

Schedule 17 – Yamatji Proponent Standard Heritage Agreement

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[2020]

Yamatji Proponent Standard Heritage Agreement

Yamatji Southern Regional Corporation

[XX – Insert name of Proponent]

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Date

THIS AGREEMENT is made on [XX – Insert date]

Parties

[XX – Insert name of Corporation)

[XX – Insert name of Proponent] (insert ABN or ACN) (**Proponent**)

Recitals

- A. The Corporation represents the Traditional Owners in relation to native title and Aboriginal heritage matters in the Agreement Area.
- B. The Corporation and the State are, together with others, parties to the ILUA.
- C. The Proponent is the registered holder of the Tenure.
- D. In accordance with the ILUA the Tenure has been granted subject to a condition requiring the Proponent to enter into an Aboriginal Heritage Agreement that applies to the Tenure and Activities carried out pursuant to that Tenure. This YPSHA is one form of Aboriginal Heritage Agreement that the Proponent can enter into in order to comply with that condition.
- E. The Proponent has agreed to enter into this YPSHA with the Corporation to comply with the abovementioned condition imposed on the Tenure.

In entering this Agreement, the Parties have identified the following Yamatji Cultural Heritage Principles:

- (a) this agreement does not permit any Party not to comply with the requirements of the *Aboriginal Heritage Act 1972* (WA);
- (b) the views of the Traditional Owners are integral in assessing Aboriginal Sites and managing any Activity likely to disturb, damage, interfere with, excavate, relocate or remove Aboriginal Sites or Aboriginal Objects;
- (c) interference with or damage to Aboriginal Sites and Aboriginal Objects should be avoided to the extent practicable;
- (d) where the Traditional Owners do not want Aboriginal Sites to be damaged or interfered with, their views will be considered and reasonable efforts will be made to avoid the particular Aboriginal Sites; and
- (e) timely and efficient processes for the avoidance and preservation of Aboriginal Sites and Aboriginal Objects, where applicable, must be developed in conjunction with the Traditional Owners.

The Parties agree as follows:

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this YPSHA, unless the contrary intention appears:

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

Aboriginal Heritage Act Minister means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

Aboriginal Heritage Act Register means the register of Aboriginal Sites established and maintained under section 38 of the Aboriginal Heritage Act.

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

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

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

Aboriginal Heritage Area means the area to which an Activity Notice applies.

Aboriginal Heritage Agreement means an agreement with the Traditional Owners or Corporation concerning the management of Aboriginal Sites and Aboriginal Objects and other matters under the Aboriginal Heritage Act with respect to areas in or near the Aboriginal Heritage Area. To avoid doubt, this YPSHA is a form of Aboriginal Heritage Agreement.

Aboriginal Heritage Liaison Officer means the person appointed under clause 10.1(a)(ii).

Aboriginal Heritage Service Provider means the person or company engaged by or on behalf of the Traditional Owners, through the Corporation, to plan and carry out Surveys for the Traditional Owners. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity.

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

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

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

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

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

Activity Notice means a notice issued by the Proponent to the Corporation under clause 8.2.

Activity Notice Date has the meaning given in clause 8.2(g).

Activity Notice Response means notice given by the Corporation to a Proponent under clause 8.3(a).

Activity Program means all Activities described in an Activity Notice.

Agreement Area means the area to which this YPSHA applies, being the land and waters described in Part A of Schedule 3.

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

Confidential Information has the meaning given in clause 21.1.

Corporation means the Yamatji Southern Regional Corporation.

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

CPI Calculation means:

$$A_x = \frac{CPI_n}{CPI_{base}}$$

where:

A = the initial base payment under this PSHA as set out in Schedule 5.

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

CPI_{base} = the June [2020] quarterly CPI number (base quarter) as published by the Australian Bureau of Statistics in the second half of the [2020] calendar year.

Determination means the approved determination of native title described in items 1 to 3 of Schedule 2.

Determination Area means the area in which native title was held to exist in the Determination. To avoid doubt, the Determination Area is the same as the Agreement Area as defined in the ILUA.

Disclosing Party has the meaning given in clause 21.1.

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

DPLH has the meaning given to Department in section 4 of the Aboriginal Heritage Act.

Due Diligence Guidelines means the Aboriginal Heritage Due Diligence Guidelines issued and amended from time to time by the Department of the Premier and Cabinet and DPLH and accessible via DPLH's website at www.dplh.wa.gov.au.

Effective Date means the date on which this YPSHA comes into force and effect as an agreement between the Corporation and an individual Proponent as the case may be, as more particularly described in clause 3.1.

Environmental Impact means an impact caused by an event such as a cyclone or flood.

Estimated Survey Costs means the costs agreed in accordance with clause 9.5.

Event of Default means any of the events described in clause 19.1(b).

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

- (a) acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);
- (d) flood;
- (e) landslides;
- (f) earthquake or tsunami;
- (g) volcanic eruption;
- (h) impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic or pandemic;
- (k) civil unrest;
- (l) industrial action (other than industrial action limited to the affected Party);
- (m) war (including civil war);
- (n) acts of terrorism;
- (o) radioactive or biological contamination;
- (p) the effect of any law or authority exercised by government official by law (other than a State law or a State government official).

but does not include:

- (q) lack of or inability to use funds for any reason;
- (r) any occurrence which results from the wrongful or negligent act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (s) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;

- (t) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of paragraphs (a) to (o); and
- (u) any act or omission of an agent or contractor of the affected Party.

GPS means a global positioning system device.

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

Guidelines for the Engagement of Aboriginal Heritage Monitors means the guidelines of the same name issued by the Department of the Premier and Cabinet and the DPLH dated 24 March 2015 and as amended from time to time.

Heritage Information Submission Form means the Form referred to, with website reference, in clause 10.2.

ILUA means the Indigenous land use agreement described in item 4 of Schedule 2.

ILUA Registration Date means the date upon which the National Native Title Registrar registers the ILUA on the Register of Indigenous Land Use Agreements.

Insolvency Event means where a Party:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

Last Fieldwork Day has the meaning given in clause 12.1.

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

- (a) field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation;
- (b) sampling, including removing soil, rock and flora samples using hand methods (including hand augering) from the natural surface;
- (c) remote sensing, biological, environmental or conservation surveys, including installing monitoring plots and marker posts;

- (d) establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks;
- (e) reconnaissance and patrol in light vehicles, but not to the extent that repetitive access and use creates a permanent track.;
- (f) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes;
- (g) collecting and removing loose rocks, firewood, flora or fauna;
- (h) conducting tests for water, site contamination, or other scientific or conservation purposes;
- (i) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures;
- (j) maintaining existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks;
- (k) erecting signage and barriers using hand and mechanical augers;
- (l) revegetating of degraded areas, including fencing areas of vegetation;
- (m) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting;
- (n) carrying out species recovery programs;
- (o) erosion control activities around existing roads, infrastructure or facilities;
- (p) weed control using hand, mechanical and chemical methods of control;
- (q) conducting tourism operations that:
 - (i) are based in established facilities; or
 - (ii) require the establishment of new facilities that require no, or only minor, ground disturbance;
- (r) any other use of hand-held tools, not referred to in the preceding paragraphs;
- (s) the laying of temporary water pipelines across the ground where no excavation is required;
- (t) electrical works associated with existing infrastructure in previously disturbed areas; and
- (u) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

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

Minor Impact Activity means any Activity that involves negligible or no ground disturbance and is not a Low Ground Disturbance Activity, including the following:

- (a) walking, photography, filming;
- (b) aerial surveying and magnetic surveys;
- (c) use of existing tracks and water courses;
- (d) environmental monitoring;
- (e) water sampling;
- (f) spatial measurement;
- (g) geological scientific research, including geological mapping, soil and drainage sampling using hand held tools only;
- (h) cultivation and grazing in previously cultivated/grazed areas;
- (i) maintenance of existing paths, walls, fences, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas;
- (j) metal detecting;
- (k) non-ground disturbing geophysical surveys including electrical and magnetic surveys and incidental activities;
- (l) feral animal eradication, weed, vermin and pest control, vegetation control and fire control; and
- (m) light vehicular access and camping, but not to the extent that repetitive access and use creates a permanent track.

For the avoidance of doubt, Minor Impact Activity does not include the grading of tracks, unless those tracks have been previously graded and does not include the doing of any activity pursuant to the Minor Impact Activity (e.g. digging after metal detecting is not permitted).

Notice of Application has the meaning given in clause 17.1.

Notice to Consult has the meaning given in clause 17.1.

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

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

Preliminary Advice means advice, in writing, complying with clause 12.3(a).

Principal Aboriginal Heritage Consultant means the anthropologist or archaeologist nominated and agreed under clause 8.3(d)(v) or 9.6.

