

Esperance Nyungar Government Indigenous Land Use Agreement

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Elaine Bullen and Jenny Woods for and on behalf of the Native Title Group

State of Western Australia

Minister for Lands

Minister for Environment

Minister for Mines and Petroleum

Minister for Water

Conservation Commission of Western Australia

Conservation and Land Management Executive Body

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THIS AGREEMENT is made on

Parties

Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods (**Registered Native Title Claimants**) for and on behalf of the Native Title Group

State of Western Australia (State)

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

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

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

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

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

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

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

Recitals

- A. The Native Title Group and the State have been involved in discussions about:
- (a) a determination of native title; and
 - (b) how the land in the Agreement Area will be used after the Determination is made.
- B. Details of the Determination, which has now been made, are set out in item 1 of schedule 2.
- C. This Agreement sets out ways in which the State and the Government Parties will now do business in the Agreement Area, whilst also recognising and protecting Aboriginal heritage and providing compensation to the Native Title Group for the loss and impairment of native title rights and interests.
- D. The Parties intend that this Agreement will provide long-term economic and social benefits to the Native Title Group as a result of:
- (a) the expeditious grant of Exploration Tenements and Access Authorities in the Agreement Area; and
 - (b) the adoption of a Government Standard Heritage Agreement to ensure protection of Aboriginal Heritage while Government business is being conducted in the Determination Area; and
 - (c) the provision of a land and monetary package to the Native Title Group:
 - (i) in consideration of their agreement to the future acts contemplated by this Agreement and surrender of native title pursuant to clause 5.4; and
 - (ii) in recognition of the continuing economic disadvantage experienced by members of the Native Title Group.
- E. The provision of benefits to the Native Title Group pursuant to this Agreement, which includes 53 parcels of land, including agricultural land, is intended to improve the social and economic circumstances of members of the Native Title Group, including by the creation of employment opportunities that are expected to accompany the establishment of land-based enterprises owned by the Native Title Group.
- F. This Agreement is an 'area agreement' for the purposes of sections 24CA to 24CI of the NT Act and regulation 7 of the ILUA Regulations.

- G. Once this Agreement is registered on the ILUA Register, the procedures in this Agreement for the doing of the future acts referred to in this Agreement will replace any 'future act' procedures of the NT Act that would otherwise apply.

The Parties agree as follows:

Agreed Terms

1. Defined terms and interpretation

1.1 NT Act definitions

In this Agreement, words and phrases defined in the NT Act have the same meanings in this Agreement. Those words and phrases include '**approved determination of native title**', '**determination of native title**', '**expedited procedure**', '**future act**', '**native title**', '**Native Title Registrar**', '**native title rights and interests**', '**non-extinguishment principle**', '**prescribed body corporate**', '**registered native title body corporate**' and '**representative Aboriginal/Torres Strait Islander body**'.

1.2 Other definitions

In this Agreement, unless the contrary intention appears:

Aboriginal Cultural Business means a funeral, event or other ceremony that prevents the Native Title Group from attending to day to day business in accordance with traditional laws and customs.

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

Aboriginal Heritage Act means the *Aboriginal Heritage Act 1972 (WA)*.

Aboriginal Heritage Act Minister means the Minister in the Government of the State for the time being responsible for the administration of the Aboriginal Heritage Act and includes the successors in office of that Minister.

Aboriginal Heritage Act Registrar means the Registrar of Aboriginal Sites appointed under section 37(1) of the Aboriginal Heritage Act.

Aboriginal Heritage Act Section 16 Application means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove any thing on or under the site.

Aboriginal Heritage Act Section 18 Application means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

Aboriginal Heritage Agreement means an agreement with the Native Title Group or PBC concerning the management of Aboriginal Heritage and other matters under the Aboriginal Heritage Act with respect to areas in or near the Aboriginal Heritage Area. To avoid doubt, the GSHA and the PSHA are forms of Aboriginal Heritage Agreement but not for the purposes of paragraph (a)(i) of the condition set out in each of clauses 10.3 and 10.4.

Aboriginal Heritage Area means the area to which the GSHA applies, being the land and waters described in schedule 3 to the GSHA.

Aboriginal Heritage Survey means a survey conducted to assess the potential impacts of Activities on Aboriginal Heritage, whether or not conducted under the GSHA. To avoid doubt, an Aboriginal Heritage Survey includes a Survey.

Aboriginal Object means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

Aboriginal Site means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act.

Access Authority means any of:

- (a) a miscellaneous licence under the Mining Act;
- (b) a LA Act Licence,

granted by the State or a Government Party, as applicable, to the holder of an Exploration Tenement to provide solely for access, or which may be used only for the purpose of obtaining access, through the Agreement Area to an Exploration Tenement.

ACMC means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

Activity means any activity, physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters or under or over that surface).

Agreement means this indigenous land use agreement entered into pursuant to Part 2, Division 3, Subdivision C of the NT Act.

Agreement Area means the area to which this Agreement applies, as described in schedule 3.

Assignment Date means the date when the Deed of Assignment referred to in clause 26.1 is fully executed.

Benefits means any benefits (including land and monetary payments) to be paid or provided to, or derived by, the Native Title Group, including through the PBC and Land Company, under this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in Western Australia.

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

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

CATSI Registrar means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed under section 653-1 of the CATSI Act.

Commencement Date means the date on which this Agreement is registered on the ILUA Register.

Compensation means compensation for any diminution, impairment or other effect on native title rights and interests.

Consultation Act means any of the future acts specified in clause 9.1.

Consultation Procedure has, in relation to a Consultation Act, the meaning given in clause 9.2(a).

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

CPI means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then CPI shall mean such other index as represents the rise in the cost of living in Perth, Western Australia as the State reasonably determines after consulting with the Native Title Group.

CPI Calculation means:

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

where:

A = the initial base payment under this Agreement;

CPI_n = the latest June quarterly CPI number published each year by the Australian Bureau of Statistics;

CPI_{base} = the June 2014 quarterly CPI number (base quarter) as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

Crown land has the meaning given in section 3 of the LA Act.

Deed of Assignment means the deed to be entered into by the Registered Native Title Claimants, the PBC and the State as provided in clause 26.1.

Deemed Low Impact Future Act means any future act that, prior to the Determination, would have been a future act falling within the description in section 24LA(1)(b) of the NT Act, but ceased to be so solely because the Determination was made. To avoid doubt, a Deemed Low Impact Future Act is a future act that does not consist of, authorise or otherwise involve:

- (a) the grant of a freehold estate in any of the land or waters; or
- (b) the grant of a lease over any of the land or waters; or
- (c) the conferral of a right of exclusive possession over any of the land or waters; or
- (d) the excavation or clearing of any of the land or waters, other than:
 - (i) excavation or clearing that is reasonably necessary for the protection of public health or public safety; or
 - (ii) tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities; or
- (e) mining (other than fossicking by using hand-held implements); or
- (f) the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or
- (g) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.

Determination means the approved determination of native title, the details of which are set out in item 1 of schedule 2.

Determination Area means the area the subject of the Determination. To avoid doubt, the Determination Area is larger than the Agreement Area.

DAA has the meaning given to Department in section 4 of the Aboriginal Heritage Act and at the Execution Date is the State's Department of Aboriginal Affairs.

DPC means the State's Department of the Premier and Cabinet.

Encumbrance means a mortgage, charge, bill of sale, lien, pledge, easement, reservation, condition, positive covenant, restrictive covenant, memorial (and any conditions or statements contained in the memorial), Notification, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any third party affecting the land or any part of the land.

Event of Default means any of the events described in clause 23.1(b).

Execution Date means the date of execution of this Agreement by the last of the Parties to execute it.

Exploration Tenement means any of the following types of titles, located wholly or partly within the Agreement Area:

- (a) the following mining tenements under the Mining Act:
 - (i) an exploration licence;
 - (ii) a prospecting licence;
 - (iii) a retention licence;
 - (iv) a special prospecting licence;
- (b) the following authorities or permits under the PGER Act:
 - (i) a special prospecting authority;
 - (ii) an access authority;
- (c) any other mining tenement under the Mining Act (not being an Access Authority) or authority, lease, licence or permit under the PGER Act (not being an Access Authority), the grant of which would, apart from the effects of this Agreement, be an act attracting the expedited procedure.

Force Majeure an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under 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;
- (o) radioactive or biological contamination;
- (p) the effect of any law or authority exercised by government official by law (other than a State law or a State government official),

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; or
- (v) any act or omission of an agent or contractor of the affected Party.

Freehold Act means the transfer or conveyance of Crown land in fee simple by the Minister for Lands to the PBC (or Land Company) under Part 6 of the LA Act.

Freehold Land means the Crown land described in schedule 7.

Government Proponent means:

- (a) the State; or
- (b) a Government Party; or
- (c) any other agency or instrumentality of the State and whom the State at any time during the currency of this Agreement notifies the Native Title Group is to be regarded (whether during the unexpired currency of this Agreement or for a more limited time) as falling within this definition.

Ground Disturbing Activity means any Activity that is not a Low Ground Disturbance Activity.

GSHA means any agreement entered into by the Native Title Group or PBC on or after the Execution Date with any Government Proponent in the form of, or substantially in the form of, the 'Government Standard Heritage Agreement' annexed to this Agreement and marked 'A'.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

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

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

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

Insolvency Event means where a Party:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or

- (c) is placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

Interest means any easement, positive or restrictive covenant or Notification that a provider of Services may require in respect of any Service it may have in, on, over, through or under the relevant parcel of land enabling it to, without limitation, use the land for operation or conveyance of the Service and to access the land for purposes including repair, maintenance and replacement of the Service and associated infrastructure, fixtures and fittings.

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

LA Act Department has the meaning given to Department in section 3 of the LA Act and at the Execution Date is the State's Department of Lands.

LA Act High Impact Licence means a LA Act Licence for Ground Disturbing Activity.

LA Act Licence means a licence granted under section 91 of the LA Act in respect of land located wholly or partly within the Agreement Area.

LA Act Low Impact Licence means a LA Act Licence for Low Ground Disturbance Activity.

Land Company means the corporate entity to be established by the Native Title Group pursuant to clause 11.2 of this Agreement.

Landgate means the Land Information Authority of Western Australia established under the *Land Information Authority Act 2006* (WA), trading as 'Landgate'.

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

Lease Act means the grant of a lease over Crown land by the Minister for Lands to the PBC (or Land Company) under section 83 of the LA Act.

Low Ground Disturbance Activity means any Activity that does not involve major or significant ground disturbance. Low Ground Disturbance Activity includes the following:

- (a) field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation; and

- (b) sampling, including removing soil, rock and flora using hand methods (including hand augering) from the natural surface; and
- (c) remote sensing, biological, environmental or conservation surveys, including installing monitoring plots and marker posts but not otherwise involving the permanent disturbance of soil and vegetation; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle; and
- (f) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
- (g) collecting and removing loose rocks, firewood or fauna; and
- (h) fossicking for rocks and gemstones; and
- (i) conducting tests for water, site contamination, or other scientific or conservation purposes; and
- (j) maintaining and refurbishing, including widening, expanding or moving, existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (k) maintaining, including by widening, expanding or moving, existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (l) erecting signage and barriers using hand and mechanical augers; and
- (m) revegetating of degraded areas, including fencing areas of vegetation; and
- (n) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (o) carrying out species recovery programs; and
- (p) erosion control activities on and in the immediate vicinity of existing roads, infrastructure or facilities; and
- (q) weed control using hand, mechanical and chemical methods of control; and
- (r) conducting tourism operations that are based in established facilities; and
- (s) public events not exceeding 60 days in duration, such as car rallies and marathons, using existing roads, stock routes or pastoral lease tracks; and

- (t) walking, driving or riding tours using existing roads, stock routes, pastoral lease tracks or official historical trails; and
- (u) the laying of temporary water pipelines across the ground where no excavation is required; and
- (v) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

Mining Act means the *Mining Act 1978* (WA).

Mining Act Department has the meaning given to Department in section 8 of the Mining Act and at the Execution Date is the State's Department of Mines and Petroleum.

Minister for Mines and Petroleum means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act and the PGER Act and includes the successors in office of that Minister.

Native Title Group means the common law holders of native title in the Determination Area. The Native Title Group is described in item 1(d) of schedule 2.

Non-Exclusive Area means the areas of land and waters within the Determination Area where non-exclusive native title rights and interests exist, as identified in the Determination at the places listed in item 1(c) of schedule 2.

Notifiable Act means any of the future acts specified in clause 9.4(a).

Notification means a notification endorsed on the certificate of Crown land title for the land under section 70A of the *Transfer of Land Act 1893* (WA) or section 17 of the LA Act.

Notification Procedure has, in relation to a Notifiable Act, the meaning given in clause 9.5(a).

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

NTRB means the representative Aboriginal/Torres Strait Islander body, for the purposes of the NT Act, for the Agreement Area, being the NTRB referred to in item 3 of schedule 2.

Objection means any objection:

- (a) lodged under the Mining Act to the grant of an Access Authority or an Exploration Tenement under the provisions of the Mining Act, to the extent that the objection is based on native title or Aboriginal heritage grounds; or

- (b) under section 32 of the NT Act, to a statement that an act attracts the expedited procedure; or
- (c) under section 24MD(6B)(d) of the NT Act, to the doing of an act under section 24MD(6B) of the NT Act; or
- (d) that is a challenge or proceeding that would have the effect of hindering or delaying the grant of any Tenure, to the extent that the challenge or proceeding is based on native title or Aboriginal heritage grounds.

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

PBC means a prescribed body corporate which is a registered native title body corporate under the NTA.

PBC Land Act means doing, or granting, any:

- (a) Freehold Act; or
- (b) Lease Act; or
- (c) Reserve Act; or
- (d) PBC Licence.

PBC Licence means the LA Act Licence granted to the PBC or Land Company, as applicable.

PBC Regulations means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

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

Proponent means the registered holder or holder (as applicable), other than any Government Proponent, at the relevant time or from time to time as the case may be of an Exploration Tenement, Access Authority or LA Act High Impact Licence granted pursuant to the terms of this Agreement.

Proponent Acceptance Deed means a deed in the form contained in schedule 5 to be executed by a Proponent in accordance with clauses 10.3 or 10.4 (as applicable).

PSHA means any agreement entered into, or deemed to be entered into, by the Native Title Group or PBC on or after the Execution Date with any Proponent in the form of, or substantially in the form of, the 'Proponent Standard Heritage Agreement' annexed to this Agreement and marked 'B'.

Regional Standard Aboriginal Heritage Agreement means the regional standard Aboriginal heritage agreement in use in the Goldfields region of Western Australia and published on the website of the Department of Mines and Petroleum. This agreement is published on that website as at the Execution Date as a document entitled 'Goldfields Land and Sea Council Agreement (GLSC)'.

Remote Sensing Survey includes:

- (a) any of the following airborne surveys carried out under the PGER Act under a special prospecting authority:
 - (i) magnetic;
 - (ii) electromagnetic;
 - (iii) airborne gamma ray spectrometry;
 - (iv) airborne radiometrics;
 - (v) airborne gravity;
 - (vi) airborne geochemistry;
 - (vii) radar survey;
 - (viii) infra-red survey;
 - (ix) aerial photography;
 - (x) induced polarised magnetic (air);
 - (xi) astral satellite;

- (b) any of the following land surveys carried out under the PGER Act under a special prospecting authority:
 - (i) amplified geochemical imaging TM;
 - (ii) electron spin resonance;
 - (iii) geochemical survey (using hand-held auger);
 - (iv) gas sniffer survey;
 - (v) multi-electrode array resistivity system;
 - (vi) magnetotellurics;
 - (vii) magnetometer;

- (viii) magnetic resonance (nuclear magnetic resonance or NMR);
 - (ix) induced polarised magnetic (land);
 - (x) gravity meter;
 - (xi) mini-sosie survey;
 - (xii) temperature well logging (in existing bore holes); and
- (c) any of the following marine surveys, which include islands not accessed for exploration, carried out under the PGER Act under a special prospecting authority or a petroleum exploration permit:
- (i) seismic survey;
 - (ii) marine magnetic;
 - (iii) marine gravity;
 - (iv) magnetotellurics.

Reserve Act means the reservation of Crown land by the Minister for Lands, and the placing of the care, control and management of such land with the PBC (or Land Company), solely or jointly with another management body, under Part 4 of the LA Act.

Review Committee means the committee established under clause 22.2.

Right to Negotiate means the right to negotiate procedure under and for the purposes of Subdivision P of Division 3 of Part 2 of the NT Act, commonly known as the 'right to negotiate'.

RNTBC Orders means the orders of the Federal Court, under section 56 or section 57 of the NT Act in relation to the PBC and the Determination. Details of the RNTBC Orders, once they come into effect, are to be set out in item 2 of schedule 2.

Sensitive Heritage Information means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by or on behalf of the Native Title Group during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

Services means all public utility services including water supply, sewerage, drainage, electricity, gas and telecommunications equipment and all infrastructure, fixtures and fittings associated with the provision, metering and charging of those services.

Specified Encumbrance means:

- (a) an Encumbrance in respect of land which is the subject of a PBC Land Act, detailed in the "Specified Encumbrance" column in schedules 7, 8, or 10;
- (b) a memorial lodged pursuant to clause 12.4; or
- (c) a registered interest or interest notified by caveat pursuant to clauses 12.1(c)(ii)(B)(I), 13.3(c)(ii)(A) and 14.1(d)(ii)(A).

Survey means an Aboriginal Heritage Survey conducted under a GSHA.

Survey Area has the meaning given to it in clause 1.1 of the GSHA.

Survey Report has the meaning given to it in clause 1.1 of the GSHA.

Tenure means any of:

- (a) an Exploration Tenement;
- (b) an Access Authority;
- (c) a LA Act Licence;
- (d) a Licence that permits or requires the undertaking of a Deemed Low Impact Future Act,

the area of which is wholly or partly within the Agreement Area and which is granted, issued or created following the Commencement Date.

1.3 Interpretation – General

In this Agreement, unless the contrary intention appears:

- (a) the headings and subheadings in this Agreement are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Agreement and a reference to this Agreement includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this Agreement) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;

- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Party;
- (f) a reference to a 'person' (including a Party to this Agreement) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) 'including' means 'including but not limited to';
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any recitals, schedules or annexures to this

Agreement, the terms and conditions of the clauses of this Agreement shall prevail.

1.4 Interpretation – liabilities and benefits

In this Agreement, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity which is in favour of the Native Title Group and the PBC is for the benefit of them jointly and severally; and
- (b) any agreement, representation, warranty or indemnity in favour of the State and a Government Party, or in favour of more than one Government Party, is for the benefit of them severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the State and a Government Party, or which is given by more than one Government Party, only binds the Parties giving it severally.

2. Term of this Agreement and exemptions

2.1 Commencement

This Agreement commences on the Execution Date, except for:

- (a) clauses 5.1 to 5.6 (inclusive), 5.8, 6, 9, 10, 17, 19.1, 19.3 and 22, which will commence on the Commencement Date; and
- (b) clauses 12, 13, 14, 15 and 19.2 which will commence on the Assignment Date.

2.2 Term

This Agreement continues indefinitely but shall terminate on the occurrence of whichever of the following events is the first to occur:

- (a) clause 7.5(a) (dealing with the consequences of non-registration) comes into effect;
- (b) all Parties agree in writing to end this Agreement;
- (c) the Determination is revoked in accordance with the NT Act;
- (d) this Agreement is removed from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NT Act.

2.3 No other termination

Subject to clause 2.2, no Party is entitled to terminate this Agreement for any reason, including by reason of breach or repudiation of this Agreement by any Party.

