

Annexure M

Co-operative Management Agreement

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201

BETWEEN:

**CHIEF EXECUTIVE OFFICER OF
THE DEPARTMENT OF PARKS AND WILDLIFE
and**

[INSERT NAME] REGIONAL CORPORATION

**[INSERT NAME] AREA CONSERVATION ESTATE CO-OPERATIVE
MANAGEMENT AGREEMENT**

CO-OPERATIVE MANAGEMENT AGREEMENT

11 October 2013

1.	COMMITMENT TO PURSUE JOINT MANAGEMENT OPPORTUNITIES IN THE [INSERT NAME] AREA	- 2 -
2.	ESTABLISHMENT OF CO-OPERATIVE MANAGEMENT COMMITTEE.....	- 3 -
3.	CO-OPERATIVE MANAGEMENT COMMITTEE.....	- 3 -
3.1.	ROLE OF THE CO-OPERATIVE MANAGEMENT COMMITTEE	- 3 -
3.2.	ADVICE OF THE CO-OPERATIVE MANAGEMENT COMMITTEE—RELATIONSHIP WITH ADVICE PROVIDED BY JOINT MANAGEMENT BODIES FOR AREAS OF THE CONSERVATION ESTATE IN THE [INSERT NAME] AREA.....	- 4 -
4.	MEMBERSHIP OF THE CO-OPERATIVE MANAGEMENT COMMITTEE	- 5 -
4.1.	NOMINATION OF REPRESENTATIVE AND ALTERNATE MEMBERS.....	- 5 -
4.2.	ALTERNATE MEMBERS	- 5 -
4.3.	CHAIRPERSON.....	- 6 -
4.4.	PERSONS INELIGIBLE TO BE MEMBERS	- 6 -
4.5.	VACANCY OF MEMBER	- 6 -
4.6.	VACANCY OF CHAIRPERSON.....	- 6 -
4.7.	REMOVAL FOR BANKRUPTCY	- 7 -
4.8.	REMOVAL FOR MISBEHAVIOUR ETC.	- 7 -
4.9.	CONFLICT OF INTEREST	- 8 -
4.10.	INVITATION TO ATTEND A MEETING OF THE CO-OPERATIVE MANAGEMENT COMMITTEE.....	- 8 -
5.	CONVENING MEETINGS.....	- 8 -
5.1.	FIRST MEETING	- 8 -
5.2.	SUBSEQUENT MEETINGS	- 8 -
5.3.	FREQUENCY.....	- 9 -
5.4.	ADMINISTRATIVE RESPONSIBILITY	- 9 -
6.	PROCEDURE.....	- 9 -
7.	SUB-COMMITTEES	- 9 -
8.	QUORUM	- 9 -
9.	VOTING.....	- 9 -
10.	CO-OPERATIVE MANAGEMENT COMMITTEE DISPUTE	- 10 -
10.1.	REFERRAL TO CEO AND CORPORATION'S CEO	- 10 -
10.2.	REFERRAL TO MEDIATION	- 10 -
10.3.	REFERRAL TO MINISTER.....	- 11 -
10.4.	OBLIGATIONS CONTINUE	- 11 -
11.	REVIEW	- 11 -
12.	VARIATION.....	- 12 -
13.	OBLIGATION OF PARTIES IN RESPECT OF REPRESENTATIVE MEMBERS .	- 12 -
14.	DEFAULT AND ENFORCEMENT	- 12 -
14.1.	EVENTS OF DEFAULT.....	- 12 -
14.2.	DEFAULT UNDER CLAUSE 14.1(B)(I) OR 14.1(B)(II).....	- 12 -
14.3.	DEFAULT UNDER CLAUSE 14.1(B)(III)	- 13 -
14.4.	CONSEQUENCES OF FAILURE TO REMEDY	- 13 -
14.5.	REMEDIES EXERCISED UNDER THIS CLAUSE 14 DO NOT PREJUDICE ANY OTHER RIGHTS A PARTY MAY HAVE	- 14 -
15.	PARTY DISPUTES.....	- 14 -
15.1.	No COURT PROCEEDINGS	- 14 -

