

***DIVISION 4A - MG CORPORATION AND MONETARY BENEFITS***

**19. ESTABLISHMENT OF BODIES CORPORATE AND TRUSTS**

**19.1 KLC to establish bodies corporate and trusts**

- (1) The KLC, acting on behalf of and on the instructions of the MG People, must as soon as practicable after the Execution Date establish:
  - (a) the MG Corporation, in accordance with clause 20 (dealing with MG Corporation); and
  - (b) the MG Charitable Trust and the MG Charitable Trustees Pty Ltd, in accordance with clause 26.
- (2) To the extent the KLC has the funds to do so (whether under clause 19.3 or otherwise) and is requested to do so by the MG People, the KLC acting on behalf of and on the instructions of the MG People must establish:
  - (a) other MG Entities; and
  - (b) trusts of which those MG Entities are corporate trustees.

**19.2 MG Entities**

- (1) A body corporate is an MG Entity if it is a wholly owned subsidiary of the MG Corporation acting in its own right or as the trustee of a trust (which may be a discretionary or charitable trust) provided the trust deed provides those matters referred to in clause 20.10(2).
- (2) For the avoidance of doubt, a body corporate may be an MG Entity whether it is established under the *Aboriginal Councils and Associations Act 1976* (Cth) or the *Corporations Act 2001* (Cth) or any other statute.

**19.3 Funding**

- (1) On the Execution Date the State must pay the sum of \$350,000 ("***Establishment Funds***") to the KLC to be held on trust for the MG People and disbursed in accordance with this deed.
- (2) The KLC must use the Establishment Funds to meet its reasonable costs and disbursements incurred in performing its obligations under this clause 19.3 and clauses 19.1 (dealing with KLC to establish body corporate and trusts), 19.2 (dealing with MG Entities), 20.13 (dealing with acting prior to Ratification Date), 22.2 (dealing with First Administration Budget and First EDU Budget) and 30.4 (dealing with Ord Enhancement Scheme).
- (3) The balance of the Establishment Funds (if any) not used in accordance with clause 19.3(2) must be paid by the KLC to the MG Corporation on or as soon as practicable after the Satisfaction Date and used by the MG Corporation for the benefit of the MG People in a manner consistent with the objects of the MG Corporation.
- (4) The KLC must, within 20 Business Days of receipt of a written request from the State or the MG Corporation, provide the State or the MG Corporation (as the case may be) with details of the expenditure of the Establishment Funds (including copies of receipts for disbursements over \$5000).

## **20. MG CORPORATION**

### **20.1 Establishment and name**

- (1) Subject to clause 28 (dealing with MG Entity May Receive Benefits), references throughout this deed to the “*MG Corporation*” are references to the body corporate established in accordance with clause 19.1(1)(a) and this clause 20.
- (2) The MG Corporation must be established under the *Aboriginal Councils and Associations Act 1976 (Cth)*.
- (3) The MG Corporation may be named “Yawoorroong Yirrgb Noong Dawang Aboriginal Corporation” or such other name chosen by the MG People

### **20.2 Objects**

The objects of the MG Corporation must include, but are not limited to, the following:

- (1) Complying with the obligations of the MG Corporation under this deed and receiving the rights and benefits of the MG Corporation under this deed.
- (2) In accordance with this deed, holding by itself or by an MG Entity, beneficially or as trustee, title to land transferred for the benefit of the MG People under this deed and receiving, holding, managing and investing monies or other benefits payable to the MG Corporation under this deed or under any other agreements involving the State and the MG People, beneficially or as trustee, for the benefit of the MG People.
- (3) Establishing and operating the Economic Development Unit for the benefit of the MG People.
- (4) Liaising between the MG People and government and industry.
- (5) Providing assistance to the MG People and MG#1 PBC and any other registered native title body corporate which is a trustee of native title for the MG People (either alone or in conjunction with others) or an agent in respect of native title held by the MG People (either alone or in conjunction with others), to enable the MG People and such a registered native title body corporate to perform its functions under the NTA.
- (6) Undertaking community development for the benefit of the MG People including, at its discretion, allocating and distributing available moneys for, or undertaking specific activities relating to, the health, education and welfare of the MG People for the purposes of:
  - (a) health and health services maintenance;
  - (b) education (including bursaries and scholarships for primary, secondary and tertiary studies);
  - (c) housing of those MG People who are sick, aged or in need of special assistance;
  - (d) relief of poverty;
  - (e) child care and care for the aged or disabled;

- (f) transportation, relief housing and resettlement of the MG People in their traditional country;
  - (g) provision of community and social infrastructure;
  - (h) cultural development activities; and
  - (i) sporting assistance.
- (7) Assisting the MG People in relation to the planning, management and use of land and waters to which they have a traditional connection, including by:
- (a) consulting with, and advising, the MG People about matters affecting such land and waters;
  - (b) providing representation and resources to ensure that the MG People are consulted about and involved in matters affecting such land and waters; and
  - (c) assisting the MG People in the carrying out of their rights, functions and responsibilities under agreements made in relation to such land and waters.

### **20.3 Constitution**

- (1) The MG Corporation must be established under a constitution that is based on the model rules provided by the Registrar for Aboriginal Corporations under the *Aboriginal Councils and Associations Act 1976* (Cth).
- (2) The MG Corporation constitution must, without limitation:
  - (a) subject to the *Aboriginal Corporations and Associations Act 1976* (Cth), provide for the matters set out in clauses 20.4 (dealing with Membership), 20.5 (dealing with the Governing Committee), 20.6 (Management Group) and 20.7 (dealing with Administration);
  - (b) provide for a power for the MG Corporation to grant leases of the New Conservation Areas and the M2 Buffer Area, the Mantinea Buffer Area and the Ord West Bank Buffer Area in accordance with this deed;
  - (c) provide for a power for the MG Corporation to grant, and for the exercise of, powers of attorney including for the execution and registration of instruments and other documents against any certificate of title for land held by the MG Corporation;
  - (d) provide that the constitution cannot be amended during the Contribution Period such that it is inconsistent with this deed;
  - (e) provide that the MG Corporation may establish MG Entities to perform any of the functions or receive any of the benefits of the MG Corporation under this deed; and
  - (f) provide that members have no liability in respect of the MG Corporation and any MG Entities.
- (3) The MG Corporation constitution must, so far as is possible at law:
  - (a) require the MG Corporation, as a public benevolent institution, to seek endorsement from the Australian Taxation Office of Deductible Gift Recipient status; and

- (b) have the following characteristics which are characteristics of a public benevolent institution:
  - (i) it is set up for needs that require benevolent relief;
  - (ii) its dominant purpose is providing benevolent relief;
  - (iii) it relieves those needs by directly providing services to the people suffering from them;
  - (iv) it is carried on for the public benefit;
  - (v) it is non-profit; and
  - (vi) it is an institution.
- (4) The MG Corporation must at all times comply with its constitution.
- (5) The MG Corporation must not amend its constitution during the Contribution Period except with the written approval of the State. If a proposed amendment to the constitution is not inconsistent with this deed then the State must give its approval to the proposed amendment.

#### **20.4 Membership**

- (1) Membership of the MG Corporation must be established as follows:
  - (a) all MG People aged 18 years and older must be eligible for membership of the MG Corporation; and
  - (b) membership must be limited to MG People.
- (2) The Constitution of the MG Corporation must provide for subgroups of members within the overall membership of the MG Corporation, with each subgroup corresponding with each Dawang within the ILUA Area.
- (3) Members of the MG Corporation who are members of a Dawang must be recorded in the corporation's register of members as being a member of those Dawang subgroups for which they are members

#### **20.5 Governing Committee**

- (1) The MG Corporation must have a Governing Committee comprised of 2 Dawang Nominees, being persons nominated by those members of the MG Corporation who are also members of a Dawang subgroup referred to in clause 20.4(2), to be a representative of that Dawang on the Governing Committee, for each Dawang subgroup.
- (2) The functions of the Governing Committee must include but are not limited to:
  - (a) managing the MG Corporation for the benefit of the MG People;
  - (b) determining the priorities of the MG Corporation and producing a strategic plan, which must be reviewed and updated every 5 years; and
  - (c) appointing a Management Group in accordance with clause 20.6.
- (3) The Governing Committee may delegate general powers and specific powers to the Management Group, and may make the exercise of a delegated power subject to conditions regarding:
  - (a) the prior consent of the Governing Committee to the exercise of the power;

- (b) ratification by the Governing Committee of the exercise of the power;
- (c) reporting requirements regarding the exercise of the power; and
- (d) revocation of the delegation.