2.4 Consequences of termination

- (a) Unless otherwise agreed in writing by all Parties, if this Agreement is terminated in accordance with clause 2.2:
 - (i) unless otherwise provided for in this Agreement, this Agreement ceases to have any force or effect on and from the date of termination; and
 - (ii) any act done under or in accordance with this Agreement on or before the date of termination of this Agreement shall remain, to the extent permitted by law, valid; and
 - (iii) all rights, obligations and remedies under this Agreement which accrued on or before the date of termination of this Agreement shall remain binding and enforceable.
- (b) If this Agreement is terminated as a result of an event described in clauses 2.2(a), 2.2(c) or 2.2(d), the Parties will meet to discuss arrangements for negotiating a replacement or alternative agreement to be registered as an indigenous land use agreement on the ILUA Register.

2.5 Termination after registration on the ILUA Register

If after the Commencement Date all Parties propose to terminate this Agreement under clause 2.2(b), then all Parties must advise the Native Title Registrar in writing in accordance with section 199C(1)(c)(ii) of the NT Act.

2.6 Exemption for existing ILUAs

- (a) If the State or a Government Party:
 - (i) has an indigenous land use agreement with the Native Title Group which it has entered into and registered prior to the Commencement Date (including prior to the Determination) and which is specified in item 4 of schedule 2; and
 - (ii) that pre-existing indigenous land use agreement applies (or will apply upon grant) to a Tenure to which this Agreement relates,

then the provisions of this Agreement shall prevail over the provisions of the pre-existing indigenous land use agreement unless otherwise provided in item 5 of schedule 2.

- (b) The Parties shall do all things necessary to give effect to clause 2.6(a), including the variation, termination, deregistration or re-registration, as required, of any pre-existing indigenous land use agreement.

3. Area to which this Agreement applies

This Agreement applies to the Agreement Area.

4. Authority, representation and warranties

4.1 Registered Native Title Claimants representations and warranties

The Registered Native Title Claimants jointly and severally represent and warrant, for the benefit of the State and the Government Parties, that:

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

4.2 Native Title Group representations and warranties

Each member of the Native Title Group jointly and severally represents and warrants, for the benefit of the State and the Government Parties, that:

- (a) they have authorised the making of this Agreement pursuant to section 251A of the NT Act;
- (b) they have authorised the Registered Native Title Claimants to enter into and perform their obligations under this Agreement on their behalf;
- (c) the terms of this Agreement are binding on them; and
- (d) they know of no impediment to them performing their obligations under this Agreement.

4.3 State and Government Party representations and warranties

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

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

4.4 Reliance on warranties

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 4.1 to 4.3 inclusive (as the case may be) to enter into this Agreement.

4.5 Acknowledgment regarding legal advice

Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of all matters in this Agreement and the effect of the rights, obligations and liabilities of each of the Parties to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this Agreement before entering into it.

4.6 Application of this Agreement to the State and the Government Parties

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

4.7 Ministers may act through authorised officers

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

4.8 Status of Registered Native Title Claimants

- (a) The Parties agree that the Registered Native Title Claimants continue to be Registered Native Title Claimants for the purposes of this Agreement until

the Assignment Date, despite the details of the Application being removed from the Register of Native Title Claims pursuant to s.190(4) of the NT Act.

- (b) If any of the Registered Native Title Claimants:
 - (i) are unwilling or unable to perform the role of a Registered Native Title Claimant under this Agreement; or
 - (ii) die,

they cease to be a Registered Native Title Claimant for the purposes of this Agreement and a reference in this Agreement to the Registered Native Title Claimants is a reference to the remaining Registered Native Title Claimants.

5. Consent to future acts in the Agreement Area

5.1 Future acts

The future acts set out in clauses 5.2 and 5.3 are consented to by the Parties to the extent that they are future acts, with the intent that such statements of consent satisfy the requirements of section 24EB(1)(b) of the NT Act.

5.2 Parties' consent to future acts in the Agreement Area

For the purposes of section 24EB of the NT Act:

- (a) each Party consents, subject to clause 10.3, to the grant of Exploration Tenements in the Agreement Area;
- (b) each Party consents, subject to clause 10.3, to the grant of Access Authorities in the Agreement Area;
- (c) each Party consents, subject to clause 10.4, to the grant of LA Act Licences in the Agreement Area;
- (d) each Party consents to the doing of Deemed Low Impact Future Acts by the State and Government Parties in the Agreement Area;
- (e) each Party consents to the doing of PBC Land Acts in the Agreement Area.

5.3 Agreement to future act includes exercise of rights

To avoid doubt, the consent to the doing of the future acts referred to in clause 5.2 includes consent to the exercise of any right or obligation created by those future acts, including the doing of any Activity or the granting of any Tenure in exercise of that right or obligation, by the person on whom the right or obligation is conferred.

5.4 Surrender of native title rights and interests

The Parties agree that upon transfer in fee simple to the Land Company of each parcel of Freehold Land in accordance with clause 12, the native title rights and interests in that parcel of land are surrendered and, pursuant to s.24CB(e) of the NT Act, that surrender is intended to extinguish the native title rights and interests as of the date of transfer.

5.5 Non-extinguishment principle applies

- (a) To avoid doubt, the non-extinguishment principle applies to all future acts under this Agreement, except where native title is surrendered pursuant to clause 5.4.
- (b) To avoid doubt, the doing of the future acts referred to in clauses 5.2 and 5.3, and any Activity required or permitted by those acts, and that is done in accordance with those acts, shall prevail over any native title rights or interests and any exercise of those rights and interests, but does not extinguish them.

5.6 No Right to Negotiate

- (a) The Right to Negotiate does not apply to any of the acts referred to in clause 5.2, with the intent that such statement satisfies the requirement of section 24EB(1)(c) of the NT Act.
- (b) For the avoidance of doubt, no other procedural requirements in Part 2 Division 3 of the NT Act apply to the future acts described in clause 5.2.

5.7 Registration of this Agreement

Each Party:

- (a) states that this Agreement is intended to be registered on the ILUA Register as an area agreement under sections 24CA to 24CI and section 199B of the NT Act and regulation 7 of the ILUA Regulations; and
- (b) acknowledges that, when this Agreement is registered on the ILUA Register, this Agreement will have the additional effects conferred by sections 24EA and 24EB of the NT Act, including the effects on Compensation provided by those sections.

5.8 Consent preserved in event of breach

A breach of this Agreement by any Party does not nullify the consent to, or the doing of, the future acts referred to in clauses 5.2 and 5.3.

6. No Objection to future acts

- (a) The Native Title Group:
 - (i) shall not make any Objection to the doing of the future acts consented to in clauses 5.2 and 5.3, nor will it authorise any other person to make any Objection on its behalf or on behalf of any member of the Native Title Group; and
 - (ii) shall not challenge the validity (under the NT Act, the LA Act or otherwise) of any of the future acts consented to in clauses 5.2 and 5.3 or authorise any other person to make any such challenge on its behalf or on behalf of any member of the Native Title Group.
- (b) If the Native Title Group or any member of the Native Title Group make any Objection or other challenges in breach of clause 6(a), the State, the Government Parties or any one or more of them as applicable, the Native Title Group or any member of the Native Title Group may plead the terms of this Agreement in bar of that claim.

7. Registration of this Agreement

7.1 Registration on ILUA Register

Each Party acknowledges their intention that this Agreement be registered on the ILUA Register as an area agreement under sections 24CA to 24CI of the NT Act and regulation 7 of the ILUA Regulations as soon as reasonably practicable after the Execution Date.

7.2 Consent to application for registration

Each Party consents to the State:

- (a) preparing an application for this Agreement to be registered on the ILUA Register, which application for registration shall be in the form, or substantially in the form, provided in schedule 4; and
- (b) applying to the Native Title Registrar for this Agreement to be registered on the ILUA Register as an 'area agreement' under Subdivision C of Division 3 of Part 2 of the NT Act.

7.3 Further assurances

Each Party shall use its reasonable endeavours and do all things reasonably necessary to assist with the timely registration of this Agreement on the ILUA Register and to maintain the registration of this Agreement on the ILUA Register.

7.4 No objection to registration

- (a) Without limiting clauses 7.1 and 7.2, a Party must not object to the registration of this Agreement on the ILUA Register.
- (b) If any Party becomes aware of an objection having been lodged in relation to the registration of this Agreement on the ILUA Register, then that Party must notify the other Parties and each Party must do all things within their power and necessary and incidental to ensure that the objection is withdrawn.

7.5 Consequences of non-registration

- (a) The Native Title Group acknowledges and agrees that the Benefits payable or provided under this Agreement are part of a global settlement of the Esperance Nyungar native title claim and that this Agreement is conditional upon it being and remaining registered on the ILUA Register.
- (b) If this Agreement has not been registered on the ILUA Register within 12 months after the application for registration being made, it shall, unless all Parties otherwise agree in writing prior to the expiry of that period, terminate upon the expiry of that period of time.
- (c) In the event of termination under clause 7.5(a), no Party shall have any claim against any other Party with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

8. No fettering of statutory powers or discretions

Notwithstanding any reference in this Agreement to an obligation that the State, a Government Party, or a Minister in the Government of the State must do an act or ensure that an act is done, each Party acknowledges and agrees that nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the statute.

9. Consultation and Notification

9.1 Consultation Acts

The Parties agree that the grant of a LA High Impact Licence is a Consultation Act.

9.2 Consultation requirements

- (a) The State or Government Party, as applicable, must unless the relevant Parties otherwise agree in writing, comply with the Consultation Procedure set out in clause 9.3 in relation to the Consultation Act specified in clause 9.1.

- (b) In relation to all consultation carried out under a Consultation Procedure, the relevant Parties may agree in writing to increase or reduce the time periods applicable.
- (c) Nothing in a Consultation Procedure is intended to limit the relevant Parties' ability to enter into additional or separate agreements, providing that those agreements do not affect the operation of this Agreement.
- (d) Nothing in a Consultation Procedure is intended to limit or affect the ability or obligation of the State or a Government Party, as applicable, to consult with and consider the views of other relevant stakeholders in relation to the relevant Consultation Act.
- (e) In the event that the State or a Government Party, as applicable, meets its obligations under a Consultation Procedure, the Native Title Group or PBC (as the case may be) shall issue the State or the Government Party, as applicable, with a written certification confirming the same and confirming that the Registered Native Title Claimants or PBC (as the case may be) have:
 - (i) consulted with the Native Title Group and obtained their views on the matters communicated to the State or the Government Party, as applicable, in connection with the relevant Consultation Act, in accordance with procedures adopted by the Native Title Group; and
 - (ii) consulted with the NTRB and considered the NTRB's views, if required under the procedures adopted by the Native Title Group.

9.3 LA Act High Impact Licence Consultation Procedure

- (a) At least 90 Business Days prior to granting a LA Act High Impact Licence the Minister for Lands must notify the Native Title Group, specifying the purpose for which the LA Act High Impact Licence is being granted and the area to which it will apply.
- (b) The Native Title Group may within 60 Business Days after the date on which notification is given, notify the Minister for Lands in writing of any queries or comments it may have in respect of the proposed grant of the LA Act High Impact Licence.
- (c) The Minister for Lands must prior to granting the LA Act High Impact Licence:
 - (i) use reasonable endeavours to respond to the Native Title Group in respect of any such queries notified by the Native Title Group; and
 - (ii) give reasonable consideration to any comments notified by the Native Title Group.

- (d) In the event the time period referred to in clause 9.3(a) has expired, the Minister for Lands may grant the LA Act High Impact Licence. For the avoidance of doubt the matters in clauses 9.3(b) and 9.3(c) shall not delay or have any other effect on the grant of the LA Act High Impact Licence.

9.4 Notifiable Acts

- (a) The following acts are Notifiable Acts:
 - (i) the grant by the State or the Government Party, as applicable, of an Exploration Tenement; and
 - (ii) the grant by the State or the Government Party, as applicable, of an Access Authority; and
 - (iii) the grant by the Minister for Lands of a LA Act Low Impact Licence; and
 - (iv) the grant of a LA Act High Impact Licence which the Parties agree in writing is to be treated as a Notifiable Act under this Agreement; and
 - (v) the doing by the Minister for Lands of any PBC Land Acts.
- (b) The Parties agree that only those future acts consented to under clauses 5.2 that are expressly referred to in clause 9.4(a) are Notifiable Acts.

9.5 Notification requirements

- (a) The State or Government Party, as applicable, must unless the relevant Parties otherwise agree in writing:
 - (i) comply with the Notification Procedure set out in clause 9.6 in relation to the Notifiable Act specified in clause 9.4(a)(i); and
 - (ii) comply with the Notification Procedure set out in clause 9.7 in relation to the Notifiable Act specified in clause 9.4(a)(ii); and
 - (iii) comply with the Notification Procedure set out in clause 9.8 in relation to the Notifiable Act specified in clause 9.4(a)(iii); and
 - (iv) comply with the Notification Procedure set out in clause 9.9 in relation to the Notifiable Act specified in clause 9.4(a)(iv); and
 - (v) comply with the Notification Procedure set out in clause 9.10 in relation to the Notifiable Act specified in clause 9.4(a)(v).

- (b) In relation to any particular notification or classes of notification carried out under a Notification Procedure, the relevant Parties may agree in writing to increase or reduce the time periods applicable.
- (c) Nothing in a Notification Procedure is intended to limit the relevant Parties' ability to enter into additional or separate agreements, providing that those agreements do not affect the operation of this Agreement.
- (d) Nothing in a Notification Procedure is intended to limit or affect the ability or obligation of the State or the Government Party, as applicable, to notify other relevant stakeholders in relation to the relevant Notifiable Act.

9.6 Exploration Tenement Notification Procedure

The State or the Government Party, as applicable, must as soon as possible but no later than 10 Business Days after granting an Exploration Tenement, give to the Native Title Group a copy of the application, a copy of the instrument of grant (if any) of the Exploration Tenement, a map showing the boundaries of the Exploration Tenement and in respect of the contact details of the Proponent stated in the application, the latest such contact details known to the State or the Government Party as applicable if different to those stated in the application.

9.7 Access Authority Notification Procedure

The State or the Government Party, as applicable, must as soon as possible but no later than 10 Business Days after granting an Access Authority, give to the Native Title Group a copy of the application, a copy of the instrument of grant (if any) of the Access Authority, a map showing the boundaries of the Access Authority and in respect of the contact details of the Proponent stated in the application, the latest such contact details known to the State or the Government Party as applicable if different to those stated in the application.

9.8 LA Act Low Impact Licence Notification Procedure

The State or the Government Party, as applicable, must as soon as possible but not later than 10 Business Days after granting a LA Act Low Impact Licence give to the Native Title Group a copy of the instrument of grant of the LA Act Low Impact Licence and in respect of the contact details of the Proponent stated in the instrument of grant, the latest such details known to the State or the Government Party as applicable if different to those stated in the instrument of grant.

9.9 LA Act High Impact Licence Notification Procedure

The State or the Government Party, as applicable, must as soon as possible but no later than 10 Business Days after the grant of any LA Act High Impact Licence referred to in clause 9.4(a)(iv), give to the Native Title Group a copy of the instrument of grant of the LA Act High Impact Licence and in respect of the contact

details of the Proponent stated in the instrument of grant, the latest such details known to the State or the Government Party as applicable if different to those stated in the instrument of grant.

9.10 PBC Land Acts Notification Procedure

The Minister for Lands must as soon as possible but no later than 10 Business Days after the doing any PBC Land Acts referred to in clause 9.4(a)(v), notify the PBC of the nature of the PBC Land Acts undertaken and any other details which the Minister for Lands reasonably considers relevant.

9.11 Relationship with Aboriginal Heritage Agreement

To avoid doubt:

- (a) compliance with the requirements of an Aboriginal Heritage Agreement does not serve to satisfy any of the requirements of a Consultation Procedure or a Notification Procedure under this clause 9; and
- (b) compliance with the requirements of a Consultation Procedure or a Notification Procedure under this clause 9 does not serve to satisfy any of the requirements of an Aboriginal Heritage Agreement,

unless the relevant Parties otherwise agree in writing.

10. Recognition and protection of Aboriginal Heritage

10.1 Parties to be bound by GSHAs

- (a) The Native Title Group acknowledges that subject to clause 10.2 it will be legally bound to comply with any GSHA entered into by it with any Government Proponent.
- (b) Each of the State and the Government Parties acknowledge that subject to clause 10.2, it will be legally bound to comply with any GSHA entered into by it with the Native Title Group.
- (c) The Parties acknowledge their intention to enter into a GSHA between them on or about the Execution Date.
- (d) The Native Title Group and the State acknowledge their intention that other Government Proponents intending to undertake Activities within the Agreement Area also enter into Heritage Agreements with the Native Title Group in the form of the GSHA.

10.2 Exemption for existing Aboriginal Heritage Agreements

If the State or a Government Party having proposed to enter into, or entered into, a GSHA with the Native Title Group:

- (a) has an Aboriginal Heritage Agreement with the Native Title Group (including prior to the Determination) which it has entered into prior to the Commencement Date and which is specified in item 6 of schedule 2; and
- (b) that existing Aboriginal Heritage Agreement applies (or will apply upon grant) to an Activity or Tenure to which this Agreement relates,

then, as between the State or Government Party (as applicable) and the Native Title Group, the provisions of this Agreement and the GSHA which it has entered into shall prevail over the provisions of the existing Aboriginal Heritage Agreement unless otherwise provided in item 7 of schedule 2. For the avoidance of doubt, the existing Agreement may continue to apply in its entirety such that the Parties do not enter into a GSHA.

10.3 Condition on Tenure

In respect of the grant to a Proponent of an Exploration Tenement or of an Access Authority, the Native Title Group's consent pursuant to clause 5.2(a) or clause 5.2(b), as applicable, to such grant is, as a condition precedent, subject to such of the Minister for Mines and Petroleum or the Minister for Lands, as applicable, in granting such Tenure imposing the following condition on such Tenure (subject to any necessary modifications of terminology as required for the Tenure):

- (a) *"As the [XX ILUA] (**relevant ILUA**) applies to this [type of tenement, e.g. exploration licence], the [tenement holder, e.g. licensee] must before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the relevant ILUA, execute and enter into, in respect of this [type of tenement], one of the following types of agreements and maintain such agreement for the term of this [type of tenement]:*
 - (i) *an [Aboriginal Heritage Agreement] (as defined in the relevant ILUA) with the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA;*
 - (ii) *at the election of the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA, a [Regional Standard Aboriginal Heritage Agreement] (as defined in the relevant ILUA) with that prescribed body corporate [or Native Title Group];*
 - (iii) *a PSHA (as defined in the relevant ILUA) with the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA; or*

- (iv) a [Proponent Acceptance Deed] (as defined in the relevant ILUA); and
- (b) provide to the Minister for Mines and Petroleum or the Minister for Lands, as applicable, a statutory declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form contained in schedule 6 to the relevant ILUA, as evidence that:
 - (i) the [tenement holder] has complied with the requirements of paragraph (a)(i), (ii) or (iii) of this condition; or
 - (ii) the [tenement holder] has complied with the requirements of paragraph (a)(iv) of this condition, in circumstances where the prescribed body corporate [or Native Title Group] for the relevant ILUA did not make an election under paragraph (ii) and the [tenement holder] made reasonable endeavours to enter into an agreement as contemplated in paragraphs (a)(i) and (iii) of this condition but was unable to do so within 60 Business Days of the later of the date of the grant of this [type of tenement] or the date on which the PBC [or Native Title Group] received notification of such grant under clauses 9.6 or 9.7 of the relevant ILUA (as may be applicable)."

