

## **Annexure O**

### **Noongar Regional Corporations Land Access Licence**

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# **Noongar Regional Corporations Land Access Licence**

**NOONGAR REGIONAL CORPORATIONS LAND ACCESS LICENCE**

**TABLE OF CONTENTS**

<b>1. DEFINITIONS AND INTERPRETATION .....</b>	<b>5</b>
1.1 DEFINITIONS.....	5
1.2 INTERPRETATION.....	12
<b>2. GRANT OF LICENCE .....</b>	<b>13</b>
2.1 GRANT OF LICENCE .....	13
2.2 NO ESTATE OR INTEREST IN LAND .....	14
2.3 CHANGING NATURE OF LICENCE AND LICENCE AREA—GRANTS OF INTERESTS .....	15
2.4 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—URGENT ACTION REQUIRED.....	15
2.5 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—FOR OTHER REASONS.....	16
2.6 PROCEDURAL RIGHTS AS SET OUT IN CLAUSES 2.4 AND 2.5.....	17
2.7 NO FETTERING GENERALLY .....	17
2.8 AGREEMENT BETWEEN THE LICENSOR AND THE LICENSEE THAT THE LICENCE MAY COVER A SMALLER AREA THAN THE AREA SPECIFIED IN ITEM 1 OF SCHEDULE 1 .....	17
2.9 COMPLY WITH LAWS AND ORDERS.....	18
2.10 SECTION 91 LICENCE .....	18
2.11 APPLICATION OF CLAUSE 10.6 (DISPUTE RESOLUTION) .....	18
<b>3. TERM.....</b>	<b>19</b>
3.1 TERM.....	19
<b>4. LICENSEE'S COVENANTS.....</b>	<b>19</b>
4.1 EXPRESS LIMITATIONS.....	19
4.2 NO INTERFERING WITH USE OF AREA BY OTHERS .....	19
4.3 APPROVALS .....	20
4.4 REPAIRS.....	20
4.5 SAFETY AND EMERGENCY MEASURES .....	20
4.6 INFORMATION SESSIONS .....	21
4.7 COPY OF LICENCE TO LICENSEE'S MEMBERS.....	21
4.8 LICENSEE TO USE BEST ENDEAVOURS TO ENSURE COMPLIANCE WITH LICENCE .....	21
4.9 COPY OF SCHEDULE 1 ACCESS AGREEMENTS TO BE PROVIDED TO THE LICENSOR.....	21
<b>5. NO WARRANTY OR REPRESENTATION BY LICENSOR .....</b>	<b>21</b>
5.1 SUITABILITY FOR PERMITTED USE.....	21
5.2 CONTAMINATION, POLLUTION OR ENVIRONMENTAL HARM .....	22
<b>6. INDEMNITY, RELEASE AND INSURANCE.....</b>	<b>22</b>
6.1 DEFINITION.....	22
6.2 INDEMNITY .....	22
6.3 RELEASE.....	23
6.4 INSURANCE.....	24
<b>7. SUSPENSION OR TERMINATION OF LICENCE .....</b>	<b>25</b>
7.1 DEFAULT AND OTHER MATTERS .....	25
7.2 LICENSOR'S RIGHT TO ENTER AND TO REMEDY .....	27
<b>8. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION.....</b>	<b>28</b>
8.1 OBLIGATION TO REMOVE PROPERTY AND RESTORE .....	28
8.2 FAILURE TO REMOVE.....	28

8.3 CLAUSE 8 DOES NOT PERMIT CONSTRUCTION ETC ON THE LICENCE AREA..... 29

**9. NO ASSIGNMENT ..... 29**

**10. GENERAL PROVISIONS..... 29**

10.1 NOTICES..... 29

10.2 EFFECT OF WAIVER..... 30

10.3 GOVERNING LAW ..... 30

10.4 VARIATION ..... 30

10.5 SEVERABILITY ..... 30

10.6 DISPUTES..... 30

10.7 FORCE MAJEURE..... 30

**SCHEDULE 1..... 32**

**SCHEDULE 2..... 34**

THIS DEED OF LICENCE IS MADE ON THE                      DAY OF

BETWEEN

**THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS**,  
a body corporate continued in existence under the *Land Administration Act 1997*, care of Department of  
Lands, 140 William Street, PERTH, WA 6000 (**Licensor**)

AND

(**NAME OF REGIONAL CORPORATION**) of (**Address of Licensee**) (**Licensee**)

## **BACKGROUND**

- A. The Noongar people have been recognised as the traditional owners of Noongar lands in the south west of Western Australia in the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act [insert date]*.
- B. The State recognises the ongoing spiritual, cultural and social connection of Noongar people to Noongar lands and the importance of accessing those lands and undertaking customary activities to maintaining that connection.
- C. The State of Western Australia and the Minister, among others, have entered into the ILUA with the Agreement Group to settle the relevant native title claim(s) under the NTA in relation to part of the Noongar lands (the **Native Title Settlement**).
- D. The [insert name of Regional Corporation] has been appointed under the Noongar Boodja Trust Deed and will, among other things, exercise rights and comply with the obligations of a Regional Corporation under the ILUA.
- E. As part of the Native Title Settlement the Minister has agreed to grant this Licence to the Licensee to allow the Agreement Group to access and undertake customary activities on certain Unallocated Crown Land and Unmanaged Reserves (the **Licence Area**).
- F. Subject to this licence and the Law of Western Australia, the Agreement Group will be able to carry out customary activities on the Licence Area, such as:
  - visiting and caring for sites and country;
  - gathering, preparing and consuming bush tucker;
  - gathering and preparing and using traditional medicine;
  - conducting ceremonies and cultural activities;
  - camping on country;
  - lighting camp fires or ceremonial fires; and
  - having meetings on country.
- G. The Licence Area is Crown Land administered by the Minister through the Department on behalf of the State of Western Australia.
- H. The Minister on behalf of the State of Western Australia is authorised by [**insert section and name of enabling Act**] to grant this Licence in respect of the Licence Area.

## OPERATIVE PART

The Parties covenant and agree as follows:

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

In this Licence the following terms shall have the following meaning:

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

**Aboriginal Customary Purpose** means—

- (a) preparing or consuming food customarily eaten by Aboriginal persons; or
- (b) preparing or using medicine customarily used by Aboriginal persons; or
- (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or
- (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c);

where the activities set out in paragraphs (a) to (d) are for the purpose of satisfying the Licensee's Members non-commercial personal, domestic, social, cultural, religious, spiritual and communal needs.

**Access Agreement** means an agreement of the kind mentioned in Item 1(b)(n) of Schedule 1.

**Access Area** means the area of Land to which an Access Agreement relates.

**Agreement Group** means the persons in the Native Title Agreement Group as defined in the ILUA.

**Authorisation** includes consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Governmental Agency and all conditions attached to those authorisations.