	15.2. NOTIFICATION	- 14 -
	15.3. PARTIES TO RESOLVE PARTY DISPUTE.....	- 14 -
	15.4. MEDIATION	- 14 -
16.	CONFIDENTIALITY	- 15 -
	16.1. BETWEEN PARTIES	- 15 -
	16.2. BETWEEN MEMBERS OF THE CO-OPERATIVE MANAGEMENT COMMITTEE	- 15 -
	16.3. PERMITTED DISCLOSURE	- 15 -
	16.4. DISCLOSURE REQUIREMENTS.....	- 16 -
	16.5. PARTY MAY SEEK INJUNCTION.....	- 16 -
	16.6. NO WAIVER OR TRANSFER OF INTELLECTUAL PROPERTY RIGHTS.....	- 16 -
17.	TERM AND TERMINATION	- 16 -
	17.1. TERM.....	- 16 -
	17.2. TERMINATION.....	- 16 -
18.	INTELLECTUAL PROPERTY.....	- 17 -
19.	CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS.....	- 17 -
20.	ACTS BY STATE – NO FETTER UPON DISCRETION.....	- 17 -
21.	NO ASSIGNMENT WITHOUT CONSENT	- 17 -
22.	FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS	- 17 -
23.	GENERAL	- 18 -
	23.1. ENTIRE AGREEMENT	- 18 -
	23.2. GOVERNING LAW AND JURISDICTION.....	- 18 -
	23.3. SEVERANCE	- 18 -
	23.4. ELECTION AND WAIVER	- 18 -
	23.5. SURVIVAL.....	- 19 -
24.	NOTICE	- 19 -
25.	DEFINITIONS AND INTERPRETATION	- 19 -
	25.1. GENERAL DEFINITIONS.....	- 19 -
	25.2. INTERPRETATION	- 21 -
	EXECUTION.....	1

THIS AGREEMENT is made the day of 201.

BETWEEN

THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS AND WILDLIFE, ACTING THROUGH THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY, a body corporate established under section 36 of the *Conservation and Land Management Act 1984*, care of 17 Dick Perry Ave, Kensington, Western Australia (**CEO**)

and

[INSERT NAME] REGIONAL CORPORATION (ICN), a body corporate established for and on behalf of the **[INSERT NAME]** Group and appointed by the Trustee of Noongar Boodja Trust, of **[insert address] (Corporation)**

STATEMENT OF RESPECT

- A. The Department of Parks and Wildlife (Department) recognises that the Noongar people are the traditional owners of the land and waters in the South West Native Title Settlement Area (Settlement Area) with continuing cultural, spiritual and social connections to the area.
- B. The Department recognises that the Noongar people have a cultural responsibility to care for country within the Settlement Area and unique traditional knowledge and expertise that will assist in managing the Conservation Estate in the Settlement Area.
- C. The Noongar people recognise that the Department has a statutory responsibility to manage the Conservation Estate within the Settlement Area on behalf of all Western Australian people.
- D. Both Parties recognise the importance of caring for the country within the Settlement area and the rights and obligations that each Party has to meet in regards to that country. Both Parties enter into this agreement in the spirit of co-operation and commit to work together in a cooperative, honest and respectful manner.

RECITALS

- A. The CEO is acting through the Conservation and Land Management Executive Body, (the body corporate established under section 36 of the *Conservation and Land Management Act 1984* (CALM Act)).
- B. The Corporation has been appointed by the Trustee of the Noongar Boodja Trust upon the endorsement of the [INSERT NAME] Group to represent the interests of the [INSERT NAME] Group pursuant to the Noongar Boodja Trust Deed and the South West Native Title Settlement.
- C. The State, the Minister for Lands, the Conservation Commission, the CEO, the [INSERT NAME] Group and others have entered into the ILUA.
- D. The ILUA provides, among other things, for the making of:
 - (i) the [INSERT NAME] Co-operative Management Agreement; and
 - (ii) Joint Management Agreements under section 56A of the CALM Act for particular areas of the Conservation Estate;substantially in the form of the Template Agreements at [insert Schedule no] to the ILUA.
- E. Pursuant to the ILUA the Parties have agreed that the [INSERT NAME] Area Co-operative Management Committee (Committee) will be created in relation to the Conservation Estate in the [INSERT NAME] Area.
- F. It is intended that the Committee will provide a whole of [INSERT NAME] Area approach to building partnerships between the Department and the Noongar community represented by the INSERT NAME Corporation to cooperatively manage the Conservation Estate and to develop frameworks, Memorandums of Understanding (MOU's), local area arrangements and

other cooperative instruments and arrangements as required to give effect to these partnership arrangements.

- G. The Committee will, among other things, work to identify and prioritise specific areas of the Conservation Estate to be jointly managed by Joint Management Bodies established under Joint Management Agreements referred to in Recital D (ii) above.
- H. The Committee may also recommend the establishment of forms of consultative and co-operative management over all of the Conservation Estate within the [INSERT NAME] Area as a way of working towards formal joint management arrangements in specific areas of the Conservation Estate as capacity and resources become available. The Committee will participate in the development of policies and/or frameworks that describe the conditions that need to be met for formal joint management to occur on parts of the Conservation Estate within the INSERT NAME Area.
- I. In accordance with this Agreement, the CEO will use the Committee to fully and actively engage with the Corporation and the INSERT NAME people in the amendment of existing Management Plans and the identification, prioritisation and drafting of new Management Plans that are presented to the Conservation Commission or the Marine Parks and Reserves Authority (as the case may be) for Ministerial approval.
- J. The Parties will work together to put in place Management Plans that include joint management arrangements over as much of the Conservation Estate within the [INSERT NAME] Area as is reasonably practicable, having regard to the statutory processes under the CALM Act and the resources of the Department and the Corporation available for this purpose.
- K. The CEO will fully engage with the Corporation in matters of site selection, design and development of capital works including economic development opportunities arising from those works in the Agreement Area through the Committee and the consultation processes endorsed by the Committee.
- L. This Agreement is substantially in the form set out in the ILUA.

