

SCHEDULE 7 – LEASE OF NEW CONSERVATION AREAS

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THE LESSOR HEREBY LEASES TO THE LESSEE the Land subject to the Covenants and the Encumbrances for the Term for the clear total rental of one dollar inclusive of GST payable on demand, and otherwise on and subject to the terms, covenants and conditions contained in this Lease and for that purpose the Lessor and the Lessee **COVENANT AND AGREE** as follows:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Lease, unless the context requires otherwise:

Authority means Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind.

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

Covenants means the Deed of Covenant and any other restrictive or positive covenants registered on the certificate of title to the Land from time to time that are consented to by the Lessee.

Deed of Covenant means the Deed of Covenant between the Lessor as registered proprietor of the Land and the Minister for Lands dated on or about the date of this Lease and which is to be registered on the certificate of title to the Land before the registration of this Lease.

Encumbrance means the encumbrances shown in the encumbrances panel on the front page to this Lease.

Further Term means the period of one hundred (100) years commencing immediately after the expiry of the initial Term of one hundred (100) years

Improvements means all buildings, erections and improvements from time to time erected, constructed or placed on the Land

Land means the land as described on the front page of this Lease, together with all Improvements.

Lessee means the State of Western Australia and its successors in title and permitted assigns.

Lessor means the MG Trustees Pty Ltd.

Management Agreement means the management agreement set out in Schedule 1.

Management Plan means the Management Plan for the Land, prepared in accordance with the Management Agreement and pursuant to section 56(c) of the CALM Act.

MG Culture means living body of traditions, observances, customs, beliefs and cultural practices of the MG People, as evidenced by but not limited to:

- (a) to the use of land and waters in accordance with the traditional laws acknowledged and traditional customs observed by the MG People; and
- (b) the native title rights and interests of the MG People in the Land

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MG People means:

- (a) those Aboriginal persons who are common law holders under the MG#1 Determination, but not including those persons who are common law holders solely on the basis that they identify themselves as Balanggarra (as defined in the MG#1 Determination) in relation to their native title rights and interests in Lacrosse Island and who are so identified by other members of the Balanggarra group; and
- (b) Aboriginal persons who are members of the native title claim group for the MG#4 Claim and all persons determined to hold native title in the MG#4 Claim area.

MG#1 Determination means the determination of native title made by the Full Court of the Federal Court by consent of the parties in proceedings WAG 6293, 6292, 6294, 6295 and 6296 of 1998.

MG#4 Claim means Federal Court of Australia native title determination application WAD 124 of 2004, or if such application is discontinued, dismissed or struck out, any other application which replacing application WAD 124 of 2004.

Permitted Use means any or all of the purposes referred to in clause 3.1.

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

Term means a term of one hundred (100) years as shown on the front page of this Lease and, when the context so requires, includes any period of holding over, the Further Term, and any other additional renewed or extended term.

TLA means the *Transfer of Land Act 1893* (WA).

Written law has the same meaning as in the *Interpretation Act 1984* (WA).

1.2 Interpretation

In this Lease, unless the context requires otherwise:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this document and references to this document or this Lease include the front page and other parts on the form necessary for registration of this Lease under the TLA and any schedule or annexure;
- (b) a reference to this or any other document includes any variation or replacement of either of them;
- (c) a reference to a written law includes consolidations, amendments, re-enactments or replacements of that written law;
- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to a person which has ceased to exist or has reconstituted,

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amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;

- (i) a reference to a thing includes a reference to the whole or any part of that thing;
- (j) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;
- (k) headings (except in a schedule) are for convenience only and do not affect the interpretation of this document;
- (l) where a period of time is to be reckoned from a day or act or event, that or the day of that act or event, is excluded;
- (m) a month means a calendar month;
- (n) including is deemed to be followed by the words, but not limited to; and
- (o) party means a party to this Lease.

2 RENT AND OTHER PAYMENTS

2.1 Rent

The total rent payable for the grant of this Lease is one dollar (including GST), which is payable on demand.

2.2 Outgoings

The Lessee must pay all rates, taxes, charges or other outgoings in respect of the Land during the Term.

2.3 Other Payments

The Lessee is not liable to make any other payments under this Lease or in respect of its use and occupation of the Land under this Lease whatsoever, except as provided elsewhere in this Lease (including clauses 2.4 and 7.2).

2.4 GST

- (a) In this clause the following terms have the following meanings:

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for or amending that Act.

The terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the respective meanings given to each of those terms in section 195-1 of the GST Act.