10.4 Condition on LA Act High Impact Licence

In respect of the grant to a Proponent of a LA Act High Impact Licence, the Native Title Group's consent pursuant to clause 5.2(c) to such grant is, as a condition precedent, subject to the Minister for Lands in granting such Tenure imposing the following condition on such Tenure (subject to any necessary modifications of terminology as required in for the Tenure):

- (a) "As the [XX ILUA])(**relevant ILUA**) applies to this LA Act High Impact Licence, the licensee must before exercising any of the rights, powers or duties pursuant to this licence over the portion of the licence area the subject of the relevant ILUA execute and enter into, in respect of this LA Act High Impact Licence, one of the following types of agreements and maintain such agreement for the term of the licence:
 - (i) an [Aboriginal Heritage Agreement] (as defined in the relevant ILUA) with the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA;
 - (ii) at the election of the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA, a [Regional Standard Aboriginal Heritage Agreement] (as defined in the relevant ILUA) with that prescribed body corporate [or Native Title Group];

- (iii) *a PSHA (as defined in the relevant ILUA) with the relevant prescribed body corporate [or Native Title Group] for the relevant ILUA; or*
- (iv) *a [Proponent Acceptance Deed] (as defined in the relevant ILUA); and*
- (b) *provide to the Minister for Lands a statutory declaration from the [licensee] (or if the [licensee] is a corporation, from a director of that corporation on its behalf) in the form contained in schedule 6 to the relevant ILUA, as evidence that:*
 - (i) *the [licensee] has complied with the requirements of paragraph (a)(i), (ii) or (iii) of this condition; or*
 - (ii) *the [licensee] has complied with the requirements of paragraph (a)(iv) of this condition, in circumstances where the prescribed body corporate [or Native Title Group] for the relevant ILUA did not make an election under paragraph (ii) and the [licensee] made reasonable endeavours to enter into an agreement as contemplated in paragraphs (a)(i) and (iii) of this condition but was unable to do so within 60 Business Days of the later of the date of the grant of this [type of tenement] or the date on which the PBC [or Native Title Group] received notification of such grant under clauses 9.3 or 9.7 of the relevant ILUA (as may be applicable)."*

10.5 Native Title Group's obligations and agreement to be bound

- (a) The Native Title Group must, upon receiving notification under clause 9.6, clause 9.7, clause 9.8 or clause 9.9 as applicable, use reasonable endeavours to commence discussions regarding an Aboriginal Heritage Agreement that may apply to each Tenure notified (**Relevant Tenure**) with the Proponent for such Tenure. This may include providing the Proponent with a copy of the PSHA or other proposed form of Aboriginal Heritage Agreement.
- (b) The Native Title Group shall in any event following the grant of the Relevant Tenure use reasonable endeavours to execute a Aboriginal Heritage Agreement (to which the Proponent for such Tenure is, or is to be, the counterparty) that applies to such Tenure within the later of 60 Business Days after the grant of such Tenure and notification of such grant to the Native Title Group under clause 9.6, clause 9.7, clause 9.8 or clause 9.9 as applicable.
- (c) The Native Title Group agrees that in the event that:
 - (i) the Native Title Group fails, within 60 Business Days after the later of the grant of the Relevant Tenure and notification of such grant to the PBC under clause 9.6, clause 9.7, clause 9.8 or clause 9.9 as applicable, to execute and give to the Proponent for such Tenure an

Aboriginal Heritage Agreement (to which the Proponent for such Tenure is, or is to be, the counterparty) that applies to such Tenure; and

- (ii) the Proponent for the Relevant Tenure subsequently executes a Proponent Acceptance Deed in accordance with its terms for such Tenure (respectively **Relevant Proponent** and **Relevant Proponent Acceptance Deed**),

then, subject to the terms of the Relevant Proponent Acceptance Deed and with effect from the date on which all of the conditions precedent set out in clause 3 of the Relevant Proponent Acceptance Deed have been satisfied:

- (iii) an agreement in the form of the PSHA (as read together with the Relevant Proponent Acceptance Deed) will be deemed to have been entered into between the Native Title Group and the Relevant Proponent for the Relevant Tenure; and
 - (iv) the Native Title Group will be deemed to have assumed the rights and obligations of the Native Title Group under that agreement as it relates to the Relevant Tenure and to Activities (as defined in the PSHA) carried out pursuant to such Tenure; and
 - (v) the Native Title Group and the Relevant Proponent will be legally bound by that agreement, and each may enforce it against the other, as if that agreement was executed by the Proponent and the Native Title Group.
- (d) The Native Title Group consents to the execution by the Proponent for the Relevant Tenure of a Proponent Acceptance Deed for the Relevant Tenure for the benefit of the Proponent in the circumstances set out in clause 10.5(c)(i).

10.6 No limitation

To avoid doubt, nothing in clauses 10.3, 10.4 or 10.5 is intended to limit the ability of the Proponent and the Native Title Group from entering into additional or separate agreements, save that those agreements shall not affect the operation of this Agreement.

10.7 Proponent statutory declaration

The form of the statutory declaration to be executed by, or on behalf of, a Proponent in compliance with the condition on title set out in clauses 10.3 and 10.4 is contained in schedule 6.

11. Conditions for PBC Land Acts

11.1 No PBC Land Acts until Assignment Date has occurred

The State and the Native Title Group agree that no PBC Land Acts will be done under this Agreement until the Assignment Date has occurred.

11.2 Native Title Group to establish bodies corporate

- (a) The Native Title Group must, as soon as practicable after the Execution Date, incorporate one or more bodies corporate in accordance with this clause 11.2, which is capable of holding any right or interest in land provided under this Agreement on behalf of the Native Title Group, and with which the care, control and management of reserves may be placed (**Land Company**).
- (b) For the avoidance of doubt, the Land Company may be, but does not have to be, the PBC.
- (c) If the Land Company is not the PBC, it must:
 - (i) either be incorporated as a CATSI Corporation established under the CATSI Act or be established under the *Corporations Act 2001* (Cth); and
 - (ii) be incorporated on such terms and conditions as have first been approved by the State, which approval must not be unreasonably withheld.

11.3 Time for completion

- (a) Subject to:
 - (i) receipt by the Minister for Lands of all written requests from the PBC provided for under clauses 12.1(a), 13.1, 13.2, 13.3(a), 14.1(a) and 15; and
 - (ii) satisfaction of all other conditions, as set out in this Agreement, which are required to enable the relevant PBC Land Act to occur,
- by 30 September 2016, the PBC Land Acts must be completed by no later than 31 December 2016, after which date the parties agree that, unless clause 11.3(b) applies, neither the State nor the Minister for Lands is obliged to perform, or take any further action to complete, any of the PBC Land Acts that have not occurred by that date.

- (b) Notwithstanding clause 11.3(a), if any of the PBC Land Acts have not occurred by 31 December 2016 as a result of delay on the part of the State or Minister for Lands, all PBC Land Acts in respect of which a written request has been received and all other conditions have been satisfied must be performed by the Minister for Lands as soon as practicable.

11.4 Acknowledgements

The Parties acknowledge and agree that, except as disclosed in this Agreement:

- (a) no warranty or representation has been given or made by the State, the Minister for Lands, or any agent, employee or contractor of those parties or any other person on the State's or Minister's behalf as to:
 - (i) the title to the Freehold Land;
 - (ii) any Encumbrance, restriction or right in favour of any third party affecting any land the subject of a PBC Land Act;
 - (iii) the condition or state of repair of any land the subject of a PBC Land Act or any part of that land;
 - (iv) the provision of access and Services to or from land the subject of a PBC Land Act;
 - (v) the condition or state of repair of any improvements or any part of any improvements on land the subject of a PBC Land Act;
 - (vi) the zoning of land the subject of a PBC Land Act or permitted use for which land the subject of a PBC Land Act may be put under any relevant law, scheme or regulation;
 - (vii) the suitability of land the subject of a PBC Land Act for any use or purpose of any kind;
 - (viii) any proposals for the realignment, widening, closure, siting or alteration of the level of any road or rights of way adjacent to land the subject of a PBC Land Act by any competent authority or person;
 - (ix) the nature and extent to which land the subject of a PBC Land Act may be affected by any Contamination; or
 - (x) whether or not the fences (if any) purporting to be on the boundaries are in fact on the proper boundaries of land the subject of a PBC Land Act;

- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, this Agreement, and any such representation or warranty is excluded to the extent permitted by law;
- (c) the Freehold Land is transferred as it stands with all existing faults, defects or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on the State (including the Minister for Lands) to disclose or particularise any faults, defects or characteristics known to the State;
- (d) the Native Title Group, the PBC and the Land Company are deemed to accept the Freehold Land in reliance on their own inspection of, and enquiries in relation to, the Freehold Land; and
- (e) the State (including the Minister for Lands) will not be liable under any circumstances to make any allowance or compensation to the Native Title Group, PBC or Land Company for the exclusion of warranties or representations made in this clause 11.4 or for any fault, defect or characteristic in land the subject of a PBC Land Act.

11.5 No Compensation

The PBC, the Native Title Group and the Land Company are not entitled to make any objection, requisition or claim for compensation in respect of:

- (a) the provision of, or lack of, access, Services, or any other services or connections to land the subject of a PBC Land Act, or in respect of the fact that any Services or connections may be joint services to any other land or because any facilities for Services for any other land pass through the relevant land;
- (b) any encroachment onto land the subject of a PBC Land Act by any improvement which does not form part of the relevant land, or the encroachment onto adjoining land of any improvement which forms part of the relevant land;
- (c) the location of any sewerage, water or drainage pipes or services affecting land the subject of a PBC Land Act, or that any sewer passes through, or penetrates the relevant land;
- (d) the fact that the current use of land the subject of a PBC Land Act may not be an authorised use under any applicable zoning or use law, scheme or regulation;
- (e) the fact that any fence on land the subject of a PBC Land Act is not on the proper boundaries of the relevant land.

12. Process for doing Freehold Acts

12.1 Conditions precedent

The Minister for Lands shall transfer to the Land Company title in fee simple under s.74 of the LA Act to each parcel of Freehold Land, in the manner set out in clause 12.2, as soon as practicable following receipt of:

- (a) a written request from the PBC, which request may not be made prior to the Assignment Date, specifying which parcels of Freehold Land are to be transferred to the Land Company; and
- (b) payment of \$1.00 from the Land Company in respect of each parcel identified for transfer in the written request; and
- (c) in the case of the Freehold Land listed at items 1 – 7 (inclusive) of schedule 7:
 - (i) a written notice to the Minister for Lands from the management body specified in Column C of schedule 7 that it agrees that its management order should be revoked pursuant to s.50(1)(a) of the LA Act; and
 - (ii) a statutory declaration **xxxxxxxxxxxxxxxxxxxxxxxx** specified in Column C of schedule 7, completed to the satisfaction of the Minister for Lands, specifying whether:
 - (A) the **xxxxxxxxxxxxxxxxxxxxxxxx** is aware of any Contamination of the relevant land; and
 - (B) any unregistered interests or rights exist in, or have been granted by **xxxxxxxxxxxxxxxxxxxxxxxx** over, or in respect of, the relevant land and, if so:
 - (I) if the interest is to be preserved on revocation **xxxxxxxxxxxxxxxxxxxxxxxx** – the PBC must provide evidence to the satisfaction of the Minister for Lands that the interest has subsequently been registered, or a caveat giving notice of the interest has been lodged, at Landgate;
 - (II) if the interest is not to be preserved on revocation of **xxxxxxxxxxxxxxxxxxxxxxxx** – the PBC must provide to the Minister for Lands, in a form satisfactory to the Minister, a copy of a document by which the interest is surrendered, duly executed by the grantor and grantee of the interest.

12.2 Indemnity

The Native Title Group and the PBC indemnify the Minister for Lands and the State against or in respect of any claim that may be brought by any person whose interest in the Freehold Land is not preserved on revocation of the relevant management order as a result of the interest not being registered or notified by caveat as provided in clause 12.1(c)(ii).

12.3 Freehold encumbrances

- (a) Prior to transferring the Freehold Land to the Land Company, the Minister for Lands shall attend to the removal of all Encumbrances registered against the titles except:
 - (i) any Specified Encumbrances;
 - (ii) any Interests; and
 - (iii) any Encumbrance registered on the Crown land title to the relevant parcel after the Execution Date with the prior written consent of the Native Title Group or PBC (as applicable).
- (b) The Native Title Group and the PBC (on and from the Assignment Date) consent to the Minister for Lands or the State granting and registering at Landgate an Interest on the Crown land title of any Freehold Land after the Execution Date and prior to transfer of the fee simple in the relevant Freehold Land to the Land Company.
- (c) The PBC acknowledges that neither the Native Title Group, the PBC nor the Land Company have a claim against the Minister for Lands or the State relating to any of the Specified Encumbrances or Interests to which the Freehold Land will be subject.

12.4 Memorial

- (a) The Minister for Lands may at its sole discretion lodge with the Registrar of Titles a memorial pursuant to s.17 of the LA Act over any of the Freehold Land warning of any hazards or other factors affecting, or likely to affect, the use or enjoyment of the Freehold Land.
- (b) This Agreement evidences the PBC's and the Native Title Group's acknowledgement of, and consent to, any action by the Minister for Lands in accordance with clause 12.4 and may be relied upon as its consent for the purpose of lodging any such memorial under s.17(1) of the LA Act.

12.5 Requirements for transfer

- (a) Within 30 days of serving a written request on the Minister for Lands for transfer of a parcel of land pursuant to clause 12.1(a), the PBC must deliver to the Minister for Lands a transfer of land duly executed by the Land Company which is in a form suitable for registration.
- (b) The period of 30 days referred to in clause 12.5(a) may be extended by agreement in writing between the Minister for Lands and the PBC in respect of specified Freehold Land.
- (c) As soon as practicable following receipt of a transfer of land executed by the Land Company, the Minister for Lands shall:
 - (i) execute the transfer of land;
 - (ii) lodge the transfer of land at Landgate; and
 - (iii) with assistance from the Land Company if required, attend to all stopped document notices and other requisitions necessary for registration to be effected.

13. Process for doing Reserve Acts

13.1 Part A of schedule 8 reserves

As soon as practicable after receiving a written request from the PBC (which request may not be made prior to the Assignment Date) specifying which parcels of Crown land described in Column B of schedule 8 (Part A) are to be the subject of a Reserve Act, the Minister for Lands shall by order:

- (a) pursuant to s.41 of the LA Act, reserve each parcel of land described in schedule 8 (Part A) for the purpose set out Column C; and
- (b) place the care, control and management of the reserves created under clause 13.1(a) with the PBC (or, if requested by the PBC, with the Land Company), by way of a management order under section 46 of the LA Act and where specified in Column D of schedule 8 (Part A) for a reserve, subject to s.18 of the LA Act, include a power to grant leases or subleases or licences over the whole or any part of the land for a term not exceeding 50 years within the reserve in question.

13.2 Part B of schedule 8 reserves

As soon as practicable after receiving a written request from the PBC (which request may not be made prior to the Assignment Date) specifying which parcels of Crown

land described in Column B of schedule 8 (Part B) are to be the subject of a Reserve Act, the Minister for Lands shall by order:

- (a) pursuant to s.51 of the LA Act, change the purpose of the reserve to the purpose set out in Column C of schedule 8 (Part B) and, where necessary, amend the boundaries of, or the locations or lots comprising, each of the reserves referred to in schedule 8 (Part B); and
- (b) place the care, control and management of the reserves created under clause 13.2(a) with the PBC (or, if requested by the PBC, with the Land Company), by way of a management order under section 46 of the LA Act and where specified in Column D of schedule 8 (Part B) for a reserve, subject to s.18 of the LA Act, include a power to grant leases or subleases or licences over the whole or any part of the land for a term not exceeding 50 years within the reserve in question.

13.3 Part C of schedule 8 reserves

As soon as practicable after the Minister for Lands receives:

- (a) a written request from the PBC (which request may not be made prior to the Assignment Date), specifying which parcels of Crown land described in Column A of schedule 8 (Part C) are to be the subject of a Reserve Act; and
- (b) a written notice to the Minister for Lands from the management body specified in Column B of schedule 8 (Part C) that it agrees that its management order should be revoked pursuant to s.50(1)(a) of the LA Act; and
- (c) a statutory declaration from **XXXXXXXXXXXXXXXXXXXX** specified in Column B of schedule 8 (Part C), completed to the satisfaction of the Minister for Lands, specifying whether:
 - (i) the **XXXXXXXXXXXXXXXXXXXX** is aware of any Contamination of the relevant land; and
 - (ii) any unregistered interests or rights exist in, or have been granted by **XXXXXXXXXXXXXXXXXXXX** over, or in respect of, the relevant land and, if so:
 - (A) if the interest is to be preserved on revocation **XXXXXXXXXXXXXXXXXXXX** – the PBC must provide evidence to the satisfaction of the Minister for Lands that the interest has subsequently been registered, or a caveat giving notice of the interest has been lodged, at Landgate; and

- (B) if the interest is not to be preserved on revocation
XXXXXXXXXXXXXXXXXXXX – the PBC must provide to the Minister for Lands, in a form satisfactory to the Minister, a copy of a document by which the interest is surrendered, duly executed by the grantor and grantee of the interest,

the Minister for Lands shall, by order:

- (d) revoke the XXXXXXXXXXXXXXXXXXXX;
- (e) pursuant to s.51 of the LA Act, change the purpose of the reserve to the purpose set out in Column C of schedule 8 (Part C) and, where necessary, amend the boundaries of, or the locations or lots comprising, each of the reserves referred to in schedule 8 (Part C); and
- (f) place the care, control and management of the reserves created under clause 13.3(d) with the PBC (or, if requested by the PBC, with the Land Company), by way of a management order under section 46 of the LA Act and where specified in Column D of schedule 8 (Part C) for a reserve, subject to s.18 of the LA Act, include a power to grant leases or subleases or licences over the whole or any part of the land for a term not exceeding 50 years within the reserve in question.

13.4 Indemnity

The Native Title Group and the PBC indemnify the Minister for Lands and the State against or in respect of any claim that may be brought by any person whose interest in land described in schedule 8 (Part C) is not preserved on revocation of the relevant management order as a result of the interest not being registered or notified by caveat as provided in clause 13.3(c)(ii)(A).

13.5 Management order conditions

The PBC acknowledges that:

- (a) as at the Execution Date, it is the intention of the Minister for Lands to develop a set of standard conditions based on the template headings annexed at schedule 9 of this Agreement to which the care, control and management of Crown reserves throughout the State of Western Australia, including each of the Reserve Acts, are subject;
- (b) other conditions, which are specific to particular Reserve Acts, may also be imposed by the Minister for Lands; and
- (c) the Minister for Lands shall consult with the PBC in relation to the final form of conditions to which each Reserve Act will be subject.

13.6 Reserve encumbrances

- (a) The PBC acknowledges and agrees that the Reserve Acts are subject to any:
 - (i) Specified Encumbrances; and
 - (ii) Interests already in existence at the time the relevant management order is made.
- (b) The Native Title Group and the PBC (on and from the Assignment Date) consent to the Minister for Lands, at its sole discretion, granting any Interest in respect of land the subject of a Reserve Act after the management order in respect of that land has been made.