THE PARTIES AGREE AS FOLLOWS:

1. COMMITMENT TO PURSUE JOINT MANAGEMENT OPPORTUNITIES IN THE [INSERT NAME] AREA

The State has agreed in the ILUA that, subject to clause 11 [no fettering of statutory powers or discretions] of the ILUA it will put in place:

- (a) at least one Joint Management Agreement for land and waters in the Conservation Estate in the [INSERT NAME] Area within five years of the Commencement Date; and
- (b) unless the parties agree otherwise, at least one further Joint Management Agreement in relation to another part of the Conservation Estate in the [INSERT NAME] Area within ten years of the Commencement Date.

2. ESTABLISHMENT OF CO-OPERATIVE MANAGEMENT COMMITTEE

- (a) The [INSERT NAME] Area Conservation Estate Co-operative Management Committee (Co-operative Management Committee) is established.
- (b) The Co-operative Management Committee shall be comprised of at least 8 Representative Members, nominated in accordance with clause 4.1.

3. CO-OPERATIVE MANAGEMENT COMMITTEE

3.1. Role of the Co-operative Management Committee

- (a) The role of the Co-operative Management Committee shall be, consistently with the CALM Act, the *Wildlife Conservation Act 1950* (Wildlife Conservation Act) and any regulations made under those Acts, to:
 - (i) provide advice to the CEO and the Corporation on, and oversee and participate in, the identification of Conservation Estate lands within the [INSERT NAME] Area to jointly manage including identifying land to be jointly managed under Clause 1(a) and 1(b);
 - (ii) make recommendations on the priorities for the development and review of Management Plans for the Conservation Estate within the [INSERT NAME] Area;
 - (iii) subject to clause 3.1(b), provide advice to the CEO on, and fully and actively participate in, the preparation and amendment of all Management Plans within the [INSERT NAME] Area including (if appropriate) to provide for joint management and the establishment of a Joint Management Body for specific areas of the Conservation Estate;
 - (iv) provide advice to the CEO and the Corporation (as appropriate) on, and participate in, the preparation of policies, programs and other management documents for the [INSERT NAME] Area;
 - (v) provide advice to the CEO on the value of the [INSERT NAME] Area land and waters to the culture and heritage of Noongar people, including participating in the development of policies and processes that describe how the Department and the Corporation will work together to determine, conserve, protect and rehabilitate this value;
 - (vi) provide advice to the CEO on the conduct of customary activities within the [INSERT NAME] Area pursuant to the CALM Act and Regulations and oversee the development of local area arrangements and agreements to cooperatively manage customary activities in the INSERT NAME Area. The provision of advice to the CEO includes advising on any proposed change to customary activity legislation, regulations, policies and arrangements within the INSERT NAME Area before any change is decided;
 - (vii) provide advice to the CEO and the Corporation on, and participate in the development of, Aboriginal employment initiatives within the [INSERT NAME] Area including the establishment of Noongar/Department co-operative employment strategies. This will

include providing advice to the CEO on how to meet the Department's publicly stated Aboriginal employment targets within the agreement area;

- (viii) provide advice to the CEO and the Corporation and develop policies, frameworks and strategies that facilitate opportunities for Noongar economic development in relation to Conservation Estate lands in the [INSERT NAME] Area;
 - (ix) monitor Departmental regional planning, contracting, licensing and budget processes to facilitate Noongar participation in employment and economic development opportunities on Conservation Estate lands in the [INSERT NAME] Area.
 - (x) make decisions about the allocation of monies that have been provided from the Land Partnership Fund to facilitate the joint management arrangements and activities in relation to the Conservation Estate lands in the [INSERT NAME] Area.
- (b) Where a Joint Management Body is put in place for an area of the Conservation Estate after the commencement of this Agreement the Committee will have no further role in advising the CEO on, and participating in, the preparation of a replacement Management Plan or amendment of the existing Management Plan for the area unless the Joint Management Body requests that the Committee undertake that role.
- (c) The role of the Co-operative Management Committee does not include undertaking the day-to-day management of any part of the Conservation Estate.

3.2. Advice of the Co-operative Management Committee—relationship with advice provided by Joint Management Bodies for areas of the Conservation Estate in the [INSERT NAME] Area

Where, in relation to the management of an area of the Conservation Estate there is a Joint Management Body in place under s 56A of the CALM Act, and the advice of the Co-operative Management Committee is inconsistent with the advice given by that Joint Management Body, the advice of the latter shall be preferred to the extent of the inconsistency.