#### **20.6 Management Group**

- (1) The Governing Committee must appoint a Management Group of the MG Corporation comprising a chief executive officer, one or more members of the Governing Committee and such other persons as the Governing Committee consider appropriate.
- (2) The function of the Management Group shall be to:
  - (a) exercise the powers delegated to it under clause 20.5(3); and
  - (b) oversee and take responsibility for the administration and staff of the MG Corporation.

#### **20.7 Administration**

The Management Group must arrange for the MG Corporation to employ or contract relevant staff and consultants.

#### **20.8 Economic Development Unit**

- (1) The MG Corporation must establish and operate an Economic Development Unit throughout the Contribution Period.
- (2) The MG Corporation must fund and maintain a position at least to the equivalent level of 1 full time employee, to carry out the functions and responsibilities of the Economic Development Unit. The person or persons retained must, by training and experience, be qualified in financial planning or business investment or employment and enterprise development.
- (3) The functions and responsibilities of the Economic Development Unit shall be:
  - (a) researching, identifying and facilitating employment, economic development, investment and business opportunities for the MG People;
  - (b) facilitating and assisting in improving the capacity and capabilities of the MG People in relation to employment and enterprise development;
  - (c) liaising with, and making applications to, the State and the Commonwealth to facilitate and obtain public funding for programs that provide for improving the capacity and capabilities of the MG People in relation to employment and enterprise development;
  - (d) procuring support and commitments from the State, the Commonwealth, the Shire of Wyndham-East Kimberley and non-government enterprises in relation to employment and enterprise development for the MG People; and
  - (e) providing information and assistance to the MG Entities.

#### **20.9 GST**

The MG Corporation must, as soon as practicable after its incorporation, register for GST purposes and be capable of issuing tax invoices.

**20.10 Requirements for MG Corporation to act as trustee**

- (1) Subject to clause 20.10(2), the MG Corporation must receive any money or interest in land under this deed beneficially and not as a trustee.
- (2) The MG Corporation may receive money or an interest in land under an express trust (which may be a discretionary or a charitable trust) if the trust deed provides that, without limitation:
  - (a) the class of beneficiaries of the trust is one or more of the following:
    - (i) the MG People (which for the avoidance of doubt includes all of the MG People); and
    - (ii) some other entity (including an MG Entity, or a trust, company, association or other legal entity) established for the benefit of the MG People and approved by the Governing Committee of the MG Corporation;
  - (b) only the Governing Committee of the MG Corporation may appoint a replacement corporate trustee and that replacement corporate trustee must be an MG Entity; and
  - (c) on vesting of the trust, if the MG Corporation has failed to vest trust property in another entity for the benefit of the MG People, it shall be deemed to vest in the MG Corporation beneficially.

**20.11 MG Corporation may deal with assets**

Except as expressly provided in this deed, nothing in this deed prevents the MG Corporation from selling, transferring, leasing or otherwise disposing of any of its assets in any manner it sees fit.

**20.12 MGC Ratification Deed**

- (1) As soon as possible after the MG Corporation is established, the MG#4 Claimants and the MG#1 PBC must procure the MG Corporation to execute and deliver to the State, LandCorp, Conservation Commission and the CPC Parties a deed to which the State, LandCorp, Conservation Commission and the CPC Parties may be Parties ("*MGC Ratification Deed*") in which, on and from the date of the deed:
  - (a) the State, LandCorp, Conservation Commission and the CPC Parties shall have the same rights against, and shall owe the same obligations to, the MG Corporation as if the MG Corporation were a Party to this deed; and
  - (b) the MG Corporation shall have the rights of and owe the obligations of the MG Corporation in accordance with the terms of this deed.
- (2) If the State, LandCorp, Conservation Commission and the CPC Parties receive the MGC Ratification Deed executed by MG Corporation then they must promptly execute the deed and deliver it to the MG Corporation.

**20.13 KLC to act before Ratification Date**

Prior to the Ratification Date, where the context allows, a reference to any obligation of the MG Corporation in Part 4 and the schedules to this Agreement shall be taken to be a reference to an obligation of the KLC, until such time as ratification occurs

whereby such obligations shall be deemed to be the obligations of the MG Corporation.

**20.14 Substitution of MG Corporation**

- (1) If, after the Satisfaction Date:
  - (a) the State and MG#1 PBC and any MG#4 PBC agree in writing that another specified body corporate shall be the MG Corporation for the purposes of this deed in place of the existing MG Corporation; and
  - (b) the requirements in this clause 20 (including in particular clause 20.12) have been met in relation to that body corporate,then that body corporate shall on and from the date specified in the written agreement, be the MG Corporation for the purposes of this deed.
- (2) The State must not enter into an agreement referred to in clause 20.14(1) without first making reasonable efforts to consult with the Governing Committee for the time being of the MG Corporation and taking any such consultations into account.
- (3) If a new body corporate is substituted as the MG Corporation in accordance with clause 20.14(1) then, on and from the date of the substitution, the former MG Corporation shall retain any liability incurred before that date under this deed and shall remain entitled to any benefit which accrued under this deed prior to that date, but shall not be entitled to any of the benefits and shall not have any liability under this deed in respect of anything done or not done on or after that date.

**20.15 MG Employment and Contracting Register**

- (1) The MG Corporation must establish and maintain a written list ("**MG Employment and Contracting Register**") containing the following details:
  - (a) MG People who wish to be and are available to be employed in a Project to which clause 49 applies, together with:
    - (i) a brief summary of their education and training and work experience; and
    - (ii) contact details for each such person; and
  - (b) MG People, and organisations (including companies, partnerships and joint ventures) owned (in whole or in part) by MG People, who wish to provide goods or services in respect of a Project to which clause 49 applies, together with:
    - (i) a brief summary of the goods and services ordinarily provided by the person or organisation; and
    - (ii) contact details for each such person or organisation; andmust make the information on the MG Employment and Contracting Register available to bona fide Proponents and Developing Parties required to prepare an Aboriginal Development Package or an Aboriginal Employment Strategy for the purposes of this deed.

## **21. COMMENCEMENT OF BENEFITS TO MG CORPORATION**

### **21.1 Satisfaction Date**

- (1) The MG Corporation must, on or as soon as practicable after the Ratification Date, provide the State with each of the following:
  - (a) copies of the certificate of incorporation and constitution of the MG Corporation;
  - (b) copies of notices from the Australian Taxation Office:
    - (i) confirming that the MG Corporation is registered for GST purposes (as required under clause 20.9); and
    - (ii) quoting an Australian Business Number for the MG Corporation;
  - (c) copies of the certificate of incorporation and constitution of the MG Charitable Trustees Pty Ltd, and a copy of the trust deed for the MG Charitable Trust;
  - (d) copies of notices from the Australian Taxation Office:
    - (i) confirming that the MG Charitable Trustees Pty Ltd is registered for GST purposes (as required under clause 26 1(4)); and
    - (ii) quoting an Australian Business Number for the MG Charitable Trustees Pty Ltd;
  - (e) the First Administration Budget in accordance with clause 22 2(2)(a);
  - (f) the First EDU Budget in accordance with clause 22 2(2)(b); and
  - (g) written notice of an address and facsimile number for service of documents on the MG Corporation and MG Charitable Trustees Pty Ltd.
- (2) If a document is provided to the State in accordance with clause 21.1 and the document is not inconsistent with this deed then the State must promptly notify the MG Corporation that it is satisfied with the document.
- (3) In this deed, the Satisfaction Date means the later of:
  - (a) Ratification Date; and
  - (b) the date upon which the State has notified the MG Corporation that it is satisfied with each of the documents referred to in clause 21 1.
- (4) The State must promptly notify the Parties of the Satisfaction Date, and must at the same time notify them of the address and facsimile number for service of documents on the MG Corporation.

### **21.2 Commencement of obligations to provide benefits**

Notwithstanding the terms of this deed, neither the State nor any other person is obliged to pay any monies or transfer or grant any land or any interest in any land to the MG Corporation or to MG Trustees Pty Ltd as trustee of the MG Charitable Trust or to any MG Entity in accordance with the terms of this deed prior to the Satisfaction Date.