**Authorised Person** has the meaning given in r 4 of the Regulations.

**Business Day** means a day other than a Saturday, Sunday or Public Holiday in Western Australia.

**CALM Act** means the *Conservation and Land Management Act 1984*.

**Camp** means to stay or lodge (whether in a Camping Unit or otherwise) during any period of 24 hours.

**Camping Area** means an area designated by sign as a camping area.

**Camping Unit** means a tent or other portable thing of any kind used or capable of being used for habitation, and includes a Caravan or other vehicle.

**Caravan** means a vehicle fitted or designed for habitation.

**Claims** means actions, claims, proceedings, suits, judgements, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand whether based in contract, statute, torts (including negligence), equity, indemnity or otherwise.

**Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003(WA)*.

**Crown Land** has the meaning given in s 3 of the LAA.

**CSA** means the *Contaminated Sites Act 2003*.

**Date of Commencement** means the date of commencement specified in item 2 of Schedule 1.

**Department** means the department principally assisting the Minister in the administration of the LAA.

**Department of Parks and Wildlife** means the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*.

**Eligible Noongar Entity** has the meaning given in the Noongar Boodja Trust Deed executed pursuant to the ILUA.

**Emergency** means a circumstance where urgent action is required to secure life, health or property, or to prevent or address an imminent hazard to the life, health or property of any person or to the environment.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) equity, interest or enforcement order; or
- (d) any other right or interest of any third party.

**Environment** has the meaning given by section 3 of the *Environment Protection Act 1986*.

**Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986*.

**Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permissions, permits or licences issued there under.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**Excluded Acts** means the Excluded Acts specified in Schedule 2.

**Excluded Land** has the meaning given in item 1(b) of Schedule 1.

**Exclusive Licence**, for the purpose of the definition of Exclusive Use Land, means a licence granted under any Law:

- (a) which expressly states that it provides the licensee with exclusive use of the area of Land the subject of the licence (the licence area); or
- (b) it is apparent from the terms of the licence that the licensee may undertake activities on the licence area which of their nature would exclude other uses of the licence area.

**Exclusive Use Land means Land in any of the following categories:**

- (a) Land in an UMR being Land in respect of which a lease subsists;
- (b) Land which is vested in any Person under any Law;
- (c) Land on which an Infrastructure Facility or a Public Work is being or has been constructed and any area of Land within 300 hundred metres of that Infrastructure Facility or Public Work that is necessary for the establishment, operation or maintenance of that Infrastructure Facility or Public Work;
- (d) Land in respect of which an Exclusive Licence subsists;
- (e) Land that has been taken (as that term is defined in section 151 of the LAA) under the LAA for the undertaking, construction or provision of any Public Work, for the grant of any interest, right, power or privilege in over or in relation to the Land permitted by any written law or for any other purpose permitted by the LAA;
- (f) Land that has been taken (as that term is defined in section 151 of the LAA) for the purposes of a Government Agreement;
- (g) Land that has been compulsorily resumed under any other Law;
- (h) Land in respect of which there is a contract or option to sell or lease;
- (i) Land in respect of which there has been an exercise of entry powers under any Act and the Land is being used for the purpose for which it was entered.

**Fauna** means any animal and includes in relation to any such animal —

- (a) any class or individual member thereof;
- (b) the eggs, larvae or semen thereof; or
- (c) the carcass, skin, plumage or fur thereof.

**Fish** has the meaning given by section 4 of the *Fish Resources Management Act 1994*.

**Flora** means any plant (including any wildflower, palm, shrub, tree, fern, creeper or vine) and includes any part of flora and all seeds and spores thereof.

**Force Majeure** means an event that prevents a Party from performing its obligations, in whole or part, under this Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) Acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);

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

but does not include:

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

**Government Agreement** has the meaning given in section 2 of the *Government Agreements Act 1979*.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Greater Bunbury Region** means the Greater Bunbury Region described in clause 3 of the *Greater Bunbury Region Scheme* or relevant future planning scheme, pursuant to the *Planning and Development Act 2005*.

**ILUA** means the Indigenous Land Use Agreement entered into by the State and others and <insert name of native title group> and registered on the Register of Indigenous Land Use Agreements under Part 8A of the NTA on <insert registration date>.

**ILUA Area** means the area of Land covered by the ILUA.

**Infrastructure Facility** has the same meaning as given in s 253 of the NTA.

**Insurance Amount** means the amount specified in item 5 of Schedule 1 or such other amount as the Minister may reasonably require from time to time.

**LAA** means the *Land Administration Act 1997*.

**Land** has the meaning given in s 3 of the LAA.

**Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

**Lease** has the meaning given in s 3 of the LAA.

**Licence** means the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

**Licence Area** has the meaning given in item 1(a) of Schedule 1.

**Licensee's Property** means all plant, equipment, structures, materials, and other property brought, placed or erected on the Licence Area by, on behalf of or with the authority of the Licensee or the Licensee's Members, including any temporary site accommodation.

**Licensee's Agents** means employees, agents, contractors, consultants of the Licensee and any other person acting with the authority of the Licensee.

**Licensee's Members** means:

- (a) the members, and persons who are eligible to become members, of the Licensee and their children (including by way of adoption under the traditional laws and customs of the Agreement Group);
- (b) invitees of the persons referred to in paragraph (a) where those invitees:
  - (i) accompany the persons referred to in paragraph (a) in accessing the Licence Area to undertake the Permitted Acts on the Licence Area for an Aboriginal Customary Purpose; and
  - (ii) are members or persons eligible to become members of an Eligible Noongar Entity or the children of those persons.

**Local Government** means a local government established under the *Local Government Act 1995*.

**Material Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986*

**Meeting** means a meeting, function or other event (including a ceremony) for an Aboriginal Customary Purpose.

**Metropolitan Region** has the meaning given in section 4(1) the *Planning and Development Act 2005*.

**Mining Act** means the *Mining Act 1978*.

**Minister** means the Minister for Lands, a body corporate under section 7(1) of the LAA.

**Noongar Boodja Trust Deed** means the Trust Deed annexed to the ILUA establishing the Noongar Boodja Trust.

**Notified Interest** means a Title, created, granted or transferred to any person under an existing Law or new Law written notice of which is given by the Licensor to the Licensee where such notice:

- (a) states that the Title is a Notified Interest under this Licence; and
- (b) sets out brief details of the Notified Interest.

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

**Parties** mean the Licensor and the Licensee.

**Party** means the Licensor or the Licensee, as the case may be.

**Peel Region** means the Peel Region described in clause 3 of the *Peel Region Scheme* or relevant future planning scheme, pursuant to the *Planning and Development Act 2005*.

**Person** has the meaning given in s 5 of the *Interpretation Act 1984*.

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967*.