14. Process for doing Lease Act (xxxxxxxxxxxxxxxxxxxxxx)

14.1 Conditions precedent

As soon as practicable after the Minister for Lands receives:

- (a) a written request from the PBC (which request may not be made prior to the Assignment Date) to perform the Lease Act in relation to the Crown land described in Column B of schedule 10; and
- (b) a written notice to the Minister for Lands from the management body specified in Column C of schedule 10 that it agrees that its management order should be revoked pursuant to s.50(1)(a) of the LA Act; and
- (c) all documentation as is required by Landgate to effect removal of expired Lease K231262 from the Crown Land title for the land described in schedule 10 (if it has not already been removed from the title);
- (d) a statutory declaration from the management body specified in Column C of schedule 10, completed to the satisfaction of the Minister for Lands, specifying whether:
 - (i) the xxxxxxxxxxxxxxxxxxxxxx is aware of any Contamination of the relevant land; and
 - (ii) any unregistered interests or rights exist in, or have been granted by the xxxxxxxxxxxxxxxxxxxxxx over, or in respect of, the relevant land and, if so:
 - (A) if the interest is to be preserved on revocation xxxxxxxxxxxxxxxxxxxxxx – the PBC must provide evidence to the satisfaction of the Minister for Lands that the interest has

subsequently been registered, or a caveat giving notice of the interest has been lodged, at Landgate; and

- (B) if the interest is not to be preserved on **XXXXXXXXXXXXXXXXXXXX** – the PBC must provide to the Minister for Lands, in a form satisfactory to the Minister, a copy of a document by which the interest is surrendered, duly executed by the grantor and grantee of the interest,

the Minister for Lands shall,

- (e) by order revoke the **XXXXXXXXXXXXXXXXXXXX** and cancel the reserve described in Column A of schedule 10; and
- (f) grant the PBC or, if requested by the PBC, the Land Company, (provided the relevant body meets the requirements of an "approved body corporate" under section 83 of the LA Act) a lease under section 83 of the LA Act in perpetuity in respect of the land described in schedule 10, substantially in the form attached at schedule 11 of this Agreement.

14.2 Indemnity

The Native Title Group and the PBC indemnify the Minister for Lands and the State against or in respect of any claim that may be brought by any person whose interest in land described in schedule 10 is not preserved on revocation of the relevant management order as a result of the interest not being registered or notified by caveat as provided in clause 14.1(d)(ii)(A).

14.3 Lease encumbrances

- (a) The PBC acknowledges and agrees that the Lease Act is subject to any:
 - (i) Specified Encumbrances; and
 - (ii) Interests already in existence at the time the relevant management order is made.
- (b) The Native Title Group and the PBC (on and from the Assignment Date) consent to the Minister for Lands, at its sole discretion, granting any Interest in respect of land the subject of a Lease Act after the Lease Act has been done.

15. Process for granting PBC Licence (XXXXXXXXXXXXXXXXXXXX)

As soon as practicable after the Minister for Lands receives a written request from the PBC (which request may not be made prior to the Assignment Date), the Minister shall grant the PBC Licence for a term of 10 years to enter onto the land

referred to in schedule 12 for the purpose of doing all things necessary for or incidental to caring for and maintaining the rockhole located therein on such conditions as the Minister thinks fit.

16. Obligation to procure consent of xxxxxxxxxxxxxxxxxxxx

The PBC acknowledges and agrees that neither the State nor the Minister for Lands has any obligation whatsoever in procuring the consent of, or any documentation required from, the relevant management body under clauses 12.1(c), 13.3(b), 13.3(c), 14.1(b), 14.1(c) or 14.1(d).

17. Memorials and allocation of costs

17.1 Memorials

- (a) The State shall lodge a memorial on each parcel of land described in schedules 7, 8, 10 and 12 to indicate that it is to be allocated to the PBC pursuant to this Agreement.
- (b) The State shall lodge the memorials referred to in clause 17.1(a):
 - (i) on the Commencement Date on titles which have issued; and
 - (ii) in respect of unallocated Crown land, on the date a Crown land title issues.

17.2 Land costs

At the time of doing a Freehold Act, Reserve Act or Lease Act:

- (a) the State will pay the costs associated with the conversion of Crown land into the relevant tenure form, xxxxxxxxxxxxxxxxxxxx to which they are applicable; and
- (b) the PBC will pay any xxxxxxxxxxxxxxxxxxxx with the conversion of Crown land into the relevant tenure form including but not limited to:
 - (i) any xxxxxxxxxxxxxxxxxxxx; and
 - (ii) all xxxxxxxxxxxxxxxxxxxx by the land holder.

18. Retention of statutory rights, powers and duties

The allocation of the land described in schedules 7, 8, 10 and 12 does not fetter the later exercise by the Minister for Lands of any statutory rights, powers and duties, including the:

- (a) right to take land under Parts 9 and 10 of the LA Act; or
- (b) revocation of management orders; or
- (c) termination of section 91 LA Act licences.

19. PBC payments and funding

19.1 Early payment for strategic planning

- (a) The State will, in consultation and with the agreement of the Native Title Group and as soon as practicable after the Commencement Date, engage a consultant (**Independent Consultant**) for and on behalf of the Native Title Group to develop a strategic plan for the purposes of:
 - (i) the establishment, incorporation and registration of a PBC, including the development of a constitution that is based on the model rules provided by the CATSI Registrar under the CATSI Act;
 - (ii) ensuring the PBC is adequately equipped to comply with its corporate governance obligations;
 - (iii) managing the assets held on behalf of the Native Title Group, including the Benefits provided under this Agreement; and
 - (iv) identifying opportunities for projects consistent with the general benefit, promotion and advancement of the Native Title Group.
- (b) Unless the State and PBC otherwise agree, the PBC must adopt the strategic plan developed by the Independent Consultant pursuant to clause 19.1(a).
- (c) The State will provide funding of up to ~~xxxxxxxxxxxxxxxxxxxx~~ for the engagement of the Independent Consultant and to meet the Independent Consultant's reasonable costs and disbursements incurred in performing the obligations of the Independent Consultant.
- (d) Any portion of the ~~xxxxxxxxxxxxxxxxxxxx~~ referred to in clause 19.1(c) which is not paid to the Independent Consultant may be rolled over into the amount referred to in clause 19.2(b).
- (e) The Native Title Group acknowledges that in engaging the Independent Consultant under this clause 19.1, the State is required to comply with State Supply Commission policies and procurement procedures.

19.2 Annual grants for PBC administration and operation

- (a) The State and the Native Title Group agree that no payment is required to be made to the Native Title Group or the PBC under this clause 19.2 until after the Assignment Date. Until that time, the monies payable by the State to the PBC under this Agreement will be held on trust for and on behalf of the Native Title Group in an interest bearing trust account held by the DPC.
- (b) The State shall pay to the PBC, by way of annual grant, the total sum of **XXXXXXXXXXXXXXXXXXXX** set out in Column B of the table in schedule 13 for the respective purposes set out opposite in Column A of that table over a period of three (3) to five (5) years, unless the State and the PBC agree to some other manner of division of that sum informed by the strategic planning referred to in clause 19.1(a) and (b), provided that:
 - (i) the first payment (**First Annual Grant**) will only be due and payable upon approval by the State of a budget submitted by the PBC; and
 - (ii) subsequent payments will only be due and payable upon approval by the State of a revised budget submitted by the PBC not less than two (2) calendar months prior to the first, second, third and fourth anniversaries respectively of the First Annual Grant.
- (c) Each annual payment made under clause 19.2(b) shall be varied on 31 August each year in accordance with the CPI Calculation.
- (d) The State shall make the payments in clear funds by way of electronic funds transfer to a bank account nominated in writing by the PBC to the State.
- (e) The bank account nominated in accordance with clause 19.2(c) is to be established and maintained by the PBC solely for the receipt and expenditure of the abovementioned administration funding in accordance with this Agreement.
- (f) Any portion of a payment previously paid by the State but not spent by the PBC in accordance with this Agreement may be rolled over to the next payment period.
- (g) The PBC acknowledges that the payments to be made under this clause are public money and must only be expended for the purposes for which they are made.
- (h) The PBC acknowledges and agrees that this Agreement and information regarding it that is in the possession of the State is subject to the *Freedom of Information Act 1992 (WA)*.

- (i) Subject to clause 19.2(j), the Parties acknowledge and agree that despite any provisions of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Auditor General Act 2006* (WA), the *Financial Management Act 2006* (WA) and any other law are not limited or affected by this Agreement.
- (j) The PBC must allow the Auditor General, or an authorised representative, to have access to and examine the PBC's records and information concerning this Agreement on reasonable notice and in the company of a PBC representative during usual business hours.
- (k) The PBC must keep full, accurate, up to date and proper records and accounts in respect of the expenditure of the payments and administration of the bank account to enable a proper audit to be conducted in accordance with clause 19.2 and for that purpose shall allow the Auditor General or authorised representative full access to those records and accounts and the premises where they are kept.

19.3 Payment of land access incentive grant for certain exploration titles

- (a) In respect of exploration licences, prospecting licences, and special prospecting licences granted under the Mining Act in the Agreement Area following consent under clause 5.2(a) (**Payment Tenements**), the State shall pay land access incentive grants to the PBC, in accordance with this clause 19.3, as an annual payment calculated on the basis of the following:
 - (i) in respect of exploration licences, for each block (as defined under section 56C(2) of the Mining Act) falling wholly or partly within the Agreement Area:
 - (A) **xxxxxxxxxxxxxxxxxxxx** where the block is located wholly within a Non-Exclusive Area;
 - (B) where the block is located partly within a Non-Exclusive Area, **xxxxxxxxxxxxxxxxxxxx** block pro-rated to reflect the proportion of the block located in the Non-Exclusive Area; and
 - (ii) in respect of prospecting licences (including special prospecting licences), for each hectare (or part thereof) falling within the Agreement Area:
 - (A) **xxxxxxxxxxxxxxxxxxxx** per hectare where the hectare is located wholly within a Non-Exclusive Area;
 - (B) where the hectare is located partly within a Non-Exclusive Area, **xxxxxxxxxxxxxxxxxxxx** per hectare pro-rated to reflect

the proportion of the hectare located in the Non-Exclusive Area.

- (b) The annual payment calculation under clause 19.3(a) shall be made on 1 January in each year after the Commencement Date (**Calculation Date**) based on:
 - (i) those Payment Tenements that are live; and
 - (ii) the proportion of those Payment Tenements located within the Non-Exclusive Area,on the Calculation Date.
- (c) To avoid doubt, no payments under this clause 19.3 are assessable in respect of a tenement that has been created from the conversion or retention of a prospecting licence or exploration licence, such as a mining lease (converted under section 49 of the Mining Act) or a retention licence (granted under section 67 of the Mining Act).
- (d) Each annual payment made by the State to the PBC under this clause 19.3 shall be made by electronic funds transfer to an account nominated in writing by the PBC to the State.
- (e) If an annual payment is payable by the State to the PBC, but:
 - (i) the RNTBC Orders have not come into effect; or
 - (ii) the PBC has failed to nominate in writing to the State an account into which the payment is to be made,then the State shall withhold the payment until both of the events described in clause 19.3(e)(i) and (ii) have occurred and payment will be made, without interest, within 30 days thereafter.
- (f) Subject to clause 19.3(e), each annual payment under clause 19.3(a) shall be payable in arrears by no later than 31 March in each year after the Commencement Date and shall be varied in accordance with the CPI Calculation.
- (g) No later than the date of making each annual payment under this clause 19.3, the State will give the PBC a written statement detailing how the annual payment has been calculated. The State will comply with any reasonable request from the PBC made within 45 Business Days after receipt by the PBC of the original written statement, for further information or copies of supporting documents regarding the calculation of the payment.

- (h) If the PBC wishes to query or dispute the amount or basis of a payment under this clause 19.3, the PBC may invoke the default or dispute resolution provisions of clauses 23 and 24 respectively within 45 Business Days after receipt of the written statement referred to in clause 19.3(g).

20. No further Compensation pursuant to this Agreement

20.1 Full and final compensation

On and from the Execution Date, the Native Title Group acknowledges and agrees that the Benefits constitute full and final Compensation in relation to:

- (a) the effects of any future acts consented to in clauses 5.2 and 5.3; and
- (b) the surrender of native title rights and interests in clause 5.4.

20.2 Release

The Native Title Group:

- (a) releases the State and Government Parties from any liability for Compensation, other than Benefits provided for and delivered under this Agreement, in relation to the acts consented to in this Agreement, or the exercise of any right or obligation created by such acts; and
- (b) agrees that:
 - (i) it will not make any claim for Compensation under the NT Act, the LA Act or otherwise, nor will it authorise any other person to bring such a claim on its behalf, against the State or Government Parties for the effects of, or the exercise of any right or obligation created by, the acts consented to in this Agreement on any native title rights and interests of the Native Title Group; and
 - (ii) if any member of the Native Title Group (or, once the RNTBC Orders come into effect, the PBC) makes a claim for Compensation in breach of clause 20.2(b)(i), the State and Government Parties may each plead the terms of this Agreement in bar of that claim.

20.3 Set off

Any Benefits derived by the Native Title Group or the PBC under this Agreement in respect of any extinguishment, diminution, impairment or other effect on native title rights and interests (which, to avoid doubt, includes the payments made under clause 19), may be set off by the State against any future liability the State may incur to pay Compensation to the Native Title Group or the PBC as a result of claims made by the Native Title Group or the PBC.

21. Publication

21.1 Publishing template Agreement

- (a) The Parties acknowledge and agree that the State may arrange to publish the template of this Agreement, and any subsequent variations, on the 'Agreements, Treaties and Negotiated Settlements' database maintained (as at the date of this Agreement) by the University of Melbourne at www.atns.net.au.
- (b) The Parties acknowledge and agree that the State and the Government Parties may make the template of this Agreement, and any subsequent variations, available on relevant State and Government Party websites.

21.2 Publishing executed Agreement

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

22. Review and variation of this Agreement

22.1 General principle

The Parties recognise the importance of engaging in regular dialogue regarding the various matters arising under this Agreement to promote its effective implementation and, where appropriate, its variation, to meet their shared and individual objectives in a spirit of partnership and building long-term relationships.

22.2 Review Committee

- (a) The Parties shall establish a Review Committee comprising representatives of the State, the Government Parties and the PBC as follows:
 - (i) 3 representatives in total nominated by the State and Government Parties; and
 - (ii) 3 representatives nominated by the PBC.
- (b) The Review Committee shall maintain minutes of its meetings.
- (c) The quorum for a meeting of the Committee shall be 3 persons, including at least one representative of the PBC and at least one representative of the State and Government Parties.

22.3 Informal review

The Review Committee shall meet annually, on or near the anniversary of the Commencement Date of this Agreement, to review this Agreement, subsisting GSHAs and PSHAs and their respective operation including any events of default or disputes arising in connection with this Agreement or subsisting GSHAs or PSHAs.

22.4 Formal review

- (a) The Review Committee shall undertake a formal review of this Agreement and subsisting GSHAs on or near the third anniversary of the Commencement Date, and every 5 years thereafter, or such other period as is agreed, for the purpose of:
 - (i) considering recommendations under clause 22.3 made by the Review Committee in previous years, including recommendations concerning proposed amendments to this Agreement or subsisting GSHAs; and
 - (ii) considering any changes to the law which directly or indirectly affect this Agreement or subsisting GSHAs; and
 - (iii) considering any submissions made by the PBC concerning proposed variations of this Agreement or subsisting GSHAs; and
 - (iv) considering any variations of this Agreement or subsisting GSHAs necessitated by changes in political or economic circumstances or variations to the Determination.
- (b) The Review Committee shall also meet to undertake a formal review of this Agreement or subsisting GSHAs if the following events occur more than 6 months prior to a formal review under clause 22.4:
 - (i) there is a change to the law which materially affects this Agreement or subsisting GSHAs; or
 - (ii) there is a variation to the Determination which materially affects this Agreement or subsisting GSHAs.

22.5 Variation

- (a) This Agreement may not be varied unless the variation is effected in writing and executed by all of the Parties.
- (b) If this Agreement is registered on the ILUA Register, the Parties each agree that they will not, without the written consent of each of the other Parties first had and received, make any application to revoke or vary the registration of this Agreement on the ILUA Register.

- (c) If details of this Agreement are entered on the ILUA Register, then any variation of this Agreement which amends the details on the ILUA Register only takes effect upon the entry of those amended details on the ILUA Register.
- (d) If details of this Agreement are entered on the ILUA Register, and the Parties have agreed in accordance with this Agreement to vary this Agreement, then the Parties each agree to do all things necessary to vary the details of this Agreement as entered on the ILUA Register including, if necessary, having this Agreement removed from the ILUA Register and replaced with a varied Agreement.

23. Default and enforcement

23.1 Events of Default

- (a) In this clause 23 a reference to a Party means a party to the default.
- (b) A Party commits an Event of Default for the purposes of this clause 23 where the Party:
 - (i) breaches any of the following material terms of this Agreement, being clauses 4.1, 4.2, 4.3, 6(a), 7.3, 7.4, 9.2(a), 9.5(a), 10.1(a), 10.1(b), 10.5(a), 11.2, 12.1, 13.1, 13.2, 13.3, 14.1, 15, 19, 20.2(b)(i), 24.1, 25, 26.1, 26.2, 26.3 or 26.5; or
 - (ii) in the case of the PBC, commits an Insolvency Event.

23.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default under clause 23.1(b)(i), the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must:
 - (i) if the Event of Default relates to a payment, remedy the Event of Default within 5 Business Days after receiving the Default Notice; or
 - (ii) if the Event of Default does not relate to a payment but is capable of being remedied, remedy the Event of Default within 20 Business Days after receiving the Default Notice. However if the Event of Default could not reasonably be remedied within 20 Business Days, the Defaulting Party must commence taking steps, in good faith, to remedy the Event of Default within the period of 20 Business Days.
- (b) If an Event of Default occurs under clause 23.1(b)(ii), the PBC shall as soon as possible notify the State and Government Parties:

- (i) that the Event of Default has occurred;
 - (ii) of the appointment of any administrator, receiver or manager to the PBC; and
 - (iii) when the relevant Event of Default ceases to exist.
- (c) 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 clauses 23.2(a)(i) or 23.2(a)(ii) is complied with, or the Event of Default no longer exists, as applicable.
- (d) Any remedy exercised under this clause 23 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law (including the right to seek interlocutory relief and specific performance).

24. Dispute resolution

24.1 No arbitration or court proceedings

If a dispute arises under this Agreement including a dispute in respect of this clause 24.1 (**Dispute**), a Party must comply with clauses 24.2 to 24.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).

24.2 Notification

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

24.3 Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 24.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 24.4.

24.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 24.3, the chairman of LEADR will appoint a mediator at the request of either Party.

- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 24:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 24.4. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation with 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 24.6) referring the matter to arbitration or commencing legal proceedings.

24.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 24.2 to 24.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 2012 (WA)*.
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 24.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural and/or native title matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

24.6 Breach of this clause

If a Party to a Dispute breaches clauses 24.1 to 24.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

24.7 Obligations continue

Subject to clause 24.8, if a Dispute is referred for mediation or arbitration under any part of this clause 24 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

24.8 Extension of time

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

25. Confidentiality

25.1 Generally

Each Party agrees that 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 under or for the purposes of this Agreement, which is identified by the disclosing Party as confidential, but not including information:

- (a) the receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the disclosing Party; or
- (b) disclosed through publication in accordance with clause 21; or
- (c) that is public knowledge (otherwise than as a result of a breach of confidentiality by the receiving Party or any of its permitted disclosees),

is confidential, must be kept confidential and will not be disclosed except as permitted by clause 21 (regarding publication) and this clause 25 (collectively, Confidential Information).

25.2 Permitted disclosure

- (a) Subject to clauses 25.2(b) and 25.3, a receiving Party may disclose Confidential Information in any of the following circumstances:
 - (i) if it has the prior written consent of the disclosing Party;
 - (ii) to the extent required by law or applicable securities regulation or rule;
 - (iii) to the extent that the information is reasonably necessary for any processes or applications under any native title laws or related to any approvals;
 - (iv) in connection with any dispute or litigation concerning this Agreement or its subject matter or a GSHA and its subject matter;
 - (v) to the receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
 - (vi) to a proposed registered native title body corporate assignee of the PBC's rights, title and interests under this Agreement;
 - (vii) where disclosure is required by the State or a Government Party to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
 - (viii) as otherwise permitted or required by this Agreement.
- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the State or a Government Party (as defined in the relevant GSHA) may disclose that Confidential Information to the DAA and ACMC, including for the purposes of:
 - (i) the State or a Government Party (as defined in the relevant GSHA) making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application; or
 - (ii) providing a copy of each Survey Report to the DAA for DAA's collection of Aboriginal heritage survey reports; or
 - (iii) the State or a Government Party (as defined in the relevant GSHA) seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act.

