

# VARIATION AGREEMENT

Date ►

- 5 OCT 2020

<b>Between the parties:</b>	
<b>State</b>	State of Western Australia
<b>Government Parties</b>	Minister for Lands Conservation and Parks Commission of Western Australia Conservation and Land Management Executive Body Main Roads Western Australia Western Australian Land Authority Housing Authority Minister for Mines and Petroleum Western Australian Agriculture Authority Minister for Water Water Corporation FES Ministerial Body
<b>PBC</b>	Esperance Tjaltjraak Native Title Aboriginal Corporation ICN 8212
<b>Recitals</b>	<p>A. On 24 April 2014 (<i>Effective Date</i>), the Esperance Nyungar Government Standard Heritage Agreement came into force and effect as an agreement between the Native Title Group, the State of Western Australia and each of the Government Parties.</p> <p>B. Pursuant to a Deed of Assignment dated 3 August 2017 (<i>Assignment Date</i>), the Native Title Group assigned all of its rights, titles and interests in the Esperance Nyungar Government Standard Heritage Agreement to the PBC and the PBC accepted the assignment.</p> <p>C. Pursuant to clause 25.4 of the Esperance Nyungar Government Standard Heritage Agreement, the Parties have undertaken a formal review of the Agreement and have agreed to vary the Agreement in the terms that follow.</p>

## 1. Definitions and Interpretation

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In this Variation Agreement:

- (a) **Agreement** means the Esperance Nyungar Government Standard Heritage Agreement; and
- (b) **Variation Date** means the date this Variation Agreement is executed by the last of the State and the Government Parties;
- (c) unless the context otherwise requires, words and phrases which are defined in the Agreement have the same meaning when used in this Variation Agreement.

## 2. Amendments to Agreement

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On and from the Variation Date, the Agreement is amended and restated as marked in the Schedule to this Variation Agreement.

## 3. Effect of this Variation Agreement

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Each Party acknowledges and agrees that:

- (a) the amendments set out in the Schedule to this Variation Agreement do not affect the validity or enforceability of the Agreement;
- (b) this Variation Agreement is supplementary to the Agreement and must be interpreted having regard to the provisions of the Agreement;
- (c) if this Variation Agreement conflicts with the Agreement, then this Variation Agreement prevails to the extent of the inconsistency;
- (d) nothing in this Variation Agreement:
  - (i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Agreement before the Effective Date; or
  - (ii) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Agreement before the Effective Date; and
- (e) each party is bound by the Agreement as amended by this Variation Agreement.

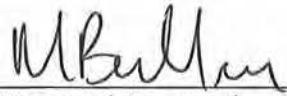
#### **4. Execution and Effect of this Variation Agreement**

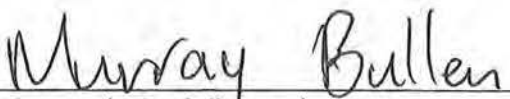
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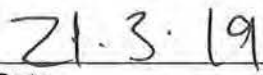
- (a) In relation to the State, execution of this Variation Agreement may take place by the State and the PBC executing counterparts of this Variation Agreement, with all counterparts together constituting the one instrument.
- (b) In relation to the Government Parties, execution of this Variation Agreement may take place by an individual Government Party and the PBC executing counterparts of this Variation Agreement, with all counterparts together constituting the one instrument as between the Government Party and the PBC.
- (c) If this Variation Agreement 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).
- (d) Notwithstanding the prior provisions of clause 4(a), 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).


## SIGNING PAGES

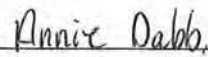
**EXECUTED** in accordance with section 99-5 )  
of the *Corporations (Aboriginal and Torres )*  
*Strait Islander) Act 2006* (Cth) on behalf of )  
Esperance Tjaltjraak Native Title Aboriginal )  
Corporation ICN 8212: )

  
\_\_\_\_\_  
Director (signature)

  
\_\_\_\_\_  
Director (print full name)

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Director or secretary (signature)  
(Delete whichever is not applicable)


  
\_\_\_\_\_  
Director or secretary (print full name)



SIGNED for and on behalf of the State of  
Western Australia by The Honourable Mark  
McGowan MLA in the presence of:

) 

Mark McGowan MLA

  
Signature of Witness

11 JUN 2019  
Date


NADEEN ROBERTS  
Full name of Witness (print)

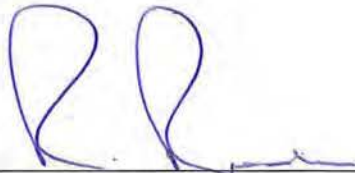
2 HAVELOCK ST, WEST PERTH WA 6005  
Address of Witness