## 22. FINANCIAL CONTRIBUTION BY THE STATE TO MG CORPORATION

### Notes.

- (1) *This clause 22 provides for the payment by the State to the MG Corporation of \$10 million over 10 years. The payments will be \$1 million for each Financial Year (1 July to 30 June).*
- (2) *The payments are divided into two parts -*
  - (a) *Administration Payment - \$750,000 a year for administration of the MG Corporation and other entities (which is referred to as an **Administration Payment**, with the first being the **First Administration Payment**), and*
  - (b) *Economic Development Payment - \$250,000 a year to enable the MG Corporation to operate an Economic Development Unit (which is referred to as an **EDU Payment**, with the first being the **First EDU Payment**).*
- (3) *The following terms used in this clause 22 apply to this Division 4A:*
  - (a) *Administration Balance Payment has the meaning in clause 22.1(2)(b);*
  - (b) *Administration Budget has the meaning in clause 22.8(2)(a);*
  - (c) *Administration Payment has the meaning in clause 22.7(1)(a),*
  - (d) *Administration Payment Purpose means the application or expenditure of moneys for the administration of the MG Corporation and any MG Entity and any other relevant expenses (but not including MG Charitable Trustees Pty Ltd), so as to prioritise the performance of the MG Corporation's functions in clauses 20.2(1) (dealing with compliance with obligations under this deed), 20.2(2) (dealing with holding land and money); and 20.2(5) (dealing with assistance to registered bodies corporate),*
  - (e) *Contribution Period means the First Payment Period and the following 9 Financial Years thereafter and being no more than 10 years in total;*
  - (f) *Contribution Period Financial Year means:*
    - (i) *the first Financial Year commencing on 1 July next following the Satisfaction Date; and*
    - (ii) *the eight subsequent Financial Years;*
  - (g) *Deferred Payments has the meaning in clauses 22.9(2) (dealing with deferral relating to budget approval), 24.4(2) (dealing with deferral relating to Non-Compliance Event), ~~24.7(1)~~ 24.7(2) (dealing with deferral due to ACAA Non-Compliance), 24.9(6) (dealing with deferral due to MGC Default) and 25 (dealing with Payment of Deferred Payments),*
  - (h) *EDU Balance Payment has the meaning in clause 22.1(2)(a);*
  - (i) *EDU Budget has the meaning in clause 22.8(2)(b),*
  - (j) *EDU Payment has the meaning in clause 22.7(1)(b);*

- (k) *EDU Payment Purpose means the expenditure of moneys for the costs associated with operating the Economic Development Unit and the administration of MG Charitable Trustees Pty Ltd, including payment of fees to the Independent Directors of MG Charitable Trustees Pty Ltd and any other relevant expenses;*
- (l) *First Administration Budget has the meaning in clause 22.2(2);*
- (m) *First Administration Payment has the meaning in clause 22.1(1)(a);*
- (n) *First EDU Budget has the meaning in clause 22.2(2)(b);*
- (o) *First EDU Payment has the meaning in clause 22.1(1)(b); and*
- (p) *First Payment Period means the period between the Satisfaction Date and 30 June next following the Satisfaction Date.*

#### **22.1 First Administration and Payments and Balance Payments**

- (1) On the Satisfaction Date the State must pay to the MG Corporation:
  - (a) \$2,054 x the number of days in the First Payment Period ("***First Administration Payment***"); and
  - (b) \$684 x the number of days in the First Payment Period ("***First EDU Payment***").
- (2) On the Satisfaction Date, or at any time during the First Payment Period, the State must pay to the MG Corporation:
  - (a) \$187,500 minus the First EDU Payment ("***EDU Balance Payment***"); and
  - (b) \$562,500 minus the First Administration Payment ("***Administration Balance Payment***").

#### **22.2 First Administration Budget and First EDU Budget**

- (1) The KLC must provide reasonable assistance to the MG Corporation to prepare the First Administration Budget and the First EDU Budget.
- (2) For the purpose of this Division 4A:
  - (a) ***First Administration Budget*** means a budget and operational plan for the First Administration Payment which clearly identifies the manner in which, during the First Payment Period, the MG Corporation will expend the First Administration Payment in accordance with the Administration Payment Purpose; and
  - (b) ***First EDU Budget*** means a budget and operational plan for the First EDU Payment which clearly identifies the manner in which, during the First Payment Period, the MG Corporation will expend the First EDU Payment in accordance with the EDU Payment Purpose.

#### **22.3 Approval and Amendment of First Administration Budget and First EDU Budget**

- (1) The First Administration Budget and any amended Administration Budget, and the First EDU Budget and any amended EDU Budget, must be approved by the Governing Committee of the MG Corporation prior to providing it to the State.

- (2) In accordance with clauses 21.1(1)(e), 21.1(1)(f) and 21.2, the First Administration Budget and a First EDU Budget must be provided to the State for approval and the State shall notify the MG Corporation if they are satisfactory.
- (3) The MG Corporation may, at any time prior to the end of the First Payment Period, prepare and provide the State with a copy of an amended First Administration Budget or an amended First EDU Budget.
- (4) If the State is provided with a copy of an amended First Administration Budget or an amended First EDU Budget in accordance with clause 22.3(3) then the State must, as soon as practicable, consider the document and:
  - (a) if it is not inconsistent with this deed, approve the amended First Administration Budget or amended First EDU Budget (as the case may be); or
  - (b) if it is inconsistent with this deed, give notice to that effect to the MG Corporation identifying the inconsistency.

*Note: The MG Corporation can then further amend that amended First Administration Budget or that amended First EDU Budget and re-submit it.*

#### **22.4 Compliance with First Administration Budget and First EDU Budget**

The MG Corporation must apply or expend the:

- (1) First Administration Payment in accordance with the First Administration Budget (including any amended First Administration Budget); and
- (2) First EDU Payment in accordance with the First EDU Budget (including any amended First EDU Budget).

#### **22.5 Balance Payments to be held in Interest Bearing Trust Account**

- (1) The MG Corporation must, on receipt of the Administration Balance Payment and the EDU Balance Payment place those payments in an interest bearing trust account and apply or expend those amounts:
  - (a) during the Contribution Period, in accordance with the Administration Payment Purpose and the EDU Payment Purpose whichever applies; and
  - (b) after the Contribution Period, for the benefit of the MG People in a manner consistent with the objects of the MG Corporation.
- (2) The MG Corporation must within 5 business days of receiving the Administration Balance Payment and the EDU Balance Payment provide to the State written confirmation that the same has been paid into an interest bearing trust account.

#### **22.6 Unexpended Moneys and Interest from First Payment Period**

- (1) To the extent (if any) that the First Administration Payment or the interest derived from either of them, is not reasonably required for the Administration Payment Purpose or is otherwise not expended during the First Payment Period, the MG Corporation must hold those payments that are not required and not expended in an interest bearing trust account, being the same account in which the Administration Balance Payment and EDU Balance Payment are held, and:

- (a) during the Contribution Period, must only expend it for the Administration Payment Purpose; and
  - (b) after the Contribution Period, must only expend it for the benefit of the MG People in a manner consistent with the objects of the MG Corporation.
- (2) To the extent (if any) that the First EDU Payment or the interest derived from either of them, is not reasonably required for the EDU Payment Purpose during the First Payment Period the MG Corporation must hold the same in an interest bearing trust account and:
- (a) during the Contribution Period, must only expend it for the EDU Payment Purpose; and
  - (b) after the Contribution Period, must expend it for the benefit of the MG People in a manner consistent with the objects of the MG Corporation.
- (3) For the avoidance of doubt subject to clause ~~24.3(3)~~ 24.4 (dealing with Failure to Rectify Non-Compliance Events) and clause 24.8 (dealing with MG Corporation Defaults) any unexpended remainder:
- (a) of the First Administration Payment and the First EDU Payment; and
  - (b) the Administration Balance Payment and EDU Balance Payment,
- will not affect the payment of a subsequent Administration Payment or EDU Payment.

#### **22.7 Administration Payments and EDU Payments**

- (1) Subject to clauses 22.8 (dealing with Administration Budgets and EDU Budgets), clause ~~24.3(3)~~ 24.4 (dealing with Failure to Rectify Non-Compliance Events) and clause 24.8 (dealing with MG Corporation Defaults):
- (a) on 1 July in each Contribution Period Financial Year, or within 5 Business Days of approval of the Administration Budget for that Contribution Period Financial Year (whichever is the later), the State must pay \$750,000 to the MG Corporation ("*Administration Payment*"); and
- Note: Each such payment is defined in this deed as an "Administration Payment".*
- (b) on 1 July in each Contribution Period Financial Year, or within 5 Business Days of approval of the EDU Budget for that Contribution Period Financial Year (whichever is the later), the State must pay \$250,000 to the MG Corporation ("*EDU Payment*").