25.3 Disclosure requirements

Before making any disclosure to a person under clause 25.2 the disclosing Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the disclosing Party's obligations under this Agreement; and
- (b) before doing so notify the disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clauses 25.2(a)(v) or 25.2(a)(vi), procure that the person or entity executes a deed with the disclosing Party, in such form acceptable to the disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as clause 25 of this Agreement.

25.4 Party may seek injunction

Each Party acknowledges that:

- (a) it is aware that any breach of this clause 25 may result in the disclosing 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 25 or any obligation of confidentiality under this Agreement, any adversely affected disclosing Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 25.

25.5 No waiver or transfer of intellectual property rights

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information (including any Survey Report prepared under a GSHA or any other Aboriginal Heritage Agreement) held by a disclosing Party.

26. Assignment

26.1 Assignment by Native Title Group

The Native Title Group must assign its rights and obligations under this Agreement to the PBC in accordance with the following process:

- (a) within 15 Business Days after the RNTBC Orders come into effect, the Native Title Group must give DPC notice of that fact;
- (b) within 20 Business Days of receipt of the notice referred to in clause 26.1(a), DPC must cause to be prepared for execution a deed of assignment (**Deed of Assignment**) substantially in the form set out in schedule 14 and submit it to the Native Title Group to arrange execution;
- (c) the Native Title Group authorises the Registered Native Title Claimants to execute the Deed of Assignment on their behalf;
- (d) within 20 Business Days of receipt of the Deed of Assignment from DPC, the Native Title Group must arrange for the Registered Native Title Claimants to execute it, cause it to be executed by the PBC, and return it to DPC; and
- (e) the State and Government Parties will then execute the Deed of Assignment, have it stamped if necessary, and provide copies of the fully executed (and stamped if necessary) Deed of Assignment to the Registered Native Title Claimants and the PBC.

26.2 General

- (a) Neither the State nor a Government Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Agreement in any circumstances.
- (b) If the State or a Government Party carries out any Activities through contractors, then the State or the Government Party, as applicable, will ensure that such contractors are made aware of the obligations of this Agreement.
- (c) Once assigned to the PBC under clause 26.1 and otherwise than pursuant to clause 11.2, the PBC may not assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under or in respect of this Agreement except in accordance with this clause 26.

26.3 PBC assignment

Subject to the State and Government Parties' prior written consent, which may not be unreasonably withheld or delayed, the PBC may assign the whole of its rights, title and interests under this Agreement to a registered native title body corporate in accordance with the provisions of the NT Act (including due to the RNTBC Orders being vacated or replaced by a subsequent determination under sections 56 or 57 of the NT Act of the Federal Court) provided:

- (a) it gives the State and the Government Parties at least 20 Business Days' notice prior to the proposed assignment; and

- (b) within 20 Business Days after giving the notice referred to in clause 26.3(a), the proposed replacement registered native title body corporate enters into a deed, in a form acceptable to the State and the Government Parties (acting reasonably), by which it agrees to be bound by this Agreement and to assume all of the PBC's obligations under this Agreement, and provides a copy of that deed to the State and the Government Parties; and
- (c) the PBC does all other things necessary to give effect to the assumption by the new registered native title body corporate of the obligations of the PBC under this Agreement, including things necessary to effect any variation and re-registration of this Agreement that may be required under the PBC Regulations.

26.4 Effect of assignment

- (a) Once an assignment of this Agreement has occurred under clauses 26.3, the PBC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this Agreement arising after the effective date of the assignment but without affecting any claim or liability arising prior to such date.
- (b) An assignment under this clause 26 shall not affect accrued rights and remedies arising under this Agreement prior to the effective date of the assignment.
- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 26 shall not affect the operation of this Agreement.

26.5 No encumbrance

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

27. Notices

27.1 General

Any notices to be given under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) subject to clause 27.2, must be delivered to the intended recipient by registered post or by hand or fax to the intended recipient's address or fax number specified in schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender); and

- (c) will be taken to be received by the recipient:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, 2 Business Days after the date of posting; and
 - (iii) in the case of fax, on receipt by the sender of a transmission report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of the recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00 pm (local time), it will be taken to have been duly given or made at the commencement of business on the next Business Day.

27.2 Recipients of notices

- (a) Subject to clauses 27.2(c) and 27.2(d), if the Native Title Group intends to give a notice which concerns Activities undertaken or to be undertaken by a Government Party, the Native Title Group shall give the notice to the relevant Government Party, and shall send a copy of the notice to the DPC at the address for service of notices on the State under this Agreement.
- (b) Subject to clauses 27.2(c) and 27.2(d), if the Native Title Group intends to give a notice which concerns Activities undertaken or to be undertaken by the State, the Native Title Group shall give the notice to the relevant department of the State through which the State is acting or proposes to act and shall send a copy of the notice to the DPC as the address for service of notices on the State under this Agreement.
- (c) If the Native Title Group intends to give a notice which relates to a Consultation Act or Consultation Procedure under clause 9, the Native Title Group shall give the notice:
 - (i) in the case of the State, to the department of the State which initiated the Consultation Procedure on behalf of the State; or
 - (ii) to the LA Act Department if the Consultation Procedure was initiated by or on behalf of the Minister for Lands; or
 - (iii) to the Mining Act Department if the Consultation Procedure was initiated by or on behalf of the Minister for Mines and Petroleum; or
 - (iv) otherwise to the other Government Party which initiated the Consultation Procedure,

and shall send a copy of the notice to the DPC at the address for service of notices on the State under this Agreement.

- (d) If the Native Title Group intends to give a notice which relates to a Notification Act or Notification Procedure under clause 9, the Native Title Group shall give the notice:
- (i) in the case of the State, to the department of the State which initiated the Notification Procedure on behalf of the State; or
 - (ii) to the LA Act Department if the Notification Procedure was initiated by or on behalf of the Minister for Lands; or
 - (iii) to the Mining Act Department if the Notification Procedure was initiated by or on behalf of the Minister for Mines and Petroleum; or
 - (iv) otherwise to the other Government Party which initiated the Notification Procedure,

and shall send a copy of the notice to the DPC at the address for service of notices on the State under this Agreement.

- (e) Where a matter relates to this Agreement generally or it is not clear to the Native Title Group to whom the notice should be given, the Native Title Group shall give notice to the State. Any notice given under this clause 27.2(e) shall make clear that it is the sole notice (not a copy of another notice), so that the State is not left uncertain as to whether it needs to act on the notice.
- (f) To avoid doubt, the copies of notices given to the State under clauses 27.2(a) to 27.2(d) (inclusive) are for the information of the State and to assist the State in monitoring the operation of this Agreement. The giving of such copies does not form part of the obligations regarding the giving of the relevant notices under this Agreement, including the calculation of time periods regarding such relevant notices.
- (g) The Native Title Group shall use reasonable endeavours to notify the appropriate responsible department of the State (in the case of a notice to the State), or Government Party, for the Activity. In the event that a notice is sent to the incorrect department of the State (in the case of a notice to the State), or Government Party, the State shall provide all reasonable assistance to ensure that the Native Title Group is promptly informed of the correct recipient of the notice.

28. Goods and Services Tax

28.1 Interpretation

Any reference in this clause 28 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

28.2 Amounts exclusive of GST

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Agreement are exclusive of GST.

28.3 GST payable

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

29. Costs and duties

- (a) The State shall bear any duty under the *Duties Act 2008* (WA) associated with:
 - (i) this Agreement; and
 - (ii) any document or transaction in connection with this Agreement,

XXXXXXXXXXXXXXXXXXXXX for payment of the duty.
- (b) The Native Title Group and PBC agree to do all things as may reasonably be required to facilitate an assessment of any document for duty or exemption from duty.

- (c) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting, execution and registration on the ILUA Register of this Agreement.

30. Force Majeure and Aboriginal Cultural Business

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party or Parties 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.

31. General

31.1 Entire agreement

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

31.2 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.

31.3 Severance

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

31.4 Waiver

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

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

31.5 No merger

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

31.6 Counterparts

This Agreement may be executed in a number of counterparts. All counterparts together will be taken to constitute the one instrument. If this Agreement is to be

executed in counterparts the Parties must execute sufficient numbers for each of them to retain one instrument (as constituted by the counterparts).

31.7 Further action and time

Each Party must use its best efforts to do all things necessary or desirable to give full effect to this Agreement and the matters contemplated by it. The Parties agree that time is of the essence in relation to the rights and obligations set out in this Agreement.

31.8 Survival

Clauses 1, 4, 6(b), 20, 21.1, 24, 25, 27, 28, 31.2, 31.3, 31.5 and 31.8 survive termination of this Agreement. Clauses 10.5 and 10.6 shall survive termination of this Agreement in relation to an Exploration Tenement, an Access Authority or a LA Act Low Impact Licence, as applicable, that has been granted to a Proponent pursuant to the terms of this Agreement prior to its termination.

Schedule 1 – Party Details

[Clause 27.1(b)]

**Esperance Nyungar Native
Title Group**
Notice details

Address: c/o- Goldfields Land & Sea Council
14 Throssell Street
Kalgoorlie WA 6430
Fax No. (08) 9091 1662

State of Western Australia
Notice details

Address: c/- Department of the Premier and Cabinet
Dumas House, 2 Havelock Street
West Perth WA 6005
Fax No. (08) 6552 5001

Minister for Lands
Notice details

Address: c/- Department of Lands
Level 2, 140 William Street, Perth WA 6000
Fax No. (08) 6552 4417

Minister for Environment
Notice details

Address: c/- Department of Parks and Wildlife
Locked Bag 104, Bentley Delivery Centre
Bentley WA 6983
Fax No. (08) 9334 0498

**Minister for Mines and
Petroleum**
Notice details

Address: c/- Department of Mines and Petroleum
Mineral House, 100 Plain Street
East Perth WA 6004
Fax No. (08) 9222 3862

Minister for Water
Notice details

Address: c/- Department of Water
PO Box K822
Perth WA 6842
Fax No. (08) 6364 7601

**Conservation Commission of
Western Australia**
Notice details

Address: Block 11, 17 Dick Perry Avenue
Kensington WA 6151

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

Address: c/- Department of Parks and Wildlife
Locked Bag 104, Bentley Delivery Centre
Bentley WA 6983
Fax No. (08) 6467 5562

Schedule 2 – Determination and Heritage Details

Item No.	Item Description	Details
Item 1 – Details of Determination		
Item 1(a)	Date of approved determination of native title	14 March 2014
Item 1(b)	Federal Court or High Court decision in which the Determination was made (including any decisions varying the original decision, where applicable)	<i>Bullen on behalf of the Esperance Nyungar People v State of Western Australia</i> [2014] FCA 197
Item 1(c)	The clauses and schedules within the Determination which describe the Non-Exclusive Areas	Schedule Four and Schedule Five
Item 1(d)	Name of Native Title Group (as recognised and recorded in the Determination)	Esperance Nyungars
Item 2 – Details of PBC		
Item 2(a)	Date on which the RNTBC Orders come into effect	
Item 2(b)	Federal Court or High Court decision in which the RNTBC Orders were made (including any decision(s) varying the original decision, where applicable)	
Item 2(c)	PBC's Indigenous corporation number (ICN), as recorded on the Register of Aboriginal and Torres Strait Islander Corporations under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)	
Details of NTRB		
Item 3	Name of NTRB	Goldfields Land & Sea Council

Item No.	Item Description	Details
Pre-existing Indigenous Land Use Agreements		
Item 4	Details of all pre-existing ILUAs for the purpose of clause 2.6	Nil
Item 5	For the purpose of clause 2.6 specify which provisions of a pre-existing ILUA will prevail over this Agreement (if the entire pre-existing ILUA prevails, write 'whole ILUA')	N/A
Pre-existing Aboriginal Heritage Agreements		
Item 6	Details of all pre-existing Aboriginal Heritage Agreements for the purposes of clause 10.2(a)	Nil
Item 7	For the purposes of clause 10.2(a) specify which provisions of a pre-existing Aboriginal Heritage Agreement will prevail over this Agreement and/or the GSHA or if the entire pre-existing Aboriginal Heritage Agreement prevails, write 'whole agreement'	N/A

Schedule 3 – Agreement Area

[Clause 3]

All those lands and waters commencing at the intersection of the Lowest Astronomical Tide with Longitude 120.465236° East and extending north to Latitude 33.966954° South, Longitude 120.465236° East; Then northerly to intersect the land division boundary between South West and Eucla Land Divisions (being the Rabbit Proof Fence) at Latitude 33.692936° South; Then generally northwesterly along that land division boundary to the intersection of the prolongation westerly of the southern boundary of Reserve 27023; Then easterly along that prolongation to the southernmost southwestern corner of Reserve 27023; Then easterly and generally northeasterly along boundaries of that reserve until it intersects the prolongation westerly of the southern boundary of Reserve 36004; Then easterly to and along the southern boundary of Reserve 36004 to its southeastern corner; Then easterly to the southwestern corner of Lot 1276 as shown on Deposited Plan 152267; Then easterly to the intersection of Latitude 32.997899° South with the eastern boundary of the western severance of Reserve 19549; Then northerly along the eastern boundary of that severance to its northeastern corner, being a point on a present boundary of the Salmon Gums Townsite boundary; Then northerly, easterly, generally northerly, again easterly and southerly along that townsite boundary to its easternmost southeastern corner; Then southerly to Latitude 33.016047° South, Longitude 121.657724° East; Then westerly to the southwestern boundary of Native Title Determination Application WAD6020/1998 Ngadju (WC1999/002) at Latitude 33.018101° South; Then southeasterly along that application boundary to the northernmost corner of Lot 491 as shown on Deposited Plan 215215; Then southeasterly along the northeastern boundary of that lot to its easternmost corner; Then southeasterly to the intersection of the Lowest Astronomical Tide with Longitude 123.754068° East, being a point southwest of Point Malcolm; Then generally westerly along the Lowest Astronomical Tide back to the commencement point.

Excluded Areas

All that land comprising Lot 50 as shown on Diagram 34438 and being the land described in certificate of title volume 63 folio 118A: and

All that land comprising Lot 324 as shown on Plan 13885 and being the land described in certificate of title volume 1630 folio 141.

Note:

- **Geographic Coordinates provided in Decimal Degrees.**
- **All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.**
- **Cadastral, Townsite and Land Division Boundaries sourced from Landgate Spatial Cadastral Database (SCDB) dated 30th December 2013.**
- **Native Title Determination Application WAD6020/1998 Ngadju (WC1999/002), as registered by the National Native Title Tribunal on 28 September 2000.**

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 21th February 2014

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Schedule 4 – Form of Application for ILUA Registration

[Clause 7.2(a)]

Application Form

Part A – Application details

1. Short name of agreement	Esperance Nyungar Government Indigenous Land Use Agreement
2. Certified applications (ss. 24CG(3)(a), 203BE(1)(b) & (5) and 251A NTA and r. 7(2)(f) ILUA regulations)	Is the application for registration certified by all relevant representative bodies/native title service providers (NTSPs) for the agreement area? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, is a copy of all the required certifications attached to this application? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Non-certified applications (ss. 24CG(3)(b) & 251A NTA and r. 7(2)(f) ILUA regulations)	Have all reasonable efforts (including consulting all representative bodies/ NTSPs) been made to identify all holders and potential holders of native title for the agreement area and have all those identified authorised the making of the agreement? Yes <input type="checkbox"/> No <input type="checkbox"/> Please detail the grounds on which the Registrar should be satisfied that the above requirements have been met: N/A

Part B – Party details

4. First party details (s. 24CG(1) NTA)	Name	Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods for and on behalf of the Esperance Nyungars Native Title Group
	Contact name	c/o- Mark Rumler, Principal Legal Officer
	Postal address	PO Box 3058 Adelaide Terrace PERTH WA 6832
	Telephone number	(08) 9263 8700
	Fax number (if available)	(08) 9218 9449
	Email address (if available)	Mark.Rumler@glc.com.au
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address and telephone number (if applicable)	Company name	Goldfields Land & Sea Council
	Contact name	Mark Rumler, Principal Legal Officer
	Postal address	PO Box 3058 Adelaide Terrace PERTH WA 6832
	Telephone number	(08) 9263 8700
	Fax number (if available)	(08) 9218 9449
	Email address (if available)	Mark.Rumler@glc.com.au
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Second party details (s. 24CG(1) NTA)	Name	State of Western Australia
	Contact name	Adrian Murphy
	Postal address	Department of the Premier and Cabinet Dumas House, 2 Havelock Street West Perth WA 6005
	Telephone number	(08) 6552 5333
	Fax number (if available)	(08) 6552 5001
	Email address (if available)	adrian.murphy@dpc.wa.gov.au
	Is this party also the applicant?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	State Solicitor's Office
	Contact name	Mr Rod Wahl
	Postal address	State Solicitor's Office Level 14 Westralia Square 141 St Georges Terrace, Perth WA 6000
	Telephone number	(08) 9264 1888
	Fax number (if available)	(08) 9264 1440
	Email address (if available)	r.wahl@sso.wa.gov.au
	Contact address for notification?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Contact address for Register entry?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Third party details (r. 7(3)(a) ILUA Regulations)	Name	Minister for Lands
	Contact name	N/A
	Postal address	Department of Lands Level 2, 140 William Street, Perth WA 6000
	Telephone number	N/A
	Fax number (if available)	(08) 6552 4417
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Fourth party details (r. 7(3)(a) ILUA Regulations)	Name	Minister for Environment
	Contact name	N/A
	Postal address	Department of Parks and Wildlife Locked Bag 104, Bentley Delivery Centre Bentley WA 6983
	Telephone number	N/A
	Fax number (if available)	(08) 9334 0498
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Fifth party details (r. 7(3)(a) ILUA Regulations)	Name	Minister for Mines and Petroleum
	Contact name	N/A
	Postal address	Department of Mines and Petroleum Mineral House, 100 Plain Street East Perth WA 6004
	Telephone number	N/A
	Fax number (if available)	(08) 9222 3862
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Sixth party details (r. 7(3)(a) ILUA Regulations)	Name	Minister for Water
	Contact name	N/A
	Postal address	Department of Water PO Box K822 Perth WA 6842
	Telephone number	N/A
	Fax number (if available)	(08) 6364 7601
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Seventh party details (r. 7(3)(a) ILUA Regulations)	Name	Conservation Commission of Western Australia
	Contact name	N/A
	Postal address	Block 11, 17 Dick Perry Avenue Kensington WA 6151
	Telephone number	N/A
	Fax number (if available)	(08) 9389 8602
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Eighth party details (r. 7(3)(a) ILUA Regulations)	Name	Conservation and Land Management Executive Body
	Contact name	N/A
	Postal address	Department of Parks and Wildlife Locked Bag 140, Bentley Delivery Centre Bentley WA 6983
	Telephone number	N/A
	Fax number (if available)	(08) 6467 5562
	Email address (if available)	N/A
	Is this party also the applicant?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Representative's name, address, and telephone number (if applicable)	Company name	N/A
	Contact name	N/A
	Postal address	N/A
	Telephone number	N/A
	Fax number (if available)	N/A
	Email address (if available)	N/A
	Contact address for notification?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Contact address for Register entry?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Part C – Mandatory parties