Proponent Acceptance Deed means a deed in the form contained in Schedule X of the ILUA which has been executed by the Proponent.

Receiving Party has the meaning given in clause 21.1.

Resolution Institute means the dispute resolution organisation of that name.

Sensitive Heritage Information means culturally sensitive information about Aboriginal Sites or Aboriginal Objects, provided by or on behalf of the Traditional Owners during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

Site Avoidance Model means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site which may include Aboriginal Objects within that area.

Site Avoidance Survey means a Survey carried out using the Site Avoidance Model.

Site Identification Model means a Survey methodology involving the identification and detailed recording of Aboriginal Sites which may include Aboriginal Objects by a Yamatji Consultant(s).

Site Identification Survey means a Survey carried out using the Site Identification Model.

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

Survey means an Aboriginal Heritage Survey conducted under this YPSHA.

Survey Agreement Date has the meaning given in clause 9.1(a) or 9.1(b).

Survey Agreement Period has the meaning given in clause 9.1(d).

Survey Area means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

Survey Methodology means either a Site Avoidance Model or a Site Identification Model.

Survey Report means a report of the results of a Survey, containing the information set out in clause 12.4 and Schedule 6.

Survey Team has the meaning given in clause 10.1.

Tenure means the tenures listed in Part 2 of Schedule 3 and granted pursuant to the Mining Act, the *Petroleum and Geothermal Energy Resources Act 1967* (WA) or section 91 of the *Land Administration Act 1997* (WA), including a renewal or extension of that tenure from time to time.

Traditional Owners for the purposes of this YPSHA means the Agreement Group as defined in the ILUA.

Yamatji Consultants means

- (a) those Traditional Owners who have demonstrated cultural knowledge of the Survey Area and can speak about the Survey Area; and, where applicable
- (b) persons identified by DPLH in consultation with the Corporation who have previously been recorded on the Aboriginal Heritage Act Register in relation to particular sites in the Survey Area.

Yamatji Cultural Business means a funeral, event, or other ceremony or cultural duty that prevents the Traditional Owners from performing their obligations, in whole or part, under this YPSHA.

Yamatji Monitor means a person appointed by or on behalf of the Corporation, who holds cultural heritage knowledge relevant to the land and waters the subject of an Activity Notice.

YPSHA means this Yamatji Proponent Standard Heritage Agreement.

1.2 Interpretation – general

In this YPSHA, unless the contrary intention appears:

- (a) the headings and subheadings in this YPSHA are inserted for guidance only and do not govern the meaning or construction of any provision of this YPSHA;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this YPSHA and a reference to this YPSHA includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this YPSHA) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Party;
- (f) a reference to a 'person' (including a Party to this YPSHA) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate)

established or continuing to perform the same or substantially similar function;

- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) 'including' means 'including but not limited to';
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this YPSHA is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this YPSHA and any recitals, schedules or annexures to this YPSHA, the terms and conditions of the clauses of this YPSHA shall prevail.

1.3 Interpretation – liabilities and benefits

In this YPSHA, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity set out in this YPSHA which is in favour of the Traditional Owners and the Corporation is for the benefit of them jointly and severally;
- (b) any agreement, representation, warranty or indemnity in favour of the Proponent, where the Proponent comprises more than one entity, is for the benefit of them jointly and severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the Proponent, where the Proponent comprises more than one entity, binds them jointly and severally.

2. No application of this YPSHA to Emergency Activities

This YPSHA does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to the life, health or property of any person.

2A. Execution and effect of this YPSHA

- (a) Execution of this YPSHA may take place by the Proponent and the Corporation executing counterparts of this YPSHA, with all counterparts together constituting the one instrument.
- (b) If this YPSHA is to be executed in counterparts, the Parties to it must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
- (c) Notwithstanding the prior provisions of this clause 2A, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).

3. Term and termination

3.1 Commencement and usual term

This YPSHA comes into force and effect as between the Proponent and the Corporation:

- (a) where this YPSHA has been executed by the Parties, on the date that the last of those Parties executes this YPSHA; or
- (b) where the Proponent has executed a Proponent Acceptance Deed, on the date that all of the conditions precedent set out in clause 3 of the Proponent Acceptance Deed have been satisfied.

3.2 Termination or de-registration of ILUA does not affect YPSHA

Notwithstanding the termination or de-registration of the ILUA, this YPSHA shall continue to apply to the Parties with full force and effect, to the extent that this YPSHA has commenced under clause 3.1.

3.3 Termination

This YPSHA shall terminate on the occurrence of whichever of the following events is first to occur:

- (a) all Parties agree in writing to end this YPSHA;
- (b) all Tenure held by the Proponent that is located wholly or partially within the Agreement Area has terminated or expired or been surrendered or cancelled;

- (c) a Court order is made to wind up the Proponent.

3.4 Survival of provisions and entitlements upon termination

This YPSHA ceases, as between the terminating Parties, to have any force or effect on and from the date of termination, save that:

- (a) any entitlements, obligations or causes of action which accrued under this YPSHA prior to termination survive termination; and
- (b) clauses 1, 3.4, 5, 12.5, 13, 20, 21, 23, 24, 28.1, 28.2, 28.3 and 28.5 survive termination.

4. Area to which this YPSHA applies

This YPSHA applies to the Agreement Area.

5. Authority, representations and warranties

5.1 Corporation's representations and warranties

The Corporation represents and warrants, for the benefit of each of the other Parties, that:

- (a) it has full power and authority to enter into this YPSHA pursuant to the ILUA and represent the Traditional Owners in respect of all matters arising in respect of this YPSHA;
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under, this YPSHA have been fulfilled or done;
- (c) it knows of no impediment to it performing its obligations under this YPSHA.

5.2 Proponent representations and warranties

The Proponent represents and warrants, for the benefit of the Corporation and the Traditional Owners, that:

- (a) it is authorised to enter into this YPSHA; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Proponent lawfully to enter into, exercise its rights and perform its obligations under, this YPSHA have been fulfilled or done; and
- (c) it knows of no impediment to the Proponent performing its obligations under this YPSHA.

5.3 Reliance on warranties

Each Party acknowledges that the other Parties have relied on the warranties provided in clause 5.1 or 5.2 (as the case may be) to enter into this YPSHA.

5.4 Acknowledgement regarding legal advice

Each Party acknowledges that it has:

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

5.5 Ministers may act through authorised officers

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

6. Time limits

6.1 Time for compliance and consequences of non-compliance

- (a) Subject to clauses 6.1(b) and 6.2, the Parties must each meet the time limits imposed under the following provisions of this YPSHA:
 - (i) the receipt by a Proponent of an Activity Notice Response (clause 8.3(a));
 - (ii) the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d));
 - (iii) the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clause 8.3(d)(iii) or 9.7);
 - (iv) the receipt by a Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
 - (v) the receipt by a Proponent of the final Survey Report (clause 12.1(c)).
- (b) The time limits on the steps referred to in clause 6.1(a) may be extended by agreement in writing between the Corporation and the relevant Proponent.

Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.

- (c) To avoid doubt, any failure to comply with the time limits for the steps described in clause 6.1(a) does not give the Proponent a right to terminate this YPSHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 6.1.
- (d) If the Corporation fails to comply with, or to ensure that the Aboriginal Heritage Service Provider complies with, any of the time limits on the steps listed in clause 6.1(a), then the Proponent may provide a written notice to the Corporation, with such a notice to nominate a date by which the non-compliance must be rectified. The date nominated by the relevant Proponent must allow a reasonable period, in all the circumstances, for rectification of the non-compliance, and in any event the date must not be less than 10 Business Days after the date of receipt of the notice of non-compliance.
- (e) If the Corporation is unable to comply with, or to ensure that the Aboriginal Heritage Service Provider complies with, the time limits imposed by the provisions referred to in clause 6.1(a)(ii) because they (or either of them as the case may be) are unable to engage an external consultant anthropologist at the rate set out in Schedule 5, the Corporation must advise the Proponent that this is the case and provide 3 written competitive quotes from external consultant anthropologists and reasons why the higher rates quoted are justified in the circumstances. If the Proponent is aware of an alternative external consultant anthropologist who will undertake the work for the rate set out in Schedule 5, then the Proponent may notify the Corporation in accordance with clauses 6.1(f) and 6.1(g) that alternative arrangements will be made for the Aboriginal Heritage Surveys.
- (f) If the Corporation fails to comply with a notice sent by the Proponent under clause 6.1(d), the Proponent may notify the Corporation that the Proponent, as the case may be, is no longer bound by clauses 9 to 12 inclusive in respect of the relevant Activity Program with effect from the date on which the Corporation receives the latter notice. The Proponent may then at its election:
 - (i) decide not to proceed with the relevant Activity Program; or
 - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (g) In the circumstances described in clauses 6.1(e) and 6.1(f), where the Proponent makes arrangements for an Aboriginal Heritage Survey to be

conducted by an independent anthropologist, archaeologist or other professional, then:

- (i) the Proponent shall inform the Corporation of the alternative arrangements made; and
 - (ii) neither the Corporation nor the Aboriginal Heritage Service Provider shall have any claim against the Proponent arising from the making of those alternative arrangements.
- (h) To avoid doubt:
- (i) the effect of this clause 6.1 is not limited by any dispute resolution processes under clause 20, and in particular the time limits on the steps referred to in clause 6.1 continue to apply where a dispute resolution process is commenced; and
 - (ii) the dispute resolution provisions in clause 20 do not apply to any decision by the Proponent to issue a notice of non-compliance under clause 6.1(d), and the provisions of this clause 6.1 apply instead. However, the Proponent may elect, by notice in writing to the Corporation, to allow use of the dispute resolution provisions in clause 20.