*Note. Each such payment is defined in this deed as an "EDU Payment".*

#### **22.8 Administration Budgets and EDU Budgets**

- (1) The State is not obliged to pay:
- (a) the Administration Payment or EDU Payment until it has approved the Administration Budget or EDU Budget (as the case may be) for the Contribution Period Financial Year to which the Administration Payment or EDU Payment applies; or

- (b) part of the Administration Payment or part of the EDU Payment unless it has approved that part of the Administration Budget or that part of the EDU Budget (as the case may be) for the Contribution Period Financial Year to which the part of the Administration Payment or part of the EDU Payment applies.
- (2) On or before 15 April prior to the commencement of each Contribution Period Financial Year, the MG Corporation must provide the State with:
  - (a) a budget and operational plan ("**Administration Budget**") for the forthcoming Contribution Period Financial Year, which clearly identifies the manner in which the MG Corporation will expend the Administration Payment and which is consistent with the Administration Payment Purpose; and
  - (b) a budget and operational plan ("**EDU Budget**") for the forthcoming Contribution Period Financial Year, which clearly identifies the manner in which the MG Corporation will expend the EDU Payment and which is consistent the EDU Payment Purpose.
- (3) The MG Corporation may, at any time prior to the end of a Contribution Period Financial Year, provide the State with a copy of an amended Administration Budget or an amended EDU Budget
- (4) Any Administration Budget or amended Administration Budget, and any EDU Budget or amended EDU Budget, must be approved by the Governing Committee of the MG Corporation prior to it being submitted to the State.

#### **22.9 Approval of Administration Payments and EDU Payments**

- (1) If the State is provided with a copy of an Administration Budget or amended Administration Budget, and with an EDU Budget or an amended EDU Budget, in accordance with clause 22.8 then the State must within 15 business days consider that document and:
  - (a) if it is not inconsistent with this deed, approve the Administration Budget, amended Administration Budget, EDU Budget or amended EDU Budget (as the case may be); or
  - (b) if it is inconsistent with this deed, give notice to that effect to the MG Corporation identifying the inconsistency.

*Note: The MG Corporation can then amend the document and re-submit it.*

- (2) If the State withholds all or part of an Administration Payment or all or part of an EDU Payment due to the State not approving an Administration Budget or an EDU Budget for the whole of a Contribution Period Financial Year, then the withheld payments are deemed to be "**Deferred Payments**".

#### **22.10 Compliance with Administration Budgets and EDU Budgets**

- (1) The MG Corporation must:
  - (a) expend each Administration Payment in accordance with the relevant Administration Budget (including any amended Administration Budget); and
  - (b) expend each EDU Payment in accordance with the relevant EDU Budget (including any amended EDU Budget).

**22.11 Moneys not Expended During Relevant Contribution Period Financial Year**

- (1) To the extent (if any) that an Administration or EDU Payment, or the interest derived from either of them, is not reasonably required for the Administration Purpose or EDU Payment Purpose during the relevant Contribution Period Financial Year the MG Corporation must only expend those amounts which are not required during that Contribution Period Financial Year:
  - (a) during the next Contribution Period Financial Year in accordance with the Administration Budget or EDU Budget for the next Contribution Period Financial Year;
  - (b) thereafter, during the Contribution Period, for the benefit of the MG People in a manner consistent with the objects of the MG Corporation;
  - (c) or a combination of both of the above.
- (2) For the avoidance of doubt, subject to clause ~~24.3(3)~~ 24.4 (dealing with Failure to Rectify Non-Compliance Events) and clause 24.8 (dealing with MG Corporation Defaults), any remainder of an Administration Payment or EDU Payment will not affect the payment of a subsequent Administration Payment or EDU Payment.

**23. ANNUAL AUDIT OF FINANCIAL CONTRIBUTIONS**

- (1) The MG Corporation must, on or before 15 October in each Contribution Period Financial Year (including the 15 October in the Contribution Period Financial Year immediately following the First Payment Period), provide the State with a copy of a report by a qualified and independent auditor as to whether:
  - (a) the financial accounts of the MG Corporation and MG Charitable Trustees Pty Ltd for the previous Financial Year are fair and accurate according to Australian accounting standards;
  - (b) for the First Payment Period, clause 22.4 (dealing with Compliance with of First Administration Budget, First EDU Budget and Balance Payment Purposes) has been complied with;
  - (c) for the First Payment Period, clause 22.5 (dealing with Balance Payments to be held in Interest Bearing Account) has been complied with;
  - (d) for the Contribution Period Financial Year, clause 22.6 (dealing with Unexpended Moneys and Interest from First Payment Period) has been complied with;
  - (e) for the Contribution Period Financial Year, clause 22.10 (dealing with Compliance with Administration Budgets and EDU Budgets) has been complied with; or
  - (f) for the Contribution Period Financial Year, clause 22.11 (dealing with Moneys not Expended During Relevant Contribution Period Financial Year) has been complied with.
- (2) The MG Corporation must, at the same time as it engages a qualified and independent auditor to conduct an audit in accordance with clause 23(1):
  - (a) notify the State of the name and contact details of the auditor; and
  - (b) authorise the auditor to receive and investigate information from the State which may reasonably be considered to be relevant to the audit.

## **24. SUSPENSION OF FINANCIAL BENEFITS TO MG CORPORATION**

### **24.1 Non-Compliance Events**

Subject to clause 24.2 (dealing with Insubstantial Non-Compliance) for the purpose of this Division 4A a *Non-Compliance Event* means any of the following:

- (1) where the MG Corporation does not provide to the State, within 5 business days, written confirmation in accordance with clause 22.5(2) that the Administration Balance Payment or EDU Balance Payment is held in an interest bearing trust account;
- (2) where the MG Corporation has not complied with clause 22.5(1), by failing to place the Administration Balance Payment or EDU Balance Payment or both in an interest bearing trust;
- (3) where an audit report referred to in clause 23 indicates that the MG Corporation has failed to comply with any of the following:
  - (a) clause 22.4 (dealing with Compliance with of First Administration Budget, First EDU Budget and Balance Payment Purposes);
  - (b) clause 22.5 (dealing with Balance Payments to be Held in Interest Bearing Account);
  - (c) clause 22.6 (dealing with Unexpended Moneys and Interest from First Payment Period);
  - (d) clause 22.10 (dealing with Compliance with Administration Budgets and EDU Budgets); or
  - (e) clause 22.11 (dealing with Moneys not Expended During Relevant Contribution Period Financial Year); or
- (4) the financial accounts of the MG Corporation are deficient in a material respect, so far as they relate to the expenditure or application of any of the following during the First Payment Period or the previous Contribution Period Financial Year:
  - (a) First Administration Payment;
  - (b) First EDU Payment;
  - (c) Administration Balance Payment;
  - (d) EDU Balance Payment;
  - (e) the Administration Payment for the previous Contribution Period Financial Year;
  - (f) or the EDU Payment for the previous Contribution Period Financial Year;
  - (g) any unexpended payments under clause 22.11 (dealing with Moneys not expended during the Relevant Contribution period Financial Year); or
  - (h) any interest derived from any of the above.

### **24.2 Insubstantial Non-Compliance**

A Non-Compliance Event in clause 24.1 shall be excused by the State and clause 24.3 (dealing with Rectification of Non-Compliance Events) and clause 24.4 (dealing with Failure to Rectify Non-Compliance Events) shall not apply if:



- (1) when the audit report under clause 23 (dealing with Annual Audit of Financial Contributions) is provided, the MG Corporation provides written information regarding the Non-Compliance Event reported in the audit report; and
- (2) within 10 days of receipt of the information in clause 24.2(1) the State in its absolute discretion gives written notice to the MG Corporation that it considers the Non-Compliance event to be insubstantial.

