

SCHEDULE 11 – LEASE TO EME

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THE LESSOR HEREBY LEASES TO THE LESSEE the Land subject to the Encumbrances for the Term for the clear total rental of one peppercorn 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:

Agricultural Area means [the M2 Farm Area or the Mantinea Farm Area or the Ord West Bank Farm Area (as the case may be)].

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.

EME means a body corporate with:

- (i) perpetual succession and a common seal;
- (ii) a membership which includes (if it chooses to join as a member) the Lessor as the registered proprietor of the Land;
- (iii) a board of directors or governing committee at least one seat on which is reserved for a nominee of the Lessor; and
- (iv) obligations to comply with conditions under the Environmental Approval relating to the conduct of agriculture and associated operations on the Agricultural Area and to the management of the Land.

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

Environmental Approval means any approval to implement a proposal under the *Environmental Protection Act 1986 (WA)*, the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)*, and any other legislation of the State, the Northern Territory and the Commonwealth dealing with the protection of the environment, which applies to the Land.

Further Term means the period of one hundred (100) years commencing immediately after the expiry of the initial Term of one hundred (100) years or immediately upon the expiry of a previous Further 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 [M2 EME or Mantinea EME or Ord West Bank EME (as the case may be)] described as such in the lessee panel on the front page of this Lease, and its successors in title and permitted assigns.

Lessor means the person described as such in the lessor panel on the front page of

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this Lease, and the registered proprietor of the Land from time to time.

Management Plan means the management plan set out in Schedule 1 to this Lease.

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

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

MG People means:

- (i) 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
- (ii) 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, any 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

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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, 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 clear total rent payable for the grant of this Lease is one peppercorn, which is payable on demand.

2.2 Outgoings

The Lessee must pay all rates, taxes, charges and 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 6.1(a))

2.4 GST

- (a) In this clause 2.4 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.

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- (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 equivalent to the GST so refunded or credited.

3. USE OF LAND

3.1 Permitted Use

Subject to clause 3.3, the Lessee may occupy and use the Land for the purposes of buffer associated with the Agricultural Land, and for the purposes of infrastructure (whether or not associated with the Agricultural Land), and any other purpose that is incidental, ancillary or beneficial to those purposes.

3.2 Improvements

The Lessee may construct, erect, demolish, reconstruct, improve or alter Improvements on the Land for or relating to a Permitted Use.

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.

4. 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 Plan.
- (b) All rights, powers, covenants, obligations and liabilities under this Lease continue even if there is no Management Plan.

4.2 Amendment of Management Plan

- (a) The Management Plan may be amended or supplemented from time to time by agreement of the parties.
- (b) If as a result of an amendment or other change to the Environmental Approval, the Management Plan does not comply with the Environmental Approval then the parties must promptly amend or supplement the Management Plan so that it complies with the Environmental Approval.
- (c) If the parties cannot agree upon any amendment or supplement to the Management Plan in accordance with clause 4.2(b) within three (3) months of the amendment or other change to the Environmental Approval then either party may request the Minister for the Environment to determine the

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amendments or supplements to the Management Plan.

- (d) If the Management Plan is amended or supplemented (including as a result of a determination by the Minister for the Environment) then the parties agree that:
 - (i) the parties will execute a deed of variation to this Lease, which deed will provide that:
 - (A) the term of this Lease is extended by one day;
 - (B) the amended Management Plan in the schedule to the deed of variation shall replace the Management Plan in Schedule 1 to this Lease; and
 - (C) the deed of variation shall be registered against the certificate of title for the Land under the TLA; and
 - (ii) the parties must do all things reasonably necessary to execute the deed of variation and to give effect to all things contemplated under it
- (e) For the purposes of this clause 4.2, the Lessor irrevocably appoints the Lessee to be the Lessor's duly appointed agent and attorney to prepare and execute all documents and do all things necessary to give effect to clause 4.2(d) and agrees to ratify and confirm and hereby ratifies and confirms anything done pursuant to this appointment.
- (f) Nothing under this clause 4.2 relieves the Lessee or any other person from any obligations under the AHA or the ATSIHPA or any other legislation, including any requirement to conduct Aboriginal heritage surveys.

5. ASSIGNMENT AND SUBLETTING

5.1 No assignment without Consent

- (a) Subject to clause 5.1(b), the Lessee may not assign any of its right, title or interest in the Lease 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.
- (b) The Lessee may assign any of its right, title or interest in the Lease to another EME in respect of the Land or, if the Lessee ceases to be an EME and there is no other EME in respect of the Land, then to the State or any agency or statutory authority of the State.

5.2 Subletting

The Lessee may with the consent of the Lessor sublet the whole or any part of the Land for a period (including any renewals) of up to one hundred (100) years for a Permitted Use. 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. INDEMNITY

6.1 Assumption of Responsibility

- (a) The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it were the owner and occupier of the Land as though the Lessee were the holder of an estate in fee simple absolute of the Land.