PERSONAL ASSISTANT  
Occupation of Witness

THE COMMON SEAL of the Minister for  
Lands, a body corporate continued under  
section 7 of the *Land Administration Act*  
1997 (WA), was hereunto affixed in the  
presence of:

)  
)  
)  
)  
)

  
Ben S. Wyatt MLA



Signature of Witness

24 JUL 2019

Date

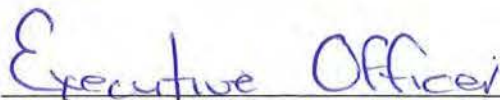


Full name of Witness (print)

6 Inness Vista

Hammond Park WA 6164

Address of Witness



Occupation of Witness



THE COMMON SEAL of the Conservation and  
Parks Commission of Western Australia was  
affixed in accordance with section 26AB of the  
Conservation and Land Management Act 1984  
(WA) in the presence of:



C. Daepel  
Member (signature)

Alan Walker  
Member (signature)

Christopher Daepel  
Member (print full name)

ALAN WALKER  
Member (print full name)

13/12/2014  
Date

13/12/2014  
Date

[Signature]  
Witness (signature)

[Signature]  
Witness (signature)

Roland Mann  
Witness (print full name)

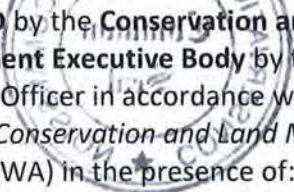
Roland Mann  
Witness (print full name)

17 Dick Perry Ave, Kensington  
Address of witness

17 Dick Perry Ave, Kensington 6151  
Address of witness

Director  
Occupation of witness

Director  
Occupation of witness

  
**EXECUTED** by the **Conservation and Land** )  
**Management Executive Body** by the Chief )  
Executive Officer in accordance with section )  
38 of the *Conservation and Land Management* )  
Act 1984 (WA) in the presence of: )

  
\_\_\_\_\_  
Signature of Chief Executive Officer

  
\_\_\_\_\_  
Signature of Witness

9/12/19  
\_\_\_\_\_  
Date

CAROL PYBURN  
\_\_\_\_\_  
Full name of Witness (print)

17 DICK PERRY AVE, KENSINGTON WA 6050  
\_\_\_\_\_  
Address of Witness

PUBLIC SERVANT  
\_\_\_\_\_  
Occupation of Witness

THE COMMON SEAL of the Commissioner of  
Main Roads was affixed to this deed by the  
Commissioner of Main Roads for the time being  
in the presence of:


Signature of the Commissioner of Main  
Roads

  
Signature of Witness

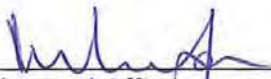
12/3/20  
Date


Murray Robinson  
Full name of Witness (print)

Door Art House Centre  
Waterloo Crt East Perth WA 6004  
Address of Witness

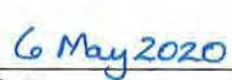
Public Servant  
Occupation of Witness

**SIGNED** on behalf of the **Western Australian** )  
**Land Authority** by persons authorised by its )  
Board in accordance with section 45(2) of )  
the *Western Australian Land Authority Act* )  
1992 (WA): )

  
\_\_\_\_\_  
Authorised Officer

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Authorised Officer

  
\_\_\_\_\_  
Date



THE COMMON SEAL of the Housing  
Authority, a body corporate referred to in  
section 6(4) of the *Housing Act 1980* (WA) was  
hereunto affixed in the presence of:



Signature of Witness

15 September 2020

Date

Michelle Jane Andrews

Full name of Witness (print)

5 Newman Court FREMANTLE  
WA

Address of Witness

Chief Executive Officer, Housing  
Authority

Occupation of Witness

SIGNED by The Honourable William J. Johnston MLA, Minister for Mines and Petroleum in the presence of:



)  
)  
)

William J. Johnston MLA

Signature of Witness

4 / 9 / 19

Date

DAVID ALEXANDER

Full name of Witness (print)

2 Havelock St, West Perth

Address of Witness

Policy Adviser

Occupation of Witness



SIGNED on behalf of the Western Australian  
Agriculture Authority by a person authorised  
under section 155(5) of the *Biosecurity and  
Agriculture Management Act 2007* (WA) in  
the presence of:

)  
)  
)  
)  
)  
)



Signature of Witness

22 MAY 2020

Date

MEAGAN SMITH

Full name of Witness (print)

3 BARON HAY COURT  
SOUTH PERTH

Address of Witness

SNR EXECUTIVE OFFICER

Occupation of Witness

**SIGNED** on behalf of the **Water Resources** )  
**Ministerial Body** by the Chief Executive )  
Officer of the Department of Water and )  
Environmental Regulation in accordance with )  
section 13(2)(c) of the *Water Agencies* )  
(*Powers*) Act 1984 (WA) in the presence of: )



