the CSC to deliver any or all of the Housing Land Development Activities on such terms and conditions as the Trustee may agree.

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## 13. Trustee

### 13.1 Initial Trustee

The first trustee of the Trust is [Name of Professional Trustee Company].

### 13.2 Eligibility

#### 13.2.1 Type of Trustee

The Trustee must be:

- (a) a Professional Trustee Company during the State Contribution Period; and
- (b) either a Professional Trustee Company or a Dedicated Trustee after the State Contribution Period.

#### 13.2.2 General Requirements

The Trustee must at all times:

- (a) either satisfy the requirements set out in the definition of a Professional Trustee Company or the Dedicated Trustee Requirements, as the case may be;
- (b) maintain and act in accordance with a Reconciliation Action Plan that includes an Indigenous employment strategy or policy;
- (c) maintain an office in Perth that is operated on a full time basis by the Trustee's employees or officers; and
- (d) provide a senior executive employee or officer dedicated to the Trust on a full time basis:
  - (i) with appropriate skill and expertise, having regard to the value of the Trust Fund and the responsibilities of the Trustee as provided for in this Deed; and
  - (ii) that is otherwise objectively capable of maintaining a senior management position in a comparable organisation.

#### 13.2.3 Additional requirements of a Dedicated Trustee

A Dedicated Trustee must:

- (a) meet the Dedicated Trustee Requirements immediately prior to being appointed as Dedicated Trustee and at all times whilst acting as Dedicated Trustee;
- (b) subject to clause 13.2.1(a), only be appointed at the end of a Financial Year, unless otherwise agreed with the Trustee;
- (c) subject to clause 13.2.1(a), only be appointed as Dedicated Trustee not less than 2 years after being proposed by the Noongar Corporations Committee; and

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- (d) at all times whilst in office as the Dedicated Trustee, appoint a Professional Trustee Company as Custodian Trustee in accordance with Schedule 10.

#### 13.2.4 Transition to a Dedicated Trustee

If the Trustee is a Professional Trustee Company and the Trustee receives a written request from the Noongar Corporations Committee at any time being at least 9 years after the commencement of the Trust, the Trustee must:

- (a) in consultation with the Noongar Corporations Committee, assist the Noongar Community to establish or select an entity to be a Nominee Entity and assist that Nominee Entity to meet the Dedicated Trustee Requirements;
- (b) in consultation with the Noongar Corporations Committee and the Nominee Entity, prepare an implementation plan for the Nominee Entity to become a Dedicated Trustee;
- (c) identify, train and otherwise engage with appropriate members of the Noongar Community as may be identified by the Noongar Corporations Committee, to assist those persons to meet the requirements to become directors or employees of the Dedicated Trustee;
- (d) consider funding and supporting the Nominee Entity during the transition process;
- (e) convene and hold quarterly briefing meetings between the Trustee and the Nominee Entity for the purpose of informing the Nominee Entity about the operations of the Trust and assisting the Nominee Entity to understand and gain experience in the functions of the Trustee;
- (f) obtain the prior written consent of the State for the Nominee Entity to be appointed as Dedicated Trustee;
- (g) notify the Appointors when the Trustee considers that the Nominee Entity has met the Dedicated Trustee Requirements; and
- (h) assist with an effective transition of the Nominee Entity to a Dedicated Trustee.

### 13.3 Appointors

- (a) The Appointors are the following persons, acting jointly:
- (i) the Attorney General; and
- (ii) a person appointed from time to time in writing by the Noongar Corporations Committee (**Noongar Appointor**).
- (b) The Noongar Corporations Committee must appoint a person as the Noongar Appointor within 3 months of that position becoming vacant, failing which the Noongar Advisory Company may do so.
- (c) The Trustee is entitled to rely on a document signed by the chairperson of the Noongar Corporations Committee as evidence of the appointment of the Noongar Appointor.

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### 13.4 Appointment and Removal of Trustee

- (a) Subject to this clause 13.4, the Appointors, acting jointly, shall have the power by instrument in writing at any time to:
  - (i) remove the Trustee;
  - (ii) appoint any additional Trustee or Trustees that complies with the qualifications described in clause 13.2; and
  - (iii) appoint a new Trustee or Trustees that complies with the qualifications described in clause 13.2 in the place of any Trustee who resigns or ceases to be a Trustee by operation of law.
- (b) Before exercising the Appointors' powers in clause 13.4(a), the Appointors must consult with the:
  - (i) Noongar Advisory Company; and
  - (ii) existing Trustee.
- (c) Upon receipt of a notice from the Trustee pursuant to clause 13.2.4(g), the Appointors must:
  - (i) assess, acting reasonably, whether the Nominee Entity meets the Dedicated Trustee Requirements; and
  - (ii) provide the Nominee Entity with written reasons sufficient to enable the Nominee Entity to identify and remedy those matters preventing its appointment, if the Appointors elect not to appoint a Nominee Entity as Dedicated Trustee.
- (d) Before the Appointors remove a Trustee, the Appointors must consider, in their absolute discretion, whether the Trustee has breached or has failed to act satisfactorily in accordance with this Deed.
- (e) At the request of the Appointors, or where the Trustee wishes to resign, the Trustee must conduct an appropriate selection process for a replacement trustee in consultation with the Noongar Advisory Company and the Appointors.
- (f) If at any time there is no Trustee, the Appointors must conduct the selection process for a replacement trustee in consultation with the Noongar Advisory Company.
- (g) Upon exercise of the Appointors' powers above, incoming and outgoing trustees must execute a Deed of Appointment substantially in the form set out in Schedule 8, subject to any amendments necessary if the Trustee resigns or ceases to be a Trustee by operation of law.

### 13.5 Trustee ceasing to meet requirements

- (a) A "**Notifiable Event**" for the purposes of this clause occurs if the Trustee:
  - (i) ceases to satisfy one or more of the eligibility requirements in clause 13.2 for a Professional Trustee Company or Dedicated Trustee (as the case requires); or

- (ii) suffers an Insolvency Event.
- (b) Any of the following may notify the Appointors in writing if they reasonably believe a Notifiable Event has occurred in relation to the Trustee, together with sufficient written details of the Notifiable Event (**Notifiable Event Notice**):
  - (i) the Noongar Advisory Company;
  - (ii) the Noongar Corporations Committee; and
  - (iii) the State.
- (c) Upon receipt of a Notifiable Event Notice, the Appointors must engage an Expert who is Independent to promptly investigate the alleged Notifiable Event and prepare a written report (**Notifiable Event Report**) which must contain:
  - (i) a conclusion as to whether a Notifiable Event has occurred;
  - (ii) the specific action required by the Trustee to rectify or remedy the circumstances that gave rise to the Notifiable Event; and
  - (iii) a reasonable deadline by which the Trustee must complete any such action, which must not be less than 7 days or greater than 60 days from the date of the Notifiable Event Report.
- (d) The Appointors must provide a copy of the Notifiable Event Report to the Trustee as soon as possible after it is completed.
- (e) If the Trustee fails to complete the appropriate action by the deadline in accordance with the Notifiable Event Report, the Appointors must meet within 7 days of the due date for that action to consider removing the Trustee pursuant to clause 13.4.
- (f) The Trustee must provide full cooperation and full disclosure to facilitate the Notifiable Event Report.

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## 14. Noongar Advisory Company

### 14.1 Establishment and Support

Subject to clause 14.3:

- (a) the Trustee must establish a wholly owned subsidiary of the Trustee having a constitution in substantially the same form as the draft in Schedule 13 (**Noongar Advisory Company**) to undertake the functions specified in this Deed; and
- (b) the Trustee must reasonably support and develop the Noongar Advisory Company to ensure, as far as practicable, that it is capable of fulfilling the purposes for which it is established.

### 14.2 Noongar Advisory Company Functions

The functions of the Noongar Advisory Company are:

(a) **General:**

- (i) assisting the Trustee to manage its relationship with, and to liaise with, the Noongar Community, the Noongar Corporations Committee, the CSC and the Regional Corporations;
- (ii) fostering mutual respect and cooperation between the Trustee, the Noongar Community, the CSC and the Regional Corporations;
- (iii) making recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Purpose and terms of this Deed generally; and
- (iv) providing guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community;

(b) **Specific:**

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

- (i) considering an Eligible Noongar Entity's performance;
- (ii) accepting Contributions into the Trust Fund;
- (iii) accessing the income or capital of the Future Fund under clause 7.2(b)
- (iv) Modifying the Future Fund Capital Base under clause 7.4(c);
- (v) Distributing capital of the Noongar Future Fund under clause 7.5;
- (vi) appointing and removing the Trustee under clause 13.4(b);
- (vii) determining the selection process for a replacement trustee under clause 13.4(e);

- (viii) consulting with the Noongar Relationship Committee on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v);
- (ix) appointing representatives to the Noongar Relationship Committee under clause 15.3(a);
- (x) determining the Annual Budget and Annual ENE Allocation under clause 18.2(a);
- (xi) reviewing and Modifying the Investment Policy under clause 19.5;
- (xii) appointing representatives of the Nominations Committee and Investment Committee;
- (xiii) formulating and reviewing the Strategic Plan under clauses 21.2 and 21.3;
- (xiv) preparing the Trustee Expense Budget under clause 23.3;
- (xv) undertaking a strategic review of the Trust under clause 26;
- (xvi) establishing any Eligible Noongar Entity, Noongar Boodja Development Corporation or other fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose;
- (xvii) Modifying this Deed under clause 27(b);
- (xviii) winding up or terminating the Trust under clause 28.2(a)(i); and
- (xix) applying any assets of the Trust Fund following winding up under clause 28.2(b)(i);

(c) **Land:**

making recommendations to or consulting with the Trustee regarding the following matters:

- (i) matters relating to, connected with or arising out of a specific Region, the Relevant Regional Corporation, Agreement Group or Noongar Boodja Traditional Lands of that Region;
- (ii) holding land in the Cultural Land Fund as contemplated under clause 10.3(b);
- (iii) identifying the Region and Relevant Regional Corporation to which Cultural Land relates under clause 10.2(b);
- (iv) reclassifying Cultural Land as Development Land under clause 10.4(a);
- (v) establishing a Noongar Boodja Development Corporation to undertake Property Development Activities under clause 11.4(b); and
- (vi) considering the allocation of Net Proceeds from Property Development Activities in relation to Development Land under clause 11.5;



(d) **Funding:**

making recommendations to or consulting with the Trustee regarding the following matters:

- (i) considering Distributions to an Eligible Noongar Entity from the Operations Fund in exceptional circumstances under clause 8.4(b);
  - (ii) considering applications for Distributions from Eligible Noongar Entities under clause 17.4;
  - (iii) placing conditions for the release of Distributions to Eligible Noongar Entities under clause 17.5; and
  - (iv) Modifying Funding Guidelines under clause 17.11; and
- (e) where there is no CSC, consulting with or providing consent to the Trustee under clauses 5.1(b)(ii)C and 5.2(b)(iv).

**14.3 Where Trustee is a Dedicated Trustee**

- (a) During any time where the Trustee is a Dedicated Trustee and subject to the written approval of the State and the Noongar Relationship Committee (which may be subsequently revoked), there is no requirement for the Noongar Advisory Company and the functions of the Noongar Advisory Company will be assumed by the Dedicated Trustee.
- (b) If the approval referred to in clause 14.3(a) is not provided or is subsequently revoked, clauses 14.1 and 14.2 will apply.

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## 15. Noongar Relationship Committee

### 15.1 General Purpose of the Noongar Relationship Committee

The general purpose of the Noongar Relationship Committee is to facilitate and streamline a process for the Trustee and the Noongar Advisory Company to have direct, regular and meaningful engagement with the Eligible Noongar Entities.

### 15.2 Functions

The Trustee must facilitate the establishment of the Noongar Relationship Committee with the following functions:

(a) **General:**

- (i) providing a forum for review of the nature and delivery of CSC Regional Services and CSC Optional Services;
- (ii) providing a forum for the CSC to review and implement a service agreement with each Regional Corporation relating to the CSC Regional Services and CSC Optional Services (if any);
- (iii) monitoring the Eligible Noongar Entities' compliance with the service agreements;
- (iv) supporting general administrative and operational matters between the Trustee, CSC and Regional Corporations;
- (v) consulting with the Trustee or Noongar Advisory Company on matters relating to the CSC and Regional Corporations generally;
- (vi) reviewing the Trustee's compliance with its obligations under this Deed, and providing recommendations to the Trustee as to how those obligations may be met;
- (vii) providing guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community; and
- (viii) providing such other general functions that the Trustee may consider appropriate from time to time;

(b) **Specific:**

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

- (i) developing, approving and updating the Code of Conduct and Policies and Procedures Manual under clause 3.2(c);
- (ii) accessing the income or capital of the Noongar Future Fund under clause 7.2(b);
- (iii) Modifying the Future Fund Capital Base under clause 7.4(c);
- (iv) Distributing the Future Fund Capital Base under clause 7.5;

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- (v) considering the allocation of net proceeds from Property Development Activities in relation to Development Land under clause 11.5.
  - (vi) consulting with the Noongar Advisory Company on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v);
  - (vii) appointing representatives on the Nominations Committee under clause 16.3(a);
  - (viii) preparing the Trustee Expense Budget under clause 23.3;
  - (ix) undertaking a strategic review of the Trust under clause 26; and
  - (x) Modifying this Deed under clause 27(b).

### **15.3 Composition**

The Noongar Relationship Committee must comprise up to 17 persons consisting of:

- (a) 3 directors of the Noongar Advisory Company nominated by the Noongar Advisory Company consisting of:
  - (i) 1 director nominated by the Trustee;
  - (ii) 1 Independent director;
  - (iii) 1 director being an Expert representative of the Noongar Community; and
- (b) the members of the Noongar Corporations Committee.

### **15.4 Meetings and Decision Making**

- (a) Decisions of the Noongar Relationship Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.
- (b) The Noongar Relationship Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.
- (c) The Trustee acknowledges that the CSC and Regional Corporations will convene the Noongar Corporations Committee without the Noongar Advisory Company representatives to address issues as between the CSC and the Regional Corporations that do not relate to the Trustee or the Noongar Advisory Company.

### **15.5 Term of appointment**

A person will continue to be a member of the Noongar Relationship Committee until the earlier of the date on which the person:

- (a) resigns;
- (b) dies;
- (c) becomes mentally incapacitated;

- (d) in the case of a member referred to in clause 15.3(a), has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 15.3(a);
- (e) in the case of a member referred to in clause 15.3(b), ceases to be a member of the Noongar Corporations Committee; or
- (f) is removed as a member in accordance with clause 15.6 or 15.7.

#### **15.6 Removing Noongar Relationship Committee members**

- (a) The Noongar Relationship Committee may by resolution remove one of its members if the person:
  - (i) fails to attend 3 consecutive Noongar Relationship Committee meetings without reasonable excuse; or
  - (ii) does an act or omission that the Noongar Relationship Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.
- (b) A person removed under this clause 15.6 is ineligible for reappointment as a member of the Noongar Relationship Committee.

#### **15.7 Withdrawal from the Noongar Relationship Committee**

Where the Trustee has issued an ENE Termination Notice in respect of an Eligible Noongar Entity, the representatives of the relevant Eligible Noongar Entity are automatically removed as members of the Noongar Relationship Committee.

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## **16. Nominations Committee**

### **16.1 General Purpose of the Nominations Committee**

- (a) The general purpose of the Nominations Committee is to facilitate and streamline the process of selecting and securing candidates for positions as directors and committee members in respect of this Trust and the Eligible Noongar Entities.
- (b) Directors of the Noongar Advisory Company and a Dedicated Trustee must be certified as eligible by the Nominations Committee in accordance with this clause 16, except in the case of the initial directors of the Noongar Advisory Company (which will be appointed in accordance with the Transition Principles).
- (c) The Nominations Committee must only act upon a direct instruction from the Trustee (which may be made upon request to the Trustee from an Eligible Noongar Entity).

### **16.2 Functions**

The Trustee must facilitate the establishment of a Nominations Committee with the following functions:

- (a) calling for nominations for appointment to the relevant boards and committees;
- (b) specifying the form in which applications must be made;
- (c) considering applications for appointment and interviewing candidates and referees;
- (d) making inquiries and investigations to confirm the eligibility of candidates for the relevant boards or committees of the Trust or Eligible Noongar Entities as the case may be;
- (e) making recommendations only to the Trustee or other relevant entity for appointments, including positions caused by casual vacancies;
- (f) acting as soon as possible upon receiving an instruction from the Trustee; and
- (g) creating a transparent and fair process for applicants and incumbent officeholders to apply for positions.

### **16.3 Composition**

- (a) The Nominations Committee must comprise 6 persons appointed by the Trustee consisting of:
  - (i) 1 person nominated by the Trustee who shall be the chair of the Nominations Committee;
  - (ii) 1 person nominated by the Noongar Relationship Committee who must not be a current director or employee of an Eligible Noongar Entity;

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- (iii) 2 representatives of the Noongar Community that have experience with directorships and boards; and
  - (iv) 2 Independent persons that have experience with directorships and boards.
- (b) The Trustee may determine the remuneration payable (if any) to the Nominations Committee.

#### **16.4 Qualifications**

Nominations Committee members must demonstrate the following qualifications:

- (a) financial literacy;
- (b) leadership experience;
- (c) absence of conflicting commitments;
- (d) has not been disqualified from managing corporations or companies;
- (e) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);
- (f) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;
- (g) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and
- (h) is not a director, officer or committee member of an Eligible Noongar Entity.

#### **16.5 Selection Process**

- (a) When selecting Nominations Committee members from the Noongar Community, the Trustee must:
  - (i) call for nominations by advertising in a range of different manners, including a suitable culturally appropriate manner; and
  - (ii) provide the Noongar Community with reasonable notice of the call for nominations.
- (b) When selecting Independent Nominations Committee members, the Trustee must call for nominations by advertising in significant online and hard copy publications in the Trustee's discretion.
- (c) When selecting the Nominations Committee members, the Trustee must in consultation with the Noongar Advisory Company:
  - (i) review the composition of the Nominations Committee to ensure that there is a balanced mix of expertise and experience;
  - (ii) develop appropriate criteria for assessing the suitability of candidates;

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- (iii) consider candidates on the basis of merit rather than any affiliation; and
  - (iv) request from candidates and third party sources sufficient information to enable the Trustee to assess the candidates' fulfilment of the qualifications in clause 16.4 and the candidates' suitability.
- (d) Candidates are preferred to be appointed to the Nominations Committee if they have:
- (i) experience working with Indigenous communities; or
  - (ii) experience with recruitment of boards or committees.

### **16.6 Meetings and Decision Making**

- (a) Decisions of the Nominations Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.
- (b) The Nominations Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

### **16.7 Term of appointment**

- (a) A person will continue to be a member of the Nominations Committee until the earlier of the:
  - (i) expiration of a period of 3 years;
  - (ii) date on which the person:
    - A. resigns;
    - B. dies;
    - C. becomes mentally incapacitated;
    - D. has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 16.3; or
    - E. is removed as a member in accordance with clause 16.8.
- (b) A person is eligible for reappointment as a member of the Nominations Committee, subject to clause 16.7(c).
- (c) A person must not be appointed as a member of the Nominations Committee for more than 2 consecutive terms.

### **16.8 Removing Nominations Committee members**

- (a) The Nominations Committee may by resolution remove one of its members if the person:
  - (i) fails to attend 3 consecutive Nominations Committee meetings without reasonable excuse; or

- (ii) does an act or omission that the Nominations Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.
- (b) A person removed under this clause 16.8 is ineligible for reappointment as a member of the Nominations Committee.



## **17. Distribution**

### **17.1 General Distribution Power**

- (a) Subject to requirements in clause 7 regarding the Noongar Future Fund, in each Financial Year the Trustee may Distribute so much of the net income and capital of the Trust Fund to the Eligible Noongar Entities for the Trust Purpose in such amounts and on such conditions as the Trustee may determine in accordance with this clause 17 and otherwise in accordance with this Deed.
- (b) Notwithstanding clause 17.1(a), but subject to requirements in clause 7 regarding the Noongar Future Fund, the Trustee shall not be bound to exercise its discretion to distribute any of the income and capital of the Trust Fund in any Financial Year and the Trustee may accumulate and retain the income as part of the Trust Fund.
- (c) The Trustee will not be in breach of its obligations under this clause 17 by reason that:
  - (i) some Eligible Noongar Entities may receive some benefits before others because of the limited financial resources of the Trust in any Financial Year; or
  - (ii) different Eligible Noongar Entities may receive benefits of different kinds or amounts to other Eligible Noongar Entities due to the activities or circumstances of the various Eligible Noongar Entities.

### **17.2 Default Accumulation**

The Trustee shall hold so much of the net income of the Trust Fund for each Financial Year as is not the subject of a Distribution under clause 17.1(a) or a decision to accumulate under clause 17.1(b) as part of the capital of the Trust Fund within the Operations Fund, and the Trustee may use that amount for Distribution in accordance with this clause 17.

### **17.3 Sustainability of Distributions**

In order to assist the Trustee to achieve long term sustainable and reliable levels of available funding to meet the Trust Purpose, the Trustee must have regard to the Annual Budget and the Trustee Expense Budget whenever the Trustee is considering the exercise of the Trustee's powers under this clause 17.

### **17.4 Applications for Distributions**

- (a) All applications for Distributions from the Trust Fund must be considered by the Trustee in accordance with the Funding Guidelines and in consultation with the Noongar Advisory Company.
- (b) The Trustee must only approve Distributions for which it has received an application from an Eligible Noongar Entity in accordance with the Funding Guidelines.

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- (c) An Eligible Noongar Entity may only apply to receive Distributions for Operations Funding from the relevant ENE Operations Account of the Trust Fund.
  - (d) The Trustee must review every Distribution application and determine whether to approve an application and if so, determine the nature and scope of the Distribution, including any relevant Payment Conditions, having regard to:
    - (i) this clause 17;
    - (ii) the Funding Guidelines; and
    - (iii) the Trustee's consultation with the Noongar Advisory Company.

### 17.5 Payment Conditions

The Trustee may place certain conditions for release of Distributions to Eligible Noongar Entities (**Payment Conditions**) having regard to any one or more of the following factors:

- (a) the size and timing of the Distribution to the Eligible Noongar Entity;
- (b) the proposed use of the Distribution;
- (c) the recommendations of the Noongar Advisory Company;
- (d) whether the Eligible Noongar Entity's use of previous Distributions was materially in accordance with the terms of the Distribution;
- (e) the Trustee's right of indemnity for the Trustee's costs and expenses;
- (f) any monies owed by the Eligible Noongar Entity to the Trustee; and
- (g) the Eligible Noongar Entity's conduct in relation to any Suspension Event.

### 17.6 ENE Distribution Accounts

Subject to clause 17.7, once the Trustee has exercised the Trustee's discretion to make a Distribution to an Eligible Noongar Entity the Trustee must:

- (a) hold that amount in trust for that Eligible Noongar Entity subject to any Payment Conditions and otherwise subject to the direction of that Eligible Noongar Entity;
- (b) establish, within the management accounts of the Trust Fund, a distribution account in the name of the Eligible Noongar Entity (**ENE Distribution Account**) to which that Distribution or any further Distribution may be credited; and
- (c) deduct the amount of any Distribution for Operations Funding from the relevant ENE Operations Account.

### 17.7 Suspension of Payments

- (a) The Trustee may suspend payment of a Distribution (**Suspension Amount**) to an Eligible Noongar Entity for a fixed period (**Suspension Period**) if:

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- (i) the Eligible Noongar Entity ceases to meet the requirements in clauses 4.2 or 5.2 (as applicable);
  - (ii) the Eligible Noongar Entity's use of a previous or current Distribution was not materially in accordance with, or was seriously in breach of, the terms of the Distribution;
  - (iii) there is a serious breach by the Eligible Noongar Entity of a Payment Condition;
  - (iv) an ENE Termination Notice has been issued in respect of the Eligible Noongar Entity; or
  - (v) there is a serious breach by the Eligible Noongar Entity of the Eligible Noongar Entity's budget for the relevant Financial Year or quarter.
- (b) The Trustee must advise the Eligible Noongar Entity of:
    - (i) the circumstances giving rise to the suspension (**Suspension Event**);
    - (ii) the Suspension Amount; and
    - (iii) the actions required to remove the suspension (**Suspension Remedy**).
  - (c) Where the Suspension Event is as a result of an ENE Termination Notice, the Suspension Remedy must be the revocation or withdrawal of the ENE Termination Notice.
  - (d) The Trustee may forfeit the Suspension Amount if, in the Trustee's reasonable opinion, the Noongar Entity fails to complete the Suspension Remedy within the Suspension Period, and the forfeited Suspension Amount shall form part of the capital of the Operations Fund.

### 17.8 Non-Forfeiture of Distribution Account

For the avoidance of doubt:

- (a) subject to clause 17.7(d), the amount standing to the credit of an Eligible Noongar Entity in an ENE Distribution Account is the property of the Eligible Noongar Entity and may not be forfeited; and
- (b) the Eligible Noongar Entity can request payment of the balance of the ENE Distribution Account, subject to the provisions of this clause 17 relating to:
  - (i) Payment Conditions; and
  - (ii) suspension of payments.

### 17.9 Preparing Funding Guidelines

- (a) Subject to clause 17.10, the Trustee must prepare and maintain Funding Guidelines.
- (b) The initial Funding Guidelines are set out in Schedule 1.
- (c) The Funding Guidelines must:

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- (i) have regard to the Funding Principles;
  - (ii) include rules and procedures for administering applications incorporating the following:
    - A. the application process for Distributions;
    - B. the process for the Trustee consulting with the Noongar Advisory Company;
    - C. factors the Trustee must consider in assessing applications and determining Distributions; and
    - D. how Eligible Noongar Entities must report to the Trustee on the use of Distributions;
  - (iii) be prepared in a manner that is culturally appropriate for the Noongar Community; and
  - (iv) encourage the Eligible Noongar Entities to seek out funding bodies to assist with funding Special Projects.

#### **17.10 Funding Principles**

When making Funding Guidelines, the Trustee must have regard to the following Funding Principles:

- (a) the principal source of Distributions is the Operations Fund;
- (b) Distributions should be made in a way that supports the Eligible Noongar Entities to benefit a broad cross-section of the Noongar Community but without limiting the Trustee's discretion as to the manner in which it will seek to balance Distributions between Eligible Noongar Entities;
- (c) Distributions should, in the Trustee's opinion, be just, fair and equitable as between Eligible Noongar Entities (which does not necessarily require equal Distributions);
- (d) Distributions must only be applied by Eligible Noongar Entities in furtherance of their objects;
- (e) it is a matter for each Eligible Noongar Entity to determine how it will pursue its objects; and
- (f) it is recognised that each Eligible Noongar Entity will have different goals, plans, pathways and timelines that should not be compared or measured against other Eligible Noongar Entities.

#### **17.11 Review of the Funding Guidelines**

The Trustee may Modify the Funding Guidelines from time to time **provided that** the:

- (a) Funding Guidelines must at all times be substantially in accordance with clause 17.9(c) and the terms of this Deed (other than Schedule 1)
- (b) Funding Guidelines must be consistent with the Strategic Plan;

- (c) Trustee has consulted with the Noongar Advisory Company;
- (d) Trustee has obtained the consent of the State, where the Modification occurs during the State Contribution Period;
- (e) Trustee provides a copy of the Modified Funding Guidelines to the:
  - (i) Eligible Noongar Entities;
  - (ii) State, where the Modification occurs during the State Contribution Period; and
  - (iii) Noongar Advisory Company.

#### **17.12 Reporting**

- (a) The Trustee must ensure that it includes in its Trustee's Annual Report all Distributions including details of the:
  - (i) recipient of the Distribution;
  - (ii) amount of the Distribution;
  - (iii) purpose for which the Distribution is being applied;
  - (iv) relevant factors the Trustee has taken into consideration in assessing the application for Distribution;
  - (v) reporting requirements that apply to the Distribution; and
  - (vi) outcome of the Distribution, if known.
- (b) The Trustee must report on Distributions in its Trustee's Annual Report in accordance with the Funding Guidelines that applied at the time of the relevant Distribution (which may not be the same Funding Guidelines that apply at the time of preparing the Trustee's Annual Report).

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## 18. Budgets

### 18.1 Sustainability

The Trustee must have regard to achieving long term capacity and sustainability of the Trust Fund to support the expected needs of the Eligible Noongar Entities whenever the Trustee is considering the exercise of the Trustee's powers under this clause 18.

### 18.2 Annual Budget

- (a) Having regard to the Budget Principles, and after consultation with the Investment Committee and the Noongar Advisory Company, the Trustee must determine in respect of each Financial Year:
  - (i) the following budgeted amounts (**Annual Budget**):
    - A. Annual Operations Budget;
    - B. Annual Special Projects Budget; and
    - C. Trustee Expense Budget; and
  - (ii) the maximum share of the Annual Operations Budget that is available for Distribution to each Eligible Noongar Entity for Operations Funding which shall be allocated to the relevant ENE Operations Account (**Annual ENE Allocation**).
- (b) The Trustee must, within 14 days of determining the Annual Budget and the Annual ENE Allocation provide a copy to the:
  - (i) Eligible Noongar Entities;
  - (ii) State during the State Contribution Period;
  - (iii) Noongar Advisory Company; and
  - (iv) Investment Committee.

### 18.3 Budget Principles

When determining the Annual Budget and Annual ENE Allocation, the Trustee must have regard to the following Budget Principles:

- (a) ensure that Distributions do not exceed levels which would reduce the long term capacity of the Trust Fund to support the expected Operations Funding needs of the Eligible Noongar Entities;
- (b) the area and population of the Noongar Community of each Region;
- (c) the reasonable costs of supporting the core functions of the Eligible Noongar Entities;
- (d) determine a fair, just and equitable (which does not necessarily mean equal) allocation of the Operations Funding that is available for Distribution between the Eligible Noongar Entities having regard to the:

- (i) number of members in each Agreement Group;
  - (ii) scope and nature of Cultural Land in which the Eligible Noongar Entity has an interest, and the cost of administering and managing that Cultural Land;
  - (iii) needs and aspirations of the Region and the Eligible Noongar Entity, having regard to the Eligible Noongar Entity's most recent annual plan and strategic plan;
  - (iv) capacity of the Eligible Noongar Entity to undertake the activities proposed in its most recent annual plan and strategic plan;
  - (v) current status of each Eligible Noongar Entity having regard to the Eligible Noongar Entity's most recent audited annual report and any Special Purpose Report; and
  - (vi) that a minimum of 70 percent (or such other percentage determined by the Trustee with the consent of the Noongar Advisory Company and the State) of the State Contribution to the Operations Fund available for Distribution in any Financial Year must be available for allocation to the Regional Corporations; and
- (e) any other factors that the Trustee considers appropriate to take into account.

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## **19. Investment**

### **19.1 Trustee's Investment Powers**

The Trustee may invest part or all of the Trust Fund only:

- (a) in accordance with the Investment Principles and:
  - (i) the Investment Policy; or
  - (ii) where there is no Investment Policy, the Default Investment Policy; and
- (b) in consultation with the Investment Committee (if there is one) appointed under clause 20;
- (c) having regard to the Trustee's Powers in Schedule 5; and
- (d) exercising the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

### **19.2 Trustees Act**

The investment of trust assets must comply with Part III of the Trustees Act. In particular:

- (a) investment decisions must meet the requirements in section 18 of the Trustees Act; and
- (b) the investments must be reviewed at least once each year.

### **19.3 Investment Principles**

The Trustee and the Investment Committee must have regard to the following Investment Principles when preparing or Modifying the Investment Policy and when considering the exercise of the Trustee's investment powers:

- (a) the Investment Policy must provide specific guidelines for investment of the following Sub Funds:
  - (i) Noongar Future Fund;
  - (ii) Operations Fund;
  - (iii) Cultural Land Fund;
  - (iv) Development Land Fund;
  - (v) Special Projects Fund;
  - (vi) Housing Land Fund; and
  - (vii) the balance of the Trust Fund not held in any particular Sub Fund;
- (b) the Investment Policy must establish appropriate benchmarks for the Trustee to report on actual performance of the Trustee's investments against the



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agreed investment performance benchmarks identified in the Investment Policy, including the Trustee's costs and expenses for conducting the investments;

- (c) investments of the Noongar Future Fund must have an appropriate asset mix that reflects the long term goals of the Noongar Future Fund (being commensurate with perpetual charitable funds of this nature);
- (d) investments of Development Land involving Property Development Activities must be:
  - (i) undertaken by one or more Noongar Boodja Development Corporations rather than by the Trust;
  - (ii) subject to specific rules agreed between the Trustee, the Investment Committee (if there is one) and the Noongar Boodja Development Corporations; and
  - (iii) in accordance with clause 11 of this Deed; and
- (e) investments of Housing Land:
  - (i) involving:
    - A. management of housing stock must be undertaken by suitably qualified housing management companies; and
    - B. Housing Land Development Activities in the nature of commercial development must be undertaken by one or more Noongar Boodja Development Corporations rather than by the Trust, where the Trustee deems it appropriate; and
  - (ii) must be in accordance with clause 12 of this Deed.

#### **19.4 Investment Policy**

- (a) Having regard to the Investment Principles and subject to clause 19.5, the Trustee must prepare an Investment Policy for the investment of the Trust Fund in the following way:
  - (i) prepare a draft Investment Policy;
  - (ii) following the preparation of a draft Investment Policy, prepare an expression of interest for the services of one or more Investment Managers with proposed investment mandates in respect to both financial assets and land assets;
  - (iii) call for and receive proposals in response to the expressions of interest from prospective Investment Managers;
  - (iv) shortlist candidates for selection as the Investment Manager and present them to the Investment Committee with the Trustee's views/opinions;
  - (v) arrange for shortlisted candidates to present proposals to the Investment Committee;

- (vi) obtain feedback and recommendations from the Investment Committee on proposals from Investment Managers;
  - (vii) select the preferred Investment Manager or Investment Managers;
  - (viii) amend the draft Investment Policy having regard to the selected Investment Manager's proposals and/or investment mandates and provide it to the Investment Committee for feedback and recommendations; and
  - (ix) finalise the Investment Policy.
- (b) Where the Trustee is a Professional Trustee Company:
- (i) the Trustee and its Associates are eligible to respond to any expressions of interest called in accordance with clause 19.4(a)(iii); and
  - (ii) the Trustee may only appoint itself or its Associates as the Investment Manager or one of the Investment Managers with the prior written consent of the Investment Committee.

#### **19.5 Review of the Investment Policy**

The Investment Policy may be reviewed or Modified by the Trustee, in consultation with the:

- (a) Noongar Corporations Committee;
- (b) Investment Committee;
- (c) State (during the State Contribution Period); and
- (d) Noongar Advisory Company.

#### **19.6 Making the Investment Policy Available**

At the end of each Financial Year, the Trustee must provide a copy of the most recent Investment Policy to the:

- (a) Eligible Noongar Entities;
- (b) Investment Committee;
- (c) State; and
- (d) Noongar Advisory Company.

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## 20. Investment Committee

### 20.1 Functions

The Investment Committee must:

- (a) review proposals from Investment Managers and provide recommendations and feedback to the Trustee;
- (b) review the draft Investment Policy as prepared by the Trustee and provide recommendations and feedback to the Trustee;
- (c) assist the Trustee to review the performance of the investments made by the Trustee against the agreed investment performance benchmarks identified in the Investment Policy;
- (d) review the Trustee's compliance with its investment obligations under this Deed, and provide recommendations to the Trustee as to how those obligations may be met;
- (e) provide unbiased investment advice and recommendations to the Trustee; and
- (f) provide guidance to the Trustee on:
  - (i) Property Development Activities; and
  - (ii) Housing Land Development Activities.

### 20.2 Composition

- (a) The Investment Committee must be appointed by the Trustee and comprise:
  - (i) **1** representative from the Trustee who shall be the chair of the Investment Committee;
  - (ii) **2** persons having at least 5 years investment or property development expertise or experience and nominated by the Noongar Corporations Committee on the recommendation of the Nominations Committee;
  - (iii) **4** Independent persons nominated by the Trustee on the recommendation of the Nominations Committee comprising:
    - A. 2 persons that have at least 5 years expertise or experience in significant property transactions or residential, commercial, industrial or retail property development special projects; and
    - B. 2 persons that have at least 5 years investment expertise or experience in relation to funds under management of greater than \$500 million (indexed annually in accordance with the Consumer Price Index).
- (b) The Trustee may determine the remuneration payable (if any) to the Investment Committee.

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### 20.3 Qualifications

An Investment Committee member must demonstrate the following qualifications:

- (a) financial literacy;
- (b) leadership experience;
- (c) absence of conflicting commitments;
- (d) has not been disqualified from managing corporations or companies;
- (e) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);
- (f) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;
- (g) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and
- (h) is not a director, officer or committee member of an Eligible Noongar Entity.

### 20.4 Selection Process

- (a) When selecting Investment Committee members, the Trustee must request the Nominations Committee to:
  - (i) call for nominations by advertising in a range of different manners, including advertising in significant online and hard copy publications in the Trustee's discretion and in a suitable culturally appropriate manner; and
  - (ii) provide reasonable notice of the call for nominations.
- (b) When selecting the Investment Committee members, the Trustee must request the Nominations Committee to:
  - (i) review the composition of the Investment Committee to ensure that there is a balanced mix of expertise and experience;
  - (ii) develop appropriate criteria for assessing the suitability of candidates;
  - (iii) consider candidates on the basis of merit rather than any affiliation; and
  - (iv) request from candidates and third party sources sufficient information to enable the Trustee to assess the candidates' fulfilment of the qualifications in clauses 20.2 and 20.3 and the candidates' suitability.

### 20.5 Investment Committee Decisions

- (a) Decisions of the Investment Committee will be determined and their meetings will be carried out in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.

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- (b) The Investment Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.

## **20.6 Term of appointment**

- (a) A person will continue to be a member of the Investment Committee until the earlier of the:
  - (i) expiration of a period of 3 years;
  - (ii) date on which the person:
    - A. resigns;
    - B. dies;
    - C. becomes mentally incapacitated;
    - D. has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 20.2; or
    - E. is removed as a member in accordance with clause 20.7.
- (b) A person is eligible for reappointment as a member of the Investment Committee, subject to clause 20.6(c).
- (c) A person must not be appointed as a member of the Investment Committee for more than 2 consecutive terms.

## **20.7 Removing Investment Committee members**

- (a) The Investment Committee may by resolution remove one of its members if the person:
  - (i) fails to attend 3 consecutive Investment Committee meetings without reasonable excuse; or
  - (ii) does an act or omission that the Investment Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.
- (b) A person removed under this clause 20.7 is ineligible for reappointment as a member of the Investment Committee.

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## 21. Strategic Plan

### 21.1 Purpose of Strategic Plan

The purpose of the Strategic Plan is to:

- (a) set out the long term objectives to facilitate advancement of the Trust and the Trust Purpose having regard to:
  - (i) the anticipated budgets of the Trust;
  - (ii) anticipated Trust income and expenditure;
  - (iii) any requirements under the ILUAs; and
  - (iv) any proposed priorities and programs of the Trust;
- (b) review and provide recommendations for improvement of the Funding Guidelines and the Investment Policy;
- (c) provide context having regard to the social, political, economic, government and environmental climate of the time; and
- (d) provide recommendations for the better administration of the Trust having regard to content of the Trustee's Annual Reports for the years covered by the Strategic Plan.

### 21.2 Formulating Strategic Plans

During the First Year, and every 3 years thereafter at the beginning of the relevant Financial Year, the Trustee will consider and formulate a Strategic Plan for the next 3 years using the following procedure:

- (a) the Trustee will formulate a proposed Strategic Plan, having regard to:
  - (i) the Trustee's Annual Reports from previous years (if any);
  - (ii) the Funding Guidelines and Investment Policy;
  - (iii) the actual and anticipated administration, overheads and operating expenses of the Trust (if any);
  - (iv) the Trust Fund and the financial position of the Trust; and
  - (v) the findings of any Auditor's review of the Trust's performance;
- (b) for the purpose of reviewing the current Strategic Plan and seeking input on the proposed Strategic Plan, the Trustee will consult with:
  - (i) any Advisory Committees (if applicable);
  - (ii) the Eligible Noongar Entities;
  - (iii) the Investment Committee;
  - (iv) the State, during the State Contribution Period;

- (v) the Noongar Corporations Committee; and
  - (vi) the Noongar Advisory Company.
- (c) having regard to the consultations conducted under clause 21.2(b) above, the Trustee will then finalise the Strategic Plan.

### **21.3 Modifying the Strategic Plan**

The Trustee may Modify the Strategic Plan during the Financial Years to which the Strategic Plan relates provided the Trustee follows a substantially similar procedure to the procedure outlined in clause 21.2.

### **21.4 Implementation of the Strategic Plan**

The Trustee must administer the Trust in accordance with the Strategic Plan and must seek to implement any recommendations contained in the Strategic Plan.

### **21.5 Making Available the Strategic Plan**

As soon as practicable after the Strategic Plan is finalised, the Trustee must make it available for viewing by the:

- (a) Eligible Noongar Entities;
- (b) Investment Committee;
- (c) State; and
- (d) Noongar Advisory Company.

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## 22. Trustee's Actions

### 22.1 Trustee to establish Land Sub and Land Register

- (a) In order to efficiently manage and hold the land assets of the Trust Fund, the Trustee must:
  - (i) establish a wholly owned subsidiary to hold any interests or Management Orders in land at all times on bare trust for and on behalf of the Trustee (**Land Sub**); and
  - (ii) ensure that Land Sub undertakes any action as directed by the Trustee in respect of the interests or Management Orders in land it holds in accordance with clause 22.1(a)(i).
- (b) The Trustee must establish, maintain and regularly update a register of all interests or Management Orders in land held by the Land Sub (**Land Register**), which also identifies the:
  - (i) Region and Relevant Regional Corporation/s to which an interest or Management Order in land relates; and
  - (ii) costs and statutory obligations of the relevant interest or Management Order.
- (c) The Trustee must make the Land Register available to the Eligible Noongar Entities.
- (d) The Trustee may contract the CSC to establish, maintain and regularly update the Land Register, provided that the Trustee enters into a service agreement with the CSC which provides that at all times:
  - (i) ownership of all intellectual property relating to the Land Register remains vested in the Trustee;
  - (ii) the Land Register shall be accessible by the Trustee and the Regional Corporations; and
  - (iii) the Land Register and the information contained on it is strictly confidential and cannot be disclosed other than to the Trustee or the Regional Corporations, or as otherwise required by law, without the prior written consent of the Trustee.

### 22.2 Trustee's Discretions and Powers

- (a) Except where there is an express contrary provision in this Deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.
- (b) Subject to this Deed, in addition to the powers vested in the Trustee by law, the Trustee has:
  - (i) the power to do all such lawful acts and things as are incidental or conducive to the attainment of the Trust Purpose; and



- (ii) the additional powers described in Schedule 5.

### **22.3 Uncommercial Transactions**

- (a) Subject to clause 22.3(b), none of the Trustee, a member, director, employee, agent or officer of the Trustee, the Settlor, a legal personal representative of the Settlor or an Associate of the Settlor or Trustee may become an Eligible Noongar Entity or directly or indirectly receive any part of the Trust Fund or the income.
- (b) Clause 22.3(a) does not prevent the payment in good faith of any of the following to a member, director, employee, agent or officer of the Trustee, with the approval of the Trustee:
  - (i) any distribution for the benefit of, either directly or indirectly, any member of the Noongar Community made strictly in accordance with the terms of this Deed; and
  - (ii) any indemnity, remuneration or payment of expenses permitted by this Deed.
- (c) Where a member, director, employee, agent or officer of the Trustee considers that it may receive a payment under clause 22.3(b) they must:
  - (i) disclose that matter to the Trustee as soon as possible;
  - (ii) not take part in any deliberations regarding that matter; and
  - (iii) not vote on that matter.

### **22.4 Trustee's Decisions and Independence**

- (a) Subject to any express provision to the contrary in this Deed, if the Trustee acts in good faith, the Trustee is not bound to implement any directives, resolutions of any meeting or views expressed by any of the Noongar Advisory Company, Nominations Committee, Investment Committee, Advisory Committee (if any) or Eligible Noongar Entity.
- (b) In making a decision, whether made on a question actually raised or implied in the acts or proceedings of the Trustee:
  - (i) the Trustee may resolve conclusively all questions of fact or interpretation;
  - (ii) a decision of the Trustee may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary;
  - (iii) the Trustee need not give any reason or justification in respect of a decision; and
  - (iv) the Trustee may change a decision made by it previously.

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**22.5 Personal Interest of Trustee**

- (a) Where the Trustee or any Associate of the Trustee has an interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee, the Trustee must disclose the nature of the interest to the Noongar Advisory Company, Noongar Corporations Committee and the Investment Committee.
- (b) The Trustee shall make regulations concerning the manner in which the Trustee will manage conflicts of interest in relation to carrying out the role of the Trustee in accordance with this Deed and shall provide a copy of the regulations to the Noongar Advisory Company, Noongar Corporations Committee and the Investment Committee.

**22.6 Trustee Consultation**

Where the Trustee is required under this Deed to consult with any party, the Trustee may, acting reasonably, determine the appropriate time and manner for such consultation having regard to the nature, circumstances and costs of the consultation.

**22.7 Liability and Indemnity**

Subject to clause 22.8, the Trustee and any officer, agent or employee of the Trustee, where purporting to act in the exercise of the trusts of this Deed or exercise powers or discretions under this Deed is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:
  - (i) entering into this Deed or any deed Modifying this Deed;
  - (ii) establishing, operating, administering, amending, terminating and winding up the Trust;
  - (iii) all matters incidental to the Trust; and
  - (iv) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 22.7(b) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this Deed.

**22.8 Limitations**

Notwithstanding clause 22.7, the Trustee and an officer, agent or employee of the Trustee is prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

- (a) the dishonesty of that Trustee, officer, agent or employee of the Trustee;
- (b) gross negligence or recklessness of that Trustee, officer, agent or employee of the Trustee;

- 
- (c) a deliberate act or omission known by that Trustee, officer, agent or employee of the Trustee to be a breach of trust; or
  - (d) penalties under section 426-120 in Schedule 1 to the Taxation Administration Act (1953).

## 22.9 Further Advisory Committees

- (a) This clause 22.9 does not apply to each committee the Trustee is specifically required to form under this Deed.
- (b) The Trustee may in its discretion establish further advisory committees for particular purposes from time to time (**Advisory Committee**) and appoint and remove, or provide for the appointment and removal of, members of those Advisory Committees provided that:
  - (i) the Trustee must determine the remuneration (if any) payable to an Advisory Committee;
  - (ii) an Advisory Committee member does not have to be a member of the Noongar Community;
  - (iii) the Trustee must not establish an Advisory Committee that duplicates or assumes all or any of the functions of the Noongar Advisory Company under this Deed; and
  - (iv) the Trustee must ensure that any matters relating to a specific Region, the Relevant Regional Corporations, the Agreement Group members of that Region or the Noongar Boodja Traditional Lands of that Region will be referred for consideration to the Relevant Regional Corporation and the Noongar Advisory Company.
- (c) The Trustee will determine the functions and proceedings of an Advisory Committee.
- (d) If the Trustee has established an Advisory Committee in respect of a particular matter then the Trustee must seek the opinion of that Advisory Committee before the Trustee makes a decision in relation to that matter.
- (e) Decisions of an Advisory Committee will be determined and their meetings convened in accordance with Schedule 4 of this Deed or as otherwise determined by the Trustee from time to time.
- (f) An Advisory Committee must adopt and comply with the Code of Conduct and Policy and Procedures Manual.
- (g) The decisions of an Advisory Committee are recommendations only and do not bind the Trustee.

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## 23. Costs and Expenditure

### 23.1 Trustee's Remuneration

- (a) Subject to clause 23.3, the Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However:
  - (i) the maximum remuneration chargeable by the Trustee in respect of any Financial Year must not exceed the remuneration of trustee companies provided for in Part 5D.3 of the Corporations Act;
  - (ii) the first Trustee's remuneration shall be in accordance with Schedule 9 and includes those costs and expenses under clause 23.2 that form part of the first Trustee's remuneration; and
  - (iii) subsequent Trustees' remuneration must be set out in a remuneration schedule attached to the Deed of Appointment.
- (b) Other than in respect of the initial Trustee, to the extent that the costs and expenses of the Trust under clause 23.2 form part of the Trustee's remuneration under clause 23.1(a), those costs and expenses must be provided for in the Deed of Appointment.

### 23.2 Costs and Expenses

- (a) Subject to clause 23.1(b), the Trustee may pay or reimburse itself from the Trust Fund for all costs and expenses reasonably and properly incurred in carrying out, administering and discharging the Trust and in exercising any power or discretion or authority conferred on the Trustee by this Deed or the law.
- (b) Distributions of Operations Funding and Special Projects Funding do not form part of the Trustee's costs and expenses.
- (c) The Trustee must endeavour at all times to keep the costs of the administration of the Trust to the minimum necessary to perform its obligations.

### 23.3 Trustee Expense Budget

- (a) The Trustee must establish internal controls of expenditure by the Trustee including compiling an annual budget of expenses of the Trust (**Trustee Expense Budget**) which must incorporate a budget for each quarter.
- (b) The Trustee must consult with the Noongar Advisory Company and the Noongar Relationship Committee in relation to the Trustee Expense Budget.
- (c) The Trustee Expense Budget must include the remuneration of the Trustee.
- (d) The Trustee must monitor the expenditure of the Trust in each quarter to ensure that the Trust expenses do not exceed the Trustee Expense Budget.
- (e) If the Trustee's expenditure exceeds the Trustee Expense Budget in any quarter, the Trustee must as soon as practicable:

- (i) examine the Trust accounts and the Trust's activities in an effort to reduce the Trustee's expenditure;
- (ii) prepare a written report detailing:
  - A. the extent to which the Trustee's expenditure exceeds the Trustee Expense Budget; and
  - B. the Trustee's proposals to reduce the Trust expenditure; and
- (iii) provide the report referred to in clause 23.3(e)(ii) to the:
  - A. Noongar Advisory Company; and
  - B. Noongar Relationship Committee.

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## **24. Records and Accounts**

### **24.1 Books of Account and Receipts**

- (a) The Trustee must keep or cause to be kept proper accounts in respect of all financial transactions, receipts and payments on account of the Trust and of all dealings connected with the Trust which must give a true and fair view of the financial position of the Trust.
- (b) As soon as practicable after the end of each Financial Year the Trustee must prepare or cause to be prepared financial statements showing the financial position of:
  - (i) the Trust Fund; and
  - (ii) each separate management account (including each Sub Fund),in respect of that Financial Year.

### **24.2 Audit**

- (a) The financial statements and all transactions made by the Trustee, the Land Sub, the Noongar Advisory Company and any Noongar Boodja Development Corporations must be audited by an Auditor.
- (b) For each Financial Year, the Trustee must provide copies of the audited financial statements as soon as reasonably practicable after receipt to the:
  - (i) Eligible Noongar Entities.
  - (ii) Investment Committee;
  - (iii) State; and
  - (iv) Noongar Advisory Company.

### **24.3 Trust Fund to be kept distinct**

The Trustee must keep the Trust Fund entirely separate and distinct from any other trust fund.

### **24.4 Receipts by others**

Where the Trustee makes a payment or Applies income or capital from the Trust Fund to a recipient, receipt confirmed by the person purporting to be the treasurer, secretary or other proper officer of the recipient shall be sufficient discharge to the Trustee.

### **24.5 Classification of Trust Income**

In making any decision under this Deed the Trustee may:

- (a) treat as income of the Trust Fund any profit, gain or receipt which is assessable income for the purposes of the Tax Law;

- (b) treat as expenditure against income of the Trust Fund (except that the Trustee may only treat as expenditure against income of the Noongar Future Fund those expenditures, payments, losses or sums which are reasonably and properly incurred in relation to the Noongar Future Fund):
  - (i) any expenditure, payment or loss which is an allowable deduction for the purposes of the Tax Law; and
  - (ii) any sum which is a capital loss for the purposes of the Tax Law;
- (c) distinguish between income of a particular nature or from a particular source as defined or referred to in the Tax Law and deal with each in a particular manner irrespective of the manner in which any other income of a particular nature or from a particular source is dealt with; and
- (d) determine the income (within the meaning given in this clause) against which any loss (including, without limitation, any capital loss or any net capital loss), outgoing, expenditure or payment which is a deduction for the purposes of the Tax Law will be set off (except that the Trustee may only set off such outgoings, expenditures or payments against income of the Noongar Future Fund to the extent that those outgoings, expenditures or payments are reasonably and properly incurred in relation to the Noongar Future Fund).

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## 25. Trustee's Annual Report

- (a) Within 3 months after the end of a Financial Year, the Trustee will conduct a review of the Trust's activities for that Financial Year (**Trustee's Annual Report**) which will include:
- (i) a brief review of whether the Trust's activities were carried out in accordance with the terms of the Strategic Plan and this Deed;
  - (ii) details of the CSC and Regional Corporations' Special Purpose Reports and/or audited annual reports, as appropriate;
  - (iii) a summary of the Trust's activities for the previous Financial Year;
  - (iv) a summary of the meetings held by the following committees for the previous Financial Year:
    - A. Investment Committee;
    - B. Nominations Committee;
    - C. Noongar Relationship Committee; and
    - D. Noongar Advisory Company.
  - (v) a summary of the investment performance of the Trustee for the previous Financial Year;
  - (vi) a summary of actions arising in respect of the Noongar Future Fund, Operations Fund, Special Projects Fund, Cultural Land Fund and Development Land Fund, Housing Land Fund, Land Sub and any Noongar Boodja Development Corporations;
  - (vii) a summary of the amount standing to the credit of each of the ENE Operations Accounts at the end of the Financial Year;
  - (viii) in accordance with clause 17.12, details of the actual Distributions made, or the expenditure of funds, by the Trustee for the previous Financial Year in relation to the Annual Budget in respect of the Eligible Noongar Entities;
  - (ix) a summary of the Trustee's assessment of the CSC and Regional Corporations' service delivery; and
  - (x) a summary of the meetings held with the Nominee Entity (if any) and the progress of the Nominee Entity's transition towards meeting the Dedicated Trustee Requirements.
- (b) The Trustee's Annual Report is to be made available for viewing by the:
- (i) Auditor;
  - (ii) Eligible Noongar Entities;
  - (iii) State; and
  - (iv) Noongar Advisory Company.



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## 26. Strategic Review of the Trust

- (a) The Trustee must undertake a strategic review of the Trust in consultation with the Eligible Noongar Entities, the State, the Noongar Relationship Committee and the Noongar Advisory Company at the following times:
- (i) 5 years after the date of this Deed;
  - (ii) 10 years after the date of this Deed; and
  - (iii) thereafter, at the end of every 10 year period,
- (Strategic Review).**
- (b) The Strategic Review must consider the manner in which the Trust operates with the object of identifying:
- (i) any shortcomings in the Trust's operation;
  - (ii) any means of more effectively operating the Trust; and
  - (iii) the effectiveness of the Noongar Future Fund in enabling the Trust to carry out its objects sustainably in perpetuity.
- (c) The State and the Noongar Advisory Company must agree the scope of the Strategic Review having regard to:
- (i) the value of the Trust Fund held by the Trust;
  - (ii) the cost, time and outcomes sought from the Strategic Review;
  - (iii) the Trustee's proposed activities as set out in its current Strategic Plan; and
  - (iv) the success to date of the Trustee in meeting the goals and objectives set out in its most recently completed Strategic Plan.
- (d) When undertaking the Strategic Review, the Trustee must:
- (i) consult with the Eligible Noongar Entities; and
  - (ii) convene, at the Trustee's cost, a meeting with the members of each Eligible Noongar Entity (with the assistance of the Eligible Noongar Entity) for the purpose of obtaining input into the Strategic Review.
- (e) The cost of undertaking the Strategic Review may be charged to and paid out of the Trust Fund.
- (f) The Trustee must communicate the results of the Strategic Review to the:
- (i) Auditor;
  - (ii) Eligible Noongar Entities;
  - (iii) Investment Committee;

- (iv) Nominations Committee;
- (v) Noongar Relationship Committee;
- (vi) State; and
- (vii) Noongar Advisory Company.

## **27. Modifying the Trust Deed**

The Trustee may only Modify the provisions of this Deed:

- (a) provided that it would not result in the Trust ceasing to be a trust for charitable purposes or the Trust ceasing to be entitled to endorsement as a tax exempt entity by the Commissioner of Taxation under the Tax Law;
- (b) following consultation with the:
  - (i) Noongar Corporations Committee;
  - (ii) Investment Committee; and
  - (iii) Noongar Advisory Company; and
- (c) with the prior written consent of the:
  - (i) Commissioner of Taxation, if required by the Tax Law;
  - (ii) Noongar Relationship Committee; and
  - (iii) State.

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## 28. General Legal Provisions

### 28.1 Notices

- (a) Any notice or communication relating to this Deed is to be in writing and may be given by an agent of the sender.
- (b) A notice or communication may be given by:
  - (i) hand delivery to the person's current address for service;
  - (ii) pre-paid ordinary mail or if the address is outside Australia by pre-paid air mail to the person's current address for service;
  - (iii) facsimile to the person's current number for service;
  - (iv) electronic mail to the person's current e-mail address; or
  - (v) such other means as the Trustee determines in its discretion having regard to the purpose and contents of the notice and the intended recipients.
- (c) If a communication is given by:
  - (i) hand, it is taken to have been received at the time of delivery;
  - (ii) post, it is taken to be received if posted within Australia to an Australian address 3 Business Days after posting and in any other case 7 Business Days after posting;
  - (iii) facsimile and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile, it is taken to be received by the addressee at the time indicated on that report, or the day after if sent after 5:00pm in Perth, Western Australia; or
  - (iv) electronic mail, it is taken to be received on the same day that it was sent, or the day after if sent after 5.00 pm in Perth, Western Australia.

### 28.2 Winding Up

- (a) The Trustee may only wind up or terminate the Trust:
  - (i) following consultation with the:
    - A. Noongar Corporations Committee;
    - B. Investment Committee; and
    - C. Noongar Advisory Company; and
  - (ii) with the prior written consent of the:
    - A. Eligible Noongar Entities; and
    - B. State.

- (b) Upon the winding up of the Trust, the Trustee must pay or apply any assets of the Trust Fund remaining after the satisfaction of all its debts and liabilities to or for one or more funds, authorities or institutions which are charitable at law and are established for similar purposes to the Trust Purpose as the Trustee decides:
  - (i) following consultation with the Noongar Advisory Company; and
  - (ii) with the consent of the:
    - A. Commissioner of Taxation; and
    - B. State.

### **28.3 Governing Law**

This Deed will be governed by the laws of Western Australia.

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**Executed by the Parties as a deed.**

Signed by  
**[Insert Settlor Name]**  
in the presence of:

.....  
**[Insert Settlor Name]**

.....  
Signature of Witness

.....  
Name of Witness

.....  
Address of Witness

.....  
Occupation of Witness

Executed by  
**[insert Trustee name]**  
ACN **[insert]**  
pursuant to Section 127  
of the Corporations Act

.....  
Director/Secretary

.....  
Director

.....  
Full Name (please print)

.....  
Full Name (please print)

## Schedule 1 – Funding Guidelines

### S1.1 Application Procedure

#### S1.1.1 Timing of Applications

- (a) Eligible Noongar Entities must attempt to submit to the Trustee an application for Operations Funding for the forthcoming Financial Year on or before 31 March of the previous Financial Year.
- (b) The Trustee may in its discretion accept late or incomplete applications for Operations Funding.
- (c) The Trustee must attempt to determine applications for Operations Funding for the forthcoming Financial Year on or before 31 May of the previous Financial Year, or such later date as the Trustee determines from time to time, to ensure that the Eligible Noongar Entities have sufficient time to revise their operations budgets and annual plans prior to the commencement of the forthcoming Financial Year.
- (d) The timing of applications for Special Projects Funding will be determined from time to time in accordance with any relevant Special Project Guidelines.
- (e) The Trustee may in its discretion accept the first application for Operations Funding for a proposed Eligible Noongar Entity from the CSC on behalf of that proposed Eligible Noongar Entity.

#### S1.1.2 Applications for Operations Funding

An application for Operations Funding should:

- (a) confirm that the Operations Funding will only be applied in furtherance of the Eligible Noongar Entity's objects;
- (b) include the Eligible Noongar Entity's budget for the forthcoming Financial Year;
- (c) include the Eligible Noongar Entity's most recent annual plan;
- (d) include the Eligible Noongar Entity's most recent strategic plan;
- (e) include the Eligible Noongar Entity's most recent Special Purpose Report (if any) and/or audited annual report, to the extent not already provided to the Trustee;
- (f) identify any material differences to the Eligible Noongar Entity's budget for the previous and current Financial Year and the reasons for the differences;
- (g) identify where the Eligible Noongar Entity's expenditure has exceeded the budget for the current Financial Year (if at all) and identify the Eligible Noongar Entity's steps to reduce its expenditure;

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- (h) in the case of the Regional Corporations, confirm that during the Start-Up Period, the Operations Funding will not be used for any CSC Regional Services that would otherwise be available from the CSC;
  - (i) in the case of the Regional Corporations, identify the costs associated with any CSC Optional Services that the Regional Corporation wishes to obtain from the CSC; and
  - (j) in the case of the CSC, confirm that an appropriate service agreement is in place with each Regional Corporation.

### **S1.1.3 Applications for Special Projects Funding**

An application for Special Projects Funding must set out:

- (a) full details of the Special Project including timelines;
- (b) the intended outcome of the Special Project;
- (c) an explanation of how the Special Project furthers the Eligible Noongar Entity's objects;
- (d) the type and amount of assistance sought from the Trust;
- (e) the type and amount of assistance committed from other sources for the Special Project, if known;
- (f) the expected sections or classes of the Noongar Community that will benefit from the outcomes from the Special Project;
- (g) the proposed method of acquittal; and
- (h) any other information required by the Trustee under the application procedure.

### **S1.1.4 Consultation with Noongar Advisory Company**

Where the Trustee is required to consult with the Noongar Advisory Company in relation to Distributions, the consultation must proceed as follows:

- (a) the consultation must occur at a meeting of the Noongar Advisory Company;
- (b) the Trustee must provide the Noongar Advisory Company with appropriate background information regarding the Distribution application;
- (c) the consultation must occur in such a way that the Noongar Advisory Company has the opportunity to ask the Trustee questions regarding the Distribution application or matters relevant to the Distribution; and
- (d) the Trustee must provide the Noongar Advisory Company with a reasonable opportunity to deliver feedback and recommendations to the Trustee.

## **S1.2 Assessment of Applications**

### **S1.2.1 General Rules**

In assessing applications for Distributions, the Trustee must have regard to:



- (a) the recommendations of the Noongar Advisory Company;
- (b) the priority of the application in relation to other applications pending;
- (c) competing applications for Distributions between Eligible Noongar Entities for different purposes;
- (d) any Distribution conditions that apply to a Sub Fund from which the Distribution will be sourced; and
- (e) any consultations with the Eligible Noongar Entities in respect of their applications.

### **S1.2.2 Operations Funding**

In assessing applications for Operations Funding, the Trustee must have regard to:

- (a) the Eligible Noongar Entity's previous performance in meeting its annual plan and strategic plan;
- (b) what is reasonably required to ensure the proper and adequate administration of the Eligible Noongar Entity and the costs involved, based on the views of the Eligible Noongar Entity, the Noongar Advisory Company and the Trustee;
- (c) whether there are any means available to ensure that the Eligible Noongar Entity acts more efficiently or cost effectively; and
- (d) whether there are any other sources or funding to support the Eligible Noongar Entity.

### **S1.2.3 Special Projects Funding**

In assessing applications for Special Projects Funding, the Trustee must have regard to:

- (a) any Special Project Guidelines that apply to the Special Project;
- (b) the nature of the Special Project;
- (c) how many persons will benefit from the Special Project and the identity of those persons;
- (d) of those persons that will benefit from the Special Project, what proportion are members of the Noongar Community;
- (e) whether the Special Project brings immediate benefits to the Noongar Community or a section of it or brings multi-generational, long term benefits to future generations of the Noongar Community;
- (f) what timeframe the Special Project will be completed in;
- (g) how the success of the Special Project is measureable;
- (h) the amount of Special Projects Funding the Eligible Noongar Entity has received from the Trust in the past and at what times;

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- (i) whether the Eligible Noongar Entity can demonstrate the organisational capacity, expertise or experience required to deliver the Special Project;
  - (j) whether there is funding available for a Special Project of this nature from other sources whether public or private;
  - (k) any effective social and community development programs and opportunities to work in alliances and partnerships with programs operated by governments or other organisations;
  - (l) what steps the Eligible Noongar Entity has taken to secure alternative funding; and
  - (m) whether, in the Trustee's opinion, a Distribution to an Eligible Noongar Entity for a Special Project should be alternatively funded by government.

### **S1.3 Reporting Requirements**

The Trustee must require that an Eligible Noongar Entity in receipt of any Distribution ensures that it:

- (a) keeps financial accounts and records relating to the use of the Distribution to enable all income and expenditure in connection with the Distribution to be identified in the Eligible Noongar Entity's accounts and records;
- (b) provides all information, records and documents as may be reasonably requested by the Trustee from time to time;
- (c) reports to the Trustee within 12 months of the Distribution:
  - (i) detailing the outcome of the Special Project;
  - (ii) comparing the outcome with the objectives of the Special Project as stated in the application made to the Trustee;
  - (iii) reporting on the satisfaction of any conditions that were attached to the Distribution; and
- (d) upon request of the Trustee, provides to the Trustee, on or before 30 June each relevant Financial Year, or such other time as the Trustee determines, a certificate by the Eligible Noongar Entity's auditor stating the amount of the Distribution spent, or committed to be spent, for the purpose of the Distribution.

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## Schedule 2 – CSC Service Delivery

### S2.1 Definitions

For the purpose of this Schedule 2, the following terms have the corresponding meaning:

- (a) **ENE Common Platform** means a set of administrative functions or services to be developed by the CSC for use by the Eligible Noongar Entities incorporating the following:
- (i) policies and procedures for general office administration;
  - (ii) job description forms and enterprise bargaining agreements;
  - (iii) accounting systems, including accounts processing, payroll processing and financial reporting;
  - (iv) IT systems, including file management and communications;
  - (v) membership database systems;
  - (vi) policies and procedures for conducting elections for director positions;
  - (vii) arrangements with third party service providers to provide the following at a group rate as amongst the Eligible Noongar Entities:
    - A. IT and communications services and equipment;
    - B. financial, auditing and tax services;
    - C. insurance policies, including through one or more group insurance policies amongst the Eligible Noongar Entities;
    - D. vehicle leasing contracts; and
    - E. office equipment;
- (b) **Start-Up Period** means the period of time commencing on the date of this Trust Deed and expiring on the date that is 5 years from the date of this Trust Deed.

### S2.2 Service Principles

The requirements in this Schedule 2 and the following principles apply to the delivery of CSC Services by the CSC:

- (a) the CSC must undertake the CSC Core Services in accordance with its objects to or for the benefit of the Noongar Community;
- (b) the CSC Regional Services are services that are fundamental to the day-to-day operations of the Regional Corporations. During the Start-Up Period, the CSC shall deliver the CSC Regional Services consistently as amongst the Regional Corporations to ensure the Regional Corporations receive a cost effective and consistent level of service. The CSC must aim to enhance the

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- capacity of the Regional Corporations to provide or source CSC Regional Services for themselves after the Start-Up Period;
  - (c) the CSC must provide a consistently high level of service to each Regional Corporation in respect of the CSC Regional Services;
  - (d) the CSC must ensure that an appropriate service agreement is in place between the CSC and each Regional Corporation governing the delivery of CSC Regional Services and CSC Optional Services (if any);
  - (e) the CSC may exercise its independent discretion as to the most appropriate and effective manner of providing the CSC Services and satisfying the Regional Corporations' expectations of the CSC Services;
  - (f) the Trustee is not required to fund the CSC's costs of delivering the CSC Services over and above the Operations Funding approved in accordance with this Deed. Any additional funding is a matter for the sole discretion of the Trustee;
  - (g) the Trust has limited Operations Funding available and it is essential that the CSC and Regional Corporations work closely to determine the most efficient manner of delivering the CSC Services;
  - (h) the CSC must establish and maintain the Noongar Corporations Committee;
  - (i) the CSC must act in good faith and ensure that the CSC Services are completed with due care, skill and diligence and in a professional manner; and
  - (j) the nature and scope of the CSC Services and the costs of providing the CSC Services will fluctuate over time.

### **S2.3 Determining the CSC Core Services**

- (a) The following initial CSC Core Services apply until Modified in accordance with item S2.7:
  - (i) supporting and assisting the Regional Corporations to comply with the ILUAs;
  - (ii) establishing and maintaining the Noongar Corporations Committee, including providing secretariat support;
  - (iii) communicating information regarding the Noongar Settlement, ILUAs and the Trust to the Eligible Noongar Entities and the Noongar Community in a culturally appropriate manner, and through a range of mediums;
  - (iv) being an advocate for the Noongar Community with key stakeholders;
  - (v) developing and implementing engagement strategies for the Eligible Noongar Entities to liaise and work with all levels of government (Local, State and Federal) on matters regarding the Noongar Community, Noongar Settlement, ILUAs or the Trust;
  - (vi) conducting research into Noongar Traditional Laws and Customs, history, culture, language, genealogy and further developing cultural resources to service the needs of the Regional Corporations;

- (vii) developing and managing cultural and community programs, providing delivery support and evaluation services and developing partnerships with service delivery providers;
  - (viii) providing support to the Regional Corporations in identifying economic development opportunities, by way of advice and linkage with public and private service providers;
  - (ix) maintaining the Land Register on behalf of the Trustee (if engaged to do so) and making it accessible at all times to the Trustee and the Regional Corporations; and
  - (x) managing activities associated with the Housing Land Fund (if engaged to do so) on such terms and conditions as the Trustee may agree with the CSC.
- (b) The CSC must make the CSC Core Services available at no cost to the Regional Corporations.

#### **S2.4 Determining the CSC Regional Services**

- (a) The following initial CSC Regional Services apply until Modified in accordance with item S2.7:
- (i) developing and maintaining the ENE Common Platform for adoption by the Regional Corporations on an opt-in basis;
  - (ii) providing company secretarial support to the Regional Corporations;
  - (iii) providing legal advice to the Regional Corporations regarding compliance with the ILUAs, Trust Deed or the CATSI Act;
  - (iv) assisting the Regional Corporations to:
    - A. prepare budgets and applications for Operations Funding;
    - B. prepare reports pursuant to the CATSI Act and the Trust Deed;
  - (v) assisting the Regional Corporations with identifying and sourcing external funding;
  - (vi) providing legal and strategic advice to the Regional Corporations regarding the:
    - A. grant of an interest in Cultural Land to the Regional Corporation; and
    - B. conversion of Cultural Land into Development Land within the Region of the Relevant Regional Corporation.
- (b) The CSC must make the CSC Regional Services available to the Regional Corporations at no cost.
- (c) The Trustee must fund the CSC to provide the CSC Regional Services during the Start-Up Period.

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- (d) The Regional Corporations are not required to utilise the CSC Regional Services delivered by the CSC, however:
    - (i) during the Start-Up Period and subject to clause S3.6(b), the Trustee must not make a Distribution to a Regional Corporation to meet the cost of obtaining a CSC Regional Service from a third party; and
    - (ii) after the Start-Up Period, a Regional Corporation may apply to the Trustee in accordance with clause 16 and the Funding Guidelines for a Distribution of Operations Funding to meet the operations cost of the Regional Corporation.

## **S2.5 Determining the CSC Optional Services**

- (a) The CSC Optional Services are any services outside of the CSC Regional Services and may be determined by the CSC in its discretion, having regard to the requirements of the Regional Corporations.
- (b) The CSC Optional Services may include:
  - (i) services that the CSC develops a capacity to deliver and offers to the Regional Corporations from time to time; or
  - (ii) services that a Regional Corporation identifies a need for that are not currently being offered by the CSC, that the Regional Corporation requests the CSC to deliver.
- (c) The CSC may in its discretion offer the CSC Optional Services to the Regional Corporations on a fee for service basis.
- (d) CSC Optional Services must be charged by the CSC on a cost recovery only basis.
- (e) The Trustee must not make a Distribution to the CSC to deliver the CSC Optional Services.
- (f) If a Regional Corporation wishes to engage the CSC to deliver a CSC Optional Service, the Regional Corporation may apply to the Trustee in accordance with clause 17 and the Funding Guidelines for a Distribution of Operations Funding to meet the operations cost of the Regional Corporation, including the costs of the CSC Optional Service.

## **S2.6 Assessment of Service Delivery**

Each Financial Year, the Trustee must assess the CSC's delivery of the CSC Services following receipt of the CSC's audited annual report or Special Purpose Report (if any) in accordance with the following process:

- (a) the Trustee must request feedback from and consult with the Regional Corporations regarding the CSC Services, in particular regarding:
  - (i) the standard of delivery of CSC Services;
  - (ii) the ongoing need for the CSC Regional Services; and
  - (iii) any additional services that should be CSC Services;

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- (b) the Trustee must consider the CSC's audited annual report or Special Purpose Report (if any);
  - (c) the Trustee must consult with the Noongar Advisory Company and the Noongar Relationship Committee regarding the CSC's performance; and
  - (d) the Trustee must raise any concerns or queries with the CSC and provide the CSC with a reasonable opportunity to respond.

## **S2.7 Modification of Service Delivery**

Having regard to the results of an assessment under item S2.6 the Trustee may:

- (a) determine that certain Payment Conditions be imposed on the CSC as part of any future Distributions;
- (b) determine that a CSC Regional Service be Modified or removed and, if removed, fund the Regional Corporations to obtain the services from a third party as part of the Regional Corporations' operations;
- (c) consider (and in its absolute discretion, approve) a request from the CSC for Operations Funding for the forthcoming Financial Year to be increased to assist the CSC to develop its organisational capacity, experience and expertise; and
- (d) consider (and in its absolute discretion, approve) a request from the CSC to modify the CSC Core Services and/or the CSC Regional Services for the forthcoming Financial year.

## **S2.8 Service Delivery Agreements**

- (a) Services delivered by the CSC to the Regional Corporations must be made by way of written agreement which will set out the nature, timing, conditions and any other relevant aspects of service delivery.
- (b) The Trustee must receive a copy of all service agreements entered into between the CSC and the Regional Corporations, and any amendments to those agreements.

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## Schedule 3 – Regional Corporation Core Functions

### S3.1 Principles

The requirements in this Schedule 3 and the following principles apply to the delivery of Regional Corporation Core Functions:

- (a) a Regional Corporation must undertake the Regional Corporation Core Functions in accordance with its objects to or for the benefit of the relevant Agreement Group of that Region;
- (b) initially, the Regional Corporations are entitled to receive administrative support in the form of CSC Regional Services from the CSC, with the aim of being able to provide or source these services for themselves when the Regional Corporations have the capacity to do so;
- (c) the Regional Corporation Core Functions are functions that are critical for the Regional Corporations to provide in order to meet the ambitions of the Noongar Settlement, ILUAs and Trust Deed;
- (d) each Regional Corporation may exercise independent discretion as to the most appropriate and effective manner of providing the Regional Corporation Core Functions;
- (e) the Trustee is not required to fund a Regional Corporation's costs of delivery of the Regional Corporation Core Functions over and above the Operations Funding approved in accordance with this Deed. Any additional funding is a matter for the sole discretion of the Trustee;
- (f) the Trust has limited Operations Funding available and it is essential that each Regional Corporation determines the most efficient manner of delivering the Regional Corporation Core Functions with due care, skill and diligence and in a professional manner; and
- (g) the nature and scope of the Regional Corporation Core Functions and the costs of providing the Regional Corporation Core Functions will fluctuate over time.

### S3.2 Determining the Regional Corporation Core Functions

The following initial Regional Corporation Core Functions apply until Modified in accordance with item S3.4:

- (a) implementing the ILUA for the Region;
- (b) communicating information regarding the Noongar Settlement, ILUAs and the Trust to the Regional Corporation and Agreement Group members in a culturally appropriate manner, and through a range of mediums;
- (c) complying with all governance requirements in accordance with the Regional Corporation's constitution and the CATSI Act;
- (d) participating in the Noongar Corporations Committee;



- (e) facilitating cultural decision making processes to ensure that, as best as possible, the right people speak for country in accordance with Traditional Laws and Customs;
- (f) being an advocate for the Agreement Group with key stakeholders;
- (g) developing cultural and community programs within the Region;
- (h) managing lands and developing land management programs for the Noongar Land Estate within the Region;
- (i) engaging in co-operative and joint management of the conservation estate, and other lands where appropriate;
- (j) developing heritage programs and ensuring proper implementation of the heritage provisions of the ILUA;
- (k) providing support to the Agreement Group in identifying economic participation opportunities; and
- (l) working with the Trustee and the CSC to identify and progress property development opportunities across the Noongar Land Estate within the Region.

### **S3.3 Assessment of Service Delivery**

Each Financial Year, the Trustee must assess each Regional Corporation's delivery of the Regional Corporation Core Functions following receipt of the Regional Corporation's audited annual reports or Special Purpose Report (if any) in accordance with the following process:

- (a) the Trustee must request feedback from and consult with the Regional Corporation, in particular regarding:
  - (i) the standard of delivery of Regional Corporation Core Functions;
  - (ii) the ongoing need for the Regional Corporation Core Functions; and
  - (iii) any additional functions that should be Regional Corporation Core Functions;
- (b) the Trustee must consider the Regional Corporation's audited annual reports or Special Purpose Report (if any);
- (c) the Trustee must consult with the Noongar Advisory Company and the CSC regarding the Regional Corporation's performance; and
- (d) the Trustee must raise any concerns or queries with the Regional Corporation and provide the Regional Corporation with a reasonable opportunity to respond.

### **S3.4 Modification of Service Delivery**

Having regard to the results of an assessment under this item S3.3 the Trustee may:

- (a) determine that certain Payment Conditions be imposed on the Regional Corporation as part of any future Distributions;

- (b) determine that a Regional Corporation Core Function be Modified or removed;  
and
- (c) consider a request from the Regional Corporation for Operations Funding for the forthcoming Financial Year to be increased to assist the Regional Corporation to develop its organisational capacity, experience and expertise.

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## Schedule 4 – Committee Meeting Rules

### S4.1 Chair and Secretary

- (a) Subject to any specific requirement to the contrary in this Deed, at the first convened meeting of a committee, the members of the committee shall elect from among the committee members a Chair and a Secretary.
- (b) A person elected as Chair or Secretary under this clause S4.1 shall hold office until the election of a successor.
- (c) The Chair of the committee shall preside at all committee meetings at which the Chair is present.
- (d) The Chair has a right to vote at meetings.
- (e) The Secretary is responsible for keeping minutes of each meeting.

### S4.2 Holding Committee Meetings

- (a) A committee must meet at least once each Financial Year or as otherwise directed by the Trustee.
- (b) Meetings of the committee shall be held at such times and places as the committee determines.

### S4.3 Attendance at Committee Meetings

A committee meeting may be attended by:

- (a) the committee members; and
- (b) any person that the committee invites to attend a committee meeting.

### S4.4 Quorum and Voting

- (a) No business shall be transacted at any meeting of a committee unless at least a quorum of committee members is present for the whole time during which the business is transacted.
- (b) At a meeting of a committee:
  - (i) not less than half of the committee members form a quorum; and
  - (ii) unless otherwise provided in this Deed, every question before the committee must be determined by a majority of the votes of the committee members present and voting on that question.

### S4.5 Meeting Business

- (a) The content of the agenda for a committee meeting is to be determined by the Chair.
- (b) A committee member may apply to the Chair to have an item placed on the agenda.

#### **S4.6 Minutes**

- (a) The Secretary is responsible for keeping minutes of each meeting.
- (b) At each meeting:
  - (i) the minutes of the previous meeting must be distributed to each committee member;
  - (ii) if necessary, the minutes may be Modified; and
  - (iii) the minutes must be signed and dated by the Chair confirming the minutes as a true record of the proceedings.

#### **S4.7 Reporting to the Trustee**

The Chair of the committee must:

- (a) provide the minutes of each meeting of that committee to the Trustee; and
- (b) provide the recommendations of the committee to the Trustee in connection with the purpose for which the committee was established and as requested or directed by the Trustee.

#### **S4.8 Use of Technology**

- (a) With the consent of all of the committee members, the committee may hold a meeting at two or more venues using any technology that gives the committee members as a whole a reasonable opportunity to participate.
- (b) The consent may be a standing one.
- (c) A committee member may only withdraw his or her consent within a reasonable period before the meeting.