- (b) Any amounts payable by the Lessee to the Lessor, under this Lease, are exclusive of GST.
- (c) The Lessee must pay additional to any amounts payable by the Lessee under this Lease, any GST payable by the Lessor in respect of a Taxable Supply made under this Lease, subject to and within thirty (30) days of the provision by the Lessor to the Lessee of a Tax Invoice in the format and form required as set out in the GST law.
- (d) If the Lessor is entitled to any refund or credit for GST paid in respect of a Taxable Supply made under this Lease, and the Lessee paid that GST to the Lessor in the first instance, the Lessor shall pay forthwith to the Lessee an amount

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equivalent to the GST so refunded or credited.

3 USE OF LAND

3.1 Permitted Use

Subject to clause 3.4, the Lessee may occupy and use the Land for purposes consistent with the Management Agreement and the Management Plan.

3.2 Improvements

- (a) The Lessee may construct, erect, demolish, reconstruct, improve or alter Improvements on the Land for or relating to a Permitted Use.
- (b) The Lessee will keep any Improvements on the Land from time to time, in a good and safe state of repair and condition.

3.3 No Dedication to Public Use

The Lessee must take all steps necessary (including closing off the Land or any part of it to the general public at least once a year or by any other means) to ensure that the Land, or any part of it, is not dedicated to the public use at common law, under any written law or in any other manner whatsoever.

3.4 Covenants

- (a) In exercising its rights under this Lease, the Lessee must comply with and not breach the Covenants.
- (b) If the Lessor considers that the Lessee has breached the Covenants:
 - (i) the Lessor must give notice in writing to the Lessee setting out the details of the alleged breach of the Covenants; and
 - (ii) the parties must use their best endeavours to resolve that dispute between themselves.
- (c) If the parties fail to resolve the dispute within 21 days after the service of the notice under clause 3.4(b)(i) the parties agree that a breach of the Covenants by the Lessee will not give the Lessor the right to terminate or rescind this Agreement, but subject to clause 3.4(b) the Lessor may exercise any right or remedy otherwise available to it in respect of such breach.

4 MANAGEMENT AGREEMENT AND MANAGEMENT PLAN

4.1 Rights under Lease

- (a) The rights and powers of the Lessor and the Lessee under this Lease must be exercised in accordance with the Management Agreement and Management Plan.
- (b) All rights, powers, covenants, obligations and liabilities under this Lease continue even if there is no Management Agreement, Management Plan or both.
- (c) For the avoidance of any doubt, the Management Agreement shall still apply, notwithstanding that there may be no Management Plan

4.2 Review

The Parties agree that within 10 years of execution of this Lease, and every 10 years thereafter, the Parties will undertake a review of its terms to take into account any changes to the Management Agreement, the Management Plan and any relevant changes

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to State legislation.

5 ASSIGNMENT AND SUBLETTING

5.1 Not without Consent

Subject to the Management Agreement set out at Schedule 1, the Lessee may not assign any of its right, title or interest in the Lease or the Land and may not sublet or part with possession of or the right to possess the whole or any part of the Land, without the Lessor's consent. The Lessor's consent may be given, withheld or given subject to such conditions as the Lessor thinks fit, in the Lessor's absolute discretion.

6 APPOINTMENT OF LESSEE'S REPRESENTATIVE

6.1 Application

This clause 6 only applies while the State is the Lessee.

6.2 Governor may Appoint

- (a) The Governor of the State may, from time to time, nominate, cancel a nomination and make a further nomination of a department of the Government of the State ("Department") or any other appropriate State Authority ("State Authority") to be responsible for the administration of this Lease on behalf of the Lessee
- (b) The Lessor is entitled to rely on all acts, matters and things bona fide done by any officer of or in the name of the Department or State Authority so nominated, in relation to the administration of this Lease, until the Lessor is notified that the nomination has been cancelled. This paragraph (b) includes notification by the Department or State Authority of its nomination or cancellation of its nomination.
- (c) This Lease may only be varied or extended by a document executed under the Public Seal of the State, and not by any authority given under this clause 6.2.

7 INDEMNITY

7.1 Assumption of Obligations and Duties

- (a) The Lessee agrees to take and be subject to the same obligations and duties to which it would be subject in respect of persons and property if, during the Term, it were the owner and occupier of the Land as though the Lessee were the holder of an estate in fee simple absolute of the Land.
- (b) Nothing in clause 7.1(a) shall be taken to affect or diminish the rights of the Lessor as registered proprietor of the Land and retained under this Lease whether arising at common law or in statute.