#### **24.3 Rectification of Non-Compliance Events**

If a Non-Compliance Event occurs the State may at any time issue the MG Corporation with a written notice ("**Rectification Notice**");

- (1) identifying each instance of Non-Compliance Event;
- (2) where relevant, identifying all or part of one or more of the following (as the case may be) to which the Non-Compliance Event relates ("**Identified Amount**"):
  - (a) First Administration Payment;
  - (b) First EDU Payment;
  - (c) Administration Balance Payment;
  - (d) EDU Balance Payment;
  - (e) the Administration Payment for the previous Contribution Period Financial Year;
  - (f) or the EDU Payment for the previous Contribution Period Financial Year;  
or
  - (g) any unexpended payments under clause 22.11 (dealing with Moneys not expended during the Relevant Contribution Period Financial Year); and
- (3) specifying particular and reasonable action to be taken by the MG Corporation within a specified time, not being less than 20 Business Days after the date the Rectification Notice is deemed to be received under this deed ("**Rectification Period**"), to remedy, or to ensure or guard against the repeat of, the Reported Non-Compliance (as the case may be).

#### **24.4 Failure to Rectify Non-Compliance Events**

- (1) If the State issues a Rectification Notice and the MG Corporation does not take the action specified in the notice, or other action acceptable to the State, within the Rectification Period then the State may withhold an amount not exceeding the Identified Amount from the Administration Payment or EDU Payment (or both) as the case may be, in respect of the next Contribution Period Financial Year and is only obliged to pay those monies to the MG Corporation when MG Corporation takes the action specified in the Rectification Notice, or other action acceptable to the State.
- (2) If as a result of the operation of this clause 24.3(3), the State withholds an Identified Amount for the whole of a Contribution Period Financial Year, then the withheld payments are deemed to be "**Deferred Payments**"

**24.5 Non-compliance with *Aboriginal Councils and Associations Act 1976 (Cth)***

For the purpose of Division 4A *ACAA Non-Compliance* means if at any time after the Satisfaction Date one or more of the following occurs:

- (1) the MG Corporation fails to comply with sections 54, 56, 57, 58 or 59 of the *Aboriginal Councils and Associations Act 1976 (Cth)*;
- (2) the Governing Committee of the MG Corporation does not take action specified in a notice under section 60A of the *Aboriginal Councils and Associations Act 1976 (Cth)* within the period specified in the notice; or
- (3) the Registrar of Aboriginal Corporations applies for an injunction under subsection 61(2) of the *Aboriginal Councils and Associations Act 1976 (Cth)*.

**24.6 Notice to Comply with *Aboriginal Councils and Associations Act 1976 (Cth)***

- (1) If an *ACAA Non-Compliance* occurs then the State may issue the MG Corporation with a written notice ("*ACAA Compliance Notice*"):

- (a) identifying each *ACAA Non-compliance*;
- (b) identifying all or part of one or more of the:
  - (i) Administration Payment; and
  - (ii) EDU Payment;

for the next Contribution Period Financial Year which the State reasonably believes the MG Corporation will deal with in a manner that does not comply with sections 54, 56, 57, 58 or 59 of the *Aboriginal Councils and Associations Act 1976 (Cth)* as a result of each *ACAA Non-compliance* ("*ACAA Non-compliance Amount*"); and

- (c) specifying particular and reasonable action to be taken by the MG Corporation within a specified time, not being less than 20 Business Days after the date the *ACAA Non-Compliance Notice* is deemed to be received under this deed ("*ACAA Compliance Period*"), to remedy, or to ensure or guard against the repeat of, each *ACAA Non-compliance*.

**24.7 Failure to Comply with *ACAA Compliance Notice***

- (1) If the State issues an *ACAA Compliance Notice* and the MG Corporation does not take the action specified in the notice, or other action acceptable to the State, within the *ACAA Compliance Period* then the State may withhold an amount not exceeding the *ACAA Non-compliance Amount* from the Administration Payment or EDU Payment (or both), in respect of the next Contribution Period Financial Year and is only obliged to pay those monies to the MG Corporation when MG Corporation takes the action specified in the *ACAA Compliance Notice*, or other action acceptable to the State.

- (2) If as a result of the operation of clause 24.7(1) the State withholds any of the following:

- (a) all or part of an Administration Payment; or
- (b) all or part of an EDU Payment,

for the whole of a Contribution Period Financial Year, then the withheld payments are deemed to be "*Deferred Payments*".

## 24.8 MGC (MG Corporation) Defaults

- (1) For the purpose of this Division 4A *MGC Default* means any of the following:
  - (a) MG Corporation is insolvent, or an administrator or special administrator is appointed for the MG Corporation, or a receiver or controller is appointed in respect of the MG Corporation's property, or a liquidator is appointed, or an order is otherwise made to wind up the MG Corporation;
  - (b) the constitution of the MG Corporation is amended without the approval of the State as required under clause 20 3(2)(d); or
  - (c) the MG Corporation fails to provide the State with an audit report in accordance with clause ~~28~~ 23.

## 24.9 Rectification of MGC Default and MGC Suspension Notice

- (1) If at any time after the Satisfaction Date an MGC Default occurs then the State may give written notice to the MG Corporation specifying the MGC Default and nominating a date (not less than 20 Business Days after the date the notice is deemed to be received under this deed) by which the MGC Default must be rectified.
- (2) If an MGC Default is not rectified prior to the date specified in the notice referred to in clause ~~24.9(2)~~ 24.9(1) then, without prejudice to any other rights the State may have at law, the State may issue the MG Corporation with a written notice suspending the State's obligations under clause ~~21 22 (dealing with Financial Contribution by the State)~~ of this deed ("*MGC Suspension Notice*").
- (3) If the State issues a MGC Suspension Notice then until the State revokes the Suspension Notice by further notice in writing to the MG Corporation, the State is not obliged to comply with clause ~~21 22 (dealing with Financial Contribution by the State)~~ of this deed.
- (4) The State must revoke a MGC Suspension Notice as soon as:
  - (a) all of the MGC Defaults specified in the MG Suspension Notice have been remedied or are otherwise no longer operative; or
  - (b) the MG Corporation has taken any action reasonably required by the State in respect of the MGC Default (which, without limitation, may include action to ensure that the MGC Default does not happen again).
- (5) On the revocation of a MGC Suspension Notice, the State must, for a Contribution Period Financial Year in which clause ~~21 22 (dealing with Financial Contribution by the State)~~ has been suspended, pay the MG Corporation, in accordance with clause ~~21 22 (dealing with Financial Contribution by the State)~~, an amount equal to:
  - (a) (Administration Payment + EDU Payment) – [(the number of days of Contribution Period Financial Year that ~~clause 21 the Financial Contribution by the State~~ has been suspended ÷ 365) × (Administration Payment + EDU Payment)]; or
  - (b) if requested by MG Corporation and the State is satisfied that it is appropriate to do so in the circumstances, one or both of:

- (i) up to the full Administration Payment; or
  - (ii) up to the full EDU Payment.
- (6) If as a result of the operation of this clause ~~24.8~~ 24.9, the State withholds one or more of:
- (a) all or part of an Administration Payment; or
  - (b) all or part of an EDU Payment,
- for the whole of a Contribution Period Financial Year, then the withheld payments are deemed to be "*Deferred Payments*".

**25. PAYMENT OF DEFERRED PAYMENTS**

- (1) Subject to any agreement to the contrary by the State and the MG Corporation the State is not obliged to pay MG Corporation any Deferred Payments during the Contribution Period.
- (2) If the Contribution Period has ended and all MGC Suspension Notices (if any) have been revoked by the State in accordance with clauses 24.9(2) and 24.9(3) the State must pay MG Corporation any unpaid portion of the Deferred Payment as follows:
  - (a) in the first Financial Year following the Contribution Period – up to \$1,000,000 or the unpaid portion of the Deferred Payments, whichever amount is the lesser; and
  - (b) in each subsequent Financial Year, if any portion of the Deferred Payments remains unpaid – up to \$1,000,000 or the unpaid portion of the Deferred Payments, whichever amount is the lesser

## **26. MG CHARITABLE TRUST**

### **26.1 Establishment of corporate trustee**

- (1) An MG Entity must be established under the Corporations Law 2001 to be the trustee of the MG Charitable Trust, in accordance with clause 19.1(1)(b) and this clause ~~26.1~~ 26.
- (2) A reference in this deed to “*MG Charitable Trustees Pty Ltd*” is a reference to the body corporate referred to in clause 26.1(1), or any replacement body corporate in accordance with clause 26.8.
- (3) MG Charitable Trustees Pty Ltd may have any name chosen by the MG People.
- (4) MG Charitable Trustees Pty Ltd must, as soon as practicable after its incorporation, register for GST purposes and be capable of issuing tax invoices.