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## Schedule 5 – Trustee’s Powers

Unless otherwise inconsistent with this Deed, and in addition to any power given to the Trustee at law, the Trustee may:

- (a) apply or accumulate the income derived by the Trust in any of the modes authorised by this Deed;
- (b) allow any investment or asset at any time forming part of the Trust Fund to remain in the original form which it was received by the Trustee and at any time to sell, call in or convert the investment or asset into money or other securities or property;
- (c) change an investment for any others or vary the terms and conditions on which an investment is held;
- (d) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (e) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated excluding all assets that constitute the Future Fund Capital Base;
- (f) take and act on the opinion of a barrister or solicitor practising in Australia in relation to the interpretation or effect of this Deed or any of the trusts or powers of this Deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (g) take any action for the adequate protection or insurance of any part of the Trust Fund;
- (h) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (i) subject to the trusts of this Deed, generally:
  - (i) perform any administrative act; and
  - (ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this Deed, as though the Trustee were the absolute owner of the Trust Fund;
- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) accept as part of the Trust Fund any gifts (by will or otherwise), deductible contributions, donations, settlements or other dispositions in money, moneys

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worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, Apply or deal with them in any way that the Trustee may invest, Apply or deal with the Trust Fund under this Deed;

- (l) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), deductible contribution, donation, settlement or other disposition in money, moneys worth or property;
- (m) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Noongar Entity to occupy the property on the terms and conditions the Trustee thinks fit;
- (n) manage any Management Order it holds or which is held by the Land Sub in accordance with the terms and conditions of the Management Order including (if applicable) allowing any Eligible Noongar Entity to occupy the property as provided in this Trust Deed;
- (o) manage any reserve land for the reserve purpose in accordance with the Management Order held by the Land Sub, which may include granting a lease of the reserve at the request of the Relevant Regional Corporation;
- (p) establish any fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose, in consultation with the Noongar Advisory Company and the Investment Committee;
- (q) do all other things incidental to the exercise of the Trustee's powers under this Deed; and
- (r) hold, manage, invest, lease, sell, develop or deal in any way with any interest on the Housing Land Fund provided that the existence of such power of the Trustee is consistent with the Housing Land Fund purpose in clause 12 of the Trust Deed.

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## Schedule 6 – Agreement Group Endorsement

- (a) Where an Agreement Group Endorsement is required under this Deed, the procedure in this Schedule 6 applies.
- (b) An Agreement Group may give an Agreement Group Endorsement by delivering an Agreement Group Endorsement to the Trustee.
- (c) An Agreement Group Endorsement means a written endorsement in the form below which the Trustee in its absolute discretion is satisfied:
  - (i) was prepared pursuant to a resolution duly passed at a meeting of the Agreement Group called by:
    - A. the Relevant Regional Corporation; or
    - B. where there is no Relevant Regional Corporation or where the Relevant Regional Corporation is unable or unwilling to call a meeting of the Agreement Group, the Facilitator; and
  - (ii) has been duly signed on behalf of the Agreement Group by the persons authorised to do so by the Agreement Group.
- (d) In obtaining Agreement Group Endorsement the entity calling the Agreement Group meeting must comply with the following requirements:
  - (i) written notice must be provided to the members of the Relevant Regional Corporation (if applicable) and members of the Agreement Group at least 21 days prior to the meeting;
  - (ii) notice must be given by sending it by post and by public advertising. Where a notice is sent by mail, it is taken to be received 3 days after it is posted;
  - (iii) notice may also be given to an individual personally or by sending it by fax or other electronic means;
  - (iv) that notice must:
    - A. set out the place, date and time of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to do this);
    - B. state the purpose of the Agreement Group meeting;
    - C. set out the proposed resolutions to be considered at the Agreement Group meeting;
    - D. be worded and presented clearly and concisely; and
    - E. include background and supporting materials relevant to the proposed resolution.
- (e) An attendance list and minutes of the meeting (recording discussion, resolutions made and the results of any decision making process) must be

kept by the Facilitator and made available for inspection by the Agreement Group members and the Trustee.

- (f) The Trustee is entitled to rely on a document purporting to be an Agreement Group Endorsement and believed by the Trustee, acting reasonably and in good faith, to be valid and genuine, and to have been duly signed on behalf of the Agreement Group, without the need for the Trustee to enquire as to or verify the validity of the Agreement Group Endorsement or the matters referred to in it (however this does not limit the Trustee's discretion to do so).
- (g) If the Trustee is unable to determine to the Trustee's satisfaction the meaning of an Agreement Group Endorsement or has reason to question whether an Agreement Group Endorsement is valid, the Trustee may disregard the Agreement Group Endorsement and request the Agreement Group to clarify the matter.
- (h) The Trustee has no duties or responsibilities except those expressly set out in this Deed and will not be taken to owe any fiduciary duty to any party (including the Agreement Group) other than as required by law.



**Form of Agreement Group Endorsement**

**[SWALSC to provide feedback on form]**

<b>TO:</b> [insert Trustee name]	
<b>FROM:</b> [insert Agreement Group name]	

**The Agreement Group delivers the following Agreement Group Endorsement to the Trustee for the purposes of Schedule 6 of the Noongar Boodja Trust Deed:**

<b>[insert content of Agreement Group Endorsement]</b>
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1. The signatories confirm that this Agreement Group Endorsement has been prepared pursuant to a resolution duly passed at a meeting of the Agreement Group.
2. The meeting was held on \_\_\_\_\_ at \_\_\_\_\_ **[insert date and place of meeting]**.
3. The following documents are **enclosed** with this Agreement Group Endorsement:
  - a. written notice of the meeting;
  - b. the list of attendees of the meeting; and
  - c. minutes of the meeting.
4. The signatories warrant that they are authorised to give the above Agreement Group Endorsement, being the persons authorised to do so by the Agreement Group by a resolution made at the meeting.

<b>Signed for and on behalf of the Agreement Group by the following authorised persons:</b>		
Chairperson of the Regional Corporation		
Signature	Name (please print)	Date
Chief Executive Officer (or equivalent) of the Regional Corporation		
Signature	Name (please print)	Date

**Facilitator's Authorisation**

\_\_\_\_\_, being the Facilitator appointed by the Trustee in accordance with Schedule 6 of the Noongar Boodja Trust Deed, authorise this Agreement Group Endorsement and confirm:

- (a) the members of the [Relevant Regional Corporation / Agreement Group] were provided with at least 21 days written notice of the meeting;
- (b) written notice was given to members by [post / fax / other electronic means / personally]; and
- (c) the notice set out:
  - (i) the place, date and time of the meeting [and the technology that will be used at the meeting];
  - (ii) the purpose of the Agreement Group Meeting; and
  - (iii) the proposed resolutions to be considered including background and supporting materials relevant to the proposed resolutions.

**Signed for and on behalf of the Facilitator by the following authorised person:**

Signature	Name (please print)	Date

## Schedule 7 – Dedicated Trustee Requirements

### S7.1 Operational Requirements

In order to be eligible for appointment as the Dedicated Trustee and at all times whilst in office as Trustee, a Nominee Entity must:

- (a) have been nominated by the Noongar Corporations Committee at least 2 years prior to appointment;
- (b) not be suffering an Insolvency Event;
- (c) have recruited and retained an appropriately qualified chief executive officer;
- (d) be operating in accordance with an appropriate governance structure which includes:
  - (i) a code of conduct;
  - (ii) a delegations framework;
  - (iii) operational policies and procedures; and
  - (iv) an organisational chart;
- (e) be operating in accordance with an appropriate:
  - (i) business plan;
  - (ii) operating budget; and
  - (iii) strategic plan;
- (f) have an Australian Business Number;
- (g) be registered with the Australian Taxation Office for GST;
- (h) be endorsed by the Commissioner of Taxation as income tax exempt under Sub-division 50-B of the *Income Tax Assessment Act 1997* (Cth);
- (i) have an appropriate accounting system in place;
- (j) have engaged an appropriately qualified accountant, auditor and lawyer;
- (k) be operating from a functioning office with all necessary infrastructure and equipment in place;
- (l) have recruited and retained sufficient administrative staff having regard to the functions and operations of the Trustee;
- (m) have appropriate employment contracts in place for all staff;
- (n) have attended at least 8 Trustee and Nominee Entity quarterly meetings in accordance with clause 13.2.4(e);

- (o) have provided the Trustee with a copy of the certificate of incorporation of the Nominee Entity issued by the Australian Securities and Investments Commission;
- (p) have provided the Trustee with a copy of the constitution of the Nominee Entity
- (q) have provided the Trustee with written submissions as to the manner in which the Nominee Entity has met the requirements in this Schedule 7; and
- (r) have obtained written confirmation from the Trustee that, in the Trustee's reasonable opinion, the Nominee Entity meets all of the requirements in this Schedule 7;

## **S7.2 Structural Requirements**

In order to be eligible for appointment as the Dedicated Trustee and at all times whilst in office as the Trustee, a Nominee Entity must comply with the structural requirements of this clause S7.2.

### **S7.2.1 Type of Company**

The Nominee Entity must be a public company limited by guarantee in accordance with section 112(1) of the Corporations Act.

### **S7.2.2 Constitution**

The constitution of the Nominee Entity must:

- (a) be a comprehensive written document containing all of the internal governance rules of the Nominee Entity;
- (b) provide for the matters set out in clauses S7.2.3 to S7.2.11; and
- (c) be consistent with the provisions of the Corporations Act and this Deed.

### **S7.2.3 Objects**

The objects of the Nominee Entity must include but are not limited to the following:

- (a) to accept appointment and perform the function of trustee of this Trust; and
- (b) any other function or purpose that is consistent with or furthers the objects of this Trust.

### **S7.2.4 Not-for-Profit**

The Nominee Entity's constitution must provide that:

- (a) subject to clause S7.2.4(b), the income and property of the Nominee Entity must be applied solely towards the Nominee Entity's objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, profit, fee or otherwise, to any director or member of the Nominee Entity;

- (b) clause S7.2.4(a) does not prohibit making a payment approved by the Nominee Entity's board:
  - (i) for out-of-pocket expenses incurred by a director in performing a duty as a director of the Nominee Entity;
  - (ii) for a service rendered to the Nominee Entity by a director in a professional or technical capacity, other than in the capacity as a director of the Nominee Entity, where:
    - A. the provision of the service has the prior approval of the Nominee Entity's board; and
    - B. the amount payable is not more than an amount which commercially would constitute reasonable payment for the services;
  - (iii) for reasonable remuneration of directors pursuant to the Nominee Entity's constitution;
  - (iv) in good faith to any member or director for goods supplied to the Nominee Entity in the ordinary and usual course of business;
  - (v) of reasonable and proper interest on money borrowed from a member or director by the Nominee Entity;
  - (vi) of reasonable and proper rent for premises let by any member or director to the Nominee Entity; or
  - (vii) for indemnification of or payment of premiums on contracts of insurance for any director to the extent permitted by law and the Nominee Entity's constitution.

### **S7.2.5 Membership**

The only members of the Nominee Entity must be the Eligible Noongar Entities.

### **S7.2.6 Members' Meetings**

- (a) Quorum at a general meeting must be a majority of the members entitled to vote and be present at the general meeting.
- (b) Resolutions at a general meeting must be put to a vote and decided by a simple majority of votes cast in favour of the resolution.

### **S7.2.7 Board of Directors**

- (a) The directors of the Nominee Entity must comprise 5 directors qualified in accordance with clause S7.2.8, of which:
  - (i) 2 directors must be Expert representatives of the Noongar Community nominated by the Nominations Committee (**Noongar Directors**);
  - (ii) 2 directors must be Independent and nominated by the Nominations Committee (**Independent Directors**); and

- (iii) 1 director must be nominated by the State.
- (b) A director of the Nominee Entity must not be an employee, officer, director or committee member of an Eligible Noongar Entity;
- (c) All directors must be confirmed by the Nominations Committee as being eligible for appointment in accordance with clause 16.2.
- (d) The Nominee Entity must ensure that as far as possible, the directors offer diverse skills and experience.

### **S7.2.8 Qualifications of Directors**

- (a) A person is only qualified for appointment as a director of the Nominee Entity if the person:
  - (i) has completed a director's course approved by the Australian Institute of Company Directors (**AICD**) or a suitable successor or equivalent to the AICD;
  - (ii) has as a minimum, 5 years' demonstrated experience as a member of a board of directors or management of an Australian company governed by the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or Government Trading Entities or Statutory Authority and can demonstrate a preparedness to question, challenge and critique and a willingness to understand and to commit to the highest standards of governance;
  - (iii) is financially literate;
  - (iv) possesses leadership experience and qualities reflecting a proven record of accomplishment and ability to work with others;
  - (v) does not have commitments that would conflict with the commitments of a director of the Nominee Entity;
  - (vi) is of high repute and recognised integrity;
  - (vii) is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;
  - (viii) has not been disqualified (either automatically or by Court order) from managing corporations under:
    - A. Part 2D.6 of the Corporations Act, without permission or leave to manage the Nominee Entity being granted under section 206F or 206G; or
    - B. Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), without permission or leave to manage the Nominee Entity being granted under section 279-30 or 279-35;
  - (ix) has not been disqualified (either automatically or by Court order) from managing corporations, or from doing anything else contemplated by the role of director, under any other applicable law; and

- 
- (x) is not a person who has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct (including fraud), other than where:
    - A. 20 years has passed from the time of conviction; or
    - B. 10 years has passed from the time of conviction and either:
      - a. the conduct resulted in a term of actual imprisonment of less than 3 months; or
      - b. the conduct resulted in a fine of less than \$5,000; and
  - (xi) is a Responsible Person (as that term is defined by the Commissioner of Taxation) and has such other characteristics as may be considered appropriate for membership on the board of directors.
- (b) A director must not be an employee of the Nominee Entity.

### **S7.2.9 Audit**

- (a) The Nominee Entity must in each year whilst in office as the Trustee:
  - (i) have its financial statements and financial records audited by a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;
  - (ii) procure a report by its auditor as to whether the financial statements and financial records of the Regional Corporation for the previous Financial Year are fair and accurate according to Australian Accounting Standards (being all accounting standards required by an Australian law, or the standard or principle as prepared by the Australian Accounting Standards Board from time to time); and
  - (iii) provide a copy of its audit report as soon as practicable after receipt to the:
    - A. Eligible Noongar Entities;
    - B. State; and
    - C. Noongar Advisory Company.
- (b) The Nominee Entity must have been audited in a similar manner as described in clause S7.2.9(a) at least once prior to being appointed as Trustee.

### **S7.2.10 Amendment of Constitution**

At all times whilst in office as the Trustee, the constitution of the Nominee Entity must not be amended without the prior written approval of the:

- (a) Noongar Relationship Committee;
- (b) State; and

- (c) Noongar Advisory Company.

**S7.2.11 Directors' Fees**

- (a) Directors are entitled to such reasonable remuneration as the members decide in general meeting, in consultation with the Nominations Committee.
- (b) Directors' remuneration must be measured against, and must not exceed, the professional fees ordinarily charged by persons providing such services on an arm's length basis, taking into account the skill, experience and ability of the relevant director.



## Schedule 8 – Deed of Appointment of New Trustee

**Date:**

### Parties

[Insert name] of [Insert address]  
(ACN )  
**(Outgoing Trustee)**

and

[Insert name] of [Insert address]  
(ACN )  
**(Incoming Trustee)**

and

[Insert name] of [Insert address]  
**(Appointors)**

of [Insert address]

### Background

- A. By Deed of Settlement dated [Insert date] (**Trust Deed**) made between [Insert name] as Settlor and [Insert name] (as Trustee), the Noongar Boodja Trust was established (**Trust**).
- B. The Outgoing Trustee is the current Trustee for the Trust.
- C. The Appointors are the current Appointors for the Trust.
- D. The Appointors have jointly resolved to appoint the Incoming Trustee as Trustee to replace the Outgoing Trustee, subject to the Incoming Trustee accepting such appointment with effect from the Effective Date.
- E. Pursuant to clause 13.4 of the Trust Deed, the Appointors have the power, acting jointly, to remove a Trustee and appoint a new Trustee or new Trustees for the Trust (**Appointment Power**).
- F. Pursuant to clause 13.4(b) of the Trust Deed, before exercising the Appointment Power, the Appointors must consult with the:
  - a. Noongar Advisory Company; and
  - b. Outgoing Trustee.

---

## Now this Deed witnesses:

### 1. Definitions

- (a) The terms used in this Deed that are defined in the Trust Deed have the same meaning as defined in the Trust Deed unless a contrary meaning is indicated.
- (b) The terms of the Trust Deed are to prevail to the extent of any inconsistency with this Deed.
- (c) In this Deed, unless the context requires otherwise, the following expressions have the following meanings:

**Effective Date** means the date of execution of this Deed;

**Incoming Trustee** means [insert name]; and

**Outgoing Trustee** means [insert name].

### 2. Removal and Appointment

With effect from the Effective Date, the Appointors exercise the Appointment Power to appoint the Incoming Trustee as the replacement for the Outgoing Trustee for the Trust on the conditions of appointment outlined at clause 4.

### 3. Acceptance of Appointment

- (a) Subject to the conditions of appointment contained in clause 4, the Incoming Trustee:
  - (i) accepts its appointment to act as Trustee for the Trust as made by the Appointors under clause 2; and
  - (ii) agrees to perform all of the duties and responsibilities of the Trustee under the terms of the Trust Deed and according to law.
- (b) The Incoming Trustee confirms that it is a Professional Trustee Company or a Dedicated Trustee.

### 4. Conditions of Appointment

#### 4.1 General Conditions

In addition to any other rights or obligations arising under this Deed and the Trust Deed, the parties agree that the appointment of the Incoming Trustee as Trustee for the Trust is subject to the following conditions:

- (a) [Insert any special conditions].

#### 4.2 Remuneration of Trustee

The Incoming Trustee is entitled to charge and be paid remuneration from the Trust Fund in the amounts specified in the remuneration schedule annexed to this Deed in **Schedule 1** in accordance with clause 23.1 of the Trust Deed.

**5. Covenant by Outgoing Trustee**

The Outgoing Trustee covenants that it will:

- (a) immediately provide all books and financial records and other information in its possession to the Incoming Trustee;
- (b) sign all documents and do all other things reasonably required to enable the Incoming Trustee to assume the office of and to carry out the duties as Trustee for the Trust;
- (c) transfer all of the shares it holds in:
  - (i) Land Sub;
  - (ii) Noongar Advisory Company; and
  - (iii) Noongar Boodja Development Corporation (if any),to the Incoming Trustee; and
- (d) do all things necessary to vest ownership and control of the Trust Fund in the Incoming Trustee and transfer legal title in the assets of the Trust to the Incoming Trustee.

**6. Indemnity by Incoming Trustee**

The Incoming Trustee agrees to fully indemnify the Outgoing Trustee against all debts and liabilities which the Outgoing Trustee has properly incurred whilst acting as Trustee for the Trust under and in accordance with the provisions of the Trust Deed and which are unpaid at the time of the Outgoing Trustee's removal as Trustee and, subject to the Incoming Trustee being fully indemnified out of the assets of the Trust, the Incoming Trustee covenants and agrees to be responsible for and to duly pay all such debts and all future debts and liabilities in relation to the Trust in accordance with the provisions of the Trust Deed.

**7. Release of Outgoing Trustee**

- (a) Pursuant to clause 13.4(d) of the Trust Deed, the Appointors consider that the Outgoing Trustee has fulfilled its obligations under the Trust.
- (b) It is agreed that subject to clause 6 of this Deed, the Outgoing Trustee is from the time of its removal from the office of Trustee discharged from further performance of the obligations and duties imposed upon it by reason of acting as Trustee for the Trust.

**8. Consultation**

The Appointors acknowledge that they have consulted with the:

- (a) Noongar Advisory Company; and
- (b) Outgoing Trustee.

**9. Trustee Undertaking**

The Incoming Trustee undertakes to endorse on or attach to or retain with the Trust Deed a copy of this Deed.

**10. Rights under Trust Deed**

The provisions contained in this Deed do not affect the rights and obligations which any of the parties may have under the terms of the Trust Deed.

**11. Costs and Transfer Duty**

All solicitors' costs of the instructions for and preparation of this Deed and all transfer duty will be paid out of the Trust Fund.

**12. Further Assurances**

Each party shall sign, execute and do such documents, deeds and things as the other parties shall reasonably require for completely effectuating the provisions of this Deed.

**13. Governing Law**

This Deed is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**Executed by the parties as a deed.**

Executed by  
[Insert Name]  
(ACN )  
pursuant to section 127 of  
the Corporations Act

.....  
Director

.....  
Full name (please print)

}  
.....  
Director/Secretary

.....  
Full name (please print)

Executed by  
[Insert Name]  
(ACN )  
pursuant to section 127 of  
the Corporations Act

.....  
Director

.....  
Full name (please print)

}  
.....  
Director/Secretary

.....  
Full name (please print)

Signed by [Insert Name] in  
[his/her] capacity as Appointor of the  
Trust in the presence of: }

.....  
[Insert name]

.....  
Signature of Witness

.....  
Name of Witness

.....  
Address of Witness

.....  
Occupation of Witness

Signed by [Insert Name] in  
[his/her] capacity as Appointor of the  
Trust in the presence of: }

.....  
[Insert name]

.....  
Signature of Witness

.....  
Name of Witness

.....  
Address of Witness

.....  
Occupation of Witness

**Deed of Appointment of New Trustee - Schedule 1 (Trustee's Remuneration)**

**[insert Trustee's remuneration schedule]**

## Schedule 9 – First Trustee’s Remuneration

**[insert remuneration schedule]**

## Schedule 10 – Custodian Trustee

### S10.1 Appointment of Custodian Trustee

- (a) If the Trustee is not a Professional Trustee Company, the Trustee must appoint a Custodian Trustee with custodian and advisory functions (as set out in S10.3 and S10.4) to hold the legal title to the assets of the Trust not required by the Trustee for the day to day operations of the Trust (including by accepting a transfer of all shares in Land Sub as well as any money, investments or other assets from a Contributor and so holding those assets) (“**Protected Property**”).
- (b) Section 14 and section 15 of the Trustees Act shall apply to the position of Custodian Trustee except to the extent that they are inconsistent with or are modified by this Schedule 10.

### S10.2 Qualifications of Custodian Trustee

The Custodian Trustee must:

- (a) hold a current Australian Financial Services Licence, authorising the Custodian Trustee to provide a custodial or depositary service in accordance with section 766E of the Corporations Act or any other replacement legislation that deals with licensing of custodian or depositary service providers;
- (b) have at least 5 years’ experience of providing such a custodial or depositary service in relation to financial products (within the meaning of Chapter 7 of the Corporations Act) with a value of more than \$[100] million (indexed annually in accordance with the Consumer Price Index);
- (c) have at least 3 years’ experience of carrying out the functions set out in section 14 and 15 of the Trustees Act;
- (d) have at least 1 year’s experience of carrying out the functions set out in section 14 and 15 of the Trustees Act in relation to trusts which benefit, predominantly, Aboriginal persons; and
- (e) be a Professional Trustee.

### S10.3 Custodian Functions

- (a) The custodian functions of the Custodian Trustee are:
  - (i) to hold legal title to the Protected Property and such other assets as the Trustee may determine; and
  - (ii) such additional functions as may be agreed in writing between the Trustee and the Custodian Trustee from time to time.



- 
- (b) Pursuant to the Trustees Act, where a Custodian Trustee is appointed to hold Protected Property:
- (i) the Protected Property will vest in the Custodian Trustee as if the Custodian Trustee were the sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustees Act;
  - (ii) the management of the Protected Property and the exercise of all powers and discretions exercisable by the Trustee under the Trust shall be and remain vested in the Trustee as fully and effectually as if there were no Custodian Trustee;
  - (iii) the sole function of the Custodian Trustee is to get in and hold the Protected Property and invest and dispose of the Protected Property as the Trustee in writing directs, for which purpose the Custodian Trustee will execute all such documents and perform all such acts as the Trustee in writing directs; and
  - (iv) the Custodian Trustee is not liable for acting on any direction from the Trustee, but if the Custodian Trustee is of the opinion that any such direction conflicts with this Deed or the law, or exposes the Custodian Trustee to any liability, or is otherwise objectionable, the Custodian Trustee may apply to the Court for directions in the matter in accordance with the Trustees Act and any order giving directions binds both the Custodian Trustee and the Trustee.
- (c) The Custodian Trustee may delegate its duties to one or more entities that meet the qualifications of a Custodian Trustee as set out in item S10.2.

#### **S10.4 Advisory Functions**

The advisory functions of the Custodian Trustee are as follows:

- (a) subject to clause S10.3 the Trust Fund remains vested in the Trustee with all of the power to manage and administer the Trust Fund as if the Trustee were the sole trustee;
- (b) pursuant to the Trustees Act and subject to the terms of this Deed, the Trustee may follow and act on the Custodian Trustee's advice and the Trustee will not be liable for anything done or omitted by the Trustee because the Trustee followed the advice of the Custodian Trustee;
- (c) where the Trustee does not adopt a recommendation of the Custodian Trustee, the Trustee must provide written feedback and reasons to the Custodian Trustee regarding the Trustee's decision not to adopt the recommendation; and
- (d) if the Trustee and the Custodian Trustee are unable to agree on any matter relating to this Deed or the Trustee or the Custodian Trustee believes that the opinion of the other conflicts with the law, this Deed, or is otherwise objectionable then either party may apply to the Court for directions in accordance with the Trustees Act and any order giving directions binds both the Trustee and the Custodian Trustee.

## Schedule 11 - Default Investment Policy

### S11.1 Objectives

- (a) The objective of this Default Investment Policy is to provide a mechanism for the Trustee to undertake investment activities:
- (i) on an interim basis until the Trustee develops an Investment Policy in accordance with clause 19.4 of the Trustee Deed; and
  - (ii) in accordance with a well performing but ultra-conservative investment strategy that preserves the Trust Fund.
- (b) The Trustee must pursue the investment strategies in clauses S11.2 and S11.3 having regard to the objectives in clause S11.1(a).

### S11.2 Investing funds

Where this Schedule 11 applies, the Trustee must only invest funds in investments that:

- (a) do not prevent the Trustee from accessing all or part of the capital of the Trust Fund other than for a period of less than 3 consecutive months; and
- (b) fall within the "Asset Class" set out in the table below, in such proportion as the Trustee determines within the corresponding "Asset Allocation Range" and having regard to the "Suggested Benchmark".

Asset class	Asset Allocation Range	Suggested Benchmark
Fixed income – Government	5%-20%	10%
Fixed income – Credit	10%-25%	16%
Cash	55%-80%	74%
		<b>100%</b>

*\*as taken from page 21 of Morgan Stanley's special report "Giving Back: From Success to Significance (January 2014)"*

### S11.3 Investing land

Where this Schedule 11 applies, the Trustee must only invest an interest in land provided that:

- (a) where that land is:
  - (i) Cultural Land, the Trustee complies with clause 10 of the Trust Deed;
  - (ii) Development Land, the Trustee complies with clause 11 of the Trust Deed; and
  - (iii) Housing Land, the Trustee complies with clause 12 of the Trust Deed; and
- (b) the investment:

- (i) does not necessitate a Decision to Proceed; or
- (ii) necessitates a Decision to Proceed but only:
  - A. if the Trustee considers the investment is reasonably necessary for the purpose of preserving the Trust Fund; or
  - B. following consultation with the Relevant Regional Corporation of the Region in which the interest in land is located, or where there is no Relevant Regional Corporation then the Agreement Group of that Region.

## Schedule 12 – Dispute Resolution Procedure

### S12.1 Dispute

On receipt of a Dispute Notice in accordance with clause 3.6, the Trustee may invoke this Dispute Resolution Procedure to resolve a Dispute.

### S12.2 Trust Operations to Continue

- (a) Despite the existence of a Dispute, the Trust must continue to operate and any person with powers and functions under this Deed must, to the extent practicable, continue to fulfil their obligations.
- (b) This Dispute Resolution Process, including any determinations made pursuant to this Schedule 12, does not bind the Trustee or otherwise fetter its discretion in relation to carrying out its functions under this Trust Deed.

### S12.3 Dispute Resolution

- (a) If the Trustee determines to apply this Dispute Resolution Procedure on receipt of a Dispute Notice, the Trustee must:
  - (i) assist the parties to try and resolve the Dispute having regard to the spirit and intent of this Trust and the nature of the Dispute, including by any of the following:
    - A. facilitating meetings between representatives of the parties;
    - B. providing an opinion in writing or otherwise on the Dispute; or
    - C. obtaining legal advice regarding the Dispute on the basis that the legal advisor is instructed to prepare advice that is neutral and unbiased as between the parties, and making that advice available to the parties; and
  - (ii) refer the Dispute to mediation in accordance with clause S12.4 if the representatives of the parties are unable to resolve the Dispute within 30 days after the Trustee receives the Dispute Notice (or such longer period as the Trustee may agree)..

### S12.4 Mediation

- (a) If the Dispute is not resolved in accordance with clause S12.3 within 30 days after the Trustee receives the Dispute Notice, the Trustee must refer the matter to mediation by:
  - (i) appointing a Mediator who is Independent to conduct a mediation between the parties in accordance with the Mediation Guidelines; and
  - (ii) advising the parties to the Dispute in writing of the appointment of the Mediator.

- (b) The parties to the Dispute must participate in the mediation in good faith and use their reasonable endeavours to resolve the Dispute.
- (c) Subject to clause S12.4(d), the Trustee shall bear the costs of the mediation, including engagement of the Mediator.
- (d) Each party to the Dispute will bear their own costs of the mediation, including with respect to a party's individual legal representation or attendance at the mediation.

### **S12.5 Expert Determination**

- (a) If the Dispute is not resolved following mediation in accordance with clause S12.4 within 30 days after the Trustee receives the Dispute Notice, the Trustee must refer the matter to Expert determination by:
  - (i) appointing an Expert who is Independent to determine the Dispute, having regard to clause S12.5(c); and
  - (ii) advising the parties to the Dispute in writing of the appointment of the Expert.
- (b) Subject to clause S12.7, the Trustee will bear the costs of the Expert.
- (c) The Expert appointed under clause S12.5(a):
  - (i) must act as an expert and not as an arbitrator;
  - (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;
  - (iii) must not be a former or current employee or representative of any party; and
  - (iv) must disclose fully to the Trustee, before entering into an agreement to act as an Expert, any interest or duty which may conflict with his or her position.

### **S12.6 Procedure for Expert Determination**

- (a) A Dispute will be determined by the Expert by way of a hearing in accordance with this clause S12.6.
- (b) Each party:
  - (i) may be legally represented at any hearing before the Expert;
  - (ii) will be entitled to produce to the Expert any materials or evidence which that party believes is relevant to the Dispute; and
  - (iii) will make available to the Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (c) The Expert will not be bound by the rules of evidence.

- (d) Subject to any privileges under law, unless otherwise agreed by the parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a party would be permitted under any provisions of this Deed.
- (e) The Expert will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and must endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined above.
- (f) Subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.

### **S12.7 Determination of Expert**

- (a) The determination of the Expert will:
  - (i) be final and binding on the parties;
  - (ii) be made without delay and in any event within 28 days of being appointed as an Expert unless the parties otherwise agree in writing;
  - (iii) subject to paragraph (iv) below, be made on a confidential basis as between the parties to the Dispute;
  - (iv) be provided to the Trustee; and
  - (v) determine what, if any, actions the parties must take to resolve the Dispute.
- (b) Unless the parties otherwise agree the Expert will determine which party will bear the costs of the determination (and if the Expert considers it appropriate, reimbursing the Trustee for the costs of the Expert under clause S12.5) and in what proportion, having regard to:
  - (i) the capacity of a party to meet these costs;
  - (ii) the degree to which the Expert considers that party was at fault or unreasonable in failing to agree to the matter under reference; or
  - (iii) that the party's conduct is vexatious or frivolous,and that party will bear those costs accordingly.
- (c) The Expert may make whatever orders he or she sees fit with respect to payment of costs, including the giving of a direction to the Trustee that any funds held in an ENE Operations Account of a party, or future Distributions made to a party that is an Eligible Noongar Entity, shall first be applied to the satisfaction of any costs order made by the Expert.

## **S12.8 Legal Proceedings**

To the extent that any legal proceedings are otherwise permitted under this Deed, no party is entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in this Schedule have been followed, except where that party seeks urgent interlocutory or other urgent equitable relief.

## Schedule 13 – Noongar Advisory Company Constitution



### Constitution of Noongar Advisory Company Limited

A Public Company Limited by Guarantee

**Important: Check cross-referencing with finalised Noongar Boodja Trust Deed before finalising this Constitution**



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## Chapter 1– Interpretation

### 1.1 Definitions

In this Constitution:

<b>Aboriginal Tradition</b>	means the bodies of traditions, customs and beliefs of Aboriginals or of a community of Aboriginals and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.
<b>Accounting Period</b>	means the period from the date of incorporation of the Company to the following 30 June and then each period of twelve months ending on 30 June in each year or any other period that the Board decides;
<b>Agreement Group</b>	means the relevant “Native Title Agreement Group” as defined in an ILUA;
<b>Agreement Group Endorsement</b>	means an endorsement given by an Agreement Group in accordance with Schedule 6 of the Noongar Boodja Trust Deed;
<b>ASIC</b>	means the Australian Securities and Investments Commission or any successor entity to the Australian Securities and Investments Commission;
<b>Auditor</b>	means a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;
<b>Australian Accounting Standards</b>	means: <ul style="list-style-type: none"> <li>(a) all accounting standards or principles that are required to be complied with by an Australian law; and</li> <li>(b) except to the extent inconsistent with paragraph (a), an accounting standard or principle prepared by the Australian Accounting Standards Board, as updated and amended from time to time;</li> </ul>
<b>Board</b>	means the board of Directors of the Company;
<b>Body Corporate</b>	has the meaning defined in section 9 of the <i>Corporations Act 2001</i> (Cth);
<b>Business Day</b>	means a day on which the major trading banks are open for business in Perth, except a Saturday, Sunday or public holiday;
<b>Casual Director</b>	has the meaning given in rule 7.8(a);
<b>Chairperson</b>	means the person who is elected as chair and presides in accordance with rule 7.19;
<b>Code of Conduct</b>	has the meaning given in clause 3.2(c)(i) of the Noongar Boodja Trust Deed;

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<b>Commissioner of Taxation</b>	means a Commissioner of Taxation (Federal), Second Commissioner of Taxation (Federal) and Deputy Commissioner of Taxation (Federal) as provided for in sections 4 and 7 of the <i>Taxation Administration Act 1953</i> (Cth);
<b>Company</b>	means [Noongar Advisory Company Limited (ACN )];
<b>Company's Objects</b>	means the objects of the Company as set out in rule 2.1;
<b>Consensus</b>	means general agreement among the meeting present as to a particular matter whereby differing points of view, if any, have been considered and reconciled and any decision is generally agreed upon in accordance with Aboriginal Tradition. For the avoidance of doubt, a decision made by Consensus in accordance with Aboriginal Tradition, does not necessarily require that the decision be agreed upon unanimously;
<b>Consent of the Members</b>	means a resolution of the Members in accordance with a duly convened meeting of the Members in accordance with the Members' constitution to consent, endorse, approve or authorise as the case may be;
<b>Constitution</b>	means this constitution and any amendments or substitutions thereto;
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth);
<b>CSC</b>	means a corporation that is appointed by the Trustee as the Central Services Corporation in accordance with clause 5.1 under the Noongar Boodja Trust Deed;
<b>Culturally Sensitive Information</b>	means information regarding the traditional laws and customs of the Noongar People, disclosure of which would contravene a cultural obligation or rule;
<b>Director</b>	means a person appointed to perform the duties of a director of the Company;
<b>Directors</b>	means the Company's Board of Directors;
<b>Eligible Noongar Entities</b>	means the: <ul style="list-style-type: none"><li>(a) CSC; and</li><li>(b) Regional Corporations;</li></ul>
<b>Expert</b>	means a person having recognised qualifications and at least 5 years demonstrated experience that is appropriate and relevant to the matter for which the Expert is required;
<b>Financial Year</b>	means the period from the date of this Deed to 30 June and then each period of 12 months ending on 30 June in each year;
<b>ILUA</b>	means each of the Indigenous Land Use Agreements entered into by the State and the following native title groups:

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- (a) Whadjuk;
- (b) Yued;
- (c) Gnaala Karla Booja and Harris Family;
- (d) South West Boojarah and Harris Family;
- (e) Wagyl Kaip and Southern Noongar; and
- (f) Ballardong

which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs;

### **Independent**

means:

- (a) in the case of a person, the person is not (and a member of the person's immediate family is not):
  - (i) a member of an Agreement Group;
  - (ii) a lineal descendant of, or first cousin of, a member of an Agreement Group;
  - (iii) married to or in a de facto relationship with a member of an Agreement Group;
  - (iv) a parent or sibling of a person who is married to or in a de facto relationship with a member of an Agreement Group;
  - (v) currently, and has not within the period of 3 years prior to their appointment been:
    1. an employee, director, consultant, advisor, auditor or other service provider to the Noongar Community or any related or associated entity of an Agreement Group; or
    2. an employee or director of a company or partner in a partnership, which is a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;
- (b) in the case of an entity, the entity is not:
  - (i) an entity in which an Agreement Group (or any member of an Agreement Group) has a material interest;
  - (ii) an entity which is controlled by an Agreement Group (or any member of an Agreement Group); or
  - (iii) currently, and has not within the period of 3 years prior to its appointment been a consultant, advisor, auditor or other service provider to an Agreement Group or any related or associated entity of an Agreement Group;

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<b>Independent Director</b>	has the meaning given in rule 7.2(a)(ii);
<b>Member</b>	means a member of the Company in accordance with rule 3.4;
<b>Member's Register</b>	means the list of Members of the Company. The first Member's Register is in <b>Schedule 1</b> ;
<b>Modify</b>	means to modify, vary, amend, alter, change or correct and the terms " <b>Modified</b> ", " <b>Modifying</b> " and " <b>Modification</b> " shall have a corresponding meaning;
<b>National Police Certificate</b>	means a document obtained from the relevant Australian police jurisdiction which lists an individual's disclosable court outcomes and pending charges sourced from the databases of all Australian police jurisdictions;
<b>Nominations Committee</b>	means the committee established in accordance with clause 15 of the Noongar Boodja Trust Deed;
<b>Noongar Boodja Trust</b>	means the Noongar Boodja Trust established on [insert];
<b>Noongar Boodja Trust Deed</b>	means the trust deed establishing the Noongar Boodja Trust;
<b>Noongar Community</b>	means the six Agreement Groups as constituted from time to time;
<b>Noongar Corporations Committee</b>	means the committee established by the CSC in accordance with the CSC's constitution and comprising representatives from the CSC and each Regional Corporation (if any);
<b>Noongar Director</b>	has the meaning given in rule 7.2(a)(i);
<b>Noongar Relationship Committee</b>	the committee established by the Trustee in accordance with clause 15 of the Noongar Boodja Trust Deed;
<b>Ordinary Resolution</b>	means a resolution passed by a simple majority of the Members voting at a general meeting or an annual general meeting,.
<b>Personal Interest</b>	has the meaning given in rule 7.13(a);
<b>Policy and Procedures Manual</b>	has the meaning given in clause 3.2(c)(ii) of the Noongar Boodja Trust Deed;

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<b>Region</b>	means the following regions that comprise the Noongar Boodja Traditional Lands: <ul style="list-style-type: none"><li>(a) Whadjuk Region;</li><li>(b) Yued Region;</li><li>(c) Gnaala Karla Booja Region;</li><li>(d) South West Boojarah Region;</li><li>(e) Wagyl Kaip / Southern Noongar Region; and</li><li>(f) Ballardong Region;</li></ul>
<b>Regional Corporation</b>	means a corporation that is appointed by the Trustee as a Regional Corporation in respect of a specific Region in accordance with clause 4.1 of the Noongar Boodja Trust Deed;
<b>Responsible Person</b>	means an individual who: <ul style="list-style-type: none"><li>(a) performs a significant public function; or</li><li>(b) is a member of a professional body having a code of ethics or rules of conduct; or</li><li>(c) is officially charged with spiritual functions by a religious institution; or</li><li>(d) is a director of a company whose shares are listed on the Australian Stock Exchange; or</li><li>(e) has received formal recognition from government for services to the community; or</li><li>(f) is a Responsible Person as described by the Commissioner of Taxation in Taxation Ruling TR 95/27 or as otherwise approved by the Commissioner of Taxation from time to time;</li></ul>
<b>Schedule</b>	means a schedule to this Constitution;
<b>Secretary</b>	means any person appointed to perform the duties of a secretary of the Company;
<b>Special Resolution</b>	means a resolution passed by a 75% majority of the Members at a general meeting or an annual general meeting;
<b>State</b>	means the State of Western Australia, acting through the Department of the Premier and Cabinet;
<b>State Director</b>	has the meaning given in rule 7.2(a)(ii)
<b>State Endorsement</b>	means the State's written approval to the nomination of a corporation as the CSC, a Regional Corporation or any other Eligible Noongar Entity as the case may be, which approval must not be revoked during any period in which the entity is otherwise eligible to act in the relevant position;

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<b>Tax Concession Charity</b>	means a charitable trust, fund or institution endorsed as a tax concession charity by the Australian Taxation Office;
<b>Tax Law</b>	means the <i>Income Tax Assessment Act 1936 (Cth)</i> , <i>Income Tax Assessment Act 1997 (Cth)</i> and the <i>Taxation Administration Act 1953 (Cth)</i> as amended from time to time;
<b>Trustee</b>	means the initial trustee specified in clause 12.1 or the trustee of the Noongar Boodja Trust appointed under clause 12.3 of the Noongar Boodja Trust Deed from time to time;
<b>Trustee Director</b>	has the meaning given in rule 7.2(a)(iv); and
<b>Trust Fund</b>	has the meaning described in clause 6.1 of the Noongar Boodja Trust Deed.

## 1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) an expression in a rule that has a defined meaning for the purposes of the Noongar Boodja Trust Deed has the same meaning as in the Noongar Boodja Trust Deed;
- (b) a word (including defined terms) importing the singular number or plural number includes the plural and singular respectively;
- (c) a word importing any gender includes every other gender;
- (d) headings are used for convenience only and do not affect the interpretation of this constitution;
- (e) 'person' includes a public body, company or association or body of persons, incorporated or unincorporated;
- (f) references to notices include formal notices of meeting and all documents and other communications from the Company to its Members;
- (g) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (h) a reference to a document includes any Modification of it;
- (i) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (j) a reference to a Member present at a general meeting is a reference to a Member present in person or by attorney or representative; and
- (k) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form.

## 1.3 Application of the Corporations Act

- (a) Unless the contrary intention appears:

- (i) an expression used in a rule that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision; and
  - (ii) subject to rule 1.3(a)(i), an expression in a rule that has a defined meaning for the purposes of the Corporations Act has the same meaning as in the Corporations Act.
- (b) The replaceable rules do not apply to the Company except those which operate as mandatory rules for public companies under the Corporations Act.

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## Chapter 2 – Objects of the Company

### 2.1 Company's Objects

The objects and functions for which the Company is established (“**Company's Objects**”) are to:

- (a) fulfil the role of the Noongar Advisory Company as provided for in clause 14.2 of the Noongar Boodja Trust Deed;
- (b) assist the Trustee to manage its relationship with, and to liaise with, the Noongar Community, the Noongar Corporations Committee, the CSC and the Regional Corporations;
- (c) foster mutual respect and cooperation between the Trustee, the Noongar Community, the CSC and the Regional Corporations;
- (d) make recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Purpose and terms of the Noongar Boodja Trust Deed generally; and
- (e) provide guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community;

### 2.2 Company's Activities

In pursuing its Objects, the Company will undertake the following activities:

- (a) **Specific:**
  - making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:
    - (i) considering an Eligible Noongar Entity's performance;
    - (ii) accepting Contributions into the Trust Fund;
    - (iii) accessing the income or capital of the Future Fund under clause 7.2(b) of the Noongar Boodja Trust Deed;
    - (iv) Modifying the Future Fund Capital Base under clause 7.4(c) of the Noongar Boodja Trust Deed;
    - (v) Distributing capital of the Noongar Future Fund under clause 7.5 of the Noongar Boodja Trust Deed;
    - (vi) appointing and removing the Trustee under clause 13.4(b) of the Noongar Boodja Trust Deed;
    - (vii) determining the selection process for a replacement trustee under clause 13.4(e) of the Noongar Boodja Trust Deed;
    - (viii) consulting with the Noongar Relationship Committee on matters relating to the CSC and Regional Corporations under clause 15.2(a)(v) of the Noongar Boodja Trust Deed;
    - (ix) appointing representatives to the Noongar Relationship Committee under clause 15.3(a) of the Noongar Boodja Trust Deed;

- (x) determining the Annual Budget and Annual ENE Allocation under clause 18.2(a) of the Noongar Boodja Trust Deed;
- (xi) reviewing and Modifying the Investment Policy under clause 19.5 of the Noongar Boodja Trust Deed;
- (xii) appointing representatives of the Nominations Committee and Investment Committee;
- (xiii) formulating and reviewing the Strategic Plan under clauses 21.2 and 21.3 of the Noongar Boodja Trust Deed;
- (xiv) preparing the Trustee Expense Budget under clause 23.3 of the Noongar Boodja Trust Deed;
- (xv) undertaking a strategic review of the Trust under clause 26 of the Noongar Boodja Trust Deed;
- (xvi) establishing any Eligible Noongar Entity, Noongar Boodja Development Corporation or other fund, authority, institution, company, society, association or trust in furtherance of the Trust Purpose;
- (xvii) Modifying this Deed under clause 27(b) of the Noongar Boodja Trust Deed;
- (xviii) winding up or terminating the Trust under clause 28.2(a)(i) of the Noongar Boodja Trust Deed; and
- (xix) applying any assets of the Trust Fund following winding up under clause 28.2(b)(i) of the Noongar Boodja Trust Deed;

(b) **Land:**

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

- (i) matters relating to, connected with or arising out of a specific Region, the Relevant Regional Corporation, Agreement Group or Noongar Boodja Traditional Lands of that Region;
- (ii) holding land in the Cultural Land Fund as contemplated under clause 10.3(b) of the Noongar Boodja Trust Deed;
- (iii) identifying the Region and Relevant Regional Corporation to which Cultural Land relates under clause 10.2(b) of the Noongar Boodja Trust Deed;
- (iv) reclassifying Cultural Land as Development Land under clause 10.4(a) of the Noongar Boodja Trust Deed;
- (v) establishing a Noongar Boodja Development Corporation to undertake Property Development Activities under clause 11.4(b) of the Noongar Boodja Trust Deed; and
- (vi) considering the allocation of Net Proceeds from Property Development Activities in relation to Development Land under clause 11.5 of the Noongar Boodja Trust Deed; and

(c) **Funding:**

making recommendations to, consulting with or providing consent to the Trustee regarding the following matters:

- 
- (i) considering Distributions to an Eligible Noongar Entity from the Operations Fund in exceptional circumstances under clause 8.4(b) of the Noongar Boodja Trust Deed;
  - (ii) considering applications for Distributions from Eligible Noongar Entities under clause 17.4 of the Noongar Boodja Trust Deed;
  - (iii) placing conditions for the release of Distributions to Eligible Noongar Entities under clause 17.5 of the Noongar Boodja Trust Deed; and
  - (iv) Modifying Funding Guidelines under clause 17.11 of the Noongar Boodja Trust Deed; and
- (d) where there is no CSC, consulting with or providing consent to the Trustee under clauses 5.1(b)(ii)C and 5.2(b)(iv) of the Noongar Boodja Trust Deed.

### **2.3 Not-for-Profit**

- (a) Subject to rule 2.3(b), the income and property of the Company must be applied solely towards the Company's objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, profit, fee or otherwise, to any Director or Member of the Company.
- (b) Rule 2.3(a) does not prohibit making a payment approved by the Company's board:
  - (i) for out-of-pocket expenses incurred by a Director in performing a duty as a Director of the Company;
  - (ii) for a service rendered to the Company by a Director in a professional or technical capacity, other than in the capacity as a Director of the Company, where:
    - A. the provision of the service has the prior approval of the Company's board; and
    - B. the amount payable is not more than an amount which commercially would constitute reasonable payment for the services;
  - (iii) for reasonable remuneration of Directors pursuant to this Constitution;
  - (iv) in good faith to any Member or Director for goods supplied to the Company in the ordinary and usual course of business;
  - (v) of reasonable and proper interest on money borrowed from a Member or Director by the Company;
  - (vi) of reasonable and proper rent for premises let by any Member or Director to the Company; or
- (c) for indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

### **2.4 General Company Powers**

The Company has the powers set out in the Corporations Act but only to the extent necessary or convenient to carry out, or incidental to carrying out, the Company's Objects.

## **Chapter 3 - Nature of Company and Membership**

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### 3.1 Nature of the Company and Liability of Members

The Company is a public company limited by guarantee and the liability of the Members is limited.

### 3.2 Guarantee by Members

Every Member undertakes to contribute an amount not more than \$1.00 to the property of the Company if it is wound up while he or she is a Member or within one year after he or she ceases to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before the time he or she ceased to be a Member; and
- (b) the costs, charges and expenses of winding up.

### 3.3 Entitlement to Membership

The persons entitled to be Members of the Company shall be:

- (a) the Trustee of the Noongar Boodja Trust, from time to time; and
- (b) if there is no Trustee of the Noongar Boodja Trust and only until such time as a Trustee is appointed to the Noongar Boodja Trust, the Directors of the Company.

### 3.4 Membership

- (a) The Members are:
  - (i) the initial Members (who must meet the requirements of rule 3.3) as identified in the application for incorporation of the Company to ASIC and listed in **Schedule 1**;
  - (ii) such other entity entitled to membership under rule 3.3(a) and as the Company admits to membership in accordance with this Constitution; and
  - (iii) such other persons entitled to membership under rule 3.3(b) and who shall be deemed to be Members from the date the Board reasonably believes that no Trustee of the Noongar Boodja Trust exists.
- (b) A Member has the right to:
  - (i) receive notice of, attend and be heard at any general meeting; and
  - (ii) 1 vote at any general meeting.

### 3.5 Application for Membership

- (a) An application for membership made under rule 3.4(a)(ii) must be:
  - (i) made in writing in the form prescribed by the Directors; and
  - (ii) accompanied by evidence of the applicant's qualification for membership.
- (b) At the next meeting of the Board of the Company following receipt of an application for membership from an entity/person entitled to be a Member under clause 3.3, the Directors on the Board of the Company must consider the application and determine whether to accept or refuse the application.

- 
- (c) The Directors must not refuse an application from a party who meets the requirements of rule 3.3.

## **3.6 Removal and Cessation of Membership**

### **3.6.1 Death, resignation and other events**

A Member immediately ceases to be a Member if:

- (a) being the Trustee, it ceases to be the Trustee under the Noongar Boodja Trust Deed;
- (b) being a Director appointed under rule 3.3(b), the member ceases to be a Director of the Company;
- (c) the Member dies;
- (d) the Member becomes of unsound mind or liable to have his or her property dealt with under a law about mental health;
- (e) being a Body Corporate, upon the deregistration or other dissolution of that Member; or
- (f) the Member resigns as a Member by giving 21 days written notice to the Company.

## **3.7 Register of Members**

The Secretary must maintain a Member's Register in the form set out in **Schedule 1**.

## **3.8 Duties of Members**

The Members of the Company must:

- (a) act honestly, diligently and with reasonable care;
- (b) act respectfully towards the Directors and other Members and not engage in personal attacks;
- (c) advance the Company's Objects in accordance with this Constitution and the Corporations Act;
- (d) not make improper use of information or opportunities received through being a Member of the Company; and
- (e) not make any public statement on behalf of the Company unless authorised by the Board.

## **3.9 Disclosure of Interest**

- (a) A member of the Company who has any interest (other than an interest under Aboriginal Tradition) in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Company must disclose the nature of the interest at a meeting of the Members as soon as possible after the relevant facts have come to his or her knowledge and a record of such disclosure must be made in the minutes of that meeting.
- (b) Where a Member of the Company has disclosed an interest under this rule:
  - (i) the meeting of Members must consider whether a conflict exists for the Member on the matter;

- (ii) if the meeting determines that a conflict exists, the Member must be invited back to the meeting whilst the matter is considered and may take part in any decision about the matter and;
- (iii) the minutes of the meeting must record the disclosure of interest, the meeting's consideration of the disclosure and the outcome as to whether or not a conflict exists.

### **3.10 Liability of Members**

- (a) The Company is a public company limited by guarantee and accordingly, the liability of each Member is limited.
- (b) Every Member undertakes to contribute an amount not more than **\$1.00** to the property of the Company if it is wound up while they are a Member or within one year after they cease to be a Member for:
  - (i) payment of the Company's debts and liabilities contracted before the time they ceased to be a Member; and
  - (ii) the costs, charges and expenses of winding up.



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## Chapter 4 – Noongar Community

### 4.1 Recognition of the Noongar Community

- (a) In exercising the Company's functions, the Company must have regard to:
  - (i) the fundamental connection between the Trust Fund and the Agreement Groups and that the source of the Trust Fund is the settlement between the Noongar Community and the State whereby native title rights and interests are dealt with in the manner envisaged in subsections 24CB(e) and 24EB(1)(d) of the Native Title Act, pursuant to the ILUAs; and
  - (ii) the connection between the Agreement Groups, the Regions and their related Regional Corporations.
- (b) The Company may rely upon the terms of the ILUAs for the purpose of determining:
  - (i) the geographical areas that constitute the Regions that, together, represent the Noongar Boodja Traditional Lands; and
  - (ii) the identity of the traditional owners of each Region, who together, may select an Eligible Noongar Entity to be their Regional Corporation for their Region.

### 4.2 Communications

All communications, reports, plans and other documentation required to be prepared by or for the Company under this Constitution, that must or may be provided to the CSC or Regional Corporations, must be prepared in plain English and in a culturally appropriate manner in form and style, including diagrammatical representations.

### 4.3 Culturally Sensitive Information

Notwithstanding any other provision of this Constitution, the Company may withhold Culturally Sensitive Information from all communications, reports, plans and other documentation required to be prepared by or for the Company under this Constitution unless strictly required for, and only to the extent necessary for, compliance with the terms of this Constitution, the Noongar Boodja Trust Deed, or at law.

### 4.4 Good Governance Practice

The Company must continue to improve, enhance and support the development of good corporate governance practice on the Board of the Company.

## Chapter 5 – Member's Annual General Meetings

### 5.1 Holding an Annual General Meeting

- (a) The Company must hold an annual general meeting within 18 months after its registration.
- (b) The Company must hold an annual general meeting within 5 months after the end of each Financial Year.

## **5.2 Extension of Time for Holding Annual General Meetings**

- (a) The Company may apply to ASIC to extend the period within which the Company must hold an annual general meeting, provided the application is made before the end of that period.
- (b) If ASIC grants an extension, the Company must hold its annual general meeting within the extended period.

## **5.3 Business of Annual General Meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) confirmation of the minutes of the previous general meeting, except at the first annual general meeting;
- (b) the consideration of the reports that under the Corporations Act are required to be presented at the annual general meeting;
- (c) the election of Directors;
- (d) the appointment and remuneration of the Directors and Auditor; and
- (e) asking questions about management of the Company and asking questions of the Auditor.

## **5.4 Decisions of Annual General Meeting of Sole Member**

In accordance with section 249B of the Corporations Act, if the Company has only 1 Member, the Company may pass a resolution by the Member recording it and signing the record.

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## Chapter 6 – General Meetings of Members

### 6.1 Convening of Meetings by Directors

Any Director may convene a general meeting of Members.

### 6.2 Convening of Meetings by Members

The Directors must call and arrange to hold a general meeting if required to do so under this Chapter or sections 249D, 249E, 249F and 249G of the Corporations Act.

### 6.3 Notice of General Meeting

- (a) Notice of every general meeting must be given to:
  - (i) each Member;
  - (ii) each Director; and
  - (iii) the Auditor.
- (b) A notice of general meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting;
  - (iii) the general nature of the business to be transacted at the meeting; and
  - (iv) any other matters required by the Corporations Act.

### 6.4 Waiving Notice

- (a) A person may waive the requirement to give the person notice of a general meeting by written notice to the Company or attendance at the general meeting.
- (b) The non-receipt of notice of a general meeting or a failure to give notice of a general meeting to any person entitled to receive notice of a general meeting does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the person waived or waives the requirement to give the person notice of that meeting; or
  - (iii) before or after the meeting, the person has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by written notice to the Company.

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## 6.5 Members Resolutions

### 6.5.1 Notice of Members' resolutions

- (a) If the Members wish to move a resolution at a general meeting, a notice of that resolution must be given to the Company by Members with at least 5% of the vote that may be cast on the resolution.
- (b) A notice of a Members' resolution must:
  - (i) be in writing;
  - (ii) set out the wording of the proposed resolution; and
  - (iii) be signed by the Members proposing to move the resolution.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

### 6.5.2 Consideration of Members' resolutions

- (a) If the Company has been given notice of a Members' resolution, the resolution must be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (b) The Company must give all Members notice of that resolution at the same time, or as soon as possible afterwards, and in the same way, as it gives notice of a general meeting.
- (c) The Company does not have to give notice of a resolution if the resolution is defamatory.

## 6.6 Observers

- (a) The Directors may extend an invitation to any other person or Body Corporate to observe a general meeting. Any such invitee is not entitled to participate in the meeting or vote on matters.
- (b) A corporate Member may appoint more than 1 representative to attend a general meeting but only 1 representative may exercise the Member's powers at any one time during the general meeting.

## 6.7 Postponing or Cancelling a Meeting

- (a) The Directors may change the venue for, postpone, or cancel a general meeting, other than a general meeting which they are required to convene and hold under the Corporations Act.
- (b) If a general meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not:
  - (i) postpone it beyond the date by which section 249D of the Corporations Act requires it to be held; or
  - (ii) cancel it without the consent of the requisitioning Member.

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## 6.8 Quorum at General Meetings

- (a) No business, other than the election of a Chairperson and the adjournment of the meeting, may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 75% of the Members.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) where the meeting was convened on the request of Members, the meeting must be dissolved; or
  - (ii) in any other case:
    - A. the meeting stands adjourned to the day, and at the time and place, that the Directors decide or, if the Directors do not make a decision, to the same day in the next week at the same time and place; and
    - B. if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

## 6.9 Decisions at General Meetings

- (a) Except where these rules or a law requires a Special Resolution, a decision or resolution of the Members must be made by Consensus.
- (b) Where Consensus is not reached on a decision or resolution at a general meeting, the decision or resolution of the Members must be put to a vote at the same general meeting and is decided by a simple majority of votes cast by secret ballot by the Members present at the meeting.
- (c) In accordance with section 249B of the Corporations Act, if the Company has only 1 Member, the Company may pass a resolution by the Member recording it and signing the record.

## 6.10 Voting

- (a) At a general meeting a resolution put to the vote must be by way of secret ballot.
- (b) Where the votes on a proposed resolution are equal, the Chairperson of the meeting has a casting vote in addition to his or her vote as a Member.
- (c) Subject to this Constitution every Member present has 1 vote at a general meeting.
- (d) A challenge to a right to vote at a general meeting:
  - (i) may only be made at the meeting; and
  - (ii) must be determined by the Chairperson of that meeting, whose decision is final.
- (e) A vote not disallowed by the Chairperson of a meeting under this rule is valid for all purposes.

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## 6.11 Chairperson of General Meetings

- (a) If the Directors have elected 1 of their number as chair of their meetings, that person must (if present within 15 minutes after the time appointed for the meeting and is willing to act) preside as Chairperson at each general meeting.
- (b) The Members present at a general meeting must elect 1 of their number to chair the meeting if:
  - (i) there are no Directors present within 10 minutes after the time appointed for the holding of the meeting; or
  - (ii) all Directors present decline to take the chair.
- (c) Subject to the terms of this Constitution dealing with adjournment of meetings, the ruling of the Chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final.
- (d) The Chairperson may expel any Member or Director from a general meeting if the Chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour, including:
  - (i) the use of offensive or abusive language which is directed to any person, object or thing; and
  - (iii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance.

## 6.12 Auditor's Right to be Heard

The Auditor is entitled to be heard at a general meeting on any part of the business of that meeting that concerns the Auditor in their professional capacity.

## 6.13 Use of Technology at General Meeting

- (e) With the Consent of the Members, the Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (f) The Members may only withdraw their consent by a resolution of the Company at a general meeting.

## 6.14 Adjourning General Meetings

- (a) The Chairperson of a general meeting may, and must if so directed by a resolution of Members at the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (c) Where a meeting is adjourned:
  - (i) the Directors may change the venue of, or postpone or cancel the adjourned meeting, unless the meeting was called and arranged to be held by the Members or the Court under the Corporations Act; and

- (ii) if a meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not postpone it beyond the date by which section 249D of the Corporations Act requires it to be held and may not cancel it without the consent of the requisitioning Member.

### 6.15 Written Resolutions of Members

- (g) If the Company has more than 1 Member, the Members are not permitted to pass any resolution by way of a resolution in writing signed by all Members without a duly convened and held meeting of Members, because of the requirement under rule 6.6 for observers to be permitted to attend (but not vote) at all general meetings.
- (h) For the avoidance of any doubt, the prohibition in rule 6.15(a) does not apply if the Company has only 1 Member, in which case section 249B(1) of the Corporations Act will apply.

## Chapter 7– Directors

### 7.1 Initial Directors

The first Directors of the Company are the persons specified as directors in the application to register the Company under the Corporations Act.

### 7.2 Number of Directors

- (a) Until otherwise determined in accordance with this Constitution, there must be a maximum of 6 Directors who are qualified in accordance with rule 7.4, comprised of:
  - (i) 2 Directors being Expert representatives of the Noongar Community (**Noongar Directors**);
  - (ii) 2 Directors being Independent (**Independent Directors**);
  - (iii) 1 Director nominated by the State (**State Director**); and
  - (iv) 1 Director nominated by the Trustee (**Trustee Director**).
- (b) All Directors must be confirmed by the Nominations Committee as being eligible for appointment.
- (c) The Trustee must ensure that as far as possible, the Directors offer diverse skills and experience.

### 7.3 Term of Appointment

- (a) A Director will continue to be a member of the Board for the earlier of:
  - (i) the expiry of a period of 2 years;
  - (ii) the expiry of such other term (not exceeding 3 years) of appointment determined by the Board in the resolution appointing that Director in order to give effect to a rotational system of appointment of Directors; and
  - (iii) the date on which the Director retires or is removed from the office by virtue of such other rule of this Constitution.
- (b) A Director is eligible for re-election.

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## 7.4 Qualifications of Directors

A person is only qualified for appointment as a Director of the Company if they can demonstrate the following qualifications:

- (a) financial literacy;
- (b) leadership experience;
- (c) absence of conflicting commitments;
- (d) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);
- (e) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;
- (f) is not subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity;
- (g) has completed a director's course approved by the Australian Institute of Company Directors (**AICD**) or a suitable equivalent to the AICD;
- (h) has as a minimum, 5 years' experience as a director of an Australian company governed by the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and can demonstrate a preparedness to question, challenge and critique and a willingness to understand and to commit to the highest standards of governance;
- (i) is of high repute and recognised integrity;
- (j) is not a person who is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;
- (k) has not been disqualified (either automatically or by Court order) from managing corporations under:
  - (i) Part 2D.6 of the Corporations Act, without permission or leave to manage the Company being granted under section 206F or 206G; or
  - (ii) Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), without permission or leave to manage the Company being granted under section 279-30 or 279-35;
- (l) has not been disqualified (either automatically or by Court order) from managing corporations, or from doing anything else contemplated by the role of Director, under any other applicable law;
- (m) is not a person who has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct (including fraud), other than where:
  - (i) 20 years has passed from the time of conviction; or
  - (ii) 10 years has passed from the time of conviction and:
    - A. the conduct resulted in a term of actual imprisonment of less than 3 months; or
    - B. the conduct resulted in a fine of less than \$5,000;



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- (n) is a Responsible Person and has such other characteristics as may be considered appropriate for membership on the Board;
  - (o) is not an employee, officer, director or committee member of:
    - (i) an Eligible Noongar Entity; or
    - (ii) the Trustee (except the Trustee Director); and
  - (p) is able to produce an acceptable National Police Certificate to the Board.

## **7.5 Appointment of Directors**

### **7.5.1 Nomination of Noongar Directors and Independent Directors**

- (a) When selecting the Noongar Directors and Independent Directors, the Board must request the Nominations Committee of the Trust to:
  - (i) review the composition of the Directors to ensure that there is a balanced mix of expertise and experience;
  - (ii) call for nominations by advertising in any reasonably relevant online and hard copy publications;
  - (iii) develop appropriate criteria for assessing the suitability of candidates;
  - (iv) consider candidates on the basis of merit rather than any affiliation;
  - (v) request from candidates and third party sources sufficient information to enable the Board to assess the candidates' fulfilment of the qualifications in clause 7.4 and the candidates' suitability; and
  - (vi) make recommendations to the Board for appointments.
- (b) The Board must by resolution nominate for appointment by the Members, 2 Noongar Directors and 2 Independent Directors in accordance with the following procedure:
  - (i) the Board will review its composition to ensure that it has the appropriate mix of expertise and experience;
  - (ii) the Board will only consider candidates selected by the Nominations Committee;
  - (iii) candidates are evaluated using criteria adopted by the Board to determine their suitability based on the information supplied by the candidates and information obtained from other sources; and
  - (iv) candidates will be preferred if they have:
    - A. experience working with Indigenous communities;
    - B. a minimum 5 years financial or business management experience; and
    - C. experience dealing with similar trusts to the Noongar Boodja Trust.

### **7.5.2 Appointment of Directors**

Directors are appointed by an Ordinary Resolution of the Members at a general meeting in accordance with the composition required by rule 7.2.

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### 7.5.3 Consent to act as Director

A person must not be appointed as a Director unless, prior to his or her appointment, that person has provided a signed consent to the Company to act as a Director.

## 7.6 Removal of Director by the Members

- (a) Subject to rule 7.6(b), in accordance with section 203D of the Corporations Act, at any time the Company may by Ordinary Resolution of the Members, passed at duly convened general meeting of the Company (even in the case of a Company with only one Member):
  - (i) remove a Director from office; and
  - (ii) appoint another person as a replacement Director.
- (b) The procedure in section 203D of the Corporations Act must be followed in order to remove a Director from office, which requires:
  - (i) the Members providing notice of intention to move the resolution to the Company at least 2 months before the meeting is to be held;
  - (ii) the Company giving the Director a copy of the notice as soon as practicable after it is received by the Company; and
  - (iii) the Director being entitled to put their case to Members by:
    - A. the Director giving the Company a written statement for circulation to Members; and
    - B. the Director speaking to the motion at the meeting (whether or not the Director is a Member of the Company).

## 7.7 Vacation of Office

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if the Director:
  - (i) resigns or retires from office by written notice to the Company;
  - (ii) becomes a director of the:
    - A. Eligible Noongar Entities; or
    - B. Trustee (except the Trustee Director);
  - (iii) becomes bankrupt;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) is absent without the consent of the Directors from all meetings of the Directors held during a continuous period of 3 months and the Board resolves that the office of that Director be vacated;
  - (vi) is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as applicable) to the office of Director;

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- (vii) is no longer permitted by the Corporations Act to be a Director or becomes prohibited from being a Director by reason of an order made under the Corporations Act;
  - (viii) the term of the person's appointment expires;
  - (ix) the person, being a nominated Company representative, is removed and replaced by that person's nominator; or
  - (x) the person is no longer eligible to be a Director of the Company.

## 7.8 Casual Vacancies

- (a) Subject to rules 7.2 and 7.4, the Board may by unanimous resolution at any time appoint a person to be a Director, to fill a casual vacancy ("**Casual Director**").
- (b) A Casual Director appointed in accordance with this rule must meet the qualification requirements for Directors in rules 7.2 and 7.4. A Casual Director holds office until the next general meeting of Members and is then eligible for re-election.

## 7.9 General Duties

### 7.9.1 Director's Duties

The Directors, Secretary, and any other officers must comply with the duties imposed on them by the Corporations Act and the general law. These include, for example:

- (a) a duty of care and diligence;
- (b) a duty of good faith;
- (c) a duty of disclosure of Personal Interests;
- (d) a duty not to improperly use position or information; and
- (e) a duty to prevent insolvent trading.

### 7.9.2 Code of Conduct and Governance Training

- (a) The Company must adopt and comply with the Code of Conduct and Policy and Procedures Manual under the Noongar Boodja Trust Deed.
- (b) The Board must ensure that each Director undertakes ongoing corporate governance and director duties and responsibilities training and commences undertaking such training within 12 months of that Director's appointment.

## 7.10 Powers of the Board

- (a) The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Corporations Act or by the provisions of the Constitution, required to be exercised by the Company in general meeting.
- (b) Subject to the Constitution, the provisions of the Corporations Act and such regulations as may be prescribed by the Company in general meeting, no regulation made by the Company in general meeting may or does invalidate any prior act of the Board that would have been valid if that regulation had not been made.

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- (c) The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.
  - (d) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 Directors or in such other manner as the Board from time to time determines.
  - (e) The Board may by power of attorney appoint any person, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the Board under the Constitution) for such period and subject to such conditions as the Board think fit.
  - (f) Any power of attorney may contain provisions for the protection and convenience of persons dealing with any such attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities, and discretions vested in the attorney.

### 7.11 Exercise of Powers

Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the law:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which under the Corporations Act a public company limited by guarantee may exercise, take or engage in.

### 7.12 Delegation

- (a) The Board may by resolution delegate any of its powers to:
  - (i) a committee of Directors; or
  - (ii) any other persons, but not less than 2 persons, acting jointly.
- (b) A delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (c) The exercise of a power by a delegate is as effective as if the Directors had exercised it.

### 7.13 Directors with Possible Conflict of Interest

- (a) A Director who has any interest (“**Personal Interest**”) in a matter that relates to the affairs of the Company must disclose:
  - (i) the nature and extent of the Personal Interest; and
  - (ii) the relation of the Personal Interest to the affairs of the Company,

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at a meeting of the Board as soon as possible after the relevant facts have come to his or her knowledge and record of such disclosure must be made in the minutes of that meeting.

- (b) Within 28 days after their appointment a Director must, if the Director has a Personal Interest, give the other Directors notice of the interest in accordance with this rule 7.13.
- (c) A Director who has disclosed a Personal Interest in a matter that is being considered at a meeting of the Board must not be present while the matter is being considered or vote on the matter, unless the Directors who do not have a Personal Interest in the matter have passed a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's Personal Interest in the matter and its relation to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the Personal Interest should not disqualify the Director from voting or being present.
- (d) The Directors may make regulations requiring the disclosure of interests that a Director, and any person considered by the Directors as related to or associated with the Director, may have in any matter concerning the Company or a related Body Corporate. Any such regulations bind all Directors.
- (e) Where the Board believes that a significant conflict exists for a Director on a Board matter, the Director concerned must not receive the relevant Board papers and must not be present at the meeting whilst the item is considered.

#### **7.14 Director's Fees**

- (a) Subject to this rule, each Director is entitled to such reasonable remuneration as the Members in a general meeting decide.
- (b) Directors' remuneration must be measured against, and must not exceed, the professional fees ordinarily charged by persons providing such services on an arm's length basis, taking into account the skill, experience and ability of the relevant Director.
- (c) The Directors' remuneration (if any) is deemed to accrue from day to day.

#### **7.15 Board Meetings**

- (a) The Board may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a Board meeting. All of the provisions in this Constitution relating to Board meetings apply, so far as they can and with any necessary changes, to Board meetings by telephone or other electronic means.
- (c) A Director who takes part in a Board meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A Board meeting by telephone or other electronic means is taken as held at the place decided by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (e) The Board may extend an invitation to any person it deems appropriate to sit with the Board, provided that any such invitee is not entitled to vote on matters.

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## 7.16 Convening Board Meetings

- (a) A Director may convene a meeting of the Board whenever he or she thinks fit.
- (b) A Secretary must, on the request of a Director, convene a meeting of the Board.

## 7.17 Notice of Board Meetings

- (a) Subject to this Constitution, notice of a meeting of the Board must be given to each person who is, at the time of giving the notice, a Director, except a Director on leave of absence approved by the Board.
- (b) A notice of a Board meeting:
  - (i) must be given not less than 14 Business Days prior to the meeting, or such other period as agreed by the Board and recorded in the Board's meeting minutes;
  - (ii) must specify the date, time and place of the meeting;
  - (iii) need not state the nature of the business to be transacted at the meeting; and
  - (iv) may be given in person or by registered post, telephone, fax or other electronic means.
- (c) A Director may waive the requirement to give the Director notice of a meeting of the Board by notifying the Company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of the Board by, or a failure by the Board to give notice of a meeting of the Board to a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the Director:
    - A. waived or waives notice of that meeting; or
    - B. notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (iii) the Director attended the meeting.

## 7.18 Quorum at Board Meetings

- (a) No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time the business is dealt with.
- (b) A quorum consists of a majority of the Directors which must include 1 Noongar Director and 1 Independent Director.
- (c) If the quorum is not present within 30 minutes after the time appointed, the meeting stands adjourned to the date, time and place as the Directors decide.
- (d) If there is a vacancy in the office of a Director then the remaining Directors may act only for the purpose of filling the vacancy.

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- (e) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of Directors or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors must act as soon as possible to:
- (i) increase the number of Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this Constitution;
  - (ii) convene a general meeting of the Company for that purpose; or
  - (iii) appoint additional Directors,
- and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **7.19 Chairperson of Directors**

- (a) The Board may elect one of the Directors as Chairperson of Directors and may decide the period for which that Director is to be the Chairperson.
- (b) The Chairperson must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as Chairperson at each meeting of the Board.
- (c) The Directors present at the meeting must elect 1 of them as Chairperson of the meeting if:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is not present within 10 minutes after the time appointed for the meeting; or
  - (iii) the Chairperson is present within that time but is not willing to act as Chairperson of the meeting.

### **7.20 Decisions of Directors**

- (a) A meeting of the Board at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Directors under this Constitution.
- (b) The Board must first attempt to make decisions or resolutions of the Board by Consensus.
- (c) If a Consensus cannot be reached, the question shall be voted on at the same meeting on the same day and the decision shall be carried where a majority of the Directors present and entitled to vote, vote in favour of the decision at the meeting.
- (d) The opinions or decisions of the Board of the Company are recommendations only and do not bind the Trustee in any way.

### **7.21 Alternate Directors**

- (a) Subject to rules 7.2, 7.3 and 7.4, a Director may, with the written approval of the other Directors, appoint a person to be an alternate Director in his or her place during such period as he or she thinks fit.
- (b) An alternate Director is entitled to notice of Board meetings and if the appointer is not present, is entitled to attend and vote in his or her stead.

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- (c) An alternate Director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate Director is deemed to be the exercise of the power by the appointer.
  - (d) The appointment of an alternate Director can be terminated at any time by the appointer notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointer's office as a Director is vacated.
  - (e) An appointment or the termination of an appointment of an alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

## 7.22 Minutes

- (a) The Board must cause minutes of all proceedings of general meetings, meetings of the Board and meetings of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chairperson of the meeting at which the proceedings took place.
- (c) During business hours all Members have the right to inspect confirmed minutes of meetings of the Board free of charge.
- (d) Members may request in writing from the Company a copy of any minutes of a general meeting or any minutes of a resolution passed by Members without a meeting and the Company must provide a copy of the minutes requested in accordance with the provisions of the Corporations Act.

## 7.23 Circular Resolution in Writing

- (a) A resolution in writing passed in accordance with the rules and signed by all Directors, excluding Directors who have been given a leave of absence, is to be treated as a determination of the Directors passed at a meeting of the Directors duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors.
- (c) If so signed, the resolution takes effect on the latest date on which a Director signs one of the documents.
- (d) A document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing.
- (e) A document bearing a facsimile of a signature is to be treated as signed.
- (f) The Directors may pass a resolution using any technology consented to by all the Directors including email provided that:
  - (i) all Directors entitled to vote on the resolution deliver written communication that they are in favour of the resolution set out in the communication;
  - (ii) each Director confirms by telephone or other verbal communication to at least one other Director that they are in favour of the resolution;
  - (iii) the resolution is passed when the last Director sends a written communication; and



- (iv) the resolution is ratified at a subsequent Directors' meeting.

## **7.24 Validity of Acts**

An act done by a person acting as a Director or a meeting of the Board attended by a person acting as a Director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified from being a Director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the Directors (as applicable) when the act was done.

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## Chapter 8 – Company Secretary

### 8.1 Company Secretary

- (a) The Board must appoint a Secretary.
- (b) The Board may at any time terminate the Secretary's appointment, with or without cause.
- (c) The Directors may determine the terms and conditions of appointment and removal of a Secretary, including remuneration.
- (d) The Secretary may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary of the Company.

## Chapter 9 – Director's Indemnity and Insurance

### 9.1 Indemnity

- (a) This rule applies to:
  - (i) each person who is or has been a Director, or Secretary of the Company; and
  - (ii) any other officers or former officers of the Company or of its Related Bodies Corporate that the Board decides in each case.
- (b) Subject to the Corporations Act, the Company must indemnify and if requested by a person to whom this rule applies enter into a deed indemnifying, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule applies for all losses or liabilities incurred by the person as an officer of the Company or of a related Body Corporate including, but not limited to, a liability for negligence or reasonable costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Corporations Act.
- (c) The indemnity in this rule 9.1:
  - (i) is a continuing obligation and is enforceable by a person to whom rule 9.1 applies even though that person has ceased to be an officer of the Company or of a related Body Corporate; and
  - (ii) operates only to the extent that the loss or liability is not covered by insurance.

### 9.2 Insurance

Subject to the Corporations Act, the Company may, to the extent permitted by law, purchase and maintain insurance, or pay or agree to pay a premium for insurance, for any person to whom this rule applies against, any liability incurred by the person as an officer of the Company or of a related Body Corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### 9.3 No limits

Nothing in Chapter 9:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

## Chapter 10 – General Legal Provisions

### 10.1 Minutes of Meetings

- (a) In accordance with section 251A of the Corporations Act (or any other applicable law) and this Constitution, the Company must keep minute books in which it records within 1 month:
  - (i) proceedings and resolutions of general meetings;
  - (ii) proceedings and resolutions of Board meetings (including meetings of a committee of directors);
  - (iii) resolutions passed by Members without a meeting; and
  - (iv) resolutions passed by Directors without a meeting.
- (b) The Company must keep its minute books at:
  - (i) its registered office; or
  - (ii) its principal place of business; or
  - (iii) another place in Australia approved by ASIC.

### 10.2 Accounts, Audit and Records

#### 10.2.1 Accounts

- (a) The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act (or any other applicable law).
- (b) The Company must prepare a financial report for each Accounting Period in accordance with all applicable laws.
- (c) The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act (or any other applicable law).

#### 10.2.2 Auditor

- (a) The Company must appoint an Independent qualified company auditor registered under Part 9.2 of the Corporations Act whose duties will be regulated in accordance with the Corporations Act (or any other applicable law).
- (b) The Company must procure a report by its auditor whether the financial statements and financial reports of the Company for the previous Financial Year are fair and accurate according to the Australian Accounting Standards.

- 
- (c) The Company must provide a copy of its audit report as soon as practicable after receipt to the:
    - (i) Eligible Noongar Entities;
    - (ii) State; and
    - (iii) Trustee.
  - (d) The remuneration of the Auditor must be fixed.

### 10.2.3 Records and rights of inspection by Members

Subject to the Corporations Act, the Directors may determine:

- (a) whether and to what extent;
- (b) at what times and places; and
- (c) under what conditions,

the accounting records and other documents of the Company or any of them are open to the inspection of Members (other than Directors). A Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

## 10.3 Notices

### 10.3.1 Persons authorised to give notices generally

- (a) A notice by the Company in connection with this Constitution may be given on behalf of the Company by a solicitor, Director, or Secretary of the Company.
- (b) The signature of a person on a notice given by the Company may be written, printed or stamped.

### 10.3.2 Method of giving notices to Members

Subject to rule 10.3.1 and in addition to the method for giving notices permitted by statute, a notice may be given by the Company to a Member by:

- (a) delivering it to the Member personally or to their street address stated in the Members Register;
- (b) posting it by prepaid post to the Member's street or postal address stated in the Members Register; or
- (c) if the Member has nominated a fax or e-mail address to the Company, fax or e-mail.

### 10.3.3 Method of giving notices to third parties

A notice may be given by the Company to the CSC and Regional Corporations, the Member or the Auditor by delivering it:

- (a) to the address provided to the Company by the recipient from time to time; and
- (b) in accordance with any preferred notice procedure that applies to the recipient.

### 10.3.4 Address for giving notices to the Company

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- (a) The street and postal address of the Company is its registered office.
- (b) The fax number or e-mail address of the Company is the number which the Company may specify by written notice to the Members as the fax number or e-mail address to which notices may be sent to the Company.

#### **10.3.5 Time notice is given**

A notice is taken as given by the Company and received by the Member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the sender of the fax receives a confirmation report that all pages of the fax have been transmitted to the recipient's fax number, but if transmission or receipt is after 5.00 pm WST, it is taken as received on the next Business Day;
- (c) if sent electronically, on the next Business Day; and
- (d) if posted, on the third Business Day after it was posted.