Chief Executive Officer



Signature of Witness

5/11/2019

Date

Amy Cowdell

Full name of Witness (print)

Dumas House, 2 Havelock St, West Perth

Address of Witness

Senior Policy Adviser

Occupation of Witness

THE COMMON SEAL of the Water Corporation was affixed hereto in the presence of:



*M. H. Holt*  
Signature of Witness **DIRECTOR**

13/11/19  
Date

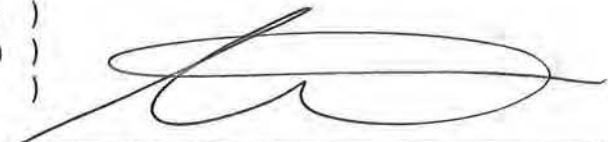
*M. H. Holt* MICHAEL VERNON HOLLETT  
Full name of Witness (print)  
**DIRECTOR**

*Pat Donovan*  
**SIGNATURE OF DIRECTOR**

Patrick Francis Donovan

*PF*  
**FULL NAME OF DIRECTOR (PRINT)**

**SIGNED** on behalf of the **FES Ministerial Body** )  
by the FES Commissioner for the time being in )  
the presence of: )

  
\_\_\_\_\_  
FES Commissioner

  
\_\_\_\_\_  
Signature of Witness

5/10/20  
\_\_\_\_\_  
Date

Michelle Smith  
\_\_\_\_\_  
Full name of Witness (print)

20 Stockton Bend, Cockburn Central  
\_\_\_\_\_  
Address of Witness

Manager Legal & Legislation  
\_\_\_\_\_  
Occupation of Witness

# SCHEDULE

## Agreement (amended and restated)

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### ANNEXURE 'A'

2014-2018

## Esperance Nyungar Government Standard Heritage Agreement

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

Esperance Tialtiraak Native Title Aboriginal Corporation ICN 8212

State of Western Australia

Minister for Lands

Conservation and Parks Commission of Western Australia

Conservation and Land Management Executive Body

Main Roads Western Australia

Western Australian Land Authority

Housing Authority

Minister for Mines and Petroleum

Western Australian Agriculture Authority

Minister for Water

Water Corporation

FES Ministerial Body

~~Horizon Power~~

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## Date

THIS AGREEMENT is made on 24 April 2014

## Parties

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

Esperance Tjaltjraak Native Title Aboriginal Corporation ICN 8212 (Native Title Prescribed Body Corporate (PBC))

### **State of Western Australia (State)**

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

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

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

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

**Commissioner of Main Roads Western Australia**, a body corporate established by section 9 of the *Main Roads Act 1930* (WA)

**Western Australian Land Authority**, a body corporate established by section 5(1) of the *Western Australian Land Authority Act 1992* (WA) (**LandCorp**)

**Housing Authority**, the body corporate referred to in section 6(4) of the *Housing Act 1980* (WA)

**Minister for Mines and Petroleum**, being the Minister in the Government of the State for the time being responsible for the administration of the *Mining Act 1978* (WA) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA)

**Western Australian Agriculture Authority**, a body corporate established under the *Biosecurity and Agriculture Management Act 2007*

**Minister for Water**, acting through the Water Resources Ministerial Body, a body corporate established under section 11 of the *Water Agencies (Powers) Act 1984* (WA)

**Water Corporation**, a body corporate established by section 4 of the *Water Corporation Act 1995* (WA)

**FES Ministerial Body**, a body corporate established by section 5 of the *Fire and Emergency Services Act 1998* (WA)

~~**Regional Power Corporation**, trading as **Horizon Power** (ABN 57 955 011 697) in accordance~~

## Recitals

- A. The ~~Registered Native Title Claimants~~PBC represents the Native Title Group in relation to native title and Aboriginal Heritage matters in the Aboriginal Heritage Area.
- B. The ~~Registered Native Title Claimants~~PBC and State are, together with others, also parties to the ILUA.
- C. The Parties have entered into this GSHA, as contemplated by the ILUA, for the management of Aboriginal Heritage and other matters under the Aboriginal Heritage Act in respect of the Aboriginal Heritage Area.

The Parties agree as follows:

## Agreed Terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this GSHA, unless the contrary intention appears:

**Aboriginal Consultants** means those members of, or persons appointed by or on behalf of the ~~Native Title Group~~PBC, who have authority to speak for the land and waters the subject of a Survey on behalf of the ~~Native Title Group~~PBC.