### **26.2 Constitution of MG Charitable Trustees Pty Ltd**

The constitution of MG Charitable Trustees Pty Ltd must provide, without limitation, that:

- (1) the objects of MG Charitable Trustees Pty Ltd include to hold on trust and to manage and administer the funds received from the State and the rights, obligations and benefits received by it from time to time under this deed for charitable purposes only for the benefit of the MG People;
- (2) during the Contribution Period, the board of directors of MG Charitable Trustees Pty Ltd must consist of:
  - (a) no less than three (3) and no more than five (5) persons nominated by the Governing Committee of the MG Corporation;
  - (b) one Independent Director nominated by the State; and
  - (c) no more than one other Independent Director nominated by MG Corporation and approved by the State, which approval must be given if the person nominated is qualified to be an Independent Director and a fit and proper person for that position; and
- (3) decisions of the board of directors of MG Charitable Trustees Pty Ltd require the votes of an absolute majority of the directors, which must include the votes of the Independent Directors

### **26.3 Terms of the Trust deed**

The deed establishing the MG Charitable Trust must be a charitable purposes trust deed capable of endorsement by the Australia Taxation Office as an Income Tax Exempt Charity and must provide, without limitation:

- (1) the MG Charitable Trust must be a charitable trust for the relief of poverty of the MG People;
- (2) subject to clause 26.3(3), MG Charitable Trustees Pty Ltd may, from time to time and with the prior approval of the Governing Committee, appoint another MG Entity as a replacement corporate trustee;
- (3) during the State Contribution Period – any replacement corporate trustee must only be appointed in accordance with clause 26.8;

- (4) on the vesting of the MG Charitable Trust, if MG Charitable Trustees Pty Ltd has failed to vest the trust property in another entity for the benefit of the MG People, it shall be deemed to vest in the MG Corporation;
- (5) during the State Contribution Period:
  - (a) the State Contribution must be invested in traditional low to medium risk investments;
  - (b) a minimum of 50% of income earned from the investment of the State Contribution must be invested in traditional low to medium risk investment; and
  - (c) all transactions involving the MG Charitable Trust must be audited by a qualified and independent auditor at least once each Financial Year and a copy of the audit report must be provided to the State as soon as practicable following the end of the Financial Year; and
- (6) during the State Contribution Period – the deed establishing the MG Charitable Trust must not be amended without the approval of the State (which for the purposes of this clause, does not include the Attorney General of the State).

#### **26.4 Contractual Obligations**

During the State Contribution Period the MG Charitable Trustees Pty Ltd must comply with the following obligations:

- (1) the deed establishing the MG Charitable Trust must not be amended without the approval of the State (which for the purposes of this clause, does not include the Attorney General of the State);
- (2) the State Contribution must be invested in traditional low to medium risk investments;
- (3) a minimum of 50% of income earned from the investment of the State Contribution must be invested in traditional low to medium risk investment; and
- (4) all transactions involving the MG Charitable Trust must be audited by a qualified and independent auditor at least once each Financial Year and the MG Charitable Trustees Pty Ltd must ensure that a copy of the audit report is provided to the State as soon as practicable following the end of the Financial Year.

#### **26.5 Amendment of MG Charitable Trust**

- (1) The State and the MG Corporation may agree in writing to vary any of the provisions of clauses 26.3 (dealing with Terms of the Trust Deed) and 26.4 (dealing with Contractual Obligations).
- (2) For the avoidance of doubt, such a variation may be done before or after the Satisfaction Date.

#### **26.6 State Contribution**

The State must pay to MG Charitable Trustees Pty Ltd by way of contribution to the MG Charitable Trust:

- (1) an initial payment of \$5,000,000 on the Satisfaction Date; and

- (2) nine (9) subsequent payments of \$1,000,000 each:
  - (a) on the anniversary of the most recent payment under clause 26.6; or
  - (b) if a MG Trust Suspension Notice has been issued:
    - (i) on the anniversary of the most recent payment plus the period during which the MG Trust Suspension Notice is operative; and
    - (ii) thereafter in accordance with clause 26.6(2)(b)(i).

#### **26.7 MGCT Ratification Deed**

- (1) As soon as possible after the MG Charitable Trustees Pty Ltd is established, the MG#4 Claimants and the MG#1 PBC must procure the MG Charitable Trustees Pty Ltd to execute and deliver to the State a deed to which the State may be Party ("**MGCT Ratification Deed**") in which, on and from the date of the deed:
  - (a) the State shall have the same rights against, and shall owe the same obligations to, the MG Charitable Trustees Pty Ltd as if the MG Charitable Trustees Pty Ltd were a Party to this deed; and
  - (b) the MG Charitable Trustees Pty Ltd shall have the rights of and owe the obligations of the MG Charitable Trustees Pty Ltd in accordance with the terms of this deed.
- (2) If the State receives the MGC Ratification Deed executed by MG Charitable Trustees Pty Ltd then the State must promptly execute the deed and deliver it to MG Charitable Trustees Pty Ltd.

#### **26.8 Substitution of MG Charitable Trustees Pty Ltd**

- (1) If, after the Satisfaction Date and during the State Contribution Period:
  - (a) the State, the MG Corporation, MG#1 PBC and any MG#4 PBC agree in writing that another MG Entity shall be the MG Charitable Trustees Pty Ltd for the purposes of this deed in place of the existing MG Charitable Trustees Pty Ltd; and
  - (b) the requirements in clauses 26.1, 26.2 and 26.7 have been met in relation to that MG Entity,  
  
then that MG Entity shall on and from the date specified in the written agreement, be the MG Charitable Trustees Pty Ltd for the purposes of this deed.
- (2) The State must not enter into an agreement referred to in clause ~~26.1(1)~~ 26.8(1) without first making reasonable efforts to consult with the Governing Committee for the time being of the MG Corporation and taking any such consultations into account.
- (3) If a new MG Entity is substituted as the MG Charitable Trustees Pty Ltd in accordance with clause 26.8(1) then, on and from the date of the substitution, the former MG Charitable Trustees Pty Ltd shall retain any liability incurred before that date under this deed and shall remain entitled to any benefit which accrued under this deed prior to that date, but shall not be entitled to any of the benefits and shall not have any liability under this deed in respect of anything done or not done on or after that date.



## **27. DEFAULT BY THE MG CHARITABLE TRUSTEES PTY LTD**

### **27.1 MG Trust (MG Charitable Trust) Default**

- (1) For the purpose of this Division 4A an *MG Trust Default* is any of the following:
  - (a) MG Charitable Trustees Pty Ltd is insolvent, or an administrator or liquidator is appointed for the corporation, or a receiver or manager is appointed in respect of the property of the corporation, or the corporation is otherwise ordered to be wound up;
  - (b) MG Charitable Trustees Pty Ltd is in breach of its duties as trustee of the MG Charitable Trust;
  - (c) MG Charitable Trustees Pty Ltd has failed to comply with Part 2M.2 (financial recording) or 2M.3 (financial reporting) of Chapter 2M of the *Corporations Act 2001* (Cth);
  - (d) during the State Contribution Period, MG Charitable Trustees Pty Ltd is replaced as the trustee of the MG Charitable Trust otherwise than under clause 26.8;
  - (e) the trust deed of the MG Charitable Trust is amended without the approval of the State as required under clause 26.4(1) (Clause 26.4 deals with Contractual Obligations);
  - (f) the State is not provided with a copy of an audit report in accordance with clause 26.4(4) (Clause 26.4 deals with Contractual Obligations), or the audit report is negative or significantly qualified; or
  - (g) MG Charitable Trustees Pty Ltd does not comply with an agreement made in accordance with clause 27.2(6).