#### **10.4 Altering this Constitution**

- (a) A Special Resolution making any Modification to, or affecting the rules of this Constitution has no effect unless it is consistent with the provisions of the Noongar Boodja Trust Deed and the Corporations Act and approved in writing by:
  - (i) the State;
  - (ii) the Commissioner of Taxation, if required by the Tax Law; and
  - (iii) Members by special resolution.

#### **10.5 Winding Up**

- (a) Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities will not be paid to or distributed among the Members but will be given or transferred to a fund or institution which:
  - (i) has objects consistent with the Noongar Boodja Trust;
  - (ii) whose constitution prohibits distributions or payments to its members; and
  - (iii) is a non-profit entity endorsed by the Commissioner of Taxation as a Tax Concession Charity for the purposes of the Tax Law.
- (b) The identity of the company, fund or institution referred to above must be decided by the Members by Ordinary Resolution at or before the time of winding up or dissolution of the Company and, if the Members cannot decide, by the Supreme Court of Western Australia.

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## Schedule 1 – Member’s Register

The initial Member(s) of the company (whose consents are set out below) adopt, on registration of the company, the above constitution as the company’s constitution in accordance with section 136(1) of the Corporations Act.

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**Name****Address**

Dated: 2013

Executed by )

)

**(ACN )** )

pursuant to )

of the )

\_\_\_\_\_  
Director\_\_\_\_\_  
Director/Secretary\_\_\_\_\_  
Name (Please Print)\_\_\_\_\_  
Name (Please Print)

## **Annexure H**

### **The Security Deed**

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## Security Deed

Name State Ministers acting on behalf of WA Government  
State

and

Name Trustee  
Trustee



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## Security Deed

Date

2014

### Parties

#### State

**Name****Address details**

#### Trustee

**Name Trustee****Address Details**

### Background

- A. The registered native title applicants of the Native Title Claims and others in the South West region of Western Australia (**Native Title Agreement Group**) propose to enter into Indigenous Land Use Agreements (**ILUAs**) with the State of Western Australia, in consideration of the resolution of the Native Title Claims and other matters, that includes:
- (i) a settlement package for the benefit of the Noongar People (**State Contribution**); and
  - (ii) the establishment of the Noongar Boodja Trust pursuant to the Trust Deed to receive and administer the settlement package.
- B. There are 6 ILUAs, covering the combined area of the Native Title Claims and adjacent land and waters.
- C. Where an ILUA Termination Event occurs in respect of an ILUA during the Conditional Period, the State may issue an ILUA Termination Notice requiring the Trustee to pay the State the ILUA Termination Amount. There can be more than 1 and up to 6 ILUA Termination Notices on issue at any single time.
- D. Where clause 12.1 of an ILUA applies, the State may issue an Indemnified Amount Notice requiring the Trustee to pay the State an amount set out therein. There can be more than 1 Indemnified Amount Notice on issue at any single time.
- E. Pursuant to the terms of the Trust Deed, the Trustee accepts the State Contribution provided by the State to the Trustee under the ILUAs on condition that the Trustee may become required to repay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State in accordance with the provisions of the Trust Deed.
- F. At the request of the State, the Trustee has agreed to grant a security interest in favour of the State:
- (i) during the Conditional Period in support of its obligation to repay any ILUA Termination Amount to the State; and

- (ii) before and after the Conditional Period Expiry Date, in support of its obligation to pay an amount payable under an Indemnified Amount Notice.

## 1. Definitions and interpretation

Terms defined in (or incorporated by reference into) the Trust Deed, unless defined herein, have the same meanings when used in this deed with all consequential amendments.

### 1.1 Definitions

**Accounts** means each of the bank accounts and securities accounts established from time to time to hold all or any part of the Trust Fund.

**Ancillary Security** means an agreement other than this deed that is intended to be security for Secured Debt.

**Attorney** means an attorney appointed under this deed or an Ancillary Security.

**Conditional Period** means the period from the date of this deed to (and including) the Conditional Period Expiry Date.

**Conditional Period Expiry Date** has the meaning given to that term in the Trust Deed.

**Encumbrance** means a Security Interest and any other security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements).

**Future Fund** means the sub fund of the Noongar Boodja Trust called the “Future Fund” and established pursuant to the Trust Deed.

**ILUA** means each of the Indigenous Land Use Agreements entered into by the State and the following native title claim groups:

- (a) Whadjuk;
- (b) Yued;
- (c) Gnaala Karla Booja and Harris Family;
- (d) South West Boojarah and Harris Family;
- (e) Wagyl Kaip and Southern Noongar; and
- (f) Ballardong

which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs.

**ILUA Termination Amount** means the amount expressed to be the amount payable to the State by the Trustee under any ILUA Termination Notice.

**ILUA Termination Event** has the meaning given in the ILUAs.

**ILUA Termination Default** means the occurrence of an event whereby the Trustee is served any ILUA Termination Notice during the Conditional Period and fails to pay the State the ILUA Termination Amount on the date specified for payment under the Trust Deed.

**ILUA Termination Notice** has the meaning given to that term in the Trust Deed.

**Indemnified Amount Default** means the occurrence of an event whereby the Trustee is served any Indemnified Amount Notice and fails to pay the State the amount set out therein, on the date specified for payment under the Trust Deed.

**Indemnified Amount Notice** has the meaning given to that term in the ILUAs.

**Investment Property** means an intermediated security, an investment instrument and a negotiable instrument not evidenced by a certificate.

**Native Title Claims** means the Claimant Applications lodged in the Federal Court and allocated numbers as follows:

- (a) **Ballardong** WC2000/007 and WAD6181/1998;
- (b) **Gnaala Karla Booja / Harris Family** WC1998/058, WC1996/041 and WAD6274/1998, WAD6085/1998;
- (c) **South West Boojarah / Harris Family** WC2006/004, WC1996/041 and WAD253/2006, WAD6085/1998;
- (d) **Whadjuk** WC2011/009 and WAD242/2011;
- (e) **Wagyl Kaip / Southern Noongar** WC1998/070, WC1996/109 and WAD6286/1998, WAD6134/1998; and
- (f) **Yued** WC1997/071 and WAD6192/1998.

**Noongar Boodja Trust** means the trust established pursuant to the Trust Deed.

**Officer** in relation to the State means [*consider appropriate executive position(s) for corresponding/decision making in relation to this deed*].

**Operations Fund** means the sub fund of the Noongar Boodja Trust called the “Operations Fund” and established pursuant to the Trust Deed.

**PPSA** means PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**Receiver** means a person appointed as a receiver or receiver and manager under this deed or an Ancillary Security that the Trustee grants.

**Relevant Documents** means the Transaction Documents and the ILUAs.

**Remedy Proceeds** means monies received from the exercise of any right against the Secured Property.

**Secured Debt** means the Trustee's obligation (if any arises) to pay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State upon becoming required to do so under the Trust Deed.

**Secured Property** means at any time the assets of the Future Fund and Operations Fund of the Noongar Boodja Trust at that time, including (without limitation):

- (a) Investment Property including all additions to, renewals and replacements of Investment Property; and
- (b) Accounts including all amounts in or credited to Accounts at any time and all additions to, renewals and replacements of Accounts.

**Security Interest** has the meaning given to that term in the PPSA.

**Tax** means:

- (a) a tax, levy, impost, charge and duty which any governmental authority imposes; and
- (b) any interest, penalty, fine or expense relating to the tax, levy, impost charge or duty.

**Transaction Document** means:

- (a) this deed;
- (b) the Trust Deed;
- (c) an Ancillary Security;
- (d) a document relating to the priority of this deed; and
- (e) a document relating to the priority of a Security Interest, which is an Ancillary Security.

**Trust Deed** means the document titled 'Noongar Boodja Trust Deed' dated [*specify date*] between the Trustee and [*name settlor*].

## 1.2 Interpretation

In this deed, unless inconsistent with the context:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) a heading is for convenience only and does not affect interpretation;

- 
- (e) a reference to a clause or schedule is a reference to a clause of or schedule to this document;
  - (f) the word *includes* is not a word of limitation and does not restrict the interpretation of a word or phrase in this deed;
  - (g) a reference to a document includes a variation or replacement of it;
  - (h) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
  - (i) a reference to person includes a reference to:
    - (i) an individual, a body corporate, a trust, a partnership, a joint venture, and an unincorporated body or other entity, whether or not it is a separate legal entity; and
    - (ii) that person's successors and permitted assigns and a person who by novation replaces that person as a party to this deed;
  - (j) a reference to a thing, including a right, is a reference to either the whole thing or a part of the thing;
  - (k) a reference to performing an obligation or exercising a right includes on as many occasions as requested or required, or from time to time;
  - (l) an agreement, representation or warranty in favour of or on the part of two or more people benefits or binds them jointly and severally;
  - (m) a reference to currency is to Australian currency;
  - (n) a reference to time is to Western Standard Time in Australia;
  - (o) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;
  - (p) a reference to a day is a reference to the period which starts at midnight and ends 24 hours later;
  - (q) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
  - (r) a reference to a specific time for performance of an obligation is a reference to that time in the State or Territory where the obligation is to be performed;
  - (s) a reference to the liquidation of a person includes the dissolution, winding-up and bankruptcy of that person and any analogous procedure under the law of a jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
  - (t) each of these terms has the meaning given to it in the PPSA:
    - (i) account;
-



- (ii) commercial property;
- (iii) control (within the meaning of Part 2.3 of the PPSA);
- (iv) financing statement;
- (v) financing change statement;
- (vi) intermediated security;
- (vii) investment instrument;
- (viii) negotiable instrument;
- (ix) possession;
- (x) securities account; and
- (xi) security agreement.

### **1.3 Trusts**

Unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Trustee includes its transactions, assets, acts or liabilities as trustee. Where the Trustee incurs an obligation, it incurs that obligation both in its own right and in its capacity as trustee, unless the obligation relates only to an asset which it holds in its own right and not as trustee.

## **2. Security**

### **2.1 Secured Debt**

The Trustee must pay the Secured Debt when due.

### **2.2 Security Interests granted by this deed**

- (a) To secure the due payment of the Secured Debt, the Trustee grants to the State a Security Interest over all of its right title and interest (whether present or future and whether actual or contingent) from time to time in the Secured Property.
- (b) The Security Interest granted under this deed ranks in priority to all other Security Interests.

### **2.3 Continuing security**

This deed and the Security Interest created under this deed:

- (a) is a continuing security, despite intermediate payments, settlement of accounts or anything else;
- (b) is in addition to any Ancillary Security; and

- (c) does not merge in any Ancillary Security.

#### **2.4 Security Interest is unconditional**

The Security Interest created under this deed is not discharged nor are the obligations of the Trustee in relation to the Security Interest affected by:

- (a) any time, indulgence, waiver or consent at any time given to another person, including a party to any Relevant Document;
- (b) an amendment to a Relevant Document, whether or not that amendment increases the liability of the Trustee;
- (c) the existence, validity or enforceability of a Relevant Document;
- (d) the enforcement of or failure to enforce a Relevant Document;
- (e) the release of a person or property from a Relevant Document;
- (f) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of another person, including any party to a Relevant Document; or
- (g) the commencement of steps to effect the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of another person, including any party to a Relevant Document.

#### **2.5 No liability**

The State is not liable to the Trustee in relation to a matter described in clause 2.4, even though it may prejudice the Trustee's rights, including its rights in subrogation.

#### **2.6 Release of security**

The Security Interest will automatically be released on the last day of the Conditional Period with respect to payment of any ILUA Termination Amount but without prejudice to any rights or obligations that existed on or before that date. The Security Interest will not be automatically released on the last day of the Conditional Period with respect to payment of any amount payable under an Indemnified Amount Notice.

#### **2.7 Trustee must assist State**

- (a) At the State's request, the Trustee must do everything within its power that the State requires to allow the State to:
  - (i) obtain the full benefit of its rights under the Transaction Documents;
  - (ii) obtain a more effective security or obtain the priority that the State requires over any Encumbrance given by the Trustee relating to any Transaction Document; and
  - (iii) perfect a Security Interest relating to this deed including by:
    - A. providing details about Secured Property;

- B. providing details about the Trustee; and
  - C. registering a financing statement or a financing change statement for a Security interest.
- (b) Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, if required by the State the Trustee must give the State possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property, including by:
- (i) delivering an instrument of title or a blank transfer to the State or its nominee or signing an authority and giving a mandate, in favour of the State, to operate an Account;
  - (ii) vesting title in or ownership of the Secured Property in the State or its nominee;
  - (iii) confirming in writing to any person the State's or its nominee's right to transfer or deal with Secured Property, and where applicable, instructing those persons to act accordingly, and to hold Secured Property on behalf of the State or its nominee;
  - (iv) agreeing, or arranging for, the State or its nominee, to be able to initiate or control the sending of electronic messages or other electronic communications by which Secured Property can be transferred or otherwise dealt with; or
  - (v) executing and delivering any document necessary to effect a withdrawal or fund transfer from an Account.
- (c) Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, the State may have possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property until the State is obliged to release the Secured Property from the Security Interests created by this deed.
- (d) The Trustee must give the State immediate notice if the Trustee's details change in a way which requires the State to register a financing change statement.
- (e) The Trustee must:
- (i) upon request, provide to the State any financial and other information in relation to the Secured Property, any Ancillary Security or any Encumbrance which the State grants or permits to exist; and
  - (ii) do everything necessary and provide to the State all documents, evidence and information necessary to enable the State to establish that it has a purchase money security interest or any other Security Interest.
- (f) The Trustee must act under this clause promptly and at its own cost.

### **3. Dealings with Secured Property**

- (a) At all times prior to the occurrence of an ILUA Termination Default or an Indemnified Amount Default and subject to clause 3(b), the Trustee may deal with the Secured Property in the manner set out in the Transaction Documents, including without limitation by exercising the Trustee's powers under the Trust Deed and at law, but not otherwise.
- (b) The Trustee agrees that it will not create or permit to subsist any Encumbrance in any Secured Property in favour of any person, without the prior written consent of the State.

### **4. Warranties**

#### **4.1 Nature of a Trustee's warranty**

- (a) The Trustee acknowledges that each Trustee warranty is and must be true, accurate and complete and is not misleading, deceptive or likely to mislead or deceive.
- (b) Only written exceptions to a Trustee warranty, which the State has acknowledged in writing, can vary a Trustee's warranty.
- (c) Each Trustee warranty is a separate warranty.
- (d) A Trustee warranty is not restricted by reference to or inference from another clause, including another warranty.
- (e) After the date of this deed and each time an item of after-acquired property becomes Secured Property, the Trustee repeats its Trustee warranties.

#### **4.2 General representations and warranties**

The Trustee represents and warrants to the State that:

- (a) it has full power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party;
- (b) if it is a corporation, it is registered (or taken to be registered) and validly existing under the Corporations Act;
- (c) if it is a corporation, it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (d) it has taken all necessary action to authorise the execution and performance of the Transaction Documents in accordance with their terms;
- (e) it has obtained all necessary action to authorise the execution, delivery and performance of the Transaction Documents to which it is a party;
- (f) the Transaction Documents to which it is a party constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration,

are enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity;

- (g) the execution, delivery and performance by it of the Transaction Documents to which it is a party do not and will not violate, breach, or result in a contravention of:
  - (i) any law, regulation or authorisation;
  - (ii) its constitution or other constituent documents; or
  - (iii) an Encumbrance or document which is binding on it or on its assets;
- (h) it has complied with all material laws applicable to it or its business; and
- (i) it has not created any Encumbrance over its interest in the Secured Property except as contemplated by a Transaction Document.

#### **4.3 Trust representations and warranties**

The Trustee represents and warrants to the State that:

- (a) it has been properly appointed as trustee of the Trust and is the only trustee of the Trust;
- (b) no meeting has been called, no resolution has been passed, no direction or notice been given and no other action has been taken to remove it as trustee of the Trust;
- (c) the Trust is duly and properly constituted as a trust in accordance with all applicable laws and the Trust Deed complies with all applicable laws;
- (d) it has full power and authority in its own right and as trustee of the Trust to enter into and perform its obligations under the Transaction Documents;
- (e) the performance by it of the Transaction Documents does not and will not violate any law, regulation, authorisation, ruling, consent, judgment, order or decree of any government agency, its constitution or other constituent documents, any document which is binding upon it, any of its assets, or on any part of the assets of the Trust, or the Trust Deed;
- (f) the execution, delivery and performance of the Transaction Documents and the transactions contemplated by them do not breach the Trust Deed;
- (g) it has a right to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under the Transaction Documents;
- (h) its right of indemnity and any equitable lien or other encumbrance which it has against or over the assets of the Trust have not been modified, waived, released, lost, diminished or rendered unenforceable, void or voidable, by any agreement, act or omission;

- (i) the assets of the Trust are sufficient to satisfy its rights of indemnity and all other obligations and liabilities in respect of which it has a right to be indemnified out of those assets;
- (j) it has complied with all of its duties as trustee of the Trust;
- (k) it is not in default under the Trust Deed;
- (l) it has complied with the terms of the Trust Deed and all trustee duties and powers arising under the terms of the Trust Deed and under law;
- (m) no resolution has been passed or direction given for the winding up or termination of the Trust or distribution of the assets of the Trust;
- (n) it is the sole legal owner of all of the right, title and interest in the Accounts;
- (o) no property of the Trust has been re-settled or set aside or transferred to any other person (as trustee or otherwise) or mixed with any other property; and
- (p) it is entering into the Transaction Documents for the proper purpose of the Trust.

#### **4.4 Survival and Repetition**

- (a) The representations and warranties given in this clause 4:
  - (i) survive the execution of this deed; and
  - (ii) are repeated on each day during the term of this deed with reference to the facts and circumstances at the time.
- (b) The Trustee acknowledges that the State has entered into this deed in reliance on the representations and warranties given in this clause 4.

### **5. Role of the State**

#### **5.1 Secured Property**

- (a) The Trustee acknowledges that the Security Interest granted to the State over the Secured Property is provided for the purpose of ensuring the due and faithful performance of the Trustee's obligations under the Transaction Documents.
- (b) The Trustee agrees that:
  - (i) the State is not responsible for the Trustee's performance of its obligations in relation to any Secured Property; and
  - (ii) the State has no duties in relation to any Secured Property except as specified in a Transaction Document, and will not be liable for any error of judgment or any mistake of fact or law, except to the extent of its own gross negligence or fraud.

## **5.2 State's rights on ILUA Termination Default or Indemnified Amount Default**

Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, if required by the State the Trustee must:

- (a) immediately do everything necessary to give the State sole control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property, including signing an authority and giving a mandate in favour of the State so that it or its nominee is the sole signatory to each Account and is solely authorised to operate it; and
- (b) not attempt to withdraw or transfer any funds or intermediated securities from any Account without the signature of the State or its nominee.

## **6. Further Security Interest or Encumbrance**

The Trustee must not permit any of the Secured Property to be the subject of an Encumbrance created by law. This clause 6 does not apply to a Security Interest in favour of the State.

## **7. No prejudicial actions or omissions**

The Trustee must not do, omit or allow anything that might:

- (a) render the Secured Property or a Security Interest created under this deed or any Ancillary Security, unenforceable or liable to forfeiture or cancellation; or
- (b) adversely affect the security of the State under a Transaction Document.

## **8. Contracting out and Confidentiality**

### **8.1 Contracting out of PPSA enforcement clauses**

- (a) If and to the extent permitted by s.115(1) and s.115(7) of the PPSA, the parties agree to contract out of the provisions of the PPSA listed in s.115(1) and s.115(7) and the following additional provisions:
  - (i) section 121(4) (enforcement of liquid asset security notice to Trustee);
  - (ii) section 125 (obligation to dispose of or retain collateral);
  - (iii) section 129(2) and 129(3) (disposal by purchase);
  - (iv) section 132 (State to give statement of account);
  - (v) section 142 (redemption of collateral); and
  - (vi) section 143 (reinstatement of security agreement).
- (b) Without limiting clause 8.1(a), the State is required to give a notice under the PPSA, including notice of a verification statement, only if:

- (i) the notice is obligatory under the PPSA; and
- (ii) the giving of notice cannot be excluded under the PPSA,

and the Trustee hereby waives any rights to receive any notices unless they are required to be given and cannot be excluded.

## **8.2 Maintaining confidentiality of information relating to a Security Interest**

To the extent permitted under the PPSA, including section 275(6) of the PPSA, the parties must not disclose information, including the Transaction Documents and any other documents relating to the Security Interest, to or at the request of an interested person as defined in section 275(9) of the PPSA.

## **9. Default powers**

### **9.1 State's powers following ILUA Termination Default or Indemnified Amount Default**

If an ILUA Termination Default or an Indemnified Amount Default has occurred, the State may exercise one or more of the rights listed in this clause.

### **9.2 State's exercise of rights**

- (a) The State's rights under this clause are in addition to its right to:
  - (i) make good a default under another Transaction Document; and
  - (ii) the rights conferred by common law, legislation and equity, in relation to the Secured Property.
- (b) The State may exercise the rights referred to in this clause:
  - (i) in any manner; and
  - (ii) whether or not a Receiver has been appointed.

### **9.3 General Powers**

The State may:

- (a) if it has not already done so, take possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property;
- (b) dispose of Secured Property in any way and upon terms that it determines, whether or not the State has taken possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property;
- (c) to the maximum extent permitted by law, purchase or offset Secured Property against the Secured Debt;



- (d) deal with the Secured Property in any way, including by becoming a party to an agreement or other arrangement relating to any item of Secured Property, or exercising rights under that agreement or arrangement; and
- (e) in relation to the Secured Property:
  - (i) exercise the Grantor's rights and remedies;
  - (ii) comply with the Grantor's obligations;
  - (iii) cause and permit another person to comply with that person's obligations;
  - (iv) vary, replace or release a right or interest of the Grantor;
  - (v) surrender or accept the surrender of Secured Property;
  - (vi) exchange a part of the Secured Property for other property;
  - (vii) if there is a difference in value between the property exchanged, then give or receive consideration so that each person receives equal value for the exchange;
  - (viii) acquire or grant a benefit;
  - (ix) grant options and rights of first refusal to acquire Secured Property;
  - (x) protect the Secured Property;
  - (xi) carry out, vary, replace, rescind, enforce or terminate an agreement relating to Secured Property to which the Trustee is a party;
  - (xii) give a guarantee or a Security Interest to protect or enhance Secured Property;
  - (xiii) give an indemnity in case a person fails to protect Secured Property;
  - (xiv) open and operate a bank account to hold any funds relating to Secured Property;
  - (xv) sell or assign Secured Property to a person, which person then assumes the Grantor's obligations;
  - (xvi) exercise a right or power, including a voting right over Secured Property; and
  - (xvii) surrender, make, enforce, compromise or settle a claim relating to a contract forming part of the Secured Property.

#### **9.4 Investment of money**

- (a) If the State receives money that it does not need to use immediately to comply with this deed, then the State may invest that money.

- (b) The State may vary or dispose of the investment.

### **9.5 Administrative powers**

The State may on behalf of the Trustee:

- (a) draw, accept, make or endorse a negotiable instrument;
- (b) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to any Secured Property;
- (c) enter into and execute and deliver a document for the purposes of a Transaction Document; or
- (d) give a receipt and release, discharge or compromise a debt or other obligation owed to or by the Trustee and which is part of the Secured Property.

### **9.6 Receiver**

- (a) The State may:
  - (i) either before or after it has taken possession of the Secured Property, appoint in writing one or more people as a receiver or receiver and manager of Secured Property; and
  - (ii) appoint a substitute receiver or receiver and manager for different parts of the Secured Property.
- (b) If more than one person is appointed as Receiver of property, then the State may empower them to act jointly or jointly and severally.
- (c) The State may:
  - (i) remove a Receiver;
  - (ii) appoint a substitute Receiver if a Receiver is removed, retires or dies;
  - (iii) reappoint a Receiver, who had retired or been removed; and
  - (iv) fix or vary the remuneration of a Receiver.

### **9.7 Agent**

- (a) The State may appoint a person or two or more people jointly and severally, as its agent to exercise a right under this deed.
- (b) The State must instruct the agent that this clause applies, as if the agent were a Receiver.

### **9.8 Rights not restricted**

The State's rights under this clause are not restricted by reference to or inference from another right.

## **10. Receivers**

### **10.1 Receivers as agent**

- (a) Subject to clauses 10.1(c) and 10.1(d), a Receiver is the agent of the Trustee.
- (b) The Trustee is solely responsible for the Receiver's acts, omissions and remuneration.
- (c) The State may appoint a Receiver as the agent of the State and delegate to a Receiver the State's rights under this deed.
- (d) If an order is made or a resolution passed for the liquidation or winding up of the Trustee, then to the extent of that order or resolution:
  - (i) a Receiver ceases to be the agent of the Trustee; and
  - (ii) a Receiver immediately becomes the agent of the State.

### **10.2 Powers**

- (a) A Receiver has the right to do anything that the Trustee may authorise an agent to do on the Trustee's behalf, to property, in relation to which the Receiver is appointed.
- (b) A Receiver may exercise:
  - (i) the rights conferred under a law, including the Corporations Act, upon receivers and receivers and managers;
  - (ii) the rights set out in clause 11; and
  - (iii) the rights of the Trustee and its directors.
- (c) Despite anything in this clause, a Receiver has no right to appoint a Receiver.
- (d) The State may by written notice to a Receiver give further rights to that Receiver.

## **11. Proceeds of enforcement**

### **11.1 Order of application**

The Remedy Proceeds may, subject to any mandatory statutory requirements, be applied by the State, any Receiver or any Attorney towards any amount and in any order which the State, any Receiver or any Attorney, as the case may be, determines in its absolute discretion, or if no determination is made in the following order:

- (a) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the balance of this clause;
- (b) second, towards the payment or reimbursement of the costs and expenses incurred by the State, any Receiver or any Attorney in the exercise or

enforcement or attempted exercise or enforcement of its rights under this deed or any Ancillary Security;

- (c) third, towards the payment or reimbursement of the other outgoings in relation to the Secured Property that the State, any Receiver or any Attorney determines;
- (d) fourth, towards:
  - (i) the remuneration of any Receiver or Attorney; and
  - (ii) any money owing by the Trustee to any Officer, employee, contractor or agent of the State, any Receiver or any Attorney;
- (e) fifth, in payment and discharge in order of their priority of any Encumbrances of which the State, Receiver or any Attorney is or are aware and which has priority to the Encumbrances granted by this deed;
- (f) sixth, towards the Secured Debt which is then due for payment and the Remedy Proceeds shall be applied as against interest, principal and any other amount as the State, Receiver or Attorney determines; and
- (g) seventh, to any person entitled to the Secured Property (including the Trustee) or authorised to give receipts for those monies.

#### **11.2 Certificate and disputes**

- (a) The State, any Receiver or any Attorney may rely upon a certificate issued by any person who claims to be entitled to receive any of the Remedy Proceeds to the effect that money is owing by the Trustee to it and stating the amount owing, without being obliged to make any further enquiry.
- (b) If there is any dispute between any persons as to who is entitled to receive the Remedy Proceeds, the State may pay the money into court and when that is done the State, any Receiver or any Attorney will have no further obligations in relation to that money.

#### **11.3 No interest on Remedy Proceeds**

The State is not obliged to pay interest to any person upon the Remedy Proceeds.

#### **11.4 Payment into bank account**

If the State, any Receiver or any Attorney pays any money into a bank account in the name of any person to whom the State is obliged to pay money under clause 11.1, and notifies that person of the particulars of the account, the State will have no further obligation in relation to that money.

#### **11.5 Reinstatement of rights**

If any transaction, or any payment or transfer received by the State, relating to the Secured Debt is void, voidable, or is otherwise unenforceable or refundable:

- (a) the State will be immediately entitled as against the Trustee to all rights in respect of the Secured Debt (whether under this Deed, any Ancillary Security or otherwise) that it would have had if that transaction had not occurred or that payment or transfer had not been received and any of that money received by the State will be deemed never to have been received by the State;
- (b) any release, discharge or settlement given or made as a result of that transaction or the receipt of that payment or transfer will be of no force and effect; and
- (c) the Trustee will immediately at the request of the State do all things and sign all deeds necessary or desirable to restore to the State:
  - (i) the security created by this Deed and any Ancillary Security; and
  - (ii) the State's rights under this Deed and any Ancillary Security,held by the State immediately before the transaction being entered into or the payment or transfer being received.

## **12. Protection**

### **12.1 Protection of third parties**

The Trustee accepts that:

- (a) a person dealing with the State, an Attorney or a Receiver is not required to enquire whether:
  - (i) a right is enforceable or properly exercised; or
  - (ii) the Receiver or Attorney is duly appointed;
- (b) a person dealing with the State, an Attorney or a Receiver is not affected by express notice that the exercise of a power was unnecessary or improper and to protect such a person:
  - (i) the irregular or improper exercise of a right is automatically validated under this deed; and
  - (ii) the Trustee authorises the exercise of the right.

### **12.2 Protection of the State, Receiver and Attorney**

- (a) The State, an Attorney and a Receiver are not liable for loss or damage, including consequential loss or damage, arising directly or indirectly from:
  - (i) an omission or delay in the exercise or non-exercise of a right; or
  - (ii) the neglect of the Trustee, the State, a Receiver or an Attorney.

- (b) The State, an Attorney and a Receiver are not liable to account as a mortgagee in possession for Secured Property if any of them takes possession of the Secured Property.
- (c) This clause does not apply:
  - (i) to the State, in relation to a loss or damage which arises from the wilful default, fraud or gross negligence of the State or its officers, employees or agents; and
  - (ii) to a Receiver or Attorney, in relation to a loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney or their officers, employees or agents.

### **12.3 Ratification**

The Trustee ratifies and agrees to ratify whatever the State, a Receiver or an Attorney does in the exercise of a right.

## **13. Indemnity**

### **13.1 The Trustee indemnifies the State**

- (a) The Trustee indemnifies the State against a claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment that the State, a Receiver or an Attorney pays, suffers, incurs or is liable for (except to the extent caused or contributed by the wilful default, fraud or gross negligence of the State, Receiver or Attorney) , which relates to:
  - (i) an ILUA Termination Default;
  - (ii) an Indemnified Amount Default;
  - (iii) the State, an Attorney or a Receiver exercising its powers as a result of an ILUA Termination Default or otherwise;
  - (iv) the non-exercise, attempted exercise, exercise or delay in the exercise of a power under a Transaction Document;
  - (v) an act or omission of the Trustee or its employees or agents;
  - (vi) the Trustee's use or ownership of Secured Property;
  - (vii) a compulsory acquisition or statutory or judicial divestiture of Secured Property; and
  - (viii) any other thing in respect of the Secured Debt or the Secured Property.
- (b) This clause applies to the Receiver, whether the Receiver is acting as agent of the Trustee or of the State.

**13.2 Foreign currency indemnity**

If the State, an Attorney or a Receiver receives or recovers an amount on account of the Secured Debt, in a currency that is not the currency that the State requires under a Transaction Document, then the Trustee must indemnify the State against a shortfall between:

- (a) the amount due in the required currency; and
- (b) the amount that the State, an Attorney or a Receiver receives after converting the payment currency into the required currency.

**13.3 Continuing indemnity**

- (a) Despite the occurrence of anything, including a settlement of account, the Trustee's indemnities in this deed are continuing obligations of the Trustee.
- (b) The Trustee's indemnities in this deed remain in full force and effect until:
  - (i) all money owing, contingently or otherwise, under a Transaction Document is paid in full; and
  - (ii) the Secured Debt is finally discharged.
- (c) Each of the Trustee's indemnities is an additional, separate and independent obligation of the Trustee.
- (d) No single indemnity limits the generality of any other indemnity.
- (e) The Trustee's indemnities survive the termination of a Transaction Document.

**14. No obligation to marshal**

The State is not required to marshal, enforce or apply:

- (a) property or rights or obligations under a Transaction Document; or
- (b) money or property that it holds or is entitled to at any time.

**15. Payment****15.1 Mode of payment**

The Trustee must pay each payment to the State under a Transaction Document:

- (a) on the due date or on demand, as applicable;
- (b) in immediately available freely transferable funds; and
- (c) in the manner that the State specifies by a notice in writing to the Trustee.

**15.2 Trustee’s payments to be free and clear:**

The Trustee must pay each payment to the State payable under a Transaction Document:

- (a) free of a restriction or condition; and
- (b) subject to law, free and clear without a deduction or withholding for Tax or on another account, whether by way of set-off, counterclaim or otherwise.

**15.3 Gross-up**

- (a) This gross-up clause applies if:
  - (i) the Trustee must deduct or withhold an amount under a law from an amount that the Trustee must pay to the State under a Transaction Document; or
  - (ii) the State must pay an amount under a law relating to an amount that the Trustee must pay to the State under a Transaction Document.
- (b) The Trustee must increase the amount that it pays to the State, so that the State receives and retains a net amount equal to the amount that it would have received and retained if:
  - (i) the Trustee was not obliged to deduct or withhold an amount; or
  - (ii) the State was not obliged to pay an amount relating to the amount that the Trustee must pay.

**16. Power of Attorney**

**16.1 Appointment**

- (a) The Trustee irrevocably appoints each Receiver, the State and each Officer of the State, severally as its attorney for the purposes set out in this clause.
- (b) The appointment is effective:
  - (i) upon the occurrence of an ILUA Termination Default and until the ILUA Termination Default is remedied;
  - (ii) upon the occurrence of an Indemnified Amount Default and until the Indemnified Amount Default is remedied; or
  - (iii) at the time that the Trustee fails to fulfil an obligation requested under clause 2.7 and until that obligation is performed.
- (c) Each person, whom the Trustee appoints, has full power to appoint and remove a substitute and to sub-delegate on the Trustee’s behalf.



## **16.2 Powers**

- (a) An Attorney may do everything reasonably necessary to give effect to this deed, including to perfect and obtain the highest possible priority for the State's Security Interests.
- (b) An Attorney acts at the Trustee's expense.

## **17. Tax, costs and expenses**

### **17.1 Costs and expenses**

The Trustee must pay or reimburse on demand all reasonable costs and expenses of the State, in connection with:

- (a) preparing, registering and maintaining any 'financing statement' or 'financing change statement' (each as defined in the PPSA), including pursuant to section 167 of the PPSA, in respect of any Encumbrance in favour of the State;
- (b) complying with any amendment demand in accordance with Part 5.6 of the PPSA;
- (c) releasing any person from any obligations under this deed or any other Transaction Document;
- (d) giving a consent or approval or waiving a requirement in connection with this Deed or any other Transaction Document; and
- (e) inspecting or reporting on the Secured Property.

This includes legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

### **17.2 Enforcement costs**

The Trustee must, on demand, reimburse the State for all costs, charges, expenses, fees, disbursements (including all legal costs on a full indemnity basis) paid or incurred by the State or incidental to:

- (a) any breach, default or repudiation of this deed or any other Transaction Document by the Trustee (including the fees for all professional consultants properly incurred by the State in consequence of, or in connection with, any such breach, default or repudiation); and
- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the State under or by virtue of this deed, including all amounts incurred in preparation and service of a notice under this deed or any other Transaction Document and in repossessing the Secured Property from the Trustee under the terms of this deed or any other Transaction Document and in enforcing the Transaction Documents generally against the Trustee.

**17.3 Trustee must pay interest on overdue amounts**

- (a) The Trustee must pay interest on Secured Debt due and payable but unpaid.
- (b) Unless otherwise specified in a Transaction Document, interest accrues daily:
  - (i) from and including the due date for payment up to and including the date of payment;
  - (ii) in the case of an amount payable as reimbursement or indemnity, if the date of disbursement or loss is earlier than the date due and payable, from the date of the disbursement of loss; and
  - (iii) both before and after a judgment or other thing into which the liability to pay the Secured Debt becomes merged.
- (c) The State may capitalise the interest at monthly intervals.
- (d) The rate of interest payable is the higher of:
  - (i) a rate specified in another Transaction Document and if no such rate is specified 10 percent per annum; and
  - (ii) the rate fixed or payable under a judgment or other thing into which the liability to pay the Secured Debt becomes merged.
- (e) The Trustee must pay the interest on demand.

**18. Certificate conclusive**

A certificate that the State issues of an amount payable under this deed is conclusive evidence for any purpose, including for a proceeding.

**19. Confidentiality**

- (a) The Trustee must keep confidential:
  - (i) information it receives from the State; and
  - (ii) this deed.
- (b) Upon request, the Trustee must return confidential information that it has received.
- (c) This clause is additional to clause 8.

**20. Notice**

[Insert the State's and the Trustee's appropriate notice provisions]

**21. Governing Law**

- (a) The law of Western Australia governs this Deed.
- (b) The parties submit to the exclusive jurisdiction of the courts of Western Australia and courts of appeal therefrom.

**22. Variation**

The parties can only vary this deed if the variation is in writing and each party signs.

**23. Exclusion of legislation, to the extent permitted by law**

To the extent permitted by law:

- (a) a provision of legislation which directly or indirectly lessens the Trustee's obligations under this deed or a Transaction Document is excluded from this deed;
- (b) a provision of legislation which directly or indirectly affects the State's exercise of a power is excluded from the deed and a Transaction Document; and
- (c) relief and protection conferred on the Trustee under that legislation is excluded.

**24. Severance**

- (a) If a provision of this deed is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this deed.
- (b) The remaining provisions of this deed remain in full force and effect.

**25. No waiver**

- (a) A party granting a waiver of a right under this deed must give written notice of that waiver to the party which benefits from the waiver.
- (b) A party's failure, partial failure or delay in exercising a right relating to this deed is not a waiver of that right.
- (c) A party may not claim that another party's delay or failure to exercise a right relating to this deed:
  - (i) constitutes a waiver of that right; or
  - (ii) is a defence to its own action or inaction.
- (d) The parties may not waive or vary this clause.

**26. Further assurance**

The Trustee must do everything necessary to give full effect to this deed.

**27. Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one document. Where counterparts are used, this deed will come into effect on the last exchange of counterparts.

Executed as a deed.

[insert execution provisions]

## **Annexure I**

### **Consent Orders**

The Court orders, declares and determines by consent that:

1. The Determination Area is the land and waters described in Exhibit 1 and depicted on the map in Exhibit 2.
2. Native Title does not exist in relation to the Determination Area.
3. There be no order as to costs.

## **Exhibit 1 - Description of Land**

[Insert description]

## **Exhibit 2 - Map**

[Insert Map]



**Annexure J**  
**Noongar Land Base Strategy**

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**1. Definitions**

**1.1 Definitions by reference to the Settlement Terms**

In this Strategy, any capitalised term for which a definition is not included in clause 1.2 of this Strategy will, where the term is defined in the Settlement Terms, have the same meaning as given to it in the Settlement Terms.

**1.2 Other definitions**

In this Strategy:

- (a) **ALT** means the Aboriginal Lands Trust.
- (b) **Aboriginal Lands Trust** means the body corporate established under section 20 of the *Aboriginal Affairs Planning Authority Act 1972*.
- (c) **ALT Managed Reserves** means land that has been reserved for persons of Aboriginal descent and placed under the control and management of the ALT.
- (d) **Allocation** means:
  - (i) the conveyance of Crown land or freehold land held by the State in any of its capacities or agencies to the Land Sub in freehold title; or
  - (ii) the creation of a reserve and the making of management orders in accordance with Part 4 of the LAA; or
  - (iii) the grant of leasehold interests in accordance with Part 6 of the LAA,and other grammatical forms of that word or phrase have a corresponding meaning.
- (e) **Box** means a numbered box in the Implementation Process Chart.
- (f) **Freehold Implementation Process Chart** means the Implementation Process Chart for the Freehold Implementation Process.
- (g) **Implementation Process Charts** means the charts attached as Annexure K to the Settlement Terms.
- (h) **LAA** means the *Land Administration Act 1997 (WA)*.
- (i) **Lost Lands** means the land included in the DAA 2003 Lost Lands Report.
- (j) **Managed Reserves Implementation Process Chart** means the Implementation Process Chart for the Managed Reserves Implementation Process.

- (k) **NLE** means the land Allocated to the Noongar people pursuant to clause 8 of the Settlement Terms and this Strategy.
- (l) **State Transaction Costs** means the costs associated with the conversion of Crown land into the tenure form determined in accordance with this Strategy being any fees payable in respect of the approval process in clause 8 of this Strategy, the costs of survey of land, stamp duty and lodgement fees.
- (m) **Strategy** means this Strategy for the Establishment of the Noongar Land Estate.
- (n) **Trust Transaction Costs** means any other costs associated with the conversion of Crown land into the tenure form determined in accordance with this Strategy including but not limited to:
- (i) any establishment costs including the provision or relocation of services to the land including road upgrades, service connections and headworks charges; and
  - (ii) all holding costs including local government rates and all other taxes that are normally borne by the land holder.
- (o) **UCL** means unallocated Crown land.
- (p) **UCL and UMR Implementation Process Chart** means the Implementation Process Chart for the UCL and UMR Implementation Process.
- (q) **UMR** means unmanaged reserve.

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## 2. Principles underpinning this Strategy

- (a) The State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar community.
- (b) The establishment of the NLE under this Agreement provides a significant opportunity for the Noongar community to achieve sustainable economic, social and cultural outcomes. The State recognises that the creation of an economic and culturally sustainable NLE is in the long term interest of both the State and the Noongar community.
- (c) The State, SWALSC and the Native Title Agreement Groups recognise that the creation of the NLE is a fundamental part of this Agreement and all parties commit to working together to maximise Noongar outcomes in regards to the NLE. It is the intention of all parties that the NLE reach the maximum hectare targets for transfer set out in this Strategy.
- (d) The State, SWALSC and the Native Title Agreement Groups acknowledge that the creation of the NLE is unprecedented in Australia, and will only reach its full potential if all Parties engage in the process in a spirit of cooperation. In particular, any concerns about inclusion of parcels of land in the NLE must be resolved in a timely and cooperative manner, with no Party placing unrealistic expectations on another.

- (e) The State commits to develop long-term and productive partnerships with the Trustee and the Regional Corporations to assist in achieving these outcomes.
- (f) The State recognises the role of the Trustee and the Regional Corporations in representing the interests of the Noongar people, who are the custodians and traditional knowledge holders of the Settlement Area.

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### **3. Legislation**

- (a) The Allocation of land to the NLE is subject to all relevant State laws and policies including the LAA, the *Mining Act 1978 (WA)* (**MA**), the *Transfer of Land Act 1893 (WA)* (**TLA**), and the *Planning and Development Act 2005 (WA)* (**PDA**).
- (b) The proposed use and development of land in the NLE is subject to all relevant Commonwealth and State laws and policies.

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### **4. Retention of the Statutory Rights, Powers and Duties**

- (a) The Allocation of land to the NLE does not fetter the later exercise of any statutory rights, powers and duties including the:
  - (i) right to take land under Part 9 and 10 of the LAA; or
  - (ii) revocation of management orders, or the forfeiture etc. of a lease.
- (b) In the event that:
  - (i) the Trustee agrees that the order by which the care, control and management of a reserve is placed with the Land Sub (management order) should be revoked under section 50(1)(a) of the LAA; or
  - (ii) the Minister for Lands considers that revocation of a management order is in the public interest under section 50(2) of the LAA; or
  - (iii) the management order is revoked under Part 9 of the LAA,

in order that the land may be used for a public work or a public purpose, the State must consult with the Trustee and seek to reach agreement on whether to provide to the Trustee either alternative reserve land or compensation comprising the current unimproved value of the land as determined by the Valuer General. If no agreement can be reached, the State will decide whether alternative reserve land or monetary compensation will be provided and its decision is final.

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## 5. Administration

### 5.1 Agency Responsibility

- (a) DoL is charged with the responsibility for administering Crown land under the LAA on behalf of the Minister for Lands for the State of Western Australia.
- (b) DoL is, and will continue to be, the agency coordinating and facilitating the creation of the NLE in so far as the creation relates to UMR and UCL in the Crown estate, whilst also liaising with other departments and agencies with respect to managed reserves that may be included in the implementation process, and freehold land that may be Allocated and included in the NLE as set out in clause 6(a) of this Strategy.
- (c) DoL will report to the State as part of the implementation process. DoL will also refer any key strategic or policy issues to the State for advice.
- (d) DoL must work closely with the Trustee to facilitate the creation of the NLE in accordance with this Strategy.
- (e) The State must provide current land cadastre information to the Trustee to assist with selection, and Allocation to the Trust of suitable parcels of UCL and UMR for inclusion in the NLE.

### 5.2 Priority Land Meetings

- (a) The State must facilitate meetings between representatives of DoL and the Trustee once every 3 months (**Priority Land Meetings**) until the end of the fifth year following the Trust Effective Date for discussions about areas of UCL and UMR identified and/or selected by the Trustee as land that is potentially eligible for inclusion in the NLE (**Priority Land**), but which have been determined by DoL to be ineligible for inclusion:
  - (i) after taking into account identification criteria referred to in clause 8.1 of this Strategy and UCL and UMR Implementation Process Chart Box 2a and 2c; or
  - (ii) after DMP assessment and consideration of the comments provided by State agencies and local government referred to in clauses 8.2, 8.4 and 8.5 of this Strategy and UCL and UMR Implementation Process Chart Box 10 and 13 ; or
  - (iii) prior to and after preparing Terms of Allocation referred to in clause 8.6 and 8.7 of this Strategy and UCL and UMR Implementation Process Chart Box 19 and 23.
- (b) The aim of the Priority Land Meetings is to discuss ways of accommodating the Noongar community's request that those parcels of Priority Land that are of significance to the Noongar community are included in the NLE, for example by way of amended tenure request or joint management. Whilst the State and the Trustee must use all reasonable endeavours to reach agreement, there is no guarantee that they will do so. There is also no obligation on the State to enter into secondary negotiations about these matters.

- (c) During the 3 month period between each Priority Land Meeting, DoL must advise the Trustee of any parcel of land that is deemed ineligible for inclusion in the NLE as soon as practicable after that decision is made as indicated in UCL and UMR Implementation Process Chart Box 2c, 4c, 10, 13, 19 and 23 (**Ineligibility Decision**), providing brief written reasons for the ineligibility to both the Trustee and the State.
- (d) Following receipt of an Ineligibility Decision or where otherwise expressly provided for in this Strategy, if the relevant land parcel is of significance to the Noongar community, the Trustee may notify the State that it wants discussion about that parcel of land included on the agenda for the next Priority Land Meeting. The notice must include brief written reasons why the parcel should be reconsidered for inclusion in the NLE.
- (e) At least 3 weeks prior to the quarterly meeting, the State must confer with the Trustee about inviting representatives from other agencies or local government to the quarterly meeting to assist the discussions and, if agreed, such representatives will be invited to attend.
- (f) The State must prepare an agenda for endorsement by the Trustee and DoL representatives which prioritises matters for discussion and resolution by reference to:
  - (i) the importance of resolving an issue regarding a particular land parcel to the Trust (or the Noongar community);
  - (ii) the time that it may take to resolve an issue (those requiring less time taking priority); and
  - (iii) the resources available to devote to the particular issue (e.g. the extent to which further investigations are required and may divert resources from ongoing NLE related work priorities).
- (g) If further negotiations about inclusion of Priority Land in the NLE are required between the Trustee and representatives from government agencies or local government, those negotiations will take place outside the Priority Land Meeting process, but the outcome of those negotiations must be reported to the State by the Trustee so that, if appropriate, the relevant land can be included in the NLE. Bilateral discussions between the Trustee and government agencies and local government about the inclusion of Priority Land in the NLE must be initiated through the Priority Land Meetings, and further negotiations with respect to decisions of government agencies or local government about the inclusion of Priority Land in the NLE require the consensus of DoL and the State before they proceed.
- (h) Where any parcel of Priority Land has been referred under this Strategy to a Priority Land Meeting and no agreement has been reached to include the parcel in the NLE, if the Trustee acting reasonably considers there has been a material change to the circumstances that previously prevented the parcel of Priority Land from being included in the NLE, the Trustee may notify the State that it wants further discussion about that parcel of Priority Land included on the agenda for the next Priority Land Meeting. The notice must include a brief written statement of the

material change in circumstance which the Trustee considers applies to the land.

- (i) Matters that are referred under this Strategy to a Priority Land Meeting for discussion and possible resolution are not subject to dispute resolution in accordance with the dispute resolution provisions in clause 15 of each Agreement.

### **5.3 Enquiries through DoL**

- (a) The Trustee must direct all enquires related to the NLE (other than in relation to ineligible Priority Land) to DoL in the first instance.
- (b) DoL must then direct these enquiries to other agencies as required.
- (c) If a disagreement arises in relation to any enquiry referred to in clause 5.3(a) and 5.3(b) of this Strategy, and either DoL or the relevant agency is unable to resolve the disagreement with the Trustee, the matter must be referred to the State for further discussion with the Trustee.

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## **6. What the NLE will Comprise**

- (a) Subject to the various conditions being met and standard statutory approvals, clearances etc., being obtained as specified in this Strategy, the State must from:
  - (i) Crown land parcels comprising UCL and UMR (including land identified by the State, SWALSC or the Trustee), and
  - (ii) State held freehold and managed reserves identified by Government departments or agencies, which are identified as being eligible by the State for Allocation:
  - (iii) subject to clauses 6(b) and 6(f) and 7.2(c) of this Strategy, create reserves and issue management orders over reserves (including land that is to be reserved for this purpose), or grant leases, to be held by the Land Sub, of a minimum of 200,000 hectares and a maximum of 300,000 hectares of land within the period of 5 years commencing on the day after the Trust Effective Date; and
  - (iv) subject to clauses 6(c), 6(d) and 6(e) and 7.2(d) of this Strategy, transfer a minimum of 10,000 hectares and a maximum of 20,000 hectares of land in freehold within the period of five years commencing on the day after the Trust Effective Date to the Land Sub.
- (b) If the maximum amount of reserves, management orders or leaseholds have not been created, issued or granted by the end of the fifth year after the Trust Effective Date from the land identified for Allocation by the end of the fourth year after the Trust Effective Date, then reserves, management orders or leaseholds up to:
  - (i) the maximum of 300,000 hectares; or

- (ii) 50,000 hectares (whichever is less)

may be created, issued or granted during the period from the beginning of the sixth year after the Trust Effective Date to the end of the seventh year after the Trust Effective Date from the land identified for Allocation by the end of the fourth year after the Trust Effective Date;

- (c) If the maximum amount of land in freehold has not been selected by the Trustee from the land identified for Allocation by the end of the fourth year after the Trust Effective Date and transferred by the end of the fifth year after the Trust Effective Date, then the Trustee may seek to convert up to:

- (i) the maximum amount of 20,000 hectares; or
- (ii) a further 5,000 hectares, whichever is less,

to freehold from the reserves or leasehold land Allocated under this Strategy during the ten year period commencing at the beginning of the eighth year after the Trust Effective Date and finishing at the end of seventeenth year after the Trust Effective Date subject to the following conditions:

- (iii) other than the costs specified in clause 12 of this Strategy, no further consideration will be payable by the Trustee;
- (iv) the Trustee must obtain all approvals and undertake all referrals as requested by DoL specified in clause 8 of this Strategy;
- (v) the State does not guarantee that all approvals will be obtained to allow conversion up to the maximum amount;
- (vi) if approved pursuant to clause 6(c)(iv) of this Strategy, the Trustee will be required to make an application under the LAA for the land tenure to be changed and the freehold title to be granted;
- (vii) any decision to convert the land tenure is subject to the approval of the Minister for Lands; and
- (viii) once the cap of 20,000 hectares has been reached, the State will no longer fund the Trustee in meeting the purchase and other costs associated with conversion of land to freehold tenure.

- (d) During the ten year period commencing at the beginning of the eighth year after the Trust Effective Date and finishing at the end of seventeenth year after the Trust Effective Date the State must facilitate the conversion of a further 5,000 hectares of freehold from the existing reserve, or leasehold land Allocated under this Strategy subject to the following conditions:

- (i) other than the costs specified in clause 12 of this Strategy, no further consideration will be payable by the Trustee;

- (ii) the Trustee must obtain all approvals and undertake all referrals as requested by DoL specified in clause 8 of this Strategy;
  - (iii) the State does not guarantee that all approvals will be obtained to allow conversion up to the maximum amount;
  - (iv) if approved pursuant to clause 6(d)(ii) of this Strategy, the Trustee will be required to make an application under the LAA for the land tenure to be changed and the freehold title to be granted;
  - (v) any decision to convert the land tenure is subject to the approval for the Minister for Lands; and
  - (vi) once this cap of 5,000 hectares has been reached, the State will no longer fund the Trustee in meeting the purchase and other costs associated with conversion of land to freehold tenure.
- (e) If the Trustee does not meet the targets for selection and acceptance of freehold land set out in clause 7.2(b) of this Strategy for possible Allocation the State does not guarantee that a minimum of 10,000 hectares of land in freehold will be Allocated.
  - (f) If the Trustee does not meet the targets for selection and acceptance of land identified by the State for creation of reserves and management orders or grant of leaseholds (as the case may be) set out in clause 7.2(b) of this Strategy for possible Allocation the State does not guarantee that a minimum of 200,000 hectares of reserved or leasehold land will be Allocated.

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## 7. Mandatory Targets for Identification, Selection and Acceptance of Land

### 7.1 Minimum amounts of land to be identified by the State

- (a) Minimum amount of freehold land to be identified by the State: The State must pursuant to clauses 8.1 and 8.2 of this Strategy identify a minimum of 20,000 hectares of land which is potentially eligible to be transferred in freehold for selection by the Trustee by the end of the fourth year after the Trust Effective Date.
  - (b) Minimum amount of leasehold land and reserve land to be identified by the State: The State must pursuant to clauses 8.1 and 8.2 of this Strategy identify a minimum of 300,000 hectares of land which is potentially eligible to be reserved, or for which management orders may be issued, or which may be granted in leasehold, for selection by the Trustee by the end of the fourth year after the Trust Effective Date,
- ((a) and (b) together, **Minimum Identified Amount**).
- (c) A minimum percentage of land which is potentially eligible to be Allocated must be identified by the State by the Trust Effective Date and for each year for the four years after the Trust Effective Date. That is:



- (i) a minimum of 10% (2,000 hectares) in freehold and 15% (45,000 hectares) in leasehold or reserve for combined minimum total of 47,000 hectares must be identified by the Trust Effective Date;
- (ii) a minimum of 10% (2,000 hectares) in freehold and 15% (45,000 hectares) in leasehold or reserve for combined minimum total of 94,000 hectares must be identified within the first year after the Trust Effective Date;
- (iii) a minimum of 35% (7,000 hectares) in freehold and 30% (90,000 hectares) in leasehold or reserve for combined minimum total of 191,000 hectares must be identified within the second year after the Trust Effective Date;
- (iv) a minimum of 35% (7,000 hectares) in freehold and 30% (90,000 hectares) in leasehold or reserve for combined minimum total of 288,000 hectares must be identified within the third year after the Trust Effective Date; and
- (v) a minimum of 10% (2,000 hectares) in freehold and 10% (30,000 hectares) in leasehold or reserve for combined minimum total of 320,000 hectares must be identified within the fourth year after the Trust Effective Date.

There is no maximum cap on how much land can be identified by the State in each year. If the State has identified 20,000 hectares of land which is potentially able to be transferred in freehold and 300,000 hectares of land which is potentially able to be reserved or granted in leasehold before the expiry of the periods specified in clauses 7.1(c)(i) to (v) of this Strategy, the State has no obligation to continue identifying land in accordance with this clause 7.1(c), but may do so. This is the case regardless of whether or not the Trustee has agreed to the Allocation of the minimum target percentages of land in accordance with clause 7.2(b) of this Strategy.

## **7.2 Minimum and maximum targets for selection and acceptance by the Trustee from identified land**

- (a) The Trustee must select and accept the Allocation from land identified for Allocation under clause 7.1 of a minimum of 210,000 hectares and up to a maximum of 320,000 hectares of land by the end of the fourth year after the Trust Effective Date for inclusion into the NLE. No further land can be identified for Allocation after the end of the fourth year after the Trust Effective Date.
- (b) A minimum target percentage of land must be selected and accepted by the Trustee for Allocation under this Strategy from land identified for Allocation for each year for the four years after the Trust Effective Date, being:
  - (i) a minimum of 10% (1,000 hectares) in freehold and 15% (30,000 hectares) in leasehold or reserve for combined minimum total of 31,000 hectares must have been accepted by the Trustee for Allocation from land selected for Allocation by

the Trust Effective Date for Allocation after the Trust Effective Date;

- (ii) a minimum of 10% (1,000 hectares) in freehold and 15% (30,000 hectares) in leasehold or reserve for combined minimum total of 62,000 hectares within the first year after the Trust Effective Date;
  - (iii) a minimum of 35% (3,500 hectares) in freehold and 30% (60,000 hectares) in leasehold or reserve for combined minimum total of 125,500 hectares within the second year after the Trust Effective Date;
  - (iv) a minimum of 35% (3,500 hectares) in freehold and 30% (60,000 hectares) in leasehold or reserve for combined minimum total of 189,000 hectares within the third year after the Trust Effective Date; and
  - (v) a minimum of 10% (1,000 hectares) in freehold and 10% (20,000 hectares) in leasehold or reserve for combined minimum total of 210,000 hectares within the fourth year after the Trust Effective Date;
- (c) if the minimum target percentage for Allocation in leasehold or reserve is not met by the Trustee in any period specified in clauses 7.2(b)(i) to (v) of this Strategy, the minimum target amount of leasehold or reserve for the relevant period will be subtracted from the minimum amount that must be transferred by the State in accordance with clause 6(a)(iii) of this Strategy; and
- (d) if the minimum target percentage for Allocation in freehold is not met by the Trustee in any period specified in clauses 7.2(b)(i) to (v) of this Strategy, the minimum target amount of freehold for the relevant period will be subtracted from the minimum amount that must be transferred by the State in accordance with clause 6(a)(iv) of this Strategy.

### **7.3 Other matters**

- (a) If the Trustee requests further freehold grants in accordance with clause 6(c) and (d) of this Strategy, a minimum of 10% of the total amount to be transferred over the 10 year period must be accepted by the Trustee for Allocation each year from land selected for Allocation and if the Trustee does not do so the State does not guarantee that the amounts of land specified in those clauses will be Allocated.
- (b) The land selection schedule can be modified by agreement between the State, in consultation with DoL, and the Trustee in consultation with the Regional Corporations and the Central Services Corporation. A land selection schedule, as modified by agreement, may include Allocation of land after the end of the fifth year after the Trust Effective Date in circumstances where there are compelling reasons why there was a delay in the Allocation of a particular parcel or parcels of land.

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## 8. Implementation Process

This clause 8 should be read in conjunction with the UCL and UMR Implementation Process Charts.

### 8.1 Initial Identification of UCL and UMR (Boxes 1 – 3, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) DoL and SWALSC have been, and DoL and the Trustee will continue to be, involved in a process of identification of UCL and UMR, which, if eligible, will be included in the list of land for Allocation.
- (b) Lost Lands that are either UCL or UMR can be considered for identification, selection and assessment. No other Lost Lands, particularly freehold parcels, will be considered.
- (c) Departments and agencies which currently hold management orders over reserves and freehold may identify managed reserves and freehold that may be eligible for inclusion in the list of land for Allocation.
- (d) The State will not take, acquire or purchase any land or any rights in land for Allocation to the NLE.
- (e) All land identified and included in the list must be wholly located within the boundaries of the Settlement Area.
- (f) There is no obligation on the State to include land in the list where, for example:
  - (i) the parcel of land is subject to a lease, a contract or option to sell or lease, or is a Class A Reserve; or
  - (ii) the parcel of land is subject to a Notice of Intention to Take or taken and designated for a public work under section 161 or section 165 of the LAA; or
  - (iii) requirements for land under other State legislation have the effect of excluding the application of the LAA to particular parcels; or
  - (iv) State policy applies, such as for example, the requirement for coastal buffer zones; or
  - (v) preliminary assessment rules out a parcel on the basis of flora conservation plans, forest management programs, physical and legal access, public access requirements, soil erosion and salinity issues and/or geographic constraints.
- (g) These and other matters will be taken into account in compiling the list of land that may be eligible for Allocation. If any UCL and UMR identified for inclusion in the list by SWALSC or the Trustee is not subsequently included in the list, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

## 8.2 Indicative assessments from DMP and preparation of List of Identified Lands (Boxes 4 and 5 UCL and UMR Implementation Process Chart)

- (a) Following compilation of a list of potentially eligible land by DoL (taking into account the matters set out at clause 8.1 of this Strategy), DoL will refer this list to DMP for an indicative assessment under section 16(3) of the MA. At this stage DMP may suggest tenure options for land parcels that are more likely than not to receive a final section 16(3) clearance.
- (b) Upon receipt of the indicative assessment under section 16(3) from DMP, DoL will prepare a list of identified lands (**List of Identified Lands**) which will include details of DMP's indicative assessment and preferred tenure type for each parcel. This list will be sent to the Trustee.
- (c) DMP may impose conditions on any proposed Allocation.
- (d) If any parcel of land initially identified by the Trustee is not included in the List of Identified Lands, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

## 8.3 Selection of land and tenure choice by the Trustee (Boxes 6, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Upon receipt of the List of Identified Lands the Trustee must:
  - (i) select parcels from that list that it would like to be included in the NLE, and
  - (ii) specify for each parcel selected the preferred tenure, within the range of tenures indicated by DMP.
- (b) Notice of the selected land and preferred tenures must be provided to DoL by the Trustee within 60 Business Days of its receipt of the List of Identified Lands.

## 8.4 Assessment of Selected Land (Boxes 7 – 10, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Upon receipt of the Trustee's selection of parcels and tenure preferences (**Selected Lands**), DoL will commence the following assessment process on the basis of the tenure preferences provided:
  - (i) consultation with local government under section 14 of the LAA including any:
    - A. future proposals for the land;
    - B. proposed planning scheme amendments that may affect the land;
    - C. proposals for future expansions of current reserves etc. that may affect the land;

- D. land management issues such as contamination of which local government is aware; and
  - E. other comments the local government may have on the proposal;
- (ii) consultation with the DoP and DPaW and any other department or agency, as required, including in relation to zoning, future requirements, any interests in the land or protection issues;
  - (iii) DoL will request responses from local government and government departments within 40 Business Days from the date it seeks comment under sub-clauses (i) and (ii); and
  - (iv) upon receipt of responses from local government and government departments DoL will consider whether parcels continue to be assessed or not.
- (b) If any parcel of land from the Selected Lands is to be removed from the Implementation Process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

#### **8.5 DMP s16(3) Clearance (Boxes 11 – 13, 27 and 28 UCL and UMR Implementation Process Chart)**

- (a) Following consultation with State agencies and local government, DoL will refer the Selected Lands to DMP for approval of the Minister for Mines and Petroleum under section 16(3) of the MA ("final section 16(3) clearance").
- (b) DMP may give a final section 16(3) clearance that is different from the earlier indicative assessment, or approval may not be given. If any parcel of land Selected Lands is to be removed from the implementation process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (c) If the final section 16(3) clearance is given for the Selected Lands to be Allocated in the selected tenure, DMP will register a notation in Tengraph to identify that there is a proposed change of land tenure and DoL will continue on to the final assessment and referrals.

#### **8.6 Final checks and referrals (Boxes 14 – 19, 27 and 28 UCL and UMR Implementation Process Chart)**

- (a) Following a final section 16(3) clearance DoL will undertake further assessment and referrals including:
  - (i) check that there is existing legal access to the land. The State is under no obligation to secure access for land that is land locked;

- (ii) referral to servicing authorities (e.g. Telstra, Western Power, Water Corporation) to find out whether there are services or infrastructure on the land that need protecting, e.g. by way of easement; and
  - (iii) referral for assessment under the Contaminated Sites Act 2003 (WA) for any lots that are proposed to be taken in freehold or leasehold.
- (b) Following these checks and referrals, DoL will collate all of the information and decide whether Allocation can proceed. If any parcel of Selected Lands is to be removed from the Implementation Process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

## **8.7 Terms of Allocation (Boxes 20 – 23, 27 and 28 UCL and UMR Implementation Process Chart)**

- (a) If the land can be Allocated, DoL will prepare terms of allocation (**Terms of Allocation**) and provide these to the Trustee for acceptance. The Terms of Allocation will include but will not necessarily be limited to:
- (i) for freehold land – refer to Annexure L to the Settlement Terms (Part A – Deed in relation to Allocation of Freehold Land);
  - (ii) for leasehold land – terms and conditions to be agreed between DoL and the Trustee; and
  - (iii) for reserve purposes and management orders –
    - A. the reserve purpose will be “Noongar Social, Cultural and Economic Benefit” or such other purpose as agreed between the State and the Trustee;
    - B. terms and conditions referred to in Annexure L to the Settlement Terms (Part B – Deed in relation to Management Order for Reserve Land and Annexure A to Management Order for Reserve Land),
 and will further deal with:
    - (iv) existing encumbrances and interests; and
    - (v) any new encumbrances and interests to be created;
- (b) If the Trustee does not accept the Terms of Allocation for a parcel of Selected Lands within 40 Business Days of the Terms of Allocation being given to it, that parcel may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

## **8.8 Allocation (Boxes 24 – 26 UCL and UMR Implementation Process Chart)**

- (a) If the Trustee accepts the Terms of Allocation DoL will:

- (i) arrange to have a survey undertaken as appropriate having regard to the selected tenure;
  - (ii) arrange for creation of a deposited plan and approval of this by Landgate; and
  - (iii) arrange for the land to be quarantined from further dealings pending its transfer to the Land Sub, perhaps by placing Memorials on title under section 17 of the LAA.
- (b) Once the processes above are completed, DoL will refer the land parcels to Landgate's Valuation Services for compulsory valuation before Allocation in accordance with the requirements of the Land Administration Regulations 1998.

## **8.9 Process for execution of documents etc.**

Once the processes in clauses 8.1 to 8.8 of this Strategy are completed:

- (a) For freehold land, DoL will prepare and submit to the Trustee the following documents:
- (i) a Deed in relation to Allocation of Freehold Land reflecting the Terms of Allocation;
  - (ii) a transfer of land document; and
  - (iii) any ancillary documents such as easements and restrictive covenants,

and the Trustee must cause the Land Sub to execute and return these documents to DoL within 40 Business Days of their receipt (which timeframe may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for execution of these documents by the Minister for Lands, have the documents stamped if necessary, and make all reasonable endeavours to lodge the transfer of land document for registration at Landgate within 40 business days of receiving all relevant executed documents from the Trustee, or as soon as reasonably practicable thereafter.

- (b) Where the Trustee fails to cause the Land Sub to execute and return the documents to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed documents to DoL. If the Trustee fails to cause the Land Sub to return the duly executed documents to DoL within this further 40 Business Day period:
- (i) the State will no longer be under any obligation to quarantine the land from future dealings; and
  - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
  - (iii) the land will be deducted from the Minimum Identified Amount;

- (c) For leasehold land, DoL will prepare and submit to the Trustee a deed of lease reflecting the Terms of Allocation. The Trustee must cause the Land Sub to execute and return the deed of lease to DoL within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for execution of the deed of lease by the Minister for Lands, have it stamped if necessary, and submit it to Landgate for registration.
- (d) Where the Trustee fails to cause the Land Sub to execute and return the deed of lease to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed deed of lease to DoL. If the Trustee fails to cause the Land Sub to return the duly executed deed of lease to DoL within this further 40 Business Day period:
  - (i) the State will no longer be under any obligation to quarantine the land from future dealings; and
  - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
  - (iii) the land will be deducted from the Minimum Identified Amount.
- (e) For reserves and Management Orders, DoL will prepare and submit to the Trustee the following documents:
  - (i) a Deed in relation to Management Order for Reserve Land reflecting the Terms of Allocation; and
  - (ii) a Management Order with Annexure A to Management Order for Reserve Land reflecting the Terms of Allocation.
- (f) The Trustee must cause the Land Sub to execute and return the documents to DoL within 40 Business Days of its receipt (which time may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for the execution of the documents by the Minister for Lands, have them stamped if necessary, and submit all registrable documents to Landgate for registration.
- (g) Where the Trustee fails to cause the Land Sub to execute and return the documents to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of the fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed documents to DoL. If the Trustee fails to cause the Land Sub to return the duly executed documents to DoL within this further 40 Business Day period:
  - (i) the State will no longer be under any obligation to quarantine the land from future dealings;
  - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
  - (iii) the land will be deducted from the Minimum Identified Amount.



## **8.10 If target reached early**

If the total Allocated hectareage reaches the maximum of 300,000 ha of reserve land and 20,000 hectares of freehold land sooner than the end of the fifth year after the Trust Effective Date then the land identification and Allocation process will cease at the time the maximum figure is achieved.

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## **9. ALT and other State freehold**

- (a) This section should be read in conjunction with the Freehold Implementation Process Chart.
- (b) The State must, upon request from the Trustee, Allocate all ALT freehold land (not subject to a lease, a contract or option to sell) and other freehold land (if any) identified for inclusion in the NLE by departments or agencies that is suitable for Allocation within the five year period after the Trust Effective Date.
- (c) All ALT freehold land that is Allocated and other freehold land identified by departments or agencies that is suitable for Allocation is to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy.
- (d) Freehold land including ALT freehold land will usually be Allocated in freehold.
- (e) Departments and agencies will prepare terms of Allocation for submission to the Trustee.

---

## **10. ALT and other Managed Reserves**

- (a) This section should be read in conjunction with the Managed Reserves Implementation Process Chart and the UCL and UMR Implementation Process Chart.
- (b) As specified in clause 8.1 of this Strategy, departments and agencies which currently hold management orders over reserves will identify managed reserves that may be eligible for inclusion in the list of land for Allocation. All managed reserves that are identified by departments or agencies that are suitable for Allocation are to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy (Boxes 1 and 2 Managed Reserves Implementation Process Chart).
- (c) If:
  - (i) the Trustee requests the land in a higher tenure (eg freehold);
  - (ii) the Trustee requests the power to lease or to licence and this was not formerly a condition of the management order for the reserve;
  - (iii) there is a change in the proposed purpose of the reserve; or
  - (iv) the reserve was formerly for a fixed term but it is proposed to become a reserve in perpetuity,

then the reserve will require a section 16(3) indicative assessment (Box 5 Managed Reserves Implementation Process Chart) and will thereafter follow the UCL and UMR Implementation Process Chart from Box 4a of that Chart and clauses 8.2 to 8.9 of this Strategy.

- (d) All managed reserves to which clause 10(c) of this Strategy does not apply, will be referred to local government for comment on the change of management, and to servicing authorities (e.g. Telstra, Western Power, Water Corporation) to find out whether there are services or infrastructure on the land that need protecting (Box 6 Managed Reserves Implementation Process Chart). If any managed reserves selected by the Trustee are to be removed from the Implementation Process at this point, those parcels that are of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (e) If Allocation can proceed, DoL will prepare Terms of Allocation, and provide these to the Trustee for acceptance in accordance with clause 8.7 of this Strategy.
- (f) If the Trustee does not accept the Terms of Allocation, that reserve may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (g) If the Trustee accepts the Terms of Allocation, Allocation will proceed as set out in clauses 8.8 and 8.9 of this Strategy (Boxes 13, 14 and 15 Managed Reserves Implementation Process Chart).

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## **11. Land remains available for acceptance after initial rejection**

UCL, UMR, ALT Managed Reserve and ALT freehold land initially rejected by the Trustee may remain available for acceptance until the end of the fourth year after the Trust Effective Date provided that if:

- (a) an expression of interest in the UCL or UMR land is received by DoL from a party other than the Trustee;
- (b) an expression of interest in the ALT Managed Reserve or ALT freehold land is received by the ALT from a party other than the Trustee; or
- (c) any State department or agency requires use of the land for any purpose inconsistent with Allocation,

DoL or the ALT, as the case may be, will give notice to the Trustee of that fact. The Trustee must request Allocation of the land to the Land Sub within 30 Business Days of receiving the notice from DoL if the land is required for the NLE. If the Trustee again rejects the land or does not respond within that 30 Business Day period DoL or the ALT, as the case may be, may deal with the relevant land without further reference to the Trustee and it will no longer be available for Allocation.

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## **12. Land Costs**

- (a) At the time of the first Allocation of a land parcel to the Land Sub:

- (i) the State will meet the State Transaction Costs; and
  - (ii) the Trustee will meet the Trust Transaction Costs.
- (b) Where land is to be converted to freehold tenure under clause 6(c) and 6(d) of this Strategy, the Trustee must pay both the State Transaction Costs and the Trust Transaction Costs.
- (c) Where the Trustee wishes to convert further land to freehold tenure, beyond the cap and timeframes identified in clause 6(c) and 6(d) of this Strategy, the Trustee must pay all of the costs associated with the conversion to freehold including the State Transaction Costs, the Trust Transaction Costs and any purchase price of the land.

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### **13. Deemed delivery of documents**

Where in this Strategy, reference is made to one Party delivering or submitting documents to another Party any such documents will be deemed to have been received:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 2 Business Days after the date of posting.

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### **14. SWALSC to fulfil role of Trustee**

Pending declaration of the Trust pursuant to clause 2 of the Settlement Terms, SWALSC must perform the role of the Trustee referred to in this Strategy in the selection of land for Allocation.

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### **15. Land previously selected for Allocation**

Annexure X to the Settlement Terms contains a list of land that has been selected by the Native Title Agreement Groups (through SWALSC) for Allocation prior to the Execution Date for Allocation after the Trust Effective Date. This land will be deducted from land that must be accepted by the Trustee for Allocation under clause 7.2(b)(i) and is to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy.

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### **16. Land taken "as is"**

Land will be Allocated in its available state ("as is") including:

- (a) subject to any existing positive or restrictive covenants, interests and easements and other encumbrances;
- (b) the State cannot guarantee the land will be free from contamination;
- (c) the State does not guarantee that the land is otherwise fit for purpose;
- (d) in relation to any fixtures on the land, the State will require the Trustee to indemnify the State in relation to any liability arising from the existence of fixtures on the land.

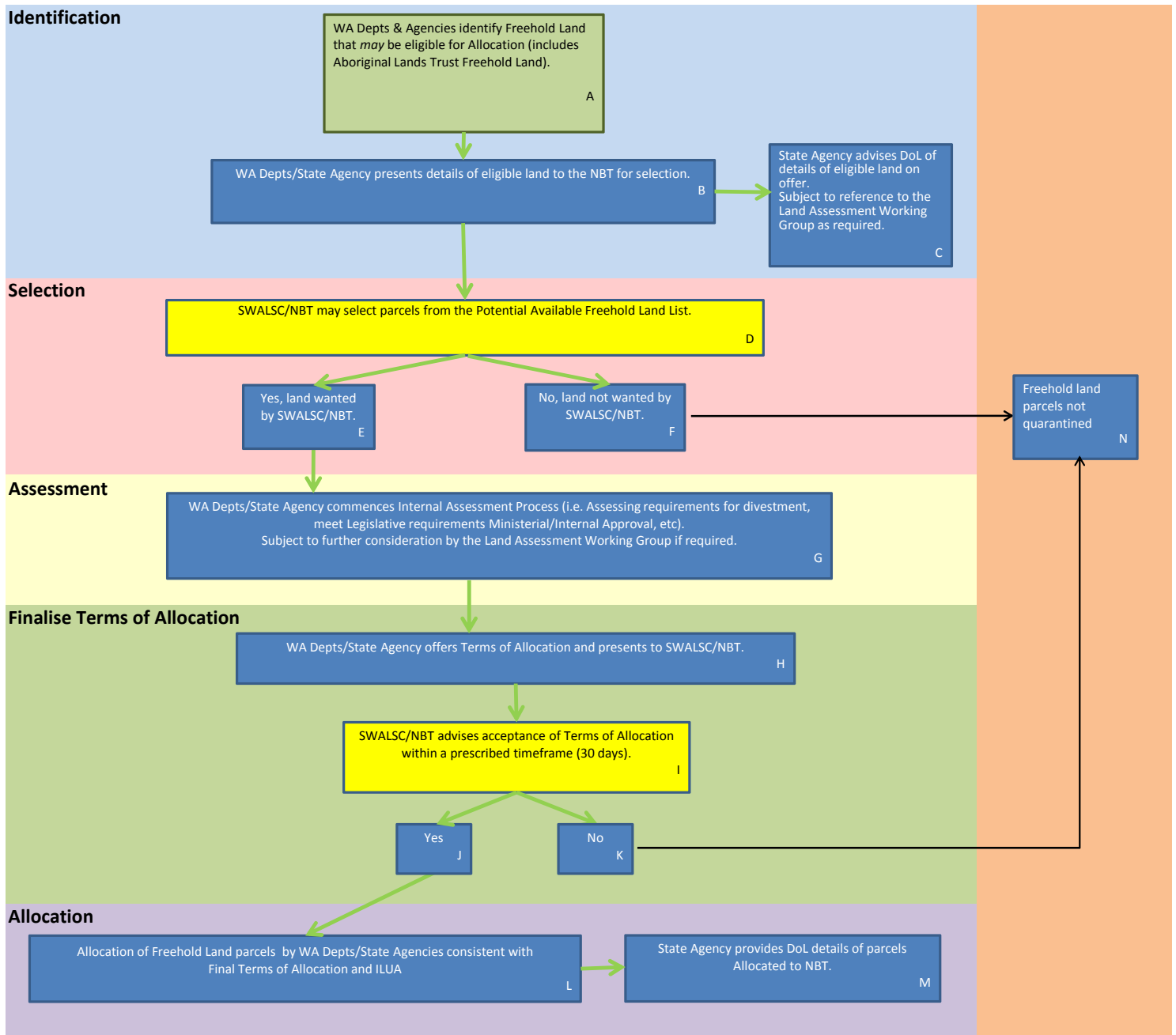
## **Annexure K**

### **Noongar Land Base Strategy - Implementation Process Charts**

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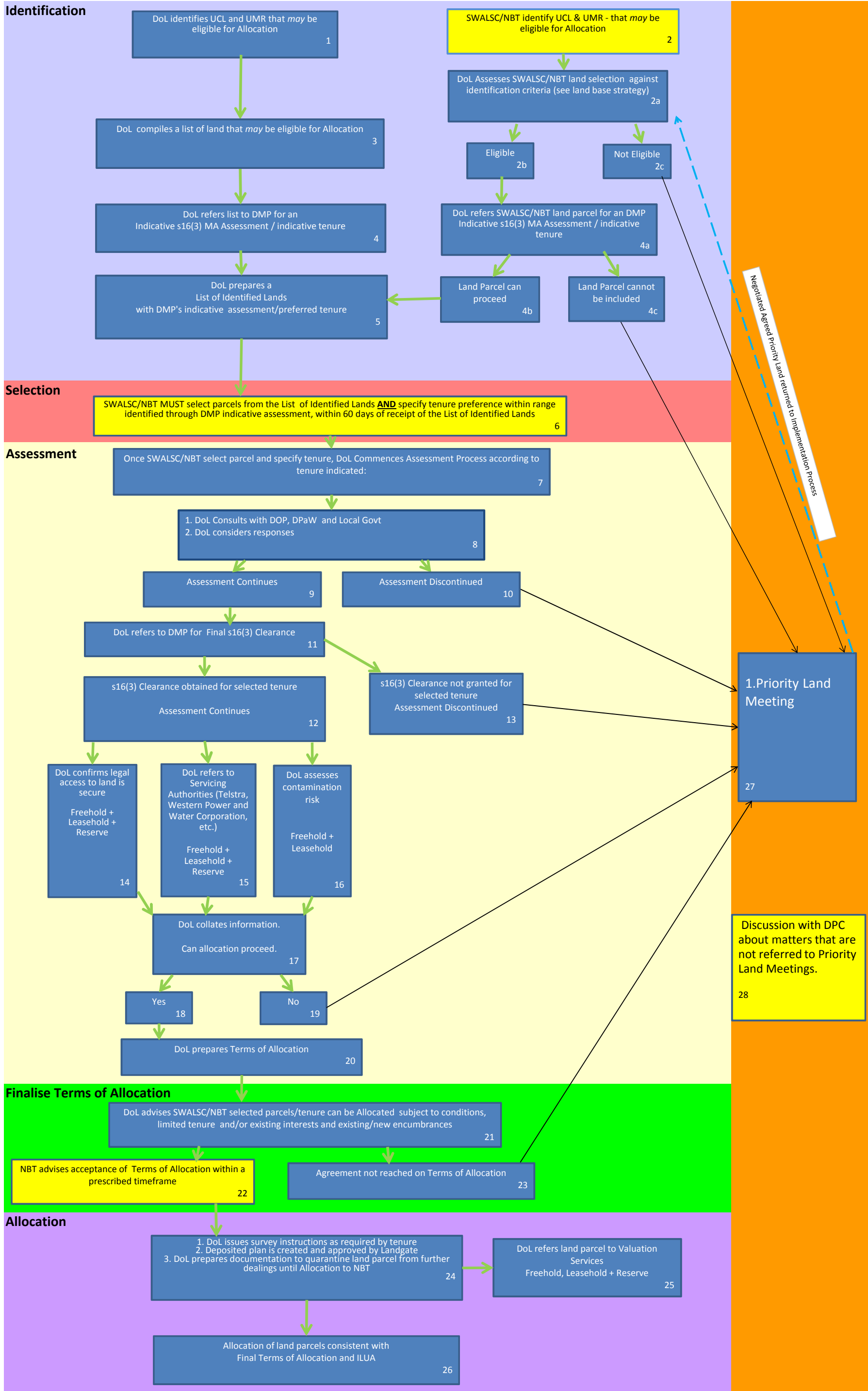
# Noongar Land Base Strategy - Freehold Implementation Process

1 8 June 2014



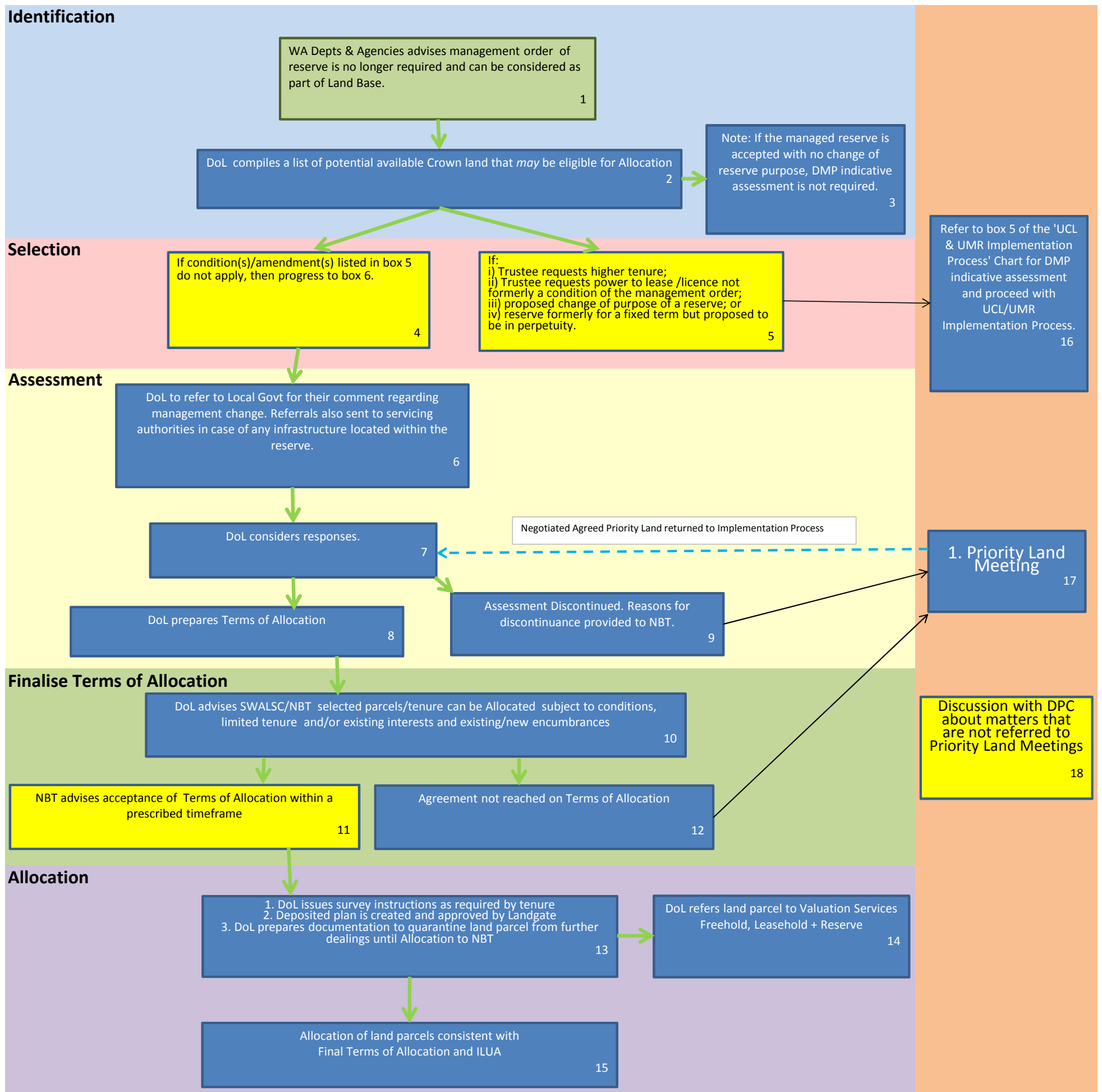
# Noongar Land Base Strategy - UCL + UMR Implementation Process

18 July 2014



# Noongar Land Base Strategy - Managed Reserves Implementation Process

18 July 2014



## **Annexure L**

### **Terms of Allocation (Parts A and B)**

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**Part A**

**Deed in relation to Allocation of Freehold land**

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**THIS DEED** is made on the date specified on the cover page

BETWEEN

**THE STATE OF WESTERN AUSTRALIA** acting through the Minister for Lands, a body corporate under section 7 of the *Land Administration Act* ("**MINISTER**")

and

("Land Sub")

and

("TRUSTEE")

#### **RECITALS:**

- A. The State and the Minister, among others, have entered into the ILUAs, one with each Agreement Group, to settle their native title claim(s) under the NTA in relation to the relevant Agreement Areas (**Native Title Settlement**).
- B. As part of the Native Title Settlement the Minister has agreed to the establishment of the Noongar Land Estate which includes the transfer of freehold land to the Land Sub pursuant to section 74 of the LAA.
- C. The Minister, the Land Sub and the Trustee have entered into this Deed which sets out the terms and conditions on which the Minister will transfer Land, as identified in each Schedule, in freehold to the Land Sub (**Deed**).

