

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:

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:

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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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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

[Page intentionally left blank - see next page]

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:

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.

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.

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.

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.

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).

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.

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.

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.

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.

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.

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.

SCHEDULE 1

ITEM

- | | | |
|-----------|---|---|
| 1. | Insurance Amount | \$20,000,000.00 |
| 2. | 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 WA 6872

Attention: The Director-General |
| | Facsimile No: | (08) 6552 4417 |

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

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.

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.

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.

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.

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.

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.

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.

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

Facsimile No: (08) 6552 4417
4. **Special Conditions:**

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.

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).