**Permitted Acts** means the following acts except to the extent they are, or involve, Excluded Acts—

- (a) entering the Licence Area;
- (b) driving or riding a Vehicle or navigating a vessel on the Licence Area;
- (c) bringing an animal on to the Licence Area;
- (d) Camping temporarily on the Licence Area;
- (e) lighting or kindling a fire on the Licence Area;
- (f) Taking or removing a Prescribed Thing on the Licence Area;
- (g) conducting a Meeting on the Licence Area;
- (h) maintaining Sites on the Licence Area;
- (i) teaching and learning on the Licence Area;
- (j) taking water on the Licence Area;
- (k) dig up and remove ochre on the Licence Area using handheld implements.

**Permitted Use** has the meaning given to this term in clause 2.1.

**Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

**Prescribed Thing** means any Flora, Fauna, forest produce or other naturally occurring thing, the Taking or removal of which from the Licence Area is prohibited or restricted by the LAA or the Regulations.

**Public Road** means a road as that term is defined in s 5 of the *Road Traffic Act 1974*.

**Public Work** means a public work as defined in the *Public Works Act 1902* (WA) or any other Act, or any other work for which the Land may be taken as if for a public work.

**Recreational Land** means Land in the Licence Area that is, or is within 500 metres of, any of the following—

- (a) a car park, including any area where signs direct Vehicles to be parked or that is predominantly used for parking Vehicles;
- (b) a Public Road, private road;
- (c) a Visitor Area.

**Regulations** means the Land Administration (Land Management) Regulations 2006.

**Relevant Time** means the time when the Licence Area is accessed for the Permitted Use.

**Schedule** means a Schedule to this Licence.

**Section 8A agreement** has the meaning given in s 3 of the CALM Act.

**Section 8A land** has the meaning given in s 3 of the CALM Act.

**Services** includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities, pipes, cables, fixtures and fittings associated with those services.

**Site** means a place listed on the register of places and objects established and maintained under s 38 of the *Aboriginal Heritage Act 1972*.

**Subject Land** has the meaning given in section 2 of the *Government Agreements Act 1979*.

**Surrounding Area** means any Land adjacent to or in the vicinity of the Licence Area and the airspace above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

**Take**, in relation to Fauna, includes the following—

- (a) to capture, injure, interfere with and kill Fauna;
- (b) to attempt to do any such act;
- (c) to hunt Fauna even though no Fauna is captured, injured or killed;
- (d) to cause or permit any such act to be done;

and reference to the word “Take” in the Licence includes a similar reference to the word “Taking” or “Taken”.

**Take**, in relation to any Prescribed Thing other than Fauna, includes the following—

- (a) to cut, damage, destroy, dig up, gather, pick and uproot the Prescribed Thing;
- (b) to attempt to do any such act;
- (c) to cause or permit any such act to be done;

and reference to the word “Take” in the Licence includes a similar reference to the word “Taking” or “Taken”.

**Term** means the term specified in clause 3.1.

**Title** includes a title, right, interest, power or Authorisation.

**Townsite** has the meaning given in section 26 (1) of the *Land Administration Act 1997*. It includes all contiguous urban growth and any non-contiguous development within 500 metres of the townsite boundary as per chapter 3 of the Australian Bureau of Statistics 2011, *Australian Statistical Geography Standard (ASGS) Vol. 4- Significant urban areas, urban centres and localities, section of State, cat. No. 1270.0.55.004*.

**Track** means a pre-existing track suitable for vehicular use and includes a track as defined in r 2 of the Regulations.

**Unallocated Crown Land** has the meaning given in s 3 of the LAA.

**Unmanaged Reserve** means a reserve the care, control and management of which are not placed with a management body, whether under section 46 of the LAA or management arrangements under another Law.

**Urban Land** means Land:

- (a) within the Metropolitan Region, the Greater Bunbury Region and the Peel Region;
- (b) within a Townsite;
- (c) zoned rural residential/rural living under a planning scheme as defined in s 4(1) of the *Planning and Development Act 2005*; or
- (d) that is wholly surrounded by Land mentioned in paragraph (c).

**Vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels by any means, but not including a train;
  - (b) an animal being driven or ridden;
- but does not include an off-road vehicle as that phrase is defined in s 3 of the *Control of Vehicles (Off-road Areas) Act 1978*.

**Visitor Area** includes any of the following—

- (a) an area of cultivated lawn;
- (b) an area signposted as a picnic area;
- (c) an area signposted as an historical, natural or cultural point of interest;
- (d) an area where any of the following have been provided for visitors—
  - (i) tables and seating;
  - (ii) a lookout or platform;
  - (iii) a toilet facility;
  - (iv) a rubbish bin;
  - (v) interpretive information;
  - (vi) any building, facility or other erected or constructed thing,

but does not include a walk trail or unsealed road.

## 1.2 INTERPRETATION

In this agreement:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (d) a reference to any title, right, interest, power or Authorisation includes amendments, re-grants or replacements of it howsoever named;
- (e) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (f) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the word ‘person’ includes a reference to the person’s personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (h) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other Law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (i) covenants by this deed by two or more persons shall be deemed joint and several;
- (j) a reference to the word “including” is deemed to be followed by the words “but not limited to”.

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## 2. GRANT OF LICENCE

### 2.1 GRANT OF LICENCE

- (a) Subject to clause 2.1(b), in consideration of the matters set out in this Licence the Licensor hereby GRANTS to the Licensee a non-exclusive licence for the Term to undertake the Permitted Acts on the Licence Area for an Aboriginal Customary Purpose (the **Permitted Use**) in accordance with the terms and conditions set out in this Licence.
- (b) The Licence does not allow the Licensee to use part or the whole of an Unmanaged Reserve to the extent that:
  - (i) the relevant Aboriginal Customary Purpose is not a purpose for which the Land was reserved; and
  - (ii) the relevant Aboriginal Customary Purpose is not compatible with or ancillary to the use of that Land at the Relevant Time for the purpose or purposes of the reserve.

- (c) Subject to clause 2.1(e) this Licence extends to and includes the Licensee's Members. It permits the Licensee's Members to undertake the Permitted Use subject to compliance by the Member with the terms of this Licence. To avoid doubt, where a Member fails to comply with the terms of this Licence the Licence does not apply to that Member during the period of non-compliance in respect of the non-compliant activity.
- (d) Where an Authorisation is required under a Law other than the LAA or the Regulations to enter or use a specific part of the Licence Area, this Licence does not constitute that Authorisation and separate Authorisation must be obtained under that Law to enter or use that part of the Licence Area.
- (e) Where a Licensee's Member:
  - (i) is convicted of an offence under the LAA, the Regulations or other Law relating to access to, or use of, part or whole of the Licence Area;
  - (ii) breaches a material term of this Licence and the breach is not remedied within the period specified in clause 7.1(a)(i);
  - (iii) breaches a material term of this Licence and the breach cannot be remedied; or
  - (iv) commits more than 3 breaches of this Licence over any 12 month period, provided that the Licensor has given the Licensee notice of any such breaches and whether or not the Licensee has rectified such breaches,

the Licensor may, in its unfettered discretion by notice in writing to the Licensee exclude that Licensee's Member from coverage under the Licence whether in whole in part to the extent specified in the Licensor's notice. For the period specified in the notice the Licensee's Member may no longer access the Licence Area (or part thereof) under the Licence. The period specified in the notice may either specify a particular period or the exclusion may be permanent.