#### **COVENANTS AND CONDITIONS**

##### **THE PARTIES AGREE AS FOLLOWS:**

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#### **1. DEFINED TERMS AND INTERPRETATION**

##### **1.1 LAA definitions**

In this Deed, words and phrases defined in the LAA have the same meaning where used in this Deed.

##### **1.2 Other definitions**

In this Deed, unless the contrary intention appears:

**Agreement Area** means the Agreement Area as defined in the relevant ILUA.

**Agreement Group** means the Native Title Agreement Group as defined in the relevant ILUA.

**Allocation** means the conveyance of each lot of Land as identified in each Schedule held by the State in any of its capacities or agencies, to the Land Sub in unconditional freehold.

**Business Day** means any day other than Saturday, Sunday or State public holiday in Western Australia.

**Commencement Date** means the date specified on the cover page.

**Completion** means the completion of an Allocation in accordance with clause 3.

**Completion Date** means the date an Allocation is actually effected.

**Conclusively Registered** has the meaning given in the ILUAs.

**Contaminated** has the meaning given in the CSA, and **Contamination** is the state of being Contaminated.

**Crown** means the Crown in right of the State of Western Australia.

**CSA** means the *Contaminated Sites Act 2003*.

**DOL** means the Department of Lands of 140 William Street, Perth, Western Australia.

**Encumbrance** means a mortgage, charge, bill of sale, lien, pledge, easement, reservation, condition, positive covenant, restrictive covenant, memorial (and any conditions or statements contained in the memorial), Notification, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any third party affecting the Land or any part of the Land.

**Environmental Laws** means all planning, environmental or Contamination or Pollution laws and any regulations, orders, directions, ordinances or requirements, permission, permits or licenses issued thereunder.

**EPA** means the *Environment Protection Act 1986*.

**ILUA** means each of the Indigenous Land Use Agreements entered into (pursuant to Part 2, Division 3, Subdivision C of the NTA) by the State, each Agreement Group and others, which has or have been Conclusively Registered and described as follows:

- 1
- 2
- 3
- 4
- 5
- 6

**LAA** means the *Land Administration Act 1997*.

**Land** means each lot of land described in Item 1 of each Schedule (if there is more than one Schedule to this Deed) with all buildings and improvements on the Land.

**Landgate** means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006* and being the agency or department responsible for the registration of dealings relating to the land in the register kept pursuant to the TLA.

**Minimum Identified Amount** has the same meaning as given in clause 7.1 of Annexure J of Schedule 10 of the ILUA.

**Minister** means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

**NBT** means the Noongar Boodja Trust.

**Notification** means a notification endorsed on the certificate of Crown land title for the Land under section 70A of the TLA.

**NTA** means the *Native Title Act 1993 (Cth)*.

**Outgoings** means all rates, taxes, assessments, State land tax, Metropolitan Region Improvement Tax, charges (including but not limited to charges for water consumption and fixed charges), and outgoings (periodic or otherwise) chargeable or payable in respect of the Land.

**Pollution** means anything that is pollution within the meaning of that term as defined in the EPA that is not authorized under any law.

**Rate** means the rate of 12 % per annum as calculated on a daily basis.

**Register** has the same meaning as defined in the TLA.

**Registrar** means the Registrar of Titles appointed under section 7 of the TLA.

**State** means the State of Western Australia acting through the Minister or the Minister's duly authorized delegate.

**Terms of Allocation** has the same meaning as defined in the ILUA.

**TLA** means the *Transfer of Land Act 1893*.

**Transfer** means a transfer of the Land, either as a single lot of Land described in a Schedule or as multiple lots of Land described in two or more Schedules, in a form approved by the Registrar under the TLA from the State to the Land Sub, which in substance and form is acceptable to Landgate for the purposes of registration under the TLA.

**Trustee** means the Trustee of the NBT.

### 1.3 Interpretation

In the Deed, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Deed or of any provision contained in this Deed;

- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, unincorporated association, corporation or other body corporate or a Governmental Agency;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules of the Deed unless otherwise indicated;
- (g) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a references to any law includes consolidations, amendments, re-enactments or replacements of it;
- (j) the word “including” is deemed to be followed by the words “but not limited to”;
- (k) if a Governmental Agency, association, body or authority, whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (l) a reference to the Deed or another instrument includes any variation of either of them;
- (m) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (n) covenants entered into by two or more persons are entered into by them jointly and severally.

#### **1.4 Exercise and performance of the State’s powers and duties**

The Trustee and the Land Sub acknowledge that under the provisions of the LAA:

- (a) any right, duty or power conferred or imposed on the State under this Deed may be exercised or performed by the Minister; and
- (b) the Minister may, under an instrument of delegation, delegate to a person any right, duty or power which this Deed authorises or requires the Minister to exercise or perform.

#### **1.5 Application of the LAA**

The provisions of this Deed do not in any way affect, alter or derogate from the Minister’s rights or powers conferred under the LAA.

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## **2. LAND AND ENCUMBRANCES**

The Land is offered for transfer in freehold to the Land Sub in accordance with this Deed free of all Encumbrances except:

- (a) as specified in Item 2 of each Schedule in relation to the Land described in Item 1 of the same Schedule; and
- (b) any easement, positive covenant, restrictive covenant, memorial (and any condition or statement contained in the memorial), reservation, condition, building condition or Notification recorded or registered or to be recorded or registered on the certificate of Crown land title for the Land.

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### **3. COMPLETION**

#### **3.1 Requirements for Transfer**

- (a) The Trustee must within 40 Business Days of receiving a Transfer for execution from DOL, cause the Land Sub to execute and deliver to DOL a Transfer duly executed by the Land Sub.
- (b) The period of 40 Business Days referred to in clause 3.1(a) may be extended by agreement in writing between DOL and the Trustee.
- (c) Where the Trustee fails to cause the Land Sub to provide a Transfer duly executed by the Land Sub within the timeframes specified at clause 3.1(a) or extended by agreement pursuant to clause 3.1(b), the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to execute and return the Transfer duly executed to DOL. If the Trustee fails to cause the Land Sub to provide a Transfer duly executed by the Land Sub within this further 40 Business Day period:
  - (i) the State will no longer be under obligation to quarantine the Land from future dealings; and
  - (ii) the State is under no obligation to ensure the Land remains available for Allocation to the Land Sub; and
  - (iii) the Land will be deducted from the Minimum Identified Amount.

#### **3.2 Acknowledgement of the Trustee and Land Sub**

The Trustee and the Land Sub acknowledge that:

- (a) a duplicate certificate of Crown land title for the Land does not exist and will not be delivered by the State to the Land Sub upon Completion;
- (b) on the Completion Date, a Certificate of Title for the Land will not exist and the State is not obliged to produce to the Land Sub a duplicate Certificate of Title for the Land upon Completion;
- (c) a Certificate of Title will be created by the Registrar once the Transfer has been registered in accordance with the provision of the TLA where the Registrar will endorse on the Certificate of Title the particulars of all dealings and matters affecting the Land as specified in, or effected by the ILUA, the Terms of Allocation, this Deed and the Transfer; and
- (d) unless the Land Sub has on the Transfer requested the duplicate Certificate of Title for the Land not to be issued, a duplicate Certificate of Title will be

issued by the Registrar and forwarded to the Land Sub as requested on the Transfer.

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#### **4. POSSESSION AND RISK**

##### **4.1 Possession**

Subject to the Trustee and the Land Sub having performed all of their obligations under this Deed, the Land Sub will be entitled to and the State will deliver to the Land Sub possession of the Land on the Completion Date.

##### **4.2 Risk**

Despite any rule of law or equity to the contrary, the Land is at the risk of the Land Sub from the Completion Date or from the date the Land Sub is entitled to or is given possession of the Land, whichever is the earliest.

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#### **5. OUTGOINGS**

##### **5.1 No Outgoings assessed on the Land**

The Land is not subject to any Outgoings, as the Land is owned by the Crown in right of the State of Western Australia.

##### **5.2 No adjustment of Outgoings**

- (a) Consistent with clause 5.1, no Outgoings will be apportioned between the State and the Land Sub.
- (b) The Land Sub is responsible for the payment of all Outgoings chargeable or payable in respect of the Land from the Completion Date or the date the Land Sub is entitled to be given possession of the Land, whichever is the earliest.

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#### **6. GENERAL PROVISIONS**

##### **6.1 The Trustee and Land Sub acknowledgements**

The Trustee and the Land Sub acknowledge and agree that, except as disclosed in this Deed:

- (a) no warranty or representation has been given or made to the Trustee, the Land Sub or to anyone on the Trustee's or the Land Sub's behalf, by the State, the Minister, or any agent, employee or contractor of DOL or any other person on the State's or Minister's behalf as to:
  - (i) the title to the Land;
  - (ii) any Encumbrance, restriction or right in favour of any third party affecting the Land;
  - (iii) the condition or state of repair of the Land or any part of the Land;



- (iv) the condition or state of repair of the improvements or any part of the improvements on the Land;
  - (v) the suitability of the Land for any use or purpose of any kind;
  - (vi) whether or not the fences (if any) purporting to be on the boundaries are in fact on the proper boundaries of the Land;
  - (vii) whether there is a constructed road, a gravel road, a track or other means of physical access over any dedicated legal access to the Land; and
  - (viii) the existence or suitability or safety of physical access (if any) to the Land;
- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in this Deed, and any such representation or warranty is excluded to the extent permitted by law;
  - (c) the Land is transferred as it stands with all existing faults, defects or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on the State to disclose or particularise any faults, defects or characteristics known to the State;
  - (d) the Trustee and the Land Sub are deemed to accept the Allocation of Land in reliance on the Trustee's and the Land Sub's own inspection of, and enquiries in relation to, the Land;
  - (e) the State will not be liable under any circumstances to make any allowance or compensation to the Trustee or the Land Sub for the exclusion of warranties or representations made in this clause 6.1 or for any fault, defect or characteristic in the Land;
  - (f) this clause will apply despite the contents of any brochure, document, letter or publication made, prepared by or published by the State or DOL or any other person with the express or implied authority of the State or DOL; and
  - (g) there is no obligation on the part of the State or the Minister to:
    - (i) provide physical access to the Land;
    - (ii) maintain or upgrade physical access to the Land; or
    - (iii) clear any rubbish from the Land.

## **6.2 Requisitions on title**

Neither the Trustee nor the Land Sub is entitled to make any objection to or requisition on the title to the Land, and the State will not be obliged to furnish answers to any objection or requisition on the title to the Land delivered by or on behalf of the Trustee or the Land Sub, it being acknowledged by the Trustee and the Land Sub that:

- (a) the Land is Crown land within the meaning of the LAA;
- (b) the State of Western Australia is, or is entitled to be recorded as the registered proprietor of the Land by virtue of section 29(5) of the LAA;

- (c) the Minister is authorised pursuant to section 74 of the LAA to transfer Crown Land in fee simple; and
- (d) the Land is transferred under section 74 of the LAA and the provisions of the LAA relating to the transfer of Crown land in fee simple apply to the Allocation of Land to the Land Sub in freehold.

### **6.3 No compensation**

The Trustee and the Land Sub are not entitled to make any objection, requisition or claim for compensation, or to terminate this Deed in respect of:

- (a) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to the Land, or in respect of the fact that any services or connections may be joint services to any other land or because any facilities for services for any other land pass through the Land;
- (b) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (c) the location of any sewerage, water or drainage pipes or services affecting the Land, or that any sewer passes through, or penetrates the Land;
- (d) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation;
- (e) the fact that any fence on the Land is not on the proper boundaries of the Land; or
- (f) the fact that the area of the Land is different from the area indicated on any plan, brochure or document issued or published by or on behalf of DOL or Landgate or as indicated on the certificate of Crown land title to the Land.

### **6.4 Planning and other matters**

The Trustee and the Land Sub acknowledge that the Land is transferred subject to the following as at the Completion Date:

- (a) the provision of any town planning scheme, zoning by-laws and other laws affecting the Land;
- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or rights of way adjacent to the Land by any competent authority or person;
- (d) any resumption or proposal to resume the Land or any part of the Land; and

- (e) any easement, memorial (and any conditions or statement contained in the memorial), Notification, reservation, condition, building condition, positive covenant or restrictive covenant affecting the Land;

and the Land Sub will take title subject to the above, and neither the Trustee nor the Land Sub will be entitled to make any objection, requisition, or claim for compensation, or to terminate this Deed in respect of any of the above.

## **6.5 Trustee's Warranties**

- (a) The Trustee represents and warrants to the Minister that the Trustee has the full powers pursuant to its constitution and its deed of trust (generally and together (if more than one) called "the Trust") under which it purports to act when entering into this Deed.
- (b) The Trustee further covenants that:
  - (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
  - (ii) the Trust will remain unrevoked and not varied other than with the prior written consent of the Minister, which will not be unreasonably withheld;
  - (iii) the assets of the Trust as well as the assets of the Trustee will at all times be available to satisfy the obligations of the Trustee under this Deed;
  - (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
  - (v) no one has taken or threatened nor is the Trustee aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Trustee or any person at any time connected with the Trustee or acting on behalf or purportedly on behalf of the Trustee with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
  - (vi) no facts are known to the Trustee where the Trust might be wound-up voluntarily or otherwise or the Trustee might be changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

## **6.6 Land Sub Warranties**

- (a) The Land Sub represents and warrants to the Minister that the Land Sub has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) The Land Sub further covenants that:
  - (i) the Land Sub is lawfully and validly constituted and all instruments in respect of the Land Sub have been properly executed;

- (ii) the Land Sub will remain so constituted;
- (iii) the assets of the Land Sub will at all times be available to satisfy the obligations of the Land Sub under this Deed;
- (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Land Sub have been obtained and all necessary conditions precedent for that purpose have been met;
- (v) no one has taken or threatened nor is the Land Sub aware of any one who is likely to take action to have the Land Sub wound-up or otherwise administered by action brought in any Court or to charge the Land Sub or any person at any time connected with the Land Sub or acting on behalf or purportedly on behalf of the Land Sub with any breach of trust or misappropriation of moneys in connection with the Land Sub; and
- (vi) no facts are known to the Land Sub where the Land Sub might be wound-up voluntarily or otherwise or the assets of the Land Sub might be vested in any other person or the Land Sub may cease to operate or be deprived of funds prior to expiration of the Term.

## **6.7 Special Conditions**

Special conditions (if any) particular to the Land are listed in Item 3 of each Schedule.

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## **7. DIVIDING FENCES**

### **7.1 State not liable**

The State will not be liable to the Trustee or the Land Sub or any other party claiming through the Trustee or the Land Sub to contribute to the cost of erecting or repairing any dividing fence whether under the *Dividing Fences Act 1961* or otherwise and the Trustee and the Land Sub will assume any existing liability as from and including Completion.

### **7.2 The Trustee and the Land Sub to indemnify the State**

Clause 7.1 will not prejudice or affect the rights of the Land Sub as between the Land Sub and adjoining owners other than the State, and the Trustee and the Land Sub agree to jointly and severally indemnify the State against all claims in respect of the cost of erecting or repairing any dividing fence from any future owner, whether legal or equitable, of any adjoining land.

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## **8. CAVEATS**

### **8.1 No lodgement of caveats**

The Trustee and the Land Sub may not lodge a caveat on any Land after entering into this Deed if the State has lodged with the Registrar of Titles a memorial pursuant to section 17 of the LAA over the Land so as to quarantine the Land from further dealings until the Completion of an Allocation to the Land Sub.

## 8.2 Withdrawal of caveat

If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date, by or in relation to the Trustee or the Land Sub or the Trustee's or Land Sub's interest (if any) in the Land, the Trustee or the Land Sub will provide a withdrawal of caveat to DOL prior to Completion, for lodgement at Completion.

## 8.3 Caveat lodged by other interests

- (a) If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date (other than a caveat registered by or in relation to the Trustee or the Land Sub or the Trustee's or the Land Sub's interest in the Land), and the State is unable to produce to the Land Sub for Completion a withdrawal of the caveat:
- (i) despite any other clause in the ILUA or this Deed, the State may by written notice to the Trustee extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the caveat to be withdrawn, removed or lapsed from the Register;
  - (ii) if the State for whatever reason cannot cause the caveat to be withdrawn, removed or lapsed from the Register on or before the extended Completion Date under sub-clause (i), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is caveat and there will be no further claim under this Deed or the ILUA by either the State or the Trustee or the Land Sub against any of the other of them at law or in equity in respect of the Allocation of the Land over which there is a caveat; and
    - (A) the State will no longer be under obligation to quarantine the Land over which there is a caveat, from future dealings; and
    - (B) the State is under no obligation to ensure the Land over which there is a caveat remains available for Allocation to the Land Sub; and
    - (C) the Land will not be deducted from the Minimum Identified Amount.
- (b) If clause 8.2 is not complied with:
- (i) the State will no longer be under obligation to quarantine the Land over which there is a caveat from future dealings; and
  - (ii) the State is under no obligation to ensure the Land over which there is a caveat remains available for Allocation to the Land Sub; and
  - (iii) the Land over which there is a caveat will be deducted from the Minimum Identified Amount.

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## **9. CERTIFICATE OF CROWN LAND TITLE NOT CREATED AND REGISTERED ON THE COMMENCEMENT DATE**

### **9.1 Application**

If a certificate of Crown land title for any Land has not been created and registered as at the Commencement Date, this clause shall apply.

### **9.2 State to apply for a certificate of Crown Land Title**

The State will at the State's expense as soon as practicable after the Commencement Date, apply to the Registrar for the creation and registration of a separate certificate of Crown land title for the Land.

### **9.3 Minor alterations**

The Trustee and the Land Sub must not unreasonably object to minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title as required by any third party whose consent or approval is required for the creation and registration of a certificate of Crown land title for the Land.

### **9.4 The Trustee and the Land Sub to accept title**

The Trustee and the Land Sub must not refuse to accept title to the Land or make any claim for compensation for minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title for the Land.

### **9.5 Notification of creation and registration of the Certificate of Crown Land Title**

The Minister must send a notice notifying the Trustee in writing within 10 Business Days of the creation and registration of a certificate of Crown land title for the Land.

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## **10. CONNECTIONS TO SEWER**

If, at the Commencement Date:

- (a) the Land is not connected to a sewer; and
- (b) the State has not received a notice from a competent authority requiring the Land to be so connected,

and on or before Completion Date a competent authority issues to the State a notice requiring the Land to be connected to a sewer, the Land Sub will be responsible for the payment of all costs and expenses payable to the competent authority or any other body in respect of that connection.

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## **11. TERMINATION OF ALLOCATION**

- (a) If for any reason outside of the control of the State, for example but without limitation if an injunction is granted, any Land cannot be transferred to the Land Sub on the Completion Date (in this clause an "**Impediment**") and the Impediment is not created, maintained or supported by the Trustee or the Land Sub:

- (i) the State may by written notice to the Trustee extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the Impediment to be removed; and
  - (ii) if the State for whatever reason cannot cause the Impediment to be removed on or before the extended Completion Date under sub-clause (a), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is an Impediment and there will be no further claim under the ILUA by either the State or the Trustee or the Land Sub against any of the other of them at law or in equity in respect of the Allocation of the Land over which there is an Impediment;
    - (A) the State will no longer be under obligation to quarantine the Land over which there is an Impediment from future dealings;
    - (B) the State is under no obligation to ensure the Land over which there is an Impediment remains available for Allocation to the Land Sub; and
    - (C) the Land over which there is an Impediment will not be deducted from the Minimum Identified Amount.
- (b) If the Impediment is created, maintained or supported by the Trustee or the Land Sub:
- (i) the State will no longer be under obligation to quarantine the Land over which there is an Impediment from future dealings; and
  - (ii) the State is under no obligation to ensure the Land over which there is an Impediment remains available for Allocation to the Land Sub; and
  - (iii) the Land over which there is an Impediment will be deducted from the Minimum Identified Amount.

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## **12. CONTAMINATION AND RELATED MATTERS**

### **12.1 No Warranty**

The State makes no warranty:

- (a) as to the nature and extent to which the Land may be affected by any Contamination; and
- (b) that remediation works will not be required to be carried out by the Land Sub for any use which it may make of the Land.

## 12.2 Memorial

- (a) After the Commencement Date, the Minister will lodge with the Registrar of Titles a memorial pursuant to section 17 of the LAA over the Land to quarantine the Land from further dealings pending Completion and will withdraw such memorial on Completion.
- (b) After the Commencement Date, the Minister may lodge with the Registrar of Titles any other memorial pursuant to section 17 of the LAA over the Land:
  - (i) as specified in the special conditions of the relevant Schedule for the Land, which may include a statement warning of any Contamination of the Land or other relevant factors as a hazard or other factor affecting, or likely to affect, the use or enjoyment of the Land; or
  - (ii) as may be imposed by the WA Planning Commission as a condition of approval for subdivision.
- (c) Nothing in sub-clauses 12.2(a) and (b) impact on the State's power to lodge a memorial over land pursuant to the *Contaminated Sites Act 2003* (WA) or any other Act.
- (d) The Parties intend the memorial in sub-clause 12.2(b) to be lodged with the Transfer, but if this does not occur the parties agree that, notwithstanding clause 13.10, such memorial to be lodged on the Certificate of Title for freehold land, can be lodged after Completion.
- (e) The State will provide notice of the intention to lodge a memorial pursuant to sub-clause 12.2(b)(ii) with the Transfer when it is sent to the Trustee for execution by the Land Sub, or give the Trustee seven days' notice before such memorial is lodged for registration.
- (f) The Trustee's and Land Sub's execution of this Deed evidences the Trustee's and the Land Sub's acknowledgement and consent to any action by the State in accordance with sub-clauses 12.2(b) and 12.2(d) and may be relied upon as its consent for the purpose of lodging any such memorial, under section 17(1) of the LAA.

## 12.3 No Compensation

Without limiting anything in clause 6, the Trustee and the Land Sub agree and acknowledge and accept the Land in its present condition including without limitation the presence of any Contamination and shall not make or take any objection, requisition or claim for compensation, or terminate this Deed in relation to the presence of any Contamination in, over or on the Land which is present at, or may become apparent after, Completion.

## 12.4 Land Sub to assume all responsibility

The Land Sub as owner of the Land must at its own cost and expense assume all responsibility for the presence of any Contamination found over, on or in the Land and must to the fullest extent permitted by the law assume all responsibility for:

- (a) compliance with Environmental Laws;



- (b) the conduct and performance of any work required by any competent authority in respect of any Contamination or under any Environmental Laws; and
- (c) any legal, statutory or other liability under or in connection with or resulting from the presence of any Contamination over, on or in the Land.

## **12.5 Release and Indemnity**

The Trustee and the Land Sub jointly and severally release and indemnify and will keep indemnified, the Minister and the Crown from and against all actions, claims, writs, proceedings, suits, demands, losses, damages, compensation, costs of remediation, legal costs, charges and expenses whatsoever which at any time may be brought, maintained or made against the Minister or the Crown arising from or relating to:

- (a) the state or condition of the Land;
- (b) any Contamination over, on or in the Land or emanating from the Land; or
- (c) both of the matters covered in sub-clauses (a) and (b).

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## **13. MISCELLANEOUS**

### **13.1 Costs and duties**

- (a) Subject to clause 14, the State will bear any duties, or fees or taxes of a similar nature, and any related fines and penalties, associated with this Deed.
- (b) Each Party will bear their own costs including legal costs associated with the negotiation, drafting and execution of this Deed and the Completion of an Allocation.
- (c) The provisions of clause 7.1 of Annexure J of Schedule 10 of the ILUA apply to this Deed.

### **13.2 Default costs and expenses**

The Trustee shall on demand pay to the State all monies, costs, charges and expenses incurred or expended by the State under or in connection with or by reason of the breach or failure by the Trustee or the Land Sub to observe and perform any of the covenants or conditions on the part of any of them in this Deed or by reason of or in relation to the exercise or attempted exercise by the State of the rights, powers and authorities of the State under this Deed together with interest on those monies at the Rate computed from the time of payment to but excluding the date of repayment or discharge of the liability.

### **13.3 Deemed delivery of documents**

Where in this Deed reference is made to one Party delivering or submitting documents to another Party any such documents will be deemed to have been received:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 2 Business Days after the date of posting.

## 13.4 Notices

Any notice given or required to be given under this Deed:

- (a) must be in writing addressed as shown below:
- (i) if to the State:
    - Address: Minister For Lands  
c/Department of Lands  
140 William St  
PERTH 6000
    - PO BOX 1143  
WEST PERTH WA 6872
    - Attention: The Director-General
  - and if by fax to  
fax number: (08) 6552 4417
  - (ii) if to the Trustee:
    - Address:
  - (iii) if to the Land Sub:
- (b) must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's authorised representative (as the case may be);
- (c) is to be regarded as being given by the sender and received by the addressee:
- (i) If by delivery in person, when delivered to the addressee;
  - (ii) if by post (which posting must be by pre-paid security post), 3 Business Days from and including the date of posting to the addressee; and
  - (iii) if by facsimile transmission:
    - (A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and
    - (B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is to be regarded as being given at 9 am (addressee's time) on the next succeeding Business day and can be relied upon by the addressee, and the addressee is not liable to

any other person for any consequences of that reliance if the addressee believes it to be genuine, correct or authorised by the sender.

### **13.5 Moratorium**

Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect the rights, powers, privileges, remedies or discretions given or accruing to a party.

### **13.6 Governing law and jurisdiction**

- (a) This Deed is governed by, and must be construed according to, the law applying in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

### **13.7 Severance**

- (a) If any provision of this Deed is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the law of any jurisdiction:
  - (i) that will not affect or impair:
    - (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
    - (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed,
  - (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.
- (b) If a part of this Deed is severed in accordance with this clause 13.7(a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.

### **13.8 Variation of this Deed**

This Deed may only be varied by a deed executed by or on behalf of each party.

### **13.9 Waiver**

A right or power under this Deed will only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or

prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and

- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **13.10 Provisions to survive completion**

- (a) The benefit of any assumption of liability or responsibility, indemnity, release, representation or warranty, or the exclusion of any representation or warranty, survive Completion.
- (b) Without limitation, to the extent that any obligations under this Deed have not been complied with on or before Completion, those obligations survive Completion and must be complied with.

### **13.11 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give full effect to this Deed and the matters contemplated by it.

### **13.12 Entire Agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

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## **14. GOODS AND SERVICES TAX**

### **14.1 Interpretation**

Any reference in this clause 14 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

### **14.2 Amounts exclusive of GST**

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Deed are exclusive of GST.

### **14.3 GST payable**

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or

incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

**ITEM**

**1. Description of Land:**

District/Townsite: .....

Lot/Location number: .....

CLT: Volume.....Folio.....

Street Address: .....

**2. Encumbrances:**

**3. Special Conditions:**

EXECUTED as a Deed

**Minister:**

**THE COMMON SEAL IS HEREUNTO** )  
**AFFIXED** for and on behalf of **THE STATE OF** )  
**WESTERN AUSTRALIA** by the **MINISTER** )  
**FOR LANDS**, a body corporate under section 7 )  
of the *Land Administration Act 1997* (WA), )  
in the presence of: )

---

**HON TERRY REDMAN MLA**  
**MINISTER FOR LANDS**

---

Signature of witness

---

Name of witness (block letters)

---

Address of witness

---

Occupation of witness

---

Date of signature

**The Land Sub:**

**The Trustee:**

**Part B**

**Deed in relation to Management Order for Reserve Land**

**and**

**Annexure A to Management Order for Reserve Land**

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**THIS DEED** is made on the date specified on the cover page

BETWEEN

**THE STATE OF WESTERN AUSTRALIA** acting through the Minister for Lands, a body corporate under section 7 of the *Land Administration Act* ("**MINISTER**")

and

("MANAGEMENT BODY")

and

("TRUSTEE")

#### **RECITALS:**

- A. The State and the Minister, among others, have entered into the ILUAs, one with each Agreement Group to settle their native title claim(s) under the NTA in relation to the relevant Agreement Area (**Native Title Settlement**).
- B. The Minister will by Order place the care, control and management of the Reserve with the Management Body for the Term on and subject to the provisions of the LAA and Management Order Conditions.
- C. As part of the Native Title Settlement the Minister has agreed to the establishment of the Noongar Land Estate which includes the creation of reserves and the making of management orders to the Management Body in accordance with Part 4 of the LAA.
- D. The Minister, the Management Body and the Trustee have entered into this Deed which sets out the terms and conditions on which the Minister will make a Management Order giving the care, control and management of Reserve, to the Management Body (**Deed**).
- E. The Management Body will take the care, control and management of the Reserve on the terms and conditions contained in this Deed and Management Order Conditions.

#### **COVENANTS AND CONDITIONS**

##### **THE PARTIES AGREE AS FOLLOWS:**

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#### **1. DEFINED TERMS AND INTERPRETATION**

##### **1.1 LAA definitions**

In this Deed, words and phrases defined in the LAA have the same meaning where used in this Deed.

## 1.2 Management Order definitions

In this Deed, words and phrases defined in the Management Order have the same meanings where used this Deed and appear with an initial capital letter, except where expressly provided otherwise.

## 1.3 Other definitions

In this Deed, unless the contrary intention appears:

**Claims** means actions, claims, proceedings, suits, judgments, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand.

**Deed** means the deed constituted by this document and any amendments or variations of it and includes Schedule 1 and 2.

**GST** has the meaning given in section 195-1 of the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

**GST Rate** means that rate of GST payable from time to time under the GST Act.

**Insurance Amount** means the amount specified in item 1 of Schedule 1 or such other amount as the Minister may reasonably require from time to time.

**Insurance Policy** means the insurance policy or policies required to be taken out under clause 3.4.

**Interest Rate** means the rate determined under section 8(1)(a) of the *Civil Judgments Enforcement Act, 2004* from time to time.

**Management Order** means the management order comprising LAA Form 1023, Annexure A and Schedules thereto, annexed in this Deed as Schedule 2.

**Management Order Conditions** means the conditions set out in the Management Order.

**Parties** means the Minister, the Management Body and the Trustee.

**State's Authorised Users** means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the State and any person entering onto the Reserve with the express or implied authority of the State.

**Schedule** means a schedule to this Deed.

**Trustee** means the trustee of the Noongar Boodja Trust.

**Trustee's Authorised Users** means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the Trustee and any person entering onto the Reserve with the express or implied authority of the Trustee.

## 1.4 Interpretation

In the Deed, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Deed or of any provision contained in this Deed;

- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, unincorporated association, corporation or other body corporate or a Governmental Agency;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules of the Deed unless otherwise indicated;
- (g) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a references to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (j) the word “including” is deemed to be followed by the words “but not limited to”;
- (k) if a Governmental Agency, association, body or authority, whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (l) a reference to the Deed, Management Order or another instrument includes any variation of either of them;
- (m) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (n) covenants entered into by two or more persons are entered into by them jointly and severally.

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## **2. GENERAL CONDITIONS**

- 2.1** On the Date of Commencement the Management Body accepts the care, control and management of the Reserve on the terms and conditions set out in this Deed and the Management Order, included as Schedule 2 of this Deed.
- 2.2** The Management Body hereby consents to the revocation of the Management Order pursuant to section 50(1)(a) of the LAA if there is a breach of the Management Order Conditions contained in clauses 5.2(a) and 5.2(b) of Annexure A of the Management Order.
- 2.3** Subject to clause 2.4, the Management Body hereby consents, pursuant to section 46(2) of the LAA, to the variation of the Management Order Conditions as may be required by the Minister from time to time to ensure good Crown land administration and management, where such variation is consistent with the conditions on which the

Minister grants management orders to non-government management bodies prevailing at the time.

- 2.4 The Minister reserves the right to vary the Management Order Conditions, not more than once every ten years.

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### 3. INDEMNITY, RELEASE AND INSURANCE

#### 3.1 Definition

In clauses 3.2 and 3.3, **Indemnified Parties** means the State and the State's Authorised Users.

#### 3.2 Indemnity

(a) The Management Body and the Trustee hereby covenant with the Minister to jointly and severally indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties:

(i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Reserve and including the property of:

- (A) any of the Indemnified Parties;
- (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
- (C) the lessee, sub-lessee or licensee of the Reserve; or
- (D) the holders of any Encumbrances on the Reserve and their authorised users;

(ii) in respect of the death of, injury to or illness of, any person including:

- (A) any of the Indemnified Parties;
- (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
- (C) the lessee, sub-lessee or licensee of the Reserve; or
- (D) the holders of any Encumbrances on the Reserve and their authorised users;

directly or indirectly caused by or arising out of or in connection with:

- (iii) the use of the Reserve by the Management Body and the Management Body's Authorised Users;
- (iv) any work carried out by or on behalf of the Management Body under this Deed;

- (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Management Body and the Management Body's Authorised Users under this Deed;
  - (vi) any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land caused or contributed to by the Management Body and the Management Body's Authorised Users.
  - (vii) any remediation required in respect of the Relevant Land or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use of the Relevant Land by the Management Body and the Management Body's Authorised Users;
  - (viii) any default by the Management Body and the Management Body's Authorised Users in the due and punctual performance of or compliance with any of the Management Order Conditions or the terms, covenants and conditions contained in this Deed, or any other Law that applies to the exercise of the Management Body's rights in respect of the Reserve; or
  - (ix) any negligent or other tortious act or omission of the Management Body or the Management Body's Authorised Users.
- (b) The obligations of the Management Body and the Trustee under this clause 3.2 are unaffected by the obligation to take out insurance and the obligation of the Management Body and the Trustee to indemnify are paramount.
  - (c) The indemnities contained in this clause 3.2 continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to expiry or revocation of the Management Order or the termination of this Deed.

### **3.3 Release**

- (a) The Management Body agrees to take and be subject to the same risks and responsibilities to which it would be subject in respect of persons and property if, during the Term it were the owner and occupier of the freehold of the Reserve.
- (b) The Management Body and the Trustee release, to the fullest extent permitted by law, the Indemnified Parties from:
  - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Reserve;
  - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land at any time throughout the duration of the Management Order whether or not identified in an audit undertaken by the Management Body or the Trustee; and

- (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Management Body or the Management Body's Authorised Users;

except to the extent that such loss or damage is caused or contributed to by the negligence of the Indemnified Parties.

- (c) The release contained in this clause 3.3 continues in full force and effect notwithstanding expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to expiry or revocation of the Management Order or the termination of this Deed.

### **3.4 Insurance**

- (a) The Management Body must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the *Insurance Act 1973 (Cth)* and to the satisfaction of the Minister, a public liability insurance policy for the Insurance Amount for any one occurrence and unlimited in the aggregate during any one period of insurance and which covers all Claims and losses howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
  - (i) any illness of, injury to or death of, any person;
  - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
  - (iv) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Relevant Land caused or contributed to by the Management Body or the Management Body's Authorised Users; or
  - (v) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under this Deed in respect of which insurance is ordinarily obtainable.
- (b) Any policy of insurance effected pursuant to this clause must contain such conditions, endorsements and exclusions as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (c) The Management Body must give to the Minister a copy of the certificate of currency for the Insurance Policy at the date of execution of this Deed, and the Management Body is to submit evidence to the Minister on each anniversary of the date of execution of this Deed, or as otherwise requested by the Minister, which shows that the Insurance Policy is still current.
- (d) The Management Body is:

- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;
- (ii) to notify the Minister immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
- (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer;
- (iv) to expend any moneys received in respect of a claim made under the Insurance Policy in satisfaction of the relevant Claim;
- (v) to ensure that the Insurance Policy is in joint names of the Trustee and the Management Body;
- (vi) to have the interests of the Minister and the State noted on the Insurance Policy and to ensure that under the Insurance Policy the insurer has no rights of subrogation against the Minister or the State;
- (vii) to indemnify the Minister and the State against any loss arising from a breach of subclause (v) and the indemnities contained in this sub clause continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Deed;
- (viii) to ensure that all premiums in respect of the Insurance Policy and renewals of the Insurance Policy are paid punctually;
- (ix) to ensure that it does not at any time during the duration of the Management Order do or bring upon the Reserve anything where the Insurance Policy may be rendered void or voidable; and
- (x) to ensure that if the Management Body does anything or brings anything onto the Reserve where the rate of premium on the Insurance Policy will be liable to be increased, the Management Body will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Reserve is put by the Management Body.

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#### **4. YIELDING UP**

On the expiry or within two months of the revocation of the Management Order, or such longer period as the Minister allows, the Management Body must, to the reasonable satisfaction of the Minister:

- (a) surrender peaceably and yield up the Reserve to the Minister:
  - (i) clean;
  - (ii) free from rubbish; and
  - (iii) in a state of good repair and condition;



- (b) fill in, consolidate and level off any unevenness, excavation or hole caused by the Management Body or by the Management Body's care, control and management of the Reserve;
- (c) remove any equipment, materials, fittings or any other property (**Materials**) on the Reserve as may be required by the Minister except Materials that:
  - (i) are identified in the Special Conditions as existing on the Reserve as at the Date of Commencement; or
  - (ii) the Minister otherwise determines were on the Reserve as at the Date of Commencement;
- (d) remove anything which is not an Authorised Improvement;
- (e) remove any Authorised Improvement, except an Improvement which existed on the Reserve at the Date of Commencement, at the request of the Minister;
- (f) promptly make good any damage caused by the removal in subclauses (c), (d) or (e); and
- (g) promptly make good and rehabilitate the Reserve and remediate any Contamination, Pollution or Material Environmental Harm of or to the Relevant Land arising from, or connected with the care, control and management of the Reserve by the Management Body or the Management Body's Authorised Users whether such use and occupation is or was under the terms of the Management Order or some other lease, licence or agreement.

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## **5. REMEDY MANAGEMENT BODY'S DEFAULT**

The Minister may, but is not obliged to, remedy any default by the Management Body in performing or complying with the Management Order Conditions or this Deed without notice (unless any clause specifically provides otherwise).

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## **6. RECOVER COSTS AND INTEREST FROM MANAGEMENT BODY AND TRUSTEE**

- 6.1** If the Minister carries out any works under clause 6.1(b) of Annexure A of the Management Order which it is the Management Body's obligation to do under the Management Order or remedies a default under clause 5, the Management Body and the Trustee are to pay to the Minister on demand all debts, costs and expenses, including legal costs and expenses, incurred by the Minister as a result of carrying out those works or remedying that default.
- 6.2** (a) If any amount payable by the Management Body and the Trustee under clause 6.1 is not paid within 20 Business Days after it becomes due for payment, the Management Body and the Trustee is to pay to the Minister interest on demand, on the amount from the due date for payment until it is paid in full.
- (b) Interest is to be calculated on a daily basis, at the Interest Rate.

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## **7. CONDITIONS CONTINUE AFTER EXPIRY OR REVOCATION OF MANAGEMENT ORDER**

### **7.1 Continuation of Management Order Conditions**

The conditions contained in clause 4 of Annexure A of the Management Order continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

### **7.2 Continuation of Rights and Obligations – Deed**

The rights and obligations under clauses 2, 3, 4, 5 and 6 of this Deed continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

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## **8. GENERAL PROVISIONS**

### **8.1 Exclusion of warranties**

The Management Body acknowledges having inspected the Reserve and that in entering into this Deed and accepting management of the Reserve, the Management Body has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by law and which cannot be contracted out of) by or on behalf of the Minister or the State whether express or implied, other than the statements, representations and warranties expressly set out in this Deed.

### **8.2 Suitability and safety of Reserve**

- (a) The Minister and the State do not represent or warrant that:
  - (i) the Reserve is suitable to be used for the Reserve Purpose;
  - (ii) any Improvements on the Reserve on the Date of Commencement are suitable to be used for the Reserve Purpose; or
  - (iii) the Reserve may lawfully be used for the Reserve Purpose.
- (b) Without affecting the generality of sub-clause (a):
  - (i) the Minister and the State do not represent or warrant that the zoning of the Reserve will allow the Reserve to be used for the Reserve Purpose, whether with the approval or permission of the relevant planning authority or otherwise; and
  - (ii) it is the Management Body's responsibility to make its own enquiries about zoning, and the Management Body and Trustee warrant that, before executing this Deed, the Management Body and Trustee have done so to their own satisfaction.

### **8.3 Contamination, Pollution or Environmental Harm**

- (a) The Minister and the State make no representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.
- (b) The Management Body relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.

- (c) There is no obligation on the part of the State or the Minister to clear any rubbish from the Reserve.

#### **8.4 Access to the Reserve**

- (a) Where the Minister has advised there is dedicated legal access to the Reserve, he or she makes no representation or warranty that this will ensure there is a constructed road, a gravel road, a track or other means of physical access over the dedicated legal access to the Reserve.
- (b) The Minister and the State make no representation or warranty as to the existence or suitability or safety of physical access (if any) to the Reserve.
- (c) There is no obligation on the State or the Minister to provide physical access to the Reserve nor to maintain or upgrade physical access to the Reserve, if any.

#### **8.5 Trustee's Warranties**

- (a) The Trustee represents and warrants to the Minister that the Trustee has the full powers pursuant to its constitution and its deed of trust (generally and together (if more than one) called "the Trust") under which it purports to act when entering into this Deed.
- (b) The Trustee further covenants that:-
  - (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
  - (ii) the Trust will remain unrevoked and not varied other than with the prior written consent of the Minister, which will not be unreasonably withheld;
  - (iii) the assets of the Trust as well as the assets of the Trustee will at all times be available to satisfy the obligations of the Trustee under this Deed;
  - (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
  - (v) no one has taken or threatened nor is the Trustee aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Trustee or any person at any time connected with the Trustee or acting on behalf or purportedly on behalf of the Trustee with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
  - (vi) no facts are known to the Trustee where the Trust might be wound-up voluntarily or otherwise or the Trustee changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

#### **8.6 Management Body's Warranties**

- (a) The Management Body represents and warrants to the Minister that the Management Body has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) The Management Body further covenants that:-

- (i) the Management Body is lawfully and validly constituted and all instruments in respect of the Management Body have been properly executed;
- (ii) the Management Body will remain so constituted;
- (iii) the assets of the Management Body will at all times be available to satisfy the obligations of the Management Body under this Deed;
- (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Management Body have been obtained and all necessary conditions precedent for that purpose have been met;
- (v) no one has taken or threatened nor is the Management Body aware of any one who is likely to take action to have the Management Body wound-up or otherwise administered by action brought in any Court or to charge the Management Body or any person at any time connected with the Management Body or acting on behalf or purportedly on behalf of the Management Body with any breach of trust or misappropriation of moneys in connection with the Management Body; and
- (vi) no facts are known to the Management Body where the Management Body might be wound-up voluntarily or otherwise or the assets of the Management Body vested in any other person or the Management Body may cease to operate or be deprived of funds prior to expiration of the Term.

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## **9. NOTICES**

### **9.1 Service of Notices on Management Body**

Any notice or other document to be served on the Management Body under this Deed will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

### **9.2 Service of Notices on Trustee**

Any notice or other document to be served on the Trustee under the Deed will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

### **9.3 Service of Notices on Minister**

Any notice or other document to be served on the Minister under the Deed may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at item 2 of Schedule 1 or at such other address previously notified to the Management Body by the Department; or
- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out in item 2 of Schedule 1 or to such other address or facsimile number previously notified to the Management Body by the Department.

### **9.4 Requirements of Notices on the Minister**

A notice or other document to be served on the Minister under this Deed must be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

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## **10. GOODS AND SERVICES TAX**

### **10.1 Interpretation**

Any reference in this clause 10 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

### **10.2 Amounts exclusive of GST**

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Deed are exclusive of GST.

### **10.3 GST payable**

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

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## **11. GENERAL**

### **11.1 Costs and duties**

- (a) Subject to clause 10, the State will bear any duties, or fees or taxes of a similar nature, and any related fines and penalties, associated with this Deed
- (b) Each Party will bear their own costs including legal costs associated with the negotiation, drafting and execution of this Deed.

### **11.2 Governing law and jurisdiction**

- (a) This Deed is governed by, and must be construed according to, the law applying in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

### **11.3 Severance**

- (a) If any provision of this Deed is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the law of any jurisdiction:
  - (i) that will not affect or impair:
    - (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed or
    - (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed; and
  - (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.
- (b) If a part of this Deed is severed in accordance with clause 11.3(a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.

### **11.4 Variation of this Deed**

Except as provided for in clauses 2.3 and 2.4 of this Deed, this Deed may only be varied by a deed executed by or on behalf of each Party.

### **11.5 Waiver**

A right or power under this Deed will only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **11.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **11.7 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give full effect to this Deed and the matters contemplated by it.

### **11.8 Entire Agreement**

To the extent permitted by law, in relation to its subject matter, this Deed and the Management Order:

- (a) embody the entire understanding of the Parties, and constitute the entire terms agreed by the Parties; and
- (b) supersede any prior written or other agreement of the Parties.

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**SCHEDULE 1**

**ITEM**

- |           |   |   |
|-----------|---|---|
| <b>1.</b> | <b>Insurance Amount</b>                               | \$20,000,000.00   |
| <b>2.</b> | <b>Minister's Address<br/>for Service of Notices:</b> | Minister for Lands<br>C/Department of Lands<br>140 Williams Street<br>PERTH WA 6000<br><br>PO BOX 1143<br>West Perth WA 6872<br><br>Attention: The Director-General |
|           | <b>Facsimile No:</b>                                  | (08) 6552 4417  |



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**SCHEDULE 2**

(Attach Management Order)

EXECUTED as a Deed

**Minister:**

**THE COMMON SEAL IS HEREUNTO** )  
**AFFIXED** for and on behalf of **THE STATE OF** )  
**WESTERN AUSTRALIA** by the **MINISTER** )  
**FOR LANDS**, a body corporate under section 7 )  
of the *Land Administration Act 1997* (WA), )  
in the presence of: )

---

**HON TERRY REDMAN MLA**  
**MINISTER FOR LANDS**

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Signature of witness

---

Name of witness (block letters)

---

Address of witness

---

Occupation of witness

---

Date of signature

**The Management Body:**

**The Trustee:**

## Annexure A to Management Order for Reserve X

### BACKGROUND

- A. The State and the Minister, among others, have entered into the ILUAs, one with each Agreement Group to settle the relevant native title claim(s) under the NTA in relation to the relevant Agreement Areas (**Native Title Settlement**).
- B. As part of the Native Title Settlement the Minister has agreed to the establishment of the Noongar Land Estate which includes the creation of reserves and the making of management orders to the Management Body in accordance with Part 4 of the LAA.
- C. The Minister, the Management Body and the Trustee of the Noongar Boodja Trust have entered into a deed which sets out the terms and conditions on which the Minister will make the Management Order giving the care, control and management of the Reserve to the Management Body (**Deed**).
- D. The Minister is authorised pursuant to section 46 of the LAA by order to place the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose, and on such terms and conditions as the Minister may determine.
- E. The Minister has by order placed the care, control and management of the Reserve with the Management Body for the Term and on and subject to the provisions of the LAA and the terms and conditions contained in the Management Order.
- F. The Management Body has accepted taking the care, control and management of the Reserve on the terms and conditions contained in the Management Order.

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### 1. DEFINITIONS, INTERPRETATION, EXERCISE OF MINISTER'S POWERS AND APPLICATION OF STATUTE

#### 1.1. Defined Terms

In the Management Order:

**Agreement Area** means the Agreement Area as defined in the relevant ILUA.

**Agreement Group** means the Native Title Agreement Group as defined in the relevant ILUA.

**Authorisation** includes a consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Governmental Agency or required under any Law and all conditions attached to those authorisations.

**Authorised Improvement** means an Improvement which:

- (a) existed on the Reserve at the Date of Commencement;
- (b) is constructed in accordance with an approval by the Minister under a Management Plan pursuant to subclause 2.2(d)(ii); or
- (c) is constructed in accordance with a Lease approved by the Minister pursuant to subparagraph 2.2(d)(ii).

[Delete sub-paragraph (c) if Option 2 is chosen in clause 2.2.]

**Business Day** means;

- (a) a day that is not Saturday, Sunday or public holiday in the place where the notice is sent to; and
- (b) for all other purposes, a day that is not a Saturday, Sunday or public holiday in Western Australia.

**Conclusively Registered** has the meaning given in the ILUAs.

**Contamination** is the state of being contaminated as that term is defined in the CSA.

**Crown** means the Crown in right of the State of Western Australia.

**CSA** means the *Contaminated Sites Act 2003*.

**Date of Commencement** means the date of registration of the Management Order on the Register as that term is defined in the TLA.

**Department** means the department principally assisting the Minister in the administration of the LAA from time to time.

**Encumbrances** means the limitations, interests, encumbrances and notifications specified in Item 2 of Schedule 1.

**Environmental Harm** has the same meaning as given in the EPA.

**Environmental Law** means all planning, environmental, Contamination or Pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from or by any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**EPA** means the *Environmental Protection Act 1986*.

**Governmental Agency** means any State, Commonwealth, regional or local government or any governmental, semi-governmental, administrative, public, fiscal or judicial body, department, commission, authority, tribunal, agency, statutory authority or entity including any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, a Law.

**ILUA** means each of the Indigenous Land Use Agreements entered into (pursuant to Part 2, Division 3, Subdivision C of the NTA) by the State, each Agreement Group and others which has or have been Conclusively Registered and described as follows:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

**ILUA Termination Event** means an ILUA Termination Event as defined in clause 10.1 of each ILUA.

**Improvements** mean any building, facility, structure or other improvement on the Reserve.

**LAA** means the *Land Administration Act 1997*.

**Law** includes any requirement of any statute, and any regulation, proclamation, ordinance or by-law issued under that statute, present or future, and whether State, Federal or otherwise.

**Management Body** means the person specified in the Management Order as the management body.

**Management Body's Authorised Users** means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the Management Body and any person entering onto the Reserve with the express or implied authority of the Management Body.

**Management Order** means the management order comprising LAA Form 1023 to which this Annexure A is attached, and includes this Annexure A.

**Management Plan** means the management plan submitted by the Management Body as required under clause 2.3 and approved by the Minister for Lands under section 49 of the LAA, and includes that management plan as may be varied from time to time under subclause 2.3 (c) and in accordance with section 49 of the LAA.

**Material Environmental Harm** has the meaning as given in the EPA.

**Minister** means the Minister for Lands, a body corporate under section 7(1) of the LAA.

**Noongar Land Estate** means the land allocated to the Management Body pursuant to the ILUAs.

**NTA** means the *Native Title Act 1993 (Cth)*.

**Pollution** means anything that is pollution within the meaning of that term as defined in the EPA that is not authorised under any Law.

**Representing** in relation to a Governmental Agency, includes acting as an officer, employee, agent or contractor for, or under delegation of, that Government Agency.

**Reserve** means the land described in the Management Order and identified by the reserve number described in the Management Order.

**Relevant Land** means the Reserve and Surrounding Area.

**Reserve Purpose** means the designated purpose described in the Order creating the Reserve and for purposes ancillary and beneficial to that purpose.

**Schedule** means the schedule to the Management Order.

**State** means the State of Western Australia and all of its ministers (including the Minister), departments and agencies, instrumentalities and bodies corporate expressed to be agents or trustees of the Crown, and those entities listed in Schedule 1 of the *Public Sector Management Act 1994 (WA)*.

**Surrounding Area** means any land or water adjacent to or in the vicinity of the Reserve and the air generally above the Reserve, and includes an affected site within the meaning of that term as defined in the CSA.

**Term** means the term of this Management Order specified in Item 1 of Schedule 1.

**Terminated Agreement** means the Terminated Agreement as defined in clause 10.1 of each ILUA.

**TLA** means the *Transfer of Land Act 1983*

## **1.2 Interpretation**

In the Management Order, unless the contrary intention appears:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Management Order or of any provision contained in this Management Order;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, unincorporated association, corporation or other body corporate or a Governmental Agency;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules of the Management Order unless otherwise indicated;
- (g) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a references to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (j) the word “including” is deemed to be followed by the words “but not limited to”;
- (k) if a Governmental Agency, association, body or authority, whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (l) a reference to the Management Order or another instrument includes any variation of either of them;
- (m) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (n) words defined in the LAA and used in the Management Order have the same meaning given to them under the LAA.

## **1.3 Minister May Act through Delegated Officers**

Where the Minister may, or is required to, give notice or do any act or other thing, that notice may be given and that act or other thing may be done by a delegated officer of the Department, appointed under section 9 of the LAA, in the name of and on behalf of the Minister.

## **1.4 Approval of Minister**

- (a) Where pursuant to the Management Order the doing or executing of any act matter or thing by the Management Body is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Minister in the Minister's absolute discretion and may be given subject to such conditions as

the Minister may determine, unless otherwise provided in the Management Order.

- (b) Any failure by the Management Body to comply with or perform a condition imposed under subclause (a) will constitute a breach of a condition under the Management Order.

## **1.5 Application of Land Administration Act**

- (a) The provisions of this Management Order do not in any way affect, alter or derogate from the Minister's rights or powers conferred under the LAA.
- (b) The conditions set out in this Management Order are in addition to any requirements of the LAA.

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## **2. APPOINTMENT OF MANAGEMENT BODY**

### **2.1 Care, Control and Management for Reserve Purpose**

The care, control and management of the Reserve is placed with the Management Body for the Reserve Purpose for the Term, on and subject to the terms and conditions of the Management Order.

### **[Option 1: 2.2 Power to Lease, Sublease or Licence Subject to Conditions]**

### **2.2 Power to Lease or Sublease or Licence Subject to Conditions**

- (a) Subject to subclauses 2.2(b) to (g), pursuant to section 46(3)(a) of the LAA, the Management Body is granted the power to grant a lease or licence, and to consent to the grant of a sub-lease over any part of the Reserve, for a purpose consistent with the Reserve Purpose for a term, (including any further term), that is not to exceed 42 years and which may comprise an initial term that is not to exceed 21 years and an option or options to renew for a further term with the aggregate of the further term not to exceed 21 years.
- (b) The Management Body's power to grant a lease or licence, or to consent to a sub-lease, with an option or options to renew for a further term, must require the lessee or licensee, not to be in breach of any obligation to pay monies or other term or condition of its existing grant at the time of the exercise of the option to renew.
- (c) Section 18 of the LAA applies to the exercise of power conferred upon the Management Body by the Management Order.
- (d) Without limiting section 18 of the LAA, the Management Body must not, without the prior written consent of the Minister:
  - (i) agree to or permit any encroachment into, upon, over or against the Reserve;
  - (ii) construct or erect or permit to be constructed or erected any Improvement on the Reserve except where they are approved under a Management Plan or pursuant to a Lease approved by the Minister; or
  - (iii) otherwise deal with any interest whatsoever in the Reserve.
- (e) The Management Body does not have the power to and may not:
  - (i) agree to, permit or grant an easement burden over or receive an easement benefit in favour of the Reserve;
  - (ii) mortgage, charge or in any way encumber its rights and powers as the Management Body of the Reserve; or

- (iii) dispose of, deal with, or assign its rights or powers as Management Body of the Reserve.
- (f) The Minister may, before giving his or her consent, in writing require;
  - (i) such information concerning the transaction for which approval is sought as the Minister specifies; and
  - (ii) information furnished in compliance with paragraph (f)(i) to be verified by statutory declaration.
- (g) Without limiting section 18 of the LAA, a condition for obtaining the approval of the Minister pursuant to section 18(5) is that the Minister is satisfied that any lease, licence or sublease proposed to be granted or consented to provides for the following:
  - (i) that upon the Management Order being revoked under section 50 of the LAA, the lease, licence or sublease will also terminate on the date of revocation of the Management Order without any right of the Management Body or the grantee, to compensation from the State arising from that termination;
  - (ii) compliance by the grantee with section 18 of the LAA in respect of transactions dealt with by that section;
  - (iii) where the grant of the lease, licence or sub-lease interest envisages construction of Improvements, that it requires the grantee of the lease, licence or sub-lease to insure those Improvements for replacement value, to take out the relevant insurances appropriate to the use intended, to maintain the Improvements and provision to deal with what is to occur if the Improvement is destroyed or substantially damaged;
  - (iv) that the grantee, where relevant, is to observe and perform the conditions of the Management Order, as if such person was the Management Body.
- (h) Without limiting section 18 of the LAA, in considering whether or not to give his or her consent, and on what conditions such consent may be given;
  - (i) the Minister may have regard to the effect the proposed use or development under any lease, licence or sub-lease may have on the amenity of the Relevant Land; and
  - (ii) for the purpose of this subclause 2.2(h) the word amenity includes natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the Relevant Land.
- (i) Without limiting section 18 of the LAA, in considering whether or not to give his or her consent, and on what conditions such consent may be given, the Minister may have regard to whether the lessee, licensee or sub-lessee will have sufficient funds or the means to meet its obligations including the maintenance requirements of the Improvements for the term of the proposed grant.
- (j) Without limiting section 18 of the LAA, as a condition of approval by the Minister any lease, licence or sub-lease granted by the Management Body must include the terms set out in Schedule 2 hereto or with such variations or amendments as are agreed by the Minister and any other terms as the Minister may require.



- (k) The Management Body must, when exercising the power to grant a lease or the power to consent to a sub-lease, ensure that any lease granted is registered on the Register as that term is defined in the TLA and that a condition of the consent to sub-lease, includes the requirement that the Lessee register any sub-lease granted on the Register as that term is defined in the TLA.

**[Option 2: 2.2 No Power to deal with any interest in the Reserve.]**

**2.2 No Power to deal with any interest in the Reserve**

- (a) The Management Body does not have the power and may not;
- (i) lease or licence any part of the Reserve or otherwise deal with any interest in the Reserve;
  - (ii) agree to, permit or grant an easement burden over or receive an easement benefit in favour of the Reserve;
  - (iii) mortgage, charge or in any way encumber its rights and powers as the Management Body of the Reserve; or
  - (iv) dispose of, deal with, or assign its rights or powers as Management Body of the Reserve.
- (b) Without limiting section 18 of the LAA, the Management Body must not without the prior written consent of the Minister;
- (i) agree to or permit any encroachment into, upon, over or against the Reserve;
  - (ii) construct or erect or permit to be constructed or erected any Improvement on the Reserve except where it is approved under a Management Plan.

**2.3 Management Plan**

**(a) Where No Approved Management Plan at Date of Commencement**

- (i) Where there is no approved Management Plan as at the Date of Commencement, the Management Body must:

**[Option 1: prepare and submit to the Minister for approval, in an approved form, within [insert number] months of the Date of Commencement a Management Plan for the development, management and use of the Reserve.]**

**[Option 2: prepare and submit to the Minister for approval, in an approved form, a Management Plan within such period as is specified in a request pursuant to section 49(2) of the LAA being not less than three months.]**

- (ii) The Management Body must in preparing the Management Plan referred to in sub-clause (a) comply with the requirements of section 49 of the LAA.
- (iii) The Management Body must amend and resubmit to the Minister within the time period specified by the Minister, the Management Plan to incorporate any changes which the Minister requires to the Management Pan.
- (iv) Once the Management Plan has been approved by the Minister, the approved Management Plan is to form part of these conditions of the

Management Order and the Management Body will at all times promptly and in a proper manner perform and comply with the terms of the Management Plan.

**(b) Where a Management Plan is approved by the Minister at the Date of Commencement**

Where a Management Plan has been approved by the Minister as at the Date of Commencement:

- (i) the Management Plan approved by the Minister forms part of these conditions of the Management Order; and
- (ii) the Management Body will at all times promptly and in a proper manner perform and comply with the terms of the Management Plan.

**(c) Variation of approved Management Plan**

Where there is a variation of the Management Plan, either at the request of the Management Body or the Minister, subclause 2.3(a) and (b) shall apply mutatis mutandis to the approval of each variation of the Management Plan pursuant to this subclause.

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**3. PAYMENTS BY MANAGEMENT BODY**

**3.1 Payment of Rates, Taxes, Etc Separately Assessed**

The Management Body must pay, when due and payable, all rates, taxes (including State land tax) and other charges (including impositions, assessments, outgoings, duties and fees) of any Governmental Agency which are separately charged upon the Reserve or imposed or levied upon the Minister or the Management Body in respect of the Reserve separately or the ownership of the Reserve separately.

**3.2 Payment of Service Charges Separately Assessed**

The Management Body must, in respect of the supply of any water, gas, electricity, telephone, waste disposal or other services separately metered or charged for the Reserve, pay all accounts when they become due and payable.

**3.3 Overlap and Daily Accrual**

The rates, taxes, other charges and service charges referred to in clauses 3.1 and 3.2 include such of those items as arise during the Term as well as such of those items as arise before or after the Term but in respect of a period of time which overlaps the start or end of the Term be apportioned on a daily basis for the period before and after the Term.

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**4. GENERAL CONDITIONS**

**4.1 Comply With Laws etc.**

The Management Body must:

- (a) comply with and observe, all Laws relevant to and all lawful orders, notices and the requirements of any Governmental Agency having jurisdiction or authority in respect of one or more of:
  - (i) the Reserve;
  - (ii) the care, control and management of the Reserve;

- (iii) the use and occupation of the Reserve and any activities or services to be carried out for the Reserve Purpose; or
- (iv) any Improvements, and without limitation, including any machinery, plant, equipment and fittings on the Reserve; and
- (b) comply with and observe the Special Conditions, if any, contained in Item 4 of Schedule 1; and
- (c) comply with and observe the terms of clause 3.4 of the Deed.

#### **4.2 Authorisation etc.**

Without limiting clause 4.1, the Management Body must:

- (a) obtain, comply with, observe and keep current, all Authorisations or other requirements under any Law required for any conduct, activity or use undertaken by the Management Body on the Reserve, including the Reserve Purpose before that conduct, activity or use is undertaken;
- (b) use the Reserve in a manner which complies with each Environmental Law and each Authorisation held by the Management Body in accordance with subclause (a);
- (c) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Reserve or any conduct or activity relating to the use of the Reserve;
- (d) punctually comply with any notice or direction served on the Management Body or the Minister (notice of which is given by the Minister to the Management Body) by a Governmental Agency requiring the destruction of noxious animals, plants or pests or the carrying out of repairs, alterations or works to the Reserve;
- (e) not cause or permit any damage to the Reserve;
- (f) not cause or permit any Contamination, Pollution or Material Environmental Harm to occur in, on or under the Relevant Land;
- (g) notify the Minister immediately on becoming aware of:
  - (i) the existence of any Contamination, Pollution or Material Environmental Harm affecting the Relevant Land;
  - (ii) an Environmental Notice being served on the Management Body or any other person which relates to the Reserve;
  - (iii) the making of a complaint to any person, including but not limited to, the Management Body or the commencement of proceedings against the Management Body relating to an alleged failure by the Management Body to observe or perform an obligation under an Environmental Law or Authorisation relating to the Reserve; and
- (h) comply with every Environmental Notice on becoming aware of it issued in respect of, arising from or relating to, the Management Body's care, control and management, use and occupation of the Reserve, whether the notice is served on the Minister or the Management Body;
- (i) have in place all necessary emergency plans, risk management and response procedures having regard to the type of activities to be undertaken on the reserve and the number of Management Body's Authorised Users involved;
  - (i) to prevent injury to the Management Body's Authorised Users;

- (ii) to respond to injuries to the Management Body's Authorised Users; and
- (j) for emergency evacuation of the Management Body's Authorised Users take all necessary precautions and have in place all necessary arrangements for:
  - (i) injured Management Body's Authorised Users; and
  - (ii) emergency evacuation of the Management Body's Authorised Users.

#### **4.3 Remediation**

Without:

- (a) affecting the obligations of the Management Body in this clause; or
- (b) limiting any right of, or indemnity in favour of, the Minister,

if any Contamination, Pollution or Material Environmental Harm occurs in breach of subclause 4.2(f), the Management Body must do everything necessary to minimise the effect of the Contamination, Pollution or Material Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the reasonable satisfaction of the Minister and in compliance with any Environmental Notice or Environmental Law.

#### **4.4 Nuisance**

The Management Body must not carry on or permit to be carried on the Reserve:

- (a) any noxious, noisome or offensive activity, trade, business or calling;
- (b) anything which may be a nuisance, a fire hazard, an annoyance or objectionable;
- (c) anything which will be inconsistent with, materially prejudice, interfere with or prevent the lawful use of the Reserve by other persons, including the beneficiary of any Encumbrance;
- (d) anything which causes damage or loss to the Minister or the owners or occupiers of any adjoining property or any other person;
- (e) anything that might:
  - (i) endanger or affect the health, safety or wellbeing of any persons;
  - (ii) cause damage to the property of any person; or
- (f) any illegal activity.

#### **4.5 Keep clean and in good repair**

- (a) The Management Body must at the Management Body's expense:
  - (i) keep and maintain the Reserve, all Improvements and any machinery, plant, equipment, and fittings in or on the Reserve, in good and safe repair and condition;
  - (ii) keep and maintain the Reserve clean and tidy; and
  - (iii) make good any damage caused to the Reserve and all Improvements howsoever caused;

to the reasonable satisfaction of the Minister.
- (b) Without limiting subclause (a), for the avoidance of doubt the Management Body is obliged to:

- (i) improve the Reserve and the Improvements so as to bring them to a state of good and safe repair and condition, including the rectification of any latent or inherent defects;
- (ii) effect all necessary structural repairs to the Reserve and to the Improvements where necessary to bring them to and maintain them in a state of good and safe repair and condition; and
- (iii) effect all structural and other repairs and improvements necessary to the Reserve and the Improvements to comply with the requirements of any Governmental Agency whether imposed on the Management Body as occupier or the State as proprietor.

#### **4.6 Management Body not to remove materials except with approval of the Minister**

- (a) The Management Body must not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell, or similar substance or permit any other person to undertake any such action without the prior approval in writing of the Minister and subject to such conditions as the Minister may determine.
- (b) Subclause (a) does not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement or alteration authorised by or under the Management Order, provided that any such removal digging up or excavation is undertaken in accordance with the requirements of that authority.

#### **4.7 Cost of Management Body's obligations**

Unless the Management Order provides otherwise, anything that must be done by the Management Body under the Management Order, whether or not at the request of the Minister, must be done at the risk and cost of the Management Body.

#### **4.8 Management Body to make recommendation**

Where the Management Body is requested by the Minister to whom the administration of the *Mining Act 1978* is committed (**Minister for Mines and Petroleum**) to provide a recommendation under section 24(5B) of the *Mining Act 1978*, the Management Body must provide written recommendations to the Minister for Mines and Petroleum within 20 Business Days of receiving the request.

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## **5. REVOCATION OR END OF TERM OF MANAGEMENT ORDER**

### **5.1 Breach of Conditions of Management Order**

- (a) Where the Management Body is in breach of any of the conditions set out in this Management Order or the Management Plan, the Minister may revoke this Management Order under section 50(1)(b) of the LAA.
- (b) Without limiting subclause (a), at the absolute discretion of the Minister, where the Management Body is in breach of any of the conditions set out in this Management Order, the Minister may serve a notice on the Management Body setting out the default and requiring the Management Body to remedy the same within a specified timeframe, but where the breach has not been rectified within the period specified by the Minister, the Minister may revoke the Management Order under section 50(1)(b) of the LAA.

### **5.2 Revocation of Management Order by consent in Deed**

- (a) It is a breach of a condition of the Management Order if the Management Body:

- (i) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
- (ii) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- (iii) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (iv) being a company, is placed under official management under the *Corporations Act 2001 Cth* or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this clause applies to any such event that may occur in relation to the Management Body if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or

- (v) is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Management Body is to be under special administration.
- (b) It is a breach of a condition of the Management Order if:
- (i) an ILUA Termination Event occurs in relation to the ILUA; and
  - (ii) the Reserve is located either wholly or partly within the Agreement Area the subject of the Terminated Agreement.
- (c) Pursuant to the Deed, the Management Body has agreed that the occurrence of any of the events in subclause (a) or (b) is a breach of a condition of the Management Order, thereby entitling revocation of the Management Order by consent in accordance with section 50(1)(a) of the LAA.

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## **6. RIGHT TO ENTER AND REMEDY**

- 6.1** (a) A person Representing, or acting on behalf of a Governmental Agency is, and will be, entitled to:
- (i) enter on and remain within the boundaries of the Reserve in order to carry out the lawful exercise and performance of the powers, functions and duties of that Governmental Agency under a Law relevant to the Reserve, the Reserve Purpose or the conduct, activity or use undertaken by the Management Body on the Reserve or the care, control and management of the Reserve; or
  - (ii) pass over any part of the Reserve in connection with the performance of their functions (as that term is defined in the *Interpretation Act 1984*) with or without vehicles, on all necessary occasions including for the purpose of accessing adjoining land,

provided any prior notice to or any prior approval of the Management Body that may be required at law, as for any other management body, is first given or obtained.

- (b) The Minister or any person authorised by the Minister may enter on to the Reserve at all reasonable times with all necessary plant, equipment and materials to:
- (i) inspect the state and condition of the Reserve and any Improvements;
  - (ii) repair, maintain or carry out any works in relation to the Reserve, which the Management Body is liable to do under this Management Order and has failed to do within 20 Business Days of the Minister serving notice on the Management Body requiring it to carry out those works;
  - (iii) remove any harmful substance or carry out any maintenance or repairs to the Reserve; or
  - (iv) comply with the lawful requirements of any Governmental Agency.

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## **7. NOTICES**

### **7.1 Service of Notices**

Any notice or other document to be served on the Management Body under the Management Order will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

### **7.2 Service Of Notice On Minister**

Any notice or other document to be served on the Minister under the Management Order may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at item 3 of Schedule 1 or at such other address previously notified to the Management Body by the Minister; or
- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out in item 3 of Schedule 1 or to such other address or facsimile number previously notified to the Management Body by the Minister.

### **7.3 Requirements Of Notices On The Minister**

A notice or other document to be served on the Minister under this Management Order must be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

**ITEM**

1. **Term:** Indefinitely
2. **Encumbrances:**
3. **Minister's Address  
for Service of Notices:** Minister for Lands  
C/Department of Lands  
140 Williams Street  
PERTH WA 6000  
PO BOX 1143  
WEST PERTH 6872  
  
Attention: The Director-General
4. **Facsimile No:** (08) 6552 4417
4. **Special Conditions:**



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## SCHEDULE 2

### CLAUSES THAT MUST BE INCLUDED AS A MINIMUM REQUIREMENT IN ANY LEASE, LICENSE OR SUB-LEASE APPROVED BY THE MANAGEMENT BODY AND THE MINISTER.

Terms defined in this Schedule 2 are to have the same meanings as in Annexure "A" of the Management Order, except where expressly provided otherwise.

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#### 1. INDEMNITY, RELEASE AND INSURANCE

##### 1.1 Definition

- (a) In clauses 1.2, 1.3 and 1.4, **Indemnified Parties** means the State and the State's Authorised Users.
- (b) In clauses 1.2, 1.3 and 1.4, **Authorised Users** means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the (Lessee, Licensee or Sub-Lessee) and any person entering onto the Reserve with the express or implied authority of the (Lessee, Licensee or Sub-Lessee).
- (c) In clauses 1.2, 1.3 and 1.4, the following words and phrases, Claims, State's Authorised Users, Trustee, Trustee's Authorised Users and Insurance Amount, defined in the deed between the Minister, the Management Body and the Trustee have the same meaning where used in this Deed.
- (d) In clauses 1.2, 1.3 and 1.4, the word Deed refers to the Lease, License or Sub-Lease approved by the Management Body and the Minister.
- (e) In clause 1.4, **Insurance Policy** means the insurance policy or policies required to be taken out under clauses 1.4(a) and (b).

##### 1.2 Indemnity

- (a) The (Lessee, Licensee or Sub-Lessee) hereby covenants with the Minister to indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties:
  - (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Reserve and including the property of:
    - (A) any of the Indemnified Parties;
    - (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
    - (C) the (Lessee, Licensee or Sub- Lessee) of the Reserve and its Authorised Users; or
    - (D) the holders of any Encumbrances on the Reserve and their authorised users;

- (ii) in respect of the death of, injury to or illness of, any person including:
  - (A) any of the Indemnified Parties;
  - (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
  - (C) the (Lessee, Licensee or Sub-Lessee) of the Reserve and its Authorised Users; or
  - (D) the holders of any Encumbrances on the Reserve and their authorised users;

directly or indirectly caused by or arising out of or in connection with:

- (iii) the use of the Reserve by the (Lessee, Licensee or Sub-Lessee) and its Authorised Users;
  - (iv) any work carried out by or on behalf of the (Lessee, Licensee or Sub-Lessee);
  - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the (Lessee, Licensee or Sub-Lessee) and its Authorised Users;
  - (vi) any Contamination Pollution or Environmental Harm in, on, under or to the Relevant Land caused or contributed to by the (Lessee, Licensee or Sub-Lessee) and its Authorised Users;
  - (vii) any remediation required in respect of the Relevant Land or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use of the Relevant Land by the (Lessee, Licensee or Sub-Lessee) and its Authorised Users;
  - (viii) any default by the (Lessee, Licensee or Sub-Lessee) and its Authorised Users in the due and punctual performance of or compliance with any of the conditions of the Management Order or the terms covenants and conditions contained in this Deed, or any other Law that applies to the exercise of the (Lessee, Licensee or Sub-Lessee's) rights in respect of the Reserve; or
  - (ix) any negligent or other tortious act or omission of the (Lessee, Licensee or Sub-Lessee) and its Authorised Users;
- (b) The obligations of the (Lessee, Licensee or Sub-Lessee) under this clause 1.2 are unaffected by the obligation to take out insurance, and the obligations of the (Lessee, Licensee or Sub-Lessee) to indemnify are paramount.
  - (c) The indemnities contained in this clause 1.2 continue in full force and effect notwithstanding the termination of the (Lease, Licence or Sub-Lease) or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to the termination of this Deed.

### **1.3 Release**

- (a) The (Lessee, Licensee or Sub-Lessee) agrees to take and be subject to the same risks and responsibilities to which it would be subject in respect of persons and property if, during the Term it were the owner and occupier of the freehold of the Reserve.

- (b) The (Lessee, Licensee or Sub-Lessee) releases, to the fullest extent permitted by law, the Indemnified Parties from:
- (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Reserve;
  - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land at any time throughout the duration of this Deed whether or not identified in an audit undertaken by the (Lessee, Licensee or Sub-Lessee); and
  - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the (Lessee, Licensee or Sub-Lessee) or its Authorised Users;
- except to the extent that such loss or damage is caused or contributed to by the negligence of the Indemnified Parties.
- (c) The release contained in this clause 1.3 continues in full force and effect notwithstanding the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to the termination of this Deed.

#### **1.4 Insurance**

- (a) The (Lessee, Licensee or Sub-Lessee) must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the *Insurance Act 1973 (Cth)* and to the satisfaction of the Minister, a public liability insurance policy for the Insurance Amount for any one occurrence and unlimited in the aggregate during any one period of insurance and which covers all Claims and losses howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
- (i) any illness of, injury to or death of, any person;
  - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
  - (iv) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Relevant Land caused or contributed to by the (Lessee, Licensee or Sub-Lessee) or its Authorised Users; or
  - (v) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under this Deed in respect of which insurance is ordinarily obtainable.
- (b) Any policy of insurance effected pursuant to this clause must contain such conditions, endorsements and exclusions as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (c) The (Lessee, Licensee or Sub-Lessee) must give to the Management Body and the Minister a copy of the certificate of currency for the Insurance Policy at the date of execution of this Deed, and the (Lessee, Licensee or Sub-Lessee) is to submit evidence to the Minister on each anniversary of the date of execution of this Deed, or as otherwise requested by the Minister, which

shows that the Insurance Policy is still current.