7.2 Lessee's Indemnity

- (a) For the purposes of this clause 7.2, the term Lessor includes any director, officer, member and the agents, servants, employees, contractors, licensees and invitees of the Lessor.
- (b) 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:
 - (i) in respect of any loss, injury or damage of or to any kind of property (including the Land and the property of third parties); and

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- (ii) in respect of any death of or injury or illness sustained by any person, that is directly or indirectly during the Term caused by, arising out of, or in connection with:
 - (A) the use or occupation of the Land by the Lessee or any person;
 - (B) any work carried out by or on behalf of the Lessee under this Lease;
 - (C) the Lessee's activities, operations or other use of the Land of any kind under this Lease;
 - (D) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants, obligations or liabilities under this Lease; or
 - (E) any negligent or other tortious act or omission of the Lessee or any of its officers, agents, servants, employees, contractors, licensees and invitees.
- (c) The obligations of the Lessee under this clause 7.2 continue after the expiration of the Term in respect of any act, deed, matter or thing occurring before the expiration of the Term.
- (d) Where an area of land has been excised from the Land, the obligations of the Lessee under this clause 7.2 continue after the excision of that area from the Land or the expiration of the Term in respect of any act, deed, matter or thing occurring before the excision.
- (e) The Lessee's liability to indemnify the Lessor under this clause 7.2 does not arise or apply to the extent that the loss, injury, damage of or to property or death of or injury or illness of any person is caused or contributed to by the negligent or other tortious act or omission of the Lessor.

8 TRANSFER OF LAND ACT

8.1 Registration

This Lease shall be registered under the ILA on the certificate of title to the Land, and the parties will do all things necessary to give effect to this provision

8.2 Exclusion of Implied Provisions

Such of the implied covenants and powers as might otherwise be implied in this Lease by the ILA do not apply to this Lease and are not implied in this Lease.

9 QUIET ENJOYMENT

9.1 Lessee's Right

Subject to clause 9.2, the Lessee may peaceably possess, use and occupy the Land during the Term without any interruption or disturbance from or by the Lessor or any person or persons lawfully claiming through under or in trust for the Lessor.

9.2 Lessor's Right

- (a) Subject to clause 9.2(b), the Lessee agrees that the MG People have the right to go onto and use the Land at any time during the Term for the purposes of MG Culture in a manner not inconsistent with the Covenants, the Management Agreement, the Management Plan and the CALM Act.

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- (b) To the extent of any inconsistency between the Lessee's right to use the Land for the Permitted Use and the MG People's right to go onto and use the Land at any time during the Term for the purposes of MG Culture in a manner not inconsistent with the Covenants, the Management Agreement and the Management Plan pursuant to clause 9.2(a), the Lessee's rights prevail.

10 LESSOR'S COVENANTS

10.1 No Right to Terminate

Provided that the Lessee uses and occupies the Land only for the purposes permitted under this Lease, and in consideration of the Lessee accepting the grant of this Lease, the Lessor hereby absolutely and unconditionally waives any right of forfeiture, re-entry or determination of this Lease which but for this clause the Lessor has or may in the future have had under or by virtue of this Lease against the Lessee.

11 EXPIRY OF LEASE

11.1 Notice to Vacate

- (a) The Lessor must give the Lessee at least twelve (12) months notice, in writing, to vacate the Land.
- (b) The Lessor may give the notice to vacate the land no earlier than twelve (12) months prior to the expiry of the Term.
- (c) The Lessee shall be entitled to continue in occupation of the Land during the twelve (12) month notice period free of rent and upon and subject to the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable.

11.2 Holding Over

If the Lessee, with the express or implied consent of the Lessor, continues in occupation of the Land after the expiry of the twelve (12) months notice period given in accordance with clause 11.1 the tenancy shall be:

- (a) deemed to be a monthly tenancy only;
- (b) free of rent;
- (c) determinable by one (1) months notice, in writing, by either Party to the other, which may be given at any time; and
- (d) subject to the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable.

11.3 Yielding Up

The Lessee must peaceably surrender and yield up the Land to the Lessor in such state of repair and condition as is consistent with the due performance by the Lessee of its obligations under this Lease, and deliver all keys and other similar locking devices to or for any Improvements to the Lessor at the expiration of either:

- (a) the 12 month notice to vacate period pursuant to clause 11.1; or
- (b) the 1 month notice pursuant to clause 11.2.

11.4 Property in Improvements

At the expiration of the Term, all right title and property in the Improvements vests in

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the Lessor absolutely without any compensation to the Lessee, and the Lessee shall have no right to remove them from the Land on the expiration of the Term.