- (f) This Licence extends to and includes the Licensee's Agents but only to the extent that access to the Licence Area by the Licensee's Agents is:
  - (i) for the purpose of providing support to the Licensee's Members who are undertaking the Permitted Use; or
  - (ii) necessary to ensure compliance by the Licensee's Members with the terms of this Licence when the Licensee's Members are accessing the Licence Area.

## **2.2 NO ESTATE OR INTEREST IN LAND**

The Licensee acknowledges and agrees that:

- (a) The permission to undertake the Permitted Use conferred by this Licence rests in contract only and does not create in or confer upon the Licensee or the Licensee's Members any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of occupation (exclusive or otherwise) of the Licence Area upon the Licensee or the Licensee's Members and the Licensor may at any time and at all times from time to time exercise all the Licensor's rights as Licensor including (but

without in any way limiting the generality of this provision) the Licensor's rights to use possess and enjoy any part of the Licence Area.

- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.

### 2.3 CHANGING NATURE OF LICENCE AND LICENCE AREA—GRANTS OF INTERESTS

The Licensee acknowledges and agrees that:

- (a) The grant of this Licence does not fetter in any way the rights of the State or any Minister in the exercise of his or her statutory rights, powers and duties including:
  - (i) the right to take Land under Parts 9 and 10 of the LAA or any other Law;
  - (ii) the grant of tenure or any other interest in Land to any person under the LAA or any other Law.
- (b) The change in status of an area of Land within the Licence Area caused by the exercise of a right, power or duty covered by clause 2.3(a), for example by the grant of a freehold or leasehold interest in the area, may result in that area of Land ceasing to be part of the Licence Area and, if so, from that time the Licence does not apply to that area. Refer to Item 1 of Schedule 1.

### 2.4 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—URGENT ACTION REQUIRED

- (a) The Licensee acknowledges and agrees that the Licensor may at any time during the term of this Licence excise an area of Land from the Licence Area pursuant to this clause 2.4 where:
  - (i) the area, part of the area or a thing on the area is hazardous to the health, life, safety or property of any person (for example, excluding an area of contaminated Land from the Licence Area or excluding Land on which a disused mine shaft is located);
  - (ii) the area, part of the area or a thing on the area requires urgent protection and/or rehabilitation from the effects of environmental degradation or other human or natural impacts (for example, where the Land is subject to significant soil erosion or where the area is an important habitat of an endangered species); or
  - (iii) the Licensor reasonably considers that the area must be excised from the Licence Area on an urgent basis for any other reason including a breach of this Licence by the Licensee, the Licensee's Members or the Licensee's Agents.
- (b) Subject to sub-clause (e) where the Licensor excises Land from the Licence Area pursuant to this clause 2.4, the Licensor must provide the Licensee with written notice of the excision of the area from the Licence Area. In the notice the Licensor must include the following details:
  - (i) the area of Land that has been or is to be excised from the Licence Area (**the Excised Area**);

- (ii) the period of excision of the area of Land from the Licence Area which may be either permanent or for the period specified in the notice;
- (iii) brief reasons for the excision of the area or Land from the Licence Area;
- (c) The excision of the Excised Area from the Licence Area takes effect on the day specified in the notice under clause 2.4(b).
- (d) The Licensor may either extend (for a fixed period or permanently) or reduce the period of the excision specified in a clause 2.4(b) notice by giving a further notice to the Licensee. Sub-clause 2.4(b) and (d) applies to the new notice *mutatis mutandis*.
- (e) In an Emergency the Licensor may immediately and without notice to the Licensee temporarily excise Land from the Licence Area by the erection of warning signs or by other methods indicating that access is prohibited and the Licensee, the Licensee's Members and the Licensee's Agents must comply with any such prohibition.

## 2.5 CHANGING NATURE OF LICENCE AND LICENCE AREA— EXPRESS EXCISIONS FROM THE LICENCE AREA—FOR OTHER REASONS

- (a) The Licensee acknowledges and agrees that the Licensor may at any time during the term of this Licence excise an area of Land from the Licence Area pursuant to this clause 2.5.
- (b) The Licensor must provide the Licensee with not less than 60 days written notice of the proposed excision of an area from the Licence Area. In the notice the Licensor must include the following details:
  - (i) the area of Land to be excised from the Licence Area;
  - (ii) the period of excision of the area of Land from the Licence Area which may be either permanent or for the period specified in the notice;
  - (iii) brief reasons for the excision of the area or Land from the Licence Area;
  - (iv) a statement to the effect that the Licensee may provide written comments to the Licensor in relation to the proposed excision no later than 30 days after the date on which the notice is given under this sub-clause 2.5(b).
- (c) After considering any comments from the Licensee, the Licensor may decide in its unfettered discretion to:
  - (i) not excise the area from the Licence Area;
  - (ii) excise the area from the Licence Area; or
  - (iii) reduce the area to be excised from the Licence Area.
- (d) The Licensor must give written notice to the Licensee of its decision within 14 days of the date when the decision is made and where either clause 2.5(c)(ii) or (iii) applies, include a description of the area that is excised (the **Excised Area**).
- (e) The excision of the Excised Area from the Licence Area takes effect on the day specified in the notice under clause 2.5(d).

- (f) The Licensor may either extend (for a fixed period or permanently) or reduce the period of the excision specified in a clause 2.5(d) notice by giving a further notice to the Licensee. Sub-clauses 2.5(b), (c), (d) and (f) apply to the new notice mutatis mutandis.

## **2.6 PROCEDURAL RIGHTS AS SET OUT IN CLAUSES 2.4 AND 2.5**

The Licensee acknowledges and agrees that:

- (a) The grant of this Licence does not give the Licensee or the Licensee's Members any procedural rights in relation to the exclusion of Land from the Licence Area as a result of:
- (i) any acts mentioned in clause 2.3(a); or
  - (ii) the processes set out in clauses 2.4 and 2.5 other than what is expressly provided for in those clauses.
- (b) The Licensee has no legitimate expectation that any particular area of Land will remain within the Licence Area.
- (c) Neither the Licensee nor the Licensee's Agents may lodge a caveat or Encumbrance over any part of the Licence Area to protect any interest or purported interest of the Licensee or the Licensee's Agents under or relating to this Licence. If the Licensee or the Licensee's Agents lodge any caveat in contravention of this sub-clause, the Licensee and the Licensee's Agents appoint the Director General of the Department as their attorney for the purpose of executing a withdrawal of caveat.
- (d) The grant of this Licence does not give the Licensee or the Licensee's Members any legal standing to seek to interfere with or prevent the lawful use of the Licence Area and the Surrounding Area by other persons.
- (e) Where any person makes any application under any Law for any lawful use of the Licence Area and the Surrounding Area or any part thereof the Licensee, the Licensee's Members and the Licensee's Agents may not assert the terms of this Licence as the basis of any objection to any such application. Nothing in this sub-clause (e) precludes the Licensee from making any other objection available to them at Law.