- (d) The (Lessee, Licensee or Sub-Lessee) is:
- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;
  - (ii) to notify the Management Body and Minister immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
  - (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer;
  - (iv) to expend any moneys received in respect of a claim made under the Insurance Policy in satisfaction of the relevant Claim;
  - (v) to have the interests of the Minister and the State noted on the Insurance Policy and to ensure that under the Insurance Policy the insurer has no rights of subrogation against the Minister or the State;
  - (vi) to indemnify the Minister and the State against any loss arising from a breach of subclause (v) and the indemnities contained in this sub clause continue in full force and effect notwithstanding the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Deed;
  - (vii) to ensure that all premiums in respect of the Insurance Policy and renewals of the Insurance Policy are paid punctually;
  - (viii) to ensure that it does not at any time during the duration of this Deed do or bring upon the Reserve anything where the Insurance Policy may be rendered void or voidable; and
  - (ix) to ensure that if the (Lessee, Licensee or Sub-Lessee) does anything or brings anything onto the Reserve where the rate of premium on the Insurance Policy will be liable to be increased, the (Lessee, Licensee or Sub-Lessee) will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Reserve is put by the (Lessee, Licensee or Sub-Lessee).

## **Annexure M**

### **Co-operative Management Agreement**

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**201**

**BETWEEN:**

**CHIEF EXECUTIVE OFFICER OF  
THE DEPARTMENT OF PARKS AND WILDLIFE  
and**

**[INSERT NAME] REGIONAL CORPORATION**

**[INSERT NAME] AREA CONSERVATION ESTATE CO-OPERATIVE  
MANAGEMENT AGREEMENT**

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**CO-OPERATIVE MANAGEMENT AGREEMENT**

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**11 October 2013**

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**THIS AGREEMENT** is made the                      day of                      201.

**BETWEEN**

**THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS AND WILDLIFE, ACTING THROUGH THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY**, a body corporate established under section 36 of the *Conservation and Land Management Act 1984*, care of 17 Dick Perry Ave, Kensington, Western Australia (**CEO**)

and

**[INSERT NAME] REGIONAL CORPORATION (ICN )**, a body corporate established for and on behalf of the **[INSERT NAME] Group** and appointed by the Trustee of Noongar Boodja Trust, of [insert address] (**Corporation**)

## STATEMENT OF RESPECT

- A. The Department of Parks and Wildlife (Department) recognises that the Noongar people are the traditional owners of the land and waters in the South West Native Title Settlement Area (Settlement Area) with continuing cultural, spiritual and social connections to the area.
- B. The Department recognises that the Noongar people have a cultural responsibility to care for country within the Settlement Area and unique traditional knowledge and expertise that will assist in managing the Conservation Estate in the Settlement Area.
- C. The Noongar people recognise that the Department has a statutory responsibility to manage the Conservation Estate within the Settlement Area on behalf of all Western Australian people.
- D. Both Parties recognise the importance of caring for the country within the Settlement area and the rights and obligations that each Party has to meet in regards to that country. Both Parties enter into this agreement in the spirit of co-operation and commit to work together in a cooperative, honest and respectful manner.

## RECITALS

- A. The CEO is acting through the Conservation and Land Management Executive Body, (the body corporate established under section 36 of the *Conservation and Land Management Act 1984* (CALM Act)).
- B. The Corporation has been appointed by the Trustee of the Noongar Boodja Trust upon the endorsement of the [INSERT NAME] Group to represent the interests of the [INSERT NAME] Group pursuant to the Noongar Boodja Trust Deed and the South West Native Title Settlement.
- C. The State, the Minister for Lands, the Conservation Commission, the CEO, the [INSERT NAME] Group and others have entered into the ILUA.
- D. The ILUA provides, among other things, for the making of:
  - (i) the [INSERT NAME] Co-operative Management Agreement; and
  - (ii) Joint Management Agreements under section 56A of the CALM Act for particular areas of the Conservation Estate;substantially in the form of the Template Agreements at [insert Schedule no] to the ILUA.
- E. Pursuant to the ILUA the Parties have agreed that the [INSERT NAME] Area Co-operative Management Committee (Committee) will be created in relation to the Conservation Estate in the [INSERT NAME] Area.
- F. It is intended that the Committee will provide a whole of [INSERT NAME] Area approach to building partnerships between the Department and the Noongar community represented by the INSERT NAME Corporation to cooperatively manage the Conservation Estate and to develop frameworks, Memorandums of Understanding (MOU's), local area arrangements and

other cooperative instruments and arrangements as required to give effect to these partnership arrangements.

- G. The Committee will, among other things, work to identify and prioritise specific areas of the Conservation Estate to be jointly managed by Joint Management Bodies established under Joint Management Agreements referred to in Recital D (ii) above.
- H. The Committee may also recommend the establishment of forms of consultative and co-operative management over all of the Conservation Estate within the [INSERT NAME] Area as a way of working towards formal joint management arrangements in specific areas of the Conservation Estate as capacity and resources become available. The Committee will participate in the development of policies and/or frameworks that describe the conditions that need to be met for formal joint management to occur on parts of the Conservation Estate within the INSERT NAME Area.
- I. In accordance with this Agreement, the CEO will use the Committee to fully and actively engage with the Corporation and the INSERT NAME people in the amendment of existing Management Plans and the identification, prioritisation and drafting of new Management Plans that are presented to the Conservation Commission or the Marine Parks and Reserves Authority (as the case may be) for Ministerial approval.
- J. The Parties will work together to put in place Management Plans that include joint management arrangements over as much of the Conservation Estate within the [INSERT NAME] Area as is reasonably practicable, having regard to the statutory processes under the CALM Act and the resources of the Department and the Corporation available for this purpose.
- K. The CEO will fully engage with the Corporation in matters of site selection, design and development of capital works including economic development opportunities arising from those works in the Agreement Area through the Committee and the consultation processes endorsed by the Committee.
- L. This Agreement is substantially in the form set out in the ILUA.

**THE PARTIES AGREE AS FOLLOWS:**

**1. COMMITMENT TO PURSUE JOINT MANAGEMENT OPPORTUNITIES IN THE [INSERT NAME] AREA**

The State has agreed in the ILUA that, subject to clause 11 [no fettering of statutory powers or discretions] of the ILUA it will put in place:

- (a) at least one Joint Management Agreement for land and waters in the Conservation Estate in the [INSERT NAME] Area within five years of the Commencement Date; and
- (b) unless the parties agree otherwise, at least one further Joint Management Agreement in relation to another part of the Conservation Estate in the [INSERT NAME] Area within ten years of the Commencement Date.

## **2. ESTABLISHMENT OF CO-OPERATIVE MANAGEMENT COMMITTEE**

- (a) The [INSERT NAME] Area Conservation Estate Co-operative Management Committee (Co-operative Management Committee) is established.
- (b) The Co-operative Management Committee shall be comprised of at least 8 Representative Members, nominated in accordance with clause 4.1.

## **3. CO-OPERATIVE MANAGEMENT COMMITTEE**

### **3.1. Role of the Co-operative Management Committee**

- (a) The role of the Co-operative Management Committee shall be, consistently with the CALM Act, the *Wildlife Conservation Act 1950* (Wildlife Conservation Act) and any regulations made under those Acts, to:
  - (i) provide advice to the CEO and the Corporation on, and oversee and participate in, the identification of Conservation Estate lands within the [INSERT NAME] Area to jointly manage including identifying land to be jointly managed under Clause 1(a) and 1(b);
  - (ii) make recommendations on the priorities for the development and review of Management Plans for the Conservation Estate within the [INSERT NAME] Area;
  - (iii) subject to clause 3.1(b), provide advice to the CEO on, and fully and actively participate in, the preparation and amendment of all Management Plans within the [INSERT NAME] Area including (if appropriate) to provide for joint management and the establishment of a Joint Management Body for specific areas of the Conservation Estate;
  - (iv) provide advice to the CEO and the Corporation (as appropriate) on, and participate in, the preparation of policies, programs and other management documents for the [INSERT NAME] Area;
  - (v) provide advice to the CEO on the value of the [INSERT NAME] Area land and waters to the culture and heritage of Noongar people, including participating in the development of policies and processes that describe how the Department and the Corporation will work together to determine, conserve, protect and rehabilitate this value;
  - (vi) provide advice to the CEO on the conduct of customary activities within the [INSERT NAME] Area pursuant to the CALM Act and Regulations and oversee the development of local area arrangements and agreements to cooperatively manage customary activities in the INSERT NAME Area. The provision of advice to the CEO includes advising on any proposed change to customary activity legislation, regulations, policies and arrangements within the INSERT NAME Area before any change is decided;
  - (vii) provide advice to the CEO and the Corporation on, and participate in the development of, Aboriginal employment initiatives within the [INSERT NAME] Area including the establishment of Noongar/Department co-operative employment strategies. This will

include providing advice to the CEO on how to meet the Department's publicly stated Aboriginal employment targets within the agreement area;

- (viii) provide advice to the CEO and the Corporation and develop policies, frameworks and strategies that facilitate opportunities for Noongar economic development in relation to Conservation Estate lands in the [INSERT NAME] Area;
  - (ix) monitor Departmental regional planning, contracting, licensing and budget processes to facilitate Noongar participation in employment and economic development opportunities on Conservation Estate lands in the [INSERT NAME] Area.
  - (x) make decisions about the allocation of monies that have been provided from the Land Partnership Fund to facilitate the joint management arrangements and activities in relation to the Conservation Estate lands in the [INSERT NAME] Area.
- (b) Where a Joint Management Body is put in place for an area of the Conservation Estate after the commencement of this Agreement the Committee will have no further role in advising the CEO on, and participating in, the preparation of a replacement Management Plan or amendment of the existing Management Plan for the area unless the Joint Management Body requests that the Committee undertake that role.
- (c) The role of the Co-operative Management Committee does not include undertaking the day-to-day management of any part of the Conservation Estate.

**3.2. Advice of the Co-operative Management Committee—relationship with advice provided by Joint Management Bodies for areas of the Conservation Estate in the [INSERT NAME] Area**

Where, in relation to the management of an area of the Conservation Estate there is a Joint Management Body in place under s 56A of the CALM Act, and the advice of the Co-operative Management Committee is inconsistent with the advice given by that Joint Management Body, the advice of the latter shall be preferred to the extent of the inconsistency.

**3.3 CEO to accept the advice of the Co-operative Management Committee**

- (a) Subject to clause 3.2, the CEO shall take into account the advice given by the Co-operative Management Committee and shall not unreasonably fail to give effect to the advice of the Co-operative Management Committee, where that advice is not inconsistent with the CALM Act, the Wildlife Conservation Act, any regulations made under those Acts and any relevant Management Plans.
- (b) Should the CEO not follow the advice of the Co-operative Management Committee, the CEO shall provide the Committee with brief written reasons why the advice was not followed.

#### **4. MEMBERSHIP OF THE CO-OPERATIVE MANAGEMENT COMMITTEE**

##### **4.1. Nomination of Representative and Alternate Members**

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1, the Parties shall each nominate persons to be Representative Members of the Co-operative Management Committee and Alternate Members of the Co-operative Management Committee in the following manner:
  - (i) The Corporation shall nominate:
    - a. six (6) persons to be Representative Members of the Co-operative Management Committee, at least one of whom should be, if possible, employed in the Corporation's or the Central Service Corporation's land unit; and
    - b. six (6) persons to be Alternate Members of the Co-operative Management Committee; and
  - (ii) the CEO shall nominate:
    - a. two (2) to six (6) persons to be Representative Members of the Co-operative Management Committee; and
    - b. two (2) to six (6) persons to be Alternate Members of the Co-operative Management Committee.
- (b) Unless otherwise agreed by the Parties, the Members nominated by the CEO shall be employees of the Department and should include the District Managers from each of the Department's districts that fall within the [INSERT NAME] Area.
- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.
- (d) Before the first meeting of the Co-operative Management Committee, each Party shall give to the other Party written notice, in accordance with clause 24, of the nominated Representative and Alternate Members.

##### **4.2. Alternate Members**

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the Corporation is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the Corporation's CEO who will then arrange for an Alternate Member to attend on behalf of the Corporation.
- (b) Upon receiving notice of a meeting, if a Representative Member nominated by the CEO is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the CEO and the Chairperson and the CEO shall arrange for an Alternate Member to attend on behalf of the CEO.
- (c) An Alternate Member notified under paragraph (a) or (b) shall attend the meeting in place of the absent Representative Member.
- (d) When acting in the place of the absent Representative Member, the Alternate Member has the rights and responsibilities of the absent Representative

Member and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 4.2.

#### **4.3. Chairperson**

- (a) At the first meeting of the Co-operative Management Committee, the Representative Members shall elect a Chairperson from the Representative Members nominated by the Corporation, to serve for a twelve month term.
- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he or she is re-elected.
- (c) The Chairperson shall preside at a meeting of the Co-operative Management Committee, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

#### **4.4. Persons ineligible to be members**

Unless otherwise agreed by the Parties, a member of the [INSERT NAME] Group who is an employee of the CEO is not eligible to be nominated as a Member.

#### **4.5. Vacancy of Member**

- (a) The position of a Member becomes vacant if he or she:
  - (i) resigns his or her position by notice delivered to the Chairperson; or
  - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he or she has had notice under clause 24;
  - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or
  - (iv) dies.
- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
  - (i) If the Member was nominated by the Corporation, the Corporation shall nominate the new Member.
  - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
  - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

#### **4.6. Vacancy of Chairperson**

- (a) The position of Chairperson becomes vacant if he or she:
  - (i) resigns their position by notice delivered to the CEO; or
  - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 24; or
  - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or

- (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of paragraph (a), a new Chairperson shall be elected in accordance with clause 4.3 for the remainder of the twelve month term.

#### **4.7. Removal for bankruptcy**

- (a) The Co-operative Management Committee may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:
  - (i) according to the *Interpretation Act 1984* (WA) section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (ii) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

shall at the first meeting after he or she becomes aware of that fact, disclose it to the Representative Members (**Remaining Representative Members**) who are at that meeting (**Disclosure**) and the Disclosure shall be recorded in the minutes.

- (c) Following a Disclosure under paragraph (b), the Remaining Representative Members shall vote in accordance with clause 9 as to whether the disclosing Member shall be removed from the Co-operative Management Committee, the results of which vote shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote to remove a Member from the Co-operative Management Committee under paragraph (c) the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

#### **4.8. Removal for misbehaviour etc.**

- (a) In this clause, 'misbehaviour' includes behaving in a manner that renders the Member unfit to be a Member even if the conduct does not relate to any function of the Co-operative Management Committee.
- (b) A Representative Member may move that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness.
- (c) Where paragraph (b) applies, the Representative Members other than the Affected Member (**Remaining Representative Members**) shall vote as to whether the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the results of which shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote under paragraph (c) that the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the position of the Affected Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.



#### **4.9. Conflict of interest**

- (a) A Representative Member who has a material personal or financial interest in a matter that is being considered by a meeting of the Co-operative Management Committee (**Conflict of Interest**) shall, as soon as possible after he or she is aware of this interest, disclose the nature of their Conflict of Interest to the other Representative Members who are at that meeting, and that disclosure shall be recorded in the minutes.
- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest in a matter under paragraph (a) the Representative Member shall not:
  - (i) take part in the consideration or discussion of the matter; or
  - (ii) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
  - (i) the remaining Representative Members (other than the Representative Member with a Conflict of Interest) shall vote in accordance with clause 9 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter and/or vote on the matter; and
  - (ii) the results of that vote shall be recorded in the minutes of the meeting.
- (d) A Representative Member shall not be taken to have a Conflict of Interest solely due to that Representative Member's particular traditional interest or seniority in relation to an area of land or waters relevant to the matter to be decided or because he or she is a director of the Corporation.

#### **4.10. Invitation to attend a meeting of the Co-operative Management Committee**

- (a) The Co-operative Management Committee or either Party (the inviting party) may invite an organisation or individual to attend a Co-operative Management Committee meeting to provide advice on any issue the inviting party deems necessary.
- (b) The inviting party has absolute discretion to determine at which meeting, or part of a meeting its invitee shall be present.
- (c) Invitees do not have a right to vote at a Co-operative Management Committee meeting.

### **5. CONVENING MEETINGS**

#### **5.1. First meeting**

Within 60 days of the Commencement Date, the CEO shall convene the first meeting of the Co-operative Management Committee, to be held at a place agreed to by the Parties.

#### **5.2. Subsequent meetings**

- (a) Subject to paragraph 5.3(b) the CEO shall be responsible for convening meetings.

- (b) At the first meeting, or at any subsequent meeting, the Co-operative Management Committee shall decide the venue for the subsequent meeting or meetings.

### **5.3. Frequency**

- (a) The Co-operative Management Committee shall meet at least three times per year.
- (b) The Co-operative Management Committee may meet more often in the following circumstances:
  - (i) the CEO calls a meeting of the Co-operative Management Committee by giving at least fifteen Business Days' notice to the Members; or
  - (ii) the Corporation's CEO calls a meeting of the Co-operative Management Committee by giving at least fifteen Business Days' notice to the Members.

### **5.4. Administrative responsibility**

The CEO shall provide administrative support for the Co-operative Management Committee, including preparing and circulating meeting notices, agendas and papers, and the Corporation may assist with that support.

## **6. PROCEDURE**

The Co-operative Management Committee may adopt such further rules and procedures from time to time as it considers necessary, but if there is any inconsistency between those rules and procedures and this Agreement, this Agreement prevails.

## **7. SUB-COMMITTEES**

The Co-operative Management Committee may appoint sub-committees (comprising any Member and any other persons) to investigate, consider and advise, or to make recommendations to, the Co-operative Management Committee on such matters as the Co-operative Management Committee sees fit.

## **8. QUORUM**

Four (4) Representative Members constitute a quorum, comprising two (2) Representative Members nominated by the Corporation and two (2) Representative Members nominated by the CEO.

## **9. VOTING**

- (a) Each Representative Member present at a meeting of the Co-operative Management Committee, including the Chairperson, has one vote and shall exercise that vote, subject to clause 4.9(b).
- (b) Subject to paragraph (c), the Co-operative Management Committee shall try to reach a unanimous decision.

- (c) If the Co-operative Management Committee cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Co-operative Management Committee then the business which is the subject of that agenda item becomes a **Dispute** for the purposes of clause 10.

## **10. CO-OPERATIVE MANAGEMENT COMMITTEE DISPUTE**

### **10.1. Referral to CEO and Corporation's CEO**

- (a) A reference in this clause to the CEO or to the Corporation's CEO is a reference to those persons acting personally.
- (b) If the circumstances in clause 9(d) arise, the Chairperson shall, within 5 Business Days after the second meeting, give notice of the Dispute to the CEO and to the Corporation's CEO setting out details of the Dispute.
- (c) Upon receiving notice of a Dispute under paragraph 10.1(b), the CEO and the Corporation's CEO, shall, within 20 Business Days of the date of that notice:
  - (i) determine the Dispute; or
  - (ii) refer the Dispute to a Mediator in accordance with clause 10.2; or
  - (iii) refer the Dispute back to the Co-operative Management Committee to decide; or
  - (iv) refer the Dispute to the Minister to decide.
- (d) When determining the Dispute under subparagraph 10.1(c)(i), the CEO and the Corporation's CEO may consult with any person.
- (e) A determination of the Dispute by the CEO and the Corporation's CEO under subparagraph 10.1(c)(i) shall be deemed to be a determination of the Co-operative Management Committee.
- (f) If the CEO and the Corporation's CEO are unable to agree what course of action to take under paragraph 10.1(c), they shall refer the Dispute to a Mediator and clause 10.2 applies.

### **10.2. Referral to Mediation**

- (a) The CEO and the Corporation's CEO shall endeavour to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within 10 Business Days after a referral under clause 10.1(c) or 10.1(f) the CEO and the Corporation's CEO cannot agree on a mediator, either Party may request the Chairman of LEADR to appoint a mediator.
- (c) The CEO and the Corporation's CEO shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.

- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which, the CEO and the Corporation's CEO may together determine the Dispute.
- (e) Any information or documents disclosed by the CEO and the Corporation's CEO under this clause 10:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (f) The CEO and the Corporation's CEO shall pay their own costs of complying with this clause 10 and the CEO and the Corporation's CEO shall each pay half the costs of any mediator.
- (g) If the CEO and the Corporation's CEO fail to resolve the Dispute by mediation within 20 Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and the Corporation's CEO, either the CEO or the Corporation's CEO may refer the Dispute to the Minister under clause 10.3.

### **10.3. Referral to Minister**

- (a) If the CEO and the Corporation's CEO refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and the Corporation's CEO regarding how the Dispute ought to be determined and do one or both of the following:
  - (i) decide as to how the Dispute is to be determined; or
  - (ii) determine the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice or recommendation made by the CEO or the Corporation's CEO in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause 10.3 shall be deemed to be a decision of the Co-operative Management Committee.

### **10.4. Obligations continue**

If a Dispute is being dealt with under any part of this clause 10, the Co-operative Management Committee shall, pending the making of a decision on the Dispute, continue to perform its obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision on the Dispute.

## **11. REVIEW**

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
  - (i) five years after the Commencement Date and at the end of every five years thereafter; or
  - (ii) they agree that a review is necessary.
- (b) A review under paragraph (a) shall be commenced within 6 months of the circumstances in subparagraphs 11(a)(i) or (a)(ii) occurring. The review shall

be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties. The agreed costs of the review shall be met by the CEO.

## **12. VARIATION**

The Parties may vary this Agreement by Deed of Variation.

## **13. OBLIGATION OF PARTIES IN RESPECT OF REPRESENTATIVE MEMBERS**

The Parties shall ensure that:

- (a) Representative Members perform their role and comply with their obligations as members of the Co-operative Management Committee under this Agreement, having regard to and in accordance with:
  - (i) the role of the Co-operative Management Committee in clause 3; and
  - (ii) the CALM Act; and
  - (iii) any other applicable State legislation.
- (b) For the purposes of clause 8, the required number of Representative Members nominated by each Party are present at every meeting of the Co-operative Management Committee.

## **14. DEFAULT AND ENFORCEMENT**

### **14.1. Events of Default**

- (a) In this clause 14, a reference to a Party means a party to the default.
- (b) A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 14:
  - (i) where the Party breaches clauses 4.1, 4.2, 10.1, 10.2, 13 (in respect of a Member's obligations under clauses 4.7, 4.8, 4.9, 6 and 16), 15.1, 16 or 21; or
  - (ii) where the Party commits 3 breaches of its obligations under this Agreement over any 12 month period, provided that the Party not in breach (the **Non-defaulting Party**) has given the Defaulting Party notice of any such breaches and whether or not the Defaulting Party has rectified such breaches; or
  - (iii) when an Insolvency Event occurs.

### **14.2. Default under clause 14.1(b)(i) or 14.1(b)(ii)**

- (a) If a Defaulting Party causes an Event of Default under clause 14.1(b)(i) or 14.1(b)(ii), the Non-defaulting Party may serve a notice (**Default Notice**) on the Defaulting Party specifying:
  - (i) the Event of Default; and
  - (ii) the steps the Defaulting Party must take which the Non-defaulting Party reasonably considers are necessary to mitigate the effect of the

Event of Default on the Non-defaulting Party and the period (not less than 5 Business Days) within which those steps must be taken.

- (b) Upon receiving a Default Notice, the Defaulting Party shall:
- (i) in the case of an Event of Default under clause 14.1(b)(i):
    - (A) remedy the Event of Default within 20 Business Days; or
    - (B) if the Event of Default cannot reasonably be remedied in 20 Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the default must be remedied by no later than 3 months from the date of the Default Notice; and
    - (C) take such steps to mitigate the effect of the Event of Default as are specified in the Default Notice within the period specified in that notice.
  - (ii) in the case of an Event of Default under clause 14.1(b)(ii), and to the satisfaction of the Non-defaulting Party (acting reasonably), take all reasonable steps open to the Defaulting Party within a period of 20 business days commencing on the date of the Default Notice to ensure that further breaches of the terms of this Agreement do not occur.

**14.3. Default under clause 14.1(b)(iii)**

- (a) If an Event of Default occurs under clause 14.1(b)(iii), the Corporation's CEO shall:
- (i) as soon as possible, notify the CEO:
    - (i) that the Event of Default has occurred;
    - (ii) of the appointment of any administrator, receiver or manager to the Corporation; and
    - (iii) when the relevant Event of Default ceases to exist.
  - (b) where the Event of Default results in an order to wind up the Corporation, the [INSERT NAME] Group shall take steps to cause a Replacement Corporation to be appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed as soon as possible.

**14.4. Consequences of failure to remedy**

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement until:

- (a) clauses 14.2(b)(i)(C) and 14.2(b)(ii) are complied with (as the case requires); and
- (b) the Event of Default has been remedied as required by clause 14.2(b) or the Event of Default no longer exists, whichever is applicable.

**14.5. Remedies exercised under this clause 14 do not prejudice any other rights a Party may have**

Any remedy exercised under this clause 14 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law or in equity (including the right to seek interlocutory relief and specific performance).

**15. PARTY DISPUTES**

**15.1. No Court proceedings**

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a dispute of the type referred to in clause 10, a Party must comply with this clause 15 before commencing court proceedings (except proceedings for urgent interlocutory relief).

**15.2. Notification**

A Party claiming a Party Dispute has arisen must give the other Party notice setting out the details of the Party Dispute.

**15.3. Parties to resolve Party Dispute**

During the 20 Business Days after a notice is given under clause 15.2 (or longer period if the Parties agree in writing), each Party must use its reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, any Party may request that the Party Dispute be referred to a mediator and, if a Party so requests, the Party Dispute shall be referred to mediation in accordance with clause 15.4.

**15.4. Mediation**

- (a) If the Parties cannot agree on a mediator within 10 Business Days after a request under clause 15.3, either Party may request the Chairman of LEADR to appoint a mediator.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute. A mediator may not make a decision which is binding on a Party to the Party Dispute except if the Party agrees in advance in writing to be so bound.
- (c) Any information or documents disclosed by a Party under this clause 15.4:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party must pay its own costs of complying with this clause 15.4. The Parties must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Party Dispute. If the Parties fail to achieve a resolution of the Party Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.

- (f) If a Party breaches clauses 15.2, 15.3 or 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

## **16. CONFIDENTIALITY**

### **16.1. Between Parties**

- (a) Subject to paragraph (b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and shall not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
- (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
  - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

### **16.2. Between Members of the Co-operative Management Committee**

- (a) Subject to paragraph (b), all information disclosed by a member of the Co-operative Management Committee (**Disclosing Party**) to another member of the Co-operative Management Committee (**Receiving Party**) during the term of this Agreement and the operation of the Co-operative Management Committee, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and will not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
- (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
  - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

### **16.3. Permitted disclosure**

A Receiving Party may, in turn, disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by law or applicable securities regulation or rule;
- (c) subject to clause 16.4, in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;



- (e) subject to clause 16.4, to a proposed Replacement Corporation assignee of the Corporation's interest under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia.

#### **16.4. Disclosure requirements**

Before making any disclosure to a person under clause 16.3(c) or 16.3(e) the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) before doing so notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 16.3(e), ensure that the person or entity executes a deed with the Corporation, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 16.

#### **16.5. Party may seek injunction**

The Parties acknowledge that:

- (a) They are aware that any breach of this clause 16 may result in the other Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 16 or any obligation of confidentiality under this Agreement, any adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 16.

#### **16.6. No waiver or transfer of intellectual property rights**

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a Disclosing Party.

### **17. TERM AND TERMINATION**

#### **17.1. Term**

Subject to clause 17.2, this Agreement remains in force from the Commencement Date until both parties agree otherwise. Both parties commit to working together to secure funding to resource the Committee after the ten year funding commitment from the State expires. If no funding can be sourced the Corporation shall resource Noongar involvement in the Committee.

#### **17.2. Termination**

This Agreement shall terminate in the following circumstances, whichever is the sooner:

- (i) when a new Agreement is substituted for this Agreement; or
- (ii) when the Parties agree in writing to terminate the Agreement.

**18. INTELLECTUAL PROPERTY**

No change of ownership which may exist in any Party's intellectual property will occur by its being made available to the Co-operative Management Committee, the Department, the State, the Corporation or any other party pursuant to this Agreement.

**19. CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS**

Any reference to the CEO in this Agreement, other than in clause 10, includes a reference to the CEO acting through the agency of a Departmental officer.

**20. ACTS BY STATE – NO FETTER UPON DISCRETION**

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the relevant statute.

**21. NO ASSIGNMENT WITHOUT CONSENT**

The Corporation may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

**22. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS**

- (a) In the event that a Party becomes wholly or partly unable to perform any of its obligations under the Agreement because of Force Majeure or Aboriginal Cultural Business, then the Agreement shall nevertheless continue and remain in force and effect but that Party shall not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business, and the time within which such a Party is required to perform any work or satisfy any obligation shall be extended by a period equivalent to that during which such prevention or delay continues, provided that:
  - (i) the cause of the Force Majeure or Aboriginal Cultural Business as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; and
  - (ii) no Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (b) The Party affected by any event of Force Majeure or Aboriginal Cultural Business shall immediately give notice to the other Parties of the occurrence of such event and the likely period of delay. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) fully describe the event of Force Majeure or Aboriginal Cultural Business;

- (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or Aboriginal Cultural Business.
- (c) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
- (d) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.
- (e) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within 3 months, either Party may, by notice to the other Party, suspend the performance of its obligations and the affected Party's rights under this Agreement until the Force Majeure or Aboriginal Cultural Business has ceased.

## **23. GENERAL**

### **23.1. Entire agreement**

This Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **23.2. Governing law and jurisdiction**

- (a) This Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **23.3. Severance**

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

### **23.4. Election and waiver**

A right or power under the Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **23.5. Survival**

Clauses 15, 16, 18, 23.2, 23.3, 23.5, 24 and 25 survive termination of this Agreement.

## **24. NOTICE**

Each notice or other communication given under this Agreement:

- (a) shall be in writing;
- (b) shall be delivered to the intended recipient by prepaid post or by hand to the address below or the address last notified by the intended recipient to the sender;  
[insert addresses]
- (c) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered; and
  - (ii) in the case of delivery by post, 7 days after the date of posting.

## **25. DEFINITIONS AND INTERPRETATION**

### **25.1. General Definitions**

Words and expressions defined in the CALM Act have the same meaning when used in this Agreement.

In this Agreement, unless the context otherwise requires:

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Corporation or Noongar people are required to attend or that prevents the members of the Corporation or Noongar persons from attending to day to day business.

**Agreement** means this Co-operative Management Agreement and includes the Schedules.

**Alternate Member** means a person who is nominated under clause 4.1.

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

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**CALM Regulations** means the *Conservation and Land Management Regulations 2002* (WA).

**Central Services Corporation** means the corporation appointed by the Trustee of the Noongar Boodja Trust as the Central Services Corporation pursuant to the Noongar Boodja Trust Deed.

**Chairperson** means the Chairperson of the Co-operative Management Committee elected pursuant to clause 4.3.

**Commencement Date** means the date on which this Agreement is executed by all Parties.

**Conservation Commission** means a body corporate established under section 18 of the *Conservation and Land Management Act 1984*.

**Conservation Estate** has the same meaning as 'land to which this Act applies' in section 5(1) of the CALM Act.

**Co-operative Management Committee** means the body established in clause 2.

**Corporation's CEO** means:

- (a) the person duly appointed as the Corporation's CEO howsoever named; or
- (b) where there is no such person, the Chairperson of the Corporation.

**Department** has the same meaning as in the CALM Act.

**Force Majeure** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

**ILUA** means the Indigenous Land Use Agreement entered into by the State and others and the [INSERT NAME] native title group which was entered on to the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act.

**Insolvency Event** means where any one or more of the following occurs to the Corporation:

- (a) it commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (b) it is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) it is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (d) it is unable to pay all its debts as and when they become due and payable; or
- (e) it is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Joint Management Body** means a body of the kind referred to in s 56A(6) of the CALM Act.

**Land Partnership Fund** means the fund established and administered by the Department of the Premier and Cabinet pursuant to the South West Native Title Settlement for the purpose of facilitating the implementation of the ILUAs including making provision for certain funding for joint management arrangements.

**LEADR** means LEADR, a company limited by guarantee, ACN: 008 651 232.

**Management Plan** means a management plan prepared under Part II Division 3 or Part V Division 1 of the CALM Act (as the case may be).

**Marine Parks and Reserves Authority** means the body established by section 26A of the CALM Act.

**Member** means a Representative Member or an Alternate Member.

**Minister** means the Minister to whom the administration of the CALM Act is committed, which for the time being is the Minister for Environment.

**Noongar Boodja Trust** means trust established pursuant to the Noongar Boodja Trust Deed as required by the ILUA.

**Party** means a party to this Agreement.

**Replacement Corporation** means a replacement corporation appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed.

**Representative Member** means a person specified under clause 2 and nominated under clause 4.1.

**South West Native Title Settlement** means the six regional ILUAs under which the native title claims in relation to those areas of the south west of Western Australia have been resolved in exchange for Noongar people receiving a package of benefits.

**Term** means the term of this Agreement specified in clause 17.1.

**[INSERT NAME] Area** means the land and waters covered by the ILUA and described in Schedule 1 and depicted in the map in Schedule 2.

**[INSERT NAME] Group** means the persons in the [INSERT NAME] native title group as defined in the ILUA.

## **25.2. Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) headings and subheadings are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender includes the other;
- (d) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, authority, Corporation or other body corporate or governmental or semi-governmental entity;

- (f) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to a person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;
- (h) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;
- (i) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (j) where the day on or by which a thing is required to be done is not a Business Day that thing shall be done on or by the succeeding Business Day;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;
- (l) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (m) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (n) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (p) "including" means "including, but not limited to".

**EXECUTION**

Executed by the Parties as an agreement.

**THE COMMON SEAL** of )  
The **CONSERVATION AND** )  
**LAND MANAGEMENT** )  
**EXECUTIVE BODY** a body )  
corporate established under )  
section 36 of the Conservation )  
and Land Management Act )  
was affixed hereto in the presence of )

Signature of Chief Executive Officer

Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness



**SIGNED** by the **CHIEF EXECUTIVE** )  
**OFFICER** for and on behalf of )  
**[INSERT NAME]** )  
**CORPORATION** )  
in the presence of: )

\_\_\_\_\_  
**CHIEF EXECUTIVE OFFICER**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_

**SCHEDULE 1. [INSERT NAME Area]**

**SCHEDULE 2. map of [INSERT NAME] Area**

## **Annexure N**

### **Joint Management Agreement**

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**BETWEEN:**

**CHIEF EXECUTIVE OFFICER OF  
THE DEPARTMENT OF PARKS AND WILDLIFE  
and**

**[INSERT NAME] REGIONAL CORPORATION**

**SECTION 56A  
JOINT MANAGEMENT AGREEMENT  
FOR THE [INSERT NAME OF PARK ETC]**

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**SECTION 56A  
JOINT MANAGEMENT AGREEMENT  
FOR THE [insert name of Park etc]**

---

**11 October 2013**

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**THIS AGREEMENT** is made the                      day of                      2013.

**BETWEEN**

**THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS AND WILDLIFE, ACTING THROUGH THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY**, a body corporate established under section 36 of the *Conservation and Land Management Act 1984*, care of 17 Dick Perry Avenue, Kensington, Western Australia (**CEO**)

and

**[INSERT NAME] REGIONAL CORPORATION (ICN                      )**, a body corporate established for and on behalf of the **[INSERT NAME] Group** and appointed by the Trustee of Noongar Boodja Trust, of **[insert address]** (the Corporation)



## RECITALS

- A. The CEO is acting through the Conservation and Land Management Executive Body (the body corporate established under section 36 of the *Conservation and Land Management Act 1984* (CALM Act)).
- B. The Corporation has been appointed by the Trustee of the Noongar Boodja Trust upon the endorsement of the [INSERT NAME] Group to represent the interests of the [INSERT NAME] Group pursuant to the Noongar Boodja Trust Deed and the South West Native Title Settlement.
- C. The State, the Minister for Lands, the Conservation Commission, the CEO, the [INSERT NAME] Group and others have entered into the ILUA.
- D. The ILUA provides, among other things, for the making of:
- (a) the [INSERT NAME] Area Conservation Estate Co-operative Management Agreement; and
  - (b) Joint Management Agreements under section 56A of the CALM Act for particular areas of the Conservation Estate;
- substantially in the form of the Template Agreements at [insert Schedule no] to the ILUA.
- E. Pursuant to section 5 of the CALM Act the [Insert name of Park etc] is land (and waters) to which the CALM Act applies.
- F. In accordance with Part II Division 3 or Part V Division 1 of the CALM Act, the Marine Parks and Reserves Authority or the Conservation Commission (as the case may be) prepared, and the Minister approved, the Management Plan.
- G. The Management Plan requires the CEO to manage the [Insert name of Park etc] jointly with the Corporation.
- H. This Agreement constitutes the agreement that is required to be attached to the Management Plan and that gives effect to joint management of the land and waters referred to in Recital D(b) and sets out the role of the Joint Management Body.
- I. This Agreement is substantially in the form set out in the ILUA.

## THE PARTIES AGREE AS FOLLOWS:

### 1. JOINT MANAGEMENT OF THE [INSERT NAME OF PARK]

The [insert name of Park] shall be jointly managed by the Corporation and the CEO through the Joint Management Body in accordance with the Management Plan and this Agreement.

### 2. ESTABLISHMENT OF JOINT MANAGEMENT BODY

- (a) A Joint Management Body is established for the purposes of section 56A of the CALM Act.

- (b) The Joint Management Body is comprised of [insert no.] Representative Members, including up to six members nominated by the Corporation in accordance with clause 4.1.

### **3. ROLE OF THE JOINT MANAGEMENT BODY**

#### **3.1. Role of the Joint Management Body**

- (a) The role of the Joint Management Body shall be, consistently with the CALM Act, the *Wildlife Conservation Act 1950* (Wildlife Conservation Act) and any regulations made under those Acts, to:
- (i) make management decisions consistent with the Management Plan on all aspects of the use, management and development of the [insert name of Park] including on the value of the [insert name of Park] land and waters to the culture and heritage of Noongar people or the methods to determine this, and the ways to conserve, protect, and rehabilitate this;
  - (ii) provide advice to the CEO on all aspects of the use, management and development of the [insert name of Park] including:
    - a. on the conduct of customary activities pursuant to the CALM Act, Conservation and Land Management Regulations, Wildlife Conservation Act, Wildlife Conservation Regulations and the Forest Management Regulations;
    - b. on the expenditure of the annual operational budget for the [insert name of Park];
  - (iii) participate in the preparation of policies, programs and other such management instruments for the management of the [insert name of Park];
  - (iv) strategically monitor the management of the [insert name of Park] including the implementation of the Management Plan, other related policies, programs and management instruments and park related expenditure and revenue;
  - (v) fully and actively participate in all phases of the preparation of any new management plan or amendment of the existing management plan for the (insert the name of Park)
  - (vi) provide advice to other State Government agencies that are responsible for the implementation of specific management actions in the Management Plan; and
  - (vii) work co-operatively with the CEO and the Corporation to obtain additional funding for the joint management of the [insert name of Park], through State and Federal funding programs and other relevant third parties.
- (b) The role of the Joint Management Body does not include undertaking the day-to-day management of the [insert name of Park].

### **3.2. Decisions of the Joint Management Body**

- (a) For the purposes of sections 33(1) and 33(3) of the CALM Act, the CEO shall take into account advice given by the Joint Management Body and shall not unreasonably fail to give effect to a management decision of the Joint Management Body, where that advice is not inconsistent with the CALM Act, the Wildlife Conservation Act, any regulations made under those Acts and the Management Plans.
- (b) Should the CEO not follow the advice, or implement a management decision, of the Joint Management Body, the CEO shall provide the Joint Management Body with brief written reasons why the advice was not followed or the management decision was not implemented.
- (c) Where the advice of the Joint Management Body in relation to the management of [insert name of Park etc] is inconsistent with the advice which has been given by the Co-operative Management Committee in respect of the [Park] the advice of the Joint Management Body shall be preferred to the extent of the inconsistency.

## **4. MEMBERSHIP OF THE JOINT MANAGEMENT BODY**

### **4.1. Nomination of Representative and Alternate Members**

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1 and thereafter, at the last meeting before the expiry of each three year term referred to in (c), for the purposes of section 56A(6) of the CALM Act, the Parties shall each nominate persons to be Representative Members of the Joint Management Body and Alternate Members of the Joint Management Body in the following manner:
  - (i) The Corporation shall nominate:
    - a. [up to six] persons to be Representative Members of the Joint Management Body; and
    - b. [up to six.] persons to be Alternate Members of the Joint Management Body; and
  - (ii) the CEO shall nominate:
    - a. [up to six] persons to be Representative Members of the Joint Management Body; and
    - b. [up to six] persons to be Alternate Members of the Joint Management Body.
- (b) Unless otherwise agreed by the Parties, the Representative members and Alternate Members nominated by the CEO shall be employees of the department of the Public Service principally assisting in the administration of the CALM Act and should include regional staff with management and operational responsibility for the [insert name of Park].
- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.

- (d) Before the first meeting of the Joint Management Body, each Party shall give to the other Party, written notice, in accordance with clause 24, of the nominated Representative Members and Alternate Members.

#### **4.2. Alternate Representative Members**

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the Corporation is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the Corporation's CEO who will then inform the Chairperson and arrange for an Alternate Member to attend on behalf of the Corporation.
- (b) Upon receiving notice of a meeting, if a Representative Member nominated by the CEO is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the CEO and the Chairperson and the CEO shall arrange for an Alternate Member to attend on behalf of the CEO.
- (c) An Alternate Member notified under paragraph (a) or (b) shall attend the meeting in place of the absent Representative Member.
- (d) When acting in the place of the absent Representative Member, the Alternate Member has the rights and responsibilities of the absent Representative Member and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 4.2.

#### **4.3. Chairperson**

- (a) At the first meeting of the Joint Management Body, the Representative Members shall elect a Chairperson from the Representative Members nominated by the Corporation, to serve for a twelve month term.
- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he or she is re-elected.
- (c) The Chairperson shall preside at a meeting of the Joint Management Body, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

#### **4.4. Persons ineligible to be members**

Unless otherwise agreed by the Parties, a member of the [INSERT NAME] Group who is an employee of the CEO is not eligible to be nominated as a Member.

#### **4.5. Vacancy of Member**

- (a) The position of a Member becomes vacant if he or she:
  - (i) resigns his or her position by notice delivered to the Chairperson; or
  - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he or she has had notice under clause 24;
  - (iii) is removed from the position by the Joint Management Body under clause 4.7 or 4.8; or
  - (iv) dies.

- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
  - (i) If the Member was nominated by the Corporation, the Corporation shall nominate the new Member.
  - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
  - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

#### **4.6. Vacancy of Chairperson**

- (a) The position of Chairperson becomes vacant if he or she:
  - (i) resigns their position by notice delivered to the CEO; or
  - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 24; or
  - (iii) is removed from the position by the Joint Management Body under clause 4.7 or 4.8; or
  - (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of paragraph (a), a new Chairperson shall be elected in accordance with clause 4.3 for the remainder of the twelve month term.

#### **4.7. Removal for bankruptcy**

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:
  - (i) according to the *Interpretation Act 1984* (WA) section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (ii) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);shall at the first meeting after he or she becomes aware of that fact, disclose it to the Representative Members (**Remaining Representative Members**) who are at that meeting (**Disclosure**), and the Disclosure shall be recorded in the minutes.
- (c) Following a Disclosure under paragraph (b), the Remaining Representative Members shall vote in accordance with clause 9 as to whether the disclosing Member shall be removed from the Joint Management Body, the results of which vote shall be recorded in the minutes.
- (d) If the remaining Representative Members vote to remove a Member from the Joint Management Body under paragraph (c) the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

#### **4.8. Removal for misbehaviour etc**

- (a) In this clause, **misbehaviour** includes behaving in a manner that renders the Member unfit to be a Member even if the conduct does not relate to any function of the Joint Management Body.
- (b) A Representative Member may move that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness.
- (c) Where paragraph (b) applies, the Representative Members other than the Affected Member (**Remaining Representative Members**) shall vote as to whether the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the results of which shall be recorded in the minutes.
- (d) If the remaining Representative Members vote under paragraph (c) that the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

#### **4.9. Conflict of interest**

- (a) A Representative Member who has a material personal or financial interest in a matter that is being considered by a meeting of the Joint Management Body (**Conflict of Interest**) shall, as soon as possible after he or she is aware of this interest, disclose the nature of their Conflict of Interest to the other Representative Members who are at that meeting, and that disclosure shall be recorded in the minutes.
- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest in a matter under paragraph (a) the Representative Member shall not:
  - (i) take part in the consideration or discussion of the matter; or
  - (ii) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
  - (i) the remaining Representative Members (other than the Representative Member with a Conflict of Interest) shall vote in accordance with clause 9 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter and/or vote on the matter; and
  - (ii) the results of that vote shall be recorded in the minutes of the meeting.
- (d) A Representative Member shall not be taken to have a Conflict of Interest solely due to that Representative Member's particular traditional interest or seniority in relation to an area of land or waters within or adjoining the [insert name of Park] or because he or she is a director of the Corporation.

#### **4.10. Invitation to attend a meeting of the Joint Management Body**

- (a) The Joint Management Body or the Chairperson (the inviting party) may invite an organisation or individual to attend a Joint Management Body meeting to provide advice on any issue the Joint Management Body deems necessary.
- (b) The inviting party has absolute discretion to determine at which meeting, or part of a meeting its invitee shall be present.
- (c) Invitees do not have a right to vote at a Joint Management Body meeting.

### **5. CONVENING MEETINGS**

#### **5.1. First meeting**

Within 60 days of the Commencement Date, the CEO shall convene the first meeting of the Joint Management Body, to be held at a place agreed to by the Parties.

#### **5.2. Subsequent meetings**

- (a) Subject to paragraph 5.3(b) the CEO shall be responsible for convening meetings.
- (b) At the first meeting, or at any subsequent meeting, the Joint Management Body shall decide the venue for the subsequent meeting or meetings.

#### **5.3. Frequency**

- (a) The Joint Management Body shall meet at least three times per year.
- (b) The Joint Management Body may meet more often in the following circumstances:
  - (i) the Corporation's CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.; or
  - (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.

#### **5.4. Administrative responsibility**

The CEO shall provide administrative support for the Joint Management Body, including preparing and circulating meeting notices, agendas and papers, and the Corporation may assist with that support.

### **6. PROCEDURE**

The Joint Management Body may adopt such further rules and procedures from time to time as it considers necessary, but if there is any inconsistency between those rules and procedures and this Agreement, this Agreement prevails.

### **7. SUB-COMMITTEES**

The Joint Management Body may appoint sub-committees (comprising any Member and any other persons) to investigate, consider and advise, or to make recommendations to, the Joint Management Body on such matters as the Joint Management Body sees fit.

## **8. QUORUM**

[insert number] Representative Members constitute a quorum, comprising at least [x] Representative Member nominated by the Corporation and at least [x] Representative Member nominated by the CEO.

## **9. VOTING**

- (a) Each Representative Member present at a meeting of the Joint Management Body, including the Chairperson, has one vote and shall exercise that vote, subject to clause 4.9(b).
- (b) Subject to paragraph (c), the Joint Management Body shall endeavour to reach a unanimous decision.
- (c) If the Joint Management Body cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Joint Management Body then the business which is the subject of that agenda item becomes a **Dispute** for the purposes of clause 10.

## **10. JOINT MANAGEMENT BODY DISPUTE**

### **10.1. Referral to CEO and Corporation' CEO**

- (a) A reference in this clause to the CEO or to the Corporation's CEO is a reference to those persons acting personally.
- (b) If the circumstances in clause 9(d) arise, the Chairperson shall, within 5 Business Days of the second meeting, give notice of the Dispute to the CEO and to the Corporation's CEO, setting out details of the Dispute.
- (c) Upon receiving notice of a Dispute under paragraph 10.1(b), the CEO and the Corporation's CEO, shall together, within 20 Business Days of the date of that notice:
  - (i) determine the Dispute; or
  - (ii) refer the Dispute to a Mediator in accordance with clause 10.2; or
  - (iii) remit the Dispute to the Joint Management Body to determine; or
  - (iv) refer the Dispute to the Minister to determine.
- (d) When determining the Dispute under sub paragraph 10.1(c)(i), the CEO and the Corporation's CEO may consult with any person.
- (e) A joint determination of the Dispute by the CEO and the Corporation's CEO under subparagraph 10.1(c)(i) shall be deemed to be a determination of the Joint Management Body.



- (f) If the CEO and the Corporation's CEO are unable to agree what course of action to take under paragraph 10.1(c), they shall refer the Dispute to a mediator and clause 10.2 applies.

### **10.2. Referral to Mediation**

- (a) The CEO and the Corporation's CEO shall endeavour to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within 10 Business Days after a referral under clause 10.1(c) or 10.1(f) the CEO and the Corporation's CEO cannot agree on a mediator, either party may request the Chairman of LEADR to appoint a mediator.
- (c) The CEO and the Corporation's CEO together shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which, the CEO and the Corporation's CEO together may decide the Dispute.
- (e) Any information or documents disclosed by the CEO and Corporation's CEO under this clause 10:
  - (i) shall be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (f) The CEO and the Corporation's CEO shall pay its own costs of complying with this clause 10 and the CEO and the Corporation's CEO shall equally pay the costs of any mediator.
- (g) If the CEO and the Corporation's CEO fail to resolve the Dispute by mediation within 20 Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and the Corporation's CEO, either the CEO or the Corporation's CEO may refer the Dispute to the Minister under clause 10.3.

### **10.3. Referral to Minister**

- (a) If the CEO and the Corporation's CEO refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and the Corporation's CEO regarding how the Dispute ought to be determined and do one or both of the following:
  - (i) decide as to how the Dispute is to be determined; or
  - (ii) determine the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice or recommendation made by the CEO or the Corporation's CEO in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause 10.3 shall be deemed to be a decision of the Joint Management Body.

#### **10.4. Obligations continue**

If a Dispute is being dealt with under any part of this clause 10, the Joint Management Body shall, pending the making of a decision on the Dispute, continue to perform its obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision on the Dispute.

#### **11. REVIEW**

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
  - (i) when a substitute management plan for the Management Plan is being prepared for the purposes of Part II Division 3 or Part V Division 1 of the CALM Act as the case may be; or
  - (ii) when they agree that a review is necessary.
- (b) A review under paragraph 11(a) shall be commenced within 6 months of the circumstances in subparagraphs 11(a)(i) or (a)(ii) occurring.
- (c) The review shall be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties. The agreed costs of the review shall be met by the CEO.

#### **12. VARIATION**

The Parties may vary this Agreement by Deed of Variation.

#### **13. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS**

The Parties shall procure that:

- (a) Members perform their role and comply with their obligations as members of the Joint Management Body under this Agreement, having regard to and in accordance with:
  - (i) the role of the Joint Management Body in clause 3; and
  - (ii) the CALM Act; and
  - (iii) any other applicable State legislation.
- (b) For the purposes of clause 8, the required number of Representative Members nominated by each Party are present at every meeting of the Joint Management Body.

#### **14. DEFAULT AND ENFORCEMENT**

##### **14.1. Events of Default**

- (a) In this clause 14, a reference to a Party means a party to the default.
- (b) A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 14:

- (i) where the Party breaches clauses 4.1, 4.2, 10.1, 10.2, 13 (in respect of a Member's obligations under clauses 4.7, 4.8, 4.9, 6 and 16), 15.1, 16 or 21; or
- (ii) a Party commits 3 breaches of its obligations under this Agreement over any 12 month period, provided that the Party not in breach has given the Defaulting Party notice of any such breaches and whether or not the Defaulting Party has rectified such breaches; or
- (iii) when an Insolvency Event occurs.

**14.2. Default under clause 14.1(b)(i) or 14.1(b)(ii)**

- (a) If a Defaulting Party causes an Event of Default under clause 14.1(b)(i) or 14.1(b)(ii), the Non-defaulting Party may serve a notice (**Default Notice**) on the Defaulting Party specifying:
  - (i) the Event of Default; and
  - (ii) the steps the Defaulting Party must take which the Non-defaulting Party reasonably considers are necessary to mitigate the effect of the Event of Default on the Non-defaulting Party and the period (not less than 5 Business Days) within which those steps must be taken.
- (b) Upon receiving a Default Notice, the Defaulting Party shall:
  - (i) in the case of an Event of Default under clause 14.1(b)(i):
    - (A) remedy the Event of Default within 20 Business Days; or
    - (B) if the Event of Default cannot reasonably be remedied in 20 Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the default must be remedied by no later than 3 months from the date of the Default Notice; and
    - (C) take such steps to mitigate the effect of the Event of Default as are specified in the Default Notice within the period specified in that notice.
  - (ii) in the case of an Event of Default under clause 14.1(b)(ii), and to the satisfaction of the Non-defaulting Party (acting reasonably), take all reasonable steps open to the Defaulting Party within a period of 20 business days commencing on the date of the Default Notice to ensure that further breaches of the terms of this Agreement do not occur.

**14.3. Default under clause 14.1(b)(iii)**

- (a) If an Event of Default occurs under clause 14.1(b)(iii), the Corporation's CEO shall:
  - (i) as soon as possible, notify the CEO:
    - (i) that the Event of Default has occurred;
    - (ii) of the appointment of any administrator, receiver or manager to the Corporation; and

- (iii) when the relevant Event of Default ceases to exist.
- (b) where the Event of Default results in an order to wind up the Corporation, the [INSERT NAME] Group shall take steps to cause a Replacement Corporation to be appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed as soon as possible.

#### **14.4. Consequences of failure to remedy**

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement until:

- (a) clauses 14.2(b)(i)(C) and 14.2(b)(ii) are complied with (as the case requires); and
- (b) the Event of Default has been remedied as required by clause 14.2(b) or the Event of Default no longer exists, whichever is applicable.

#### **14.5. Remedies exercised under this clause 14 do not prejudice any other rights a Party may have**

Any remedy exercised under this clause 14 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law or in equity (including the right to seek interlocutory relief and specific performance).

### **15. PARTY DISPUTES**

#### **15.1. No Court proceedings**

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a dispute of the type referred to in clause 10, a Party shall comply with this clause 15 before commencing court proceedings (except proceedings for urgent interlocutory relief).

#### **15.2. Notification**

A Party claiming a Party Dispute has arisen shall give the other Party notice setting out the details of the Party Dispute.

#### **15.3. Parties to resolve Party Dispute**

During the 20 Business Days after a notice is given under clause 15.2 (or longer period if the Parties agree in writing), each Party shall use its reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, any Party may request that the Party Dispute be referred to a mediator and, if a Party so requests, the Party Dispute shall be referred to mediation in accordance with clause 15.4.

#### **15.4. Mediation**

- (a) If the Parties cannot agree on a mediator within 10 Business Days after a request under clause 15.3, either Party may request the Chairman of LEADR to appoint a mediator.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute. A mediator may not make a decision which is binding on a Party to

the Party Dispute except if the Party agrees in advance in writing to be so bound.

- (c) Any information or documents disclosed by a Party under this clause 15.4:
  - (i) shall be kept confidential; and
  - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party shall pay its own costs of complying with this clause 15.4. The Parties shall equally pay the costs of any mediator.
- (e) The Parties shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Party Dispute. If the Parties fail to achieve a resolution of the Party Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.
- (f) If a Party breaches clauses 15.2, 15.3 or 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

## **16. CONFIDENTIALITY**

### **16.1. Between Parties**

- (a) Subject to paragraph (b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified by the Disclosing Party as confidential, is confidential and shall be kept confidential and shall not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
  - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
  - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

### **16.2. Between Members of the Joint Management Body**

- (a) Subject to paragraph (b), all information disclosed by a member of the Joint Management Body (**Disclosing Party**) to another member of the Joint Management Body (**Receiving Party**) during the term of this Agreement and the operation of the Joint Management Body, that is identified by the Disclosing Party as confidential, is confidential and shall be kept confidential and shall not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:

- (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

### **16.3. Permitted disclosure**

A Receiving Party may, in turn, disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by law or applicable securities regulation or rule;
- (c) subject to clause 16.4, in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;
- (e) subject to clause 16.4, to a proposed Replacement Corporation assignee of the Corporation's interest under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia.

### **16.4. Disclosure requirements**

Before making any disclosure to a person under clause 16.3(c) or 16.3(e) the Receiving Party shall:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) before doing so, notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 16.3(e), ensure that the person or entity executes a deed with the Corporation, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 16.

### **16.5. Party may seek injunction**

The Parties acknowledge that:

- (a) they are aware that any breach of this clause 16 may result in the other Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 16 or any obligation of confidentiality under this Agreement, any adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 16.

**16.6. No waiver or transfer of intellectual property rights**

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

**17. TERM AND TERMINATION**

**17.1. Term**

Subject to clause 17.2, this Agreement remains in force from the Commencement Date for as long as the Management Plan remains in force.

**17.2. Termination**

- (a) This Agreement shall terminate in the following circumstances, whichever is the sooner:
  - (i) when the Management Plan expires and a new plan is substituted for it; or
  - (ii) when the Management Plan is revoked and a new plan is substituted for it; or
  - (iii) when a new Agreement is substituted for this Agreement; or
  - (iv) when and if the Management Plan is amended so that joint management is no longer required.
- (b) In the circumstances outlined in (a)(i) and (a)(ii), the CEO shall attach a new joint management agreement to the Management Plan, identical to this Agreement or this Agreement varied as agreed by the parties, for the purposes of section 56A(3) of the CALM Act, unless the new plan does not require joint management.
- (c) If the CALM Act is amended to provide, in effect, that a Joint Management Agreement does not have to be signed each time a new management plan is substituted for an existing management plan, then this Agreement shall continue until:
  - (i) the Management Plan, as amended or replaced from time to time, is amended so that joint management is no longer required; or
  - (ii) a new Agreement is substituted for it.

**18. INTELLECTUAL PROPERTY**

No change of ownership which may exist in any Party's intellectual property will occur by its being made available to the Joint Management Body, the Department, the State, Corporation or any other party pursuant to this Agreement.

**19. CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS**

Any reference to the CEO in this Agreement, other than in clause 10, includes a reference to the CEO acting through the agency of a Departmental officer.

**20. ACTS BY STATE – NO FETTER UPON DISCRETION**

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the statute.

**21. NO ASSIGNMENT WITHOUT CONSENT**

The Corporation may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

**22. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS**

- (a) In the event that a Party becomes wholly or partly unable to perform any of its obligations under the Agreement because of Force Majeure or Aboriginal Cultural Business, then the Agreement shall nevertheless continue and remain in force and effect but that Party shall not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business, and the time within which such a Party is required to perform any work or satisfy any obligation shall be extended by a period equivalent to that during which such prevention or delay continues, provided that:
- (i) the cause of the Force Majeure or Aboriginal Cultural Business as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; and
  - (ii) no Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (b) The Party affected by any event of Force Majeure or Aboriginal Cultural Business shall immediately give notice to the other Parties of the occurrence of such event and the likely period of delay. The notice shall:
- (i) specify the obligations it cannot perform;
  - (ii) fully describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or Aboriginal Cultural Business.
- (c) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
- (d) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business shall take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.
- (e) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within 3 months, either Party may, by notice to the other Party, suspend the performance of its obligations and the affected Party's rights under this



Agreement until the Force Majeure or Aboriginal Cultural Business has ceased.

## **23. GENERAL**

### **23.1. Entire agreement**

The Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **23.2. Governing law and jurisdiction**

- (a) The Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **23.3. Severance**

If any provisions of the Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

### **23.4. Election and waiver**

A right or power under the Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **23.5. Survival**

Clauses 15, 16, 18, 23.2, 23.3, 23.5, 24 and 25 survive termination of this Agreement.

## **24. NOTICE**

Each notice or other communication given under this Agreement:

- (a) shall be in writing;

(b) shall be delivered to the intended recipient by prepaid post or by hand to the address below or the address last notified by the intended recipient to the sender;

[insert addresses]

(c) will be taken to be duly given or made:

(i) in the case of delivery in person, when delivered; and

(ii) in the case of delivery by post, 7 days after the date of posting.

## 25. DEFINITIONS AND INTERPRETATION

### 25.1. General Definitions

Words and expressions defined in the CALM Act have the same meaning when used in this Agreement.

In this Agreement, unless the context otherwise requires:

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Corporation or Noongar people are required to attend or that prevents the members of the Corporation or Noongar persons from attending to day to day business.

**Agreement** means this joint management agreement and includes the Schedules.

**Alternate Member** means a person who is nominated under clause 4.1.

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

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**Chairperson** means the Chairperson of the Co-operative Management Committee elected pursuant to clause 4.3.

**Commencement Date** means the date on which this Agreement is executed by all Parties.

**Conservation Commission** means a body corporate established under section 18 of the *Conservation and Land Management Act 1984*.

**Conservation and Land Management Regulations** means the *Conservation and Land Management Regulations 2002* (WA).

**Co-operative Management Committee** means the regional advisory committee established under the [INSERT NAME] Area Conservation Estate Co-operative Management Agreement.

**Corporation's CEO** means:

(a) the person duly appointed as the Corporation's CEO howsoever named; or

(b) where there is no such person, the Chairperson of the Corporation.

**[insert name of Park]** means the whole of reserve [insert details] described in Schedule 1 and shown on map in Schedule 2.

**Force Majeure** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

**Forest Management Regulations** means the *Forest Management Regulations 1993*.

**ILUA** means the Indigenous Land Use Agreement entered into by the State and others and the [INSERT NAME] Group as part of the South West Native Title Settlement which was entered on to the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the *Native Title Act 1993*(Cth).

**Insolvency Event** means where any one or more of the following occurs to the Corporation:

- (a) it commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (b) it is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) it is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (d) it is unable to pay all its debts as and when they become due and payable; or
- (e) it is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Joint Management Body** means the body established in clause 2.

**Land Partnership Fund** means the fund established and administered by the Department of the Premier and Cabinet pursuant to the South West Native Title Settlement for the purpose of facilitating the implementation of the ILUAs including making provision for certain funding for joint management arrangements.

**LEADR** means LEADR, a company limited by guarantee, ACN: 008 651 232.

**Management Plan** means the management plan approved under section 60 of the CALM Act in respect of the [insert name of Park].

**Marine Parks and Reserves Authority** means the body established by section 26A of the CALM Act.

**Member** means a Representative Member or an Alternate Member.

**Minister** means the Minister to whom the administration of the Conservation and Land Management Act is committed, which for the time being is the Minister for Environment.

**Minister for Lands** means the body corporate continued under section 7 of the Land Administration Act.

**Native Title Act** means the *Native Title Act 1993* (Cth).

**Noongar Boodja Trust** means the trust established pursuant to the Noongar Boodja Trust Deed as required by the ILUA.

**Party** means a party to this Agreement.

**Replacement Corporation** means a replacement corporation appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed.

**Representative Member** means a person specified under clause 2 and nominated under clause 4.1.

**South West Native Title Settlement** means the six regional ILUAs under which the native title claims in relation to those areas of the south west of Western Australia have been resolved in exchange for Noongar people receiving a package of benefits.

**Term** means the term of this Agreement specified in clause 17.1.

**[INSERT NAME] Group** means the INSERT NAME people who have authorised the making of the ILUA.

**Wildlife Conservation Act** means the *Wildlife Conservation Act 1950* (WA).

**Wildlife Conservation Regulations** means the *Wildlife Conservation Regulations 1970*.

## **25.2. Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) headings and subheadings are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender includes the other;
- (d) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, authority, Corporation or other body corporate or governmental or semi-governmental entity;
- (f) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;
- (h) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;

- (i) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (j) where the day on or by which a thing is required to be done is not a Business Day that thing shall be done on or by the succeeding Business Day;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;
- (l) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (m) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (n) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (p) "including" means "including, but not limited to".

**EXECUTION**

Executed by the Parties as an agreement.

**THE COMMON SEAL** of )  
The **CONSERVATION AND** )  
**LAND MANAGEMENT** )  
**EXECUTIVE BODY** a body )  
corporate established under )  
section 36 of the Conservation )  
and Land Management Act )  
was affixed hereto in the presence of )

Signature of Chief Executive Officer

Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

**SIGNED** by the **CHIEF EXECUTIVE** )  
**OFFICER** for and on behalf of )  
**[INSERT NAME]** )  
**CORPORATION** )  
in the presence of: )

\_\_\_\_\_  
**CHIEF EXECUTIVE OFFICER**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_

**SCHEDULE 1. [insert name of Park]**



**SCHEDULE 2.      Map of [insert name of Park etc]**

## **Annexure O**

### **Noongar Regional Corporations Land Access Licence**

[Page intentionally left blank - see next page]

# **Noongar Regional Corporations Land Access Licence**

**NOONGAR REGIONAL CORPORATIONS LAND ACCESS LICENCE**

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THIS DEED OF LICENCE IS MADE ON THE                      DAY OF

BETWEEN

**THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS**,  
a body corporate continued in existence under the *Land Administration Act 1997*, care of Department of  
Lands, 140 William Street, PERTH, WA 6000 (**Licensor**)

AND

(**NAME OF REGIONAL CORPORATION**) of (**Address of Licensee**) (**Licensee**)

## BACKGROUND

- A. The Noongar people have been recognised as the traditional owners of Noongar lands in the south west of Western Australia in the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act [insert date]*.
- B. The State recognises the ongoing spiritual, cultural and social connection of Noongar people to Noongar lands and the importance of accessing those lands and undertaking customary activities to maintaining that connection.
- C. The State of Western Australia and the Minister, among others, have entered into the ILUA with the Agreement Group to settle the relevant native title claim(s) under the NTA in relation to part of the Noongar lands (the **Native Title Settlement**).
- D. The [insert name of Regional Corporation] has been appointed under the Noongar Boodja Trust Deed and will, among other things, exercise rights and comply with the obligations of a Regional Corporation under the ILUA.
- E. As part of the Native Title Settlement the Minister has agreed to grant this Licence to the Licensee to allow the Agreement Group to access and undertake customary activities on certain Unallocated Crown Land and Unmanaged Reserves (the **Licence Area**).
- F. Subject to this licence and the Law of Western Australia, the Agreement Group will be able to carry out customary activities on the Licence Area, such as:
  - visiting and caring for sites and country;
  - gathering, preparing and consuming bush tucker;
  - gathering and preparing and using traditional medicine;
  - conducting ceremonies and cultural activities;
  - camping on country;
  - lighting camp fires or ceremonial fires; and
  - having meetings on country.
- G. The Licence Area is Crown Land administered by the Minister through the Department on behalf of the State of Western Australia.
- H. The Minister on behalf of the State of Western Australia is authorised by [insert section and name of enabling Act] to grant this Licence in respect of the Licence Area.

## OPERATIVE PART

The Parties covenant and agree as follows:

---

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

In this Licence the following terms shall have the following meaning:

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Regional Corporation or Noongar people are required to attend or that prevents the members of the Regional Corporation or Noongar persons from attending to day to day business.

**Aboriginal Customary Purpose** means—

- (a) preparing or consuming food customarily eaten by Aboriginal persons; or
- (b) preparing or using medicine customarily used by Aboriginal persons; or
- (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or
- (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c);

where the activities set out in paragraphs (a) to (d) are for the purpose of satisfying the Licensee's Members non-commercial personal, domestic, social, cultural, religious, spiritual and communal needs.

**Access Agreement** means an agreement of the kind mentioned in Item 1(b)(n) of Schedule 1.

**Access Area** means the area of Land to which an Access Agreement relates.

**Agreement Group** means the persons in the Native Title Agreement Group as defined in the ILUA.

**Authorisation** includes consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Governmental Agency and all conditions attached to those authorisations.

**Authorised Person** has the meaning given in r 4 of the Regulations.

**Business Day** means a day other than a Saturday, Sunday or Public Holiday in Western Australia.

**CALM Act** means the *Conservation and Land Management Act 1984*.

**Camp** means to stay or lodge (whether in a Camping Unit or otherwise) during any period of 24 hours.

**Camping Area** means an area designated by sign as a camping area.

**Camping Unit** means a tent or other portable thing of any kind used or capable of being used for habitation, and includes a Caravan or other vehicle.

**Caravan** means a vehicle fitted or designed for habitation.

**Claims** means actions, claims, proceedings, suits, judgements, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand whether based in contract, statute, torts (including negligence), equity, indemnity or otherwise.

**Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003(WA)*.

**Crown Land** has the meaning given in s 3 of the LAA.

**CSA** means the *Contaminated Sites Act 2003*.

**Date of Commencement** means the date of commencement specified in item 2 of Schedule 1.

**Department** means the department principally assisting the Minister in the administration of the LAA.

**Department of Parks and Wildlife** means the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*.

**Eligible Noongar Entity** has the meaning given in the Noongar Boodja Trust Deed executed pursuant to the ILUA.

**Emergency** means a circumstance where urgent action is required to secure life, health or property, or to prevent or address an imminent hazard to the life, health or property of any person or to the environment.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) equity, interest or enforcement order; or
- (d) any other right or interest of any third party.

**Environment** has the meaning given by section 3 of the *Environment Protection Act 1986*.

**Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986*.

**Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permissions, permits or licences issued there under.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.



**Excluded Acts** means the Excluded Acts specified in Schedule 2.

**Excluded Land** has the meaning given in item 1(b) of Schedule 1.

**Exclusive Licence**, for the purpose of the definition of Exclusive Use Land, means a licence granted under any Law:

- (a) which expressly states that it provides the licensee with exclusive use of the area of Land the subject of the licence (the licence area); or
- (b) it is apparent from the terms of the licence that the licensee may undertake activities on the licence area which of their nature would exclude other uses of the licence area.

**Exclusive Use Land means Land in any of the following categories:**

- (a) Land in an UMR being Land in respect of which a lease subsists;
- (b) Land which is vested in any Person under any Law;
- (c) Land on which an Infrastructure Facility or a Public Work is being or has been constructed and any area of Land within 300 hundred metres of that Infrastructure Facility or Public Work that is necessary for the establishment, operation or maintenance of that Infrastructure Facility or Public Work;
- (d) Land in respect of which an Exclusive Licence subsists;
- (e) Land that has been taken (as that term is defined in section 151 of the LAA) under the LAA for the undertaking, construction or provision of any Public Work, for the grant of any interest, right, power or privilege in over or in relation to the Land permitted by any written law or for any other purpose permitted by the LAA;
- (f) Land that has been taken (as that term is defined in section 151 of the LAA) for the purposes of a Government Agreement;
- (g) Land that has been compulsorily resumed under any other Law;
- (h) Land in respect of which there is a contract or option to sell or lease;
- (i) Land in respect of which there has been an exercise of entry powers under any Act and the Land is being used for the purpose for which it was entered.

**Fauna** means any animal and includes in relation to any such animal —

- (a) any class or individual member thereof;
- (b) the eggs, larvae or semen thereof; or
- (c) the carcass, skin, plumage or fur thereof.

**Fish** has the meaning given by section 4 of the *Fish Resources Management Act 1994*.

**Flora** means any plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) and includes any part of flora and all seeds and spores thereof.

**Force Majeure** means an event that prevents a Party from performing its obligations, in whole or part, under this Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) Acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);

- (d) flood;
- (e) landslides;
- (f) earthquake or tsunami;
- (g) volcanic eruption;
- (h) impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic or pandemic;
- (k) civil unrest;
- (l) industrial action (other than industrial action limited to the affected Party);
- (m) war (including civil war);
- (n) acts of terrorism; or
- (o) radioactive or biological contamination;

but does not include:

- (i) lack of or inability to use funds for any reason;
- (ii) any occurrence which results from the wrongful or negligent act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (iii) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- (iv) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of items (a) to (o) above;
- (v) any act or omission of an agent or contractor of the affected Party.

**Government Agreement** has the meaning given in section 2 of the *Government Agreements Act 1979*.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Greater Bunbury Region** means the Greater Bunbury Region described in clause 3 of the *Greater Bunbury Region Scheme* or relevant future planning scheme, pursuant to the *Planning and Development Act 2005*.

**ILUA** means the Indigenous Land Use Agreement entered into by the State and others and <insert name of native title group> and registered on the Register of Indigenous Land Use Agreements under Part 8A of the NTA on <insert registration date>.

**ILUA Area** means the area of Land covered by the ILUA.

**Infrastructure Facility** has the same meaning as given in s 253 of the NTA.

**Insurance Amount** means the amount specified in item 5 of Schedule 1 or such other amount as the Minister may reasonably require from time to time.

**LAA** means the *Land Administration Act 1997*.

**Land** has the meaning given in s 3 of the LAA.

**Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

**Lease** has the meaning given in s 3 of the LAA.

**Licence** means the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

**Licence Area** has the meaning given in item 1(a) of Schedule 1.

**Licensee's Property** means all plant, equipment, structures, materials, and other property brought, placed or erected on the Licence Area by, on behalf of or with the authority of the Licensee or the Licensee's Members, including any temporary site accommodation.

**Licensee's Agents** means employees, agents, contractors, consultants of the Licensee and any other person acting with the authority of the Licensee.

**Licensee's Members** means:

- (a) the members, and persons who are eligible to become members, of the Licensee and their children (including by way of adoption under the traditional laws and customs of the Agreement Group);
- (b) invitees of the persons referred to in paragraph (a) where those invitees:
  - (i) accompany the persons referred to in paragraph (a) in accessing the Licence Area to undertake the Permitted Acts on the Licence Area for an Aboriginal Customary Purpose; and
  - (ii) are members or persons eligible to become members of an Eligible Noongar Entity or the children of those persons.

**Local Government** means a local government established under the *Local Government Act 1995*.

**Material Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986*

**Meeting** means a meeting, function or other event (including a ceremony) for an Aboriginal Customary Purpose.

**Metropolitan Region** has the meaning given in section 4(1) the *Planning and Development Act 2005*.

**Mining Act** means the *Mining Act 1978*.

**Minister** means the Minister for Lands, a body corporate under section 7(1) of the LAA.

**Noongar Boodja Trust Deed** means the Trust Deed annexed to the ILUA establishing the Noongar Boodja Trust.

**Notified Interest** means a Title, created, granted or transferred to any person under an existing Law or new Law written notice of which is given by the Licensor to the Licensee where such notice:

- (a) states that the Title is a Notified Interest under this Licence; and
- (b) sets out brief details of the Notified Interest.

**NTA** means the *Native Title Act 1993* (Cth).

**Parties** mean the Licensor and the Licensee.

**Party** means the Licensor or the Licensee, as the case may be.

**Peel Region** means the Peel Region described in clause 3 of the *Peel Region Scheme* or relevant future planning scheme, pursuant to the *Planning and Development Act 2005*.

**Person** has the meaning given in s 5 of the *Interpretation Act 1984*.

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967*.

**Permitted Acts** means the following acts except to the extent they are, or involve, Excluded Acts—

- (a) entering the Licence Area;
- (b) driving or riding a Vehicle or navigating a vessel on the Licence Area;
- (c) bringing an animal on to the Licence Area;
- (d) Camping temporarily on the Licence Area;
- (e) lighting or kindling a fire on the Licence Area;
- (f) Taking or removing a Prescribed Thing on the Licence Area;
- (g) conducting a Meeting on the Licence Area;
- (h) maintaining Sites on the Licence Area;
- (i) teaching and learning on the Licence Area;
- (j) taking water on the Licence Area;
- (k) dig up and remove ochre on the Licence Area using handheld implements.

**Permitted Use** has the meaning given to this term in clause 2.1.

**Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

**Prescribed Thing** means any Flora, Fauna, forest produce or other naturally occurring thing, the Taking or removal of which from the Licence Area is prohibited or restricted by the LAA or the Regulations.

**Public Road** means a road as that term is defined in s 5 of the *Road Traffic Act 1974*.

**Public Work** means a public work as defined in the *Public Works Act 1902* (WA) or any other Act, or any other work for which the Land may be taken as if for a public work.

**Recreational Land** means Land in the Licence Area that is, or is within 500 metres of, any of the following—

- (a) a car park, including any area where signs direct Vehicles to be parked or that is predominantly used for parking Vehicles;
- (b) a Public Road, private road;
- (c) a Visitor Area.

**Regulations** means the Land Administration (Land Management) Regulations 2006.

**Relevant Time** means the time when the Licence Area is accessed for the Permitted Use.

**Schedule** means a Schedule to this Licence.

**Section 8A agreement** has the meaning given in s 3 of the CALM Act.

**Section 8A land** has the meaning given in s 3 of the CALM Act.

**Services** includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities, pipes, cables, fixtures and fittings associated with those services.

**Site** means a place listed on the register of places and objects established and maintained under s 38 of the *Aboriginal Heritage Act 1972*.

**Subject Land** has the meaning given in section 2 of the *Government Agreements Act 1979*.

**Surrounding Area** means any Land adjacent to or in the vicinity of the Licence Area and the airspace above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

**Take**, in relation to Fauna, includes the following—

- (a) to capture, injure, interfere with and kill Fauna;
- (b) to attempt to do any such act;
- (c) to hunt Fauna even though no Fauna is captured, injured or killed;
- (d) to cause or permit any such act to be done;

and reference to the word “Take” in the Licence includes a similar reference to the word “Taking” or “Taken”.

**Take**, in relation to any Prescribed Thing other than Fauna, includes the following—

- (a) to cut, damage, destroy, dig up, gather, pick and uproot the Prescribed Thing;
- (b) to attempt to do any such act;
- (c) to cause or permit any such act to be done;

and reference to the word “Take” in the Licence includes a similar reference to the word “Taking” or “Taken”.

**Term** means the term specified in clause 3.1.

**Title** includes a title, right, interest, power or Authorisation.

**Townsite** has the meaning given in section 26 (1) of the *Land Administration Act 1997*. It includes all contiguous urban growth and any non-contiguous development within 500 metres of the townsite boundary as per chapter 3 of the Australian Bureau of Statistics 2011, *Australian Statistical Geography Standard (ASGS) Vol. 4- Significant urban areas, urban centres and localities, section of State, cat. No. 1270.0.55.004*.

**Track** means a pre-existing track suitable for vehicular use and includes a track as defined in r 2 of the Regulations.

**Unallocated Crown Land** has the meaning given in s 3 of the LAA.

**Unmanaged Reserve** means a reserve the care, control and management of which are not placed with a management body, whether under section 46 of the LAA or management arrangements under another Law.

**Urban Land** means Land:

- (a) within the Metropolitan Region, the Greater Bunbury Region and the Peel Region;
- (b) within a Townsite;
- (c) zoned rural residential/rural living under a planning scheme as defined in s 4(1) of the *Planning and Development Act 2005*; or
- (d) that is wholly surrounded by Land mentioned in paragraph (c).

**Vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels by any means, but not including a train;
  - (b) an animal being driven or ridden;
- but does not include an off-road vehicle as that phrase is defined in s 3 of the *Control of Vehicles (Off-road Areas) Act 1978*.

**Visitor Area** includes any of the following—

- (a) an area of cultivated lawn;
- (b) an area signposted as a picnic area;
- (c) an area signposted as an historical, natural or cultural point of interest;
- (d) an area where any of the following have been provided for visitors—
  - (i) tables and seating;
  - (ii) a lookout or platform;
  - (iii) a toilet facility;
  - (iv) a rubbish bin;
  - (v) interpretive information;
  - (vi) any building, facility or other erected or constructed thing,

but does not include a walk trail or unsealed road.

## 1.2 INTERPRETATION

In this agreement:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (d) a reference to any title, right, interest, power or Authorisation includes amendments, re-grants or replacements of it howsoever named;
- (e) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (f) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the word ‘person’ includes a reference to the person’s personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (h) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other Law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (i) covenants by this deed by two or more persons shall be deemed joint and several;
- (j) a reference to the word “including” is deemed to be followed by the words “but not limited to”.

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## 2. GRANT OF LICENCE

### 2.1 GRANT OF LICENCE

- (a) Subject to clause 2.1(b), in consideration of the matters set out in this Licence the Licensor hereby GRANTS to the Licensee a non-exclusive licence for the Term to undertake the Permitted Acts on the Licence Area for an Aboriginal Customary Purpose (the **Permitted Use**) in accordance with the terms and conditions set out in this Licence.
- (b) The Licence does not allow the Licensee to use part or the whole of an Unmanaged Reserve to the extent that:
  - (i) the relevant Aboriginal Customary Purpose is not a purpose for which the Land was reserved; and
  - (ii) the relevant Aboriginal Customary Purpose is not compatible with or ancillary to the use of that Land at the Relevant Time for the purpose or purposes of the reserve.

- (c) Subject to clause 2.1(e) this Licence extends to and includes the Licensee's Members. It permits the Licensee's Members to undertake the Permitted Use subject to compliance by the Member with the terms of this Licence. To avoid doubt, where a Member fails to comply with the terms of this Licence the Licence does not apply to that Member during the period of non-compliance in respect of the non-compliant activity.
- (d) Where an Authorisation is required under a Law other than the LAA or the Regulations to enter or use a specific part of the Licence Area, this Licence does not constitute that Authorisation and separate Authorisation must be obtained under that Law to enter or use that part of the Licence Area.
- (e) Where a Licensee's Member:
  - (i) is convicted of an offence under the LAA, the Regulations or other Law relating to access to, or use of, part or whole of the Licence Area;
  - (ii) breaches a material term of this Licence and the breach is not remedied within the period specified in clause 7.1(a)(i);
  - (iii) breaches a material term of this Licence and the breach cannot be remedied; or
  - (iv) commits more than 3 breaches of this Licence over any 12 month period, provided that the Licensor has given the Licensee notice of any such breaches and whether or not the Licensee has rectified such breaches,

the Licensor may, in its unfettered discretion by notice in writing to the Licensee exclude that Licensee's Member from coverage under the Licence whether in whole in part to the extent specified in the Licensor's notice. For the period specified in the notice the Licensee's Member may no longer access the Licence Area (or part thereof) under the Licence. The period specified in the notice may either specify a particular period or the exclusion may be permanent.