3.3 CEO to accept the advice of the Co-operative Management Committee

- (a) Subject to clause 3.2, the CEO shall take into account the advice given by the Co-operative Management Committee and shall not unreasonably fail to give effect to the advice of the Co-operative Management Committee, where that advice is not inconsistent with the CALM Act, the Wildlife Conservation Act, any regulations made under those Acts and any relevant Management Plans.
- (b) Should the CEO not follow the advice of the Co-operative Management Committee, the CEO shall provide the Committee with brief written reasons why the advice was not followed.

4. MEMBERSHIP OF THE CO-OPERATIVE MANAGEMENT COMMITTEE

4.1. Nomination of Representative and Alternate Members

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1, the Parties shall each nominate persons to be Representative Members of the Co-operative Management Committee and Alternate Members of the Co-operative Management Committee in the following manner:
 - (i) The Corporation shall nominate:
 - a. six (6) persons to be Representative Members of the Co-operative Management Committee, at least one of whom should be, if possible, employed in the Corporation's or the Central Service Corporation's land unit; and
 - b. six (6) persons to be Alternate Members of the Co-operative Management Committee; and
 - (ii) the CEO shall nominate:
 - a. two (2) to six (6) persons to be Representative Members of the Co-operative Management Committee; and
 - b. two (2) to six (6) persons to be Alternate Members of the Co-operative Management Committee.
- (b) Unless otherwise agreed by the Parties, the Members nominated by the CEO shall be employees of the Department and should include the District Managers from each of the Department's districts that fall within the [INSERT NAME] Area.
- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.
- (d) Before the first meeting of the Co-operative Management Committee, each Party shall give to the other Party written notice, in accordance with clause 24, of the nominated Representative and Alternate Members.

4.2. Alternate Members

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the Corporation is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the Corporation's CEO who will then arrange for an Alternate Member to attend on behalf of the Corporation.
- (b) Upon receiving notice of a meeting, if a Representative Member nominated by the CEO is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he or she shall, as soon as possible after they become aware of that fact, inform the CEO and the Chairperson and the CEO shall arrange for an Alternate Member to attend on behalf of the CEO.
- (c) An Alternate Member notified under paragraph (a) or (b) shall attend the meeting in place of the absent Representative Member.
- (d) When acting in the place of the absent Representative Member, the Alternate Member has the rights and responsibilities of the absent Representative

Member and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 4.2.

4.3. Chairperson

- (a) At the first meeting of the Co-operative Management Committee, the Representative Members shall elect a Chairperson from the Representative Members nominated by the Corporation, to serve for a twelve month term.
- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he or she is re-elected.
- (c) The Chairperson shall preside at a meeting of the Co-operative Management Committee, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

4.4. Persons ineligible to be members

Unless otherwise agreed by the Parties, a member of the [INSERT NAME] Group who is an employee of the CEO is not eligible to be nominated as a Member.

4.5. Vacancy of Member

- (a) The position of a Member becomes vacant if he or she:
 - (i) resigns his or her position by notice delivered to the Chairperson; or
 - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he or she has had notice under clause 24;
 - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or
 - (iv) dies.
- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
 - (i) If the Member was nominated by the Corporation, the Corporation shall nominate the new Member.
 - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
 - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

4.6. Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if he or she:
 - (i) resigns their position by notice delivered to the CEO; or
 - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 24; or
 - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or

- (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of paragraph (a), a new Chairperson shall be elected in accordance with clause 4.3 for the remainder of the twelve month term.

4.7. Removal for bankruptcy

- (a) The Co-operative Management Committee may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:
 - (i) according to the *Interpretation Act 1984* (WA) section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (ii) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

shall at the first meeting after he or she becomes aware of that fact, disclose it to the Representative Members (**Remaining Representative Members**) who are at that meeting (**Disclosure**) and the Disclosure shall be recorded in the minutes.

- (c) Following a Disclosure under paragraph (b), the Remaining Representative Members shall vote in accordance with clause 9 as to whether the disclosing Member shall be removed from the Co-operative Management Committee, the results of which vote shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote to remove a Member from the Co-operative Management Committee under paragraph (c) the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.8. Removal for misbehaviour etc.