<p>5. Native title group – registered native title claimant or registered native title body corporate (s. 24CD(1) & (2)(a)–(b) NTA)</p>	<p>Is there one or more:</p> <ul style="list-style-type: none"> • registered native title claimant(s) or • registered native title body/bodies corporate <p>for any of the land or waters in the agreement area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, are all such registered native title claimants and/or all registered native title bodies corporate parties to the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p>Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods for and on behalf of the Esperance Nyungars Native Title Group</p>
<p>6. Native title group – no registered native title claimant or registered native title body corporate (s. 24CD(1), (2)(c) & (3) NTA)</p>	<p>If there is no registered native title claimant or native title body corporate for all or any part of the agreement area, one or more of the following persons/bodies must be party to the agreement (there must be at least one):</p> <p>A person(s) who claims to hold native title in relation to an area?</p> <p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>A representative body/NTSP for the area?</p> <p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>If yes, please identify which party/parties:</p>

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

<p>8. Other native title parties (s. 24CD(4)(a) & (b) NTA)</p>	<p>Please identify any other party/parties who claims to hold native title in relation to the area who has not previously been identified in questions 5 or 6.</p> <p>N/A</p>
<p>9. Representative Aboriginal/Torres Strait Island Bodies or NTSPs for the area (s. 24CD(7) NTA and r. 7(3)(b) & (4) ILUA Regulations)</p>	<p>Are there any representative bodies/NTSPs for any of the area covered by the agreement not previously identified in question 6?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Goldfields Land & Sea Council South West Aboriginal Land & Sea Council</p> <p>If yes, are any representative bodies/NTSPs for any of the area a party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please identify which representative body/NTSP:</p> <p>N/A</p>
<p>10. Government parties (r. 7(3)(c) ILUA Regulations)</p>	<p>If not previously identified in question 7, is the Commonwealth, State or Territory government a party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please identify which party/parties:</p> <p>N/A</p>

Part E – Informing representative bodies/NTSPs of intention to enter agreement

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

<p>12. Complete description of agreement area (s. 24CG(2) NTA and r. 7(2)(d) & 5 ILUA Regulations)</p>	<p>Provide a ‘complete description’ of the agreement area, including any areas within the external boundary of the agreement area that are excluded from the agreement area (or refer to relevant section of agreement):</p> <p>See schedule 3 of Agreement</p> <p>Note: a map of the agreement area showing geographic coordinates must be attached to this application or be contained within the agreement.</p>
<p>(s. 24CG(2) NTA and r. 7(2)(e) & 5 ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title that is intended to extinguish native title rights and interests in the agreement area?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please provide a ‘complete description’ of those areas (or refer to relevant section of agreement):</p> <p>See clause 5.4 and land parcels described in schedule 7 of the Agreement, plus technical descriptions and maps attached to this application.</p> <p>Note: a map showing geographic coordinates which identifies any areas where the surrender of native title is intended to extinguish native title rights and interests must be attached to this application or be contained within the agreement.</p>

Part G – Operating period

<p>13. Operating period (r. 7(3)(d) ILUA Regulations)</p>	<p>Does the agreement specify a time period during which it will operate?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If applicable, please provide the commencement date here (the commencement date may also be defined by reference to a specified event or activity, e.g. once a determination of native title is made by the Federal Court):</p> <p>The Agreement commences on the Execution Date, except for:</p> <p>(a) clauses 5.1 to 5.6 (inclusive), 5.8, 6, 9, 10, 17, 19.1, 19.3 and 22, which will commence on the Commencement Date; and</p> <p>(b) clauses 12, 13, 14, 15 and 19.2, which will commence on the Assignment Date.</p> <p>If applicable, please write the end date here (the end date may also be defined by reference to a specified event or activity, e.g. upon completion of a particular project):</p> <p>The Agreement continues indefinitely unless one of the events in clause 2.2 occurs.</p> <p>Please specify where in the agreement details of the operating period are located:</p> <p>See clause 2</p>
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Part H – Statements in the agreement

<p>14. Consent to future acts (s. 24EB(1)(b) NTA and r. 7(5)(a) ILUA Regulations)</p>	<p>Does the agreement contain any statement/s consenting to the doing of a particular future act, or class of acts, whether or not subject to conditions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (e.g. clauses 5 and 6 plus definitions):</p> <p>See clause 5, plus definitions</p>
<p>15. Acts excluded from the right to negotiate (s. 24EB(1)(c) NTA and r. 7(5)(b) ILUA Regulations)</p>	<p>Does the agreement include any statement/s to the effect that the right to negotiate provisions of the Act are not intended to apply to any or all of the future acts included in the agreement?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>See clause 5.6</p>
<p>16. Surrender intended to extinguish native title (s. 24EB(1)(d) NTA and r. 7(5)(c) ILUA Regulations)</p>	<p>Does the agreement provide for the surrender of native title rights and interests in the future?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to extinguish native title rights and interests?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please also ensure that question 7 has also been completed):</p> <p>See clause 5.4</p>

<p>17. Validation of future acts that have already been done invalidly (s. 24EBA(1)(a)(i)–(ii) NTA and r. 7(5)(d)–(e) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of future acts or class of future acts (other than intermediate period acts or the surrender of native title) that have already been done invalidly, whether or not subject to conditions?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>N/A</p>
<p>18. Intermediate period acts affected (s. 24EBA(1)(a) (iii) NTA and r. 7(5)(f) ILUA Regulations)</p>	<p>Does the agreement provide for changing the effects on native title of the validation of an intermediate period act or class of acts?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement:</p> <p>N/A</p>
<p>19. Validation of the previous purported surrender of native title (s. 24EBA(1) & (4) NTA and r. 7(5)(g) ILUA Regulations)</p>	<p>Does the agreement provide for the validation of the extinguishment of native title rights and interests by surrender which has already occurred invalidly?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, does the agreement contain a statement to the effect that the surrender is intended to have extinguished those native title rights and interests?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please specify where each such statement is located in the agreement (please ensure that question 7 has also been completed):</p> <p>N/A</p>
<p>20. Any other comments about statements in the agreement?</p>	<p>N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/></p>

Part I – Parts of the Register to be kept confidential

21. Confidential information	<p>Please indicate if there is any information or documents which you do not wish to be available for inspection by the public if the agreement is registered:</p> <p>Clauses and schedules relevant to the land allocation and financial payments are to remain confidential unless otherwise agreed by the State and Native Title Group or PBC.</p> <p>Note: the Registrar can only keep information confidential to the extent that the law allows.</p> <p>Is the agreement between the parties confidential?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (to the extent outlined above)</p>
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Part J – Document checklist

<p>Documents that must accompany the application (s. 24CG(2) NTA, r. 7(2) ILUA Regulations and r. 9(1) PBC Regulations)</p>	<p>A copy of the agreement (the original is not required) including any attachments or appendices— s. 24CG(2).</p>	<p>Yes <input checked="" type="checkbox"/></p>
	<p>A copy of each determination of native title for each party that is a registered native title body corporate—r. 7(2)(a).</p>	<p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p>
	<p>A statement by each party to the agreement, signed by or for the party, that the party agrees to the application being made— r. 7(2)(b).</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>Specify where in agreement/application</p> <p>See clause 7.2</p>
	<p>An extract from the Register of Native Title Claims giving details of each party that is a registered claimant—r. 7(2)(c).</p>	<p>Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p>
	<p>A complete description of the agreement area (r. 7(2)(d) and (5)) including:</p> <ul style="list-style-type: none"> • any areas within the external boundary of the agreement area that are not included in the agreement area, and • a map showing geographic coordinates of that area. 	<p>Yes <input checked="" type="checkbox"/></p> <p>Specify where in agreement/application</p> <p>See schedule 3</p>

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

	<p>If there is a representative body/NTSP for the agreement area and it is not a party, a statement signed by a party that is a member of the native title group (see s. 24CD(1)–(3)) that at least one representative body/NTSP was informed of the native title group’s intention to enter into the agreement—r. 7(4).</p>	<p>Yes <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>Attached to application</p>
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Schedule 5 – Proponent Acceptance Deed

[Clauses 10.3, 10.4 and 10.5(c)]

This Proponent Acceptance Deed is made as a deed poll by:

Parties

.....

.....

(Tenure Holder) [XX – Insert name(s) and, if applicable, ABN(s)]

of:

.....

.....

.....

.....

[XX – Insert address of Tenure Holder]

in relation to the PSHA to be entered into in accordance with this Proponent Acceptance Deed, in respect of the Tenure.

Background

- A. The Tenure Holder is the registered holder of the Tenure.
- B. The Tenure is subject to certain conditions, including that there must be an Aboriginal Heritage Agreement which applies to the Tenure and Activities carried out pursuant to the Tenure.
- C. By signing this Proponent Acceptance Deed and subject to the satisfaction of the conditions precedent set out in this Proponent Acceptance Deed, the Tenure Holder assumes the rights and obligations of the Proponent party under the PSHA as if the Tenure Holder were the Proponent referred to in the PSHA and the Tenure were the Tenure referred to in the PSHA.

Operative Provisions

The Tenure Holder covenants as follows.

1. Definitions and interpretation

- (a) **PBC** means the 'prescribed body corporate' (as that term is used in Division 6 of Part 2 of the NT Act) in respect of the Native Title Group for the Determination Area and the ILUA as at the relevant time.
- (b) **PSHA** means an agreement in the form of the Proponent Standard Heritage Agreement that, in accordance with the ILUA, applies in the Heritage Area in which the Tenure is located wholly or partially.
- (c) **Tenure** means [XX – Insert details of relevant Exploration Tenement(s) or Access Authority(ies)].
- (d) Words capitalised and not otherwise defined in this Proponent Acceptance Deed have the meaning given in the PSHA.

2. Covenant to be bound

The Tenure Holder enters into the PSHA:

- (a) by duly completing and signing this Proponent Acceptance Deed; and
- (b) subject to the conditions precedent described in clause 3 of this Proponent Acceptance Deed being first satisfied,

and thereby:

- (c) acknowledges that a PSHA will be deemed to have been entered in to between the PBC [or the Native Title Group] and the Tenure Holder for the Tenure;
- (d) the Tenure Holder will be deemed to have assumed the rights and obligations of the Proponent party under the PSHA as it relates to the Tenure and to Activities carried out pursuant to that Tenure; and
- (e) the PBC [or the Native Title Group] and the Tenure Holder will be legally bound by the PSHA, and each may enforce it against the other, as if that agreement was executed by the Tenure Holder (as the Proponent referred to in the PSHA) and by the PBC [or the Native Title Group].

3. When effective

The PSHA comes into force and effect between the Tenure Holder and the PBC [or the Native Title Group] on the date upon which all the following conditions precedent have been satisfied:

- (a) the PBC [or the Native Title Group] fails, within 60 Business Days after the latter of the grant of the Tenure and notification of such grant to the PBC [or

the Native Title Group] under clause 9.6, clause 9.7, clause 9.8 or clause 9.9 as applicable of the ILUA to execute and provide to the Tenure Holder an Aboriginal Heritage Agreement (to which the Tenure Holder is, or is to be, the counterparty) that applies to such Tenure; and

- (b) the Tenure Holder has subsequently duly completed and executed this Proponent Acceptance Deed; and
- (c) the Tenure Holder has provided the PBC [or the Native Title Group] with a copy of this executed Proponent Acceptance Deed.

4. Benefit of Proponent Acceptance Deed

This Proponent Acceptance Deed is made by the Tenure Holder in favour, and for the benefit, of the PBC and the Native Title Group.

5. Application

Upon the PSHA coming into force and effect in accordance with clause 3 of this Proponent Acceptance Deed, it shall apply to the Tenure and any Activities carried out pursuant to that Tenure.

6. Independent Legal Advice

The Tenure Holder acknowledges that it has had an opportunity to seek independent legal advice with respects to all aspects of this Proponent Acceptance Deed, the PSHA and the ILUA.

7. Notices

For the purposes of clause 21 of the PSHA, the notice details for the Tenure Holder are:

Name: [XX – Insert name of Tenure Holder]

Address: [XX – Insert address in Western Australia of Tenure Holder]

Facsimile: [XX – Insert fax number for Tenure Holder]

Executed by the Tenure Holder as a deed poll.

Schedule 6 – Proponent Statutory Declaration

[clause 10.7]

Statutory Declaration

Oaths, Affidavits and Statutory Declarations Act 2005 (WA)

I,

[XX – Insert full name, address and occupation of person making declaration]

Do solemnly and sincerely declare:

(* (**) Delete whichever is not applicable

1. (* I am the registered holder of the following Tenure [XX – Insert details of Tenure].

(*) I am a director of [XX – Insert name of corporation] being the registered holder of the following Tenure [XX – insert details of the Tenure] and am duly authorised by it to make this declaration.
2. (**) The registered holder of the Tenure as mentioned above has on [XX – Insert date of Aboriginal Heritage Agreement] entered into an Aboriginal Heritage Agreement with [XX – Insert name of relevant prescribed body corporate or Native Title Group] that applies to the Tenure.

(**) The registered holder of the Tenure as mentioned above has on [XX – Insert date of Regional Standard Aboriginal Heritage Agreement], at the election of [XX – Insert name of relevant prescribed body corporate or Native Title Group], entered into a Regional Standard Aboriginal Heritage Agreement with [XX – Insert name of relevant prescribed body corporate or Native Title Group] that applies to the Tenure.

(**) The registered holder of the Tenure as mentioned above has made reasonable endeavours to execute a Aboriginal Heritage Agreement with [XX – Insert name of relevant prescribed body corporate] (**PBC**) [or the Native Title Group] within 60 Business Days (as defined in [XX – Insert name of relevant ILUA]) (**ILUA**) of the latter of the grant of the Tenure and notification of such grant to the PBC [or the Native Title Group] under clause 9.6, clause 9.7, clause 9.8 or clause 9.9 as applicable of the ILUA and, in the absence of an executed Aboriginal Heritage Agreement, has on [XX –

Insert date of Proponent Acceptance Deed] subsequently executed a Proponent Acceptance Deed which applies to the Tenure and provided a copy of the same to the PBC [or the Native Title Group].

3. By entering into an Aboriginal Heritage Agreement with the PBC [or Native Title Group] in the manner provided in clause 2 above, and upon providing this Statutory Declaration to the [XX – Insert details of relevant Department], I believe that the registered holder of the Tenure as mentioned above will have satisfied the conditions applicable to the Tenure.
4. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
5. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

Declared

(Signature of person making declaration)

In the presence of:

(Signature of Authorised Witness)

(Name and qualification of Authorised Witness)

Instructions for completing Statutory Declaration

The following is a guide for executing a statutory declaration pursuant to Oaths, Affidavits and Statutory Declarations Act 2005 (WA). It is recommended that prior to executing any statutory declaration the person making the declaration should consult the provision of that Act to ensure compliance with it.

Signature by the person making the statutory declaration

The person who is making the statutory declaration must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any alteration that has been made to the statutory declaration (if any); and
- (c) in the presence of an authorised witness declare orally:
 - (i) that he or she is the person named as the maker of the statutory declaration;
 - (ii) that the contents of the statutory declaration are true;
 - (iii) that the signature or mark is his or hers; and
 - (iv) if necessary, that any attachment to the statutory declaration is the attachment referred to in it.

Witnessing of a statutory declaration

After the maker of the statutory declaration has complied with the authorised witness must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any alteration in the statutory declaration (if any); and
- (c) imprint or clearly write his or her name and qualification as an authorised witness.

Categories of authorised witnesses

A statutory declaration must be made before one of the following persons (authorised witnesses):

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer, Defence force officer, Dentist, Doctor, Electorate officer of a member of State Parliament, Engineer, Commonwealth Industrial organisation secretary, Insurance broker, Justice of the Peace, Landgate officer, Lawyer, Local government CEO or deputy CEO, Local government councilor, Loss adjuster, Marriage celebrant, Member of Parliament, Minister of religion, Nurse, Optometrist, Patent attorney, Physiotherapist, Podiatrist, Police officer, Post office manager, Psychologist, Public notary, Public servant (Commonwealth), Public servant (State), Real estate agent, Settlement agent, Sheriff or deputy sheriff, Surveyor, Teacher, Tribunal officer or Veterinary surgeon.

Schedule 7 – Freehold Acts

[clause 12]

Schedule 8 – Reserve Acts

PART A – Creation of new reserves [clause 13.1]

PART B – Changing the purpose of and, where necessary, the boundaries/locations/lots of, reserves already in existence

[clause 13.2]

PART C – Reserves in existence and where existing management order must first be revoked

[clause 13.3]

Schedule 9 – Standard Management Order Conditions Template

[Clause 13.5]

BACKGROUND

- A. The Minister is authorised pursuant to section 46 of the LA Act by order to place the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose, and on such terms and conditions as the Minister may determine.
- B. The Minister has by order placed the care, control and management of the Reserve with the Management Body on and subject to the provisions of the LA Act and the terms and conditions contained in the Management Order.
- C. The Management Body has accepted taking the care, control and management of the Reserve on the terms and conditions contained in the Management Order.

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Schedule 11 – Draft lease

[Clause 14.1(f)]

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PARTIES

The parties to this Lease are the Lessor and the Lessee defined in clause 1.1.

RECITALS

- A. The Minister is authorised by section 83 of the LAA to grant leases of Crown land for the purposes of advancing the interests of any Aboriginal person or persons and on such terms and conditions as the Minister may determine.
- B. The Lessee is an Approved Body Corporate as defined in section 83(3) of the LAA.
- C. The Minister has agreed to grant to the Lessee and the Lessee has agreed to take a lease of the Leased Premises subject to the Encumbrances, in perpetuity and at the Rent and on and subject to the provisions of the LAA and the terms and conditions of this Lease.

AGREEMENT

The parties covenant and agree on the matters set out on the front page of this Lease and as follows:

1. DEFINITIONS, INTERPRETATION AND EXERCISE OF MINISTER'S POWERS

1.1 DEFINITIONS

In this Lease, the following definitions, together with those in the Schedule, apply unless the contrary intention appears:

Approved Body Corporate has the same meaning as defined in section 83(3) of the LAA.

Authorisation includes a consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Government Agency or required under any Law and all conditions attached to an authorisation.

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

Commencement Date means the date shown on the front page of this Lease as the commencement date.

Contamination is the state of being contaminated as that term is defined in the CSA.

Crown means the Crown in right of the State of Western Australia.

CSA means the *Contaminated Sites Act 2003*.

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

Encumbrances means the limitations, interests, encumbrances and notifications shown on the front page of this Lease.

Environmental Harm has the same meaning as that term is defined in the EPA.

Environmental Law means all planning, environmental, Contamination or Pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

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

EPA means the *Environmental Protection Act 1986*.

Front page means the front page of this Lease, being in the form suitable for registration at the TLA Agency.

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

GST has the meaning given in section 195-1 of the GST Act.

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

GST Law has the meaning given in section 195-1 of the GST Act.

Improvements mean any building, facility or structure on the Leased Premises.

Insurance Policies means each of the policies of insurance required to be taken out by the Lessee under clause 7.

Interest Rate means the rate determined under section 8(1) (a) of the *Civil Judgments Enforcement Act 2004* from time to time.

LAA means the *Land Administration Act 1997*.

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

Lease means this lease, as it is amended from time to time, varied, supplemented, replaced, extended, renewed or assigned, as permitted by this lease, and includes any deed of variation of this lease.

Leased Premises means the land described on the front page of this Lease.

Lessee means the party so described on the front page of this Lease and, includes its successors and permitted assigns and if the Lessee is a natural person, its executors, administrators and permitted assigns.

Lessor means the State of Western Australia acting through the Minister, care of the Department.

Minister means the Minister for Lands, a body corporate under section 7 of the LAA.

Permitted Use means the use of the Leased Premises described in item 2 of the Schedule.

Pollution means any thing that is pollution within the meaning of that term as defined in the EPA that is not authorised under any Law.

Relevant Land means the Leased Premises and Surrounding Area.

Rent means the annual rent specified in item 1 of the Schedule.