- (f) This Licence extends to and includes the Licensee's Agents but only to the extent that access to the Licence Area by the Licensee's Agents is:
  - (i) for the purpose of providing support to the Licensee's Members who are undertaking the Permitted Use; or
  - (ii) necessary to ensure compliance by the Licensee's Members with the terms of this Licence when the Licensee's Members are accessing the Licence Area.

## **2.2 NO ESTATE OR INTEREST IN LAND**

The Licensee acknowledges and agrees that:

- (a) The permission to undertake the Permitted Use conferred by this Licence rests in contract only and does not create in or confer upon the Licensee or the Licensee's Members any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of occupation (exclusive or otherwise) of the Licence Area upon the Licensee or the Licensee's Members and the Licensor may at any time and at all times from time to time exercise all the Licensor's rights as Licensor including (but



without in any way limiting the generality of this provision) the Licensor's rights to use possess and enjoy any part of the Licence Area.

- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.

### 2.3 CHANGING NATURE OF LICENCE AND LICENCE AREA—GRANTS OF INTERESTS

The Licensee acknowledges and agrees that:

- (a) The grant of this Licence does not fetter in any way the rights of the State or any Minister in the exercise of his or her statutory rights, powers and duties including:
  - (i) the right to take Land under Parts 9 and 10 of the LAA or any other Law;
  - (ii) the grant of tenure or any other interest in Land to any person under the LAA or any other Law.
- (b) The change in status of an area of Land within the Licence Area caused by the exercise of a right, power or duty covered by clause 2.3(a), for example by the grant of a freehold or leasehold interest in the area, may result in that area of Land ceasing to be part of the Licence Area and, if so, from that time the Licence does not apply to that area. Refer to Item 1 of Schedule 1.

### 2.4 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—URGENT ACTION REQUIRED

- (a) The Licensee acknowledges and agrees that the Licensor may at any time during the term of this Licence excise an area of Land from the Licence Area pursuant to this clause 2.4 where:
  - (i) the area, part of the area or a thing on the area is hazardous to the health, life, safety or property of any person (for example, excluding an area of contaminated Land from the Licence Area or excluding Land on which a disused mine shaft is located);
  - (ii) the area, part of the area or a thing on the area requires urgent protection and/or rehabilitation from the effects of environmental degradation or other human or natural impacts (for example, where the Land is subject to significant soil erosion or where the area is an important habitat of an endangered species); or
  - (iii) the Licensor reasonably considers that the area must be excised from the Licence Area on an urgent basis for any other reason including a breach of this Licence by the Licensee, the Licensee's Members or the Licensee's Agents.
- (b) Subject to sub-clause (e) where the Licensor excises Land from the Licence Area pursuant to this clause 2.4, the Licensor must provide the Licensee with written notice of the excision of the area from the Licence Area. In the notice the Licensor must include the following details:
  - (i) the area of Land that has been or is to be excised from the Licence Area (**the Excised Area**);

- (ii) the period of excision of the area of Land from the Licence Area which may be either permanent or for the period specified in the notice;
- (iii) brief reasons for the excision of the area or Land from the Licence Area;
- (c) The excision of the Excised Area from the Licence Area takes effect on the day specified in the notice under clause 2.4(b).
- (d) The Licensor may either extend (for a fixed period or permanently) or reduce the period of the excision specified in a clause 2.4(b) notice by giving a further notice to the Licensee. Sub-clause 2.4(b) and (d) applies to the new notice *mutatis mutandis*.
- (e) In an Emergency the Licensor may immediately and without notice to the Licensee temporarily excise Land from the Licence Area by the erection of warning signs or by other methods indicating that access is prohibited and the Licensee, the Licensee's Members and the Licensee's Agents must comply with any such prohibition.

## 2.5 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—FOR OTHER REASONS

- (a) The Licensee acknowledges and agrees that the Licensor may at any time during the term of this Licence excise an area of Land from the Licence Area pursuant to this clause 2.5.
- (b) The Licensor must provide the Licensee with not less than 60 days written notice of the proposed excision of an area from the Licence Area. In the notice the Licensor must include the following details:
  - (i) the area of Land to be excised from the Licence Area;
  - (ii) the period of excision of the area of Land from the Licence Area which may be either permanent or for the period specified in the notice;
  - (iii) brief reasons for the excision of the area or Land from the Licence Area;
  - (iv) a statement to the effect that the Licensee may provide written comments to the Licensor in relation to the proposed excision no later than 30 days after the date on which the notice is given under this sub-clause 2.5(b).
- (c) After considering any comments from the Licensee, the Licensor may decide in its unfettered discretion to:
  - (i) not excise the area from the Licence Area;
  - (ii) excise the area from the Licence Area; or
  - (iii) reduce the area to be excised from the Licence Area.
- (d) The Licensor must give written notice to the Licensee of its decision within 14 days of the date when the decision is made and where either clause 2.5(c)(ii) or (iii) applies, include a description of the area that is excised (the **Excised Area**).
- (e) The excision of the Excised Area from the Licence Area takes effect on the day specified in the notice under clause 2.5(d).

- (f) The Licensor may either extend (for a fixed period or permanently) or reduce the period of the excision specified in a clause 2.5(d) notice by giving a further notice to the Licensee. Sub-clauses 2.5(b), (c), (d) and (f) apply to the new notice mutatis mutandis.

## **2.6 PROCEDURAL RIGHTS AS SET OUT IN CLAUSES 2.4 AND 2.5**

The Licensee acknowledges and agrees that:

- (a) The grant of this Licence does not give the Licensee or the Licensee's Members any procedural rights in relation to the exclusion of Land from the Licence Area as a result of:
- (i) any acts mentioned in clause 2.3(a); or
  - (ii) the processes set out in clauses 2.4 and 2.5 other than what is expressly provided for in those clauses.
- (b) The Licensee has no legitimate expectation that any particular area of Land will remain within the Licence Area.
- (c) Neither the Licensee nor the Licensee's Agents may lodge a caveat or Encumbrance over any part of the Licence Area to protect any interest or purported interest of the Licensee or the Licensee's Agents under or relating to this Licence. If the Licensee or the Licensee's Agents lodge any caveat in contravention of this sub-clause, the Licensee and the Licensee's Agents appoint the Director General of the Department as their attorney for the purpose of executing a withdrawal of caveat.
- (d) The grant of this Licence does not give the Licensee or the Licensee's Members any legal standing to seek to interfere with or prevent the lawful use of the Licence Area and the Surrounding Area by other persons.
- (e) Where any person makes any application under any Law for any lawful use of the Licence Area and the Surrounding Area or any part thereof the Licensee, the Licensee's Members and the Licensee's Agents may not assert the terms of this Licence as the basis of any objection to any such application. Nothing in this sub-clause (e) precludes the Licensee from making any other objection available to them at Law.

## **2.7 NO FETTERING GENERALLY**

The Licensee acknowledges and agrees that the grant of this Licence does not:

- (a) Fetter or control in any way the exercise by any person (including a Minister) of a statutory power or discretion in accordance with the statute;
- (b) Prevent the State, a Minister or any other person from seeking to pass a Law that may have the effect of regulating (including prohibiting) the exercise of acts in the Licence Area that are Permitted Acts under this Licence.

## **2.8 AGREEMENT BETWEEN THE LICENSOR AND THE LICENSEE THAT THE LICENCE MAY COVER A SMALLER AREA THAN THE AREA SPECIFIED IN ITEM 1 OF SCHEDULE 1**

The Licensor and the Licensee may agree in writing from time to time that this Licence covers only part or parts of the Land that is specified in Item 1 of Schedule 1 (a **Reduction Agreement** in

relation to a **Reduced Licence Area**) and during the period when the Reduction Agreement is in force this Licence applies only to the Reduced Licence Area and a reference in this Licence to the Licence Area is to be taken as a reference to the Reduced Licence Area.

## 2.9 COMPLY WITH LAWS AND ORDERS

- (a) The Licensee, the Licensee's Members and the Licensee's Agents shall punctually comply with and observe, at the expense of the Licensee, all Laws and all lawful orders and requirements of any statutory, public or other Governmental Agency which relates to the Licence Area or any part of it, or the use of the Licence Area, and with all lawful notices received either by the Licensor or the Licensee, the Licensee's Members or the Licensee's Agents from any such Governmental Agency.

*Example 1:*

*Where a total fire ban is in place under the Bushfires Act 1954, fires permitted to be lit under this Licence cannot be lit in contravention of that Act.*

*Example 2:*

*Where a Prescribed Thing cannot be Taken under a Law other than the LAA or the Land Administration (Land Management) Regulations 2006, this Licence does not prevail and the Prescribed Thing must not be Taken in contravention of that other Law.*

*Example 3:*

*Except where authority is otherwise provided in this Licence, the Regulations apply in relation to activities in the Licence Area. For example, regulations 12(1)(b), 14(4), 16, 17 and 19 apply and must be complied with.*

- (b) Without limiting the generality of this clause, the Licensee, the Licensee's Members or Licensee's Agents (as the case requires) will:
- (i) obtain, comply with and observe, at the expense of the Licensee, all Authorisations or other requirements under any Law necessary for the Licensee's Members or the Licensee's Agents (when assisting the Licensee's Members) to use the Licence Area for the Permitted Use; and
  - (ii) where there exists any doubt about whether:
    - (A) the relevant person is actually within the Licence Area; or
    - (B) the activity that is being undertaken is a Permitted Use,
 pending a resolution of the matter comply with any direction of an Authorised Person to either cease an activity on, or vacate the Land and must not assert the terms of this Licence to question the validity of any such direction or otherwise question the purported authority of any person to issue such a direction.

## 2.10 SECTION 91 LICENCE

This Licence is deemed to be a section 91 licence under the LAA.

## 2.11 APPLICATION OF CLAUSE 10.6 (DISPUTE RESOLUTION)

Clause 10.6 (Dispute Resolution) does not apply to this clause 2.

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### **3. TERM**

#### **3.1 TERM**

The Term shall commence on the Date of Commencement and subject to the terms and conditions of this Licence will continue indefinitely unless terminated earlier.

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### **4. LICENSEE'S COVENANTS**

#### **4.1 EXPRESS LIMITATIONS**

The Licensee acknowledges and agrees that this Licence does not permit the Licensee, the Licensee's Members or the Licensee's Agents to:

- (a) carry out an Excluded Act;
- (b) access Excluded Land;
- (c) construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing that is a fixture on the Licence Area;
- (d) leave a Camping Unit on Land in the Licence Area:
  - (i) if the Land is Recreational Land or Urban Land; or
  - (ii) if the Land is not Recreational Land or Urban Land—for a period of more than 14 consecutive days;
- (e) return a Camping Unit to Land in the vicinity of Land in the Licence Area on which it was previously placed if less than 14 days has elapsed since the last time it was so placed;
- (f) cause or permit any damage to the Licence Area or the Surrounding Area;
- (g) cause or permit any Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) to occur in, on or under the Licence Area or to the Surrounding Area;
- (h) dispose or store on the Licence Area any rubbish (except in a rubbish bin) or any poisonous, toxic or hazardous substance;
- (i) undertake or permit to be undertaken any excavation (other than the digging up of ochre using handheld implements) or clearing of the Licence Area.

#### **4.2 NO INTERFERING WITH USE OF AREA BY OTHERS**

The Licensee acknowledges and agrees that this Licence does not permit the Licensee, the Licensee's Members or the Licensee's Agents to:

- (a) interfere with or prevent the lawful use of the Licence Area by other persons;

- (b) do anything that is or may reasonably be considered to be offensive or a nuisance to anyone, including the occupiers of the Surrounding Area;
- (c) create any hazard or use the Licence Area in a way that might:
  - (i) endanger or affect the health, safety or wellbeing of any person using the Licence Area;
  - (ii) cause damage to the property of any person.

#### **4.3 APPROVALS**

The Licensee acknowledges and agrees that the Licensee, the Licensee's Members or the Licensee's Agents as the case requires must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence.

#### **4.4 REPAIRS**

The Licensee must:

- (a) minimise any damage, Contamination, Pollution or Environmental Harm caused by the Licensee, the Licensee's Members or the Licensee's Agents to the Licence Area or the Surrounding Area;
- (b) give notice to the Licensor of any damage, Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) of which the Licensee is aware caused by the Licensee, the Licensee's Members or the Licensee's Agents to the Licence Area or Surrounding Area;
- (c) repair or remedy any damage, Contamination, Pollution or Material Environmental Harm caused or permitted by the Licensee, the Licensee's Members or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area to the reasonable satisfaction of the Licensor.

#### **4.5 SAFETY AND EMERGENCY MEASURES**

The Licensee must, having regard to type of Permitted Acts being undertaken and the number of Licensee's Members and the Licensee's Agents involved:

- (a) have in place all necessary emergency plans, risk management and response procedures;
  - (i) to prevent injuries to the Licensee's Members and the Licensee's Agents;
  - (ii) to respond to injuries to the Licensee's Members and the Licensee's Agents; and
  - (iii) for emergency evacuation of the Licensee's Members and the Licensee's Agents;
- (b) take all necessary precautions and have in place all necessary arrangements for:
  - (i) injured Licensee's Members and the Licensee's Agents;
  - (ii) emergency evacuation of Licensee's Members and the Licensee's Agents.

#### **4.6 INFORMATION SESSIONS**

- (a) The Licensee must hold information sessions for the Licensee's Members:
  - (i) before the Licensee's Members access the Licence Area under this Licence;
  - (ii) at least once every 6 months for the first 3 years after the Date of Commencement; and
  - (iii) annually thereafter.
- (b) The Licensee must inform the Licensee's Members of:
  - (i) the categories of Land which are not permitted to be accessed under this Licence, and where the information is reasonably available, the areas of Land within the ILUA Area that are accessible under this Licence;
  - (ii) the Permitted Use and any Excluded Acts that may not be undertaken on the Licence Area; and
  - (iii) the conditions for the Permitted Use.

#### **4.7 COPY OF LICENCE TO LICENSEE'S MEMBERS**

The Licensee must make a copy of this Licence available to the Licensee's Members and the Licensee's Agents including by placing a copy of this Licence at the Licensee's premises for inspection by the Licensee's Members and the Licensee's Agents.

#### **4.8 LICENSEE TO USE BEST ENDEAVOURS TO ENSURE COMPLIANCE WITH LICENCE**

The Licensee must use its best endeavours to ensure that the Licensee's Members and the Licensee's Agents comply with the terms of this Licence.

#### **4.9 COPY OF SCHEDULE 1 ACCESS AGREEMENTS TO BE PROVIDED TO THE LICENSOR**

The Licensee must provide a copy of any Access Agreement (referred to in Item 1(b)(n) of Schedule 1) that it enters into in relation to an Access Area to the Licensor before the Licensee's Members undertake the Permitted Use in the Access Area.

### **5. NO WARRANTY OR REPRESENTATION BY LICENSOR**

#### **5.1 SUITABILITY FOR PERMITTED USE**

The Licensor does not give any warranty of any kind that:

- (a) the Licence Area is suitable for the Permitted Use. To the extent permitted by law, any warranty in relation to the Licence Area which is implied by law is excluded and does not apply to this Licence;
- (b) there are no other restrictions on the use of the Licence Area for the Permitted Use;

- (c) Tracks within the Licence Area are suitable and safe for vehicular use.

## 5.2 CONTAMINATION, POLLUTION OR ENVIRONMENTAL HARM

The Licensor does not make any representation or give any warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm on the Licence Area.

## 6. INDEMNITY, RELEASE AND INSURANCE

### 6.1 DEFINITION

In clauses 6.2 and 6.3, **Indemnified Parties** means the Licensor, the Minister, the State of Western Australia and all its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the State of Western Australia and any person entering into the Licence Area with the express or implied authority of the State.

### 6.2 INDEMNITY

- (a) The Licensee hereby covenants with the Minister to indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties:
- (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Licence Area and including the property of:
    - (A) any of the Indemnified Parties;
    - (B) the Licensee, the Licensee's Members or the Licensee's Agents;
  - (ii) in respect of the death of, injury to or illness of, any person including:
    - (A) any of the Indemnified Parties;
    - (B) the Licensee, the Licensee's Members or the Licensee's Agents,
 directly or indirectly caused by or arising out of or in connection with:
    - (iii) the use or enjoyment of the Licence Area or any part of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
    - (iv) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Licensee or the Licensee's Members under this License;
    - (v) any Contamination Pollution or Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) in, on, under or to the Licence Area and Surrounding Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents;



- (vi) any remediation required in respect of the Licence Area, Surrounding Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (vii) any default by the Licensee, the Licensee's Members or the Licensee's Agents in the due and punctual performance of or compliance with any of the terms and conditions of the Licence or any other Law that apply to the exercise of the Licensee's rights in respect of the Licence Area; or
  - (viii) any negligent or other tortious act or omission of the Licensee, the Licensee's Members or the Licensee's Agents.
- (b) The obligations of the Licensee under this clause 6.2 are unaffected by the obligation to take out insurance, and the obligations of the Licensee to indemnify are paramount.
  - (c) The indemnities contained in this clause 6.2 continue in full force and effect notwithstanding the expiry or termination of the Licence for any reason in respect of any act, deed, matter or thing occurring prior to the termination or expiry of this Licence.

### **6.3 RELEASE**

- (a) The Licensee releases, to the fullest extent permitted by law, the Indemnified Parties from:
  - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Licence Area;
  - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Licence Area at any time throughout the duration of the Licence whether or not identified in an audit undertaken by the Licensee; and
  - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Licensee, the Licensee's Members or the Licensee's Agents,

directly or indirectly caused by or arising out of or in connection with:

  - (iv) the use or enjoyment of the Licence Area or any part of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Licensee or the Licensee's Members under this Licence;
  - (vi) any Contamination Pollution or Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) in, on, under or to the Licence Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (vii) any remediation required in respect of the Licence Area or otherwise having to comply with any Environmental Notice or any other notice received from any

Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;

- (viii) any default by the Licensee, the Licensee's Members or the Licensee's Agents in the due and punctual performance of or compliance with any of the conditions of the Licence or any other Law that apply to the exercise of the Licensee's rights in respect of the Licence Area; or
- (ix) any negligent or other tortious act or omission of the Licensee, the Licensee's Members or the Licensee's Agents.

except to the extent that such loss or damage is caused or contributed to by the negligence of the State.

- (b) The release contained in this clause 6.3 continues in full force and effect notwithstanding the expiry or the termination of the Licence for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or the termination of this Licence.

#### **6.4 INSURANCE**

- (a) The Licensee must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the Insurance Act 1973 (Cth) and to the satisfaction of the Minister, a public liability insurance policy for the Insurance Amount for any one occurrence and unlimited in the aggregate during any one period of insurance and covers all Claims and losses howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
  - (i) any illness of, injury to or death of, any person;
  - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
  - (iv) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Licence Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents; or
  - (v) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under this Licence in respect of which insurance is ordinarily obtainable,

##### **(Insurance Policy).**

- (b) Any Insurance Policy effected pursuant to this clause must contain such conditions, endorsements and exclusions as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (c) The Licensee must give to the Minister a copy of the certificate of currency for the Insurance Policy at the Date of Commencement, and the Licensee is to submit evidence to

the Minister on each anniversary of the Date of Commencement, or as otherwise requested by the Minister, which shows that the Insurance Policy is still current.

- (d) The Licensee is:
- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;
  - (ii) to notify the Minister immediately if an event occurs in relation to the exercise of any rights under the Licence which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
  - (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer;
  - (iv) to expend any moneys received in respect of a claim made under the Insurance Policy in satisfaction of the relevant Claim;
  - (v) to have the interests of the Minister and the State noted on the Insurance Policy and to ensure that under the Insurance Policy the insurer has no rights of subrogation against the Minister or the State;
  - (vi) to indemnify the Minister and the State against any loss arising from a breach of subclause (v) and the indemnities contained in this sub clause continue in full force and effect notwithstanding the expiry or termination of this Licence for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Licence;
  - (vii) to ensure that all premiums in respect of the Insurance Policy and renewals of the Insurance Policy are paid punctually;
  - (viii) to ensure that it does not at any time during the duration of the Licence do or bring upon the Licence Area anything where the Insurance Policy may be rendered void or voidable; and
  - (ix) to ensure that if the Licensee does anything or brings anything onto the Licence Area where the rate of premium on the Insurance Policy will be liable to be increased, the Licensee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Licence Area is put by the Licensee.

## **7. SUSPENSION OR TERMINATION OF LICENCE**

### **7.1 DEFAULT AND OTHER MATTERS**

- (a) This Licence and the rights granted to the Licensee pursuant to it:
- (i) may be suspended (in whole or in part) by the Licensor by notice in writing to the Licensee if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence and the breach has not been remedied by the Licensee within:

- (A) if the Licensee is carrying out an Excluded Act or is accessing Excluded Land, 24 hours after service of the notice from the Licensor requiring the Licensee to remedy the breach or non-observance;
- (B) if the Licensor determines in its absolute discretion that the breach is, or is likely to be, hazardous to the health, life, safety or property of any person or to the environment, such cure period as the Licensor specifies in its notice; or otherwise
- (C) 28 days after service of the notice from the Licensor requiring the Licensee to remedy the breach or non-observance;

or

(ii) is suspended if the Licensee:

- (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
- (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
- (D) being a company, is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this clause 7.1(a)(ii) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or

- (E) is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Licensee is to be under special administration.

- (b) Where the Licensee remedies the breach or non-observance to the satisfaction of the Licensor under clause 7.1(a)(i) or the Licensor is satisfied that clause 7.1(a)(ii) no longer applies and clause 7.1(c) does not apply, the Licensor will, by notice in writing and within 14 days of the Licensor being so satisfied, lift the suspension.
- (c) This Licence and the rights granted to the Licensee pursuant to it terminate immediately if:
  - (i) the Licensee ceases to exist; or

- (ii) the Licensee ceases to be appointed as the Regional Corporation for the ILUA Area pursuant to the Noongar Boodja Trust Deed;
- (iii) the ILUA is terminated or expires; or
- (iv) amendments to the LAA commence which:
  - (A) the Licensee and the Licensor have agreed in writing provide the Licensee's Members with appropriate access to, and use of, the Licence Area for Aboriginal Customary Purposes; or
  - (B) the Minister for Lands, acting reasonably, has determined provide substantially similar or greater access to and use of the Licence Area by the Licensee's Members for Aboriginal Customary Purposes;

whichever is earlier.

- (d) The Parties to this Licence may agree in writing to terminate this Licence at any time.
- (e) No compensation or money is payable to, or recoverable by, the Licensee or the Licensee's Members from the Licensor for termination or suspension of the Licence under this clause.
- (f) Any termination of the Licence under this clause:
  - (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and
  - (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

## **7.2 LICENSOR'S RIGHT TO ENTER AND TO REMEDY**

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 28 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this deed, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
  - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and
  - (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

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## **8. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION**

### **8.1 OBLIGATION TO REMOVE PROPERTY AND RESTORE**

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
  - (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's reasonable satisfaction;
  - (ii) promptly make good to the reasonable satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in clause 8.1(a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area and paving or resurfacing the Licence Area to the Licensor's satisfaction; and
  - (iii) remediate any Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora permitted by this Licence) to the Licence Area or the Surrounding Area caused by the Licensee, the Licensee's Members or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under clause 8.1(a) will survive the expiration of the Term or other termination of this Licence.

### **8.2 FAILURE TO REMOVE**

If the Licensee's Property is not removed in accordance with clause 8.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 8.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;
- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 8.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under clause 8.2(c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.
- (e) The Licensor's rights under this clause 8.2 will survive the expiration of the Term or other termination of this Licence.

### 8.3 CLAUSE 8 DOES NOT PERMIT CONSTRUCTION ETC ON THE LICENCE AREA

Nothing in this clause permits the construction or erection of anything on the Licence Area in contravention of clause 4.1(c) to which sections 270, 271 and 272 of the LAA or the provisions of clause 8.2 apply mutatis mutandis.

## 9. NO ASSIGNMENT

- (a) The rights granted by this Licence are for the benefit of the party named as 'Licensee' and the Licensee's Members in this Licence.
- (b) The Licensee must not:
  - (i) assign or transfer its rights under this Licence or grant any sublicense of the Licence Area, to any person; or
  - (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.
- (d) For the purposes of clause 9(b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

## 10. GENERAL PROVISIONS

### 10.1 NOTICES

- (a) Any notice that must or may be served under or pursuant to this Licence:
  - (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
  - (ii) will be sufficiently served on:
    - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 3 of Schedule 1 or such other address as is notified by the Licensor to the Licensee; and
    - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 4 of Schedule 1 or such other address as is notified by the Licensee to the Licensor.
- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.

- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

## **10.2 EFFECT OF WAIVER**

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

## **10.3 GOVERNING LAW**

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the exclusive jurisdiction of the Courts of Western Australia.

## **10.4 VARIATION**

This Licence cannot be altered or varied by the Parties except by deed.

## **10.5 SEVERABILITY**

If any provisions of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.

## **10.6 DISPUTES**

Subject to clause 2.11, the provisions of clause 15 of the ILUA will apply to any disputes between the Parties in respect of this Licence.

## **10.7 FORCE MAJEURE**

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.



- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this Agreement shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.

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**SCHEDULE 1**

<b>ITEM</b>	<b>TERM</b>	<b>DEFINITION</b>
<b>1(a)</b>	<b>Licence Area</b>	Subject to clause 2.8 the Licence Area means, at the Relevant Time, all Land in the ILUA Area which is Unallocated Crown Land or Land in an Unmanaged Reserve (UMR), other than Land which is Excluded Land.
<b>1(b)</b>	<b>Excluded Land</b>	<p>The following categories of Land are not permitted to be accessed under this Licence:</p> <ul style="list-style-type: none"> <li>(a) Exclusive Use Land;</li> <li>(b) Section 8A land if the relevant Section 8A agreement does not permit the Licensee's Members to do the Permitted Acts for an Aboriginal Customary Purpose;</li> <li>(c) Land in an UMR the care control and management of which has been placed with a person or persons under an Act other than the LAA;</li> <li>(d) Land in respect of which the State has, in a Government Agreement, agreed not to grant any rights in the Land under the LAA or otherwise;</li> <li>(e) Land in respect of which it would be contrary to any Law to grant this Licence;;</li> <li>(f) any Land: <ul style="list-style-type: none"> <li>i that is Subject Land; or</li> <li>ii that is Land covered by a Government Agreement including Land in respect of which there is in force a mining or mineral tenement or Title granted or held pursuant to a Government Agreement; or</li> <li>iii in respect of which there is in force: <ul style="list-style-type: none"> <li>(A) a mining lease, general purpose lease, miscellaneous licence under the Mining Act,</li> <li>(B) a mining tenement referred to in s 5(2)(a) of the Mining Act;</li> <li>(C) a right of occupancy referred to in s 5(2)(b) of the Mining Act;</li> <li>(D) a petroleum retention lease, petroleum production licence, geothermal retention lease, geothermal production licence or a drilling reservation under the PGER Act;</li> <li>(E) a Notified Interest;</li> </ul> </li> </ul> </li> </ul> <p>unless there is in force a written agreement (an <b>Access Agreement</b>) between the Licensee and each tenement holder or, in the case of a Government Agreement or otherwise, the</p>

non-government parties (the **Title Holder**) under which the Title Holder consents to access to the Access Area under this Licence by the:

(i) Licensee's Members to undertake some or all of the Permitted Acts on the Access Area for an Aboriginal Customary Purpose; and

(ii) Licensee's Agents as contemplated in clause 2.1(f).

Where any of Items 1(b)(a) to 1(b)(e) apply to an area of Land, Item 1(b)(f) does not apply to that Land.

(g) any area of Land excluded from the Licence Area pursuant to clauses 2.4 to 2.5.

(Refer also to clause 2.3)

- |           |  |   |
|-----------|--|---|
| <b>2.</b> | <b>Date of Commencement</b>                      | [The date this Licence is executed by the last Party]   |
| <b>3.</b> | <b>Licensor's Address for Service of Notices</b> | Minister for Lands<br>C/- Department of Lands<br>140 William Street<br>Perth WA 6000<br><br>Attention: Director General of the<br>Department of Lands |
|           | <b>Facsimile No:</b>                             | (08) 6552 4417  |
| <b>4.</b> | <b>Licensee's Address for Service of Notices</b> | [enter full name and address of Licensee]   |
|           | <b>Facsimile No:</b>                             | [#]   |
| <b>5.</b> | <b>Insurance Amount</b>                          | \$ 20,000,000.00  |

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## SCHEDULE 2

### Excluded Acts

#### 1. Excluded Acts: animals

- (1) In this item—

**poison risk area** means an area shown on a poison risk map in which poison baits to control vertebrates may be present;

**poison risk map** means a map produced by the Department of Parks and Wildlife that—

- (a) shows poison risk areas; and
  - (b) is available for inspection by the public during normal office hours at each district office of that department nearest to a poison risk area.
- (2) Bringing an animal on to the Licence Area is an Excluded Act if the Land is in a poison risk area.

#### 2. Excluded Acts: Vehicles

Driving or riding a vehicle on the Licence Area is an Excluded Act if the vehicle is driven or ridden on Land other than on a Public Road or a Track.

#### 3. Excluded Acts: fire

- (1) The lighting or kindling a fire is an Excluded Act if the fire is lit or kindled on Recreational Land, Urban Land, or in a Camping Area where the lighting of fires is not permitted.
- (2) The lighting or kindling a fire is an Excluded Act unless it is lit or kindled—
- (a) for the purpose of cooking food; or
  - (b) for the purpose of a camp fire; or
  - (c) for the purpose of a ceremonial activity, such as a smoking ceremony;
- and during which activity the fire is confined to an area of less than 1m<sup>2</sup>.
- (3) The lighting or kindling a fire is an Excluded Act if:
- (a) it is not safe and reasonable to do so; or
  - (b) the fire is lit or kindled or left without taking due precaution against it spreading or causing injury to:
    - (i) Flora and Fauna in the vicinity;
    - (ii) structures in the vicinity.

#### 4. Excluded Acts: Camping temporarily

- (1) Camping temporarily on the Licence Area is an Excluded Act if the person Camps on the Land for a period of more than 14 consecutive days;

- (2) Camping temporarily on the Licence Area is an Excluded Act if the person Camps on the Land and the Land is:
  - (i) Recreational Land or Urban Land;
  - (ii) a road or track;
- (3) Camping temporarily on part of the Licence Area is an Excluded Act if less than 14 days has elapsed since the person last Camped temporarily on that part or in the vicinity of that part of the Licence Area.

#### **5. Excluded Acts: Prescribed Things**

- (1) Taking of Fauna (including non-indigenous Fauna) other than Fish is an Excluded Act if the Fauna is Taken on Land that is Recreational Land or Land that is, or is within 500 metres of a Camping Area or Urban Land.
- (2) Taking Flora is an Excluded Act if the Flora is Taken on Recreational Land or in a Camping Area.
- (3) The Taking of Fish in an area which has been designated as an area in which fishing is restricted is an Excluded Act if the Fish are taken in contravention of that restriction.

#### **6. Excluded Act: Conducting Large Meetings**

Conducting a Meeting which involves, or is likely to involve, the attendance of more than the number of persons specified in r 16(2)(b) of the Regulations at the Relevant Time is an Excluded Act.

#### **7. Excluded Act: discharge of firearms or other weapon**

Discharging any firearm or other weapon on the Licence Area is an Excluded Act.

#### **8. Excluded Act: local area restrictions**

Undertaking a Permitted Act in contravention of a sign placed on Land within the Licence Area pursuant to subregulation 9(1)(b) of the Regulations is an Excluded Act.

#### **9. Excluded Act: Restrictions imposed by an Access Agreement**

Where an Access Agreement is in place and:

- (1) the Title Holder does not consent to the Licensee's Members undertaking a Permitted Act in the Access Area under this Licence; or
- (2) the Permitted Act is done contrary to a condition imposed by the Access Agreement,

that Permitted Act is an Excluded Act.

**EXECUTED AS A DEED**

**The Common Seal of** )  
**MINISTER FOR LANDS** )  
was hereunto affixed by me )

\_\_\_\_\_

MINISTER FOR LANDS  
In the presence of:

.....  
Witness

**EXECUTED** by the Licensee in accordance )  
with section 99-5 of the *Corporations* )  
(*Aboriginal and Torres Strait Islander*) Act )  
2006 (Cth) on behalf of [XX - Insert name of )  
**Corporation**]:

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Director or Secretary (signature)  
(Delete whichever is not applicable)

\_\_\_\_\_  
Director (print full name)

\_\_\_\_\_  
Director or secretary (print full name)

\_\_\_\_\_  
Date

## **Annexure P**

### **Part 1 - Housing Authority - Property Transfer Deed**

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HOUSING AUTHORITY  
AND  
TRUSTEE OF THE NOONGAR BOODJA TRUST  
AND  
LAND SUB

---

**PROPERTY TRANSFER DEED**

---

Housing Authority  
99 Plain Street  
EAST PERTH WA 6004



**THIS DEED** is made on [insert date and year]

**BETWEEN** Housing Authority, a statutory authority constituted under the *Housing Act 1980*, of 99 Plain Street, East Perth, Western Australia (**Authority**).

**AND** The Trustee of the Noongar Boodja Trust (Insert ACN) of [address], Western Australia (**NBT**)

**AND** [Insert details] of [address] (**Land Sub**)

## **BACKGROUND**

- A. This Deed is entered into pursuant to the SW ILUAs.
- B. As part of the settlement of the Native Title Claims the Authority intends to transfer the Properties to the Land Sub.
- C. The Parties acknowledge that as part of the intended transfer of up to 121 properties to the Land Sub, the Authority will also make available to the NBT funding for the refurbishment and/or demolition of properties under a funding agreement to be entered into by the Parties.

## **THE PARTIES AGREE AS FOLLOWS**

### **1 DEFINED TERMS AND INTERPRETATION**

#### **1.1 Definitions**

In this Deed, unless the contrary intention appears:

**Asbestos** has the meaning given in the *Occupational Safety and Health Regulations 1996* (WA);

**Building Condition Assessment** means a property assessment referencing the requirements of, and compliance with the National Construction Code 2013 prepared for each Property by a building surveyor appointed by the Authority and provided to the NBT as part of the transfer of the Property to the Land Sub;

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks in Western Australia are open for general business;

**Commencement Date** means 60 Business Days after either the declaration of the NBT or the incorporation of the Land Sub, whichever is the later;

**Compensation** has the meaning given to it in the SW ILUAs;

**Contamination** has a corresponding meaning to “contaminated” as defined in the *Contaminated Sites Act 2003* (WA);

**Deed** refers to this Property Transfer Deed, including its recitals, the schedules and annexures (if any);

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing;

**ILUA** means an Indigenous Land Use Agreement and has the meaning given to it by the NTA;

**Land Sub** has the meaning given in the Settlement Terms.

**Like to Like Model** refers to the basis on which the Authority may propose a Substitute Property to replace a Property in Schedule 1 being that in the reasonable opinion of the Authority the Substitute Property has substantially similar attributes;

**Native Title Agreement Groups** has the meaning given in the Settlement Terms;

**NTA** means the *Native Title Act 1993* (Cth);

**Native Title Claims** means the following native title claims in South West Western Australia:

- Ballardong (WAD 6181/98);
- Gnaala Karla Booja (WAD 6274/98);
- South West Boojarah (WAD 253/2006);
- Harris Family (WAD 6085/98);
- Wagyl Kaip (WAD 6286/98);
- Southern Noongar (WAD 6134/1998);
- Whadjuk (WAD 242/11); and
- Yued (WAD 6192/98);

**Party** means any of the Authority, the NBT or the Land Sub, as the case requires, and **Parties** means all of them;

**Properties** mean the land or land and improvements in Schedule 1 to be transferred and **Property** means any individual such land or land and improvements and refers to Substitute Property as applicable;

**Property Settlement** means the delivery of possession of the Property by the Authority to the Land Sub;

**Property Settlement Date** means the date nominated by the Authority from time to time in accordance with clause 6;

**Relevant Authority** means any body or corporation or any municipal, government, statutory or non-statutory authority or body having authority or jurisdiction over the Property or to whose systems the Property is connected at any time;

**Schedule 1** means the schedule to this Deed which identifies each of the Properties intended for transfer from the Authority to the Land Sub after the Commencement Date;

**Settlement Terms** means the settlement terms attached to the SW ILUAs at Schedule 9;

**Substitute Property** refers to a replacement property that replaces a Property identified in Schedule 1 for the purpose of transfer in accordance with clause 5;

**SWALSC** means the South West Aboriginal Land & Sea Council Aboriginal Corporation (ICN 3832);

**SW ILUAs** means each of the six ILUAs entered into by the Native Title Agreement Groups, SWALSC, the State and others in relation to the settlement of the Native Title Claims including the Settlement Terms; and

**Transfer** means the instrument required to transfer each Property to the Land Sub in a form acceptable for registration by Landgate, subject to signing by all Parties.

## 1.2 Interpretation

(a) In this document:

- (i) headings are for reference only and do not affect interpretation;
- (ii) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (iii) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (iv) no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for its drafting;
- (v) examples and use of the word 'including' and similar expressions do not limit what else may be included;
- (vi) nothing contained in this Deed will be deemed or construed as creating the relationship of partnership or of principal and agent;
- (vii) if a Party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Deed; and

(b) Unless the context requires otherwise, a reference in this document to:

- (i) a Party to any document includes that person's successors and permitted substitutes and assigns;
- (ii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (iii) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (iv) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (v) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (vi) time is to Perth, Western Australia time unless stated otherwise;
- (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and

(viii) clause headings are for convenience only and will be ignored in the interpretation of this Deed.

## **2 TERM OF THIS DEED**

The term of this Deed commences on the Commencement Date and shall operate until the earlier of:

- (a) 60 Business Days after the last Property is transferred to the Land Sub; or
- (b) the termination date of the last SW ILUAs; or
- (c) a date fixed by written agreement between the Parties.

## **3 Relationship with SW ILUAs**

- (a) The Parties acknowledge and accept the terms of clauses 9.6, 9.7 and 10 of the SW ILUAs and how the operation of those clauses may affect this Deed.
- (b) Where any one or more of clauses 9.6, 9.7 and 10 applies in any one or more SW ILUAs the Authority will not, in accordance with the relevant clause, transfer Properties under this Deed that are located in any area that is covered by that or those SW ILUAs.

## **4 TRANSFER OF PROPERTY**

### **4.1 The Properties**

Subject to clause 3 and clause 5, the Authority agrees to transfer and the Land Sub agrees to accept an estate in fee simple in each of the Properties referred to in Schedule 1:

- (a) on the terms and conditions in this Deed; and
- (b) without limiting paragraph (a) above, for no monetary consideration but as part of the Compensation.

### **4.2 Time to effect transfer**

- (a) The process for transfer of Properties shall commence on the Commencement Date and shall be completed within a period of five (5) years.
- (b) Notwithstanding subclause (a), the Parties agree that the period in which any Property may be transferred may be extended:
  - (i) for a further two (2) year period where there are exceptional circumstances, as determined solely by the Authority; or
  - (ii) by written agreement between the Parties.

### **4.3 Part of Transfer**

The Authority will, as part of the transfer of each Property, provide to the Land Sub a Building Condition Assessment for each of the Properties except where the Property comprises vacant land.

## **5 SUBSTITUTE PROPERTY**

- (a) The Authority may propose, in writing, a Substitute Property in place of any of the Properties in Schedule 1.
- (b) Any Substitute Property proposed by the Authority will be, in so far as practicable, determined solely by the Authority based on the Like to Like Model.
- (c) If the Authority proposes a Substitute Property then the Land Sub must within 20 Business Days of receipt of the notice to substitute a Property, indicate whether it will accept the Substitute Property.
- (d) If the Land Sub refuses to accept the Substitute Property then Schedule 1 is reduced by that one Property.
- (e) The terms and conditions of this Deed will apply to any Substitute Property.

## **6 PROPERTY SETTLEMENT**

### **6.1 Nomination of Property Settlement Date**

- (a) The Authority, in its absolute discretion, will determine when a Property is available for transfer.
- (b) As each Property becomes available for transfer, the Authority will provide written notice to the NBT nominating a Property Settlement Date.

### **6.2 Property Settlement Process**

- (a) No later than 14 days prior to the Property Settlement Date, the Authority will arrange for the Transfer to be prepared and provided to the NBT.
- (b) No later than 5 days prior to Property Settlement Date, the NBT must:
  - (i) cause the Land Sub to sign the Transfer;
  - (ii) arrange for the Transfer to be endorsed by the Office of State Revenue; and
  - (iii) deliver the Transfer endorsed by the Office of State Revenue to the Authority; and
  - (iv) deliver to the Authority a photocopy of the Deed showing payment of any duty payable.
- (c) Property Settlement will take place at such time and place nominated by the Authority or as otherwise agreed to by the Parties.
- (d) The Parties must complete the Property Settlement on the Property Settlement Date or on any other date agreed to by the Parties.

### **6.3 Post Property Settlement**

- (a) The Authority must lodge the Transfer and every other document required to enable Transfer to be registered at Landgate after the Property Settlement Date and the Authority must use its best endeavours to ensure that Transfer is registered as soon as possible.

- (b) If a requisition notice is issued by Landgate in relation to the registration of the Transfer or any other document which is lodged for registration with the Transfer, the Parties must immediately do everything reasonably necessary to satisfy the requirements of the requisition notice.
- (c) Where a requisition notice is issued by Landgate in respect of a document prepared by or on behalf of the Authority, the Authority will pay the fee required by Landgate in respect of that requisition notice.

## **7 POSSESSION AND RISK**

### **7.1 Possession**

The Land Sub will be entitled to and the Authority will deliver to the Land Sub possession of the Property on Property Settlement.

### **7.2 Risk**

Notwithstanding any rule of law or in equity to the contrary, each Property is at the risk of the Land Sub in all respects (including without limitation, any damage to or destruction thereof) from the Property Settlement or from the date the Land Sub is entitled to or is given possession of the Property, whichever of these is the earlier.

## **8 TITLE**

### **8.1 Inspection of title**

The Certificate of Title in respect of each Property may be inspected by search at Landgate and neither the NBT nor the Land Sub is entitled to require the Authority to produce an abstract of title or any other evidence of the Authority's title or right to transfer each Property.

### **8.2 No requisitions on title**

Neither the NBT nor the Land Sub are entitled to give the Authority a written statement of objections to or requisitions on the title of any Property.

## **9 ERROR OR MISDESCRIPTION**

### **9.1 Meaning of error or misdescription**

An error or misdescription of any Property means an error or misdescription in Schedule 1 or the Building Condition Assessment of:

- (a) a physical structure or physical feature of that Property;
- (b) a boundary of that Property; or
- (c) the area of that Property.

### **9.2 No termination or delay in the Property Settlement**

An error or misdescription of any Property in Schedule 1 or the Building Condition Assessment shall not:

- (a) entitle the NBT or the Land Sub to terminate this Deed;
- (b) entitle the NBT or the Land Sub to a Substitute Property;

- (c) result in any deferment or delay in Property Settlement; or
- (d) entitle the NBT or the Land Sub to any compensation.

## **10 ENCUMBRANCES**

Each Property is transferred to the Land Sub subject to the following:

- (a) any lease, easement, restrictive covenant or other right granted by the Authority at any time in favour of any other person or any Relevant Authority;
- (b) any easements, positive covenants, restrictive covenants, memorials (and any condition or statement contained in the memorial), rights, reservations, conditions and notifications lodged pursuant to any Act and interests, orders, tenancies, public roads and encroachment (if any) affecting each Property and which are mentioned in the Certificate of Title or which shall be mentioned or registered upon lodgement of the Transfer of each Property to the Land Sub at Landgate; and
- (c) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Property by any local, state or federal government department or Relevant Authority or under any legislation,

and neither the NBT nor the Land Sub may make any objection, delay or refuse to effect Property Settlement or make any claim for compensation or damages arising from the matters specified in this clause 10.

## **11 DIVIDING FENCES**

### **11.1 Boundaries**

All fences and walls purporting to be on the boundaries of each Property will, as between the NBT, the Land Sub and the Authority, be deemed to be upon their survey boundaries and if any fence or wall is found, whether prior or subsequent to transfer, not to be on its true boundary, neither the NBT nor the Land Sub will be entitled to any compensation from or have any claim against the Authority.

### **11.2 No claim for dividing fences**

- (b) Both the NBT and the Land Sub acknowledge and accept the state and condition of any boundary fence or wall erected on each Property as is, and for the avoidance of doubt, the NBT and the Land Sub acknowledge that the Authority has no obligation to:
  - (i) erect a new boundary fence or wall if no boundary fence or wall is in place at Property Settlement; or
  - (ii) replace or repair any existing boundary fence or wall, unless the Authority has been notified in writing of a claim by an adjoining owner (other than the Land Sub), prior to transfer of a Property to the Land Sub, in which case:
    - (A) the Authority undertakes to notify the NBT and the Land Sub in writing of that claim as soon as practicable after being notified of the claim; and
    - (B) the Authority agrees to complete the works required pursuant to that claim at its cost.

- (c) Neither the NBT nor the Land Sub may make any claim against the Authority pursuant to the *Dividing Fences Act 1961 (WA)* or however else concerning:
  - (i) the construction of or contribution to the cost of construction of any dividing fences or walls;
  - (ii) the repair and maintenance of or contribution to the costs of repair and maintenance of any dividing fences or walls; or
  - (iii) any other liability in respect of a dividing fence or wall including any liability the Authority may have incurred to any adjoining owners.

### **11.3 Contribution from adjoining owners**

Where the Authority is entitled under the *Dividing Fences Act 1961 (WA)* to recover from an adjoining land owner part of the costs of erecting or repairing a boundary fence or wall on the Properties but has not done so on or before Property Settlement, both the NBT and the Land Sub must assist or facilitate the Authority's recovery of such costs as required by the Authority after Property Settlement.

## **12 RATES AND TAXES**

- (a) If each Property is separately rated by the Relevant Authority before Property Settlement then the outgoings payable by the Parties shall be apportioned on Property Settlement.
- (b) If each Property is not separately rated by the Relevant Authority before Property Settlement, then the applicable outgoing will be adjusted at the Authority's election, either:
  - (i) at Property Settlement by calculating the outgoings in a manner that the Authority considers fair and reasonable including having regard to the area of each Property and the area of the land to which the assessment of the Relevant Authority relates; or
  - (ii) after Property Settlement when the relevant information becomes available from the Relevant Authority.
- (c) The Authority will pay each outgoing payable up to and including the date of Property Settlement and the Land Sub will pay each outgoing payable after Property Settlement.

## **13 NBT'S AND LAND SUB'S ACKNOWLEDGEMENTS**

### **13.1 Property transferred 'as is'**

The NBT and the Land Sub acknowledge and agree:

- (a) that each Property is transferred 'as is, where is' and with all faults, defects and characteristics whether they are apparent or ascertainable on inspection or not, and without any obligation on the Authority to disclose or particularise any faults, defects or characteristics known to the Authority;
- (b) no warranty or representation has been given or made to the NBT or the Land Sub by the Authority or any of its agents, employees or contractors or any other person on its behalf as to:



- (i) the title to each Property;
  - (ii) any encumbrance, restriction or right in favour of any third party affecting each Property;
  - (iii) the condition or state of repair of each Property.
- (c) the Authority will not be liable under any circumstances to make any allowance or compensation to the NBT or the Land Sub by the exclusion of warranties or representations in the Deed or for any fault, defect or characteristic in each Property; and
- (d) the NBT and the Land Sub have thoroughly read and understood this Deed and had the opportunity to produce this Deed to professional advisors for the purpose of receiving independent legal and/or financial advice.

### **13.2 Own enquiries**

The NBT and the Land Sub acknowledge that by the Land Sub accepting a transfer of an estate in fee simple in each Property and entering into this Deed each of them will be taken to have satisfied themselves:

- (a) by physical examination and inspection and all other necessary enquiries and relying on the opinion or advice of such experts as it may wish to consult as to the state, condition, quality and quantity of each Property;
- (b) by enquiry of all Relevant Authorities as to the zoning of each Property and the use to which each Property or any other land adjoining or in the vicinity of each Property may be put;
- (c) as to the easements, restrictive covenants, notifications, memorials or other contracts or encumbrances to which each Property may be or become subject;
- (d) as to the requirements of each and every authority, body or government department which has control or jurisdiction over each Property and the current and prospective use and development of each Property;
- (e) by independent valuations or reports as to the value of each Property provided by the Authority and as to the present and future feasibility, liability and economic return that may be derived from each Property; and
- (f) by survey and physical examination as to the area including the boundaries of each Property and not relying on the position of any pegs purporting to mark the boundary,

and shall be deemed to accept the transfer of an estate in fee simple in each Property in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement or representation whatsoever made or alleged to have been made to the NBT or the Land Sub by the Authority or any of its employees, contractors or agents.

### **13.3 Planning acknowledgement**

The NBT and the Land Sub acknowledge that each Property is transferred subject to the following as at the Property Settlement Date:

- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting each Property;
- (b) any orders or requisitions affecting each Property;
- (c) any proposal or scheme for the widening, realignment, closure, setting or alteration of the level of any road or right of way adjacent to or in the vicinity of each Property by any competent authority or person;
- (d) any resumption or proposal to resume each Property or any adjoining or other land; and
- (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance mentioned in clause 10 affecting each Property or which shall affect each Property on registration of the Transfer of each Property to the Land Sub,

and the Land Sub will take title subject to the above and shall not be entitled to make any objection, requisition or claim for compensation, in respect of any matter mentioned in this Deed.

#### **14 LIMITING OF LIABILITY**

Neither the NBT nor the Land Sub will make any objection or requisition or claim against the Authority for compensation or to rescind this Deed and the Authority will not be liable to indemnify the NBT or the Land Sub whatsoever and howsoever arising by reason of:

- (a) any Property being unsuitable for any particular purpose;
- (b) the area of any Property being different from the area indicated on any plan, brochure, material or other publication issued or published by the Authority or on the Authority's behalf or as indicated on the Certificate of Title to each Property;
- (c) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to each Property, or in respect of the fact that any services or connections may be joint services to any other land, or because any facilities for services for any other land pass through any Property;
- (d) any encroachment onto any Property by any improvement which does not form part of that Property, or the encroachment onto adjoining land of any improvement which forms part of any Property;
- (e) the location of any sewerage, water or drainage pipes or services affecting each Property or that any sewer passes through, or penetrates any Property;
- (f) the presence of Asbestos on any Property; or
- (g) the fact that the current use of any Property may not be an authorised use under any applicable zoning or use law, scheme or regulation.

#### **15 ENVIRONMENTAL MATTERS**

- (a) Notwithstanding any other provision contained in this Deed, the Parties mutually acknowledge and agree that some or all of the Properties contain Asbestos and that on and from Property Settlement the Land Sub bears all risk arising from and

responsibility for dealing with such Asbestos. For the avoidance of doubt, risk and responsibility arising from the existence of Asbestos in any Property prior to Property Settlement remains with the Authority.

- (b) Unless the Authority otherwise notifies the NBT in writing prior to Property Settlement, the Authority is not aware of the existence of any Contamination (except for the presence of Asbestos) in on or under each Property that would materially adversely affect the proposed use of each Property and the NBT and the Land Sub acknowledge and agree that on and from Property Settlement, the Land Sub will bear the risk and responsibility of dealing with any Contamination (pre-existing or otherwise) that may subsequently arise in on or under each Property in accordance with the terms of the *Contaminated Sites Act 2003* (WA).
- (c) The NBT and the Land Sub acknowledge and agree that:
  - (i) each of them shall be taken to have satisfied themselves by physical examination and inspection and all other necessary enquiries and by relying on the advice and opinions of such experts as the NBT and the Land Sub may wish to consult as to the geotechnical condition of each Property and each and every part of each Property; and
  - (ii) neither the NBT nor the Land Sub shall have any claim whatsoever against the Authority and the Authority will not indemnify the NBT or the Land Sub in respect of any geotechnical matter which may relate to the suitability of each Property for building purposes (including the compaction of soil or any fill) or any additional costs, losses or expenses that may be incurred by the NBT or the Land Sub in relation to its use or intended use of each Property as a result of the geotechnical condition of each Property.

## 16 NBT AND LAND SUB INDEMNITY

- (a) The NBT and the Land Sub jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
  - (i) a breach of this Deed by the NBT or the Land Sub;
  - (ii) any negligent or tortious act or omission of the NBT or the Land Sub arising out of or in connection with this Deed;
  - (iii) any breach by the NBT or the Land Sub of a State or Commonwealth law arising out of or in connection with this Deed; and
  - (iv) any third party claim arising out of or in connection with this Deed and only provided that risk in relation to the Properties has been transferred to the Land Sub in accordance with clause 7.2 of this Deed.

- (b) The NBT's or the Land Sub's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.
- (d) To the fullest extent available at law, each of the NBT and the Land Sub release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT or the Land Sub may suffer or incur in respect of or in connection with any of the matters referred to in clauses 9, 10, 12, 13, 14 and 15.
- (e) The NBT and the Land Sub acknowledge and agree that sub-clause (d) may be pleaded as an absolute bar to any relief, compensation or claim sought by the NBT or the Land Sub against the Authority.

## 17 DISPUTES AND MEDIATION

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Deed (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Deed has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent

jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012* (WA).

- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

## 18 GST

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Deed has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Deed by a party making a supply (**Supplier**), the recipient of that supply must pay an additional amount for GST (**GST Amount**) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.
- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.
- (i) If one of the Parties to this Deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Deed, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

- (j) In the event that non-monetary consideration is provided under this Deed, the Parties to this Deed will seek to agree upon the GST-exclusive market value of the non-monetary consideration and where appropriate, the Parties must apply clauses 18(b) to 18(h) (inclusive) in respect of any non-monetary consideration that is treated as a taxable supply.
- (k) Notwithstanding Clause 18(h), where non-monetary consideration is provided under this Deed, the Parties agree to issue a Tax Invoice to each other in respect of the non-monetary consideration that complies with the GST Act and where appropriate, the Tax Invoice must show any GST Amount payable.
- (l) Where the Parties agree to apply the margin scheme, the margin scheme will be applied to calculate the amount of GST on the sale of the Property by the Authority under this Deed. The purchaser acknowledges that it will not be entitled to an input tax credit for the acquisition of the Property under this Deed. Where any GST is payable under the margin scheme, clause 18(c) will apply.

## 19 COSTS AND DUTY

### 19.1 Legal and other costs

Each Party must bear its own legal costs in connection with the preparation, negotiation, execution and completion of this Deed.

### 19.2 Transfer duty and registration fee

- (a) Either the NBT or the Land Sub must pay (unless otherwise exempt) all duty payable under the *Duties Act 2008 (WA)* on this Deed and the Transfer.
- (b) The Authority must pay the cost of the preparation of the Transfer and the registration fee payable to Landgate on the Transfer.

## 20 NOTICES

- (a) Any notice or other communication which is required to be given or served under this Deed (**Notice**) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other Party.
- (b) Subject to paragraph (c), Notice is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the third Business Day after posting; and
  - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## 21 CONFIDENTIALITY

- (a) In this clause 21 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Deed:
  - (i) during negotiations preparatory to the execution of this Deed; and
  - (ii) during the term of this Deed,

that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.

- (b) Subject to the remainder of this clause 21, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
- (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
  - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
  - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;
  - (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information;
  - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;
  - (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
  - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
  - (vii) to a Regional Corporation (as defined in the SW ILUAs);
  - (viii) to SWALSC, and when appointed by the NBT, the Central Services Corporation (as defined in the SW ILUAs);
  - (ix) to the legislative or executive arms of the Government of Western Australia;
  - (x) to the extent required by law;
  - (xi) to a Court or tribunal of competent jurisdiction; and
  - (xii) as otherwise permitted or required by this Deed.
- (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
  - (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Deed;
  - (ii) before making any disclosure (other than under sub-clauses (c)(ix), (x) and (xi)), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that

that Party considers necessary to protect the confidentiality of that information; and

- (iii) in the case of a disclosure to a person or entity under sub-clause (c) (vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 21 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
- (i) it is aware that any breach of this clause 21 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
  - (ii) in the event of a suspected or actual breach of this clause 21, or of any obligation of confidentiality under this Deed, any aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 21; and
  - (iii) clause 17 of this Deed does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Deed does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

## **22 GENERAL PROVISIONS**

### **22.1 Assignment and Encumbrances**

- (a) No Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Deed in any circumstances.
- (b) The NBT and the Land Sub must not grant any encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Deed in any circumstances.

### **22.2 Entire agreement**

This Deed and the documents referenced herein constitute the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **22.3 Governing law and jurisdiction**

- (a) This Deed is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia.



## **22.4 Severance**

If any provisions of this Deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.

## **22.5 Waiver**

A right or power under this Deed shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasion by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

## **22.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed.

## **22.7 Counterparts**

This Deed may be executed in a number of counterparts. All counterparts together will be taken to constitute the one instrument. If this Deed is to be executed in counterparts the Parties must execute sufficient numbers for each of them to retain one instrument (as constituted by the counterparts).

## **22.8 Further action**

Each Party must use its best efforts to do all things necessary or desirable to give full effect to this Deed and the matters contemplated by it.

## **22.9 Survival**

Clauses 1, 9, 11, 12, 14, 15, 16, 18, 19.2 20, 21 and 22 survive termination of this Deed.

**EXECUTED** by the Parties as a deed on the \_\_\_\_\_ day of \_\_\_\_\_ 2014

The common seal of )  
the **Housing Authority** )  
was hereunto affixed in )  
the presence of the )  
DIRECTOR GENERAL )

\_\_\_\_\_  
Grahame John Searle

**THE COMMON SEAL of the** )  
**Noongar Boodja Trust** (Insert )  
ACN) was hereunto affixed in the )  
presence of: )

**[We will need the correct  
execution clause for  
the NBT]**

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Name of Authorised Person in full (block  
letters)

.....  
Name of Authorised Person in full  
(block letters)

**THE COMMON SEAL of Land Sub** )  
**ABN ##** was hereunto affixed in the )  
presence of: )

**[We will need the correct  
execution clause for  
the Land Sub]**

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Name of Authorised Person in full (block  
letters)

.....  
Name of Authorised Person in full  
(block letters)

# SCHEDULE 1

Certificate of Title Details					
	Lot No.	Deposited Plan No.	Volume No.	Folio No.	Portion of Land
1					Whole
2					Whole
3					Whole
4					Whole
5					Whole
6					Whole
7					Whole
8					Whole
9					Whole
10					Whole
11					Whole
12					Whole
13					Whole
14					Whole
15					Whole
16					Whole
17					Whole
18					Whole
19					Whole
20					Whole
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22					Whole
23					Whole
24					Whole
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26					Whole
27					Whole
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29					Whole
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31					Whole
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38					Whole
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111					Whole
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114					Whole
115					Whole
116					Whole
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118					Whole
119					Whole
120					Whole
121					Whole

**Part 2 – General Particulars of the Housing Properties**

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## General Particulars of the Properties (Clause 14)

No.	Dwelling Type	SUBURB/TOWN	Year Built	Bedrooms	Lot Size	Construction Material	Occupied	Valuation	Valuation Integrity*
1	SD	<b>KARRINYUP</b>	1972	3	872	MM	Yes	\$780,000	3.2
2	SD		1972	3	883	MM	Yes	\$780,000	3.2
3	SD		1964	4	997	MT	Yes	\$820,000	3.2
4	SD	<b>BASSENDAN</b>	1973	5	1012	MM	Yes	\$560,000	3.1
5			1970	4	748	MP	No	\$410,000	3.1
6	SD	<b>BALGA</b>	1972	3	809	MT	Yes	\$325,000	3.1
7			1966	3	773	MT	Yes	\$320,000	3.1
8	SD	<b>EDEN HILL</b>	1968	4	756	MT	Yes	\$355,000	3.1
9	SD		1968	4	756	MT	Yes	\$345,000	3.1
10	SD		1968	4	750	MT	Yes	\$380,000	3.1
11	SD	<b>HAZELMERE</b>	1970	3	983	MT	Yes	\$400,000	3.1
12	SD	<b>MIDLAND</b>	1972	4	1052	MM	Yes	\$405,000	3.2
13	SD		1969	4	1011	MT	Yes	\$500,000	3.1
14	SD	<b>NOLLAMARA</b>	1960	3	809	MT	Yes	\$480,000	3.1
15	SD		1972	3	825	MT	Yes	\$470,000	3.1
16	SD	<b>MIDDLE SWAN</b>	2010	8	867	MM	Yes	\$405,000	3.2
17	SD		1996	3	728	MM	Yes	\$300,000	3.1

18	SD	<b>EMBLETON</b>	1972	3	825	MM	Yes	\$440,000	3.1
19	SD	<b>EMBLETON</b>	1970	4	708	MT	Yes	\$430,000	3.1
20	SD		1972	3	786	MT	Yes	\$360,000	3.1
21	SD		1972	3	692	MT	Yes	\$420,000	3.1
22	SD	<b>BAYSWATER</b>	1968	4	1117	MT	Yes	\$600,000	3.1
23	SD	<b>LOCKRIDGE</b>	1972	3	727	MT	Yes	\$295,000	3.1
24	SD		1972	3	740	MT	Yes	\$300,000	3.1
25	SD		2010	6	883	MM	Yes	\$440,000	3.2
26	SD	<b>KOONGAMIA</b>	1966	3	576	MT	Yes	\$320,000	3.1
27	SD	<b>SOUTH GUILDFORD</b>	1968	4	845	MT	Yes	\$510,000	3.1
28	SD		1969	4	785	MT	Yes	\$510,000	3.1
29	SD	<b>HAMILTON HILL</b>	1972	3	754	MT	Yes	\$400,000	3.3
30	SD		1972	3	992	MT	Yes	\$420,000	3.3
31	SD		1962	3	728	MT	Yes	\$420,000	3.3
32	SD		1972	3	734	MT	No	\$420,000	3.3
33	LAND		N/A	N/A	1012	N/A	N/A	\$420,000	3.3
34	SD	<b>COOLBELLUP</b>	1972	3	760	MM	Yes	\$370,000	3.1
35	SD		2010	2	794	MM	Yes	\$350,806	3.3
36	SD		1972	4	760	MT	Yes	\$365,000	3.3
37	SD		1966	3	837	MT	Yes	\$375,000	3.3
38	SD		1972	3	728	WT	Yes	\$390,000	3.3
39	SD		1967	3	711	MT	No	\$350,000	3.3
40	SD	<b>FORRESTFIELD</b>	1972	3	1011	MT	Yes	\$360,000	3.1
41	SD		1972	3	1021	MT	Yes	\$395,000	3.1
42	SD		1972	3	1024	MT	Yes	\$360,000	3.1
43	LAND		N/A	N/A	1026	N/A	N/A	\$360,000	3.1



44	SD	<b>QUEENS PARK</b>	1972	3	664	MT	Yes	\$345,000	3.2
45	SD	<b>KEWDALE</b>	1969	4	850	MT	Yes	\$400,000	3.2
46	SD	<b>WILSON</b>	1972	3	811	MM	Yes	\$475,000	3.2
47	SD		1972	3	927	MM	Yes	\$530,000	3.2
48	SD		1993	4	783	MM	Yes	\$550,000	3.2
49	SD	<b>BELMONT</b>	1972	3	1004	MM	Yes	\$500,000	3.2
50	SD	<b>RIVERVALE</b>	1968	4	910	MT	Yes	\$560,000	3.2
51	SD	<b>ARMADALE</b>	1970	4	817	MT	Yes	\$234,000	3.3
52	SD		1972	3	971	MT	Yes	\$234,000	3.3
53	SD		1972	3	894	MT	Yes	\$255,000	3.3
54	SD	<b>MADDINGTON</b>	1969	4	961	MT	Yes	\$275,000	3.3
55	SD		1975	4	809	MT	Yes	\$305,000	3.3
56	SD		1970	4	1011	MT	No	\$325,000	3.3
57	SD	<b>CLOVERDALE</b>	1972	3	709	MT	Yes	\$375,000	3.2
58	SD		1972	4	668	MT	Yes	\$300,000	3.2
59	SD		1972	3	741	MT	Yes	\$310,000	3.2
60	SD		1972	3	648	MT	Yes	\$320,000	3.2
61	SD		2010	5	658	MM	Yes	\$480,000	3.2
62	SD	<b>BECKENHAM</b>	1970	4	806	MT	Yes	\$400,000	3.3
63	LAND	<b>MORLEY</b>	N/A	N/A	1012	N/A	N/A	\$500,000	3.1
64	Duplex	<b>CANNINGTON</b>	1972	2 + 2	1010	MM/MT	Yes	\$520,000	3.2

65	Duplex	<b>PINJARRA</b>	1992	2 + 2	1173	MM	Yes	\$340,000	3.4
66	SD	<b>NORTHAM</b>	1988	3	1011	MS	Yes	\$230,000	3.3
67	SD		1992	4	1011	MS	Yes	\$235,000	3.3
68	SD		1992	3	935	MT	Yes	\$237,000	3.3
69	SD		2000	3	829	MS	Yes	\$248,000	3.3
70	SD		1992	4	960	MS	Yes	\$250,000	3.3
71	SD		1995	4	928	MT	Yes	\$202,000	3.3
72	SD		1991	4	849	MT	Yes	\$217,000	3.3
73	SD		1966	3	792	AT	Yes	\$85,000	3.3
74	SD		1969	3	1039	AT	No	\$177,000	3.3
75	SD	<b>MERREDIN</b>	1995	4	1011	MT	Yes	\$201,000	3.3
76	SD	<b>ALBANY</b>	2006	4	729	MM	Yes	\$360,000	3.3
77	SD	<b>TAMBELLUP</b>	1984	4	1063	MT	Yes	\$107,000	3.5
78	SD	<b>GNOWANGERUP</b>	2001	4	961	MP	Yes	\$131,000	3.1
79	SD		2006	4	960	MS	Yes	\$141,000	3.1
80	SD		1980	1	1013	MM	No	\$100,000	3.1
81	SD	<b>MOUNT BARKER</b>	1996	4	1373	MT	Yes	\$182,000	3.5
82	SD		1996	4	1377	MT	Yes	\$182,000	3.5
83	SD		1996	5	2022	MS	Yes	\$186,000	3.5
84	SD		2006	4	1103	MT	Yes	\$190,000	3.5
85	SD		1996	4	1527	MT	Yes	\$176,000	3.5
86	SD	<b>BUNBURY</b>	1965	3	1073	AT	Yes	\$194,000	2.1
87	SD	<b>CAREY PARK</b>	1964	3	809	AT	Yes	\$198,000	2.1
88	SD		1993	4	837	MM	Yes	\$242,000	2.1

89	SD	<b>CAREY PARK</b>	2000	3	682	MM	No	\$237,000	2.1
90	SD	<b>HARVEY</b>	2000	4	832	MT	Yes	\$320,000	3.3
91	SD	<b>MOORA</b>	1969	5	1011	AT	Yes	\$142,000	3.1
92	SD		1969	4	759	AT	Yes	\$120,000	3.1
93	SD		1969	3	834	AT	Yes	\$114,500	3.1
94	SD		1971	3	834	TT	Yes	\$109,500	3.1
95	SD	<b>KELLERBERRIN</b>	1973	3	1019	AT	Yes	\$76,000	3.2
96	SD		1964	4	760.3	AT	Yes	\$80,000	3.1
97	SD	<b>QUAIRADING</b>	1972	3	760.3	AT	Yes	\$105,000	3.2
98	SD	<b>MUKINBUDIN</b>	1971	3	1011	TT	Yes	\$50,000	3.1
99	SD	<b>BEVERLEY</b>	1974	3	2030	AT	Yes	\$117,000	3.2
100	SD	<b>GOOMALLING</b>	1972	4	1293	TT	Yes	\$62,500	3.2
101	SD		1970	4	1189	AT	Yes	\$140,000	3.2
102	SD	<b>PINGELLY</b>	1972	3	822	AT	Yes	\$137,000	3.5
103	SD		1972	3	986	AT	Yes	\$123,000	3.5
104	SD		1996	4	1011	MT	No	\$154,000	3.5
105	SD	<b>NARROGIN</b>	1965	3	728	AT	Yes	\$84,500	3.4
106	SD		1998	4	943	MT	Yes	\$167,000	3.4
107	SD		1999	3	940	MT	Yes	\$199,000	3.4
108	SD		1972	3	872	AT	Yes	\$129,000	3.4
109	SD		1967	6	728	AT	Yes	\$122,000	3.4
110	SD		1972	3	728	AT	Yes	\$122,000	3.4
111	SD		1972	3	728	AT	Yes	\$137,000	3.4
112	SD		1972	3	939	DT	Yes	\$144,000	3.4

113	SD	<b>NARROGIN</b>	1979	3	746	MT	Yes	\$152,000	3.4
114	SD		2004	4	839	MT	Yes	\$167,000	3.4
115	SD		1972	3	728	AT	Yes	\$172,000	3.4
116	SD		1993	3	892	MT	Yes	\$183,000	3.4
117	SD		1967	3	728	AT	No	\$122,000	3.4
118	DUPLEX		2009	2 + 2	942	SI	Yes	\$137,000	3.4
119	SD	<b>BROOMEHILL</b>	1972	3	1004	TI	No	\$73,500	3.5
120	SD	<b>KENDENUP</b>	1964	2	3012	SI	No	\$146,000	3.5
121	VACANT		N/A	N/A	1868	N/A	N/A	\$42,500	1/7/1997

\*Valuation Integrity

All valuations are dated 1 July 2013 and are supplied by Landgate except the Kendenup property, which is Crown land and has not been valued since 1 July 1997.

- 2.1 Desktop valuation in 2013 based on detailed information on the property in the Landgate database.
- 3.1 Kerbside valuation done on the property, property details in the Landgate database were confirmed/or adjusted in 2013.
- 3.2 Kerbside valuation done in 2012 and adjusted via a desktop valuation in 2013.
- 3.3 Kerbside valuation done in 2011 and adjusted via a desktop valuation in 2012 and 2013.
- 3.4 Kerbside valuation done in 2010 and adjusted via a desktop valuation in 2011, 2012 and 2013.
- 3.5 Kerbside valuation done in 2009 and adjusted via a desktop valuation in 2010, 2011, 2012 and 2013.

SD = SINGLE DWELLING

## Construction Material

MM	Full Masonry	Brick and Tile
MT	Masonry Veneer	Timber Framed
SI	Steel Clad	Iron Framed
AT	Asbestos Cement Cladding	Timber Framed
WT	Full weatherboard	Timber Framed
DT	Weatherboard dado on timber	
MP	Masonry Veneer	Panel frame
TT	Transportable	Timber frame
TI	Iron Clad	Timber Framed

## **Annexure Q**

### **Funding Agreement**

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HOUSING AUTHORITY  
AND  
THE TRUSTEE OF THE NOONGAR BOODJA TRUST  
AND  
LAND SUB

---

**FUNDING AGREEMENT**

---

Housing Authority  
99 Plain Street  
EAST PERTH WA 6004

**THIS AGREEMENT** is made on [insert date and year]

**BETWEEN HOUSING AUTHORITY**, a statutory authority constituted under the *Housing Act 1980*, of 99 Plain Street, East Perth, Western Australia (**Authority**)

**AND** The Trustee of the Noongar Boodja Trust (Insert ACN) of [address], Western Australia (**NBT**)

**AND** [Insert details] of [address] (**Land Sub**)

## **BACKGROUND**

- A. This Agreement is entered into pursuant to the SW ILUAs.
- B. The Parties have entered into the Property Transfer Deed which identifies the Properties and details the timing and process for their transfer.
- C. The Parties acknowledge that as part of the transfer of each Property, the Authority will make available to the NBT payment from the Fund to be applied towards the Project Works.
- D. The NBT shall decide upon, manage, administer, undertake and be responsible for Project Works for any of the Properties on behalf of the Land Sub.
- E. The Authority will make payments from the Fund to the NBT for the Project Works in accordance with the terms of this Agreement.

## **THE PARTIES AGREE AS FOLLOWS**

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Agreement** means this funding agreement, including its recitals, the Schedule and annexures (if any);

**Asbestos** has the meaning given in the *Occupational Safety and Health Regulations 1996* (WA);

**Auditor General** means the Auditor General for the State of Western Australia;

**BCA** means a property assessment referencing the requirements of, and compliance with the National Construction Code 2013 prepared for each Property by a building surveyor appointed by the Authority and provided to the NBT as part of the transfer of the Property to the Land Sub;

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks in Western Australia are open for general business;

**Commencement Date** means 60 Business Days after either the declaration of the NBT or the incorporation of the Land Sub, whichever is the later;



**Fund** means the amount specified in Item 1 of the Schedule;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing;

**ILUA** means an Indigenous Land Use Agreement and has the meaning given to it by the NTA;

**Land Sub** has the meaning given in the Settlement Terms;

**Native Title Agreement Groups** has the meaning given in the Settlement Terms;

**NTA** means the *Native Title Act 1993* (Cth);

**Native Title Claims** means the following native title claims in South West Western Australia:

- Ballardong (WAD 6181/98);
- Gnaala Karla Booja (WAD 6274/98);
- South West Boojarah (WAD 253/2006);
- Harris Family (WAD 6085/98);
- Wagyl Kaip (WAD 6286/98);
- Southern Noongar (WAD 6134/1998);
- Whadjuk (WAD 242/11); and
- Yued (WAD 6192/98);

**Party** means each of the Authority or the NBT or the Land Sub as the context requires and **Parties** means all of them;

**Property Transfer Deed** means the agreement of even date entered into between the Parties to govern the transfer of the Properties;

**Project Works** means either the:

- (a) refurbishment, upgrade or repair work on any of the Properties to bring an existing dwelling to a good and tenable condition that is ready for occupation; or
- (b) demolition of a Property,

as determined by the NBT in accordance with clause 6;

**Property or Properties** has the meaning given in the Property Transfer Deed between the Authority, the NBT and the Land Sub;

**Practical Completion** means the completion of Project Works on any of the Properties such that the Property is ready for occupation or that any improvements on a Property have been demolished;

**Schedule** means the schedule to this Agreement;

**Schedule of Project Works** means a description of activities undertaken for the Project Works and referred to in Item 2 of the Schedule;

**Settlement Terms** means the settlement terms attached to the SW ILUAs at Schedule 9;

**SWALSC** means the South West Aboriginal Land & Sea Council Aboriginal Corporation (ICN 3832); and

**SW ILUAs** means each of the six ILUAs entered into by the Native Title Agreement Groups, SWALSC, the State and others in relation to the settlement of the Native Title Claims and includes the Settlement Terms.

## 1.2 Interpretation

- (a) In this document:
- (i) headings are for reference only and do not affect interpretation;
  - (ii) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
  - (iii) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
  - (iv) no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for its drafting;
  - (v) examples and use of the word 'including' and similar expressions do not limit what else may be included;
  - (vi) nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership or of principal and agent;
  - (vii) if a Party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Agreement; and
- (b) Unless the context requires otherwise, a reference in this document to:
- (i) a Party to any document includes that person's successors and permitted substitutes and assigns;
  - (ii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
  - (iii) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
  - (iv) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
  - (v) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
  - (vi) time is to Perth, Western Australia time unless stated otherwise;
  - (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and
  - (viii) clause headings are for convenience only and will be ignored in the interpretation of this Agreement.

## **2. Term of this Agreement**

The term of this Agreement commences on the Commencement Date and shall operate until the earlier of:

- (a) 12 months after the last Property is transferred to the Land Sub pursuant to the Property Transfer Deed; or
- (b) the Fund is expended; or
- (c) the termination date of the last SW ILUAs; or
- (d) a date fixed by written agreement between the Parties.

## **3. Relationship with SW ILUAs**

- (a) The Parties acknowledge and accept the terms of clauses 9.6, 9.7 and 10 of the SW ILUAs and how the operation of those clauses may affect this Agreement
- (b) Where any one or more of clauses 9.6, 9.7 and 10 applies in any one or more SW ILUAs this Deed will not apply and no funding will be provided in relation to any transferred Property that is located in any area that is covered by that or those SW ILUAs unless the Authority agrees otherwise in writing.

## **4. Authority to establish the Fund**

As soon as reasonably practicable after the Commencement Date the Authority will establish the Fund.

## **5. Refurbishment Recommendations**

- (a) As part of the transfer of each Property the Authority will provide the NBT with a BCA for the Property except where the Property comprises vacant land.
- (b) The BCA will contain recommendations that either:
  - (i) no refurbishment of the existing dwelling be required; or
  - (ii) the existing dwelling be refurbished or repaired, in which case the BCA will also provide details of the works recommended to be undertaken to bring the dwelling to a tenantable standard; or
  - (iii) the existing dwelling be demolished.
- (c) The NBT is under no obligation to the Authority to comply with the recommendations in the BCA, either as to whether to refurbish or demolish, or as to the details of the works that will be undertaken with respect to any particular Property.
- (d) For the avoidance of doubt, both the NBT and the Land Sub acknowledge that the Authority will have no responsibility or liability in respect of any recommendation made in the BCA.

## **6. Project Works**

### **6.1. NBT represents the Land Sub**

The Parties acknowledge that the NBT will undertake the Project Works for and on behalf of the Land Sub.

## **6.2. Risk**

- (a) The NBT accepts liability for all risks in respect of or arising from any Project Works undertaken by the NBT.
- (b) To the fullest extent available at law, each of the NBT and the Land Sub release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT or the Land Sub may suffer or incur in respect of or in connection with the Project Works.

## **6.3. Procuring Project Works**

The NBT has sole responsibility for the engagement of any consultant, project manager, builders and tradespersons to undertake or oversee any Project Works.

## **6.4. Obtaining consents and approvals**

In undertaking any Project Works, the NBT must obtain all necessary consents, approval and permits, including but not limited to:

- (a) any consent or other approval required for demolition of any existing building or structure on the Property; and
- (b) any building approval or licence including those which are required to be obtained from planning and/or local government in relation to the Project Works.

## **6.5. Competence of contractors engaged to undertake Project Works**

The NBT must ensure that the contractors engaged to undertake any Project Works are appropriately qualified and are compliant with all requisite licensing, registration or approval requirements, including but not limited to requirements for works or demolition where Asbestos may be present.

## **6.6. Insurance of contractors engaged to undertake Project Works**

The NBT must ensure that the contractors engaged to undertake any Project Works are adequately insured.

## **6.7. NBT to comply with Government policies**

In carrying out the Project Works the NBT must comply with the following State Government policies as if it was a State public authority, namely:

- Value for Money.
- Probity and Accountability
- Open and Effective Competition
- Buy local

- Priority Start Building

details of which can be obtained at this website:

<http://www.finance.wa.gov.au/cms/content.aspx?id=3699>

## 7. Payments from the Fund

- (a) An initial payment of \$500,000 (five hundred thousand dollars) (**Float**) will be released by the Authority to the NBT from the Fund not later than twenty (20) Business Days after the date of the transfer of the first Property by the Authority to the Land Sub.
- (b) The NBT will use the Float to make payments toward the costs of any Project Works undertaken in accordance with the requirements of this Agreement (**Payments**).
- (c) The Authority will reimburse the NBT from the Fund for the Payments (**Reimbursement**) subject to the Float comprising a total of no more than \$500,000 (five hundred thousand dollars) at all times.
- (d) Reimbursements must be based on valid tax invoices provided by the NBT to the Authority and will be subject to:
  - (i) the NBT having first submitted to the Authority a Schedule of Project Works in respect of a Property, and providing any amended Schedule of Works where the anticipated works changes; and
  - (ii) compliance with the Schedule of Project Works or any amended Schedule of Project Works from time to time for that Property.
- (e) Notwithstanding any other provision contained in this Agreement, unless the Parties agree otherwise in writing, the total Reimbursement from the Fund is capped at a maximum of \$2,000,000 (two million dollars) for each financial year of the term of this Agreement commencing from the Commencement Date.
- (f) Once the Fund is exhausted, the balance of the Float must be used by the NBT to pay the costs of any Project Works and accounted for in accordance with clause 7(d), except that no Reimbursements will be made.
- (g) The NBT must repay to the Authority on demand any funds that the Authority has paid which are not used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (h) If the cost of all of the Project Works is less than the Fund, the remaining balance of the Fund will be retained by the Authority.
- (i) If the cost of all of the Project Works exceeds the value of the Fund, the NBT will be responsible for any difference.
- (j) The NBT must provide the Authority with an annual audited statement of income received from the Fund, including the Float, and expenditure on the Project Works (**Audited Statement**) within three (3) months of the end of each financial year for the term of this Agreement.
- (k) If the Audited Statement is not provided to the Authority in accordance with clause 7(j), then notwithstanding any other provision contained in this

Agreement no further payments will be made from the Fund until clause 7(j) is first complied with.

## **8. Obligations of the NBT and the Land Sub**

### **8.1. Use of Disbursement Payment**

The NBT must use all payments from the Fund solely to meet or reimburse the cost of any Project Works undertaken.