- (a) In this clause, 'misbehaviour' includes behaving in a manner that renders the Member unfit to be a Member even if the conduct does not relate to any function of the Co-operative Management Committee.
- (b) A Representative Member may move that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness.
- (c) Where paragraph (b) applies, the Representative Members other than the Affected Member (**Remaining Representative Members**) shall vote as to whether the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the results of which shall be recorded in the minutes.
- (d) If the Remaining Representative Members vote under paragraph (c) that the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the position of the Affected Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.9. Conflict of interest

- (a) A Representative Member who has a material personal or financial interest in a matter that is being considered by a meeting of the Co-operative Management Committee (**Conflict of Interest**) shall, as soon as possible after he or she is aware of this interest, disclose the nature of their Conflict of Interest to the other Representative Members who are at that meeting, and that disclosure shall be recorded in the minutes.
- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest in a matter under paragraph (a) the Representative Member shall not:
 - (i) take part in the consideration or discussion of the matter; or
 - (ii) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
 - (i) the remaining Representative Members (other than the Representative Member with a Conflict of Interest) shall vote in accordance with clause 9 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter and/or vote on the matter; and
 - (ii) the results of that vote shall be recorded in the minutes of the meeting.
- (d) A Representative Member shall not be taken to have a Conflict of Interest solely due to that Representative Member's particular traditional interest or seniority in relation to an area of land or waters relevant to the matter to be decided or because he or she is a director of the Corporation.

4.10. Invitation to attend a meeting of the Co-operative Management Committee

- (a) The Co-operative Management Committee or either Party (the inviting party) may invite an organisation or individual to attend a Co-operative Management Committee meeting to provide advice on any issue the inviting party deems necessary.
- (b) The inviting party has absolute discretion to determine at which meeting, or part of a meeting its invitee shall be present.
- (c) Invitees do not have a right to vote at a Co-operative Management Committee meeting.

5. CONVENING MEETINGS

5.1. First meeting

Within 60 days of the Commencement Date, the CEO shall convene the first meeting of the Co-operative Management Committee, to be held at a place agreed to by the Parties.

5.2. Subsequent meetings

- (a) Subject to paragraph 5.3(b) the CEO shall be responsible for convening meetings.

- (b) At the first meeting, or at any subsequent meeting, the Co-operative Management Committee shall decide the venue for the subsequent meeting or meetings.

5.3. Frequency

- (a) The Co-operative Management Committee shall meet at least three times per year.
- (b) The Co-operative Management Committee may meet more often in the following circumstances:
 - (i) the CEO calls a meeting of the Co-operative Management Committee by giving at least fifteen Business Days' notice to the Members; or
 - (ii) the Corporation's CEO calls a meeting of the Co-operative Management Committee by giving at least fifteen Business Days' notice to the Members.

5.4. Administrative responsibility

The CEO shall provide administrative support for the Co-operative Management Committee, including preparing and circulating meeting notices, agendas and papers, and the Corporation may assist with that support.

6. PROCEDURE

The Co-operative Management Committee may adopt such further rules and procedures from time to time as it considers necessary, but if there is any inconsistency between those rules and procedures and this Agreement, this Agreement prevails.

7. SUB-COMMITTEES

The Co-operative Management Committee may appoint sub-committees (comprising any Member and any other persons) to investigate, consider and advise, or to make recommendations to, the Co-operative Management Committee on such matters as the Co-operative Management Committee sees fit.

8. QUORUM

Four (4) Representative Members constitute a quorum, comprising two (2) Representative Members nominated by the Corporation and two (2) Representative Members nominated by the CEO.

9. VOTING

- (a) Each Representative Member present at a meeting of the Co-operative Management Committee, including the Chairperson, has one vote and shall exercise that vote, subject to clause 4.9(b).
- (b) Subject to paragraph (c), the Co-operative Management Committee shall try to reach a unanimous decision.

- (c) If the Co-operative Management Committee cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Co-operative Management Committee then the business which is the subject of that agenda item becomes a **Dispute** for the purposes of clause 10.

10. CO-OPERATIVE MANAGEMENT COMMITTEE DISPUTE

10.1. Referral to CEO and Corporation's CEO

- (a) A reference in this clause to the CEO or to the Corporation's CEO is a reference to those persons acting personally.
- (b) If the circumstances in clause 9(d) arise, the Chairperson shall, within 5 Business Days after the second meeting, give notice of the Dispute to the CEO and to the Corporation's CEO setting out details of the Dispute.
- (c) Upon receiving notice of a Dispute under paragraph 10.1(b), the CEO and the Corporation's CEO, shall, within 20 Business Days of the date of that notice:
 - (i) determine the Dispute; or
 - (ii) refer the Dispute to a Mediator in accordance with clause 10.2; or
 - (iii) refer the Dispute back to the Co-operative Management Committee to decide; or
 - (iv) refer the Dispute to the Minister to decide.
- (d) When determining the Dispute under subparagraph 10.1(c)(i), the CEO and the Corporation's CEO may consult with any person.
- (e) A determination of the Dispute by the CEO and the Corporation's CEO under subparagraph 10.1(c)(i) shall be deemed to be a determination of the Co-operative Management Committee.
- (f) If the CEO and the Corporation's CEO are unable to agree what course of action to take under paragraph 10.1(c), they shall refer the Dispute to a Mediator and clause 10.2 applies.