### **27.2 Rectification of MG Trust Default and MG Trust Suspension Notice**

- (1) If at any time after the Satisfaction Date a MG Trust Default occurs then the State may give written notice to the MG Charitable Trustees Pty Ltd specifying the MG Trust Default and nominating a date (not less than 20 Business Days after the date the notice is deemed to be received under this deed) by which the MG Trust Default must be rectified.
- (2) If an MG Trust Default is not rectified prior to the date specified in the notice referred to in clause 27.2(1) then, without prejudice to any other rights the State may have at law, the State may issue the MG Charitable Trustees Pty Ltd with a written notice suspending the State's obligations under clause 26.6 (dealing with State Contribution) of this deed ("*MG Trust Suspension Notice*").
- (3) An audit report shall, without limitation, be taken to be negative or significantly qualified for the purposes of clause 27.1(1)(f) if it reports that the State Contribution, or income earned from the investment of the State Contribution, is not invested in accordance with clauses 26.3 (dealing with Terms of the Trust Deed) and 26.4 (dealing with Contractual Obligations).
- (4) If the State issues a MG Trust Suspension Notice then until the State revokes the MG Trust Suspension Notice by further notice in writing to the MG Charitable Trustees Pty Ltd, the State is not obliged to comply with clause 26.6 (dealing with State Contribution) of this deed.

- (5) The State must revoke a MG Trust Suspension Notice as soon as:
  - (a) all of the MG Trust Defaults specified in the MG Trust Suspension Notice have been remedied or are otherwise no longer operative; or
  - (b) the MG Corporation or MG Charitable Trustees Pty Ltd have taken any action reasonably required by the State in respect of the MG Trust Default (which, without limitation, may include action to ensure that the MG Trust Default does not happen again).
- (6) If an MG Trust Default is due to a negative or significantly qualified audit report then, without limitation, that default may be remedied by the MG Charitable Trustees Pty Ltd and the State entering into an agreement as to the manner in which future instalments of the State Contribution are to be invested or otherwise dealt with.
- (7) On the revocation of a MG Trust Suspension Notice, the State must pay the MG Charitable Trustees Pty Ltd, in accordance with clause 26.6 (dealing with State Contribution), the payment under clause 26.6 that would have been paid to the MG Charitable Trustees Pty Ltd by the State but for the suspension under clause 27.2(2) and the following payments are to be made on the anniversary of that date thereafter (as set out in clause 26.6(2)(b)).

**28. MG ENTITY MAY RECEIVE BENEFITS**

**28.1 Nomination of MG Entity**

- (1) The MG Corporation may from time to time nominate an MG Entity to receive:
  - (a) any payment of money under a particular clause or clauses of this deed (other than the payments under clause 19 (dealing with Establishment of Bodies Corporate and Trusts), clause 20 (dealing with MG Corporation), clause 26 (dealing with MG Charitable Trust) and clause 38 (dealing with Reserve 31165)); or
  - (b) any transfer or grant of an interest in land or other benefit under a particular clause or clauses of this deed (other than the transfer or grant or benefit referred to in clause 38 (dealing with Reserve 31165)).
- (2) A nomination in accordance with clause 28.1(1) must be:
  - (a) in writing;
  - (b) given to the State and to the person liable to make the relevant payment or to transfer or grant the relevant interest in land under this deed, prior to the date upon which such payment or transfer or grant is to be made; and  
*Note: The "person" referred to above may be the State, LandCorp or a Developing Party.*
  - (c) specify the particular payment or transfer or grant, or class of payment or transfer or grant, which is to be made to the particular MG Entity, and the date from which the nomination is to take effect.
- (3) If the MG Corporation is overdue in the payment of money to the person referred to in clause 28.1(2)(b) in accordance with any clause of this deed then the nomination in accordance with clause 28.1(1) must also be accompanied by a payment of all such overdue monies.
- (4) If the MG Corporation makes a nomination in accordance with this clause 28.1 (which, for the avoidance of doubt, includes any payment required under clause 28.1(3)) then a reference in the relevant clause of this deed to the MG Corporation as the recipient of the money or transfer or grant of an interest in land or other benefit (as the case may be) shall be taken to be a reference to the nominated MG Entity.
- (5) The MG Corporation must ensure that the MG Entity assumes the MG Corporation's obligation where:
  - (a) the MG Corporation makes a nomination under clause 28.1(1) for an MG Entity to receive a benefit in place of the MG Corporation; and
  - (b) the benefit under this deed is an obligation to grant an interest in land to the MG Corporation and that grant has a corresponding obligation on the MG Corporation to grant a lease or other interest in the subject land.
- (6) For the avoidance of doubt, except to the extent provided in clause 28.1(5), notwithstanding the nomination of an MG Entity to receive a payment of money or transfer or grant of an interest in land under a particular clause of this deed, the MG Corporation retains all of its rights and obligations under this deed (including the giving and receiving of notices) apart from the right to

receive the payment of money or transfer or grant of an interest in land the subject of the nomination.

- (7) The MG Corporation may at any time before an MG Entity has received any payment of money or transfer or grant of an interest in land under this deed, by notice in writing to the State and to the person liable to make the relevant payment or to transfer or grant the relevant interest in land under this deed, revoke a nomination of an MG Entity under this clause 28.1

## **28.2 Requirements for MG Entity acting as trustee**

- (1) Subject to clause 28.2(2), an MG Entity nominated in accordance with clause 28.1 must receive the money or land or interest in land beneficially and not as a trustee
- (2) An MG Entity may receive money or land or an interest in land under an express trust (which may be a discretionary or a charitable trust) if the trust deed provides, without limitation:
  - (a) the class of beneficiaries of the trust is one or more of the following:
    - (i) the MG People (which for the avoidance of doubt includes all of the MG People);
    - (ii) MG Corporation; and
    - (iii) some other entity (including an MG Entity, or a trust, company, association or other legal entity) established for the benefit of the MG People and approved by the Governing Committee of the MG Corporation;
  - (b) only the corporate trustee may, from time to time and with the prior approval of the Governing Committee of the MG Corporation, appoint a replacement corporate trustee and that replacement corporate trustee must be an MG Entity; and
  - (c) on vesting of the trust, if the corporate trustee has failed to vest the trust property in another entity for the benefit of the MG People, shall be deemed to vest in the MG Corporation

## **28.3 MG Entity may deal with assets**

Except as expressly provided in this deed, nothing in this deed prevents an MG Entity from selling, transferring, leasing or otherwise disposing of any of its assets in any manner it sees fit.

## **28.4 MG Entity can enforce this deed**

- (1) If as a result of a nomination under this clause 28 an MG Entity is entitled under the terms of this deed to receive any benefit, then on and from the Satisfaction Date, or the date of nomination of the relevant MG Entity under clause 28.1 (whichever is later), the MG Entity may enforce this deed against any person who is obliged under or in accordance with this deed to provide the benefit as if the MG Entity were a Party to this deed.

*Note: This deed is intended to be enforceable by the MG Entity through section 11 of the Property Law Act 1969 (WA).*

- (2) In any proceedings brought by an MG Entity to enforce the provision of a benefit under this deed, the person who is obliged to provide the benefit may set off against any judgment sum, any monies owing to that person by the MG Corporation as at the date of the judgment in favour of the MG Entity.

**29. DEFAULT BY MG ENTITIES**

- (1) The MG Corporation must, during the Contribution Period, provide the State with a copy of any annual report and any audited financial accounts for any MG Entity which has been nominated to receive benefits under this deed.
- (2) The MG Corporation must notify the State in writing as soon as practicable if an MG Entity which has been nominated to receive benefits under this deed is insolvent, or an administrator or liquidator is appointed for the MG Entity, or the MG Entity is otherwise ordered to be wound up.
- (3) If at any time an MG Entity which has been nominated to receive benefits under this deed:
  - (a) is insolvent, or an administrator or liquidator is appointed for the MG Entity, or the MG Entity is otherwise ordered to be wound up; or
  - (b) refuses or fails to perform an obligation of the MG Corporation under this deed for which that MG Entity is responsible by reason of its nomination under this deed,

then the State may by notice in writing to the MG Corporation, the MG Entity and the person liable to make the relevant payment or to transfer or grant the relevant interest in land under this deed, revoke the nomination of that MG Entity.

- (4) For the avoidance of doubt, if the State revokes the nomination of an MG Entity under clause 29(3) then the MG Corporation shall on and from that date become entitled to the relevant payment or transfer or grant of the relevant interest in land under this deed.

**30. ORD ENHANCEMENT SCHEME**

**30.1 Establishment**

- (1) As soon as practicable following the Execution Date, the State must establish the Ord Enhancement Scheme in accordance with this clause 30.

**30.2 Purpose of the Ord Enhancement Scheme**

- (1) The purpose of the Ord Enhancement Scheme is to address the impact of the Ord Stage 1 irrigation scheme on the MG People by the implementation of the recommendations of the ASEIA Report.