### **8.2. Accounts**

The NBT must keep proper financial records in accordance with generally accepted accounting principles and practices in respect of the Project Works.

### **8.3. Request for Information and Access**

- (a) The NBT must provide the Authority with any documents or information relating to this Agreement or to any Project Works anticipated or undertaken, including any progress reports, evaluation reports, contracts and financial records, within ten (10) Business Days of receiving a request from the Authority.
- (b) Upon reasonable notice, the NBT must also provide the Authority, the Auditor General or their respective agents, with access at any reasonable time and from time to time to the NBT's premises, including any of the Properties, financial records, other documents including contracts, equipment and other property for the purpose of audit and inspection by the Authority or the Auditor General in order to verify compliance by the NBT with this Agreement.
- (c) The NBT must ensure that all contracts with contractors in respect of Project Works contain similar provisions which would require any contractor to provide similar access to the Authority and the Auditor General and their respective agents when requested.

### **8.4. General Undertaking of NBT/Land Sub**

The NBT and the Land Sub must:

- (a) at all times duly perform and observe its obligations under this Agreement and will promptly inform the Authority of any occurrence which might adversely affect its ability to do so in a material way;
- (b) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) comply with all State and Commonwealth laws, rules, regulations and by-laws; and
- (d) cooperate fully with the Authority in the administration of this Agreement.

## **9. Limitation of Liability**

The Authority does not accept any responsibility or liability for the success or otherwise of any Project Works anticipated or undertaken and is not liable for

any losses which may be suffered by the NBT or the Land Sub in undertaking the Project Works.

## **10. Default and Termination**

### **10.1. Event of Default**

An event of default (**Event of Default**) occurs if the:

- (a) NBT or the Land Sub breaches any of its obligations under this Agreement which continues without remedy for ten (10) Business Days after notice in writing has been served on the NBT by the Authority;
- (b) NBT or the Land Sub breaches an obligation under this Agreement which is incapable of being remedied;
- (c) NBT or the Land Sub becomes insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth);
- (d) Authority has reasonable grounds to believe that the NBT or the Land Sub is unwilling or unable to comply with its obligations under this Agreement and remains of that belief despite notice in writing having been served by the Authority on the NBT to comply with the NBT's or Land Sub's obligations; or
- (e) Property Transfer Deed is terminated.

### **10.2. Effect of Event of Default**

If an Event of Default occurs, the Authority may:

- (a) terminate this Agreement and recover any funds already paid but not expended on Project Works whether in whole or in part; or
- (b) suspend payments from the Fund.

### **10.3. Recommencement of Disbursement Payments**

Where payments from the Fund have been suspended in accordance with clause 10.2(b), the Authority may, in its absolute discretion, recommence payments if and when the NBT or Land Sub has remedied the Event of Default.

## **11. Disputes and Mediation**

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Agreement has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).

- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012 (WA)*.
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

## 12. NBT/Land Sub Indemnity

- (a) The NBT and the Land Sub jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
  - (i) a breach of this Agreement by the NBT or the Land Sub;
  - (ii) any negligent or tortious act or omission of the NBT or the Land Sub arising out of or in connection with this Agreement;
  - (iii) any breach by the NBT or the Land Sub of a State or Commonwealth law arising out of or in connection with this Agreement; and



- (iv) any third party claim arising out of or in connection with this Agreement or the Project Works.
- (b) The NBT's or the Land Sub's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.

### **13. Goods and Services Tax (GST)**

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Agreement by a party making a supply (Supplier), the recipient of that supply must pay an additional amount for GST (GST Amount) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.
- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.

- (i) If one of the Parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

#### 14. Notices

- (a) Any notice or other communication which is required to be given or served under this Agreement (**Notice**) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other Party referred to in Item 3 of the Schedule.
- (b) Subject to paragraph (c), Notice is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the third Business Day after posting; and
  - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

#### 15. Confidentiality

- (a) In this clause 15 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Agreement:
  - (i) during negotiations preparatory to the execution of this Agreement; and
  - (ii) during the term of this Agreement,that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.
- (b) Subject to the remainder of this clause 15, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
- (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
  - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
  - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;

- (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information
  - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;
  - (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
  - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
  - (vii) to a Regional Corporation (as defined in the SW ILUAs);
  - (viii) to SWALSC, and when appointed by the NBT, the Central Services Corporation (as defined in the SW ILUAs);
  - (ix) to the legislative or executive arms of the Government of Western Australia;
  - (x) to the extent required by law;
  - (xi) to a Court or tribunal of competent jurisdiction; and
  - (xii) as otherwise permitted or required by this Agreement.
- (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
- (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Agreement;
  - (ii) before making any disclosure (other than under sub-clauses (c) (ix), (x) and (xi)), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
  - (iii) in the case of a disclosure to a person or entity under sub-clause (c)(vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 15 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
- (i) it is aware that any breach of this clause 15 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
  - (ii) in the event of a suspected or actual breach of this clause 15 or of any obligation of confidentiality under this Agreement, any

aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause<sup>15</sup>; and

- (iii) clause 11 of this Agreement does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

## **16. General Provisions**

### **16.1. Legal and other costs**

Each Party must bear its own legal costs in connection with the preparation, negotiation, execution and completion of this Agreement.

### **16.2. Assignment and Encumbrances**

- (a) No Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Agreement in any circumstances.
- (b) The NBT and the Land Sub must not grant any encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Agreement in any circumstances.

### **16.3. Entire agreement**

This Agreement and the documents referenced herein constitute the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **16.4. Governing law and jurisdiction**

- (a) This Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia.

### **16.5. Severance**

If any provisions of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.

### **16.6. Waiver**

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or

power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

#### **16.7. No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement.

#### **16.8. Counterparts**

This Agreement may be executed in a number of counterparts. All counterparts together will be taken to constitute the one instrument. If this Agreement is to be executed in counterparts the Parties must execute sufficient numbers for each of them to retain one instrument (as constituted by the counterparts).

#### **16.9. Further action**

Each Party must use its best efforts to do all things necessary or desirable to give full effect to this Agreement and the matters contemplated by it.

#### **16.10. Survival**

Clauses 1, 7, 8, 9, 10.2, 12, 13, 14, 15 and 16 survive termination of this Agreement.

**Executed** by the Parties as an agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 2014

The common seal of )  
the **Housing Authority** )  
was hereunto affixed in )  
the presence of the )  
DIRECTOR GENERAL )

\_\_\_\_\_  
Grahame John Searle

**THE COMMON SEAL of the** )  
**Noongar Boodja Trust (Insert ACN)** )  
**was hereunto affixed in the** )  
**presence of:** )

**[We will need the correct**  
**execution clause for**  
**the NBT]**

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Name of Authorised Person in full  
(block letters)

.....  
Name of Authorised Person in full (block  
letters)

**THE COMMON SEAL of Land Sub** )  
ABN ## was hereunto affixed in the )  
presence of: )  
)

**[We will need the correct**  
**execution clause for**  
**the NBT]**

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Name of Authorised Person in full  
(block letters)

.....  
Name of Authorised Person in full (block  
letters)

**SCHEDULE**

**Item 1: Fund**

\$10,000,000 (ten million dollars).

**Item 2: Schedule of Project Works**

The following table should accompany all Tax Invoices.

<b>Schedule of Project Works as at [Insert Date]</b>				
<b>Property Details</b>		<b>Project Works</b>	<b>BCA Ref Number</b>	<b>Expenses</b>
<b>Lot No.</b>	<b>Street Address</b>	<b>Description of activities undertaken</b>		<b>\$</b>
<b>Total Expenses for the Period</b>				<b>\$</b>

**Item 3: Notice Addresses for Service**

(a) Authority

Contact Person:	
Address for Service:	
Telephone No:	
Facsimile No:	

(b) NBT

Contact Person:	
Address for Service:	
Telephone No:	
Facsimile No:	

(c) Land Sub

Contact Person:	
Address for Service:	
Telephone No:	
Facsimile No:	



## **Annexure R**

**By-laws under section 34 of the *Water Agencies (Powers) Act 1984 (WA)***

**(Parts A and B)**

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**Part A**

**Country Area Water Supply Amendment By-laws**

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## **Country Areas Water Supply Amendment By-laws 2014**

Made by the Minister under the *Country Areas Water Supply Act 1947* section 105 and the *Water Agencies (Powers) Act 1984* section 34.

### **1. Citation**

These by-laws are the *Country Areas Water Supply Amendment By-laws 2014*.

### **2. Commencement**

These by-laws come into operation as follows —

- (a) by-laws 1 and 2 — on the day on which these by-laws are published in the *Gazette*;
- (b) the rest of the by-laws — on the day after that day.

### **3. By-laws amended**

These by-laws amend the *Country Areas Water Supply By-laws 1957*.

*[The following shows how the Country Areas Water Supply By-laws 1957 would look after the proposed amendments. The formal amendments needed to produce the desired result will be drafted when it has been agreed how those regulations should end up looking.]*

## Country Areas Water Supply By-laws 1957

### Division 1 — Preliminary

#### 1. Citation, commencement and application

- (1a) These by-laws may be cited as the *Country Areas Water Supply By-laws 1957* .
- (1) These by-laws shall take effect and have the force of law on and after 1 July 1957, in every catchment area and water reserve constituted under section 9 of the principal Act.
- [(2) Omitted.]*
- (2) Despite sub-by-law (1), these by-laws do not apply to the Wellington Dam Catchment Area except for the Mungalup Dam Catchment.
- (3) The boundaries of the Mungalup Dam Catchment are, for the purposes of sub-by-law (2) —
- (a) defined by reference to the coordinates annexed to the Department of Water Plan WT 6564 titled “Mungalup Dam Catchment” and dated 3/09/2013; and
  - (b) shown, for information, on the maps in Schedule 4.
- Note: The map referred to in sub-by-law (3)(a) is available for inspection at the Head Office of the Department of Water and on the Department’s website.
- (4) In sub-by-law (3) —

*coordinates* means Map Grid of Australia 1994 grid coordinates in Zone 50 of the Universal Transverse Mercator Grid System based on the Geocentric Datum of Australia.

**1A. Terms used**

(1) In these by-laws, unless the context otherwise requires —

*Aboriginal customary purpose* means —

(a) preparing or consuming food customarily eaten by Aboriginal persons; or

(b) preparing or using medicine customarily used by Aboriginal persons; or

(c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or

(d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c);

*feeder* means a watercourse, creek, stream or other channel with permanent or intermittent flow whereby water is or can be conveyed to a reservoir;

*inspector* means an inspector appointed by the Corporation or the CEO for the purposes of these by-laws;

*liquid waste* means liquid wastes as defined in the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* regulation 3;

*Noongar people* means the traditional owners of the lands in the South west settlement area;

*principal Act* means the *Country Areas Water Supply Act 1947*, as ~~amended~~, amended;

*South west settlement area* means the area of lands described in Schedule 1 and shown, for information purposes, on the map in Schedule 2;

*special provision catchment area* means a catchment area within the South west settlement area.

**bl. 3**

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- (2) In these by-laws, unless the context otherwise requires, words and expressions have the same meanings as in the principal Act.
- (3) In these by-laws, unless the context otherwise requires, ***cesspool, drain, house, land, owner*** have the same meanings as they have in section 3 of the *Health Act 1911*.

DRAFT

**Division 2 — Prevention of pollution in water reserves and catchment areas**

**2. Application of Division**

Subject to by-law 1(2), the by-laws in this Division apply to all water reserves and catchment areas constituted for the purpose of the principal or any amending Act.

**3. Cesspools to be filled in on notice from CEO**

All existing cesspools, within the catchment areas shall be cleansed and filled up to the satisfaction of an inspector, within one calendar month after notice, in writing, to that effect has been given by or with the authority of the CEO to the occupier or owner of the premises concerned.

**4. Closets, situation of, removal on notice from CEO etc.**

Closets shall not be constructed within 50 m of high-water mark, or of any well or bore, and any closet situated within 50 m of high-water mark, or of any well or bore, shall within one calendar month of notice to that effect being given to the owner or occupier by the CEO or by an inspector, be taken down and the cesspool, if it exists, cleansed and a fire made therein, after which the cesspool shall be filled up to the satisfaction of the inspector by the owner or occupier of the house to which the closet or cesspool is appurtenant.

**5. Houses to have approved sanitary conveniences**

- (1) The owner and occupier of every house within the catchment area shall provide for the use of the occupants of the house —
  - (a) an earth closet with a sufficient number of pans approved by an inspector; or
  - (b) septic tanks or other apparatus as may be required or authorised by the CEO.
- (2) The closet, septic tanks or authorised apparatus shall be erected in a position as directed by an inspector.

**6. Earth closets and privies, construction of**

No person shall construct or cause to be constructed any earth closet or privy which does not comply with the following conditions:

- (a) It shall not be less than —  
1.5 m in length, or  
1 m in width, or  
2 m in height.
- (b) It shall not be within 6 m of any house or tank, nor within 15 m of any other water supply, nor within 15 m of the milking shed or milk room of any dairy, and shall be so constructed that the pan may be withdrawn from the rear of the convenience.
- (c) The walls shall be of stone, brick, or other material approved by the CEO.
- (d) There shall be at least 2 ventilating openings, of 325 cm<sup>2</sup>, in area, one in each of 2 opposite walls, and situated 1.8 m above the floor level.
- (e) The roof shall be of galvanised iron, or other impervious material.
- (f) The door shall be hung so that there is, when the door is closed, a clear space of at least 8 cm above and below it.
- (g) The floor shall be of approved impervious material, and shall have a uniform fall of 1 in 30 from back to front and its upper surface shall be not less than 15 cm above the level of the ground adjoining.
- (h) The panstead shall measure 50 cm long by 40 cm wide. It shall be totally enclosed and constructed in a manner to exclude flies.
- (i) The under surface of the seat shall be 40 cm above the floor.
- (j) A hinged aperture cover shall be provided to the seat.



- (k) A service door shall be provided in the rear wall of the convenience through which the pan must be withdrawn.

**6A. Sanitary conveniences, number required in houses etc.**

In relation to sanitary conveniences to be provided in connection with houses and public and private places, the following provisions shall apply, that is to say:

- (1) Every house, and every public place and every private place shall be provided with not less than one sanitary convenience.
- (2) In the case of any house, or public or private place in respect of which the requirements of more than 20 persons have to be provided for, there shall be additional sanitary conveniences in the proportion of one for every 20 persons, or portion of 20: Provided that this requirement shall not apply to public buildings under Part VI of the *Health Act 1911*, nor to licensed premises under the provisions of the *Licensing Act 1911*<sup>3</sup>, nor to factories under the provisions of the *Factories and Shops Act 1920*.

**6B. Sanitary conveniences to be kept clean**

- (1) The occupier of any premises whereon there is a sanitary convenience shall maintain the convenience in a cleanly condition.
- (2) The owner of any premises whereon there is a sanitary convenience shall maintain the convenience in accordance with these by-laws.
- (3) Every closet shall be supplied with a sufficient number of receptacles which shall be interchangeable with others in the same district and which shall be of approved size, shape and style, and every pan shall be emptied and cleansed at least once every week or as often as may be required by an inspector.

**7. Closets and urinals to be replaced on notice from inspector**

Closets or urinals already in existence shall, whenever considered necessary by an inspector be removed where directed by the inspector, and the removal or re-erection shall be at the cost of the owner, who shall have the work completed within one calendar month from delivery by the inspector of written notice to the owner requiring this to be done.

**8. Closets not to cause nuisances**

- (1) The owner or occupier of any house within a catchment area shall not permit the contents of any pan used in any closet or urinal to overflow from any cause whatever.
- (2) The owner or occupier of any house within the catchment area shall not permit any closet or urinal, or pan appertaining thereto, or used by the occupants of such house to become offensive or a nuisance, and every such owner or occupier, whenever directed, either verbally or in writing by an inspector, shall properly and effectively empty and cleanse the closet, urinal or pan, to the satisfaction of the inspector.

**9. Nightsoil etc., disposal of**

- (1) Nightsoil, refuse and garbage shall be disposed of from time to time as the CEO or an inspector may direct.
- (2) Nightsoil, faecal matter or refuse shall not be buried within the catchment area unless written consent thereto has been obtained from the CEO.
- (3) Nightsoil, faecal matter or human urine, whether mixed with any other substance or not, or any solution thereof, unless the same has been thoroughly deodorised and disinfected to the satisfaction of an inspector, shall not be placed, deposited, spread or permitted to be placed, deposited or spread in or upon any land or garden within a catchment area, unless written consent thereto has been obtained from the CEO.

**10. Manure etc., disposal of near water**

Refuse, dung, manure or other offensive matter shall not be deposited or be permitted to be deposited within 300 m of high-water mark or of any well or bore.

**11. Fertiliser and poisons, use of**

- (1) The owner or occupier of any house, land or premises situated within a catchment area shall not use without the approval of the CEO —
  - (a) any artificial manure for agricultural, horticultural, pastoral and silvicultural purposes; or
  - (b) any weed killer or any other toxic substance; or
  - (c) any poison for the destruction of rabbits, dogs, foxes, possums, rats, mice or other vermin.
- (2) The CEO may from time to time by notice published in the *Government Gazette* —
  - (a) specify substances that may be used within a catchment area without the CEO's prior approval; or
  - (b) permit the use within a catchment area of any specified substance or substances in a specified manner or in accordance with a specified method.
- (3)(a) Where a notice specifies a substance that may be used without the CEO's prior approval in accordance with sub-bylaw (2)(a) that substance may be used within the catchment area in question without the approval referred to in sub-bylaw (1).
- (b) Where a notice permits the use of any substance in a specified manner or in accordance with a specified method no person shall without the approval of the CEO use the substance within the catchment area in question except in that manner or in accordance with that method.

**12. Stables etc., construction of near water**

- (1) Buildings of any description shall not be used as or constructed for a stable, cow-shed, goat-shed, sheep-pen, pig-sty or fowl-house, and any animal or bird shall not be housed or yarded within 300 m of high-water mark or of any well or bore or in a position that stormwaters may wash any manure or refuse therefrom into any reservoir or feeder.
- (2) Every such structure within the catchment area shall have attached thereto for containing all liquid and solid manure a watertight receptacle approved by an inspector.
- (3)(a) Land sloping to a feeder on which any such structure stands shall be excavated to a depth of at least 30 cm and the soil so obtained shall be used as an embankment around the area so excavated.
- (b) Such work shall be done by and at the expense of the owner or occupier of such premises.

**13. Stables etc. to be kept clean**

The owner or occupier of any stable, cow shed, goat-shed, sheep-pen, pig-sty or fowl-house, situated within a catchment area, shall not allow any dung, manure, or other refuse to accumulate in or near such premises, but shall immediately remove or dispose of same in such manner that it cannot pollute any water flowing or which may flow into any reservoir or any feeder or any well or bore and an inspector may by written notice to the owner or occupier order the immediate removal and disposal of any dung, manure, or other refuse from such premises and any person omitting to comply with the notice to the satisfaction of an inspector shall be guilty of an offence against these by-laws, and liable to penalties for breach thereof.

**14. Closets to be disinfected on notice from CEO**

The occupier of every house or premises whether public or private situated on any catchment area, shall when required by

the CEO, cause all nightsoil or other matter deposited in any pan in any closet or privy to be thoroughly disinfected in the manner specified by an inspector.

**15. Nightsoil to be treated etc.**

Every nightman or contractor shall cause the nightsoil removed from any premises to be either rendered inoffensive or treated in a destructor, desiccator or incinerator, or buried in trenches outside the catchment area, or disposed of in a manner approved by an inspector.

**16. Closet pans, procedure for removing and cleaning**

The mode of removal of each receptacle in each closet shall be as follows:

- (a) The nightman shall remove each receptacle and at once cover the same with a suitable tight-fitting lid, and upon every such removal shall carefully place a cleansed pan, of the pattern approved by the CEO or an inspector, in lieu of every pan so removed.
- (b) Each receptacle which is so removed from a closet and sealed with a lid as prescribed in the foregoing clause, shall be removed by the nightman in a cart or vehicle of a pattern to be approved by an inspector, and the contents of all such receptacles shall be deposited in such place or places as shall from time to time be fixed by the CEO or an inspector.
- (c) After the receptacle has been emptied, it and its lid shall be thoroughly washed, and scrubbed in clean water and then the inside of the receptacle and both sides of the lid shall be thoroughly scrubbed in a disinfecting solution, a separate brush being used, and then wholly immersed in a solution of disinfectant having a germicidal value equal to a 5% solution of pure carbolic acid; or thoroughly cleansed in a steam-tight box or chamber with steam, to be applied to the receptacle and lid for not less than 5 minutes.

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- (d) The interior surface of every receptacle and the underside of the lids shall, after being thoroughly cleansed, be properly coated with coal tar applied hot, and the coating shall be renewed, whenever necessary, so as to properly protect the whole internal surface of the receptacle and the underside of the lid.
- (e) The receptacle shall be emptied and perfectly cleansed as above once per week at least, or so much more frequently as the CEO or inspector may from time to time direct.

**17. Nightsoil, charges for removal of**

Every nightman is entitled to charge, unless other arrangements be made, and to receive from the occupier of any premises from which any nightsoil, trade or house refuse is removed, such sum or sums of money as are specified in a contract and approved by the CEO, and shall not ask, demand, or receive more than the sums approved.

*[18 & 19. Deleted.]*

**19A. Pigs, keeping of**

The keeping of swine on any portion of a catchment area within 500 m of a reservoir or feeder situate within a catchment area or of a well or bore is hereby forbidden.

**20. Animals not to be allowed to stray etc.**

A person shall not cause or permit horses, cattle, sheep, goats, pigs, ducks, geese, fowls or other species of livestock to stray or depasture over any portion of a catchment area in respect of which area the CEO has by notice in the *Government Gazette* prohibited the straying or depasturing of horses, cattle, sheep, goats, pigs, ducks, geese, fowls or other species of livestock.

**21. Abattoirs etc., establishment of**

Abattoirs, slaughterhouses or any trade with offensive waste shall not be established or conducted in any part of the catchment area, except in an area defined in the Schedule to this by-law and set apart for the offensive trades, and unless provision is made for the disposal of all wastes, liquid or otherwise, either outside the catchment area, or in some other manner approved by the CEO.

**Schedule**

**Area; Description**

Wellington Dam Catchment — Offensive Trades Waste Area; that piece of land delineated and bordered in red on Public Works Department Plan, W.A. 36033.

**22. Carcasses to be removed from near water**

In the event of the death or of an accident necessitating the slaughter of any horse, cattle, or sheep, or other animal, the carcass of the animal shall be removed by the owner thereof to a safe distance from high-water mark, or of any well or bore, or any feeder, or to such place as an inspector may direct, and the owner shall immediately thereafter dispose of same by burning to the satisfaction of the inspector, or if the owner cannot be found, the inspector shall destroy it.

**23. Human burials to be in approved places**

- (1) No human body shall be buried in any catchment area except in a place approved by the Minister.
- (2) Any human body so buried with the approval of the Minister shall be covered with at least 1.5 m of earth.

**24. Household refuse, receptacles for**

- (1) The occupier of every house or premises shall provide and keep in a position approved by an inspector, such and so many receptacles or boxes of the material and of the dimensions as

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may be required by the CEO or inspector for the temporary deposit of solid house refuse.

- (2) The owner or occupier of the house shall regularly collect all refuse or rubbish from the premises, and place the same in receptacles and he shall not permit or suffer the receptacles to overflow or become offensive, and shall, when necessary, or directed by the inspector, thoroughly disinfect the same forthwith.
- (3)(a) The owner or occupier of every house or premises in which a receptacle or box is so provided or kept or used, shall cause same to be emptied at least once a week or as often as the inspector may direct.
- (b) The owner or occupier of the house or premises shall keep the receptacle or box in good repair, and upon notice from the inspector immediately replace by a new and improved receptacle or box any receptacle or box that the inspector may deem worn out or unfit for use.

**25. Household refuse, disposal of**

- (1) The owner or occupier of any house which is served by a rubbish removal service shall not deposit any rubbish whatsoever upon any catchment area, other than in the place set apart by the CEO or an inspector for such purpose.
- (2) Where a house is not served by a rubbish removal service, then the owner or occupier of the house may, subject to the next succeeding by-law, dispose of his own dry house refuse or rubbish by burial: Provided that such rubbish shall be covered by at least 30 cm of clean earth.

**26. Refuse etc. not to be deposited in catchment area**

Rubbish, filth, blood, offal or manure or any slops, soapsuds, urine, water containing urine or other refuse, noisome thing or matter, shall not be deposited or be permitted to be deposited in any part of a catchment area, where it may, in the opinion of an



inspector, be carried by stormwater, into any feeder or any well or bore, but every occupier or owner shall provide and maintain proper watertight vehicles or receptacles fitted with close-fitting covers or lids for the purpose of carting or receiving same.

**27. Refuse bins etc., position and cleaning of**

All such vehicles or receptacles shall be kept in such convenient place to allow of ready removal as may be directed by an inspector, so as not to be a nuisance to any person, and shall be kept in a thoroughly sanitary condition, and removed at least once every week and cleansed and disinfected both inside and out.

**28. Refuse etc. to be deposited only at approved sites**

Foul or offensive water or other offensive liquid, or refuse, garbage, sweepings, or other offensive matter or thing, shall not be pumped, emptied or swept, thrown, or otherwise discharged or deposited into or upon any street, lane, yard, vacant land, or other place, whether public or private within the district other than the place set apart by the CEO or an inspector for that purpose.

**29. Industrial wastes, discharge of**

- (1) No person shall pump, drain or discharge or permit to be pumped, drained, or discharged, any water or liquid waste from any quarry, mine pit, factory or industrial process upon any catchment area without the written permission of the CEO.
- (2) Where any permitted water or liquid waste is so discharged the person so discharging it shall at all times comply with the requirements of the permit.

**30. Polluting activities prohibited**

No person shall wash clothes or other articles in any watercourse, reservoir, aqueduct, or any waterworks within a catchment area, nor shall any person wash, throw, cause or permit to enter therein any dog or other animal, or throw or

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convey, or permit to be conveyed or thrown therein any rubbish, dirt, filth, dead animal, or other noisome thing.

**31. Bathing prohibited except in approved places**

Bathing in any watercourse, reservoir, aqueduct or any waterworks within a catchment area is prohibited except in the places and under the conditions as the CEO may from time to time specify.

**32. Inspectors etc., powers of entry**

- (1) It is lawful for an inspector or any assistant acting under the directions of an inspector or other officer authorised by the CEO, at any reasonable hour, with or without notice, to enter any land, house, or premises for the purpose of ascertaining whether any act or thing is being done or permitted or left within that land, or house, or those premises in breach of these by-laws and to remove or cause to be removed anything so done, permitted or left thereon in breach of these by-laws, or to take steps as he may deem necessary for carrying out these provisions.
- (2) The cost of removal or other necessary act shall be borne by the owner or occupier of the premises upon which the breach occurs.

**33. Compliance, CEO to fix time for**

Unless otherwise provided for, the time which may elapse between the giving of a notice and the doing of a thing required to be done by any inspector or other authorised officer shall be determined by the CEO according to the nature of each case.

**34. Timber cutting and clearing without permission**

- (1) No person, whether in possession of a timber cutter's licence or not, shall cut or hew timber or destroy any trees, shrubs or vegetation of any kind or carry out any clearing of any kind, on any catchment area unless authorised so to do by the CEO.

(2) A person does not need to be authorised by the CEO to do an activity referred to in sub-by-law (1) in a special provision catchment area if the person —

(a) is a member of the Noongar people; and

(b) undertakes the activity for an Aboriginal customary purpose; and

(c) in undertaking the activity does not enter into or upon a reservoir or watercourse.

**35. Hunting, shooting and fishing, CEO may restrict**

(1) In this by-law —

*hand-held tool* does not include —

(a) a firearm or any other device from which an object is discharged; or

(b) a spear, boomerang or any other thing that is propelled from the hand.

(2) The CEO may from time to time prescribe restrictions on hunting, shooting and fishing in the catchment area.

(3) A restriction prescribed under this by-law does not operate to prevent a person from hunting for an invertebrate or egg in a special provision catchment area if the person —

(a) is a member of the Noongar people; and

(b) does so for an Aboriginal customary purpose; and

(c) does so only by hand or with a hand-held tool; and

(d) in doing so does not enter into or upon a reservoir or watercourse; and

(e) in doing so does not allow any hand-held tool to enter into or upon a reservoir or watercourse; and

(f) does not sell the invertebrate or egg.

**36. Camping and picnicking restricted**

- (1) No person, body corporate or association or group of persons shall at any time camp or picnic within 300 m of the high-water mark or of any well or bore or any reservoir or feeder thereto.
- (2) The CEO may from time to time by notices erected in a catchment area, further restrict camping and picnicking in the catchment area.

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**Division 3 — Protection of water supplies and Minister and Corporation property**

*[37 - 39. Deleted]*

**40. Flora protected**

(1) The removal, plucking, or damaging of any wild flower, shrub, bush, tree, or other plant, growing on any land or reserve under the care, control and management of the Corporation or the Minister, within 800 m of any reservoir or bore is prohibited.

(2) A person does not contravene sub-bylaw (1) by removing, plucking, or damaging a wild flower, shrub, bush, tree, or other plant in the South west settlement area if the person —

(a) is a member of the Noongar people; and

(b) does so for an Aboriginal customary purpose; and

(c) in doing so does not enter into or upon a reservoir or watercourse; and

(d) in doing so does not cause damage to, or adversely affect, any water works.

**Division 7 — Miscellaneous**

[89. *omitted. 97 - 104D deleted.*]

**105. Penalties**

- (1) A person who contravenes or commits a breach of any provision of these by-laws, whether by act or omission, for which a penalty is not expressly prescribed, is liable, on conviction, to a penalty not exceeding \$200, and in the case of a continuing contravention or breach, to a further penalty not exceeding \$50 for each day during which the offence continues after notice of the contravention or breach is given by or on behalf of the Corporation or the Minister to that person.
- (2) In addition to any penalty provided by these by-laws, any expense, loss or damage incurred by the Corporation or the Minister in consequence of the breach of any by-law shall be paid by the person committing the breach and recoverable in the same manner as compensation may be recovered under section 45(3) of the principal Act.

**Schedule 1 — Description of South west settlement area**

[bl.1A(1)]

All the lands and waters contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark, being a point on a northern boundary of native title determination application WAD6192/1998 (WC97/71) as accepted for registration on the Register of Native Title Claims on 22 August 1997;
- then continues generally easterly and generally south-easterly along the boundaries of that native title application to the intersection with native title determination application WAD6181/1998 (WC00/7) as accepted for registration on the Register of Native Title Claims on 3 July 2008;
- then continues generally easterly, generally south-easterly and westerly along the boundaries of that native title application to the intersection with native title determination application WAD6286/1998 (WC98/70) as accepted for registration on the Register of Native Title Claims on 29 September 1998;
- then continues generally southerly along the boundaries of that native title application to the intersection with the low water mark;
- then continues generally south-westerly, generally north-westerly and generally northerly along the low water mark back to the starting point,

other than any land or waters the subject of native title determination application WAD6193/1998 (WC97/72-6) as accepted for registration on the Register of Native Title Claims on 12 December 2011.

And all the islands landward of the low water mark that exist within the area contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark;

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- then continues generally southerly, generally south-easterly and generally north-easterly along the low water mark to the intersection with longitude 120.465236;
- then continues southerly to the intersection of the 3 nautical mile limit with longitude 120.465236;
- then continues generally south-westerly, generally north-westerly and generally northerly along the 3 nautical mile limit to the prolongation westerly of the northern boundary of the Shire of Coorow;
- then continues easterly along that prolongation back to the starting point.

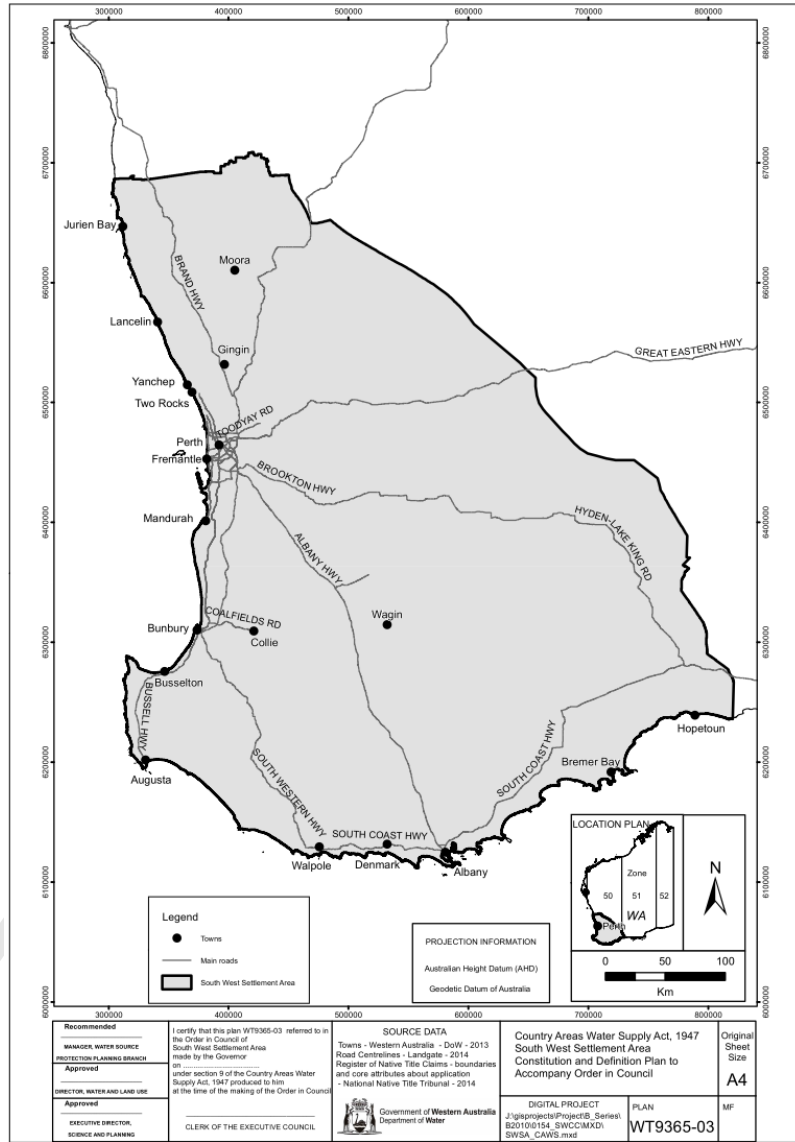
Notes:

1. The low water mark is sourced from the Spatial Cadastral Database maintained by the Western Australian Land Information Authority as at 29 October 2012.
2. Coordinate references are to Geocentric Datum of Australia 1994 (GDA94) coordinates in decimal degrees.
3. The 3 nautical mile limit is sourced from Australian Maritime Boundaries (AMB), 6<sup>th</sup> edition, released in February 2006.



**Schedule 2 — Map of South west settlement area**

[bl.1.1]



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*[No proposed amendment to Schedule 4.]*

Minister for Water.

Clerk of the Executive Council.

DRAFT

**Part B**

**Metropolitan Water Supply, Sewerage and Drainage Amendment By-laws**

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Metropolitan Water Supply, Sewerage, and Drainage Act 1909  
Water Agencies (Powers) Act 1984

## **Metropolitan Water Supply, Sewerage and Drainage Amendment By-laws 2014**

Made by the Minister under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* section 146 and the *Water Agencies (Powers) Act 1984* section 34.

### **1. Citation**

These by-laws are the *Metropolitan Water Supply, Sewerage and Drainage Amendment By-laws 2014*.

### **2. Commencement**

These by-laws come into operation as follows —

- (a) by-laws 1 and 2 — on the day on which these by-laws are published in the *Gazette*;
- (b) the rest of the by-laws — on the day after that day.

### **3. By-laws amended**

These by-laws amend the *Metropolitan Water Supply, Sewerage and Drainage By-laws 1981*.

***[The following shows how the By-laws would look after the proposed amendments. The formal amendments needed to produce the desired result will be drafted when it has been agreed how those amendments should end up looking.]***

## Metropolitan Water Supply, Sewerage and Drainage By-laws 1981

### Preliminary and definitions

#### 1.0 Citation

These by-laws may be cited as the *Metropolitan Water Supply, Sewerage and Drainage By-laws 1981* and shall come into operation on 1 March 1981.

#### 1.1 Terms used

In these by-laws, unless the context otherwise requires —

*Aboriginal customary purpose* means —

- (a) preparing or consuming food customarily eaten by Aboriginal persons; or
- (b) preparing or using medicine customarily used by Aboriginal persons; or
- (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or
- (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c);

*Act* means the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, as amended from time to time;

*bore, diameter* or *size*, in reference to —

- (a) any pipe of copper or brass, means the external diameter of the pipe; and
- (b) any pipe of any other material, means the internal diameter of the pipe;

*Corporation* means the Water Corporation established by the *Water Corporations Act 1995* section 4(1);

***Dangerous Goods Storage Regulations*** means the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007*;

***designated camping site*** means an area designated under by-law 4.11.2 to be a camping site for Noongar people;

***domestic sewage*** means all faecal matter, urine, household slops and household liquid refuse;

***feeder*** means any water course, creek, stream or other channel with either perennial or intermittent flow whereby water can be conveyed to any reservoir;

***ground*** means the surface of the earth, soil, or rock which conform to the established finished grade at a specific location after all excavations have been thoroughly backfilled or otherwise closed and after all surface treatment at said location has been completed;

***high-water mark*** means the level of full supply of any reservoir or feeder thereto;

***industrial waste*** means the liquid, solid or gaseous refuse from any business, industry, warehouse or manufacturing premises other than domestic sewage, stormwater, or unpolluted water;

***liquid waste*** means liquid wastes as defined in the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* regulation 3;

***Noongar people*** means the traditional owners of the lands in the South west settlement area;

***observation well*** means a well constructed for the purposes of observing the depth to the ground water from the top of the well, and for obtaining samples of the ground water;

***pesticides*** means a substance or compound used or intended for use for agricultural, pastoral, horticultural, domestic, or industrial purposes for controlling, destroying or preventing the growth and development of any fungus, virus, insect, mite, mollusc, nematode, plant or animal and includes all admixtures containing any proportion of any one or more of them;

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***petroleum product*** has the meaning given in the Dangerous Goods Storage Regulations regulation 4;

***production well*** means a well owned and operated by the Corporation and from which groundwater is extracted for the provision of a public water supply;

***registered Aboriginal site*** means a place in the register maintained under the *Aboriginal Heritage Act 1972* section 38;

***South west settlement area*** means the area of lands described in Schedule 1 and shown, for information purposes, on the map in Schedule 2;

***special provision catchment area*** means a catchment area, or water reserve from which water can flow into an existing reservoir, within the South west settlement area;

***underground storage or handling system*** means an underground storage or handling system as defined in the Dangerous Goods Storage Regulations regulation 4;

***underground water*** means all water that is below the surface of the ground, whether or not flowing or in defined channels;

***works*** has the meaning given in the *Water Agencies (Powers) Act 1984* section 3(1).

## **4.0 Protection of catchment areas and water reserves**

### **4.1 Object of this Part**

4.1.1 The by-laws contained in this Part are intended to —

- (a) prevent any deterioration of the quality of water collected from the Minister's catchment areas and water reserves by way of increased bacteriological or chemical contamination, increased turbidity, or increased level of nutrients necessary to the growth of undesirable aquatic flora;
- (b) control and manage existing and future development within the catchments and water reserves that could adversely affect water quality;
- (c) regulate the behaviour of persons entering the catchment areas.

4.1.2 Attention is drawn to by-law 31.4 regarding penalties that may be imposed for breaches of these by-laws.

### **4.2 Application of this Part**

4.2.1 The by-laws in this Part apply to water reserves and catchment areas constituted under the Act and within which surface or sub-surface water may be collected into an open storage reservoir before distribution to consumers.

4.2.2 In this Part —

4.2.2.1 All by-laws applicable to a catchment area shall apply equally to any part of a water reserve from which water can flow into an existing storage reservoir.

4.2.2.2 Prohibited zone means that part of a catchment area which lies —

- (a) upstream of a dam; and
- (b) within 2 km of the top water level of any reservoir in which water is or can be stored.



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4.2.2.3 Public road means a road or street as defined in the Local Government Act.

**4.3 Catchment areas etc., protection of**

4.3.1 No person shall throw, deposit, discharge or leave or cause, permit or suffer to be thrown, deposited, discharged or left into or upon a catchment area or water reserve any chemical, radioactive material, litter, rubbish, offal, dung, dead animal or any noisome, noxious or polluting liquid substance, matter, or thing which is likely to pollute the catchment area or water reserve or any reservoir or watercourse in the catchment area, or which is likely to affect purity of the water.

4.3.2 No person shall swim, bathe, or have any bodily contact with the water or wash any clothes or other articles in any stream, reservoir, aqueduct or other water works within a catchment area.

4.3.3 No person shall in or upon any watercourse, lake, reservoir, aqueduct or other water works in a catchment area set afloat, sail, propel or cause to be propelled any craft or vessel, without express permission in writing from the CEO and subject to any conditions that it may deem necessary.

4.3.4 [Subject to by-laws 4.11.5, 4.12.2 and 4.12.3, no](#) ~~No~~ person shall camp, or shoot, trap or hunt any game or catch, or attempt to catch, any fish or marron within a catchment area, without specific permission in writing from the CEO to which it may attach any conditions that it deems necessary.

4.3.5 [Subject to by-law 4.13, no](#) ~~No~~ person shall light a fire on Crown land in a prohibited ~~S~~4.3.6 zone on a catchment area except in the fire places provided at authorised picnic sites unless with the written approval of the CEO, and any person lighting fires at other places on a catchment area shall comply fully with all requirements of the [Bush Fires Act 1954](#) ~~Bush Fires Act~~<sup>3</sup> or restrictions promulgated under that Act.

- 4.3.6 [Subject to by-law 4.14, no](#) ~~No~~ unauthorised person shall enter Crown land within a prohibited zone on any catchment area except for the purposes of —
- (a) travelling through the prohibited area on public roads; or
  - (b) travelling along private roads constructed by the State and which are open for public use; or
  - (c) picnicking within designated picnic sites provided and serviced by the State.
- 4.3.7 No picnic area or amenity to encourage picnicking or public recreation is to be established in any catchment area or water reserve without the written approval of the Minister.
- 4.4 Sewage, liquid waste and solid refuse**
- 4.4.1 No person shall permit the water of any property sewer or any filthy or polluted water discharging from premises occupied by him or under his control, to run, flow, or be brought into any reservoir or watercourse in any catchment area or water reserve.
- 4.4.2 Disposal of domestic sewage on catchment areas and water reserves.
- 4.4.2.1 All domestic sewage and liquid waste shall be treated and disposed of in accordance with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*.
- 4.4.2.2 Prior approval in writing must be obtained from the CEO before a bacteriolytic treatment plant is installed within a prohibited zone or within 100 m of the centre line of any watercourse.
- 4.4.2.3 Any liquid waste not processed through a bacteriolytic treatment plant, or not capable of treatment in such a plant shall be stored in watertight tanks or receptacles (which shall be maintained in good condition) and periodically removed from the catchment area by a liquid waste removal contractor approved by the appropriate Local Health Authority, and by the CEO.
- 4.4.3 The occupier of every house or premises shall provide and maintain in good condition a sufficient number of receptacles or

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boxes to contain all solid refuse, and the contents of these receptacles or boxes shall be removed from the catchment area at least once every week.

**4.5 Animals and birds**

4.5.1 The owner or person in charge of any animals or birds shall not cause or permit any dog, horse, goat, cattle, sheep, pig, duck, geese or fowls or other species of livestock to enter or remain on any portion of a catchment area.

4.5.2 The occupier or owner of any land within a catchment area shall not raise or graze livestock without approval of the CEO.

4.5.3 No person shall ride a horse or any other animal on any of the Minister's catchment areas (except along public roads) without the written permission of the CEO.

4.5.4 Any animal or bird found straying within a catchment area may be —

- (a) driven away or otherwise removed from such lands; or
- (b) sold; or
- (c) destroyed; or
- (d) otherwise disposed of,

by any officer or person authorised by the CEO without incurring any liability on the part of the State to recompense the owner for the loss.

4.5.5 [Subject to by-laws 4.12.2 and 4.12.3, no](#) ~~No~~ person shall slaughter any animal or bird in a catchment area without the permission of the CEO.

- 4.5.6 The owner of any animal or bird which dies upon any part of a catchment area or the person under whose charge the animal was at or immediately before the time of its death, shall forthwith upon knowing or being informed of the death of the animal or bird remove its body or carcass from the catchment area or bury the same so that all parts of the carcass are not less than 300 mm below the normal surface and restore the ground at least to its original level except that no animal or bird shall be buried within a prohibited zone or within 100 m of the centre line of any watercourse.
- 4.6 Manure, fertilizers, chemicals, petrol etc.**
- 4.6.1 The occupier or owner of any house, land or premises situated within a catchment area shall not store or use any animal manure or fertilizer without written permission of the CEO.
- 4.6.2 No person shall lay, place or use upon any part of the catchment area any poison, pesticide, insecticide, herbicide or other dangerous substances without written permission of the CEO and then they shall be applied in the manner required by the *Health (Pesticides) Regulations 2011*.
- 4.6.3 All persons storing, laying, placing or using any explosive or dangerous goods on a catchment area shall comply with the requirements of the *Dangerous Goods Safety Act 2004*.
- 4.6.4 No toxic, dangerous chemicals or radioactive materials are to be stored on the catchment areas without the prior written approval of the CEO.
- 4.6.5 Storage of Petroleum Products on Catchment Areas and Water Reserves
- 4.6.5.1 A person storing or handling petroleum products is to ensure that —
- (a) the petroleum products are stored and handled in accordance with the Dangerous Goods Storage Regulations; and

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- (b) no underground storage or handling system is situated within a prohibited zone or within 100 m of the centre line of any watercourse; and
- (c) no underground storage or handling system is constructed without the prior written approval of the CEO; and
- (d) each underground storage or handling system is designed, installed, operated and maintained so that it does not leak; and
- (e) any conditions set out in a written notice given to the person by the CEO are complied with.

4.6.5.2 A person storing petroleum products on premises that are not the subject of a licence granted under the Dangerous Goods Storage Regulations regulation 32 is to —

- (a) take all precautions necessary to prevent spillage of petroleum products onto the ground; and
- (b) comply with any requirement of the CEO to install containment structures on the premises.

**4.7 Clearing, road construction, vehicles etc.**

4.7.1 No person shall clear any portion of the catchment area or commence any excavation or any construction, alteration or diversion of roads in the catchment area without the prior written approval of the CEO.

4.7.2 No person shall drive a vehicle on any part of a catchment area other than a road or track which has a graded, gravelled, sealed, primed or other prepared surface without written approval of the CEO.

4.7.3 No person or organisation shall conduct a vehicle rally or race on a catchment area without the prior written approval of the CEO.

**4.8 Development, mining, offensive trades etc.**

- 4.8.1 No person shall commence, carry out, change or expand any agricultural, industrial, commercial, quarrying or mining development in a catchment area without the written approval of the CEO.
- 4.8.2 No person is to establish or carry on an offensive trade as defined in the *Health Act 1911* on a catchment area or water reserve without the written approval of the CEO.
- 4.8.3 No person shall commence or proceed with the erection of a building or structure of any kind or any alterations or additions to a building or structure on a catchment area or water reserve without the written approval of the CEO.
- 4.8.4 The occupier or owner of premises in a catchment area shall maintain those premises at all times to the standards required by the *Health Act 1911* or the relevant regulations made under that Act.

**4.9 Remedying damage etc., CEO's powers for**

- 4.9.1 If any person commits an offence under Part 4, the CEO, upon discovery of that offence, may serve notice on the offending person to restore any damage, remove any cause of pollution, or dismantle any building carried out in contravention of these by-laws by a nominated date.
- 4.9.2 A person who fails to comply with a notice served on that person under this by-law commits an offence.

**4.10 Signs; rangers' powers**

- 4.10.1 The CEO may erect signs at any position in the catchment areas or water reserves that it considers necessary to control the activities of persons or movement of vehicles entering onto or moving across the catchment areas or water reserves.
- 4.10.2 Any person driving or taking a vehicle, trailer, or item of mobile equipment onto or across a catchment area shall comply with all

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signs erected to control the speed, movement or parking of vehicles, trailers or mobile equipment.

4.10.3 Powers of a Ranger

4.10.3.1 Rangers and other persons authorised by the CEO are empowered to demand the name and address of any person committing or reasonably suspected of committing an offence against the Act or these by-laws relating to catchment areas and water reserves.

4.10.3.2 Any person who refuses to give, or gives a false name or address when such is requested by a Ranger or other authorised person is deemed to commit an offence under these by-laws.

**4.11 Designated camping sites for Noongar people**

4.11.1 In this by-law —

*CALM Act land* means land to which the *Conservation and Land Management Act 1984* applies under section 5 of that Act;

*CALM Act Minister* means the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor;

*wellhead protection zone* —

(a) within a pollution area — has the meaning given in by-law 5.6.1; and

(b) within a water reserve — means an area identified as a wellhead protection zone in the drinking water source protection plan for the water reserve published on the Department's website.

4.11.2 Subject to by-law 4.11.3, the Minister may, by notice published in the *Gazette*, designate all or part of a special provision catchment area to be a camping site for the Noongar people.

4.11.3 The Minister must not —

- (a) designate CALM Act land to be a camping site under this by-law without the written consent of the CALM Act Minister; or
- (b) designate a prohibited zone to be a camping site under this by-law; or
- (c) designate a wellhead protection zone within a pollution area or within a water reserve to be a camping site under this by-law.

4.11.4 The CEO must ensure that sufficient signs are erected and maintained in the vicinity of a designated camping site indicating that the area is a designated camping site for the Noongar people.

4.11.5 A person does not breach by-law 4.3.4 by camping in a special provision catchment area if the person —

- (a) is a member of the Noongar people; and
- (b) camps in a designated camping site.

#### **4.12 Customary hunting by Noongar people**

4.12.1 In this by-law —

*hand-held tool* does not include —

- (a) a firearm or any other device from which an object is discharged; or
- (b) a spear, boomerang or any other thing that is propelled from the hand;

*take* means trap, hunt or slaughter.

4.12.2 A person does not breach by-law 4.3.4 or 4.5.5 by taking an invertebrate or egg, as the case may be, in a prohibited zone in a special provision catchment area if the person —

- (a) is a member of the Noongar people; and
- (b) does so on a registered Aboriginal site; and
- (c) does so for an Aboriginal customary purpose; and
- (d) does so only by hand or with a hand-held tool; and



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(e) in doing so does not enter into or upon a stream,  
reservoir or watercourse; and

(f) in doing so does not allow a hand-held tool to enter into  
a stream, reservoir or watercourse; and

(g) does not sell the invertebrate or egg.

4.12.3 A person does not breach by-law 4.3.4 or 4.5.5 by taking an  
invertebrate or egg, as the case may be, in a special provision  
catchment area, other than in a prohibited zone in that area, if  
the person —

(a) is a member of the Noongar people; and

(b) does so for an Aboriginal customary purpose; and

(c) does so only by hand or with a hand-held tool; and

(d) in doing so does not enter into or upon a stream,  
reservoir or watercourse; and

(e) in doing so does not allow a hand-held tool to enter into  
a stream, reservoir or watercourse; and

(f) does not sell the invertebrate or egg.

**4.13 Noongar people lighting fires for customary purposes**

A person does not need approval under by-law 4.3.5 to light a  
fire on Crown land in a prohibited zone on a special provision  
catchment area if the person —

(a) is a member of the Noongar people; and

(b) does so on a registered Aboriginal site; and

(c) does so for an Aboriginal customary purpose; and

(d) in doing so does not enter into or upon a stream,  
reservoir or watercourse.

**4.14 Entry to Aboriginal sites by Noongar people**

A person who enters Crown land within a prohibited zone on a  
special provision catchment area does not breach by-law 4.3.6  
if —

- (a) the person is a member of the Noongar people; and
- (b) the person is travelling directly to or from, or is on, a registered Aboriginal site within the prohibited zone; and
- (c) while on the land, the person does not enter into or upon a stream, watercourse or reservoir.

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## **5.0 Protection of public water supply areas and underground water pollution control areas**

### **5.1 Object of this Part; CEO may erect signs**

5.1.1 The objectives of the by-laws in Part 5 are —

*[(a) deleted]*

- (b) to protect the Minister's production and observation wells from damage or pollution;
- (c) to prevent contamination of underground water in the pollution control areas;
- (d) to control development over the areas so as to prevent or inhibit contamination.

5.1.2 Penalties for breaches of any by-laws in Part 5 shall be as set out in section 57B(4) of the Act.

5.1.3 The CEO may erect signs and notice boards in any pollution area for the exhibition of any by-law, rule, regulation or notice.

*[By-law 5.1 amended in Gazette 29 Dec 1995 p. 6325-6;  
21 Apr 2011 p. 1479 and 1482; 14 Nov 2013 p. 5055.]*

*[5.2 Deleted in Gazette 14 Nov 2013 p. 5055.]*

### **5.3 Causing flooding of wells etc.**

5.3.1 A person shall not construct, alter or obstruct any watercourse, or drainage assets in a manner that causes the flooding of any well or observation well.

### **5.4 Pollution areas, production wells etc., protection of**

5.4.1 In a pollution area the use, storage and transport of pesticides, the disposal of pesticide containers and the disposal of spilled pesticides shall be in compliance with the *Health (Pesticides) Regulations 2011*.

- 5.4.2 In a pollution area a person shall not store animal manures or sewage sludges within 100 m of a production well except with the approval of the CEO.
- 5.4.3 In a pollution area a person shall not carry out the burial or disposal of animal or poultry carcasses, blood offal, or other refuse products in excess of 2 t, unless prior approval has been obtained from the CEO.
- 5.4.4 In a pollution area a person shall not yard or house an animal within 30 m of a production well.
- 5.4.5 In a pollution area installation or operation of septic tanks, leach drains, soakwells and other apparatus for the disposal of liquid waste shall be carried out in conformity with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* as amended from time to time and where the site is within 100 m of a production well a person shall obtain prior consent for the installation or operation from the CEO who may impose further conditions and restrictions as to the siting, construction or operation of the apparatus, in which event the State shall meet any consequential extra cost incurred in the initial construction of the apparatus.
- 5.4.6 In a pollution area or a part of a pollution area a person shall not dispose of or discharge onto or into the ground, or into any lake, swamp or drain industrial wastes, chemicals, radioactive material, petroleum or petroleum products, polluted water, or refuse unless that person has been granted permission in writing by the CEO to do so.
- 5.4.7 A person shall not discharge into any well or observation well any chemical, industrial waste, treated or untreated sewage, effluent or other matter which in the opinion of the CEO may pollute the underground water.
- 5.4.8A A person shall not place any chemical or other substance that is capable of polluting underground water, down a well during the course of its construction, redevelopment, maintenance or operation without prior approval of the CEO.

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5.4.8 The holder of a permit referred to in by-law 5.5.2, shall notify the CEO and the Corporation immediately any spillage occurs that might pollute the groundwater, either directly or indirectly, and where that spillage occurs.

5.4.9 Any person spilling, or being aware of any leakage of, any petroleum product in a pollution area shall notify the CEO and the Corporation immediately of that occurrence.

**5.5 Pollution areas, development and storing petrol etc. in**

5.5.1 A person shall not establish an offensive trade in accordance with the provisions of the *Health Act 1911*, in a pollution area, unless they have obtained the consent of the Minister to do so, and unless they comply with any conditions which the Minister may impose in relation to the establishment of that offensive trade.

5.5.2 The establishment or operation of any premises for the storage, packaging, formulating, processing, manufacturing, sale, testing or use of chemicals or other substances liable to pollute underground water in a pollution area shall be subject to the following terms, provisions and conditions —

- (a) application shall be made to the Minister in writing for a permit to operate existing or proposed premises and the application shall set out —
  - (i) the process or processes of manufacture, packaging, storage, formulating, testing, or use of all raw materials and fuels, intermediate products and final products including waste material and effluents whether gaseous, liquid or solid;
  - (ii) the quantities of raw materials, and fuels used and the intermediate and final products, waste materials, effluents, being or proposed to be produced;
  - (iii) the methods proposed to treat and dispose of any wastes, by-products and effluents, including

- stormwater and wash down water where this may be or could become polluted;
- (iv) plans and procedures proposed to prevent pollution of underground water, including emergency plans and procedures for contingencies such as accidental spillage or malfunction of any manufacturing, storage, transport or treatment process or system, both on and off the premises where this is applicable;
  - (v) such other information required by the Minister to assess the pollution risk to underground water and to assist with measures to prevent pollution;
- (b) upon receipt of the permit for the operation of the premises the applicant shall enter into a written agreement with the Minister to comply with the conditions of the permit which may where so required include conditions that where at any time in the opinion of the Minister —
- (i) the occupier is not fully and faithfully performing and observing the terms, provisions and conditions of the permit or any by-law; or
  - (ii) the raw materials, intermediate products and final products, wastes, effluents, fuels or any other substances are not in compliance with the terms, provisions or conditions of the permit; or
  - (iii) the apparatus, the subject of the permit is not in efficient working order; or
  - (iv) pollution of the groundwater may be occurring or about to occur; or
  - (v) any other breach of the agreement has been made,
- the Minister may serve a notice in writing upon the occupier of the property, by delivering it or posting it addressed to him at the property, specifying the matter or matters in respect of which a breach has taken place, or as to which the occupier is in default, or concerning

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which there is any complaint by the Minister, and the notice shall require the occupier to make good the same in all things to the satisfaction of the Minister, within a period to be stated therein, from the date of service thereof in a manner so specified, and the notice shall also state that the Minister is at liberty to terminate and put an end to the permit;

- (c) the occupier shall notify the Minister in writing of his desire to make any alteration which shall in any way affect the nature and quantity of the raw materials, fuels, intermediate and final products, wastes and effluents, or the apparatus plans and procedures the subject of the permit, and which may affect the risk of pollution to underground water, and shall not make such an alteration without prior approval in writing from the Minister;
- (d) the person to whom the permit is granted shall notify the Minister in writing of any change of ownership or occupancy of the property, at least 14 days prior to the change;
- (e) the permit shall not be assigned or transferred, unless the consent of the Minister in writing has been first obtained;
- (f) the Minister may require the owner or occupier of any premises the subject of a permit from the Minister to install sample collection apparatus, measuring equipment and observation wells in the ground for the purpose of measuring the depth to the ground water and for obtaining samples of ground water, or for any other purpose;
- (g) an officer authorised by the CEO shall be at liberty at any time and from time to time to enter upon the property and every part thereof and to take samples or measurements and otherwise to inspect the apparatus stored or situated on the property.

- 5.5.3 Where the requirements of a notice referred to in by-law 5.5.2(b) have not been complied with on the expiration of the period mentioned therein, the permit shall automatically terminate, and an officer authorised by the CEO may enter upon the property, and at the expense of the occupier disconnect or stop the apparatus used and take such other action as may be deemed necessary to prevent or stop pollution of groundwater that may be occurring or which might occur, and the occupier shall not be entitled to compensation in connection therewith.
- 5.5.4 A person storing or handling petroleum products or flammable liquids in a pollution area is to ensure that —
- (a) the petroleum products or flammable liquids are stored and handled in accordance with the Dangerous Goods Storage Regulations; and
  - (b) no underground storage or handling system is situated within a prohibited zone or within 100 m of a production well; and
  - (c) no underground storage or handling system is constructed without the prior written approval of the CEO; and
  - (d) each underground storage or handling system is designed, installed, operated and maintained so that it does not leak; and
  - (e) no flammable liquid is stored without the prior written approval of the CEO; and
  - (e) any conditions set out in a written notice given to the person by the CEO are complied with.
- 5.5.5 A person storing petroleum products in a pollution area on premises that are not the subject of a licence granted under the Dangerous Goods Storage Regulations regulation 32 is to —
- (a) take all precautions necessary to prevent spillage of petroleum products onto the ground; and
  - (b) comply with any requirement of the CEO to install containment structures on the premises.



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**5.6 Priority source protection areas, control of certain developments in**

5.6.1 In this by-law and by-laws 5.6.2, 5.6.3, 5.6.4, 5.6.5, 5.6.6, 5.6.7 and 5.6.8 —

***automotive business premises*** means premises associated with the repair, maintenance or servicing of motor vehicles and includes premises that are to be used as or by any of the following —

- (a) an automotive maintenance and repair shop or premises where motor vehicle parts are installed; or
- (b) a motor vehicle detailer, a car wash establishment, a motor vehicle wrecker or a vehicle depot; or
- (c) a workshop for construction, mining and earthmoving equipment; or
- (d) a wholesaler or retailer of fuels and oils;

***bulk liquid storage tank system*** means any tank, whether or not mobile, having a capacity of or greater than 250 L, and includes the pipework fittings and filling and dispensing apparatus associated with the tank, but does not include a tank that is part of any apparatus for the bacteriolytic treatment of sewage or that contains unpolluted water;

***elevated storage tank system*** means a bulk liquid storage tank system in which no portion of the tank is on or below the ground;

***establish***, in relation to a mobile bulk liquid storage tank system, includes placing that storage tank system at a location where it will operate for a purpose other than the delivery to, or collection from, another bulk liquid storage tank system;

***ground storage tank system*** means a bulk liquid storage tank system in which any portion of the tank is on or below the ground;

***owner*** has the meaning given in the *Local Government Act 1995* section 1.4;

**plans** means the plans showing the locations of pollution areas, priority 1, 2 and 3 source protection areas, wellheads and wellhead protection zones, copies of which are available for public inspection at the offices of the Department, and representations of which are set out in the Schedule after by-law 5.6.8;

**priority 1 source protection area, priority 2 source protection area and priority 3 source protection area** mean the portions of pollution areas designated, respectively, “P1”, “P2” and “P3” on the plans;

**tank** includes all the tanks that are connected in, or otherwise form part of, the same bulk liquid storage tank system;

**unpolluted water** means water that, if released from storage, would not contaminate groundwater or other water resources;

**wellhead** means a well, or the location of a proposed well, identified on the plans by its name adjacent to a black circle;

**wellhead protection zone** means that area within a pollution area that surrounds a wellhead, the extent of which is identified on the plans.

5.6.2 Regardless of any other provision of these by-laws, a person shall not establish within a priority 1 or a priority 2 source protection area —

- (a) a ground storage tank system; or
- (b) any automotive business premises; or
- (c) an elevated storage tank system inside a wellhead protection zone.

5.6.3 A person shall not establish, or increase the capacity of, an elevated storage tank system within a priority 1 or priority 2 source protection area unless —

- (a) the person has applied for a permit under by-law 5.6.4; and

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- (b) the Minister has issued a permit authorising the establishment, or increase in capacity, of the storage tank system; and
  - (c) the person complies with the terms and conditions of the permit.
- 5.6.4 An application for a permit to establish, or increase the capacity of, an elevated storage tank system on land within a priority 1 or priority 2 source protection area shall be made —
  - (a) in writing to the Minister; and
  - (b) by the owner of the land or, if the owner is not the occupier, by the occupier of the land.
- 5.6.5 The Minister may only issue a permit applied for under by-law 5.6.4 —
  - (a) for an elevated storage tank system that, including any proposed increase in capacity, does not exceed 5 000 L, unless the Minister is satisfied that there are special circumstances relevant to the issue of that permit; and
  - (b) if, regardless of the present or proposed capacity of the elevated storage tank system the subject of the application, the Minister is satisfied that there is no undue risk that the purity of underground water in the source protection area in which the storage tank system is to be established, or increased in capacity, will be affected detrimentally, either directly or indirectly, by the establishment, or increase in capacity, of that storage tank system.
- 5.6.6 By-laws 5.5.2 (other than paragraph (a)) and 5.5.3, as they relate to permits, apply, to the extent that they are applicable and with appropriate modifications, to a permit applied for under by-law 5.6.4.
- 5.6.7 The CEO, by notice in writing served on a person who, in contravention of by-law 5.6.2 or 5.6.3, as the case may be —

- (a) has established, or increased the capacity of, a storage tank system; or
- (b) has established any automotive business premises,

may direct that person within such period, being not less than 21 days after the service of the notice, as specified in the notice, to dismantle and remove the storage tank system or the business premises.

5.6.8 If a person fails to comply with a notice served on that person under by-law 5.6.7 —

- (a) the person commits an offence; and
- (b) an officer authorised by the CEO may dismantle and remove the storage tank system or the business premises the subject of the offence.

***[The schedule after this by-law has been omitted from this draft because there are no proposed changes to it.]***

## **31.0 Offences and penalties**

*[31.1-31.3 Deleted in Gazette 14 Nov 2013 p. 5056.]*

### **31.4 Penalties**

- 31.4.1 A person committing a breach of any of the provisions of these by-laws, to which no specific penalty is attached shall be liable on summary conviction to a penalty not exceeding \$200.00 and in addition may be ordered to pay any expense incurred by the State in consequence of such breach.
- 31.4.2 In the case of a continuing breach the offender shall be liable in addition to the fine and payment of expenses to a daily penalty not exceeding \$50.00 for each day the breach continues after notice thereof has been given by or on behalf of the Minister or the CEO to the offender.

**Schedule 1 — Description of South west settlement area**

[bl.1.1]

All the lands and waters contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark, being a point on a northern boundary of native title determination application WAD6192/1998 (WC97/71) as accepted for registration on the Register of Native Title Claims on 22 August 1997;
- then continues generally easterly and generally south-easterly along the boundaries of that native title application to the intersection with native title determination application WAD6181/1998 (WC00/7) as accepted for registration on the Register of Native Title Claims on 3 July 2008;
- then continues generally easterly, generally south-easterly and westerly along the boundaries of that native title application to the intersection with native title determination application WAD6286/1998 (WC98/70) as accepted for registration on the Register of Native Title Claims on 29 September 1998;
- then continues generally southerly along the boundaries of that native title application to the intersection with the low water mark;
- then continues generally south-westerly, generally north-westerly and generally northerly along the low water mark back to the starting point,

other than any land or waters the subject of native title determination application WAD6193/1998 (WC97/72-6) as accepted for registration on the Register of Native Title Claims on 12 December 2011.

And all the islands landward of the low water mark that exist within the area contained within a line that —

- starts at the intersection of the prolongation westerly of the northern boundary of the Shire of Coorow with the low water mark;

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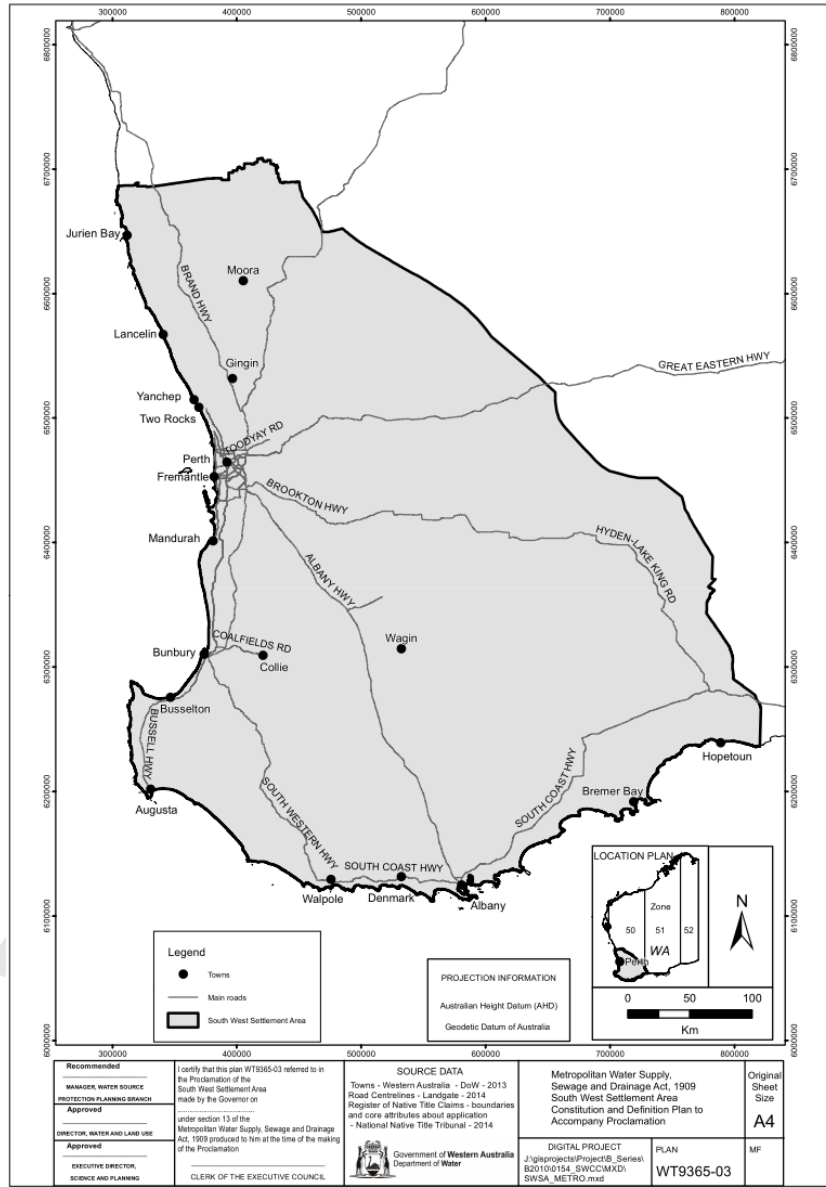
- then continues generally southerly, generally south-easterly and generally north-easterly along the low water mark to the intersection with longitude 120.465236;
- then continues southerly to the intersection of the 3 nautical mile limit with longitude 120.465236;
- then continues generally south-westerly, generally north-westerly and generally northerly along the 3 nautical mile limit to the prolongation westerly of the northern boundary of the Shire of Coorow;
- then continues easterly along that prolongation back to the starting point.

Notes:

1. The low water mark is sourced from the Spatial Cadastral Database maintained by the Western Australian Land Information Authority as at 29 October 2012.
2. Coordinate references are to Geocentric Datum of Australia 1994 (GDA94) coordinates in decimal degrees.
3. The 3 nautical mile limit is sourced from Australian Maritime Boundaries (AMB), 6<sup>th</sup> edition, released in February 2006.

**Schedule 2 — Map of South west settlement area**

[bl.1.1]



Minister for Water.



**bl. 4.14**

---

Clerk of the Executive Council.

DRAFT

## **Annexure S**

### **Noongar Economic Participation Framework**

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## **A. INTRODUCTION**

Under Clause 5.3(i) of the 2009 Heads of Agreement for the full and final resolution of all native title claims in the South West of Western Australia (the South West Settlement), it was agreed that the State of Western Australia (the State) and the South West Aboriginal Land and Sea Council (SWALSC) would negotiate:

*“An appropriate regime to accommodate Noongar interests in the State’s use and development of State land.”*

The State acknowledges the Noongar community’s desire to participate more fully in the economy of the South West region of Western Australia. Through the Settlement, the State will provide a number of avenues for increased Noongar economic development and participation. In particular, the State is proposing the following Noongar Economic Participation Framework (the Framework). The Framework demonstrates a mutual commitment by both government and the Noongar community to work collaboratively to achieve the Framework’s objectives.

The State’s support for Noongar economic participation takes multiple forms in the context of the South West Settlement. That is, Noongar economic participation is fundamental to:

- the development of the Noongar Boodja Trust and the advocacy that will arise from the central and regional governance structures;
- the various streams of home ownership and asset management that have been proposed; and
- the development of Noongar land holdings.

Further, every effort will be made to maximise Noongar employment within government and through contracting arrangements arising out of the implementation of the South West Settlement.

## **B. PURPOSE:**

The objectives of the Framework are to:

- Grow Noongar owned businesses and Noongar/non-Noongar joint ventures, and increase Noongar employment in Noongar businesses.
- Increase the knowledge and skills of the Noongar community in the areas of Government procurement, tendering and contracting.
- Increase Noongar participation and representation in employment and the broader economy.
- Build on the existing strengths of the Noongar community to foster the Noongar entrepreneurial culture.

## C. PRINCIPLES

To improve economic participation outcomes for Noongar people in the South West the State will apply and promote the following principles:

- **Recognition that Noongar** people and businesses are a valued part of the local and regional economy particularly in the South West.
- **Channels of communication are open** to ensure Noongar businesses and corporations are provided with information regarding Government contracting and tendering opportunities.
- **A demonstrated commitment to transparency, accountability** and appropriate **governance** structures.

The State will apply these principles in partnership and consultation with the Noongar Economic Participation Steering Group.

## D. GOVERNANCE

A Noongar Economic Participation Steering Group will be established to oversee implementation of this Framework.

The Group will consist of Senior Government Representatives from agencies that may include:

- Department of the Premier and Cabinet;
- Department of Aboriginal Affairs;
- Small Business Development Corporation;
- Landcorp;
- Department of Lands;
- Department of Finance (Building, Management and Works);
- Main Roads WA;
- **Other Departments/Agencies as identified.**
- 1 Representative from each Noongar Regional Corporation and the Central Services Corporation.
- 1 Representative of the Noongar Chamber of Commerce

Membership of the Noongar Economic Participation Steering Group (the Steering Group) will be constantly reviewed to ensure relevant Government and Noongar representation is maintained.

The Steering Group will meet on a quarterly basis in its initial year and thereafter, meet half yearly or as otherwise agreed.

In the first year of the agreement the task of the Steering Group will be to develop:

- the terms of reference;
- a three year implementation and communication plan; and

- evaluation tools.

***It is anticipated the initial Terms of Reference for the Noongar Economic Participation Steering Group would include:***

- Facilitate early engagement with Noongar representatives on government land use and development activities planned in the South West;
- Identify opportunities for greater Noongar participation in South West development, including specific employment, contracting and investment opportunities, upcoming projects and tenders;
- Build the capacity and facilitate the ability of Noongar interests to take advantage of those opportunities and provide Noongar businesses with a strategic opportunity to plan for involvement in land and other development; and
- Ensure government Aboriginal training and education programs are responsive to local Noongar community needs and priorities to increase Noongar employment.

**E. KEY DELIVERABLES**

- Intensive capacity building in year one of the implementation of the Settlement, and ongoing support thereafter, in government tendering and contracting policies as well as the development and submission of tender documentation;
- Promote early engagement between State Government agencies through Early Tender Advice for all Noongar businesses registered with Tenders WA;
- Exemption from competitive tendering processes that allows for the direct engagement of a registered Noongar business for works, goods and services procurements valued at less than \$150,000 (as outlined in the Engaging Aboriginal Business Policy and Open and Effective Communication Policy).
- Increase registration of Noongar businesses on the Tenders WA website (Refer Attachment 1).
- Provide Noongar representation on tender evaluation panels for Government agencies providing works in the South West where appropriate (Refer Attachment 1).

***Initial Projects – State Government Year 1:***

To implement the Key Deliverables the following projects will be undertaken in Year one of the Settlement:

- The State will deliver workshops in partnership with each Noongar Regional Corporation to provide information and education to Noongar people with existing businesses or for those planning to establish new businesses covering topics that include:
  - How to take advantage of existing preferential Aboriginal business initiatives;
  - Demystifying the Government tendering and contracting processes;
  - How to obtain preferred provider status;

- How to get pre-qualification status;
- Establishing new businesses;
- The State will create a central location for all information and policies relevant to Aboriginal Businesses at a central portal (Eg: the Aboriginal Business Directory).
- The State will promote and encourage the registration of Noongar businesses on the Aboriginal Business Directory to ensure that Noongar businesses are highlighted and can take advantage of the education, training and economic opportunities available.

## **F. LANDCORP**

A further element of the State's economic participation proposal is the continuation of the current Landcorp 5% offer as part of the "Future Act incentives for release of Unallocated Crown Lands in town-sites." This policy was developed to streamline the process for negotiating with native title claimants to facilitate the release of town-site land for residential, commercial or light industrial development. The incentive payment included the equivalent of a standard 5% of the sale price of the lots in the land release. Although the process relates to the native title future act system, Landcorp will continue the 5% payment as part of the South West Settlement, with respect to Unallocated Crown Lands which is developed by LandCorp.

## **G. SECRETARIAT**

Secretariat support will be provided by the DPC SW Settlement Implementation Unit. The Secretariat will monitor outcomes from the Steering Group, consult with Steering Group members and identify where further action may be required to improve the effectiveness of this Framework. Reports will be provided by the Secretariat on the progress of the outputs and evaluation measures.

## **H. REVIEW AND EVALUATION**

Review and evaluation of the Framework will occur annually and will be led by DPC. Changes to the Framework may be implemented by mutual agreement of the Noongar Regional Corporations, the Central Services Corporation and DPC.

The Noongar Economic Participation Steering Group will provide a 6 monthly report to the South West Settlement Implementation Committee providing information regarding progress to achieve deliverables as outlined in the Noongar Economic Participation Implementation Plan (as developed by the Steering Group).

The Noongar Economic Participation Steering Group will participate in an annual review workshop convened by the Department of the Premier and Cabinet SW Settlement Implementation Unit.

At the end of the first six months of Settlement the Noongar Economic Participation Steering Group will provide a 3 year Strategic Implementation Plan to the South West Settlement Implementation Committee, Noongar Regional Corporations and Central Services Corporation. This plan will

provide a basis on which to review and evaluate the progress and impact of the Framework across the South West.

## **ATTACHMENT 1**

### **NOONGAR ECONOMIC PARTICIPATION FRAMEWORK – EXPLANATORY NOTES**

#### **What is Tenders WA?**

The Tenders WA website is a central portal for all Government tender processes. This website contains a range of functions to make the tendering process for WA Government contracts transparent and efficient. It is the central source of information on Western Australian public sector requests and awarded contracts.

Western Australian government departments use this website to advertise their public tender requests and publish details of contracts awarded.

By registering a business on the Tenders WA website you are able to:

- receive invitations to submit tender applications relevant to the goods/services that you provide;
- register to receive early tender advice emails.

#### **What is Early Tender Advice?**

Businesses can register on the Tenders WA website for Early Tender Advice (ETA). ETA are advance notices of possible future tenders to be posted by Government Departments and Agencies. Registered Businesses will be provided ETA for the good or service that they are registered.

Noongar businesses can register on Tenders WA for early advice for:

- categories of contract service provision work that they may be interested; or
- everything that government agencies load in Tenders WA as an ETA.

Early tender advice requires registration of the business then a separate logon to set up for an email push. This process is quite simple to set up and guides are available online. Once a business is set up for an automatic email push when a government agency loads the ETA into the system advising the market of the potential tender activity the business will automatically receive an email regarding an opportunity to tender within a reasonable time to prepare for the required works. Timelines between the ETA and the actual tender request can vary from 6 weeks to 6 months to one year.

#### **What is a Tender Evaluation Panel?**

Every tender process over the value of \$20,000 requires a tender evaluation panel to be established by the purchasing Department or Agency.

Panel members are required to have knowledge of the work or services required and the evaluation process. Each panel member assesses each offer received for a tender against the stated requirements of the Tender Request.

At first, each panel member carries out an independent assessment. The evaluation panel then convenes and comes to a consensus decision based on ratings against the tender requirements. This is based on the written evidence provided in each submission.

Where appropriate, the evaluation panel will also consider any wider benefits to Western Australia, including:

- Whether the supplier is local, especially in regional Western Australia,
- Whether the supplier uses or employs local and small suppliers, including suppliers in regional Western Australia.



Noongar membership on tender evaluation panels will support the development of knowledge of the tendering process as well as an understanding of successful tendering in the Government sector which can be applied across the corporate/non-Government sectors.

Tenders are evaluated in isolation and therefore no rolling membership would occur. Where a tender is released to market and it is appropriate to include a Noongar representative on the panel as a non-voting member of the panel, a government agency would make contact. The Department of Finance, through the Funding and Contracting Services Unit have offered to provide training sessions as to how evaluation processes are undertaken to provide knowledge for the Noongar community to be familiar with the processes before undertaking such obligations. Noongar representatives would not be permitted to vote as non-public servants cannot be held accountable for the spending of public funds. However, a Noongar representative may have technical advice that will value add to the procurement evaluation process that assists with the value for money assessment.

The knowledge gained by being part of these processes will assist the Noongar community to structure tender submissions in a meaningful and competitive way, therefore capacity building Noongar business' ability to extend competitiveness for government contracts and become aware of existing Policy preferences.

## **Annexure T**

### **Community Development Framework**

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The State of Western Australia is currently negotiating the full and final resolution of all native title claims in the South West of Western Australia (the Settlement). The State and the Noongar People agree that the Settlement is a unique opportunity to build on the strengths and resilience of the Noongar Community in order to achieve long held aspirations for better social outcomes. Under section 5.3(j) of the 2009 Heads of Agreement, it was agreed that the South West Aboriginal Land and Sea Council (SWALSC) and the State of Western Australia (the State) would negotiate Community Development including:

- (i) *“Funding toward the promotion of Indigenous culture and improving educational outcomes; and*
- (ii) *Relationship between Central Body Corporate and the Regional Bodies Corporate in the management of programs and funding distribution.”*

## 1. PURPOSE

The Community Development Framework (the Framework) provides a statement of mutual commitment by [the **State Government of Western Australia and the South West Aboriginal Land and Sea Council**] to a shared set of principles and priorities. The Framework aims to provide an environment for key government agencies, industry and non-government organisations to work collaboratively with the Noongar community, Regional and Central Services Corporations and to deliver against shared priorities in a manner consistent with the Framework Principles.