10.2. Referral to Mediation

- (a) The CEO and the Corporation's CEO shall endeavour to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within 10 Business Days after a referral under clause 10.1(c) or 10.1(f) the CEO and the Corporation's CEO cannot agree on a mediator, either Party may request the Chairman of LEADR to appoint a mediator.
- (c) The CEO and the Corporation's CEO shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.

- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which, the CEO and the Corporation's CEO may together determine the Dispute.
- (e) Any information or documents disclosed by the CEO and the Corporation's CEO under this clause 10:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (f) The CEO and the Corporation's CEO shall pay their own costs of complying with this clause 10 and the CEO and the Corporation's CEO shall each pay half the costs of any mediator.
- (g) If the CEO and the Corporation's CEO fail to resolve the Dispute by mediation within 20 Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and the Corporation's CEO, either the CEO or the Corporation's CEO may refer the Dispute to the Minister under clause 10.3.

10.3. Referral to Minister

- (a) If the CEO and the Corporation's CEO refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and the Corporation's CEO regarding how the Dispute ought to be determined and do one or both of the following:
 - (i) decide as to how the Dispute is to be determined; or
 - (ii) determine the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice or recommendation made by the CEO or the Corporation's CEO in the course of the consultation process.
- (c) A determination of the Dispute by the Minister under this clause 10.3 shall be deemed to be a decision of the Co-operative Management Committee.

10.4. Obligations continue

If a Dispute is being dealt with under any part of this clause 10, the Co-operative Management Committee shall, pending the making of a decision on the Dispute, continue to perform its obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision on the Dispute.

11. REVIEW

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
 - (i) five years after the Commencement Date and at the end of every five years thereafter; or
 - (ii) they agree that a review is necessary.
- (b) A review under paragraph (a) shall be commenced within 6 months of the circumstances in subparagraphs 11(a)(i) or (a)(ii) occurring. The review shall

be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties. The agreed costs of the review shall be met by the CEO.

12. VARIATION

The Parties may vary this Agreement by Deed of Variation.

13. OBLIGATION OF PARTIES IN RESPECT OF REPRESENTATIVE MEMBERS

The Parties shall ensure that:

- (a) Representative Members perform their role and comply with their obligations as members of the Co-operative Management Committee under this Agreement, having regard to and in accordance with:
 - (i) the role of the Co-operative Management Committee in clause 3; and
 - (ii) the CALM Act; and
 - (iii) any other applicable State legislation.
- (b) For the purposes of clause 8, the required number of Representative Members nominated by each Party are present at every meeting of the Co-operative Management Committee.

14. DEFAULT AND ENFORCEMENT

14.1. Events of Default

- (a) In this clause 14, a reference to a Party means a party to the default.
- (b) A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 14:
 - (i) where the Party breaches clauses 4.1, 4.2, 10.1, 10.2, 13 (in respect of a Member's obligations under clauses 4.7, 4.8, 4.9, 6 and 16), 15.1, 16 or 21; or
 - (ii) where the Party commits 3 breaches of its obligations under this Agreement over any 12 month period, provided that the Party not in breach (the **Non-defaulting Party**) has given the Defaulting Party notice of any such breaches and whether or not the Defaulting Party has rectified such breaches; or
 - (iii) when an Insolvency Event occurs.

14.2. Default under clause 14.1(b)(i) or 14.1(b)(ii)

- (a) If a Defaulting Party causes an Event of Default under clause 14.1(b)(i) or 14.1(b)(ii), the Non-defaulting Party may serve a notice (**Default Notice**) on the Defaulting Party specifying:
 - (i) the Event of Default; and
 - (ii) the steps the Defaulting Party must take which the Non-defaulting Party reasonably considers are necessary to mitigate the effect of the

Event of Default on the Non-defaulting Party and the period (not less than 5 Business Days) within which those steps must be taken.

- (b) Upon receiving a Default Notice, the Defaulting Party shall:
 - (i) in the case of an Event of Default under clause 14.1(b)(i):
 - (A) remedy the Event of Default within 20 Business Days; or
 - (B) if the Event of Default cannot reasonably be remedied in 20 Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the default must be remedied by no later than 3 months from the date of the Default Notice; and
 - (C) take such steps to mitigate the effect of the Event of Default as are specified in the Default Notice within the period specified in that notice.
 - (ii) in the case of an Event of Default under clause 14.1(b)(ii), and to the satisfaction of the Non-defaulting Party (acting reasonably), take all reasonable steps open to the Defaulting Party within a period of 20 business days commencing on the date of the Default Notice to ensure that further breaches of the terms of this Agreement do not occur.

14.3. Default under clause 14.1(b)(iii)

- (a) If an Event of Default occurs under clause 14.1(b)(iii), the Corporation' CEO shall:
 - (i) as soon as possible, notify the CEO:
 - (i) that the Event of Default has occurred;
 - (ii) of the appointment of any administrator, receiver or manager to the Corporation; and
 - (iii) when the relevant Event of Default ceases to exist.
- (b) where the Event of Default results in an order to wind up the Corporation, the [INSERT NAME] Group shall take steps to cause a Replacement Corporation to be appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed as soon as possible.