6.2 The Proponent must act reasonably in asserting its rights under this clause

6.1 Justifiable delay

- (a) Delay caused by any event of Force Majeure or Yamatji Cultural Business notified under clause 26 will be excluded from the time limits referred to in clause 6.1.
- (b) A Party asserting the existence of a delay to which clause 6.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

7. Cooperation regarding Aboriginal Sites and proposed Activities

7.1 Exchange of information

The Parties acknowledge the importance of an early exchange of information between the Proponent and the Corporation, to ensure that the Traditional Owners and the Corporation know what Activities are proposed by a Proponent, to avoid misunderstandings and to enable informed decisions to be made and in order that the desired outcomes are achieved. In accordance with this objective:

- (a) the Proponent will provide an outline of the nature, location and timing of the Activity to be undertaken in the Agreement Area for the following six months, to the extent that such information is known to the Proponent;

- (b) if any changes are made to the Activity proposed within the six month period, those changes will be notified to the Corporation within 5 Business Days of the change/s being made; and
- (c) the Proponent must ensure that the information provided in accordance with paragraph (a) includes, without limitation, details of any Minor Impact Activity;
- (d) where, as a result of receiving the above information, the Corporation becomes aware of any particular cultural heritage concern arising from a proposal to conduct an Activity, including whether a scheduled Activity is to take place between 1 December – 1 March of any years, the Corporation will:
 - (i) notify the Proponent of that conflict and
 - (ii) the Parties will use their reasonable endeavours to perform the Activity taking into account the information provided pursuant to subclause 7.1(d)(i) above; and
- (e) where either Party becomes aware of an event that has occurred that is likely to have had an Environmental Impact on the Aboriginal Heritage Area within the six month period, that Party will notify the other Party of the event, and if a Survey has already occurred but no Activity has commenced, the Parties will arrange for representatives of each Party to visit the Aboriginal Heritage Area to find out whether the Environmental Impact has had such an effect as to require either a further Survey or Monitors to be engaged when the proposed Activity is undertaken.

7.2 Due Diligence Guidelines

- (a) The Parties acknowledge the application of the Due Diligence Guidelines as part of the assessment process for considering the impact of any proposed Activity on Aboriginal Heritage.
- (b) Following the issuing of the Activity Notice if there is any doubt as to the impact of any proposed Activity on Aboriginal Heritage after considering the Due Diligence Guidelines, the Parties may seek the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH, with respect to the provision of further information if appropriate.

7.3 Obligation to comply with Aboriginal Heritage Act

- (a) The Parties must at all times comply with the Aboriginal Heritage Act and, for the avoidance of doubt, nothing in this YPSHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (b) If the Proponent carries out any Activities through contractors, then the Proponent will ensure that such contractors are made aware of all relevant obligations of the Proponent pursuant to the Aboriginal Heritage Act and

this YPSHA, including by providing the internet web address through which copies of the Aboriginal Heritage Act and this YPSHA are available to the contractors.

8. The Activity Notice

8.1 Circumstances where no Activity Notice needs to be given

- (a) The Proponent may elect not to give an Activity Notice in respect of any proposed Activity where the Activity proposed to be conducted consists entirely of
 - (A) Minor Impact Activity; or
 - (B) Low Ground Disturbance Activity of a class that the Corporation has notified in writing to the Proponent need not be the subject of an Activity Notice.
- (b) In the event that the Proponent, acting reasonably, is unsure as to whether clause 8.1(a) operates to exempt it from giving an Activity Notice, then it should give the Activity Notice in any event.

8.2 Giving the Activity Notice

- (a) Except where clause 8.1 applies, if the Proponent intends to undertake an Activity in the Aboriginal Heritage Area, it must issue a notice in writing to the Corporation in accordance with this clause (**Activity Notice**).
- (b) The main purposes of an Activity Notice are:
 - (i) to provide adequate information to assist the Corporation to make an assessment as to whether a Survey is required and if so, whether a Site Identification Survey or a Site Avoidance Survey; and
 - (ii) if a Survey is required, to provide information relevant to the conduct of that Survey.
- (c) The Activity Notice shall contain:
 - (i) the basic information specified in Part 1.1 of Schedule 4;
 - (ii) the key statements and nominations specified in Part 1.2 of Schedule 4 or if clause 8.2(e) applies, the default provision of Part 3 of Schedule 4; and
 - (iii) the additional information and documents (including the map) specified in Part 2 of Schedule 4.
- (d) The Corporation acknowledges that the inclusion in an Activity Notice of the matters described in Parts 1.2(c) to (f) of Schedule 4 does not prejudice

any statement by the Proponent that it considers that a Survey is not required.

- (e) If the Proponent omits to specify or nominate, in an Activity Notice, any of the particular items referred to in Part 1.2 of Schedule 4, then the default provisions provided in Part 3 of Schedule 4 apply.
- (f) To avoid doubt, the Proponent may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Corporation and the Proponent but, provided that the Corporation acts reasonably, the Corporation shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. The Proponent may also request any of the items referred to in Part 1.2(f) of Schedule 4 at any later time, in accordance with clause 12.2.
- (g) The date of receipt by the Corporation of the Activity Notice (or fresh Activity Notice if requested under clause 8.2(f)) is the Activity Notice Date.

8.3 Considering the Activity Notice and deciding whether a Survey is required

- (a) The Corporation will promptly consider the Activity Notice and shall, within 15 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Proponent in writing as to whether the Corporation considers that a Survey is required (**Activity Notice Response**). In coming to its decision the Corporation shall take into account the following:
 - (i) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities and in that regard taking into account the provisions of clause 8.3(e); and
 - (ii) the extent to which the land and waters referred to in the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, the Corporation will consider:
 - (A) whether it is reasonably clear from the reported results of the previous Aboriginal Heritage Surveys, having had a reasonable opportunity to review the relevant Survey Reports containing those results, that the Activities disclosed in the Activity Notice can be carried out without damaging or disturbing an Aboriginal Site or Aboriginal Object,
 - (B) any relevant previous decisions by the Corporation under clause 8.3(b); and

- (C) any other matter the Corporation reasonably considers relevant including if appropriate a visit to the Agreement Area with representatives from the Proponent and from DPLH and, where relevant, a Traditional Owner or a representative of the Corporation at their own cost.
- (b) The Proponent shall be free to carry out any Activity in the Aboriginal Heritage Area without conducting a Survey where
- (i) the Corporation so agrees in writing; or
 - (ii) the Corporation waives its right under clause 6.1(f) of this YPSHA to require a Survey for the proposed Activity, or
 - (iii) the Corporation agrees to the engagement of up to 2 Yamatji Monitors in accordance with the Guidelines for the Engagement of Aboriginal Heritage Monitors,

after considering an Activity Notice or at any other time.

- (c) The Corporation and the Proponent may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response the Corporation indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
- (i) if different to the opinion given by the Proponent in its Activity Notice in accordance with Part 1.2(a) of Schedule 4, a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the Corporation's opinion;
 - (ii) if different to the nomination by the Proponent in its Activity Notice in accordance with Part 1.2(c) of Schedule 4, a nomination of the Corporation's proposed Survey Methodology, subject however to clause 9.4;
 - (iii) if different to the date or dates nominated by the Proponent in its Activity Notice in accordance with Part 1.2(c) of Schedule 4, a nomination of a proposed Survey start date or finish date taking into account the availability of the Aboriginal Heritage Service Provider, if contracted by the Corporation;
 - (iv) subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
 - (v) an election, or not, by the Corporation as to whether it will:

- (A) contract the Aboriginal Heritage Service Provider; or
 - (B) perform the functions of the Aboriginal Heritage Service Provider itself and, if so, whether it will need to contract a Principal Aboriginal Heritage Consultant; and if electing to contract the Aboriginal Heritage Service Provider, a nomination of the Corporation's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
- (vi) if the Corporation does not elect either to be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Survey Provider under clause 8.3(d)(v), the names and contact details of the proposed Yamatji Consultants for the Survey. If these details are not provided to the Proponent either in the Activity Notice Response or within 10 Business Days after the Survey Agreement Date, the Proponent may contact DPLH for details of persons identified by DPLH who have previously been recorded on the Aboriginal Heritage Register in relation to particular sites in the Survey Area.
- (e) The Corporation acknowledges that only in unusual circumstances would the Corporation provide notice (under clause 8.3(a)) of its opinion that a Survey is required in respect of proposed Low Ground Disturbance Activity, such as the existence of a large number of Aboriginal Sites or Aboriginal Objects that are located within and/or intersect the Survey Area.