12 OPTION TO RENEW

12.1 Further Term

Subject to clause 12.2, if:

- (a) at any time in the ten (10) year period prior to the expiry of the initial Term of one hundred (100) years of this Lease, the Lessee gives notice to the Lessor that it wishes to extend the Term of this Lease for the Further Term; and
- (b) at the date of giving the notice under paragraph (a), the Lessee is not in breach of a condition of this Lease, where notice of that breach has been given by the Lessor and has not been remedied or waived,

then the Term of this Lease shall be extended for the Further Term on the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable, except for this clause 12.

12.2 Lease Review

Prior to any renewal as provided for in 12.1, the Lessor and the Lessee will review the terms of the Lease to determine the appropriateness of those terms to take into account all matters relating to the ongoing management of the Land

13 OPTION TO PURCHASE

13.1 Interpretation

In this clause 13:

Option means the option described in clause 13.2.

Lessee's Notice means the notice in clause 13.3(b)

Lessor's Notice means the notice in clause 13.3(a).

Purchase Price means the market value for the Land, as determined by the Valuer General of Western Australia on or around the time of the Lessee's Notice.

13.2 Grant of Option

The Lessor, in consideration of ONE DOLLAR (\$1.00) (payment of which is acknowledged by the Lessor by its signature to this Lease), hereby grants to the Lessee an option to purchase all right, title, estate and interest in the Land (including all improvements on the Land) on the terms and conditions set out in this clause 13.

13.3 Condition of Exercise

- (a) As soon as the Lessor intends to sell, assign, transfer, part with possession or otherwise deal with any or all of its rights, title, estate and interests in the Land the Lessor must give notice of that intention to the Lessee.
- (b) If the Lessor gives the Lessor's Notice, the Lessee may exercise the Option by giving notice to the Lessor within ninety (90) days after receipt of the Lessor's Notice.
- (c) The Lessee agrees not to exercise the Option except as provided in this clause 13.3.

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13.4 Sale and Transfer of Land

If the Lessee exercises the Option the Lessor must, in consideration of the Lessee paying to the Lessor the Purchase Price, sell and transfer to the Lessee all right, title estate and interest in the Land (including all improvements on the Land) absolutely free of all encumbrances other than the Covenants and any other encumbrances agreed in writing by the Lessee.

13.5 Settlement

- (a) Settlement of the sale and transfer of the Land under clause 13.4 shall occur at the place nominated by the Lessee, on or before ninety (90) days after the date of the receipt by the Lessor of the Lessee's Notice.
- (b) At settlement:
 - (i) the Lessee must pay the Purchase Price to the Lessor; and
 - (ii) the Lessor must deliver to the Lessee a duly executed transfer in a form that will allow registration of it under the *Transfer of Land Act 1893* and all such other deeds, instruments and documents as the Lessee reasonably requires to complete and fully effect the transfer and conveyance of the Land to the Lessee in accordance with this clause 13.

13.6 Costs and Stamp Duty

Each party shall pay its own legal and other costs incurred in respect of any matter under this clause 13, but the Lessee must pay all stamp duty, if any, payable in respect of the sale and transfer of the Land.

13.7 Option Applies

For the avoidance of any doubt:

- (a) the Lessor's obligation to give the Lessor's Notice; and
- (b) if the Lessor's Notice is given, the Lessee's right to exercise the Option, arises on each and every occasion that the Lessor desires or intends to sell, assign, transfer, part with possession or otherwise deal with any or all of its rights, title, estate and interests in the Land during the Term.

14 NOTICES

- (a) Notices under this Lease shall be in writing and may be delivered by hand delivery, pre-paid post or facsimile transmission.
- (b) Notice shall be deemed to be received:
 - (i) in the case of hand delivery, on delivery to the address of the Party set out below or as otherwise notified in writing from time to time;
 - (ii) in the case of pre-paid post, five (5) Business Days after posting; and
 - (iii) in the case of facsimile transmission, upon receipt by the sender of a transmission form indicating successful transmission of the entire facsimile.
- (c) Notices to be given to:
 - (i) the Lessor shall be addressed to:
Facsimile No:

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(ii) the Lessee shall be addressed to:

Facsimile No:

15 GOVERNING LAW

This Lease is governed by the law in force in the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia and the appeal Courts from those Courts.

16 SEVERABILITY

If any provision of this Lease is void, voidable by any Party, unenforceable or illegal in any jurisdiction, it shall be read down so as to be valid and enforceable or if it cannot be so read down, then in an appropriate case a Court may sever that provision or where possible the offending words and the remaining parts not so severed shall remain in full force and effect and be unaffected by the severance.