For the purpose of this Framework, Community Development is defined as ***the process of working with a community to identify and implement strategies to strengthen and develop towards its full potential.***

The key objectives of the Framework are:

- improved and sustainable social and economic outcomes for the Noongar community;
- strengthening of Noongar culture, language, traditional knowledge, values and identity in continuation with a greater understanding and celebration of Noongar culture and society throughout Western Australia;
- increased capacity for Government and other service providers to work more effectively, and partner with Noongar people in the design and delivery of human and community services; and
- improvements in economic independence, leadership and governance, and self-esteem across the Noongar community.

A diagrammatic representation of Community Development within the South West Settlement is included at Attachment A.

## 2. PRINCIPLES:

All parties, in working to meet the Framework's objectives, undertake to adopt the following principles:

- **Recognition that Noongar culture** is fundamental in strengthening the future for the Noongar people and the wider South West community. Measures that strengthen connections to country and transmission of culture are fundamental to successful community development.
- **A partnership approach** to planning and delivering community services by ensuring ongoing engagement, communication and consultation, mutual respect and learning between the Noongar community, Aboriginal corporations, Governments, and Non-Government Organisations (NGOs).
- **A demonstrated commitment to transparency, accountability** and appropriate **governance** structures.
- **An enduring commitment to the sustainable delivery** of community services while building on existing strengths and being responsive to the priorities of both the Noongar community and Government.

## 3. PRIORITIES

In working to meet the Framework's objectives, the parties agree to focus on the following:

- **Safeguarding, developing and transmitting Noongar culture**
- **Capacity Building and Leadership**
- **Housing**
- **Youth**
- **Health**
- **Education**

These priorities will be reviewed after the first 5 years of the Settlement. Additional region specific priorities may also be agreed.

#### 4. DELIVERY

The key partnership mechanisms to deliver the Framework will be **Programs, Collaboration and Engagement.**

##### (i) Programs

Programs are community and cultural development initiatives designed by the Noongar community and delivered by the Regional Noongar Corporations and the Central Services Corporation. These programs will be provided in addition to current mainstream services, and will offer an alternative approach to challenges experienced by the Noongar community. The delivery of programs will be the responsibility of the Noongar Community.

Examples of programs include:

- Connection to Country;
- Intergenerational transmission of Traditional Knowledge and Values – Elders to Youth;
- Language Consolidation; and
- Healing and Resilience.

##### (ii) Collaboration

Collaborative partnerships are relationships (including those formalised through MOUs, contracts and other mechanisms) in the design and delivery of human and community services between the Regional and Central Noongar Corporations; and State and Commonwealth Government agencies and NGOs with particular emphasis on improving:

- outcomes for Noongar people;
- coordination of services;
- input and direction by Noongar people; and
- delivery of culturally appropriate services.

The approach to collaboration will recognise existing service providers and sources of relevant expertise within both the Noongar community and the Government and Non-Government sectors, and both parties will seek to engage and work with these existing stakeholders.

##### (iii) Engagement

Engagement activities will involve the provision of advice by the Noongar community through the Central and Regional Noongar Corporations regarding Government and non-Government designed and delivered programs and services. These partnerships will increase the accessibility, cultural appropriateness and value of these programs and services to the Noongar community.

## **5. GOVERNANCE**

Implementation of the Framework will be overseen by the Community Development Reference Group (The Reference Group), which will comprise:

- Members of the Aboriginal Affairs Coordinating Committee (AACC);
- Chair/Representatives from the Noongar Central and Regional Corporations; and
- Representatives from NGOs delivering services to the Noongar community.

The Reference Group will provide advice and support in developing and implementing programs, and forging and strengthening collaboration and engagement.

The Reference Group will meet bi-annually, and will be co-chaired by a nominated representative from the AACC, and from the Noongar Central or Regional Corporations.

The Reference Group and broader Community Development governance structure will be reviewed within 5 years of coming into effect, and any adjustments made to improve its effectiveness will be agreed between the Parties. Detailed Terms of Reference, membership, chairing and secretariat arrangements for the Reference Group will be agreed by the Parties and summarised in a governance manual.

The Reference Group may also establish Working Groups to focus on particular priority themes or a combination of themes within a specific region, or all regions. These Working Groups will have key community, Government, NGOs, and industry representatives. These groups will operate for as long as deemed necessary by the Reference Group.

At the regional level, the key implementation mechanism will be existing Regional Human Services Management Groups. These groups coordinate cross agency activities and responses to portfolio issues at the regional management level. The groups will meet regularly with representatives from the Noongar Regional Corporations to oversee the implementation of the Framework at a regional level. For these meetings a co-chair arrangement will exist with the current Chairs and a nominated representative from the Regional Corporation.

## **6. EVALUATION AND REVIEW**

A comprehensive evaluation framework will be developed through consultation between the State and SWALSC. This will outline a review schedule which will require approval by the Reference Group.

## **7. EFFECTIVE DATE**

The date that the Settlement is signed.

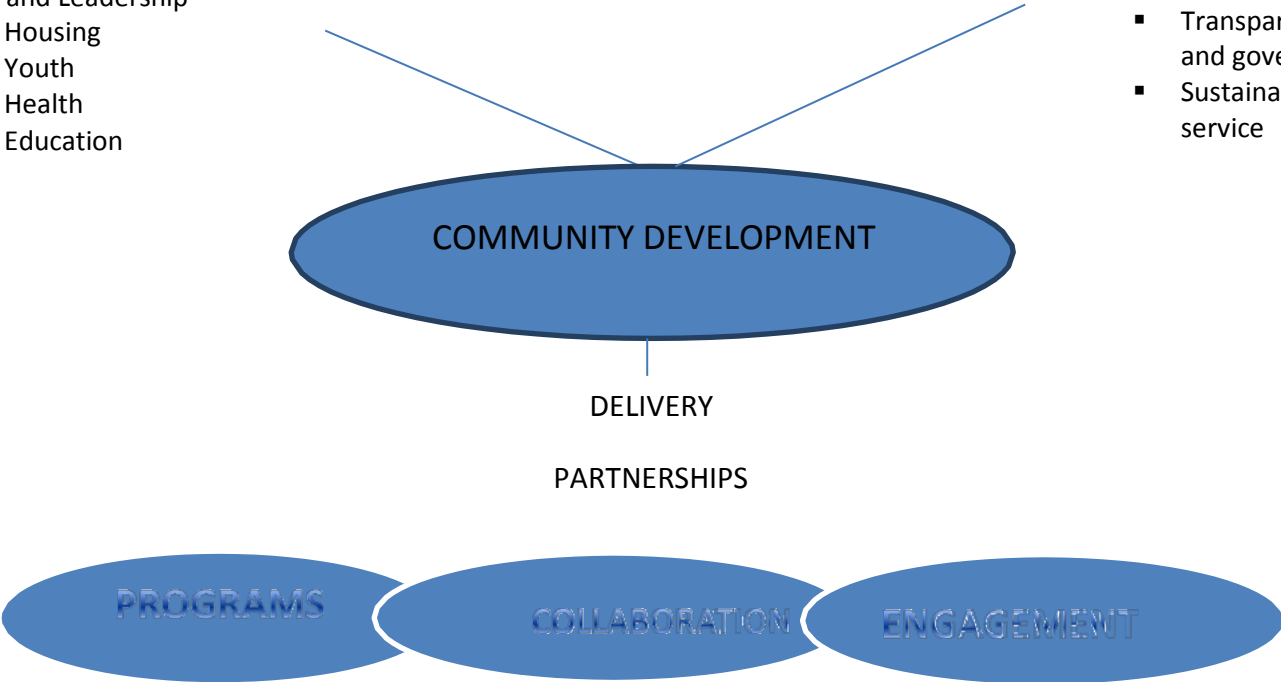
### Community Development in the South West Settlement

PRIORITIES:

- Noongar Culture
- Capacity Building and Leadership
- Housing
- Youth
- Health
- Education

PRINCIPLES:

- Importance of Noongar Culture
- Partnership approach
- Transparency, accountability and governance
- Sustainable delivery of service



**Relationship**

Noongar to Noongar designed and delivered programs	↔	Noongar/Government/NGO designed and delivered together	↔	Gov/NGO designed and delivered programs/services informed by the Noongar community
--	---	--	---	--

**Type of Service**

Noongar Cultural Development	↔		↔	Mainstream community and human services
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**Example**

Noongar Leadership Program		Noongar Youth Diversion Program SW Settlement Housing Program		Mental Health Services Child Protection Services
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## **Annexure U**

### **Proponent Statutory Declaration**

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Annexure U

Proponent Statutory Declaration

Statutory Declaration

*Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*

I, .....

.....

.....

[XX – Insert full name, address and occupation of person making declaration]

**Do solemnly and sincerely declare:**

(\*) (\*\*) Delete whichever is not applicable

1. (\*) I am the registered holder of the following Tenure [XX – Insert details of Tenure].  
(\*) I am a director of [XX – Insert name of corporation] being the registered holder of the following Tenure [XX – insert details of the Tenure] and am duly authorised by it to make this declaration.
2. (\*\*) The registered holder of the Tenure as mentioned above has on [XX – Insert date of Aboriginal Heritage Agreement] entered into an Aboriginal Heritage Agreement with [XX – Insert name of relevant Native Title Agreement Group (through SWALSC) or Regional Corporation as the case may be] that applies to the Tenure.  
(\*\*) The registered holder of the Tenure as mentioned above has on [XX – Insert date of Noongar Standard Aboriginal Heritage Agreement], entered into a Noongar Standard Aboriginal Heritage Agreement with [XX – Insert name of relevant Native Title Agreement Group (through SWALSC) or Regional Corporation as the case may be] that applies to the Tenure.  
(\*\*) The registered holder of the Tenure as mentioned above has made reasonable endeavours to execute and enter into a Aboriginal Heritage Agreement with [XX – Insert name of relevant Native Title Agreement Group (through SWALSC) or Regional Corporation as the case may be] (RC) within 20 Business Days (as defined in [XX - Insert name of relevant ILUA]) (ILUA) of the commencement of negotiations between the registered holder of the Tenure and the RC under clause 28(e) of the ILUA and condition [XX insert condition] on Tenure and, in the absence of an executed Aboriginal Heritage Agreement, has on [XX – Insert date of execution of the NSHA] subsequently executed a Noongar Standard Aboriginal Heritage Agreement which would, if executed by the RC, apply to the Tenure, and provided a copy of the same to the RC.

- (\*\*) The executed Noongar Standard Aboriginal Heritage Agreement was received by the RC on [XX – Insert date on which NSHA received by the RC] and by [XX – insert date 20 Business Days after the date of receipt] the registered holder of the Tenure had not received a copy of the fully executed Noongar Standard Aboriginal Heritage Agreement from the RC.
3. (\*\*) By entering into an Aboriginal Heritage Agreement or Noongar Standard Aboriginal Heritage Agreement with the RC in the manner provided in paragraph 2 above, and upon providing this Statutory Declaration to the [XX – Insert details of relevant Department of the State], I believe that the registered holder of the Tenure as mentioned above will have satisfied the relevant conditions applicable to the Tenure.
- (\*\*) By executing a Noongar Standard Aboriginal Heritage Agreement and providing it to the RC in the manner provided in paragraph 2 above, and upon the RC not providing an executed copy of the Noongar Standard Aboriginal Heritage Agreement to the registered holder of Tenure by [XX – Insert date] and upon providing this Statutory Declaration to the [XX – Insert details of relevant Department of the State], I believe that the registered holder of the Tenure as mentioned above will have satisfied the relevant conditions applicable to the Tenure.
4. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
5. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

**Declared**

At: \_\_\_\_\_  
(Place)

On: \_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
  
\_\_\_\_\_  
(Signature of person making declaration)

In the presence of: \_\_\_\_\_

---

(Signature of Authorised Witness)

---

(Name and qualification of Authorised  
Witness)

## Instructions for completing Statutory Declaration

The following is a guide for executing a statutory declaration pursuant to *Oaths, Affidavits and Statutory Declarations Act 2005* (WA). It is recommended that prior to executing any statutory declaration the person making the declaration should consult the provision of that Act to ensure compliance with it.

### **Signature by the person making the statutory declaration**

The person who is making the statutory declaration must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any alteration that has been made to the statutory declaration (if any);  
and
- (c) in the presence of an authorised witness declare orally:
  - (i) that he or she is the person named as the maker of the statutory declaration;
  - (ii) that the contents of the statutory declaration are true;
  - (iii) that the signature or mark is his or hers; and
  - (iv) if necessary, that any attachment to the statutory declaration is the attachment referred to in it.

### **Witnessing of a statutory declaration**

After the maker of the statutory declaration has complied with the authorised witness must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any alteration in the statutory declaration (if any); and
- (c) imprint or clearly write his or her name and qualification as an authorised witness.

### **Categories of authorised witnesses**

A statutory declaration must be made before one of the following persons (authorised witnesses):

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer, Defence force officer, Dentist, Doctor, Electorate officer of a member of State Parliament, Engineer, Commonwealth. Industrial organisation secretary, Insurance broker, Justice of the

Peace, Landgate officer, Lawyer, Local government CEO or deputy CEO, Local government councilor, Loss adjuster, Marriage celebrant, Member of Parliament, Minister of religion, Nurse, Optometrist, Patent attorney, Physiotherapist, Podiatrist, Police officer, Post office manager, Psychologist, Public notary, Public servant (Commonwealth), Public servant (State), Real estate agent, Settlement agent, Sheriff or deputy sheriff, Surveyor, Teacher, Tribunal officer or Veterinary surgeon.

## **Annexure V**

### **Noongar Heritage Partnership Agreement**

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2014

**BETWEEN:**

**THE DEPARTMENT OF ABORIGINAL AFFAIRS  
(the Department)**

and

**[Insert Name] REGIONAL CORPORATION**

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**NOONGAR HERITAGE PARTNERSHIP  
AGREEMENT**

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**THIS AGREEMENT** is made the            day of            20xx.

**BETWEEN**

**THE STATE OF WESTERN AUSTRALIA**, acting through THE MINISTER FOR ABORIGINAL AFFAIRS care of Department of Aboriginal Affairs, 151 Royal Street, East Perth, Western Australia (**Minister**)

and

**[Insert Name] REGIONAL CORPORATION (ICN    )**, a body corporate established for and on behalf of the [Insert Name] Group and appointed by the Trustee of Noongar Boodja Trust, of [insert address] (**Corporation**)

## 1. PURPOSE

The Purpose of the Noongar Heritage Partnership Agreement is to provide the framework through which the Department and the (region) Regional Corporation work in partnership to protect Noongar Aboriginal Heritage, including identifying, recording, protecting and preserving of Aboriginal sites within the ILUA Area, taking into account Noongar Heritage Values.

## 2. STATEMENT OF RESPECT

The Statement of Respect contained within the NHPA is complementary to that articulated in the Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2013, in that;

- A. The Department recognises Noongar people are the traditional owners of the land and waters in the South West Native Title Settlement Area (Settlement Area), have continuing cultural, spiritual and social connections to the area and have a body of Noongar Law and Custom that describes responsibilities and obligations to sites and matters of heritage.
- B. The Department recognises that the Noongar people, as the custodians of Noongar heritage, have a cultural responsibility to care for country within the Settlement Area and have unique traditional knowledge and expertise that will assist in managing Aboriginal Heritage in the Settlement Area.
- C. The Department recognises that Noongar people rightfully hold the cultural knowledge of their traditional country, and that all reasonable efforts will be made for active Noongar involvement in the protection and management of Noongar Aboriginal Heritage in the Settlement Area.
- D. The Noongar people recognise that the Department has a statutory responsibility to administer the following pieces of legislation: *Aboriginal Affairs Planning Authority Act 1972* and the *Aboriginal Heritage Act 1972*.
- E. Both Parties recognise Noongar heritage and culture is of the utmost importance to the Noongar people and is central to supporting a stronger Noongar community and the importance of managing Noongar heritage sites and preserving Noongar culture within the Settlement area,
- F. Both Parties recognise that with growing pressure on the South West landscape, joint action by Noongar people and other land users will be critical for the management of Noongar Aboriginal Heritage and the preservation of Noongar culture.
- G. Through the historic South West Native Title Settlement the parties have entered into an ILUA which provides, among other things, for the making of Noongar Standard Heritage Agreements (NSHA), substantially in the form of [insert Schedule no] to the ILUA.
- H. In recognition that the Noongar community has an integral role in the maintenance and protection of Noongar heritage and that active

engagement with the community through Regional Corporations is the foundation of the partnership, the Parties will work together to preserve and strengthen Noongar heritage.

- I. Both Parties will work together to encourage an open dialogue between all Government agencies and the Noongar community to develop processes and protocols for addressing matters of Noongar Aboriginal Heritage maintenance and protection.
- J. Both Parties recognise the rights and obligations of the each Party and enter into this agreement in the spirit of co-operation and commit to work together in a cooperative, honest and respectful manner.
- K. Both Parties recognise that improved awareness and recognition of Noongar heritage and culture will add greatly to the strength, diversity and uniqueness of the entire Western Australian community.
- L. The Parties intend that this Agreement applies in relation to all the land and waters in the ILUA Area.

### 3. DEFINITIONS

**Aboriginal Cultural Material Committee** means the Committee or APMC as established under section 28 of the *Aboriginal Heritage Act 1972* .

**Aboriginal Heritage** means Aboriginal Heritage as defined in the *Aboriginal Heritage Act 1972*.

**Aboriginal Site** means a place as defined at *Section 5* of the *Aboriginal Heritage Act 1972* .

**AHA** means the *Aboriginal Heritage Act 1972*.

**Agreement** means this agreement including the Schedules and Annexure, if any.

**ILUA Area** means the Agreement Area as defined in the ILUA.

**Commencement Date** means the date of execution of this Agreement by the last Party.

**Department** means the Department of Aboriginal Affairs.

**ILUA** means the Indigenous Land Use Agreement [insert details of the ILUA].

**NHPSG** means the Noongar Heritage Partnership Steering Group established under clause 6.1 of this Agreement.

**Noongar Corporations Committee** means the Noongar Corporations Committee as defined in the ILUA.

**Noongar Heritage Management** means the identification, assessment, recording, maintenance, remediation and protection of Aboriginal Sites and Cultural Materials as defined in the *Aboriginal Heritage Act 1972* .

**Noongar Heritage Values** means the fundamental and lasting beliefs and ideals shared by Noongar people relating to their heritage and includes Noongar history, stories, language and the way Noongar heritage is incorporated in the landscape.

**NSHA** means the Noongar Standard Heritage Agreement substantially in the form of [insert Schedule number] to the ILUA.

**Parties** means the parties of this Agreement.

**Registrar** means the person appointed Registrar of Aboriginal Sites under section 37(1) of the *Aboriginal Heritage Act 1972 (AHA)*.

**Settlement Area** means the aggregate of those lands and waters as defined in the Indigenous Land Use Agreements that comprise the South West Native Title Settlement .

#### **4. COMMITMENT TO NOONGAR HERITAGE IN THE [INSERT NAME] AREA**

The Department and the Corporation are committed to:

- (a) Developing a partnership built on mutual respect, accountability, transparency and commitment.
- (b) Achieving improved Noongar heritage outcomes in the region which include, but are not limited to;
  - (i) increasing the overall understanding of Noongar Heritage Values and exploring strategies to develop management tools that include articulation of these values.
- (c) Prioritising management planning of Aboriginal Sites of high importance and significance to the [Insert Name] Community, particularly those sites that may be vulnerable to damage, by:
  - (i) Reassessing the integrity of information in the Register of Aboriginal places and objects, and, where required, improving the quality of the information;
  - (ii) Promoting the increased registration of Aboriginal Sites;
  - (iii) Building the capacity of the Noongar community to engage in Noongar Heritage Management; and
  - (iv) Developing and implementing mechanisms for proactive interaction between the Department and the Heritage Officers in the region in relation to Aboriginal site protection and compliance.
- (d) Developing authoritative information systems that safeguard Noongar heritage information; and
- (e) Advising of any impacts of the NSHA processes on broader Noongar Heritage Management and the NSHA's effect on Noongar Aboriginal Sites.

#### **5. HERITAGE MANAGEMENT**

##### **5.1. Roles and Responsibilities**

- (a) The role of the Regional Corporation shall be, consistent with the AHA and any regulations made under the AHA, to:

- (i) provide advice to the Department on cultural heritage matters within the ILUA Area;
  - (ii) prepare, amend and implement local and regional heritage management plans within the ILUA Area;
  - (iii) make recommendations and provide advice to the Department to inform decisions on the application of Sections 16, 18, 19 and 20 of the AHA;
  - (iv) provide advice and work with the Department in the preparation of policies, programs and other heritage management documents for the ILUA Area;
  - (v) provide advice and work with the Department on the development of Aboriginal heritage training and employment initiatives within the ILUA Area.
  - (vi) ensure Aboriginal heritage survey activity is conducted in a manner consistent with the NSHA;
  - (vii) seek funding, either jointly or separately to support the facilitation of heritage training and management arrangements in the ILUA Area.
- (b) The role of the Department shall be, consistent with the AHA and any regulations made under the AHA, to:
- (i) administer the AHA;
  - (ii) provide administrative oversight in the application of the AHA;
  - (iii) maintain an accurate Register of Aboriginal places and objects;
  - (iv) apply relevant State Government policy consistent with the NSHA, and;
  - (v) take into account the advice of the Regional Corporation in the development of policies, programs and other related matters.

## **6. GOVERNANCE**

### **6.1. Noongar Heritage Partnership Steering Group**

The Parties will establish a Noongar Heritage Partnership Steering Group (NHPSG) consisting of equal membership of both Government and Regional Corporation representatives to oversee and undertake implementation of this Agreement.

The NHPSG will meet at least 2 times per year, with progress reports to be provided to the Noongar Corporations Committee by the Department or Regional Corporation as required.

### **6.2 Role of the Heritage Partnership Steering Group (NHPSG)**

The NHPSG is responsible for:

- (a) overseeing implementation of this NHPA, its principles and its commitments and engaging in discussion to facilitate this Agreement;

- (b) providing advice to Government and the Regional Corporation on matters relating directly to implementation of the Agreement;
- (c) developing and implementing processes and protocols for active engagement and appropriate consultation between Government, the Regional Corporation and the Noongar community, including developing local and regional heritage management plans;
- (d) providing advice to the Registrar on the maintenance and protection of Aboriginal Sites within the Settlement Area, and in particular the ILUA Area;
- (e) without fettering the Minister;
  - (i) providing advice to the Aboriginal Cultural Materials Committee (ACMC) on the protection of Noongar Aboriginal Sites within the Settlement Area;

## **7. IMPLEMENTATION PLANNING**

To progress implementation of the Agreement, the NHPSG will, within 12 months of the Commencement Date, identify a workplan of priorities consistent with the commitments made in clause 5;

The workplan will include but not be limited to;

- (a) Developing and implementing local and regional Heritage Management Plans;
- (b) Identifying cultural heritage management training needs and opportunities for Regional Corporation staff and Traditional Owners.

## **8. REVIEW**

Review and evaluation of the Agreement will occur annually on the anniversary of the Commencement Date and will be led by the Department. Terms of reference for the review will be set by the NHPSG, and may be varied by agreement of all Parties.

## **9. VARIATION**

Variation of this Agreement can only be made with the agreement of both Parties.

## **10. STATUS OF THIS AGREEMENT**

The Parties acknowledge and agree that this Agreement is not intended to be and is not legally binding on the Parties.

**EXECUTION**

THE **COMMON SEAL** of )  
The **DEPARTMENT OF** )  
**ABORIGINAL AFFAIRS** a body )  
corporate established under )  
the Aboriginal Affairs Planning Authority )  
Act was affixed hereto in the )  
presence of )

Signature of Chief Executive Officer

Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

**SIGNED** by the **CHIEF EXECUTIVE** )  
**OFFICER** for and on behalf of )  
**[Insert Name]** )  
**CORPORATION** )  
in the presence of: )

---

**CHIEF EXECUTIVE OFFICER**

---

Signature of witness

---

Date

---

Full name of witness (print)

---

Address of witness

---

Occupation of witness



**Annexure W**

**Template ILUA Termination Notice**

To:

To: South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832 of 1490  
Albany Highway, Cannington, Western Australia

Or

[insert names and addresses of all of the Regional Corporations]

[refer to clause 10 of the ILUA]

[Insert name of Trustee and contact Details]

This ILUA Termination Notice is issued pursuant to clause 10 of the [insert name of Agreement] (the Agreement)

An ILUA Termination Event occurred on [insert date].

Pursuant to the Agreement the State of Western Australia (the State) requires the Trustee to pay to the State, in the manner specified below, the ILUA Termination Amount.

The ILUA Termination Amount is [insert \$ amount].

<insert details of how calculated>

The ILUA Termination Amount must be paid into the account specified below by 12 noon on <insert due date>.

<specify account details>

Signed for and on behalf of the State by

.....

Signature .....

Print name .....

Office held .....

## **Annexure X**

### **Land Previously Selected for Allocation**

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**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
1	781710	Lot 3043 on Deposited Plan 214465	Reserve 36572	Government Requirements	3066/291	Hayes Rd	Shire of Ravensthorpe	Goldfields-Esperance	Ballardong	239.6985	1.1	Reserve WPL			28 March 2014
2	1127341	Lot 1162 on Deposited Plan 82057	Reserve 14732	Timber	3004/921	Vasse Hwy	City of Busselton	South West	South West Boojarah	63.6459	1.1	Reserve WPL	1. Main Roads Western Australia requires an excision from the land for a 15.0 metre widening of the Vasse Highway. The excision will be approximately 0.4857 hectares.	1. If the excision is not effected before execution of the deed in relation to the management order for the reserve, a special condition will be included in the deed regarding the proposed excision.	28 March 2014
3	511515	Part of Lot 13241 on Deposited Plan 215751 being the area of 74.8318 ha - See graphic attached and named "Attachment X1"	Part Reserve 615	Resting Place for Teams & Stock	3150/139	Cundinup Rd	Shire of Nannup	South West	South West Boojarah	74.8318	1.1	Reserve WPL	1. Environmental constraints for potential clearing. 2. Part of Lot 13241 on Deposited Plan 215751 is to be excised from existing Reserve 615 (being that portion with an area of 71.120 ha). 3. Reserve number may change following excision of that portion of Lot 13241 (being an area of 71.120 ha).	1. If the excision is not effected before execution of the deed in relation to the management order for the reserve, a special condition will be included in the deed regarding the proposed excision.	28 March 2014
4	511578	Part of Lot 13241 on Deposited Plan 215751 being the area 13.2744 ha - See graphic attached and named "Attachment X1"	Part Reserve 615	Resting Place for Teams & Stock	3150/139	Cundinup Rd	Shire of Nannup	South West	South West Boojarah	13.2744	1.1	Reserve WPL	1. Environmental constraints for potential clearing. 2. Requirement for an easement over that portion of Lot 13241 on Deposited Plan 215751 being an area of 13.274 ha over existing track which provides access from Cundinup West Road to adjoining freehold lots. 3. Part of Lot 13241 on Deposited Plan 215751 is to be excised from existing Reserve 615 (being that portion with an area of 71.120 ha). 4. Reserve number may change following excision of that portion of Lot 13241 (being an area of 71.120 ha).	1. Identification of easement on Management Order. If the easement is not registered prior to execution of deed in relation to the management order for the reserve, a special condition will be included in the deed requiring the Land Sub to consent to the subsequent grant of the easement. 2. If the excision is not effected before execution of the deed in relation to the management order for the reserve, a special condition will be included in the deed regarding the proposed excision.	28 March 2014
5	11760995	Lot 501 on Deposited Plan 60970	Part Reserve 615	Resting Place for Teams & Stock	3151/484	Cundinup Rd	Shire of Nannup	South West	South West Boojarah	7.0258	1.1	Reserve WPL	1. Environmental constraints for potential clearing. 2. Reserve number may change following excision of that portion of Lot 13241 (being an area of 71.120 ha).		28 March 2014
6	11760994	Lot 500 on Deposited Plan 60970	Part Reserve 615	Resting Place for Teams & Stock	3151/483	Cundinup Rd	Shire of Nannup	South West	South West Boojarah	2.6123	1.1	Reserve WPL	1. Environmental constraints for potential clearing. 2. Reserve number may change following excision of that portion of Lot 13241 (being an area of 71.120 ha).		28 March 2014
7	617685	Lot 940 on Deposited Plan 102660	Reserve 13280	Water	3009/410	Tambellup West Rd	Shire of Broomehill/Tambellup	Great Southern	Wagyl Kaip	6.2309	1.1	Reserve WPL			28 March 2014
8	645142	Lot 2071 on Deposited Plan 215499	Unallocated Crown Land	n/a	3020/15	South Coast Hwy	Shire of Ravensthorpe	Goldfields-Esperance	Wagyl Kaip	545.4517	1.1	Reserve WPL	1. Main Roads Western Australia requires an excision from the land for a 10.0 metre widening along the common boundary between South Coast Hwy and Lot 2071. The excision will be approximately 1.4442 hectares.	1. If the excision is not effected before execution of the deed in relation to the management order for the reserve, a special condition will be included in the deed regarding the proposed excision.	28 March 2014
9	568898	Lot 474 on Deposited Plan 229869	Unallocated Crown Land	n/a	3001/868	Dick St	Shire of Goomalling	Wheatbelt	Ballardong	0.1012	3.1	Freehold	1. There is rubbish on the Land being several 2.4 metres of 40 mm galvanised piping. There is no evidence of contamination.	1. Special condition whereby the Land Sub and Trustee acknowledge that there are several 2.4 metres of 40 mm galvanised piping on the Land.	28 March 2014
10	677789	Lot 1459 on Plan 5058	Unallocated Crown Land	n/a	3116/219	Fourth Ave	Shire of Merredin	Wheatbelt	Ballardong	0.1077	3.1	Freehold	1. The dedicated legal access is via a gravel road.		28 March 2014
11	670394	Lot 251 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/936	White St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold			28 March 2014
12	670397	Lot 249 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/935	White St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold			28 March 2014
13	670399	Lot 247 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/934	White St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. There are piles of blue metal/road base on the Land 2. Possible rubbish on Land comprising sundry small items. 3. No suspected contamination. 4. DOL will request Main Roads Western Australia that they remove the blue metal/road base. 5. DOL will request the owner of freehold lot 248 on Deposited Plan 222183 that they remove rubbish on Land comprising sundry small items.	1. Special condition whereby the Land Sub and Trustee acknowledge that there is possible rubbish comprising sundry small items on the Land.	28 March 2014
14	670401	Lot 246 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/933	White St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. There are piles of blue metal/road base on the Land. 2.No evidence of contamination found. 3.DOL will request Main Roads Western Australia that they remove the blue metal/road base.	1.Special condition whereby the Land Sub and Trustee acknowledge that there are several 2.4 metres of 40 mm galvanised piping on the Reserve.	28 March 2014
15	670403	Lot 245 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/932	White St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. The dedicated legal access is via a gravel road. 2. There are piles of blue metal/road base on the Land. 3. There is no evidence of contamination found. 4. DOL will request Main Roads Western Australia that they remove the blue metal/road base.	1. If Main Roads Western Australia does not remove the blue metal/road base prior to execution of the Deed, a Special condition whereby the Land Sub and Trustee acknowledge that there are piles of blue metal/road base on the Land.	28 March 2014

**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
16	670407	Lot 240 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/930	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. There are piles of blue metal/road base on the Land. 2. There is an old loading ramp on the northern boundary, which has limited use as a BMX jumping point. 3. There is no evidence of contamination found. 4. DOL will request Main Roads Western Australia that they remove the blue metal/road base	1. If Main Roads Western Australia does not remove the blue metal/road base prior to execution of the Deed, a Special condition whereby the Land Sub and Trustee acknowledge that there are piles of blue metal/road base on the Land.	28 March 2014
17	670406	Lot 239 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/929	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold			28 March 2014
18	670404	Lot 238 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/928	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold			28 March 2014
19	670400	Lot 236 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/927	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold			28 March 2014
20	444585	Lot 380 on Deposited Plan 223051	Reserve 6131	Government Requirements	3015/759	Wilson Rd	Shire of Murray	Peel	Gnaala Karla Booja	1.6247	3.1	Freehold	1. This Land is subject to surface water inundation.	1. Special condition stating that the Land is subject to surface water inundation. 2. Special condition noting that a memorial will be registered on the Certificate of Title advising that the Land is subject to surface water inundation.	28 March 2014
21	671858	Lot 1692 on Deposited Plan 172874	Unallocated Crown Land	n/a	3118/441	Range Rd	Town of Narrogin	Wheatbelt	Gnaala Karla Booja	0.0799	3.1	Freehold			28 March 2014
22	671857	Lot 1693 on Deposited Plan 172874	Unallocated Crown Land	n/a	3118/442	Range Rd	Town of Narrogin	Wheatbelt	Gnaala Karla Booja	0.0819	3.1	Freehold			28 March 2014
23	618697	Lot 317 on Deposited Plan 168830	Unallocated Crown Land	n/a	3150/154	Cousins St	Shire of Broomehill/Tambellup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Dumped materials including agricultural rubbish on Land totalling less than 10m <sup>3</sup> . 2. No evidence of contamination observed.	1. Special condition whereby the Land Sub and Trustee acknowledge that there are dumped materials including agricultural rubbish on the Land totalling less than 10m <sup>3</sup> .	28 March 2014
24	617217	Lot 295 on Deposited Plan 206549	Unallocated Crown Land	n/a	3152/244	Gilliam St	Shire of Cranbrook	Great Southern	Wagyl Kaip	0.1138	3.1	Freehold			28 March 2014
25	669332	Lot 223 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/61	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
26	669334	Lot 222 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/60	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
27	669336	Lot 221 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/59	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
28	669340	Lot 219 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/57	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1162	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
29	669342	Lot 218 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/56	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
30	669344	Lot 217 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/53	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
31	669352	Lot 216 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/51	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1196	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
32	669351	Lot 215 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/50	West St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.0971	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
33	669350	Lot 214 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/49	West St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.0971	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
34	669333	Lot 207 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/43	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
35	669335	Lot 208 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/44	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1215	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
36	669337	Lot 209 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/45	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
37	669339	Lot 210 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/46	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1269	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
38	669341	Lot 211 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/47	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1104	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
39	669343	Lot 212 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/48	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1339	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
40	669429	Lot 197 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/42	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1214	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
41	669431	Lot 196 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/41	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
42	669433	Lot 195 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/40	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
43	669435	Lot 194 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/37	Carpenter St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		28 March 2014
44	669430	Lot 190 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/31	Jaekel St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1307	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
45	669432	Lot 191 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/32	Jaekel St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1082	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
46	669434	Lot 192 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/33	Jaekel St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1075	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014

**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
47	669436	Lot 193 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/35	Jaekel St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1068	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
48	669347	Lot 254 on Deposited Plan 169376	Unallocated Crown Land	n/a	3018/20	John St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1100	3.1	Freehold	1. Environmental constraints for potential clearing. 2. There is a bicycle track runs from John St to the rear of lot 150. 3. The lot has an old 6x4 trailer containing various steel items. There are stockpiles of top soil however they appear to have been there for many years and the soil does not appear to contain any foreign material. Treated pine sleepers are also present on the site near the trailer.	1. Special condition whereby the Land Sub and Trustee acknowledge that there is an old 6x4 trailer containing various steel items, stockpiles of top soil and treated pine sleepers located near the trailer.	28 March 2014
49	625046	Lot 5 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.0963	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
50	625047	Lot 6 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
51	625049	Lot 7 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
52	625050	Lot 8 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
53	625052	Lot 9 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Evidence indicating adjoining landowner may be using land for storage purposes and may have fenced an area for stock grazing. 3. No evidence of contamination. 4. DOL will request the adjoining freehold owner of Lot 10 on Deposited Plan 209058 that storage materials and fence for stock grazing are removed.	1. If the adjoining freehold owner of Lot 10 on Deposited Plan 209058 does not remove storage materials and fence for stock grazing prior to execution of the Deed, a Special condition whereby the Land Sub and Trustee acknowledge that there are storage materials and fence for stock grazing on the Land.	28 March 2014
54	625055	Lot 12 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
55	625056	Lot 13 on Deposited Plan 209058	Unallocated Crown Land	n/a	3018/550	Melaleuca St	Shire of Jerramungup	Great Southern	Wagyl Kaip	0.1133	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
56	669736	Lot 287 on Deposited Plan 171235	Unallocated Crown Land	n/a	3094/158	Dearle Rd	Shire of Kojonup	Great Southern	Wagyl Kaip	0.0809	3.1	Freehold			28 March 2014
57	667440	Lot 51 on Deposited Plan 223222	Unallocated Crown Land	n/a	3020/881	Shenton Rd	Shire of Woodanilling	Great Southern	Wagyl Kaip	0.5656	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
58	667441	Lot 53 on Deposited Plan 223222	Unallocated Crown Land	n/a	3020/881	Shenton Rd	Shire of Woodanilling	Great Southern	Wagyl Kaip	0.5651	3.1	Freehold	1. Environmental constraints for potential clearing.		28 March 2014
59	502320	Lot 77 on Deposited Plan 172824	Reserve 30103	Native Housing	3001/662	Waterloo Rd	Shire of Dardanup	South West	Gnaala Karla Booja	0.1012	3.1	Reserve WPL			28 March 2014
60	502321	Lot 78 on Deposited Plan 172824	Reserve 30103	Native Housing	3001/663	Waterloo Rd	Shire of Dardanup	South West	Gnaala Karla Booja	0.1012	3.1	Reserve WPL			28 March 2014
61	617251	Lot 303 on Deposited Plan 172451	Unallocated Crown Land	n/a	3153/931	Hardy St	Shire of Cranbrook	Great Southern	Wagyl Kaip	0.1012	3.1	Reserve WPL	1. Unconstructed dedicated road.		28 March 2014
62	617252	Lot 302 on Deposited Plan 172451	Unallocated Crown Land	n/a	3153/930	Hardy St	Shire of Cranbrook	Great Southern	Wagyl Kaip	0.1012	3.1	Reserve WPL	1. Unconstructed dedicated road.		28 March 2014
63	11022406	Lot 112 on Deposited Plan 32077	Unallocated Crown Land	n/a	3128/197	Moir St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.5798	3.1	Reserve WPL	1. There may be development restrictions due to buffer zone to Cooperative Bulk Handling (CBH) 2. Environmental constraints for potential clearing. 3. Unconstructed dedicated road.		28 March 2014
64	1244248	Lot 4170 on Deposited Plan 219837	Unallocated Crown Land	n/a	3110/878		Shire of Moora	Wheatbelt	Yued	0.9637	3.1	Reserve WPL	1. CBH may seek use and access of and to Land for possible future rail extension & access to rail.		28 March 2014
65	1296389	Lot 4222 on Deposited Plan 220335	Part Reserve 28714	Recreation	3114/974	The Midlands Rd	Shire of Moora	Wheatbelt	Yued	11.5238	3.1	Reserve WPL	1. CBH may seek use and access of and to Land for possible future rail extension & access to rail. 2. Lot 4221 is not included in the offer of Land. Reserve 28714 will be amended.	1. If the excision is not effected before execution of the deed in relation to the management order for the reserve, a special condition will be included in the deed regarding the proposed excision.	28 March 2014
66	569430	Lot 148 on Deposited Plan 401327	Reserve 22222	Government Requirements	Lodged and awaiting registration	Cavell St	Shire of Victoria Plains	Wheatbelt	Yued	0.9477	3.1	Reserve WPL	1. Shire of Victoria Plains may in future request use of land for relocation of caravan park or truck parking due to location near main road.		28 March 2014
67	673722	Lot 15707 on Diagram 9676	Reserve 21410	Public Cemetery for Aborigines	3151/462	Cowcher Rd	Shire of Narrogin	Wheatbelt	Gnaala Karla Booja	0.4047	3.1	Reserve	1. Unconstructed dedicated road. 2. Shire of Narrogin has no plans to construct a road.		28 March 2014

**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
68	11858579	Lot 500 on Deposited Plan 66535	Reserve 39181	Apiary Site	3158/906	Bartram Rd	City of Cockburn	Metro	Whadjuk	5.3508	1.1	Freehold	1. Adjoins Water Corporation Jandakot Groundwater Treatment Plant. Part of lot falls within the 250m chemical buffer of plant. Sensitive land uses are likely to be resisted. 2. Requirement for an easement in favour of Western Power for underground cables in north east and south east corners of lot. Easement to be 1 metre wide using cable as the centre line. 3. There is approximately 10m3 of rubbish on lot including at least 5 sheets of asbestos cement fencing, engine oil, a car battery and sundry items. Overall risk of contamination is estimated to be a medium.	1. Identification of easement to Western Power in deed. 2. If the easement is not registered prior to execution of deed, a special condition requiring the Land Sub and Trustee to consent to the subsequent grant of the easement, to be 1 metre wide using existing cable as the centre line. 3. Special condition whereby the Land Sub and Trustee acknowledge that there is approximately 10m3 of rubbish on Land including at least 5 sheets of asbestos cement fencing, engine oil, a car battery and sundry items. Overall risk of contamination is estimated to be a medium. 4. Special condition noting a memorial will be registered on title advising of the risk of contamination. 5. Special condition whereby the Minister will remove the memorial once the land is remediated to the satisfaction of the Minister.	21 August 2014
69	670409	Lot 242 on Deposited Plan 222183	Unallocated Crown Land	n/a	3155/931	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. There are piles of blue metal/road base on the lot. 2. No evidence of contamination found. 3. DOL will request Main Roads Western Australia that it removes the blue metal/road base.	1. If the piles of blue metal/roadbase are not removed prior to the execution of deed, a special condition whereby the Land Sub and Trustee acknowledge the presence of the piles of blue metal/road base on the Land.	21 August 2014
70	670408	Lot 241 on Deposited Plan 222183	Unallocated Crown Land	n/a	3022/316	Williams St	Shire of Brookton	Wheatbelt	Gnaala Karla Booja	0.1012	3.1	Freehold	1. There are piles of blue metal/road base on the lot. 2. DOL will request Main Roads Western Australia that it removes the blue metal/road base.	1. If the piles of blue metal/roadbase are not removed prior to the execution of deed, a special condition whereby the Land Sub and Trustee acknowledge the presence of the piles of blue metal/road base on the Land.	21 August 2014
71	1308296	Lot 116 on Deposited Plan 220715	Unallocated Crown Land	n/a	3115/9	Sittella Dr	Shire of Harvey	South West	Gnaala Karla Booja	0.1263	3.1	Freehold	1. Lot 116 was formerly Crown Reserve 16030 and was used as a rifle range from 1915. 2. No signs of rubbish, illegal use or encroachment and no evidence of contamination found.		21 August 2014
72	671105	Lot 1701 on on Deposited Plan 9267	Unallocated Crown Land	n/a	3121/50	Lefroy St	Town of Narrogin	Wheatbelt	Gnaala Karla Booja	0.0728	3.1	Freehold	1. Water meter installed on lot. 2. Sewer pipe traverses the eastern severance of the lot. 3. Requirement for an easement in favour of Water Corp for sewer pipes. Easement to be 3 metres wide, using the sewer pipeline as the centre line.	1. Identification of easement to Water Corp in deed, in relation to sewer pipe that traverses eastern severance of the Land. 2. If the easement is not registered prior to execution of deed, a special condition requiring the Land Sub/Trustee to consent to the subsequent grant of the easement, to be 3 metres wide using the existing sewer pipeline as the centre line.	21 August 2014
73	1088199, 537766 and 537772	Part Sussex Location 941 and Sussex Location 942, currently shown as Lot 288 on Deposited Plan 26437 but excluding Lot 249 on Deposited Plan 219029 - See graphic attached and named "Attachment X2"	Unallocated Crown Land	n/a	n/a	Boodjidup Rd	Shire of Augusta-Margaret River	South West	South West Boojarah	59.3739	3.1	Freehold	1. Deposited Plan 26437 is not approved, there is no existing Crown Land Title. 2. Portion of Lot 288 now shown as Lot 249 on Deposited Plan 219029 with an area of 0.1906ha is to be excised. 3. Land to be surveyed before transfer, Deposited Plan 26437 to be cancelled and new Deposited Plan to be created.	1. Special condition that the Land will be surveyed prior to transfer and that the State makes no warranty as to the final boundary or area of Land.	21 August 2014
74	537871	Part Sussex Location 941, currently shown as Lot 287 on Deposited Plan 26437	Unallocated Crown Land	n/a	n/a	Boodjidup Rd	Shire of Augusta-Margaret River	South West	South West Boojarah	22.233	3.1	Freehold	1. Deposited Plan 26437 is not approved, there is no existing Crown Land Title. 2. Land to be surveyed before transfer, Deposited Plan 26437 to be cancelled and new Deposited Plan to be created.	1. Special condition that the Land will be surveyed prior to transfer and the State makes no warranty as to the final boundary or area of Land.	21 August 2014
75	11950090	Lot 285 on Deposited Plan 26436	Unallocated Crown Land	n/a	3021/160	Boodjidup Rd	Shire of Augusta-Margaret River	South West	South West Boojarah	15.5004	3.1	Freehold			21 August 2014
76	669338	Lot 220 on Deposited Plan 211751	Unallocated Crown Land	n/a	3018/58	Connell St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.1012	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unconstructed dedicated road.		21 August 2014
77	648383	Lot 710 on Deposited Plan 224134	Part Reserve 9777	Government Requirements	3020/530	Cullen St	Shire of Katanning	Great Southern	Wagyl Kaip	0.1033	3.1	Freehold	1. Lot 710 on Deposited Plan 224134 is to be excised from existing Reserve 9777, being that portion with an area of 0.1033 ha. 2. Land to be surveyed before transfer.	1. If the excision is not effected before execution of deed, a special condition will be included in the deed regarding the proposed excision. 2. Special condition that the Land will be surveyed prior to transfer and the State makes no warranty as to the final boundary or area of Land.	21 August 2014
78	966718	Lot 29 on Deposited Plan 229933	Reserve 15536	Excepted from Sale	3005/832	Baxter St	Shire of Bruce Rock	Wheatbelt	Ballardong	0.1012	3.1	Reserve WPL	1. Unconstructed dedicated road. 2. Lot located within Belka, now a cancelled townsite. Belka is an area without basic community services or infrastructure. The town has been closed for a number of reasons including rising salt. 3. There are neighbouring parcels of land that may be available for allocation.		21 August 2014

**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
79	966720	Lot 30 on Deposited Plan 229933	Reserve 15536	Excepted from Sale	3005/833	Baxter St	Shire of Bruce Rock	Wheatbelt	Ballardong	0.1012	3.1	Reserve WPL	1. Unconstructed dedicated road. 2. Lot located within Belka, now a cancelled townsite. Belka is an area without basic community services or infrastructure. The town has been closed for a number of reasons including rising salt. 3. There are neighbouring parcels of land that may be available for allocation.		21 August 2014
80	583945	Lot 103 on Deposited Plan 222026	Reserve 5150	Public Utility	3155/93	Maxwell St	City of Albany	Great Southern	Wagyl Kaip	2.0349	3.1	Reserve WPL	1. Unconstructed dedicated road. 2. Decommissioned fuel tanks in adjacent lots which may have contamination issues.	1. Special condition whereby the Land Sub and Trustee acknowledge that in the land adjacent to the Land there are decommissioned fuel tanks which may have contamination issues.	21 August 2014
81	583944	Lot 102 on Deposited Plan 222026	Reserve 5150	Public Utility	3155/92	Maxwell St	City of Albany	Great Southern	Wagyl Kaip	2.0368	3.1	Reserve WPL	1. Unconstructed dedicated road. 2. Decommissioned fuel tanks in adjacent lot which may have contamination issues.	1. Special condition whereby the Land Sub and Trustee acknowledge that in the land adjacent to the Land there are decommissioned fuel tanks which may have contamination issues.	21 August 2014
82	1198006	Lot 109 on Deposited Plan 193112	Unallocated Crown Land	n/a	3007/77	Moir St	Shire of Gnowangerup	Great Southern	Wagyl Kaip	0.7547	3.1	Reserve WPL	1. Main Roads Western Australia requires an excision from the land for a 5.0 metre widening of Chester Pass Road. The excision will be approximately 0.0501 ha. 2. Environmental constraints for potential clearing. 3. Lot to be surveyed before transfer.	1. If the excision is not effected before execution of the Deed, a special condition will be included in Deed, providing consent to the proposed excision. 2. Special condition that the Land will be surveyed prior to transfer and that the State makes no warranty as to the final boundary or area of Land.	21 August 2014
83	648088	Lot 365 on Deposited Plan 401940	Unallocated Crown Land	n/a	Lodged and awaiting registration	Arnold St	Shire of Katanning	Great Southern	Wagyl Kaip	2.7406	3.1	Reserve WPL	1. Application for new title must be registered at Landgate to finalise Deposited Plan 401940.		21 August 2014
84	625214	Lot 26 on Deposited Plan 211284	Unallocated Crown Land	n/a	3149/864	Lawrence St	City of Albany	Great Southern	Wagyl Kaip	0.2023	3.1	Freehold	1. Unconstructed dedicated road. 2. Environmental constraints for potential clearing. 3. Lot is unserviced and there are constraints on water supply within townsite. 4. The lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	1. Special condition noting a memorial will be registered on title advising the Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014
85	625216	Wellstead UCL lot, shown as Lot 27 on Deposited Plan 211284	Unallocated Crown Land	n/a	Lodged and awaiting registration	Porter St	City of Albany	Great Southern	Wagyl Kaip	0.2023	3.1	Freehold	1. Unconstructed dedicated road. 2. Environmental constraints for potential clearing. 3. Unserviced and constraints on water supply within townsite. 4. The lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted. 5. Application for New Title must be registered at Landgate to finalise Deposited Plan 211284	1. Special condition noting a memorial will be registered on title advising the Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014
86	625212	Wellstead UCL lot, shown as lot 28 on Deposited Plan 211284	Unallocated Crown Land	n/a	Lodged and awaiting registration	Porter St	City of Albany	Great Southern	Wagyl Kaip	0.2023	3.1	Freehold	1. Unconstructed dedicated road. 2. Environmental constraints for potential clearing. 3. Unserviced and constraints on water supply within townsite. 4. This lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted. 5. Application for new title must be registered at Landgate to finalise Deposited Plan 211284	1. Special condition noting a memorial will be registered on title advising the Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014
87	625210	Wellstead UCL lot, shown as Lot 29 on Deposited Plan 211284	Unallocated Crown Land	n/a	Lodged and awaiting registration	Sandalwood Rd	City of Albany	Great Southern	Wagyl Kaip	0.2005	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unserviced and constraints on water supply within townsite. 3. This lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted. 4. Application for New Title must be registered at Landgate to finalise Deposited Plan 211284	1. Special condition noting a memorial will be registered on title advising the lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014
88	625208	Wellstead UCL lot, shown as Lot 30 on Deposited Plan 211284	Unallocated Crown Land	n/a	Lodged and awaiting registration	Sandalwood Rd	City of Albany	Great Southern	Wagyl Kaip	0.2005	3.1	Freehold	1. Environmental constraints for potential clearing. 2. Unserviced and constraints on water supply within townsite. 3. This lot lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted. 4. Application for New Title must be registered at Landgate to finalise Deposited Plan 211284	1. Special condition noting a memorial will be registered on title advising the Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014

**Annexure X - Land Previously Selected for Allocation**

**UCL and UMR**

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
89	625211	Wellstead UCL lot, shown as Lot 31 on Deposited Plan 211284	Unallocated Crown Land	n/a	Lodged and awaiting registration	Lawrence St	City of Albany	Great Southern	Wagyl Kaip	0.2023	3.1	Freehold	1. Unconstructed dedicated road. 2. Environmental constraints for potential clearing. 3. Unserviced and constraints on water supply within townsite. 4. The Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted. 5. Application for New Title must be registered at Landgate to finalise Deposited Plan 211284.	1. Special condition noting a memorial will be registered on title advising the Land lies within 3000 metres of the easternmost future extension of the Southdown magnetite mine and rural amenity may be impacted.	21 August 2014

**DAA Freehold Properties**

Parcel Number Count	Polygon Identification Number	Land Description	Certificate of Title	Current Tenure	Street Name	LGA	Region	Claim Group	Area (ha)	"Limitations, Interests, Encumbrances & Notifications (Found on the Certificate of Title)"	"Land Status (i.e. Vacant, Housing, Sheds)"	Leased			
1	234229	Lot 11057 on Deposited Plan 191655	2607/421	Freehold	62 MATHESON ROAD, APPECROSS	City Of Melville	Metropolitan	Whadjuk	0.2056	N/A	Vacant Land	Not Leased			
2	268425	Lot 294 on Plan 7376	2140/166	Freehold	20 - 22 FREDERICK ROAD, HAMILTON HILL	Shire of Cockburn	Metropolitan	Whadjuk	0.1715	Lease - J117534 (Expired)	Vacant Land	Not Leased			
3	11564133	Lot 50 on Diagram 12357	1082/573	Freehold	MISSION ROAD, KELLERBERIN	Shire of Kellerberrin	Wheatbelt	Ballardong	0.4047	N/A	Vacant Land	Not Leased			
4	620311	Lot 557 on Plan 4819	1908/201	Freehold	132 FIFTH AVENUE, KENDENUP	Shire of Plantagenet	Great Southern	Wagyl Kaip	0.1012	Easement Benefit - see Plan 4819	Vacant Land	Not Leased			
5	458304	Lots 40 on Plan 603	1195/994	Freehold	9 DEMPSTER STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.105	N/A	Vacant Land	Not Leased			
6	458301	Lots 41 on Plan 603	1195/994	Freehold	7 DEMPSTER STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.0961	N/A	Vacant Land	Not Leased			
7	458296	Lots 42 on Plan 603	1195/994	Freehold	1 DEMPSTER STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.1373	N/A	Vacant Land	Not Leased			
8	457277	Lot 42 on Plan 237	1448/46	Freehold	20 MADDEN STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.857	N/A	Vacant Land	Not Leased			
9	457281	Lot 43 on Plan 237	1448/47	Freehold	22 MADDEN STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.0847	N/A	Vacant Land	Not Leased			
10	457271	Lot 41 on Plan 237	1448/48	Freehold	18 MADDEN STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.0857	N/A	Vacant Land	Not Leased			
11	457246	Lot 24 on Plan 237	1448/50	Freehold	2 HORLEY STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	1.953	N/A	Vacant Land	Not Leased			
12	457267	Lot 40 on Plan 237	1461/650	Freehold	16 MADDEN STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.857	N/A	Vacant Land	Not Leased			
13	457263	Lot 39 on Plan 237	1461/651	Freehold	14 MADDEN STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.857	N/A	Vacant Land	Not Leased			
14	457256	Lot 1 on Plan 2805	1522/1	Freehold	34 MCCLEMENTS STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4578	N/A	Vacant Land	Not Leased			
15	457266	Lot 2 on Plan 2805	1522/1	Freehold	30 MCCLEMENTS STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.3566	N/A	Vacant Land	Not Leased			
16	457278	Lot 3 on Plan 2805	1522/1	Freehold	26 MCCLEMENTS STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.3566	N/A	Vacant Land	Not Leased			
17	457282	Lot 4 on Plan 2805	1522/1	Freehold	22 MCCLEMENTS STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.3666	N/A	Vacant Land	Not Leased			
18	457283	Lot 5 on Plan 2805	1522/1	Freehold	79 KATRINE ROAD, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4123	N/A	Vacant Land	Not Leased			
19	457284	Lot 6 on Plan 2805	1522/1	Freehold	77 KATRINE ROAD, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4047	N/A	Vacant Land	Not Leased			
20	457285	Lot 7 on Plan 2805	1522/1	Freehold	75 KATRINE ROAD, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4047	N/A	Vacant Land	Not Leased			
21	457286	Lot 8 on Plan 2805	1522/1	Freehold	73 KATRINE ROAD, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4047	N/A	Vacant Land	Not Leased			
22	457287	Lot 9 on Plan 2805	1522/1	Freehold	71 KATRINE ROAD, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.4047	N/A	Vacant Land	Not Leased			
23	457273	Lot 36 on Plan 237	1627/697	Freehold	11 HORLEY STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.1285	N/A	Vacant Land	Not Leased			
24	457270	Lot 37 on Plan 237	1627/697	Freehold	9 HORLEY STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	0.1285	N/A	Vacant Land	Not Leased			
25	457247	Lot 25 on Plan 237	1627/698	Freehold	4 HORLEY STREET, NORTHAM	Shire of Northam	Wheatbelt	Ballardong	1.381	N/A	Vacant Land	Not Leased			
26	1180142	Lot 93 on Diagram 91783	2083/872	Freehold	H 77 SAUNDERS STREET, HENLEY BROOK	City of Swan	Metropolitan	Whadjuk	5.2298	N/A	Vacant Land	Not Leased			
27	1180144	Lot 95 on Diagram 91783	2083/874	Freehold	H 59 SAUNDERS STREET, HENLEY BROOK	City of Swan	Metropolitan	Whadjuk	5.6081	N/A	Vacant Land	Not Leased			
28	1180143	Lot 94 on Diagram 91783	2083/873	Freehold	H 61 SAUNDERS STREET, HENLEY BROOK	City of Swan	Metropolitan	Whadjuk	2.8917	N/A	Vacant Land	Not Leased			
29	156497	Lot 10 on Diagram 62398	1623/890	Freehold	L 10 ARMAGH ST, VICTORIA PARK	City of Victoria Park	Metropolitan	Whadjuk	0.67	Easement - C458314	Vacant Land	Not Leased			
30	185894	Lot 57 on Plan 7050	2140/161	Freehold	67 INNAMINCKA ROAD, GREENMOUNT	Shire of Mundaring	Metropolitan	Whadjuk	0.0994	Lease - I982140 (Expired)	Vacant Land	Not Leased			
31	185919	Lot 58 on Plan 7050	2140/161	Freehold	69-71 INNAMINCKA ROAD, GREENMOUNT	Shire of Mundaring	Metropolitan	Whadjuk	0.2023	Lease - I982140 (Expired)	Vacant Land	Not Leased			
32	185927	Lot 74 on Plan 7050	2140/161	Freehold	LOT 74 WOOLWRA ROAD, GREENMOUNT	Shire of Mundaring	Metropolitan	Whadjuk	0.0931	Lease - I982140 (Expired)	Vacant Land	Not Leased			

<b>Total Area of UCL and UMR (Ha)</b>	<b>1087.3072</b>
<b>Total number of UCL and UMR Parcels</b>	<b>89</b>

<b>Total Area of DAA properties (Ha)</b>	<b>25.9169</b>
<b>Total number of DAA Parcels</b>	<b>32</b>

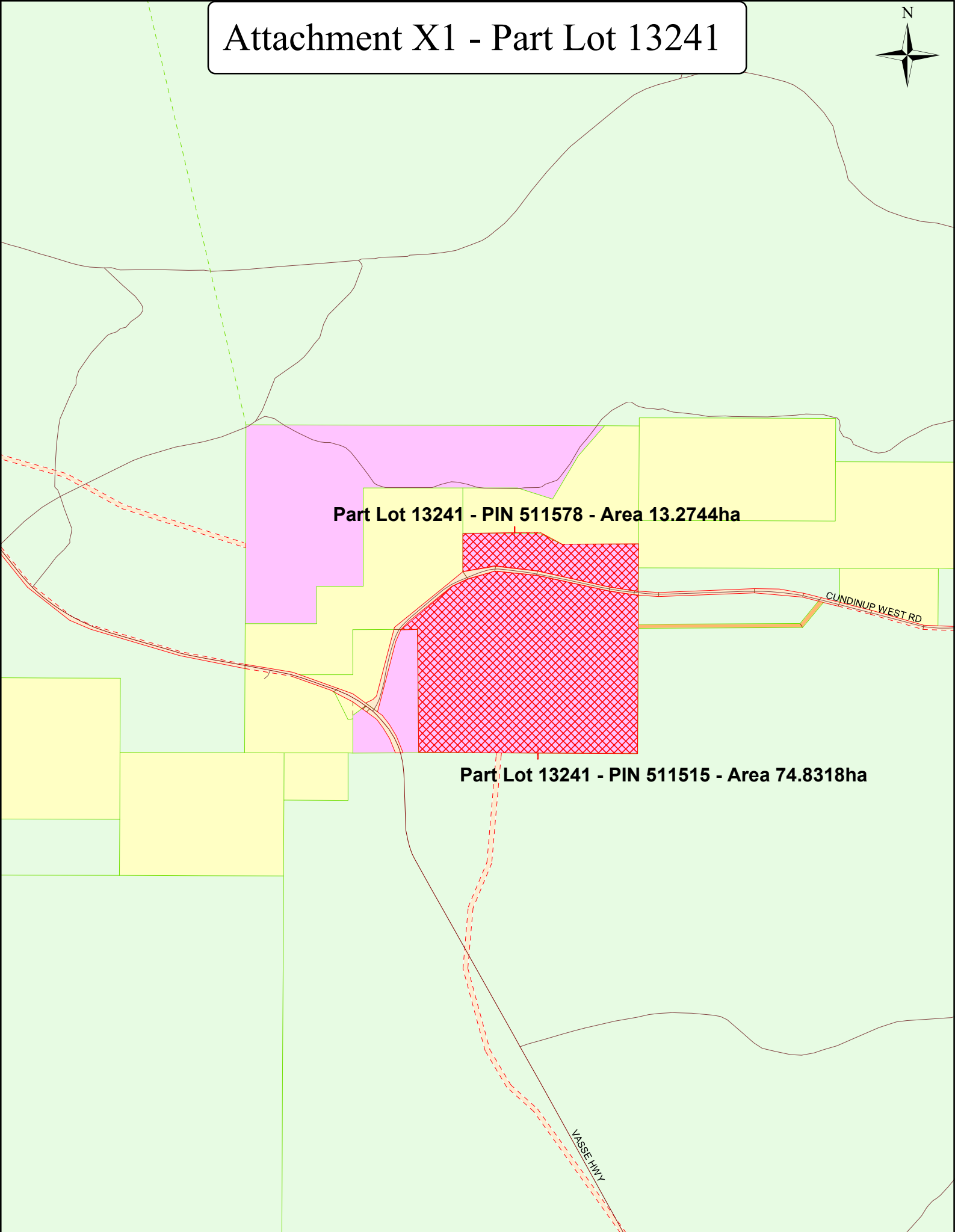


**Annexure X - Land Previously Selected for Allocation**

UCL and UMR

Parcel Number Count	Polygon Identification Number	Land Description	Current Tenure	Current Reserve Purpose	Crown Land Title	Street Name	LGA	Region	Claim Group	Area (ha)	Category Number	Agreed Tenure for Allocation	Information	Special Conditions (In addition to General Conditions)	Date Accepted by SWALSC
Total Area Selected for Allocation (Ha)			1113.2241												
Total Parcels			121												

# Attachment X1 - Part Lot 13241



**Part Lot 13241 - PIN 511578 - Area 13.2744ha**

**Part Lot 13241 - PIN 511515 - Area 74.8318ha**

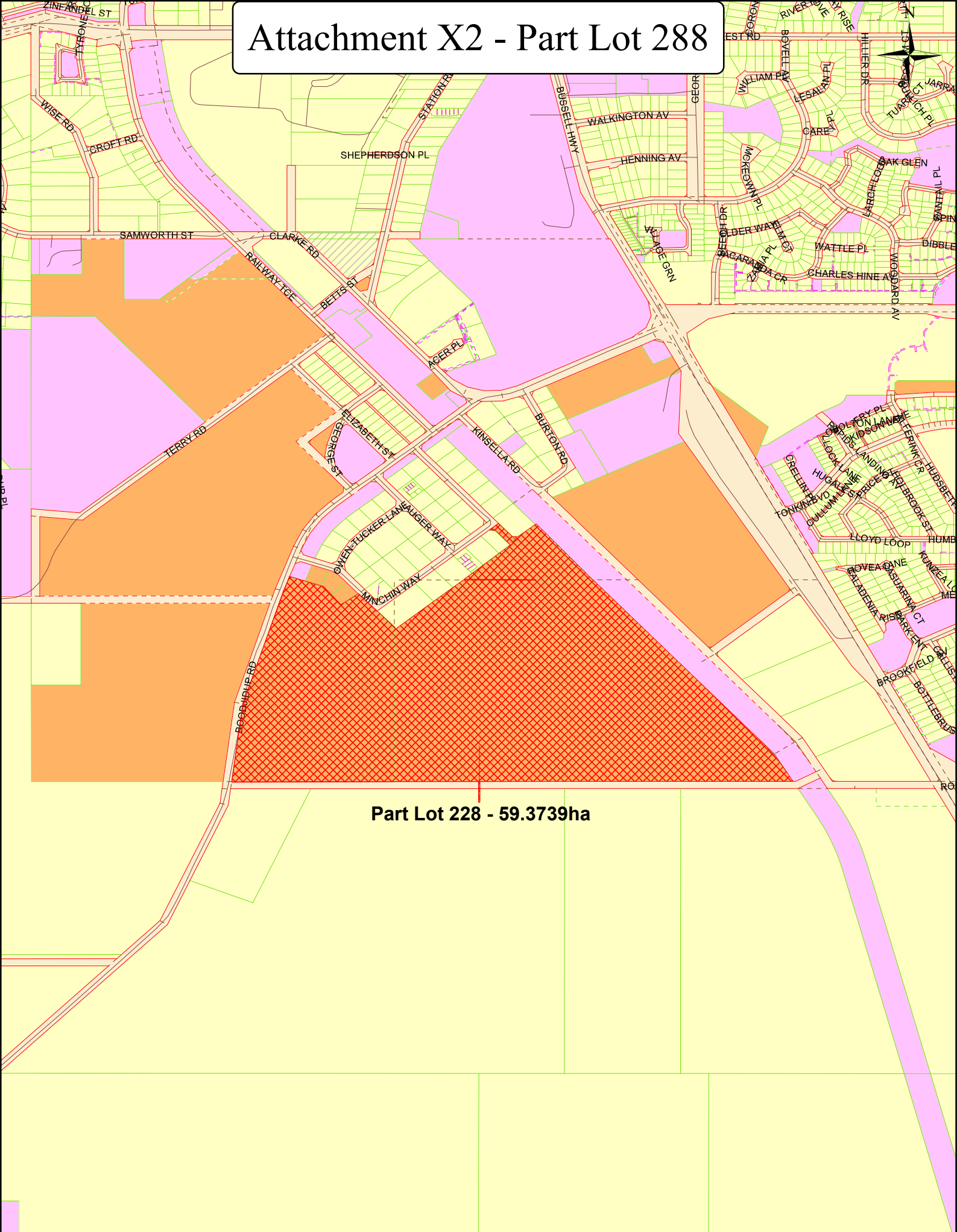
CUNDINUP WEST RD

VASE HWY

Scale : 1:18617 (Geographical)  
MGA : SW=377901.3E,6253934.4N Zone 50 / NE=381731.0E,6260034.1N Zone 50  
Lat/Long : 115°40'48.837", -33°50'52.136" / 115°43'20.773", -33°47'35.704" H 271mm by W 210mm

Printed : 12:15 Mon 25/Aug/2014  
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# Attachment X2 - Part Lot 288



**Part Lot 228 - 59.3739ha**

Scale : 1:10722 (Geographical)  
MGA : SW=320773.1E,6237893.2N Zone 50 / NE=322957.3E,6241426.7N Zone 50  
Lat/Long : 115°03'34.981", -33°59'03.316" / 115°05'02.639", -33°57'09.987" H 271mm by W 210mm

Printed : 12:24 Mon 25/Aug/2014  
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## **Annexure Y**

### **Transition Principles**

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## Transition Principles

Terms used in this Annexure are defined in either the ILUA or the Trust Deed.

### 1. Purpose of Transition Principles

The purposes of the Transition Principles are to :

- (a) ensure that a transparent and accountable process is undertaken to identify the following entities during the period following the ILUA Execution Date and prior to the Trust Effective Date (the **Transition Period**):
  - (i) **Nominee CSC:** an Aboriginal corporation that is eligible for appointment as the Central Services Corporation by the Trustee of the NBT; and
  - (ii) **Nominee RCs:** Aboriginal corporations that are eligible for appointment as the Regional Corporation for each of the Agreement Areas in the ILUAs by the Trustee of the NBT,  
  
(together referred to as the **Nominee Noongar Entities**); and
- (b) provide guidance to the Trustee on how to determine if a Nominee Noongar Entity has satisfied these Transition Principles.

### 2. Establishment of Nominee Noongar Entities

The Transition Principles are to:

- (a) maximise Noongar Community participation in the development of the Nominee Noongar Entities by the execution of a well defined communication, consultation and participation plan during the Transition Period;
- (b) encourage maximum participation in and membership of the Nominee Noongar Entities by the relevant Agreement Group members and to ensure that those relevant persons have the opportunity to:
  - (i) review, amend and adopt the template Rulebook (as amended) of their relevant Nominee Noongar Entity;
  - (ii) review, amend and adopt the initial Cultural Advice Policy of their Nominee RC; and
  - (iii) review, amend and adopt the initial Cultural Consultation Policy of the Nominee CSC;
- (c) ensure the relevant Agreement Groups participate in:
  - (i) the recruitment, election and appointment of a new board of directors, including independent directors, in accordance with the Rulebook and the relevant Regional Corporation Principles and CSC Principles;
  - (ii) the recruitment, selection and appointment of appropriate senior management and staff; and
  - (iii) the relevant Agreement Group Endorsement of a Nominee RC and a Nominee CSC.

### 3. Satisfaction of Transition Principles

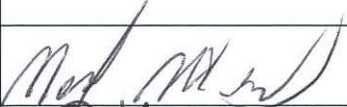
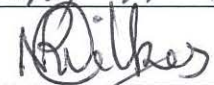





The parties agree that:

- (a) a Nominee Noongar Entity must satisfy the Trustee that a transparent and accountable process was undertaken to establish the Nominee Noongar Entity in accordance with these Transition Principles and that the Nominee Noongar Entity genuinely reflects the outcomes of that process; and
- (b) pursuant to clause 4 and clause 5 of the Trust Deed:
  - (i) once the Trustee receives an ENE Nomination from a Nominee Noongar Entity, the Trustee must appoint the Nominee Noongar Entity as RC or CSC only if the Trustee is satisfied that the Nominee Noongar Entity is eligible to act as RC or CSC; and
  - (ii) in addition to compliance with the CSC Principles, RC Principles and the Transition Principles, eligibility to act as RC or CSC includes the requirement for a valid Agreement Group Endorsement and State Endorsement.



## **SIGNING PAGES**

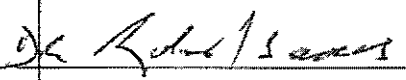
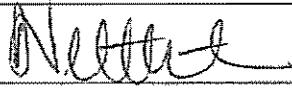
**EXECUTED** as a deed.

Signed by the Representative Parties, on their own behalf and on behalf of the Native Title Agreement Group

Name	Signature	Witness Name (Print)	Witness Signature	Date
Clive Davis				
Noel Morich		CAROLYN FENWELL		24/02/2016
Nigel Wilkes		PETE NETTLETON		08/05/2015
Trevor Nettle		PETE NETTLETON		07/04/2015
Dianne Wynne		NORY LAND		14/04/2015
Albert Corunna				
Kathleen Penny				
Richard Wilkes				
Gregory Garlett				
Bella Bropho				
Anthony Bennell				
Alan Blurton				



Name	Signature	Witness Name (Print)	Witness Signature	Date
Glen Colbung		PETE NETTLETON		12/05/2015.
Donald Collard				
Clarrie Collard-Ugle				
Shawn Councillor				
Dallas Coyne				
Dianna Coyne				
Margaret Culbong				
Edith De Giambattista				
Aden Eades				
Trevor Eades				
Doolann-Leisha Eattes				
Ezzard Flowers				
John Garlett				

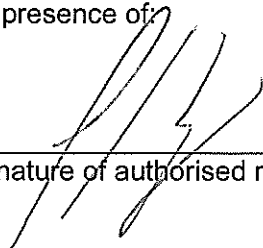
Name	Signature	Witness Name (Print)	Witness Signature	Date
Ted Hart				
George Hayden				
John Hayden				
Reg Hayden				
Eric Hayward				
Jack Hill				
Oswald Humphries				
Robert Isaacs		PEPE NETTLETON		12/05/2015
Allan Jones				
James Kahn				
Justin Kickett				
Eric Krakouer				
Winnie McHenry				

Name	Signature	Witness Name (Print)	Witness Signature	Date
Barry McGuire				
Peter Michael				
Theodore Michael				
Samuel Miller				
Diane Mippy				
Fred Mogridge				
Harry Narkle				
Joe Northover				
Clive Parfitt				
John Pell				
Carol Pettersen				
Fred Pickett				
Phillip Prosser				

Name	Signature	Witness Name (Print)	Witness Signature	Date
William Reidy				
Malcolm Ryder				
Ruby Ryder				
Charlie Shaw				
Iris Slater				
Barbara Corbett- Councillor Stammner	<i>Barbara Corbett Councillor Stammner</i>	PETE NETTLETON	<i>Nettleton</i>	09/04/2015
Angus Wallam				
Charmaine Walley				
Richard Walley				
Trevor Walley	<i>Trevor Walley</i>	PETE NETTLETON	<i>Nettleton</i>	15/05/2015
William Webb				
Beryl Weston	<i>Beryl Weston</i>	PETE NETTLETON	<i>Nettleton</i>	11/05/2015


<b>Name</b>	<b>Signature</b>	<b>Witness Name (Print)</b>	<b>Witness Signature</b>	<b>Date</b>
<b>Bertram Williams</b>				
<b>Gerald Williams (Snr)</b>				
<b>Andrew Woodley</b>				
<b>Humphrey Woods</b>				
<b>Dianne Yappo</b>				
<b>Myrtle Yarran</b>				

Executed by **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** in accordance with its constitution in the presence of:

  
\_\_\_\_\_  
Signature of authorised representative

GLEN ALAN KELLY  
\_\_\_\_\_  
Full name of authorised representative

12/5/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of witness

PETER NETTLETON  
\_\_\_\_\_  
Full name of witness

12/05/2015 .  
\_\_\_\_\_  
Date

Signed for and on behalf of the State of )  
Western Australia by The Honourable )  
Colin J. Barnett MLA, Premier in the )  
presence of: )  
)  
)  
)



Colin J. Barnett MLA



Signature of Witness

8 June 2015

Date

PETER FRANCIS CONRAN  
Full name of Witness (print)

2 HAVELOCK ST. W. PERTH  
Address of Witness

DIRECTOR GENERAL  
Occupation of Witness

The Common Seal of the Minister for Lands, a body corporate continued under section 7 of the *Land Administration Act 1997* (WA), was hereunto affixed in the presence of:



Terry Redman MLA

Signature of Witness

8 JUNE 2015  
Date

ALICIA McALLISTER  
Full name of Witness (print)

2 MAVELOCK ST, WEST PERTH  
Address of Witness

PUBLIC SERVANT, SENIOR POLICY  
Occupation of Witness  
ADVISER

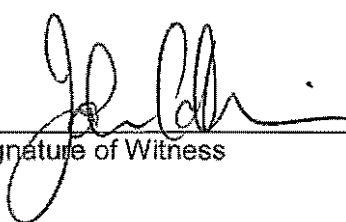


Signed by The Honourable W.R. Marmion )  
MLA, Minister for Mines and Petroleum, in )  
the presence of: )

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)  
)  
)  
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W.R. Marmion MLA



Signature of Witness

08/06/2015

Date

JOHN CATLIN

Full name of Witness (print)

2 Havelock Street, West Perth, 6008

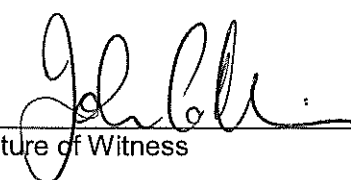
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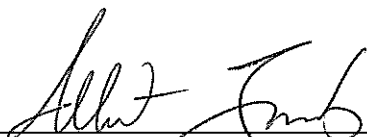
PUBLIC SERVANT

Occupation of Witness

Signed by The Honourable Albert P. Jacob )  
MLA, Minister for Environment, in the )  
presence of: )

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Signature of Witness

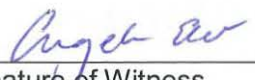
  
\_\_\_\_\_  
Albert P. Jacob MLA  
  
08/06/2015  
\_\_\_\_\_  
Date

JOHN CATLIN  
\_\_\_\_\_  
Full name of Witness (print)

Signed by **The Honourable Mia J. Davies** )  
**MLA, Minister for Water**, in the presence of: )

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Mia J. Davies MLA

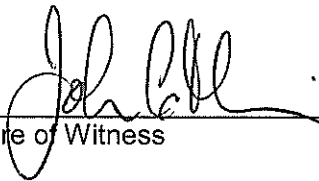
  
Signature of Witness


8 June 2015  
Date

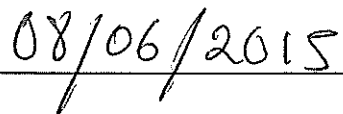
Angela Elder  
Full name of Witness (print)

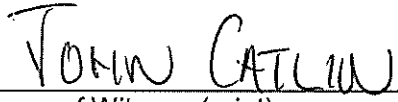
Signed by The Honourable Peter C. Collier )  
MLC, Minister for Aboriginal Affairs, in the )  
presence of: )

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\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Peter C. Collier MLC

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Full name of Witness (print)

Executed by the Conservation Commission )  
of Western Australia by an authorised )  
member in accordance with section 26AB of )  
the Conservation and Land Management Act )  
1984 (WA) in the presence of: )  
)  
)

  
\_\_\_\_\_  
Signature of Authorised Member

A May  
\_\_\_\_\_  
Signature of Witness

BRIAN WILLIAM EASTON  
\_\_\_\_\_  
Full Name of Authorised Member

BRIAN JOHN MURPHY  
\_\_\_\_\_  
Full name of Witness (print)

4/6/2015  
\_\_\_\_\_  
Date

2 HAVELOCK ST WEST PERTH WA  
\_\_\_\_\_  
Address of Witness

PUBLIC SERVANT  
\_\_\_\_\_  
Occupation of Witness

Executed by the Conservation and Land Management Executive Body by the Chief Executive Officer in accordance with section 38 of the Conservation and Land Management Act 1984 (WA) in the presence of:

J. Sharp  
Signature of Chief Executive Officer

A. Murphy  
Signature of Witness

4/6/2015  
Date

ADRIAN JOHN MURPHY  
Full name of Witness (print)

2 HAWLOCK ST WEST PERTH WA  
Address of Witness

PUBLIC SERVANT  
Occupation of Witness

The Common Seal of the HOUSING AUTHORITY was hereunto affixed in the presence of the DIRECTOR GENERAL:

*Handwritten initials*



)  
)  
)  
)  
)

*Handwritten signature of Grahame John Searle*

~~Grahame John Searle~~

PAUL RONALD WINDYAS

4-6-15

*Handwritten signature of witness*

Signature of Witness

Date

ADRIAN JOHN MURPHY

Full name of Witness (print)

2 HAVLOCK ST WEST PERTH WA

Address of Witness

PUBLIC SERVANT

Occupation of Witness

Executed by the **Marine Parks and Reserves Authority** an authority established by section 26A of the *Conservation and Land Management Act 1984* (WA) in the presence of:

  
\_\_\_\_\_  
Signature of Chair of the Board

  
\_\_\_\_\_  
Signature of Witness

4-6-2015  
\_\_\_\_\_  
Date

ADRIAN JOHN MURPHY  
\_\_\_\_\_  
Full name of Witness (print)

2 HAZLOCK ST WEST PERTH WA  
\_\_\_\_\_  
Address of Witness

PUBLIC SERVANT  
\_\_\_\_\_  
Occupation of Witness

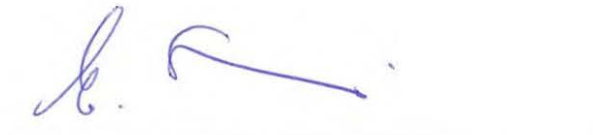


The Common Seal of the Water Corporation, a body corporate established by section 4 of the *Water Corporations Act 1995* (WA), was hereunto affixed in the presence of



  
Chief Executive Officer Signature

SUSAN MURPHY  
Chief Executive Officer Name

  
Chairman Signature

EVA SKIRA  
Chairman Name

4 JUNE 2015  
Date

The Common Seal of the Western Australian Land Authority, was hereunto affixed with the authority of its Board in the presence of:

)  
)  
)  
)  
)



*F. Marra*

Chief Executive Officer Signature

*FRANK MARRA*

Chief Executive Officer Name

*George Austin McAllan*

Board Member Signature

*GEORGE AUSTIN McALLAN*

Board Member Name

*4/6/2015*

Date