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- (b) Nothing in clause 6 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

6.2 Lessee's Indemnity

- (a) For the purposes of this clause 6.2, 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
 - (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 6.2 continue after the expiration of the Term in respect of any act, deed, matter or thing occurring before the expiration of the Term.
- (d) The Lessee's liability to indemnify the Lessor under this clause 6.2 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

6.3 Lessor's Indemnity

- (a) For the purposes of this clause 6.3, the term Lessee includes any director, officer, member and the agents, servants, employees, contractors, licensees and invitees of the Lessee
- (b) The Lessor must indemnify and keep indemnified the Lessee from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be brought, maintained or made against the Lessee:
 - (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
 - (ii) in respect of any death of or injury or illness sustained by any person,

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that is directly or indirectly during the Term caused by, arising out of, or in connection with any negligent or other tortious act or omission of the Lessor or any of its officers, agents, servants, employees, contractors, licensees, invitees and members in the exercise of their right under clause 8.2(a).

7. TRANSFER OF LAND ACT

7.1 Registration

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

7.2 Exclusion of Implied Provisions

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

8. QUIET ENJOYMENT

8.1 Lessee's Right

Subject to clause 8.2, if the Lessee does not breach the conditions of this Lease, 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.

8.2 Lessor's Right

- (a) Subject to clause 8.2(b), the Lessor has the right (for itself and its members from time to time) 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 Permitted Use and the Management Plan.
- (b) To the extent of any inconsistency between the Lessee's right to use the Land for the Permitted Use under this Lease and the Lessor's right (for itself and its members from time to time) to go onto and use the Land at any time during the Term for the purposes of MG Culture in accordance with clause 8.2(a), the Lessee's rights prevail.

9. TERMINATION BY LESSOR

9.1 No Right to Terminate

Subject to clause 9.2, 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.

9.2 Exception

- (a) If the State gives written notice to the Lessor and Lessee that the Land is no longer required for the purpose of buffer for the Agricultural Land then the Lessor may terminate this Lease on twelve (12) months written notice to the Lessee.
- (b) If the Lessee occupies or uses the Land or permits the Land to be occupied or used for a purpose which is not permitted under clause 3.1 then the Lessor may terminate this Lease PROVIDED that the Lessor must give the Lessee at least 28 days written notice specifying the alleged impermissible occupation or use

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of the Land and the Lessor shall not terminate this Lease if the Lessee has during that notice period ceased to occupy or use the Land or permit the Land to be occupied or used (as the case may be) for the alleged impermissible purpose.

10. EXPIRY OF LEASE

10.1 Notice to Vacate

Unless the Lessor has given the Lessee a notice to vacate at least 12 months prior to the expiry of the Term, the Lessee shall be entitled to continue in occupation of the Land after the expiry of the Term until the expiry of a period of 12 months after the giving of a notice to vacate by the Lessor, such occupation to be 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

10.2 Holding Over

If the Lessee shall with the express or implied consent of the Lessor continue in occupation of the Land after the expiry of the Term other than pursuant to clause 11.1, or after any period of occupancy pursuant to clause 11.1, the Lessee shall be deemed to be a monthly tenant only free of rent and such tenancy may be determined by one (1) months notice in writing by either party to the other, which may be given at any time, and otherwise shall be subject to the same terms, covenants and conditions as are contained in this Lease or such of them as shall then be applicable.

10.3 Yielding Up

At the expiration of the Term, 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

10.4 Property in Improvements

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

11. OPTION TO RENEW

11.1 Further Term

Subject to clause 9.2 and 11.2, the Lessee has the right to extend the initial Term of one hundred (100) years by up to nine (9) consecutive Further Terms of one hundred (100) years.

11.2 Notice of exercise of option

If:

- (a) the Lessee reasonably considers that it requires the Lease of the Land for the Permitted Use for a Further Term or part of a Further Term; and
- (b) at any time in the ten (10) year period prior to the expiry of the Term of this Lease (including as extended under clause 11.1), the Lessee gives notice to the Lessor that it wishes to extend the Term of this Lease for a Further Term; and
- (c) at the date of giving the notice under clause 11.2(b), the Lessee is not in breach

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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.

12. OPTION TO PURCHASE

12.1 Interpretation

In this clause 12:

Option means the option described in clause 12.2.

Lessee's Notice means the notice in clause 12.3(a).

Lessor's Notice means the notice in clause 12.3(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

12.2 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 12.

12.3 Condition of Exercise

- (a) If 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 then the Lessor must, as soon as possible, give notice to the Lessee of that intention or desire.
- (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 12.3.

12.4 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.

12.5 Settlement

- (a) Settlement of the sale and transfer of the Land under clause 12.4 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

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- (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 12.

12.6 Costs and Stamp Duty

Each party shall pay its own legal and other costs incurred in respect of any matter under this clause 12, but the Lessee must pay all stamp duty, if any, payable in respect of the sale and transfer of the Land.

12.7 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.

13. NOTICES

- (a) Notices under this Lease shall be in writing and may be delivered by hand delivery, pre-paid post or facsimile transmission.
- (b) Notices to be given to:
 - (i) the Lessor shall be addressed to:
Facsimile No:
 - (ii) the Lessee shall be addressed to:
Facsimile No:
- (c) 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 from time to time;
 - (ii) in the case of pre-paid post, three (3) 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.

14. 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