## **2.7 NO FETTERING GENERALLY**

The Licensee acknowledges and agrees that the grant of this Licence does not:

- (a) Fetter or control in any way the exercise by any person (including a Minister) of a statutory power or discretion in accordance with the statute;
- (b) Prevent the State, a Minister or any other person from seeking to pass a Law that may have the effect of regulating (including prohibiting) the exercise of acts in the Licence Area that are Permitted Acts under this Licence.

## **2.8 AGREEMENT BETWEEN THE LICENSOR AND THE LICENSEE THAT THE LICENCE MAY COVER A SMALLER AREA THAN THE AREA SPECIFIED IN ITEM 1 OF SCHEDULE 1**

The Licensor and the Licensee may agree in writing from time to time that this Licence covers only part or parts of the Land that is specified in Item 1 of Schedule 1 (a **Reduction Agreement** in

relation to a **Reduced Licence Area**) and during the period when the Reduction Agreement is in force this Licence applies only to the Reduced Licence Area and a reference in this Licence to the Licence Area is to be taken as a reference to the Reduced Licence Area.

## 2.9 COMPLY WITH LAWS AND ORDERS

- (a) The Licensee, the Licensee's Members and the Licensee's Agents shall punctually comply with and observe, at the expense of the Licensee, all Laws and all lawful orders and requirements of any statutory, public or other Governmental Agency which relates to the Licence Area or any part of it, or the use of the Licence Area, and with all lawful notices received either by the Licensor or the Licensee, the Licensee's Members or the Licensee's Agents from any such Governmental Agency.

*Example 1:*

*Where a total fire ban is in place under the Bushfires Act 1954, fires permitted to be lit under this Licence cannot be lit in contravention of that Act.*

*Example 2:*

*Where a Prescribed Thing cannot be Taken under a Law other than the LAA or the Land Administration (Land Management) Regulations 2006, this Licence does not prevail and the Prescribed Thing must not be Taken in contravention of that other Law.*

*Example 3:*

*Except where authority is otherwise provided in this Licence, the Regulations apply in relation to activities in the Licence Area. For example, regulations 12(1)(b), 14(4), 16, 17 and 19 apply and must be complied with.*

- (b) Without limiting the generality of this clause, the Licensee, the Licensee's Members or Licensee's Agents (as the case requires) will:
- (i) obtain, comply with and observe, at the expense of the Licensee, all Authorisations or other requirements under any Law necessary for the Licensee's Members or the Licensee's Agents (when assisting the Licensee's Members) to use the Licence Area for the Permitted Use; and
  - (ii) where there exists any doubt about whether:
    - (A) the relevant person is actually within the Licence Area; or
    - (B) the activity that is being undertaken is a Permitted Use,
 pending a resolution of the matter comply with any direction of an Authorised Person to either cease an activity on, or vacate the Land and must not assert the terms of this Licence to question the validity of any such direction or otherwise question the purported authority of any person to issue such a direction.

## 2.10 SECTION 91 LICENCE

This Licence is deemed to be a section 91 licence under the LAA.

## 2.11 APPLICATION OF CLAUSE 10.6 (DISPUTE RESOLUTION)

Clause 10.6 (Dispute Resolution) does not apply to this clause 2.

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### **3. TERM**

#### **3.1 TERM**

The Term shall commence on the Date of Commencement and subject to the terms and conditions of this Licence will continue indefinitely unless terminated earlier.

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### **4. LICENSEE'S COVENANTS**

#### **4.1 EXPRESS LIMITATIONS**

The Licensee acknowledges and agrees that this Licence does not permit the Licensee, the Licensee's Members or the Licensee's Agents to:

- (a) carry out an Excluded Act;
- (b) access Excluded Land;
- (c) construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing that is a fixture on the Licence Area;
- (d) leave a Camping Unit on Land in the Licence Area:
  - (i) if the Land is Recreational Land or Urban Land; or
  - (ii) if the Land is not Recreational Land or Urban Land—for a period of more than 14 consecutive days;
- (e) return a Camping Unit to Land in the vicinity of Land in the Licence Area on which it was previously placed if less than 14 days has elapsed since the last time it was so placed;
- (f) cause or permit any damage to the Licence Area or the Surrounding Area;
- (g) cause or permit any Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) to occur in, on or under the Licence Area or to the Surrounding Area;
- (h) dispose or store on the Licence Area any rubbish (except in a rubbish bin) or any poisonous, toxic or hazardous substance;
- (i) undertake or permit to be undertaken any excavation (other than the digging up of ochre using handheld implements) or clearing of the Licence Area.

#### **4.2 NO INTERFERING WITH USE OF AREA BY OTHERS**

The Licensee acknowledges and agrees that this Licence does not permit the Licensee, the Licensee's Members or the Licensee's Agents to:

- (a) interfere with or prevent the lawful use of the Licence Area by other persons;

- (b) do anything that is or may reasonably be considered to be offensive or a nuisance to anyone, including the occupiers of the Surrounding Area;
- (c) create any hazard or use the Licence Area in a way that might:
  - (i) endanger or affect the health, safety or wellbeing of any person using the Licence Area;
  - (ii) cause damage to the property of any person.

#### **4.3 APPROVALS**

The Licensee acknowledges and agrees that the Licensee, the Licensee's Members or the Licensee's Agents as the case requires must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence.

#### **4.4 REPAIRS**

The Licensee must:

- (a) minimise any damage, Contamination, Pollution or Environmental Harm caused by the Licensee, the Licensee's Members or the Licensee's Agents to the Licence Area or the Surrounding Area;
- (b) give notice to the Licensor of any damage, Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) of which the Licensee is aware caused by the Licensee, the Licensee's Members or the Licensee's Agents to the Licence Area or Surrounding Area;
- (c) repair or remedy any damage, Contamination, Pollution or Material Environmental Harm caused or permitted by the Licensee, the Licensee's Members or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area to the reasonable satisfaction of the Licensor.

#### **4.5 SAFETY AND EMERGENCY MEASURES**

The Licensee must, having regard to type of Permitted Acts being undertaken and the number of Licensee's Members and the Licensee's Agents involved:

- (a) have in place all necessary emergency plans, risk management and response procedures;
  - (i) to prevent injuries to the Licensee's Members and the Licensee's Agents;
  - (ii) to respond to injuries to the Licensee's Members and the Licensee's Agents; and
  - (iii) for emergency evacuation of the Licensee's Members and the Licensee's Agents;
- (b) take all necessary precautions and have in place all necessary arrangements for:
  - (i) injured Licensee's Members and the Licensee's Agents;
  - (ii) emergency evacuation of Licensee's Members and the Licensee's Agents.