Rent Payment Date means the Commencement Date and the anniversary of the Commencement Date in each year of the Term.

Services include all public utility services including roads, footpaths, water supply, sewerage, drainage, electricity and gas reticulation and telecommunications equipment.

Schedule means the schedule to this Lease.

Surrounding Area means any land or water adjacent to or in the vicinity of the Leased Premises and the air generally above the Leased Premises, and includes an affected site within the meaning of that term as defined in the CSA.

Taxable Supply has the meaning given in section 195-1 of the GST Act.

Tax Invoice has the meaning given in section 195-1 of the GST Act.

Term means a period in perpetuity commencing on the Commencement Date.

TLA Agency means the agency or department responsible for the registration of dealings relating to land in the register kept pursuant to the *Transfer of Land Act 1893*.

1.2 INTERPRETATION

In this Lease, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of this Lease or of any provision contained in this Lease;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to parts, clauses and parties are references to parts and clauses of, and parties to, this Lease;
- (g) a reference to a party to this Lease includes that party's successors and permitted assigns and in the case of a natural person also includes that person's personal representatives and administrators;
- (h) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (i) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (j) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this Lease or of any of the provisions of this Lease;
- (k) references to statutes, regulations, ordinances and by-laws when contained in this Lease include amendments, re-enactments or consolidations of any of them and a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute;
- (l) a reference in this Lease to a subclause, paragraph or subparagraph is a reference to a subclause, paragraph or subparagraph in the clause or definition in which the reference appears; and
- (m) words that are defined in the LAA and used in this Lease have the same meaning given to them under the LAA.

1.3 PERFORMANCE OF FUNCTIONS BY MINISTER

All acts and things that the Lessor or the Minister is required or empowered to do under this Lease must be done by the Minister or the Minister's delegate appointed under section 9 of the LAA.

1.4 APPROVAL BY THE MINISTER

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessee is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Minister in the Minister's absolute discretion and may be given subject to such conditions as the Minister may determine unless otherwise provided in this Lease.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under subclause (a) will constitute a breach of a condition or covenant under this Lease.

2. APPLICATION AND EXCLUSION OF STATUTES

2.1 LAND ADMINISTRATION ACT

The Lessee and the Lessor agree that:

- (a) the provisions of the LAA relating to leases of Crown land granted under section 83 of the LAA apply to the Lessee; and
- (b) the provisions of this Lease do not in any way affect, alter or derogate from the Lessor's or the Minister's rights or powers conferred under the LAA.

2.2 TRANSFER OF LAND ACT

Such of the covenants and powers as might otherwise be implied by the *Transfer of Land Act 1893* do not apply to this Lease and are not implied in this Lease unless expressly included.

3. RENT

3.1 PAYMENT OF RENT

The Lessee must pay to the Lessor the Rent:

- (a) on each Rent Payment Date;
- (b) at the place and in the manner notified by the Lessor in writing at any time or in the absence of that direction, at the address specified in item 3 of the Schedule;
- (c) without deduction or abatement; and
- (d) without demand from the Lessor.

4. SERVICES AND OTHER PAYMENTS BY LESSEE

4.1 PAYMENT OF RATES, TAXES, ETC SEPARATELY ASSESSED

The Lessee must pay, when due and payable, all rates, taxes (including State land tax) and other charges (including impositions, assessments, outgoings, duties and fees) of any Governmental Agency which are separately charged upon the Leased Premises or imposed or levied upon the Lessor, the Minister or the Lessee in respect of the Leased Premises separately or the ownership of the Leased Premises separately.

4.2 PAYMENT OF SERVICE CHARGES SEPARATELY METERED

The Lessee must, in respect of the supply of any water, gas, electricity, telephone, waste disposal or other services separately metered or charged for the Leased Premises, pay all accounts when they become due and payable.

4.3 OVERLAP AND DAILY ACCRUAL

The rates, taxes, other charges and service charges referred to in clauses 4.1 and 4.2 include such of those items as arise during the Term as well as such of those items as arise before or after the Term but in respect of a period of time which overlaps the start or end of the Term.

4.4 LEGAL COSTS AND DUTY

- (a) The Lessee must pay to the Lessor the Lessor's reasonable legal and other costs and expenses arising out of this Lease, including those incurred:
- (i) in relation to an assignment, subletting or surrender of this Lease;
 - (ii) in considering a request for any consent or approval by the Minister;
 - (iii) as a result of a default by the Lessee in performance of his obligations under this Lease; and
 - (iv) as a result of the exercise of any right, power, privilege, authority or remedy of the Lessor or the Minister in respect of this Lease, including the preparation and service of any notice referred to in clause 12.
- (b) The Lessee is to pay or reimburse the Lessor on demand for:
- (i) all duty, penalties or fines payable under the *Duties Act 2008* in respect of any dutiable transaction or other matter to which this Lease and any extension of the Term of this Lease relates; and
 - (ii) all costs relating to the registration of this Lease and any extension of the Term of this Lease.

4.5 INTEREST

- (a) If any amount payable by the Lessee under this Lease (whether formally demanded or not) is not paid within 30 days after it becomes due for payment, the Lessee is to pay to the Lessor interest on demand, on the amount from the due date for payment until it is paid in full.
- (b) Interest is to be calculated on a daily basis, at the Interest Rate.
- (c) Nothing in this clause affects or prejudices any other right that the Lessor may have in respect of the Lessee's failure to pay any amount by the due date for payment.

5. LESSEE'S GENERAL OBLIGATIONS

5.1 PERMITTED USE

- (a) This Lease confers on the Lessee a right to occupy and use the Leased Premises for the Permitted Use, but only to the extent that such use does not create a common law or statutory liability.
- (b) The Lessee must not use the Leased Premises or allow the Leased Premises to be used for any purpose other than the Permitted Use.
- (c) The Lessee must put the Leased Premises to use for the Permitted Use from the Commencement Date and continue to do so and use the Leased Premises in accordance with the terms of this Lease and otherwise in a good and workmanlike manner and in accordance with sound business practice.
- (d) The Lessee must not make any alterations or additions to the Leased Premises without the Lessor's prior written consent.

5.2 COMPLIANCE WITH LAW

- (a) The Lessee must comply with all Laws and the requirements, notices or orders of any Governmental Agency having jurisdiction or authority in respect of one or more of:
 - (i) the Leased Premises;
 - (ii) the use and occupation of the Leased Premises; and
 - (iii) the Improvements, and without limitation, including any machinery, plant, equipment, fixtures and fittings of the Lessee on the Leased Premises.
- (b) On being served with a notice by the Lessor, the Lessee must punctually comply with any notice or direction served on the Lessor or the Minister by a Governmental Agency requiring the destruction of noxious animals, plants or

pests or the carrying out of repairs, alterations or works to the Leased Premises.

- (c) The Lessee must obtain and keep current all permits, licences, approvals and consents required, to undertake any works on the Leased Premises or carry on business on or from the Leased Premises, in relation to the activities permitted by the Permitted Use.

5.3 NUISANCE

Except for the Permitted Use in clause 5.1, the Lessee must not carry on or permit to be carried on, on the Leased Premises:

- (a) any noxious noisome or offensive activity, trade or calling;
- (b) anything which may be a nuisance, an annoyance or objectionable to owners of adjoining land to the Leased Premises;
- (c) anything which causes damage or loss to the Lessor or the owners or occupiers of any adjoining property or any other person; or
- (d) any illegal activity.

5.4 KEEP CLEAN AND IN GOOD REPAIR

The Lessee must at the Lessee's expense:

- (a) keep and maintain the Leased Premises and all Improvements including without limitation any machinery, plant, equipment, fixtures and fittings in or on the Leased Premises, in good and safe repair and condition;
- (b) keep and maintain the Leased Premises clean and tidy;
- (c) make good any damage caused to the Leased Premises and all Improvements howsoever caused; and
- (d) shall upon expiry or earlier termination of this Lease yield up the Leased Premises and Improvements to the Lessor in a state of good and safe repair,

to the reasonable satisfaction of the Lessor.

5.5 DEALINGS WITH ANY INTEREST IN THIS LEASE OR THE LEASED PREMISES TO BE APPROVED BY THE MINISTER

- (a) It is agreed by the parties that section 18 of the LAA applies to this Lease and, without limiting the generality of that section, the Lessee must not, without the prior written consent of the Minister:

- (i) part with possession of, share possession of or sublet the Leased Premises;
 - (ii) mortgage, charge or in any way encumber the Lessee's estate or interest in the Leased Premises or its rights and powers as Lessee under this Lease;
 - (iii) dispose of, deal with, or assign its estate or interest in the Leased Premises or its rights and powers as Lessee under this Lease; or
 - (iv) otherwise deal with any interest whatsoever in the Leased Premises or the Lessee's estate or interest under this Lease.
- (b) Any consent given by the Minister under subclause (a) may be subject to such terms and conditions as the Minister in his absolute discretion may impose.
- (c) For the purposes of subclause (a)(iii) where the Lessee is a corporation (not being a corporation whose shares are listed on any stock exchange in Australia or in any other place proposed by the Lessee and agreed to in writing by the Minister), any change in the identity of the owner of more than 50% of the voting rights in the Lessee, or in a corporation which is the owner of more than 50% of the voting rights in the Lessee or which has effective control of the Lessee, shall be deemed to be an assignment or disposition of or dealing with the Lessee's estate or interest in the Leased Premises or of its rights or powers under this Lease.
- (d) Where any change referred to in subclause (c) occurs without the prior written consent of the Minister, the Lessee shall be deemed to have committed a breach of this Lease at the time of the change.
- (e) Without limiting subclause (a), the Lessee must not agree to or permit any encroachment or easement into, upon, over or against the Leased Premises or any part of the Leased Premises without the prior written approval of the Minister.
- (f) The Lessee agrees that the Minister may, before giving approval under section 18 of the LAA, in writing require:
 - (i) such information concerning the transaction for which approval is sought as the Minister specifies; and
 - (ii) information furnished in compliance with subclause (f) (i) to be verified by statutory declaration.
- (g) The provisions of sections 80 and 82 of the *Property Law Act 1969* are hereby excluded.

5.6 DEALINGS WITH LEASED PREMISES

Subject to clause 5.5, the Lessee agrees that the Lessee will not dispose of, deal with or assign its estate or interest in the Leased Premises or its rights or powers as Lessee under this Lease, unless the Lessee has secured from the assignee a deed of covenant with the Lessor in a form satisfactory to the Lessor to observe and perform the terms and conditions of this Lease, as if such person was a party to and had executed this Lease.

5.7 LESSEE NOT TO REMOVE MATERIALS EXCEPT WITH APPROVAL OF LESSOR

- (a) The Lessee must not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell, or similar substance or permit any other person to undertake any such action without the prior approval in writing of the Lessor and subject to such conditions as the Lessor may determine.
- (b) Subclause (a) does not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement or alteration authorised by or under this Lease, provided that any such removal digging up or excavation is undertaken in accordance with the requirements of that authority.

5.8 COST OF LESSEE'S OBLIGATIONS

Unless this Lease provides otherwise, anything that must be done by the Lessee under this Lease, whether or not at the request of the Lessor, must be done at the risk and cost of the Lessee.

5.9 REGISTRATION OF LEASE

The Lessee is to lodge this Lease for registration at the TLA Agency, within 30 days after it is executed by the Minister and the Lessee.

5.10 COMPLIANCE WITH ABORIGINAL HERITAGE ACT 1972 AND ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984 (CTH)

Without limiting the provisions of this Lease, the Lessee must comply with the provisions of the *Aboriginal Heritage Act 1972* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*.

6. LESSEE'S ENVIRONMENTAL OBLIGATIONS

- (a) The Lessee:
 - (i) must obtain any Authorisation required for any conduct, activity or use undertaken by the Lessee on the Leased Premises, including the Permitted Use before that conduct, activity or use is undertaken and

must keep all such Authorisations in full force and effect throughout the term;

- (ii) must use the Leased Premises in a manner which complies with each Environmental Law and each Authorisation held by the Lessee in accordance with subclause (a)(i);
- (iii) must not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Leased Premises or any conduct or activity relating to the use of the Leased Premises;
- (iv) must not cause or permit any Contamination, Pollution or Environmental Harm of the Relevant Land;
- (v) must at all times comply with the requirements of the *Soil and Land Conservation Act 1945 (WA)* in respect of any clearing proposed to be undertaken or undertaken on the Leased Premises;
- (vi) must notify the Lessor immediately on becoming aware of:
 - (A) the existence of any Contamination affecting the Relevant Land which relates to or arises from the Lessee's use of the Leased Premises;
 - (B) any Pollution affecting the Relevant Land which relates to or arises from the Lessee's use of the Leased Premises;
 - (C) an Environmental Notice being served on the Lessee or any other person which relates to or arises from the Lessee's use of the Leased Premises; or
 - (D) the making of a complaint to any person, including but not limited to, the Lessee or the commencement of proceedings against the Lessee relating to an alleged failure by the Lessee to observe or perform an obligation under an Environmental Law or Authorisation; and
- (vii) must, at the Lessee's cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Lessee's use of the Leased Premises, whether the notice is served on the Lessor or the Lessee.
- (viii) must, if it requires to make and use bores, pumps, pipelines, tanks and related equipment and to take water from the Leased Premises, hold, keep current, and comply with the terms of, any licence required under the *Rights in Water and Irrigation Act 1914 (WA)*.

- (b) Without:
- (i) affecting the obligations of the Lessee in this clause; or
 - (ii) limiting any right of, or indemnity in favour of, the Lessor,
- if any Contamination, Pollution or Environmental Harm occurs in breach of subclause (a), the Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the reasonable satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.
- (c) The obligations of the Lessee under this clause continue after the expiration or earlier determination of this Lease.

7. INDEMNITIES, RELEASE AND INSURANCE

7.1 DEFINITIONS

For the purposes of clause 7.3, clause 7.4 and clause 7.5, the term **Lessor** includes the Crown, the Minister and the agents, servants, employees and contractors of the Lessor, the Crown and the Minister.

7.2 LESSEE ASSUMPTION OF RESPONSIBILITIES

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term it were the owner and occupier of the freehold of the Leased Premises.

7.3 INDEMNITY

- (a) The Lessee must indemnify and keep indemnified the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be brought, maintained or made against the Lessor in respect of:
- (i) any loss whatsoever (including loss of use);
 - (ii) injury or damage of, or to, any kind of property or thing (including the Leased Premises and the property of third parties); and
 - (iii) any death of, or injury or illness sustained by, any person,
- caused by, contributed to or arising out of, or in connection with, whether directly or indirectly:

- (iv) the use or occupation of the Leased Premises by the Lessee;
 - (v) any work carried out by or on behalf of the Lessee under this Lease;
 - (vi) the Lessee's activities, operations, business or other use of any kind under this Lease;
 - (vii) the presence of any Contamination, Pollution or Environmental Harm in on or under the Relevant Land caused or contributed to by the act, neglect or omission of the Lessee or its employees, agents, contractors, invitees or licensees;
 - (viii) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
 - (ix) any negligent or other tortious act or omission of the Lessee.
- (b) The Lessee indemnifies and must keep indemnified the Lessor from and against all claims, proceedings, suits, writs, demands and expenses relating to, or in respect of, the remediation of Contamination, Pollution or Environmental Harm required under any Environmental Notice, by any Law or by any Governmental Agency as a result of any Contamination, Pollution or Environmental Harm emanating on, or from, the Leased Premises as a result of, or relating to, the use or occupation of the Leased Premises by the Lessee.
- (c) The obligations of the Lessee under this clause:
- (i) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount; and
 - (ii) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of this Lease.

7.4 RELEASE

- (a) The Lessee:
- (i) agrees to occupy, use and keep the Leased Premises at its own risk;
 - (ii) releases to the full extent permitted by law the Lessor from:
 - (A) any liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature in or near the Leased Premises;

- (B) loss of or damage to fixtures or personal property of the Lessee; and
- (C) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm affecting the Relevant Land at any time throughout the Term;

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

- (b) The obligations of the Lessee under this clause continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of this Lease.

7.5 INSURANCE

- (a) The Lessee must during the continuance of the Lease effect, maintain and keep current with an insurer of good repute to the satisfaction of the Lessor:
 - (i) a public risk insurance policy in respect of the Leased Premises in the amount specified in item 5 of the Schedule for any one claim (or such other amount as the Minister may reasonably require at any time and from time to time consistent with usual prudent commercial practice) and which includes the interests of the Lessor under this Lease and covers all claims and losses howsoever arising or caused, including but not limited to:
 - (A) those in respect of:
 - (1) any injury of, or illness to, or death of, any person;
 - (2) any loss, damage or destruction to any property including to the property of the Lessor;
 - (3) the loss of use of any property, including the property of the Lessor; and
 - (4) any claims, risks and events covered under the indemnities provided by the Lessee to the Lessor under this Lease; and
 - (B) liability arising out of any Contamination, Pollution or Environmental Harm to the Relevant Land;

- (ii) a policy of insurance for each Improvement insured to its full insurable value on a replacement or reinstatement basis against loss or damage by fire, flood, storm, tempest, rainwater, cyclones, explosion, smoke, lightning and such other risks against which in the Lessor's opinion a lessee may and does ordinarily insure, to their full replacement value.
- (b) Where applicable, the Lessee must during the continuance of this Lease effect, maintain and keep current and ensure that if applicable each of its contractors or subcontractors effects, maintains and keeps current:
 - (i) a contractors risk insurance policy to cover all other works undertaken or to be undertaken in relation to the construction of any development, for loss, destruction or damage of or to property insured arising from any one cause for not less than 110% of the full amount of the contract sum under any building contract; and
 - (ii) an employer's indemnity insurance, including workers compensation insurance, in respect of all employees employed around or on the Leased Premises and in respect of any other liability under common law or any Law to pay damages or compensation.
- (c) The Lessee must:
 - (i) give to the Lessor a copy of the certificate of currency for each of the Insurance Policies referred to in subclauses (a) and (b) at the Commencement Date; and
 - (ii) submit evidence to the Lessor on each anniversary of the Commencement Date during the Term, or as otherwise requested by the Lessor, which shows that the Insurance Policies remain current.
- (d) The Lessee is:
 - (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policies;
 - (ii) to notify the Lessor immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policies or which could prejudice the Insurance Policies;
 - (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer in relation to fire protection of any Improvements, when they are being, or are constructed;
 - (iv) to expend any moneys received in respect of a claim made under the Insurance Policies referred to in subclause (a) (ii) and, if appropriate,

subclause (b) (i) in reinstating or replacing the damaged or destroyed property in respect of which the claim was made;

- (v) to ensure that under the Insurance Policies the insurer has no rights of subrogation against the Minister, the Crown or the Lessor, and the Lessee indemnifies the Minister, the Crown and the Lessor against any loss arising from a breach of this subclause;
- (vi) to ensure that all premiums in respect of the Insurance Policies and renewals of Insurance Policies are paid punctually;
- (vii) to ensure that it does not at any time during the Term do or bring upon the Leased Premises anything where the insurance policies may be rendered void or voidable; and
- (viii) to ensure that if the Lessee does anything or brings anything onto the Leased Premises where the rate of premium on the Insurance Policies will be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums in respect of the Leased Premises (if any) required on account of the additional risk caused by the use to which the Leased Premises is put by the Lessee.

8. QUIET ENJOYMENT AND NATIVE TITLE

8.1 QUIET ENJOYMENT

If the Lessee pays the Rent, rates and taxes and other charges referred to in clause 4 and does not breach the conditions of this Lease, the Lessee may occupy the Leased Premises during the Term without any interference from the Lessor and the Minister except where otherwise allowed by this Lease or the LAA.

8.2 NATIVE TITLE

This Lease shall not, in its execution or operation, be construed or administered so as to extinguish or in any way impair any traditional native title which exists or which may hereafter be found to exist under any Law in respect of the Leased Premises.