**Aboriginal Cultural Business** means any cultural practice or ceremony associated with the death of a member of the community, including a funeral, or any other ceremony or cultural practice that the members of the ~~Native Title Group~~PBC are required to attend or that prevents the ~~Native Title Group~~PBC from attending to day to day business in accordance with traditional laws and customs.

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

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

**Aboriginal Heritage Act Minister** means the Minister in the Government of the State 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 Agreement** means an agreement with the Native Title Group or PBC concerning the management of Aboriginal Sites and Aboriginal Objects ~~Aboriginal Heritage~~ and other matters under the Aboriginal Heritage Act with respect to areas in or near the Aboriginal Heritage Area. To avoid doubt, this GSHA is a form of Aboriginal Heritage Agreement, but not for the purposes of paragraph (a)(i) of the condition set out in each of clauses 10.3 and 10.4 of the ILUA.

**Aboriginal Heritage Area** means the area to which this GSHA applies, being the area the subject of the Esperance Nyungar native title determination application (WAD6097/1998) as described in schedule 3.

**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 ~~Native Title Group~~ PBC to plan and carry out Surveys for the PBC ~~that Native Title Group~~. 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 an ethnographic and/or archaeological survey (including a physical inspection) of an area of land and/or waters in order to avoid possible damage to Aboriginal Site(s) or Aboriginal Object(s). To avoid doubt, an **Aboriginal Heritage Survey** includes a Survey.

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

**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 Government Proponent to the ~~Native Title Group~~ PBC under clause 8.2.

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

**Activity Notice Response** means notice given by the ~~Native Title Group~~ PBC to a Government Proponent under clause 8.3(a).

**Activity Program** means all Activities described in an Activity Notice.

**Anthropologist** means a person with an honours degree in anthropology unless otherwise agreed in writing.

**Archaeologist** means a person with an honours degree in archaeology unless otherwise agreed in writing.

**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 19.1.

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

**CPI Calculation** means:

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

where:

A = the initial base payment under this GSHA 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 2014 quarterly CPI number (base quarter) as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

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

**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.

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

**Due Diligence Guidelines** means the Aboriginal heritage due diligence guidelines issued by the Department of the Premier and Cabinet and ~~DAA~~ the Heritage Department dated 30 April 2013 and as amended from time to time.

**Effective Date** means the date on which this GSHA came ~~comes~~ into force and effect as an agreement between the Native Title Group and the State or between the Native Title Group/PBC and an individual Government Party as the case may be, as more particularly described in clause 3.1.

**Event of Default** means any of the events described in clause 17.1(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 Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) acts of God;
- (b) explosion or fire;
- (c) storm or cyclone (of any category);
- (d) flood;
- (e) landslides;
- (f) earthquake or tsunami;

- (g) volcanic eruption;
- (h) impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic or pandemic;
- (k) civil unrest;
- (l) industrial action (other than industrial action limited to the affected Party);
- (m) war (including civil war);
- (n) acts of terrorism;
- (o) radioactive or biological contamination;
- (p) the effect of any law or authority exercised by government official by law (other than a State law or a State government official),

but does not include:

- (i) lack of or inability to use funds for any reason;
- (ii) any occurrence which results from the wrongful or negligent act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (iii) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- (iv) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of items (a) to (o) above; or
- (v) any act or omission of an agent or contractor of the affected Party.

**Government Proponent** means:

- (a) the State; or
- (b) a Government Party; or

- (c) any other agency or instrumentality of the State ~~which and whom~~ the State at any time notifies the ~~Native Title Group~~ PBC is to be regarded as falling within this definition.

**GPS** means a global positioning system device.

**GSHA** means this Government Standard Heritage Agreement.

**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 Heritage Department dated 24 March 2015 and as amended from time to time.

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

**Heritage Information Submission Form** means the Form referred to, with website reference, in ~~schedule 7~~ clause 12.6.

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

**ILUA Commencement Date** has the meaning given to 'Commencement Date' in the ILUA.

**ILUA Execution Date** has the meaning given to 'Execution Date' given in the ILUA.

**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); or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
- (d) is unable to pay all its debts as and when they become due and payable.

**LA Act Department** has the meaning given to **Department** in section 3 of the *Land Administration Act 1997 (WA)* and at the Effective Date is the State's Department of Lands.