14.4. Consequences of failure to remedy

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement until:

- (a) clauses 14.2(b)(i)(C) and 14.2(b)(ii) are complied with (as the case requires); and
- (b) the Event of Default has been remedied as required by clause 14.2(b) or the Event of Default no longer exists, whichever is applicable.

14.5. Remedies exercised under this clause 14 do not prejudice any other rights a Party may have

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

15. PARTY DISPUTES

15.1. No Court proceedings

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a dispute of the type referred to in clause 10, a Party must comply with this clause 15 before commencing court proceedings (except proceedings for urgent interlocutory relief).

15.2. Notification

A Party claiming a Party Dispute has arisen must give the other Party notice setting out the details of the Party Dispute.

15.3. Parties to resolve Party Dispute

During the 20 Business Days after a notice is given under clause 15.2 (or longer period if the Parties agree in writing), each Party must use its reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, any Party may request that the Party Dispute be referred to a mediator and, if a Party so requests, the Party Dispute shall be referred to mediation in accordance with clause 15.4.

15.4. Mediation

- (a) If the Parties cannot agree on a mediator within 10 Business Days after a request under clause 15.3, either Party may request the Chairman of LEADR to appoint a mediator.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute. A mediator may not make a decision which is binding on a Party to the Party Dispute except if the Party agrees in advance in writing to be so bound.
- (c) Any information or documents disclosed by a Party under this clause 15.4:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party must pay its own costs of complying with this clause 15.4. The Parties must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Party Dispute. If the Parties fail to achieve a resolution of the Party Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.

- (f) If a Party breaches clauses 15.2, 15.3 or 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

16. CONFIDENTIALITY

16.1. Between Parties

- (a) Subject to paragraph (b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and shall not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

16.2. Between Members of the Co-operative Management Committee

- (a) Subject to paragraph (b), all information disclosed by a member of the Co-operative Management Committee (**Disclosing Party**) to another member of the Co-operative Management Committee (**Receiving Party**) during the term of this Agreement and the operation of the Co-operative Management Committee, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and will not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

16.3. Permitted disclosure

A Receiving Party may, in turn, disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by law or applicable securities regulation or rule;
- (c) subject to clause 16.4, in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;

- (e) subject to clause 16.4, to a proposed Replacement Corporation assignee of the Corporation's interest under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia.

16.4. Disclosure requirements

Before making any disclosure to a person under clause 16.3(c) or 16.3(e) the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) before doing so notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 16.3(e), ensure that the person or entity executes a deed with the Corporation, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 16.

16.5. Party may seek injunction

The Parties acknowledge that:

- (a) They are aware that any breach of this clause 16 may result in the other Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 16 or any obligation of confidentiality under this Agreement, any adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 16.

16.6. No waiver or transfer of intellectual property rights

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

17. TERM AND TERMINATION

17.1. Term

Subject to clause 17.2, this Agreement remains in force from the Commencement Date until both parties agree otherwise. Both parties commit to working together to secure funding to resource the Committee after the ten year funding commitment from the State expires. If no funding can be sourced the Corporation shall resource Noongar involvement in the Committee.

17.2. Termination

This Agreement shall terminate in the following circumstances, whichever is the sooner:

- (i) when a new Agreement is substituted for this Agreement; or
- (ii) when the Parties agree in writing to terminate the Agreement.

18. INTELLECTUAL PROPERTY

No change of ownership which may exist in any Party's intellectual property will occur by its being made available to the Co-operative Management Committee, the Department, the State, the Corporation or any other party pursuant to this Agreement.

19. CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS

Any reference to the CEO in this Agreement, other than in clause 10, includes a reference to the CEO acting through the agency of a Departmental officer.

20. ACTS BY STATE – NO FETTER UPON DISCRETION

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the relevant statute.

21. NO ASSIGNMENT WITHOUT CONSENT

The Corporation may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

22. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS

- (a) In the event that a Party becomes wholly or partly unable to perform any of its obligations under the Agreement because of Force Majeure or Aboriginal Cultural Business, then the Agreement shall nevertheless continue and remain in force and effect but that Party shall not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business, and the time within which such a Party is required to perform any work or satisfy any obligation shall be extended by a period equivalent to that during which such prevention or delay continues, provided that:
 - (i) the cause of the Force Majeure or Aboriginal Cultural Business as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; and
 - (ii) no Party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (b) The Party affected by any event of Force Majeure or Aboriginal Cultural Business shall immediately give notice to the other Parties of the occurrence of such event and the likely period of delay. The notice must:
 - (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure or Aboriginal Cultural Business;

- (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or Aboriginal Cultural Business.
- (c) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
- (d) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.
- (e) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within 3 months, either Party may, by notice to the other Party, suspend the performance of its obligations and the affected Party's rights under this Agreement until the Force Majeure or Aboriginal Cultural Business has ceased.