9. DEFAULT

9.1 ESSENTIAL TERMS

- (a) Without limiting the provisions of this Lease which are essential terms it is agreed that each of the covenants by the Lessee contained in each of the following clauses is deemed to be an essential term of this Lease:
 - (i) Clause 4 (Other Payments by Lessee);
 - (ii) Clause 5.1 (Permitted Use);

- (iii) Clause 5.2 (Compliance with Law);
 - (iv) Clause 5.3 (Nuisance);
 - (v) Clause 5.4 (Keep Clean and in Good Repair);
 - (vi) Clause 5.5 (Dealings with Interest in Lease or Leased Premises);
 - (vii) Clause 5.6 (Dealings with Leased Premises)
 - (viii) Clause 6 (Lessee's Environmental Obligations);
 - (ix) Clause 7 (Indemnity, Release and Insurance);
 - (x) Clause 14 (Goods and Services Tax); and
- (b) In respect of the Lessee's obligation to pay Rent or make other payments, the acceptance by the Lessor of any late payment shall not constitute a waiver of the essentiality of the Lessee's obligation to make that payment or of the Lessee's continuing obligation to pay during the Term.

9.2 TERMINATION OF LEASE

- (a) The parties agree that, in addition to any other ground for termination at law, and subject to section 81(1) of the *Property Law Act 1969* if it applies, this Lease may be terminated by the Lessor:
- (i) in the event of breach of an essential term of this Lease by the Lessee and failure by the Lessee to remedy the breach within 14 fourteen days after service by the Lessor on the Lessee of written notice specifying the breach and requiring the Lessee to remedy it; or
 - (ii) without limiting subclause (a)(i), if the Lessee ceases to use the Leased Premises for the Permitted Use, other than temporarily for repairs and maintenance, or ceases to have the right under any Law to use the Leased Premises for the Permitted Use; or
 - (iii) if the Lessee:
 - (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 subclause (a)(iii) applies to any such event that may occur in relation to the Lessee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or

- (iv) if the Lessee 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 Lessee is to be under special administration; or
 - (v) if the Lessee abandons or vacates the Leased Premises; or
 - (vi) pursuant to the provisions for forfeiture under section 35 of the LAA.
- (b) This Lease may be terminated under subclauses (a) (i), (ii), (iii), (iv) and (v) either by the Lessor giving notice to the Lessee or by the Lessor re-entering the Leased Premises without notice.

9.3 COMPENSATION FOR TERMINATION

- (a) Without limiting the Lessor's rights and remedies at law in respect of any breach of any term of this Lease, it is agreed that in the event of termination of this Lease pursuant to this clause or otherwise at law, the Lessee shall compensate the Lessor for all costs and losses incurred by the Lessor.
- (b) The losses to be so compensated in terms of subclause (a) include:
 - (i) loss of Rent in respect of the period from the time of termination to the time at which this Lease would otherwise have expired; and
 - (ii) reasonable legal costs.
- (c) The Lessor's entitlement to recover compensation or damages shall not be affected or limited by any of the following:
 - (i) the Lessee abandoning or vacating the Leased Premises;
 - (ii) the Lessor electing to re-enter or to effect forfeiture of this Lease;

- (iii) the Lessor accepting any repudiation of this Lease by the Lessee; or
- (iv) conduct by any of the parties constituting a surrender by operation of law.

10. RIGHTS AND OBLIGATIONS AT TERMINATION OF LEASE

10.1 YIELDING UP

- (a) On the expiration or earlier determination of this Lease, the Lessee must, to the absolute satisfaction of the Lessor:
 - (i) surrender peaceably and yield up the Leased Premises to the Lessor:
 - (A) clean;
 - (B) free from rubbish; and
 - (C) in a state of good repair and condition;
 - (ii) fill in, consolidate and level off any unevenness, excavation or hole caused by the Lessee or by the Lessee's use of the Leased Premises;
 - (iii) remove any fixtures, fittings or any other property on the Leased Premises as may be required by the Lessor;
 - (iv) promptly make good any damage caused by the removal in subclause (a) (iii); and
 - (v) promptly make good and rehabilitate the Leased Premises and remediate any Contamination, Pollution or Environmental Harm of or to the Relevant Land arising from, or connected with, the use and occupation of the Leased Premises by the Lessee or the Lessee's employees, agents, contractors, invitees or licensees, whether such use and occupation is or was under the terms of this Lease or some other lease, licence or agreement.
- (b) The obligations of the Lessee under this clause continue after the expiration or earlier determination of this Lease.

10.2 IMPROVEMENTS TO VEST IN CROWN

- a) It is agreed that the provisions of section 92 of the LAA apply to this Lease except as varied by this Lease.
- b) Subject to section 92(3) of the LAA, the Minister is not liable to pay to the Lessee any compensation in respect of any Improvements effected by the Lessee on the Leased Premises and remaining on the Leased Premises at the expiration or earlier determination of this Lease.

11. LESSOR'S RIGHTS

11.1 RIGHT TO ENTER

- (a) The Lessor or any person authorised by the Lessor or the Minister may enter on to the Leased Premises at all reasonable times and on reasonable notice with all necessary plant, equipment and materials:
- (i) to inspect the state and condition of the Leased Premises and the Improvements;
 - (ii) to repair, maintain or carry out any works in relation to the Leased Premises, which the Lessee is liable to do under this Lease and has failed to do within 28 days of the Lessor serving notice on the Lessee requiring it to carry out those works;
 - (iii) to remove any harmful substance or carry out any maintenance or repairs to the Leased Premises; or
 - (iv) to comply with the requirements of any Governmental Agency.
- (b) The Lessor is not required to give any notice to the Lessee before entering on to the Leased Premises or carrying out any works under subclause (a)(ii) if the Lessor is of the opinion those works are of an emergency nature.

11.2 REMEDY LESSEE'S DEFAULT

The Lessor may, but is not obliged to, remedy any default by the Lessee of its obligations under this Lease without notice (unless any clause specifically provides otherwise), including the payment of any moneys payable by the Lessee under this Lease.

11.3 RECOVER COSTS FROM LESSEE

If the Lessor carries out any works under clause 11.1 which it is the Lessee's obligation to do under this Lease or remedies a default under clause 11.2, the Lessee is to pay to the Lessor on demand all debts, costs and expenses, including legal costs and expenses, incurred by the Lessor as a result of carrying out those works or remedying that default.

12. NOTICES

12.1 SERVICE OF NOTICE ON LESSEE

Any notice or other document to be served on the Lessee under this Lease will be served in accordance with section 274 of the LAA.

12.2 SERVICE OF NOTICES ON LESSOR OR MINISTER

Any notice or other document to be served on the Lessor or the Minister under this Lease may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at item 4 of the Schedule or at such other address previously notified to the Lessee by the Lessor or the Minister; or
- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out in item 4 of the Schedule or to such other address or facsimile number previously notified to the Lessee by the Lessor or the Minister.

12.3 REQUIREMENTS OF NOTICES SERVED ON THE LESSOR OR MINISTER

A notice or other document to be served on the Lessor or the Minister under this Lease must be signed by:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

13. GENERAL PROVISIONS

13.1 EXCLUSION OF WARRANTIES

The Lessee acknowledges having inspected the Leased Premises and that in entering into this Lease the Lessee has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by law and which cannot be contracted out of) by or on behalf of the Lessor or the Minister whether express or implied, other than the statements representations and warranties expressly set out in this Lease.

13.2 SUITABILITY AND SAFETY OF LEASED PREMISES

- (a) The Lessor or the Minister does not represent or warrant:
 - (i) that the Leased Premises are suitable to be used for the Permitted Use;
 - (ii) that any Improvements on the Leased Premises on the Commencement Date are suitable to be used for the Permitted Use; or
 - (iii) that the Leased Premises may lawfully be used for the Permitted Use.
- (b) Without affecting the generality of subclause (a),

- (i) the Lessor or the Minister does not represent or warrant that the zoning of the Leased Premises will allow the Leased Premises to be used for the Permitted Use, whether with the approval or permission of the relevant planning authority or otherwise; and
 - (ii) it is the Lessee's responsibility to make its own enquiries about zoning, and the Lessee warrants that, before executing this Lease, the Lessee has done so to its own satisfaction.
- (c) The Lessee acknowledges having satisfied itself that the Leased Premises are suitable and safe to be used for the Permitted Use and agrees to take all measures necessary to ensure that the Leased Premises remain safe and free from hazards to the Lessee and all persons entering the Leased Premises.

13.3 CONTAMINATION, POLLUTION OR ENVIRONMENTAL HARM

- (a) Neither the Lessor nor the Minister makes any representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Relevant Land.
- (b) The Lessee relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Relevant Land.

13.4 SERVICES

The Minister, the Lessor, the state government, any relevant local authority or any Governmental Agency will not be responsible for the provision or connection of any Services to the Leased Premises.

13.5 NO RIGHT TO PURCHASE

The Lessee acknowledges and agrees that subject to any express provision to the contrary in this Lease, the grant of this Lease does not confer on the Lessee a right to purchase the Leased Premises or to the grant of a further lease.

13.6 MINISTER'S ENTITLEMENT TO CREATE EASEMENTS AND PUBLIC ACCESS ROUTES

- (a) The Lessee agrees that the Lessee will, when requested to do so by the Minister, grant its consent as required under:
 - (i) section 144 of the LAA to the creation by the Minister of any easement referred to in a notice served on the Lessee by the Minister; and
 - (ii) section 64 of the LAA to the declaration, variation or cancellation of a declaration by the Minister of a public access route referred to in a notice served on the Lessee by the Minister.

- (b) The Lessee agrees to execute all documents and do all things as may be required by the Minister to give effect to this clause.

13.7 WAIVER

- (a) Failure to exercise or delay in exercising any right, power or privilege in this Lease by the Lessor or the Minister does not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of any right, power or privilege does not preclude:
 - (i) any other or further exercise of that right, power or privilege; or
 - (ii) the exercise of any other right, power or privilege.

13.8 SEVERABILITY OF PROVISIONS

If a court decides that any part of this Lease is void, voidable, illegal or unenforceable or this Lease would be void, voidable or unenforceable unless a part is severed from this Lease, then that part is severed from this Lease and does not affect the continued operation of the rest of this Lease.

13.9 APPLICABLE LAW

- (a) This Lease shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

13.10 VARIATION

A variation of any provision of this Lease must be in writing and signed by the parties.

13.11 ACCRUED RIGHTS

The termination of this Lease (including without limitation, by way of forfeiture) does not affect the rights or remedies of the Lessor or the Minister against the Lessee in relation to a breach of this Lease by the Lessee before the termination of the Lease.

13.12 FLOODING

Without limiting any other clause in this Lease, compensation will not be payable by the Minister to the Lessee for damage to any property or Improvements of the Lessor or Lessee whatsoever caused by flooding of the Leased Premises.

13.13 FIRE

The Lessee must take all precautions against causing an outbreak of fire and must comply with any Law or any requirements, notice or orders of any Governmental Agency relating to the construction of fire breaks on the Leased Premises and installing and maintaining appropriate fire fighting and control equipment.

13.14 TRUST PROVISION

The Lessee:

- (a) acknowledges that it is entering into this Lease as the trustee of the Trust and not as trustee of any other trust or for and on behalf of any other person;
- (b) the Lessee covenants with and warrants to the Lessor that the Lessee (as trustee) has full powers pursuant to its memorandum and articles or constitution (if a company) and the Trust Deed to enter into and perform its obligations under this Lease;
- (c) the Trust is lawfully and validly constituted and the Trust Deed and other instruments in respect of the Trust have been properly executed;
- (d) at all times during the continuation of this Lease, the Trust will remain in force and will not be varied;
- (e) the assets of the Trust, as well as the personal assets of the Lessee will, at all times, be available to satisfy the obligations of the Lessee under this Lease;
- (f) the Lessee has obtained all consents and approvals necessary to execute this Lease so as to bind the property of the Trust and all necessary conditions precedent for that purpose have been met; and
- (g) no facts are known to the Lessee whereby:
 - (i) the Trust might be wound-up voluntarily or otherwise;
 - (ii) the trustee might be changed;
 - (iii) the assets of the Trust might be vested in any other person; or
 - (iv) the Trust might cease to operate or be deprived of funds before the expiration of this Lease.

14. GOODS AND SERVICES TAX

14.1 RENT EXCLUSIVE OF GST

The Rent and any other amounts payable by the Lessee to the Lessor, under this Lease, are exclusive of GST.

14.2 LESSEE TO PAY GST

The Lessee must pay additional to the Rent and any other amounts payable by the Lessee, any GST payable by the Lessor in respect of a Taxable Supply made under this Lease.

14.3 VARIATION OF GST

Where GST is payable on Rent, the amount payable shall be the amount specified in item 1A of the Schedule, until varied from time to time consequent upon each review of Rent in accordance with this Lease.

14.4 TAX INVOICE

Where GST is payable, the Lessor shall provide to the Lessee, a Tax Invoice in the format and form required as set out in the GST Law.

14.5 NOTIFICATION IS CONCLUSIVE

A written notification given to the Lessee by the Lessor of the amount of GST that the Lessor is liable to pay on a Taxable Supply made or to be made under this Lease is conclusive between the parties except in the case of an obvious error.

14.6 THE LESSEE MUST PAY GST AT SAME TIME

The Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay under this Lease:

(a) at the same time; and

(b) in the same manner,

as the Lessee is obliged to pay for the Taxable Supply.

14.7 APPORTIONMENT OF GST

Where a Taxable Supply is not separately supplied to the Lessee, the liability of the Lessee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Lessee's proportion of that Taxable Supply is determined.

14.8 OTHER SUPPLIES

If there is a supply by any party, which is a Taxable Supply and is not covered by clause 14.2, then the consideration for the supply shall be increased by an amount calculated as:

A x R

where:

A is the amount of the consideration for the supply apart from clause 14.2; and
R is the rate of GST applicable to the supply.

SCHEDULE

ITEM	TERM	DEFINITION
1.	Rent	\$1.10 (inclusive of GST) per annum
2.	Permitted Use	<p>Any Aboriginal cultural, community and commercial purposes which advance the interests of the Lessee or its members.</p> <p>For the avoidance of doubt, the Permitted Use includes the subleasing of the Leased Premises or parts thereof for commercial return where the income is used for the financial benefit of the Lessee and its members.</p>
3.	Address for payment of Rent	Department of Lands 140 William Street PERTH WA 6000 Attention: Manager, Accounting Services
4.	Address for service of notice on Lessor or Minister	Department of Lands 140 William Street PERTH WA 6000 Attention: Manager, Goldfields Esperance and Wheatbelt Telephone: 6552 4730 Fax: 6552 4417
5.	Insurance	\$ 10,000,000.00.

Schedule 12 – PBC Licence (xxxxxxxxxxxx)

[clause 15]

Schedule 13 – PBC Funding

[clause 19.2 – Annual grants for PBC administration and operation]

Schedule 14 – Deed of Assignment

[clause 26.1]

Deed of Assignment

Esperance Nyungar

Government Indigenous Land Use Agreement

Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods for and on behalf of the Native Title Group

[insert name] (Native Title Prescribed Body Corporate)

State of Western Australia

Minister for Lands

Minister for Environment

Minister for Mines and Petroleum

Minister for Water

Conservation Commission of Western Australia

Conservation and Land Management Executive Body

THIS DEED OF ASSIGNMENT is made on [insert date on which last party signs]

BY:

Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods (**Registered Native Title Claimants**) for and on behalf of the Native Title Group

[insert name] (Native Title Prescribed Body Corporate) (**PBC**)

State of Western Australia (State)

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

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

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

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

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

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

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

BACKGROUND:

- A. On [insert date] the Registered Native Title Claimants for and on behalf of the Native Title Group, the State of Western Australia and each of the Government Parties entered into the *Esperance Nyungar Government Indigenous Land Use Agreement* ("ILUA").
- B. The ILUA was registered on the Register of Indigenous Land Use Agreements on [insert date].
- C. The ILUA requires the establishment of the [insert name] PBC to receive the benefits and perform the obligations of the PBC under the ILUA.
- D. The [insert name] PBC was registered by the Office of the Registrar of Indigenous Corporations on [date].
- E. The RNTBC Orders came into effect on [date].
- F. Pursuant to clause 26.1 of the ILUA, the Native Title Group must, within the timeframes specified in that clause, procure the Registered Native Title Claimants and the PBC to execute, and deliver to DPC for execution by the State and Government Parties, a deed in which the Native Title Group assigns its rights and obligations under the ILUA to the PBC.
- G. This Deed of Assignment is the deed contemplated under clause 26.1(b) of the ILUA.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- (a) In this Deed, unless the contrary intention appears, a term defined in the ILUA has the same meaning in this Deed.
- (b) Clauses 1.3 and 1.4 (dealing with principles of interpretation) of the ILUA are repeated in this Deed as if set out in full in this Deed.

2. ASSIGNMENT, ASSUMPTION AND RELEASE

2.1 Assignment

With effect on and from the Assignment Date, the Native Title Group assigns to the PBC all of its right, title and interest in the ILUA and the PBC accepts the assignment with effect on and from the Assignment Date.

2.2 Assumption of liabilities

With effect on and from the Assignment Date:

- (a) the PBC assumes all of the Native Title Group's liabilities and obligations (present or future, actual or contingent) under the ILUA, whether those liabilities and obligations arose before or after the Assignment Date; and
- (b) the PBC indemnifies and will keep indemnified the Native Title Group against all losses, costs, liabilities, expenses and taxes incurred by the Native Title Group arising from or in connection with the PBC failing to comply with the liabilities and obligations referred to in clause 2.2(a).

2.3 Mutual release

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

- (a) the State and each Government Party releases the Native Title Group from all liabilities and obligations (present or future, actual or contingent) under the ILUA, including those liabilities and obligations that arose before the Assignment Date; and
- (b) the Native Title Group releases the State and each Government Party from all liabilities and obligations (present or future, actual or contingent) under the ILUA, including those liabilities and obligations that arose before the Assignment Date.

3. WARRANTIES AND RELIANCE

3.1 Warranties

The PBC represents and warrants for the benefit for the State and the Government Parties, that:

- (a) it is a 'prescribed body corporate' within the meaning of section 59 of the NT Act and regulation 4 of the PBC Regulations and it is, pursuant to the RNTBC Orders, the 'registered native title body corporate' (as defined in section 253 of the NT Act) for the Determination Area; and
- (b) it is authorised to enter into this Deed on behalf of the Native Title Group; and
- (c) it also represents the Native Title Group in respect of Aboriginal Heritage matters within the Determination Area; and
- (d) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Deed and the ILUA have been fulfilled or done; and

- (e) it knows of no impediment to it performing its obligations under this Deed or the ILUA.

3.2 Reliance

The Native Title Group and the PBC acknowledge that the State and each of the Government Parties have entered into this Deed in reliance on the representations and warranties in clause 3.1.

4. RATIFICATION

- (a) The parties agree that the ILUA is ratified and confirmed by this Deed.
- (b) The parties agree that execution of this Deed by all parties is in full satisfaction of all parties' obligations under clause 26.1 of the ILUA and that the date of this Deed is deemed to be the Assignment Date for the purposes of the ILUA.

5. GENERAL

- (a) The parties must do anything (including execute any document), and must ensure that their employees and agents do anything (including execute any document), that another party may reasonably require to give full effect to this Deed.
- (b) Each party must pay its own costs and expenses incurred in negotiating, executing and registering this Deed. The State must pay any stamp duty payable on or with respect to this Deed.
- (c) This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument.
- (d) This Deed is governed by the law in force in Western Australia.

Executed as a deed.

SIGNED BY THE REGISTERED NATIVE TITLE CLAIMANTS