**30.3 Duration**

- (1) The Ord Enhancement Scheme will operate until the later of the following:
  - (a) the date four (4) years after the Execution Date; or
  - (b) the date upon which all of the funding under clause 30.9(1) is expended.

**30.4 Ord Enhancement Scheme Management Committee**

- (1) As soon as practicable following the Execution Date, and subject to ratification of the appointments by the State, the Minister for the Kimberley and the Chairperson of the MG Corporation must jointly appoint the members of the Ord Enhancement Scheme Management Committee as follows:
  - (a) 7 representatives of the MG Corporation; and
  - (b) 1 representative of the Kimberley Development Commission

*Note: Under clause 20.13, the KLC will undertake this responsibility prior to the Ratification Date. The KLC will do so in consultation with and having regard to the MG People's ASEIA Sub-committee.*

- (2) The Minister for the Kimberley and the Chairperson of the MG Corporation must appoint one member of the Ord Enhancement Scheme Management Committee as Chairperson of the Ord Enhancement Scheme Management Committee.
- (3) The Minister for the Kimberley may appoint, in addition to those appointments under 30.4(1), up to 2 representatives of the non-government sector nominated by the Ord Enhancement Scheme Management Committee as members of the Ord Enhancement Scheme Management Committee.
- (4) Membership of the Ord Enhancement Scheme Management Committee will be for a term of 2 years and a member is eligible for subsequent appointment.
- (5) If at any time there is a representative of the MG Corporation who cannot perform his or her responsibilities as a member of the Ord Enhancement Scheme Management Committee for a meeting:
  - (a) that representative must inform the Chairperson of the Ord Enhancement Scheme Management Committee;
  - (b) the MG Corporation shall nominate a replacement for the purpose of that meeting; and

- (c) that person nominated as a replacement for the purpose of that meeting shall be deemed to be a member under clause 30.4(1) for the purpose of that meeting only.
- (6) If at any time there is a representative of the MG Corporation who cannot perform his or her responsibilities as a member of the Ord Enhancement Scheme Management Committee permanently:
  - (a) that representative must inform the Chairperson of the Ord Enhancement Scheme Management Committee; and
  - (b) the MG Corporation shall nominate a person for the purpose of appointment under clause 30.4(1).
- (7) Resolutions of the Ord Enhancement Scheme Management Committee will be decided by majority with each member having one vote.
- (8) The quorum for a Ord Enhancement Scheme Management Committee meeting will be 1 representative of the Kimberley Development Commission and 4 representatives of the MG Corporation.
- (9) If a quorum is not satisfied at 2 consecutive meetings of the Ord Enhancement Scheme Management Committee, the business which was proposed to be discussed at the meetings for which the quorum was not satisfied ("**Referred Business**") shall be referred to the Minister for the Kimberley who shall:
  - (a) jointly with the MG Corporation make a determination of Referred Business; or
  - (b) if the Minister for the Kimberley is satisfied that a determination under clause 30.4(9)(a) is not possible, make a determination of Referred Business.
- (10) A determination of Referred Business under clause 30.4(9) shall be deemed to be a determination of the Ord Enhancement Scheme Management Committee.
- (11) The Ord Enhancement Scheme Management Committee shall adopt such rules and procedures, including forming Working Groups comprised of members of the Ord Enhancement Scheme Management Committee and representatives of relevant agencies, as it considers necessary to enable it to carry out its functions under this Agreement.

### **30.5 Functions of the Ord Enhancement Scheme Committee**

- (1) The functions of the Ord Enhancement Scheme Committee shall be to:
  - (a) coordinate effective actions to deal with the priority social and economic issues raised by the ASEIA Report;
  - (b) establish performance indicators for actions before they are undertaken;
  - (c) make recommendations regarding the most effective implementation of related programs and initiatives undertaken by Government;
  - (d) assess funding proposals and make recommendations to the Minister for the Kimberley regarding projects to be undertaken under the Ord Enhancement Scheme;



- (e) report annually on the progress of action with reference to performance indicators established in accordance with clause 30.5(1)(b) to the Minister for the Kimberley; and
- (f) inform the MG People about the operation of the Ord Enhancement Scheme and the work of the Ord Enhancement Scheme Management Committee by meeting with the MG Corporation at least three times a year.

### **30.6 Guiding Principles**

- (1) The Ord Enhancement Scheme Committee shall have regard to the following principles:
  - (a) **Collaboration:** A commitment to Indigenous and non-Indigenous peoples working together to address their mutual concerns arising out of a recognition that current issues cannot be solved by working in isolation;
  - (b) **Participation:** Enabling MG People to be actively involved in decisions and actions about their own future and to build their capacity for self-governance;
  - (c) **Compensation:** Recognition of the need to 'fix the past before moving to the future' in respect of the adverse impacts of Stage 1 of the Ord Irrigation Area;
  - (d) **Sustainability:** Acknowledgement that the achievement of positive social change will require on-going progress and action by all Parties, rather than just short term and 'one off' initiatives;
  - (e) **Accountability:** Acceptance by service providers that they have joint accountability to the MG People and to government for the achievement of outcomes;
  - (f) **Reciprocation:** Projects established will be characterised by commitment to a sense of shared responsibility, such as joint funding and resource sharing arrangements; and
  - (g) **Capacity Building:** Recognition that the self reliance and resilience of the MG People, and their capacity to make informed decisions and actions, will best be strengthened in the context of addressing particular needs, rather than through generic training and workshops conducted in isolation.

### **30.7 Process**

- (1) The Ord Enhancement Scheme Committee shall have regard to the following:
  - (a) the Ord Enhancement Scheme will be a mechanism by which MG People can engage with government and non-government sectors to undertake initiatives to respond to their priorities;
  - (b) the Ord Enhancement Scheme will provide for joint decision making where Parties work cooperatively through processes of dialogue, negotiation and collaboration; and
  - (c) the Ord Enhancement Scheme is not intended to provide an opportunity for cost shifting by government agencies or other bodies.

- (2) The Ord Enhancement Scheme Committee shall:
  - (a) liaise with government and non-government agencies for the purpose of the Ord Enhancement Scheme;
  - (b) seek initiatives for the purpose of the Ord Enhancement Scheme that do not require approval of funding under clause 30.8;
  - (c) seek funding from government and non-government agencies for the development of joint initiatives with government and non-government agencies and involve the any such committee approved by the Ord Enhancement Scheme Committee in the development of those initiatives;
  - (d) seek the retention of existing funding by government agencies or other bodies; and
  - (e) seek reports from service delivery agencies on a bi-annual basis on progress towards addressing identified needs that fall within their sphere of functional responsibility.

### **30.8 Approval of Funding applications**

- (1) The Minister for the Kimberley shall:
  - (a) consider funding recommendations from the Ord Enhancement Scheme Committee; and
  - (b) make funding decisions consistent with the purpose of the Ord Enhancement Scheme under clause 30.2 and the guiding principles in clause 30.6.

### **30.9 Funding and administration**

- (1) The State must commence payment as soon as practicable following the Execution Date of \$11,195,000 to the Ord Enhancement Scheme through the Kimberley Development Commission on the following basis:
  - (a) \$3,550,000 for the first year;
  - (b) \$2,715,000 for the second year;
  - (c) \$2,565,000 for the third year; and
  - (d) \$2,365,000 for fourth year,and any unexpended funds at the end of each year of operation must be rolled over into the budget for the next year.
- (2) Unless the Ord Enhancement Scheme Management Committee determines otherwise, no more than 10% of the total funding for the Ord Enhancement Scheme received under clause 30.9(1) will be expended on administration costs including salaries and allowances.
- (3) Subject to approval by the Minister for the Kimberley, the Kimberley Development Commission must pay to members of the Ord Enhancement Scheme Management Committee attendance fees for attending meetings of the Ord Enhancement Scheme Management Committee except where they are paid to attend those meeting by their employer.
- (4) Subject to this clause 30, the Kimberley Development Commission shall administer the Ord Enhancement Scheme, including:

- (a) providing administrative support for the Ord Enhancement Scheme Management Committee;
  - (b) employing staff and consultants and otherwise securing services to administer the Ord Enhancement Scheme; and
  - (c) purchasing equipment and materials for use in the administration of the Ord Enhancement Scheme.
- (5) Subject to clause 30.9(2), the funds provided to the Kimberley Development Commission under clause 30.9(1) shall be used to meet the costs associated with administering the Ord Enhancement Scheme