8.4 Disagreements following Activity Notice Response

If, following receipt by the Proponent of the Activity Notice Response, the Corporation and the Proponent are in disagreement on any matter about the conduct of a proposed Survey, then they shall endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until they have consulted under clause 9 during the period of 20 Business Days referred to in clause 9.1(d), they are not entitled to invoke the dispute resolution provisions of clause 20 in respect of any matter the subject of clauses 8 or 9.

9. Survey agreement and planning

9.1 Operation of this clause 9 – Survey Agreement Date

- (a) Subject to clause 9.1(b), the date on which agreement is reached between the Corporation and the Proponent on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.
- (b) If after receipt by the Proponent of the Activity Notice Response under clause 8.3(a) the Corporation and the Proponent are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity

Notice Response shall be deemed to be the Survey Agreement Date otherwise referred to in clause 9.1(a).

- (c) The discussions between the Corporation and the Proponent under this clause 9 shall be conducted reasonably and in good faith.
- (d) The Corporation and the Proponent shall ensure that the Survey Agreement Date occurs within 20 Business Days after the date of receipt by the Proponent of the Activity Notice Response (**Survey Agreement Period**).
- (e) If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then either Party may serve a notice of Dispute in accordance with clause 20.2 on or after the first Business Day after the expiry of the 20 Business Days comprising the Survey Agreement Period referred to in clause 9.1(d).

9.2 Whether a Survey is required

- (a) The discussions between the Corporation and the Proponent about whether a Survey is required will be guided by the matters in clauses 8.3(a), 8.3(e) and 9.2(b).
- (b) The following provisions shall apply to the discussions between the Corporation and the Proponent about whether a Survey is required.
 - (i) Where no previous Aboriginal Heritage Survey (whether under this YPSHA or otherwise) has been undertaken in relation to the area the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
 - (ii) Where this YPSHA does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
 - (iii) Where a previous Aboriginal Heritage Survey (whether conducted under this YPSHA or otherwise) has, or if this is not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Proponent must (if it is in the Proponent's possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to the Corporation (if such copy has not already been provided with the Activity Notice).
 - (iv) Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Corporation and the Proponent will have regard to the following matters:

- (A) nature of the Activities outlined in the Activity Notice;
- (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey;
- (C) the extent to which the land has been affected by previous ground disturbing activities;
- (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites or Aboriginal Objects on the land the subject of the Activity Notice;
- (E) any relevant matters relating to the Traditional Owners' practices, laws and customs; and
- (F) any other relevant matters raised by either the Corporation or the Proponent.

9.3 Agreements regarding Low Ground Disturbance Activity

- (a) The discussions between the Corporation and the Proponent to confirm the extent of Low Ground Disturbance Activity, and whether a Survey is required of such Activity, will be guided by:
 - (i) the definition of Low Ground Disturbance Activity in this YPSHA; and
 - (ii) the provisions of clause 8.3(e).
- (b) If the Corporation considers that a Survey for any Low Ground Disturbance Activity is required, then the Corporation and the Proponent will each use their reasonable endeavours to address the concerns of the Corporation by modifying the proposed Low Ground Disturbance Activity to the extent necessary to remove the need to conduct a Survey.

9.4 Selection of Survey Methodology

The discussions between the Corporation and the Proponent about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to the Corporation's concerns for the Survey Area and the Activities proposed by the Proponent

9.5 Estimate of costs of Survey

- (a) The Parties acknowledge that it may not always be possible for the Corporation's nominated Aboriginal Heritage Service Provider to provide accurate Estimated Survey Costs at the time of providing an Activity Notice Response, and that Estimated Survey Costs in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.

- (b) If Estimated Survey Costs have not been provided earlier, then the Corporation must ensure that during the Survey Agreement Period the Aboriginal Heritage Service Provider submits written and itemised Estimated Survey Costs to the Proponent for approval by the Proponent.
- (c) The Corporation must ensure that in the Estimated Survey Costs the Aboriginal Heritage Service Provider clearly indicates those items that the Proponent will be asked to pay in advance under clause 11(b).
- (d) During the Survey Agreement Period, the Corporation and the Proponent shall agree on the Estimated Survey Costs for the proposed Survey (such agreement not to be unreasonably withheld or delayed by either the Corporation or the Proponent).

9.6 Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant

- (a) If the Corporation's Activity Notice Response does not identify the Corporation's proposed Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) Principal Aboriginal Heritage Consultant, then the Corporation will advise the Proponent of these nominations during the Survey Agreement Period.
- (b) Subject to clause 9.6(c), the Parties acknowledge that the Proponent will not usually have any role in nominating an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant, subject however to the rights of the Proponent under clause 6.1(f)(ii) in the event of delays.
- (c) The Proponent shall not unreasonably refuse to accept the Corporation's nomination of an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant.
- (d) If the Proponent has reasonable concerns about the expense, competence or professionalism of the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) nominated by the Corporation, it may request the Corporation to consider another anthropologist, archaeologist or appropriately qualified professional to act as Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be).
- (e) If the Corporation and the Proponent cannot reach agreement on the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) within the Survey Agreement Period, then in addition to and without limiting its general rights under clause 6.1(f)(ii), the Proponent may nominate a proposed Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) and the Corporation shall respond to any such nomination within 10 Business Days and shall not unreasonably withhold its approval to appointing such nominee as the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be).

9.7 Estimate of time for Survey commencement or completion

If following the Activity Notice Response the Corporation and the Proponent are not in agreement about the date of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, they shall agree on such date or dates.

10. Survey Team and commencement of Survey

10.1 Survey team

- (a) As soon as possible after the Survey Agreement Date, the Corporation's nominated Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant (if appointed), will organise a Survey Team, which shall consist of:
 - (i) up to 6 Yamatji Consultants who, in the opinion of the Corporation in consultation with the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), equitably represent the Traditional Owners and have appropriate knowledge, experience and authority, as are necessary to examine the Survey Area and assist in the Survey;
 - (ii) if considered necessary by the Corporation and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) and agreed to by the Proponent, an Aboriginal Liaison Officer, who will be responsible for Survey logistics and on-ground operations;
 - (iii) where considered necessary by the Corporation and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the Proponent, another anthropologist of a specific gender; and
 - (iv) subject to clause 10.1(b), where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) and agreed to by the Corporation and the Proponent, including during the course of the Survey, an archaeologist or an anthropologist as the case may be.
- (b) Where considered necessary by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) and agreed to by the Corporation and the Proponent, more than one archaeologist may be appointed to the Survey Team.

- (c) The number of paid Yamatji Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i) unless particular circumstances can be demonstrated to exist including, for example:
- (i) a large number of registered Aboriginal Sites are known to exist within a Survey Area and the number of Aboriginal people who have knowledge and authority to speak for those Aboriginal Sites and should be consulted about them is greater than 8; and/or
 - (ii) the Survey Area encompasses more than one area of cultural authority within the Agreement Area.

In these circumstances the Proponent and the Corporation must agree on the number of additional Yamatji Consultants for the Survey Team.

- (d) Additional Yamatji Consultants may accompany the Survey Team but the Proponent will not be liable for additional costs.
- (e) The Proponent may send one or two nominees with relevant qualifications and authority on the Survey to assist the Survey Team conducting the Survey with information and direction where required.