**Last Fieldwork Day** has the meaning given in clause 12.1.

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

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

- (a) field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation; and
- (b) sampling, including removing soil, rock and flora using hand methods (including hand augering) from the natural surface; and
- (c) remote sensing, biological, environmental or conservation surveys, including installing monitoring plots and marker posts but not otherwise involving the permanent disturbance of soil and vegetation; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle; and
- (f) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
- (g) collecting and removing loose rocks, firewood or fauna; and
- (h) conducting tests for water, site contamination, or other scientific or conservation purposes; and
- (i) maintaining and refurbishing, including widening, expanding or moving, existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (j) maintaining, including by widening, expanding or moving, existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (k) erecting signage and barriers using hand and mechanical augers; and
- (l) revegetating of degraded areas, including fencing areas of vegetation; and
- (m) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (n) carrying out species recovery programs; and



- (o) erosion control activities on and in the immediate vicinity of existing roads, infrastructure or facilities; and
- (p) weed control using hand, mechanical and chemical methods of control; and
- (q) conducting tourism operations that are based in established facilities; and
- (r) the laying of temporary water pipelines across the ground where no excavation is required; and
- (s) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

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

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

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

- (a) walking, photography, filming; and
- (b) aerial surveying and magnetic surveys; and
- (c) use of existing tracks and water courses; and
- (d) environmental monitoring; and
- (e) water sampling; and
- (f) spatial measurement; and
- (g) geological scientific research, including rock chipping, using hand held tools; and
- (h) maintaining and refurbishing (but not widening, expanding or moving) existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (i) maintaining (but not widening, expanding or moving) existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (j) establishing temporary camps for surveying, environment or conservation purposes, where the establishment of the temporary camp involves use of swags ("fly camps"), does not require the removal of trees or shrubs and does not require any earthworks; and

- (k) any other Activities agreed in writing by the Parties to be Minor Impact Activities.

**Mining** has the meaning given in section 8 of the Mining Act.

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

**Notice of Application** has the meaning given in clause 16.1.

**Notice to Consult** has the meaning given in clause 16.1.

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

**Other Aboriginal Consultants** means those Aboriginal persons who are not members of the Native Title Group but who have, or are likely to have, knowledge of places or objects in that part of the Aboriginal Heritage Area outside of the Determination Area to which sections 5 or 6 of the Aboriginal Heritage Act apply.

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

**PBC** means the 'prescribed body corporate' (as that term is used in Division 6 of Part 2 of the NT Act) in respect of the Native Title Group for the Determination Area (details of which are to be listed in items 8 and 9 of schedule 2).

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

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

**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 clauses 8.3(d)(v) or 9.6.

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

**RNTBC Orders** means the orders of the Federal Court, under section 56 or section 57 of the NT Act in relation to the PBC and the Determination. Details of the RNTBC Orders, ~~once they come into effect, are to be~~ set out in item 13 of schedule 2.

**Sensitive Heritage Information** means culturally ~~restricted~~ sensitive information about Aboriginal Sites or Aboriginal Objects ~~any other items of Aboriginal Heritage~~, provided by or on behalf of the ~~Native Title Group~~ PBC 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 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 of Aboriginal Sites by an Aboriginal Consultant.

**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 and, for the avoidance of doubt, also means:

- (a) government departments established under section 35 of the *Public Sector Management Act 1994* (WA); and
- (b) the following agencies and instrumentalities of the State:
  - (i) Forest Products Commission;
  - (ii) Great Southern Development Commission;
  - (iii) Southern Ports Authority
  - (iv) National Trust of Australia (WA);
  - (v) Western Australia Police; and
  - (vi) Public Transport Authority of Western Australia.

**Survey** means an Aboriginal heritage survey conducted under this GSHA.

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

## **1.2 Interpretation – general**

In this GSHA, unless the contrary intention appears:

- (a) the headings and subheadings in this GSHA are inserted for guidance only and do not govern the meaning or construction of any provision of this GSHA;
- (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 GSHA and a reference to this GSHA includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this GSHA) 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 GSHA) 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 GSHA 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 GSHA and any recitals, schedules or annexures to this GSHA, the terms and conditions of the clauses of this GSHA shall prevail.

### **1.3 Interpretation – liabilities and benefits**

In this GSHA, unless the contrary intention appears:

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



## 2. No Application of this GSHA to Emergency Activities

- (a) This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person in accordance with the law.
- (b) In the event that the creation of a new road, drain, culvert, bridge, trail, track fence line or firebreak ("Emergency Installation") ~~or new track~~ is urgently required for a purpose described in clause 2(a), the relevant Government Proponent must as soon as practicable after the event, advise the ~~Native Title Group~~PBC of the Emergency Installation, newly created road or track and provide a map showing clearly the area the subject of the Emergency Installation, and discuss with the PBC whether any measures are required to mitigate impacts on Aboriginal Sites and/or Aboriginal Objects that may have arisen as a result of the Emergency Installation.~~new road or new track.~~