#### **4.6 INFORMATION SESSIONS**

- (a) The Licensee must hold information sessions for the Licensee's Members:
  - (i) before the Licensee's Members access the Licence Area under this Licence;
  - (ii) at least once every 6 months for the first 3 years after the Date of Commencement; and
  - (iii) annually thereafter.
- (b) The Licensee must inform the Licensee's Members of:
  - (i) the categories of Land which are not permitted to be accessed under this Licence, and where the information is reasonably available, the areas of Land within the ILUA Area that are accessible under this Licence;
  - (ii) the Permitted Use and any Excluded Acts that may not be undertaken on the Licence Area; and
  - (iii) the conditions for the Permitted Use.

#### **4.7 COPY OF LICENCE TO LICENSEE'S MEMBERS**

The Licensee must make a copy of this Licence available to the Licensee's Members and the Licensee's Agents including by placing a copy of this Licence at the Licensee's premises for inspection by the Licensee's Members and the Licensee's Agents.

#### **4.8 LICENSEE TO USE BEST ENDEAVOURS TO ENSURE COMPLIANCE WITH LICENCE**

The Licensee must use its best endeavours to ensure that the Licensee's Members and the Licensee's Agents comply with the terms of this Licence.

#### **4.9 COPY OF SCHEDULE 1 ACCESS AGREEMENTS TO BE PROVIDED TO THE LICENSOR**

The Licensee must provide a copy of any Access Agreement (referred to in Item 1(b)(n) of Schedule 1) that it enters into in relation to an Access Area to the Licensor before the Licensee's Members undertake the Permitted Use in the Access Area.

### **5. NO WARRANTY OR REPRESENTATION BY LICENSOR**

#### **5.1 SUITABILITY FOR PERMITTED USE**

The Licensor does not give any warranty of any kind that:

- (a) the Licence Area is suitable for the Permitted Use. To the extent permitted by law, any warranty in relation to the Licence Area which is implied by law is excluded and does not apply to this Licence;
- (b) there are no other restrictions on the use of the Licence Area for the Permitted Use;

- (c) Tracks within the Licence Area are suitable and safe for vehicular use.

## 5.2 CONTAMINATION, POLLUTION OR ENVIRONMENTAL HARM

The Licensor does not make any representation or give any warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm on the Licence Area.

## 6. INDEMNITY, RELEASE AND INSURANCE

### 6.1 DEFINITION

In clauses 6.2 and 6.3, **Indemnified Parties** means the Licensor, the Minister, the State of Western Australia and all its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the State of Western Australia and any person entering into the Licence Area with the express or implied authority of the State.

### 6.2 INDEMNITY

- (a) The Licensee hereby covenants with the Minister to indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties:
- (i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Licence Area and including the property of:
    - (A) any of the Indemnified Parties;
    - (B) the Licensee, the Licensee's Members or the Licensee's Agents;
  - (ii) in respect of the death of, injury to or illness of, any person including:
    - (A) any of the Indemnified Parties;
    - (B) the Licensee, the Licensee's Members or the Licensee's Agents,
 directly or indirectly caused by or arising out of or in connection with:
    - (iii) the use or enjoyment of the Licence Area or any part of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
    - (iv) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Licensee or the Licensee's Members under this License;
    - (v) any Contamination Pollution or Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) in, on, under or to the Licence Area and Surrounding Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents;

- (vi) any remediation required in respect of the Licence Area, Surrounding Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (vii) any default by the Licensee, the Licensee's Members or the Licensee's Agents in the due and punctual performance of or compliance with any of the terms and conditions of the Licence or any other Law that apply to the exercise of the Licensee's rights in respect of the Licence Area; or
  - (viii) any negligent or other tortious act or omission of the Licensee, the Licensee's Members or the Licensee's Agents.
- (b) The obligations of the Licensee under this clause 6.2 are unaffected by the obligation to take out insurance, and the obligations of the Licensee to indemnify are paramount.
  - (c) The indemnities contained in this clause 6.2 continue in full force and effect notwithstanding the expiry or termination of the Licence for any reason in respect of any act, deed, matter or thing occurring prior to the termination or expiry of this Licence.

### **6.3 RELEASE**

- (a) The Licensee releases, to the fullest extent permitted by law, the Indemnified Parties from:
  - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Licence Area;
  - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Licence Area at any time throughout the duration of the Licence whether or not identified in an audit undertaken by the Licensee; and
  - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Licensee, the Licensee's Members or the Licensee's Agents,

directly or indirectly caused by or arising out of or in connection with:

  - (iv) the use or enjoyment of the Licence Area or any part of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Licensee or the Licensee's Members under this Licence;
  - (vi) any Contamination Pollution or Environmental Harm (other than the Taking of Flora and the digging up of ochre permitted by this Licence) in, on, under or to the Licence Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents;
  - (vii) any remediation required in respect of the Licence Area or otherwise having to comply with any Environmental Notice or any other notice received from any

Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Licensee, the Licensee's Members or the Licensee's Agents;

- (viii) any default by the Licensee, the Licensee's Members or the Licensee's Agents in the due and punctual performance of or compliance with any of the conditions of the Licence or any other Law that apply to the exercise of the Licensee's rights in respect of the Licence Area; or
- (ix) any negligent or other tortious act or omission of the Licensee, the Licensee's Members or the Licensee's Agents.

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

- (b) The release contained in this clause 6.3 continues in full force and effect notwithstanding the expiry or the termination of the Licence for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or the termination of this Licence.

#### **6.4 INSURANCE**

- (a) The Licensee must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the Insurance Act 1973 (Cth) and to the satisfaction of the Minister, a public liability insurance policy for the Insurance Amount for any one occurrence and unlimited in the aggregate during any one period of insurance and covers all Claims and losses howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
  - (i) any illness of, injury to or death of, any person;
  - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
  - (iv) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Licence Area caused or contributed to by the Licensee, the Licensee's Members or the Licensee's Agents; or
  - (v) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under this Licence in respect of which insurance is ordinarily obtainable,

##### **(Insurance Policy).**

- (b) Any Insurance Policy effected pursuant to this clause must contain such conditions, endorsements and exclusions as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (c) The Licensee must give to the Minister a copy of the certificate of currency for the Insurance Policy at the Date of Commencement, and the Licensee is to submit evidence to

the Minister on each anniversary of the Date of Commencement, or as otherwise requested by the Minister, which shows that the Insurance Policy is still current.