10.2 Commencement and conduct of Survey

- (a) Subject to clause 11(b), the Corporation will use its, and must ensure the Aboriginal Heritage Service Provider and the Principal Aboriginal Heritage Consultant (if different to the Aboriginal Heritage Service Provider) each uses its, best endeavours to commence the Survey within the time agreed by the Corporation and the Proponent, or in the absence of such agreement, within 35 Business Days after the Survey Agreement Date.
- (b) The Proponent will provide to members of the Survey Team (and any other attending Traditional Owners) before the Survey commences:
 - (i) details and explanation of any safety and other procedures and policies implemented from time to time by the Proponent over the Survey Area, including any procedures in relation to extreme heat events including temperatures over 40 degrees Celsius; and
 - (ii) protective clothing and equipment if reasonably necessary in all the circumstances.
- (c) The Parties acknowledge that the Proponent is not required to have insurance in place for the protection of Survey Team members.
- (d) The Survey Team will as appropriate in the circumstances:
 - (i) visit the Survey Area;

- (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and
- (iii) provide sufficient information to the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), to enable them to:
 - (A) record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using GPS;
 - (B) in the case of a Site Identification Survey, record relevant Aboriginal Site information for the purposes of completing and submitting a Heritage Information Submission Form (accessible via the Heritage Department's website at www.dplh.wa.gov.au);
 - (C) in the case of a Site Avoidance Survey, record the area to be avoided and why it could reasonably be suspected to be a site to which the AHA applies, but not for the purposes of completing and submitting a Heritage Information Submission Form (accessible via the Heritage Department's website at www.dplh.wa.gov.au) unless the Traditional Owners so agree;
 - (D) mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map;
 - (E) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team;
 - (F) when an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application is to be lodged, record sufficient information to address DPLH's requirements for such an application (including the information referred to in clause 10.2(d)(iii)(B) and (C), as applicable); and
 - (G) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to concerns raised by the Yamatji Consultants about an Aboriginal Site or an Aboriginal Object, the representatives of the Proponent nominated under clause 10.1(e):
 - (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information; and

- (ii) may make modifications to the Activity Program.

11. Payment for Surveys

- (a) The Proponent shall pay the costs and expenses of the Survey at the rates set out in Schedule 5.
- (b) The Proponent agrees to pay 50% of the Estimated Survey Costs in advance of the commencement of the Survey. If the Proponent does not pay that component of the costs referred to in clause 11(a) within the period of 20 Business Days after the Survey Agreement Date (or by such earlier date agreed for the commencement of the Survey as may be applicable) and in any event no later than 48 hours before the Survey commences, the Corporation may, at its discretion, advise the Proponent by notice in writing that:
 - (i) the Survey cannot commence until payment has been made; and
 - (ii) notwithstanding any other provisions of this YPSHA:
 - (A) the date on which that payment will be deemed to be the new Survey Agreement Date;
 - (B) the date for commencement of the Survey will be 30 Business Days after the new Survey Agreement Date, unless otherwise agreed between the Parties; and
 - (C) if the dates have been agreed for the completion of the fieldwork for a Survey or the Survey Report, such dates are to be altered to reflect the delayed date for commencement of the Survey arising from the operation of this clause, unless otherwise agreed between the Parties, provided that if the Proponent fails to make payment within 14 Business Days after receipt of the notice under this clause, the default provisions of clause 18 will apply.
- (c) If the Survey is cancelled by the Proponent before it is completed, the part of the administration fee that has been advanced and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Proponent.
- (d) The monies constituting the Estimated Survey Costs must be:
 - (i) held by the Corporation in an account in the Corporation's name; and
 - (ii) used only for the payment of the Estimated Survey Costs and any repayment to the Proponent under clause 11(e).

- (e) The balance of the Estimated Survey Costs will be paid within 21 days after receipt of the Survey Report by the Proponent. The Corporation must provide a tax invoice of the Estimated Survey Costs that reconciles the costs estimated, and any costs advanced under clause 11(b), with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by an authorised officer of the Corporation.

12. Survey Report

12.1 Timing of Preliminary Advice and Survey Report

After the last day of fieldwork for a Survey (Last Fieldwork Day) the Corporation will ensure that the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) provides the Corporation and the Proponent with:

- (a) Preliminary Advice (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event within 7 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event within 30 Business Days after the Last Fieldwork Day, to enable the Corporation and the Government Proponent to comment on it; and
- (c) a final Survey Report as soon as reasonably practicable, and in any event within 50 Business Days after the Last Fieldwork Day.

12.2 Requests for reports

- (a) Notwithstanding the relevant nominations by the Proponent in the Activity Notice under Part 1.2(f) of Schedule 4, the Proponent may by notice in writing request the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) to provide a Preliminary Advice or draft Survey Report, at any time, subject to this clause. The Proponent shall provide a copy of any notice under this clause to the Corporation at the same time as notifying the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be).
- (b) The Proponent acknowledges that a notification under clause 12.2(a) may impact on the times and costs for the Survey, and the Corporation shall ensure that any revised times and costs are notified promptly to the Proponent.

12.3 Preliminary Advice

- (a) A Preliminary Advice shall include a summary of the results of the Survey with corresponding spatial information as required and record at least the information referred to in clause 12.4(c)(i).
- (b) Upon receipt by the Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Proponent may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).

12.4 Contents of Survey Report

- (a) The Survey Report will record sufficient information to enable the Proponent to:
 - (i) plan and, subject to the law and this YPSHA, undertake the things that are the subject of the Activity Notice; and
 - (ii) lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application supported by all necessary information, where the Parties have been made aware of the proposed application in accordance with clause 17.
- (b) The Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) will, in consultation with the Survey Team, be responsible for preparing a Survey Report:
 - (i) as per the requirements in Part 1 and Part 2 of Schedule 6, where the Survey being conducted is a Site Avoidance Survey; or
 - (ii) as per the requirements in Part 1 and Part 3 of Schedule 6, where the Survey is a Site Identification Survey.
- (c) In addition to the matters described in Schedule 6, the Survey Report will:
 - (i) describe which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, may result in impacts to Aboriginal Heritage Sites;
 - (ii) describe which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, would benefit from the presence of Yamatji Monitors and the recommended number and/or gender of the Yamatji Monitors; and
 - (iii) record sufficient information to enable the Government Proponent to plan and, subject to the law and this YPSHA, undertake the things that are the subject of the Activity Notice.

- (d) If the Survey Report includes a recommendation that Yamatji Monitors should be engaged with respect to Activity that does not require an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application, the Proponent will contact the Corporation within 10 Business Days of receipt of the Survey Report to discuss the recommendation.

12.5 Reliance on and use of Survey Report

While the Parties each acknowledge that they may rely upon the contents of a Survey Report, the following conditions apply to use of information about sites that do or likely constitute Aboriginal Sites arising from a Survey Report and/or Preliminary Advice (**Site Information**):

- (a) Site Information, excluding any Sensitive Heritage Information, will be submitted in a Heritage Information Submission Form to DPLH and if the Site Information was obtained during a Site Avoidance Survey and the ACMC intends to rely on that Site Information for the purpose of assessing whether the relevant site is an Aboriginal Site, the Parties will:
 - (i) advise the ACMC that the Site Information contained within the Survey Report and/or Preliminary Advice is not a complete recording of that site; and
 - (ii) recommend that the ACMC seek further information from the Corporation about this site prior to making such an assessment;
- (b) if the Site Information was obtained during a Site Avoidance Survey, it cannot be used for the purpose of making an Aboriginal Heritage Section 16 Application or Aboriginal Heritage Act Section 18 Application; and
- (c) if the Site Information was obtained during a Site Identification Survey, it may be used for the purpose of making an Aboriginal Heritage Section 16 Application or Aboriginal Heritage Act Section 18 Application in accordance with clause 17.

12.6 Provision of Information to DPLH

Within 15 Business Days of the completion of the Survey Report, the Corporation must provide the following information to DPLH and the Aboriginal Heritage Act Registrar:

- (a) a copy of the Survey Report to DPLH; and
- (b) if Aboriginal Sites have been identified during the Site Identification Survey that have not been previously recorded, or additional information is received about a previously recorded site, a Heritage Information Submission Form (accessible via the Heritage Department's website at www.dplh.wa.gov.au) with respect to each site.

13. Intellectual property

13.1 Intellectual property of the Traditional Owners

All intellectual property rights in the Survey Report vest absolutely and irrevocably in the Traditional Owners.

13.2 Licence to use intellectual property

- (a) Subject to clause 21, the Corporation pursuant to the ILUA on behalf of the Traditional Owners, grants to the Proponent an irrevocable, transferable, non-exclusive, unrestricted, royalty-free licence to utilise any Survey Report for the purposes of the Proponent:
 - (i) conducting its Activities;
 - (ii) seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act; and
 - (iii) enforcing its rights, and complying with its obligations, under this YPSHA.

14. Identification and Relocation of Ancestral Remains or Objects

- (a) Where, as a result of an Activity, the Proponent uncovers skeletal remains or identifies an area or object which it reasonably suspects of being an Aboriginal Site or Aboriginal Object, the Proponent will:
 - (i) cease all such operations and activities in the immediate vicinity of such remains, area or objects;
 - (ii) immediately notify the DPLH and other relevant authorities in accordance with the Aboriginal Heritage Act and other applicable statutory law; and
 - (iii) notify the Corporation of the findings and, subject to other statutory requirements, meet on site where the Parties will discuss in good faith a culturally appropriate method of managing the discovery and how to deal with it in accordance with the provisions of the Aboriginal Heritage Act or other applicable statutory law.
- (b) For the avoidance of doubt, and subject to other statutory requirements, the Activity may continue in areas which are not in the immediate vicinity of the suspected skeletal remains or suspected Aboriginal Site or Aboriginal Object.