23. GENERAL

23.1. Entire agreement

This Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

23.2. Governing law and jurisdiction

- (a) This Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

23.3. Severance

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

23.4. Election and waiver

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

23.5. Survival

Clauses 15, 16, 18, 23.2, 23.3, 23.5, 24 and 25 survive termination of this Agreement.

24. NOTICE

Each notice or other communication given under this Agreement:

- (a) shall be in writing;
- (b) shall be delivered to the intended recipient by prepaid post or by hand to the address below or the address last notified by the intended recipient to the sender;

[insert addresses]
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, 7 days after the date of posting.

25. DEFINITIONS AND INTERPRETATION

25.1. General Definitions

Words and expressions defined in the CALM Act have the same meaning when used in this Agreement.

In this Agreement, unless the context otherwise requires:

Aboriginal Cultural Business means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Corporation or Noongar people are required to attend or that prevents the members of the Corporation or Noongar persons from attending to day to day business.

Agreement means this Co-operative Management Agreement and includes the Schedules.

Alternate Member means a person who is nominated under clause 4.1.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

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

CALM Regulations means the *Conservation and Land Management Regulations 2002* (WA).

Central Services Corporation means the corporation appointed by the Trustee of the Noongar Boodja Trust as the Central Services Corporation pursuant to the Noongar Boodja Trust Deed.

Chairperson means the Chairperson of the Co-operative Management Committee elected pursuant to clause 4.3.

Commencement Date means the date on which this Agreement is executed by all Parties.

Conservation Commission means a body corporate established under section 18 of the *Conservation and Land Management Act 1984*.

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

Co-operative Management Committee means the body established in clause 2.

Corporation's CEO means:

- (a) the person duly appointed as the Corporation's CEO howsoever named; or
- (b) where there is no such person, the Chairperson of the Corporation.

Department has the same meaning as in the CALM Act.

Force Majeure means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

ILUA means the Indigenous Land Use Agreement entered into by the State and others and the [INSERT NAME] native title group which was entered on to the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act.

Insolvency Event means where any one or more of the following occurs to the Corporation:

- (a) it commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (b) it is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) it is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (d) it is unable to pay all its debts as and when they become due and payable; or
- (e) it is deregistered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Joint Management Body means a body of the kind referred to in s 56A(6) of the CALM Act.

Land Partnership Fund means the fund established and administered by the Department of the Premier and Cabinet pursuant to the South West Native Title Settlement for the purpose of facilitating the implementation of the ILUAs including making provision for certain funding for joint management arrangements.

LEADR means LEADR, a company limited by guarantee, ACN: 008 651 232.

Management Plan means a management plan prepared under Part II Division 3 or Part V Division 1 of the CALM Act (as the case may be).

Marine Parks and Reserves Authority means the body established by section 26A of the CALM Act.

Member means a Representative Member or an Alternate Member.

Minister means the Minister to whom the administration of the CALM Act is committed, which for the time being is the Minister for Environment.

Noongar Boodja Trust means trust established pursuant to the Noongar Boodja Trust Deed as required by the ILUA.

Party means a party to this Agreement.

Replacement Corporation means a replacement corporation appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed.

Representative Member means a person specified under clause 2 and nominated under clause 4.1.

South West Native Title Settlement means the six regional ILUAs under which the native title claims in relation to those areas of the south west of Western Australia have been resolved in exchange for Noongar people receiving a package of benefits.

Term means the term of this Agreement specified in clause 17.1.

[INSERT NAME] Area means the land and waters covered by the ILUA and described in Schedule 1 and depicted in the map in Schedule 2.

[INSERT NAME] Group means the persons in the [INSERT NAME] native title group as defined in the ILUA.

25.2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings and subheadings are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender includes the other;
- (d) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, authority, Corporation or other body corporate or governmental or semi-governmental entity;

- (f) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to a person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;
- (h) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;
- (i) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (j) where the day on or by which a thing is required to be done is not a Business Day that thing shall be done on or by the succeeding Business Day;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;
- (l) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (m) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (n) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (p) "including" means "including, but not limited to".

EXECUTION

Executed by the Parties as an agreement.

THE COMMON SEAL of)
The CONSERVATION AND)
LAND MANAGEMENT)
EXECUTIVE BODY a body)
corporate established under)
section 36 of the Conservation)
and Land Management Act)
was affixed hereto in the presence of)

Signature of Chief Executive Officer

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

SIGNED by the **CHIEF EXECUTIVE**)
OFFICER for and on behalf of)
[INSERT NAME])
CORPORATION)
in the presence of:)

CHIEF EXECUTIVE OFFICER

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

SCHEDULE 1. [INSERT NAME Area]

SCHEDULE 2. map of [INSERT NAME] Area