- (d) The Licensee is:
- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;
  - (ii) to notify the Minister immediately if an event occurs in relation to the exercise of any rights under the Licence which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
  - (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer;
  - (iv) to expend any moneys received in respect of a claim made under the Insurance Policy in satisfaction of the relevant Claim;
  - (v) to have the interests of the Minister and the State noted on the Insurance Policy and to ensure that under the Insurance Policy the insurer has no rights of subrogation against the Minister or the State;
  - (vi) to indemnify the Minister and the State against any loss arising from a breach of subclause (v) and the indemnities contained in this sub clause continue in full force and effect notwithstanding the expiry or termination of this Licence for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Licence;
  - (vii) to ensure that all premiums in respect of the Insurance Policy and renewals of the Insurance Policy are paid punctually;
  - (viii) to ensure that it does not at any time during the duration of the Licence do or bring upon the Licence Area anything where the Insurance Policy may be rendered void or voidable; and
  - (ix) to ensure that if the Licensee does anything or brings anything onto the Licence Area where the rate of premium on the Insurance Policy will be liable to be increased, the Licensee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Licence Area is put by the Licensee.

## **7. SUSPENSION OR TERMINATION OF LICENCE**

### **7.1 DEFAULT AND OTHER MATTERS**

- (a) This Licence and the rights granted to the Licensee pursuant to it:
- (i) may be suspended (in whole or in part) by the Licensor by notice in writing to the Licensee if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence and the breach has not been remedied by the Licensee within:

- (A) if the Licensee is carrying out an Excluded Act or is accessing Excluded Land, 24 hours after service of the notice from the Licensor requiring the Licensee to remedy the breach or non-observance;
- (B) if the Licensor determines in its absolute discretion that the breach is, or is likely to be, hazardous to the health, life, safety or property of any person or to the environment, such cure period as the Licensor specifies in its notice; or otherwise
- (C) 28 days after service of the notice from the Licensor requiring the Licensee to remedy the breach or non-observance;

or

(ii) is suspended if the Licensee:

- (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
- (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
- (D) being a company, is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this clause 7.1(a)(ii) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or

- (E) is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Licensee is to be under special administration.

- (b) Where the Licensee remedies the breach or non-observance to the satisfaction of the Licensor under clause 7.1(a)(i) or the Licensor is satisfied that clause 7.1(a)(ii) no longer applies and clause 7.1(c) does not apply, the Licensor will, by notice in writing and within 14 days of the Licensor being so satisfied, lift the suspension.
- (c) This Licence and the rights granted to the Licensee pursuant to it terminate immediately if:
  - (i) the Licensee ceases to exist; or

- (ii) the Licensee ceases to be appointed as the Regional Corporation for the ILUA Area pursuant to the Noongar Boodja Trust Deed;
- (iii) the ILUA is terminated or expires; or
- (iv) amendments to the LAA commence which:
  - (A) the Licensee and the Licensor have agreed in writing provide the Licensee's Members with appropriate access to, and use of, the Licence Area for Aboriginal Customary Purposes; or
  - (B) the Minister for Lands, acting reasonably, has determined provide substantially similar or greater access to and use of the Licence Area by the Licensee's Members for Aboriginal Customary Purposes;

whichever is earlier.

- (d) The Parties to this Licence may agree in writing to terminate this Licence at any time.
- (e) No compensation or money is payable to, or recoverable by, the Licensee or the Licensee's Members from the Licensor for termination or suspension of the Licence under this clause.
- (f) Any termination of the Licence under this clause:
  - (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and
  - (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

## **7.2 LICENSOR'S RIGHT TO ENTER AND TO REMEDY**

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 28 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this deed, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
  - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and
  - (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

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## **8. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION**

### **8.1 OBLIGATION TO REMOVE PROPERTY AND RESTORE**

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
- (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's reasonable satisfaction;
  - (ii) promptly make good to the reasonable satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in clause 8.1(a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area and paving or resurfacing the Licence Area to the Licensor's satisfaction; and
  - (iii) remediate any Contamination, Pollution or Material Environmental Harm (other than the Taking of Flora permitted by this Licence) to the Licence Area or the Surrounding Area caused by the Licensee, the Licensee's Members or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under clause 8.1(a) will survive the expiration of the Term or other termination of this Licence.

### **8.2 FAILURE TO REMOVE**

If the Licensee's Property is not removed in accordance with clause 8.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 8.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;
- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 8.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under clause 8.2(c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.
- (e) The Licensor's rights under this clause 8.2 will survive the expiration of the Term or other termination of this Licence.

### 8.3 CLAUSE 8 DOES NOT PERMIT CONSTRUCTION ETC ON THE LICENCE AREA

Nothing in this clause permits the construction or erection of anything on the Licence Area in contravention of clause 4.1(c) to which sections 270, 271 and 272 of the LAA or the provisions of clause 8.2 apply mutatis mutandis.

## 9. NO ASSIGNMENT

- (a) The rights granted by this Licence are for the benefit of the party named as 'Licensee' and the Licensee's Members in this Licence.
- (b) The Licensee must not:
  - (i) assign or transfer its rights under this Licence or grant any sublicense of the Licence Area, to any person; or
  - (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.
- (d) For the purposes of clause 9(b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

## 10. GENERAL PROVISIONS

### 10.1 NOTICES

- (a) Any notice that must or may be served under or pursuant to this Licence:
  - (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
  - (ii) will be sufficiently served on:
    - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 3 of Schedule 1 or such other address as is notified by the Licensor to the Licensee; and
    - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 4 of Schedule 1 or such other address as is notified by the Licensee to the Licensor.
- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.

- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

## **10.2 EFFECT OF WAIVER**

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

## **10.3 GOVERNING LAW**

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the exclusive jurisdiction of the Courts of Western Australia.

## **10.4 VARIATION**

This Licence cannot be altered or varied by the Parties except by deed.

## **10.5 SEVERABILITY**

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

## **10.6 DISPUTES**

Subject to clause 2.11, the provisions of clause 15 of the ILUA will apply to any disputes between the Parties in respect of this Licence.

## **10.7 FORCE MAJEURE**

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
  - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this Agreement shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.