15. Effect of YPSHA on other Aboriginal Heritage Agreements

If the Proponent:

- (a) has one or more Aboriginal Heritage Agreements (other than this YPSHA) with the Corporation or any of its Members, which were entered into prior to the Effective Date (including ones entered into prior to the ILUA, and which is or are specified in item 5 of Schedule 2; and
- (b) the pre-existing Aboriginal Heritage Agreement applies to an Activity to which this YPSHA relates,

then the provisions of this YPSHA shall prevail over the provisions of any such pre-existing Aboriginal Heritage Agreement unless otherwise provided in item 6 of Schedule 2.

16. Environmental protection

In co-operation with the Corporation, the Proponent agrees to rehabilitate the Aboriginal Heritage Area as a result of their Activities as required by law.

17. Consultation about Aboriginal Heritage Act applications

17.1 Proponent must consult about Aboriginal Heritage Act applications

- (a) Subject to the provisions of this clause 17.1, each Party acknowledges the benefit of the Corporation being consulted about a proposal by a Proponent to lodge an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application in respect of any area within the Aboriginal Heritage Area.
- (b) Unless otherwise agreed between the Parties, the Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application without first giving the Corporation prior written notice of its intention to do so (**Notice of Application**) and arranging for consultation in accordance with clauses 17.1(c) and (d).
- (c) If the Proponent gives the Corporation a Notice of Application under clause 17.1(b):
 - (i) the Corporation must, if it wishes to proceed to consultation under clause 17.1(d), within 15 Business Days of receiving the Notice of Application, give to the Proponent a written notice stating that the Corporation would like to proceed to consultation (**Notice to Consult**); or
 - (ii) if the Corporation does not give a Notice to Consult to the Proponent within the time period specified in clause 17.1(c)(i), the Proponent may lodge the Aboriginal Heritage Act Section

16 Application or Aboriginal Heritage Act Section 18 Application (as the case may be) the subject of the Notice of Application without further consultation with the Corporation under this clause 17.1.

- (d) If the Proponent receives a Notice to Consult within the period specified in clause 17.1(c)(i), the Proponent must consult with the Corporation for a minimum of 35 Business Days immediately after receipt of such Notice to Consult including by making reasonable efforts to meet with the Corporation, about the proposal which is the subject of the Notice of Application, with a view to agreeing:
- (i) where appropriate, that the proposal is not likely to impact Aboriginal Sites or Aboriginal Objects; or
 - (ii) ways to avoid the need to lodge the Aboriginal Heritage Act Section 16 Application or the Aboriginal Heritage Act Section 18 Application (as the case may be); or
 - (iii) where the Proponent considers that agreement under clause 17.1(d)(ii) above is not likely, ways to minimise and mitigate the impact of an authorisation under section 16 of the Aboriginal Heritage Act or consent under section 18 of the Aboriginal Heritage Act, as the case may be (including through salvage or relocation of Aboriginal Sites or Aboriginal Objects).

17.2 Yamatji Monitors

- (a) Where a Survey Report recommends that Yamatji Monitors be engaged, the Proponent shall note in any Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application:
- (i) that the survey report recommends that Yamatji Monitors be engaged, in consultation with the Corporation, for any excavation, removal or other works that may be approved by the Registrar under section 16 of the Aboriginal Heritage Act or the Minister under section 18 of the Aboriginal Heritage Act; and
 - (ii) whether the Proponent supports this recommendation and, if so, what the terms of any proposed condition could be (**the Proposed Condition**).
- (b) The Proponent shall be responsible for the terms of any Proposed Condition in any Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application and may, without limitation, specify the number of Yamatji Monitors to be engaged and whether the Yamatji Monitors are to be present for some or all of the time in which any excavation, removal or other works that may be approved by the Registrar

under section 16 of the Aboriginal Heritage Act or the Minister under section 18 of the Aboriginal Heritage Act are being undertaken.

17.3 Justifiable delay

- (a) A delay caused by an event of Force Majeure or Yamatji Cultural Business notified under clause 26 will be excluded from the time limits referred to in clause 17.1.
- (b) A Party asserting the existence of a delay to which clause 17.3(a) applies must advise the other Party of that delay and take reasonable steps to mitigate (to the extent applicable) that delay.

18. Insurance

- (a) The Proponent and the Corporation will each maintain their own workers' compensation, public liability insurance and any other insurance as required by law.
- (b) The Corporation will procure any third party Aboriginal Heritage Service Provider to maintain its own workers compensation, public liability insurance and any other insurance as required by law.

19. Default and enforcement

19.1 Interpretation

- (a) In this clause 19 a reference to a Party means a party to the default or dispute.
- (b) An Event of Default occurs where a Party:
 - (i) breaches an obligation under this YPSHA; or
 - (ii) commits an Insolvency Event.

19.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default under clause 19.1(b)(i), the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 10 Business Days after receiving the Default Notice.
- (b) If the Event of Default that applies to the Corporation occurs under clause 19.1(b)(ii), the Corporation shall as soon as possible notify the Proponent:
 - (i) that the Event of Default has occurred;

- (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the Corporation; and
 - (iii) when the relevant Event of Default ceases to exist.
- (c) If the Event of Default that applies to the Proponent occurs under clause 19.1(b)(ii), then:
- (i) The Proponent shall as soon as possible notify the Corporation:
 - (A) that the Event of Default has occurred;
 - (B) of the appointment of any administrator, receiver or manager to manage the affairs of the Corporation; and
 - (C) when the relevant Event of Default ceases to exist;
 - (ii) where the Event of Default results in a court order to wind up the Proponent, this YPSHA shall by force of this clause terminate with effect from the date of the court order.
- (d) The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this YPSHA until either clause 19.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (e) Any remedy exercised under this clause 19 is without prejudice to any other rights a Party may have under this YPSHA or otherwise at law (including the right to seek interlocutory relief and specific performance).

20. Dispute resolution

20.1 No arbitration or court proceedings

- (a) Subject to clause 20.1(b), if a dispute arises under this YPSHA including a dispute in respect of this clause 20.1 (**Dispute**), a party must comply with clauses 20.2 to 20.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 20 are subject to clause 8.4.

20.2 Notification

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

20.3 Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 20.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its

reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 20.4.

20.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 20.3, the chairman of the Resolution Institute will appoint a mediator at the request of either Party.
- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 20:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 20.4. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within 20 Business Days of the appointment of a mediator and the commencement of mediation under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 20.6) referring the matter to arbitration or commencing legal proceedings.

20.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 20.2 to 20.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 2012* (WA).
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 20.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.

- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

20.6 Breach of this clause

If a Party to a Dispute breaches clauses 20.1 to 20.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

20.7 Obligations continue

Subject to clause 20.8, if a Dispute is referred for mediation or arbitration under any part of this clause 20 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this YPSHA so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

20.8 Extension of time

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

21. Confidentiality

21.1 Confidential information

Each Party agrees that the following information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 21.2:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this YPSHA, including any Sensitive Heritage Information;
- information given by the Proponent to the Corporation in respect of the Activities of the Proponent, where the Proponent advises the Corporation that the relevant information is confidential; and
- (b) any other information disclosed by one Party to another under this YPSHA which is identified by the Disclosing Party as confidential,

but not including information:

- (c) the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (d) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

21.2 Permitted disclosure

- (a) Subject to clauses 21.2(b), 21.2(c) and 21.3, a Receiving Party may disclose Confidential Information in any of the following circumstances:
 - (i) if it has the prior consent of the Party which provided the information;
 - (ii) to the extent required by any law or applicable securities regulation or rule;
 - (iii) to the extent that the information is necessary for any processes or applications under any native title laws or related to any statutory approvals;
 - (iv) in connection with any dispute or litigation concerning this YPSHA or its subject matter or the ILUA or its subject matter;
 - (v) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate, or a Principal Aboriginal Heritage Consultant or Aboriginal Heritage Service Provider appointed under this YPSHA;
 - (vi) where the Receiving Party is the Proponent, to a bona fide proposed assignee of the Proponent's rights or obligations under this YPSHA;
 - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
 - (viii) to a proposed assignee of the Corporation's rights, title and interests under this YPSHA;
 - (ix) in accordance with clause 21.2(b);
 - (x) where disclosure is required by the Proponent to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
 - (xi) as otherwise permitted or required by the terms of this YPSHA.

- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Proponent may disclose that Confidential Information to the DPLH and ACMC, including for the purposes of:
 - (i) the Proponent making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application in accordance with any outcomes agreed during consultation that occurs pursuant to clause 17; or
 - (ii) providing a copy of each Survey Report to the DPLH; or
 - (iii) the Proponent seeking any necessary statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act.
- (c) To avoid doubt, except for the circumstances described in clause 21.2(b), disclosure of Sensitive Heritage Information may only occur if the Corporation consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) The Corporation must inform the Proponent of any information which it discloses during the course of the Survey to the Proponent, including by inclusion in a Survey Report, which comprises Sensitive Heritage Information.

21.3 Disclosure requirements

Before making any disclosure to a person under clause 21.2 the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this YPSHA;
- (b) before doing so notify the Disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 21.2(a)(v), **Error! Reference source not found.**, 21.2(a)(vii) or 21.2(a)(viii), but with the exception of employees or officers of a Receiving Party, procure that the person or entity executes a deed with the Disclosing Party in such form acceptable to the Disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause21.

22. Assignment

22.1 Generally

Neither the PBC nor the Proponent may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this YPSHA, except in accordance with this YPSHA.

22.2 Assignment by Proponent

- (a) The Proponent may from time to time assign all or part of its rights, title, and interests under this YPSHA to any person (whether by farm out, joint venture, sale or otherwise) where the Proponent is also assigning all or part of its interest in the Tenure to which this YPSHA applies.
- (b) Before such assignment, the Proponent must:
 - (i) give the Corporation at least 20 Business Days' notice prior to the proposed assignment; and
 - (ii) within 20 Business Days after giving the Corporation the notice referred to in this clause 22.2(b)(i), obtain an executed deed of assumption in a form acceptable to the Corporation (acting reasonably) in favour of the Corporation by which the assignee agrees to be bound, alone or jointly with the Proponent, by the provisions of this YPSHA and to assume, observe and perform (alone or jointly with the Proponent) the obligations of the Proponent under this YPSHA.
- (c) Once executed, the Proponent shall provide a copy of the relevant deed to the Corporation and shall do all other things necessary to give effect to the assumption by the assignee of the relevant obligations under this YPSHA.

22.3 Assignment by Corporation

The Corporation may assign the whole of its rights, titles and interests under this YPSHA provided:

- (a) the Corporation gives the Proponent at least 20 Business Days' notice prior to the proposed assignment;
- (b) within 20 Business Days after giving the Proponent the notice referred to in clause 22.3(a), the proposed new corporation enters into a deed, in a form acceptable to the Proponent(acting reasonably), by which it agrees to be bound by this YPSHA and to assume all of the Corporation's obligations under this YPSHA, and provides a copy of that deed to the Proponent; and
- (c) the Corporation does all other things necessary to give effect to the assumption by the new corporation of the obligations under this YPSHA.

22.4 Effect of Assignment

- (a) Once an assignment by a Proponent of all of its rights, title and interests under this YPSHA has occurred under clause 22.2, then the assigning Proponent will be deemed to have been released to the extent of the assignment from all claims and liabilities arising under or in respect of this YPSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
- (b) Once an assignment of this YPSHA has occurred under clause 22.2, the assigning Corporation will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this YPSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 22 shall not affect the operation of this YPSHA.

22.5 No encumbrance

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

23. Notices

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by registered post or by hand, fax or email to the intended recipient's postal address, email address or fax number specified in Schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to the Corporation under clause 8.2);
- (c) will be taken to be received by the recipient:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, 3 Business Days after the date of posting;
 - (iii) in the case of delivery by email, at the time of receipt determined in accordance with the *Electronic Transactions Act 2011* (WA); and
 - (iv) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct

destination fax machine number and name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

24. GST

24.1 Interpretation

Any reference in this clause 24 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

24.2 Amounts exclusive of GST

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

24.3 GST payable

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

25. Costs and duties

- (a) The Proponent shall bear any duties or fees or taxes of a similar nature associated with this YPSHA.
- (b) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this YPSHA.

26. Force Majeure and Yamatji Cultural Business

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this YPSHA as a result of an event of Force Majeure or Yamatji Cultural Business, it must promptly notify the other Party accordingly. The notice must:
- (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure or Yamatji Cultural Business;
 - (iii) estimate the time during which the Force Majeure or Yamatji Cultural Business will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- (b) Following this notice, and while the Force Majeure or Yamatji Cultural Business continues, this YPSHA shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Yamatji Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Yamatji Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this YPSHA as a result of an event of Force Majeure or Yamatji Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this YPSHA.

27. Review and Variation

Where this YPSHA is to be amended or varied, then this YPSHA may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

28. General

28.1 Entire agreement

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

28.2 Governing law and jurisdiction

- (a) This YPSHA is governed by the law applicable in the State of Western Australia.

- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

28.3 Severance

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

28.4 Waiver

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

28.5 No merger

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

28.6 Further action

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this YPSHA and the matters contemplated by it.

Schedule 1 – Party details

(Clause 23)

Yamatji Southern Regional Corporation Notice details	Postal Address:	[XX] – Insert CORPORATION's address in Western Australia]
	Email Address:	[XX] – Insert CORPORATION's email address]
	Fax No:	[XX] – Insert CORPORATION's fax details]
Proponent Notice details	Postal Address:	
	Email Address:	[XX] – Insert Proponent's email address]
	Fax No:	

Schedule 2 – Details of ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
Details of ILUA (as recorded on the Register of Indigenous Land Use Agreements)		
	Short name of ILUA	[XX]
	National Native Title Tribunal file no.	[XX]
	Date registered	[XX]
	Local government region(s)	[XX]
Pre-existing Aboriginal Heritage Agreements		
	Details of all pre-existing Aboriginal Heritage Agreements to which clause 14 applies.	[XX – insert sufficient details of prior agreements]
	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this YPSHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write ‘whole agreement’).	[XX – insert sufficient details of prior agreements]

Schedule 3 – Agreement Area and Tenure

Part 1 Agreement Area

(Clause 1.1 definition of **Agreement Area**)

[XX – Insert maps and technical description]

Part 2 Tenure

(Clause 1.1 definition of **Tenure**)

Tenure

The Tenure held by the Proponent to which this YPSHA applies is as follows:

Schedule 4 – Contents of Activity Notice

Part 1 Primary contents of Activity Notice

(Clause 8.2 Giving the Activity Notice)

1.1 Basic information

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this YPSHA (by reference to the name of the Determination or ILUA as set out in item 1 or item 2 of Schedule 2); and
- (b) the name of the Proponent, and:
 - (i) an address in Western Australia for service of notices under this YPSHA on the Proponent; and
 - (ii) full contact details (name, telephone number and fax number) for a primary contact person within the Proponent (if a body corporate).

1.2 Key statements and nominations

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(e), contain the following required key statements:

- (a) a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Proponent; and
- (b) a statement of whether the Proponent considers that a Survey is required (taking into consideration the matters referred to in clauses 8.1(b) and 8.3); and
- (c) a nomination, by the Proponent, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model;
- (d) where a Site Avoidance Model is nominated, a statement of whether the Proponent requires any Survey to be conducted in respect of:
 - (i) only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice (commonly known as a 'work program clearance' survey); or
 - (ii) a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice (commonly known as a 'work area clearance' survey); and

- (e) a nomination, by the Proponent, of a proposed Survey fieldwork start date or end date; and
- (f) a nomination, by the Proponent, as to whether it requires:
 - (i) a Preliminary Advice (see clause 12.1(a));
 - (ii) a draft of the Survey Report (see clause 12.1(b)).

Where any of those key statements are omitted, Part 3 of this Schedule 4 provides default provisions.

Part 2 Additional detailed contents of Activity Notice

(Clauses 8.2(b) and 8.2(c))

In accordance with clause 8 of this YPSHA, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

- (a) a map showing clearly the area the subject of the Activity Notice;
- (b) digital spatial data showing clearly the area the subject of the Activity Notice;
- (c) aerial photographs (if available) or smaller scale maps;
- (d) where applicable, identifying numbers (or other identifying information) of any tenures to which the Activity Notice relates;
- (e) all known vehicular access routes to the area the subject of the Activity Notice;
- (f) any ground disturbing Activities that the Proponent intends to undertake;
- (g) details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice;
- (h) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity;
- (i) the approximate number of personnel who will be involved in any proposed Activity; and
- (j) any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.

An Activity Notice may also set out:

- (a) whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and

results of that survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report, including any Closed report for which permission is required to be sought from the informants for disclosure. That permission must be sought before the Activity Notice is issued so that the written report can be provided to the Corporation;

- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities;
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice;
- (d) any additional information which explains what sort of Survey outcome is being sought (if a Survey is required); and
- (e) any other background material which will better help the Corporation and the Traditional Owners to understand the potential impacts of what is proposed.