### ~~2A. Execution and effect of this GSHA~~

- ~~(a) In relation to the State, execution of this GSHA may take place by the State and the Native Title Group executing counterparts of this GSHA, with all counterparts together constituting the one instrument.~~
- ~~(b) In relation to the Government Parties, execution of this GSHA may take place by an individual Government Party and the Native Title Group executing counterparts of this GSHA, with all counterparts together constituting the one instrument as between the Government Party and the Native Title Group.~~
- ~~(c) If this GSHA 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).~~
- ~~(d) 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

- (a) This GSHA ~~comes~~ came into force and effect on 24 April 2014.
  - ~~(i) as between the State and the Native Title Group on the later to occur of:~~

- ~~(A) the date on which the last of those Parties executes this GSHA;~~  
~~and~~
- ~~(B) the ILUA Execution Date; and~~
- ~~(ii) as between an individual Government Party and the Native Title Group,~~  
~~on the later to occur of:~~
  - ~~(A) the date on which the last of those Parties executes this GSHA;~~  
~~and~~
  - ~~(B) the ILUA Execution Date.~~

(b) This GSHA shall terminate in accordance with clause 3.3.

### **3.2 Termination or de-registration of ILUA does not affect GSHA**

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

### **3.3 Early termination**

This GSHA may be terminated as between the ~~Native Title Group~~ PBC and any other Party or Parties, by agreement of the terminating Parties in writing, which may occur at any time.

### **3.4 Survival of provisions and entitlements upon termination**

This GSHA 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 GSHA prior to termination survive termination; and
- (b) clauses 1, 3.4, 5, 12.5, 13, 18, 19, 21, 22, 26.2, 26.3, 26.4 and 26.6 survive termination.

## **4. Area to which this GSHA applies**

This GSHA applies to the Aboriginal Heritage Area.

## **5. Authority, representations and warranties**

### **5.1 ~~Registered Native Title Claimants~~PBC's representations and warranties**

The ~~Registered Native Title Claimants jointly and severally~~PBC represents and warrants, for the benefit of each of the other Parties, that:

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

### **5.2 ~~Native Title Group representations and warranties~~**

~~Each member of the Native Title Group jointly and severally represents and warrants, for the benefit of each of the other Parties, that:~~

- ~~(a) they have authorised the Registered Native Title Claimants to enter into and perform their obligations under this GSHA on their behalf;~~
- ~~(b) the terms of this GSHA are binding on them; and~~
- ~~(c) they know of no impediment to them performing their obligations under this GSHA.~~

### **5.3 State and Government Party representations and warranties**

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

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

### **5.4 Reliance on warranties**

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 5.1, 5.2 or 5.3 (as the case may be) to enter into this GSHA.

### **5.5 Acknowledgment regarding legal advice**



Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of all matters in this GSHA 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 GSHA before entering into it.

## **5.6 Application of this GSHA to the State and Government Parties**

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

## **5.7 Ministers may act through authorised officers**

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

# **6. Time limits**

## **6.1 Time for compliance and consequences of non-compliance**

- (a) The Parties must each meet the time limits imposed under the following provisions of this GSHA:
  - (i) the receipt by a Government Proponent of an Activity Notice Response (clause 8.3(a)); and
  - (ii) the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
  - (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 (clauses 8.3(d)(iii) or 9.7); and
  - (iv) the receipt by a Government Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
  - (v) the receipt by a Government 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 ~~Native Title Group~~PBC and the relevant Government 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 Government Proponent a right to terminate this GSHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 6.1.
- (d) If the ~~PBCNative Title Group~~ 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), including any extension of time agreed to pursuant to 6.1(b), then the Government Proponent shall provide a written notice to the ~~PBCNative Title Group~~, with such a notice to nominate a date by which the non-compliance must be rectified. The date nominated by the relevant Government 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 12 Business Days after the date of receipt of the notice of non-compliance.
- (e) If the ~~PBCNative Title Group~~ 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 a Principal Aboriginal Heritage Consultant at the rate set out in schedule 5, the ~~PBCNative Title Group~~ must advise the Government Proponent that this is the case and provide 3 written competitive quotes from external consultant anthropologists (or archaeologists where appropriate) and reasons why the higher rates quoted are justified in the circumstances. If the Government Proponent is aware of an alternative external consultant anthropologist (or archaeologist, as the case may be) who will undertake the work for the rate set out in schedule 5, then the Government Proponent may notify the ~~PBCNative Title Group~~ in accordance with clause 6.1(f)(iii) and 6.1(g) that alternative arrangements will be made for the Aboriginal Heritage Survey.
- (f) If the ~~PBCNative Title Group~~ fails to comply with a notice sent by the Government Proponent under clause 6.1(d), then the Government Proponent may notify the ~~PBC Native Title Group~~ that the Government Proponent 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 ~~PBCNative Title Group~~

receives the latter notice. The Government Proponent may then at its election:

- (i) decide not to proceed with the relevant Activity Program; or
  - (ii) conduct the relevant Activity Program at its own risk; or
  - (iii) 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 clause 6.1(f)(iii), where the Government Proponent makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
- (i) the Government Proponent shall inform the ~~PBCNative Title Group~~ of the alternative arrangements made; and
  - (ii) neither the ~~PBCNative Title Group~~ nor the Aboriginal Heritage Service Provider shall have any claim against the Government 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 18, 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 18 do not apply to any decision by the Government 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 Government Proponent may elect, by notice in writing to the ~~PBCNative Title Group~~, to allow use of the dispute resolution provisions in clause 18.
- (i) The Government Proponent must act reasonably in asserting its rights under this clause 6.1.

## **6.2 Justifiable delay**

- (a) Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 6.1.
- (b) The period specified in item 10 of schedule 2 shall also be excluded from the time limits referred to in clause 6.1.

- (c) A Party asserting the existence of a delay to which clause 6.2(a) or clause 6.2(b) 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 a regular flow of information between the State and Government Parties and the ~~PBCNative Title Group~~, to ensure that ~~the PBC members of the Native Title Group~~ knows what Activities are proposed by a Government 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 State and each Government Party will provide an outline of the nature, location and timing of Activity to be undertaken in the Aboriginal Heritage Area for the following six months, to the extent that such information is known to the Government Proponent, as applicable; and
- (b) where, as a result of receiving the above information the ~~PBCNative Title Group~~ becomes aware of any particular cultural heritage concern arising from a proposal to conduct an Activity, the ~~PBCNative Title Group~~ will use its reasonable endeavours to raise those concerns with the Government Proponent, as applicable.

### **7.2 Obligation to comply with Aboriginal Heritage Act**

- (a) The Parties acknowledge that they are bound by the provisions and obligations of the Aboriginal Heritage Act.
- (b) Nothing in this GSHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (c) If a Government Proponent carries out any Activities through contractors, then the Government Proponent will ensure that such contractors are made aware of all relevant obligations of the Government Proponent pursuant to the Aboriginal Heritage Act and this GSHA, including by providing the internet web address through which copies of the Aboriginal Heritage Act and this GSHA are available to the contractors.

## **8. The Activity Notice**

### **8.1 Circumstances where no Activity Notice needs to be given**

- (a) The Government Proponent does not have to give an Activity Notice where the Activities it proposes be conducted consist entirely of:
  - (i) Minor Impact Activities; or
  - (ii) Activities of a class that the Native Title Group has notified in writing to the Government Proponent need not be the subject of an Activity Notice.
- (b) If the Government Proponent has a reasonable doubt (taking into account the Due Diligence Guidelines) 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 Government Proponent intends to undertake an Activity in the Aboriginal Heritage Area, it must issue a notice in writing to the ~~PBCNative Title Group~~ in accordance with this clause (**Activity Notice**).
- (b) The main purposes of an Activity Notice are:
  - (i) to determine whether a Survey is required and if so, what kind; 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; and
  - (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 ~~PBCNative Title Group~~ 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 Government Proponent that it considers that a Survey is not required.
- (e) If the Government 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 Government 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 ~~PBCNative Title Group~~ and the Government Proponent but, acting reasonably, the ~~PBCNative Title Group~~ shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. The Government 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 ~~PBCNative Title Group~~ 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 ~~PBCNative Title Group~~ will promptly consider the Activity Notice and shall, within 15 Business Days where the proposed Activity constitutes Low Ground Disturbance Activity but otherwise within 30 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Government Proponent in writing as to whether the ~~PBCNative Title Group~~ considers that a Survey is required (**Activity Notice Response**). In coming to its decision the ~~PBCNative Title Group~~ shall take into account:
  - (i) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; 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 ~~PBCNative Title Group~~ will consider whether it is reasonably clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without breaching the Aboriginal Heritage Act; and
  - (iii) any relevant previous decisions by the Native Title Group or PBC under clause 8.3(b); and
  - (iv) any other matter the ~~PBCNative Title Group~~ reasonably considers relevant.
- (b) The Government Proponent shall be free to carry out any Activity in the Aboriginal Heritage Area without conducting a Survey where:
  - (i) the ~~PBCNative Title Group~~ so agrees in writing; or
  - (ii) the ~~PBCNative Title Group~~ waives its right under clause 6.1(f) of this GSHA to require a Survey of the proposed Activity; or