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**SCHEDULE 1**

<b>ITEM</b>	<b>TERM</b>	<b>DEFINITION</b>
<b>1(a)</b>	<b>Licence Area</b>	Subject to clause 2.8 the Licence Area means, at the Relevant Time, all Land in the ILUA Area which is Unallocated Crown Land or Land in an Unmanaged Reserve (UMR), other than Land which is Excluded Land.
<b>1(b)</b>	<b>Excluded Land</b>	<p>The following categories of Land are not permitted to be accessed under this Licence:</p> <ul style="list-style-type: none"> <li>(a) Exclusive Use Land;</li> <li>(b) Section 8A land if the relevant Section 8A agreement does not permit the Licensee's Members to do the Permitted Acts for an Aboriginal Customary Purpose;</li> <li>(c) Land in an UMR the care control and management of which has been placed with a person or persons under an Act other than the LAA;</li> <li>(d) Land in respect of which the State has, in a Government Agreement, agreed not to grant any rights in the Land under the LAA or otherwise;</li> <li>(e) Land in respect of which it would be contrary to any Law to grant this Licence;;</li> <li>(f) any Land: <ul style="list-style-type: none"> <li>i that is Subject Land; or</li> <li>ii that is Land covered by a Government Agreement including Land in respect of which there is in force a mining or mineral tenement or Title granted or held pursuant to a Government Agreement; or</li> <li>iii in respect of which there is in force: <ul style="list-style-type: none"> <li>(A) a mining lease, general purpose lease, miscellaneous licence under the Mining Act,</li> <li>(B) a mining tenement referred to in s 5(2)(a) of the Mining Act;</li> <li>(C) a right of occupancy referred to in s 5(2)(b) of the Mining Act;</li> <li>(D) a petroleum retention lease, petroleum production licence, geothermal retention lease, geothermal production licence or a drilling reservation under the PGER Act;</li> <li>(E) a Notified Interest;</li> </ul> </li> </ul> </li> </ul> <p>unless there is in force a written agreement (an <b>Access Agreement</b>) between the Licensee and each tenement holder or, in the case of a Government Agreement or otherwise, the</p>

non-government parties (the **Title Holder**) under which the Title Holder consents to access to the Access Area under this Licence by the:

(i) Licensee's Members to undertake some or all of the Permitted Acts on the Access Area for an Aboriginal Customary Purpose; and

(ii) Licensee's Agents as contemplated in clause 2.1(f).

Where any of Items 1(b)(a) to 1(b)(e) apply to an area of Land, Item 1(b)(f) does not apply to that Land.

(g) any area of Land excluded from the Licence Area pursuant to clauses 2.4 to 2.5.

(Refer also to clause 2.3)

- |           |  |   |
|-----------|--|---|
| <b>2.</b> | <b>Date of Commencement</b>                      | [The date this Licence is executed by the last Party]   |
| <b>3.</b> | <b>Licensor's Address for Service of Notices</b> | Minister for Lands<br>C/- Department of Lands<br>140 William Street<br>Perth WA 6000<br><br>Attention: Director General of the<br>Department of Lands |
|           | <b>Facsimile No:</b>                             | (08) 6552 4417  |
| <b>4.</b> | <b>Licensee's Address for Service of Notices</b> | [enter full name and address of Licensee]   |
|           | <b>Facsimile No:</b>                             | [#]   |
| <b>5.</b> | <b>Insurance Amount</b>                          | \$ 20,000,000.00  |

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## SCHEDULE 2

### Excluded Acts

#### 1. Excluded Acts: animals

- (1) In this item—

**poison risk area** means an area shown on a poison risk map in which poison baits to control vertebrates may be present;

**poison risk map** means a map produced by the Department of Parks and Wildlife that—

- (a) shows poison risk areas; and
  - (b) is available for inspection by the public during normal office hours at each district office of that department nearest to a poison risk area.
- (2) Bringing an animal on to the Licence Area is an Excluded Act if the Land is in a poison risk area.

#### 2. Excluded Acts: Vehicles

Driving or riding a vehicle on the Licence Area is an Excluded Act if the vehicle is driven or ridden on Land other than on a Public Road or a Track.

#### 3. Excluded Acts: fire

- (1) The lighting or kindling a fire is an Excluded Act if the fire is lit or kindled on Recreational Land, Urban Land, or in a Camping Area where the lighting of fires is not permitted.
- (2) The lighting or kindling a fire is an Excluded Act unless it is lit or kindled—
- (a) for the purpose of cooking food; or
  - (b) for the purpose of a camp fire; or
  - (c) for the purpose of a ceremonial activity, such as a smoking ceremony;
- and during which activity the fire is confined to an area of less than 1m<sup>2</sup>.
- (3) The lighting or kindling a fire is an Excluded Act if:
- (a) it is not safe and reasonable to do so; or
  - (b) the fire is lit or kindled or left without taking due precaution against it spreading or causing injury to:
    - (i) Flora and Fauna in the vicinity;
    - (ii) structures in the vicinity.

#### 4. Excluded Acts: Camping temporarily

- (1) Camping temporarily on the Licence Area is an Excluded Act if the person Camps on the Land for a period of more than 14 consecutive days;

- (2) Camping temporarily on the Licence Area is an Excluded Act if the person Camps on the Land and the Land is:
  - (i) Recreational Land or Urban Land;
  - (ii) a road or track;
- (3) Camping temporarily on part of the Licence Area is an Excluded Act if less than 14 days has elapsed since the person last Camped temporarily on that part or in the vicinity of that part of the Licence Area.

**5. Excluded Acts: Prescribed Things**

- (1) Taking of Fauna (including non-indigenous Fauna) other than Fish is an Excluded Act if the Fauna is Taken on Land that is Recreational Land or Land that is, or is within 500 metres of a Camping Area or Urban Land.
- (2) Taking Flora is an Excluded Act if the Flora is Taken on Recreational Land or in a Camping Area.
- (3) The Taking of Fish in an area which has been designated as an area in which fishing is restricted is an Excluded Act if the Fish are taken in contravention of that restriction.

**6. Excluded Act: Conducting Large Meetings**

Conducting a Meeting which involves, or is likely to involve, the attendance of more than the number of persons specified in r 16(2)(b) of the Regulations at the Relevant Time is an Excluded Act.

**7. Excluded Act: discharge of firearms or other weapon**

Discharging any firearm or other weapon on the Licence Area is an Excluded Act.

**8. Excluded Act: local area restrictions**

Undertaking a Permitted Act in contravention of a sign placed on Land within the Licence Area pursuant to subregulation 9(1)(b) of the Regulations is an Excluded Act.

**9. Excluded Act: Restrictions imposed by an Access Agreement**

Where an Access Agreement is in place and:

- (1) the Title Holder does not consent to the Licensee's Members undertaking a Permitted Act in the Access Area under this Licence; or
- (2) the Permitted Act is done contrary to a condition imposed by the Access Agreement,

that Permitted Act is an Excluded Act.

**EXECUTED AS A DEED**

**The Common Seal of** )  
**MINISTER FOR LANDS** )  
was hereunto affixed by me )

\_\_\_\_\_

MINISTER FOR LANDS

In the presence of:

.....  
Witness

**EXECUTED** by the Licensee in accordance )  
with section 99-5 of the *Corporations* )  
(*Aboriginal and Torres Strait Islander*) Act )  
2006 (Cth) on behalf of [XX - Insert name of )  
**Corporation**]:

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Director or Secretary (signature)  
(Delete whichever is not applicable)

\_\_\_\_\_  
Director (print full name)

\_\_\_\_\_  
Director or secretary (print full name)

\_\_\_\_\_  
Date