Part 3 Default provisions of Activity Notice

(Clauses 8.2(c) and 8.2(e))

For the purposes of clause 8.2(e) of this YPSHA, the following default provisions apply in respect of any item in Part 1.2 of this Schedule 4 that is not specified or nominated in the Activity Notice.

Item No.	Default provision
Item (a)	The Activity Program contains no Low Ground Disturbance Activity.
Item (b)	A Survey is required.
Item (c)	Site Avoidance Model.
Item (d)	Only the areas of specific Activities described in the Activity Notice are required to be surveyed.
Item (e)	Not applicable (Corporation and Proponent to discuss and agree proposed Survey fieldwork start date or end date).
Item (f)	There is no requirement for a Preliminary Advice or a draft of the Survey Report.

Part 4 Optional inclusions in Activity Notice

Information on area, terrain and environment of land proposed to be inspected during the heritage survey

- a) Information on area, terrain and environment of land proposed to be inspected during the heritage survey that is relevant to the physical demands of the survey, and which could be relevant considerations in the nomination of Aboriginal Consultants.
- b) Expected schedule of activities and associated timeframes, including lunch and other breaks (indicative only)
- c) Mode/s of transport (eg by foot, car, plane), and expected ratio between different modes of transport
- d) Type of terrain expected
- e) Type of physical activities required
- f) Expected distances to be walked and anticipated timeframes (if not already covered above)
- g) Possible unfavourable weather conditions
- h) Where temperatures are forecast to exceed 40 degrees Celsius. This information must be included in any Activity Notice which involves surveys between the days of 1 December to 1 March.

- i) Where conditions exist or are reasonably anticipated which the Corporation would be required to comply with under the provisions of any applicable legislation relating to occupation health and safety.

- j) Any other factors that may prevent particular individuals from fully participating in all aspects of the survey (eg where individuals have restricted mobility, medical conditions, etc).

Schedule 5 – Costs for conduct of a Survey

No.	Item	Rate	Description
Ethnographic Assessment			
	Aboriginal Heritage Service Provider (AHSP)	At cost [Usually \$900 - \$1200; Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
	Principal Aboriginal Heritage Consultant (if agreed)	At cost [Usually \$900 - \$1200; Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
	External Consultant Anthropologist	At cost [Usually \$900 - \$1200; Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
	Aboriginal Heritage Act Register Search	\$200 or as advised by the Heritage Department	
	Aboriginal Liaison Officer (if required)	\$500 [Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
Archaeological Assessment (if necessary and agreed)			
	Archaeologist (archaeological team external contractors)	At cost [Usually \$900 - \$1200; Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
	Fieldwork and reporting	At cost [Usually \$900 - \$1200; Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
Aboriginal Consultants (Clause 10.1(a)(i))			
	Yamatji Consultants - up to 6	\$500 (max) [Indexed to CPI]	per person per day or pro rata for part thereof where a day is 7.5 hours.
Regional Allowance (in addition to the Aboriginal Consultants' Costs set out above)			
	Yamatji Consultants - up to 6 unless otherwise agreed	Equivalent to the Standard District Allowance Rate ("Rate") per week for the Regional Development Zone in which the relevant Aboriginal Consultant ordinarily resides. The Rate for the relevant Regional Development Zone is as referred to in the District Allowance (Government Wages Employees) General Agreement, as adjusted from time to time.	per person per 5 day week or pro rata for part thereof

No.	Item	Rate	Description
Field Expenses			
	Principal Aboriginal Heritage Consultant (if agreed) accommodation/meals	At Australian Taxation Office rates	
	Aboriginal Liaison Officer or Anthropologist accommodation/meals	At Australian Taxation Office rates	
	Archaeologist or Archaeological Team accommodation/meals	At Australian Taxation Office rates	
	Yamatji Consultants accommodation/meals	At Australian Taxation Office rates	
Travel Expenses			
	AHSP Vehicle mileage (up to a maximum of 864 km)	As per Australian Taxation Office tax schedule for location	per km
	Hire Vehicle (if survey vehicle is hired)	Commercial rates, plus fuel	
	Yamatji Consultants travel expenses (if required) (up to a maximum of 864 km)	As per Australian Taxation Office tax schedule for location	per km
	Airfares	At cost (economy)	
	Taxi travel (to and from airports or meetings)	At cost	
Incidental Expenses			
	Film, maps, report production and expendables	At cost	
Administration Fee and Disbursements			
	Administration Fee	10% of total expenditure	
	Disbursements, including telephone calls, facsimiles, etc.	At cost	

Initials: Aboriginal Heritage Service Provider _____

Initials: Authorised Officer of the State: _____

Initials: Authorised Officer of each Government Party _____

CPI Indexation

Where a rate listed in this schedule 5 is indicated to be "Indexed to CPI" it shall be varied annually on 31 August each year in accordance with the CPI Calculation.

Schedule 6 – Contents of Survey Report

(Clause 12.4 Contents of Survey Report)

Part 4 Standard Requirements for all Survey Reports

4.1 Copyright and confidentiality

Insert a statement to the effect that the report may only be copied in accordance with this YPSHA and subject to any other restrictions agreed to, from time to time, by the Proponent and the Corporation on behalf of the Traditional Owners, and that the Traditional Owners owns the intellectual property in the report but grants a licence to the Proponent to use the Survey Report as set out in clause 13.2

4.2 Survey personnel

- (a) Author's name in full and occupation and author's business or company name.
- (b) Full name and gender of each Yamatji Consultant, and the group they represent.
- (c) Full names and gender of other personnel participating in the Survey and their role.
- (d) Confirmation that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) considers the Yamatji Consultants to be appropriate to speak for Aboriginal Heritage in relation to the area surveyed.

4.3 Survey date(s)

Insert the date(s) on which fieldwork was conducted.

4.4 Spatial information

- (a) The general location of the area within which the Survey was undertaken (e.g. title numbers 'x' to 'z', or the 'abc' pastoral lease, or the area shown on a map contained in the Survey Report).
- (b) Grid references of the Survey Area.
- (c) A map of the Survey Area.
- (d) Include shapefiles and coordinate data.

4.5 Search of the Aboriginal Heritage Act Register

- (a) Results of searches of the Aboriginal Heritage Act Register including the site number and name, if given, and the reference number.
- (b) If a search of the Aboriginal Heritage Act Register yields no results, record this in the Survey Report.

4.6 Fieldwork and methodology

- (a) A general description of the fieldwork undertaken.
- (b) Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.

Part 5 Additional requirements for Survey Reports where Site Avoidance Model is used

5.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information

- (a) Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
- (b) Grid references of the area where Activity should not be carried out, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (c) Dimensions of the area (e.g. approximately 100m east-west and 50m north-south).
- (d) Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature (e.g. the northern corner of mining lease X about 100m east of the prominent hill).
- (e) Full names of person(s) who provided the information set out at (a) to (d) above.

Part 6 Additional requirements for Survey Reports where Site Identification Model is used

6.1 Description of Aboriginal Sites

- (a) Description of all registered or potential Aboriginal Site(s) within the Survey Area, including their location and spatial extent.
- (b) If there are no Aboriginal Sites within the Survey Area, record this in the Survey Report.
- (c) For any potential Aboriginal Site(s) not already identified on the Aboriginal Heritage Register, indicate which part or parts of section 5 of the Aboriginal Heritage Act are relevant to the specific Aboriginal Site(s) - i.e., whether the Aboriginal Site is:
 - (i) a place of importance or significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with

- the traditional cultural life of Aboriginal people (past or present); and/or
- (ii) a sacred, ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
 - (iii) a place of historical, anthropological, archaeological or ethnographic importance and/or significance associated with Aboriginal people; and/or
 - (iv) a place where Aboriginal Objects are traditionally stored.
- (d) For each potential Aboriginal Site identified, please complete and attach a copy of the *Heritage Information Submission Form* – see clause 10.2(d)(iii)(B) and (C) .

6.2 Impact on Aboriginal Sites

- (a) Description of any Aboriginal Sites in the Survey Area that may be affected by the Activity.
- (b) Description of how the Activity is likely to impact on the Aboriginal Site(s) within the Survey Area.
- (c) Description of any practical measures that may be taken to avoid or mitigate potential harm to an Aboriginal Site(s) within the Survey Area.

Signing pages

EXECUTED as a deed.

EXECUTED by Yamatji Southern)
Regional Corporation (ACN [insert]) in)
accordance with the requirements of)
section 127 of the *Corporations Act*)
2001 (Cth) by:

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

EXECUTED by [insert name of Proponent (if individual)] in the presence of:)
)
) _____
)

 Signature of witness

 Full name of witness (print)

)
)
EXECUTED by [insert name of Proponent] (ACN [insert]) in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) by:)
)

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

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