(iii) the PBC agrees to the engagement of up to 2 Aboriginal 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 ~~PBC Native Title Group~~ and the Government Proponent may request additional information from the other at any time, including a request to meet, to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response the ~~PBC Native Title Group~~ 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 Government 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 ~~PBC's Native Title Group's opinion~~; and
  - (ii) if different to the nomination by the Government Proponent in its Activity Notice in accordance with part 1.2(c) of schedule 4, a nomination of the ~~PBC's Native Title Group's~~ proposed Survey Methodology, subject however to clause 9.4; and
  - (iii) if different to the date or dates nominated by the Government Proponent in its Activity Notice in accordance with part 1.2(e) of schedule 4, a nomination of a proposed Survey start date or finish date; and
  - (iv) subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
  - (v) a nomination of the ~~PBC's Native Title Group's~~ proposed Aboriginal Heritage Survey Provider and (if different to the Aboriginal Heritage Service Provider) Principal Aboriginal Heritage Consultant.

#### **8.4 Disagreements following Activity Notice Response**

If, following receipt by the Government Proponent of the Activity Notice Response, the ~~PBC Native Title Group~~ and the Government 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 referred to in clause 9.1(d), they are not entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8 or clause 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 ~~PBCNative Title Group~~ and the Government 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 Government Proponent of the Activity Notice Response under clause 8.3(a) the ~~PBCNative Title Group~~ and the Government 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 ~~PBCNative Title Group~~ and the Government Proponent under this clause 9 shall be conducted reasonably and in good faith.
- (d) The ~~PBCNative Title Group~~ and the Government Proponent shall ensure that the Survey Agreement Date occurs within 20 Business Days where the proposed Activity constitutes Low Ground Disturbance Activity but otherwise within 30 Business Days after the date of receipt by the Government 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 the Government Proponent may, by notice in writing to the ~~PBCNative Title Group~~, agree that the Survey Agreement Date has been reached notwithstanding the lack of agreement on that matter or matters. In such a case, the ~~Native Title Group~~~~PBC~~ and the Government Proponent will continue to discuss the non-agreed matters with a view to resolving them as quickly as practicable. To avoid doubt, a notice under this clause has effect to waive the right of the Government Proponent to rely on clause 6.1(a), but does not otherwise affect the rights of the Government Proponent under clause 6.

### 9.2 Whether a Survey is required

- (a) The discussions between the ~~Native Title Group~~~~PBC~~ and the Government Proponent about whether a Survey is required will be guided by the matters in clauses 8.3(a) and 9.2(b).
- (b) The following provisions shall apply to the discussions between the ~~Native Title Group~~~~PBC~~ and the Government Proponent about whether a Survey is required.

- (i) Where no previous Aboriginal Heritage Survey (whether under this GSHA 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 GSHA 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 GSHA or otherwise) has, or if 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 Government Proponent must (if it is in the Government Proponent's possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to the ~~Native Title Group~~PBC (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 otherwise determining whether a Survey is required, the ~~Native Title Group~~PBC and the Government Proponent will have regard to the following matters:
  - (A) the nature of the Activities outlined in the Activity Notice; and
  - (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey; and
  - (C) the extent to which the land has been affected by previous ground disturbing activities; and
  - (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
  - (E) any relevant matters relating to the Native Title Group's practices, laws and customs; and
  - (F) any other relevant matters raised by either the ~~Native Title Group~~PBC or the Government Proponent.

### **9.3 Agreements regarding Low Ground Disturbance Activity**

- (a) The discussions between the ~~Native Title Group~~PBC and the Government Proponent to confirm the extent of Low Ground Disturbance Activity, and

whether a Survey is required of such Activity, will be guided by the definition of Low Ground Disturbance Activity in this GSHA.

- (b) If the ~~Native Title Group~~PBC considers that a Survey for any Low Ground Disturbance Activity is required, then the ~~Native Title Group~~PBC and the Government Proponent will each use their reasonable endeavours to address the concerns of the ~~Native Title Group~~PBC, 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

If the ~~Native Title Group~~PBC's proposed Survey Methodology is different to the nomination by the Government Proponent in its Activity Notice, the discussions between the ~~Native Title Group~~PBC and the Government 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 ~~Native Title Group~~PBC's concerns for the Survey Area and the Activities proposed by the Government Proponent.

#### 9.5 Estimate of costs of Survey

- (a) The Parties acknowledge that it may not always be possible for the ~~Native Title Group~~PBC or the ~~Native Title Group~~PBC's nominated Aboriginal Heritage Service Provider to provide an accurate Survey cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.
- (b) If an estimate of Survey costs has not been provided earlier, then the ~~Native Title Group~~PBC must ensure that during the Survey Agreement Period the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Government Proponent for approval by the Government Proponent.
- ~~(c) The Native Title Group must ensure that in the estimate of Survey costs the Aboriginal Heritage Service Provider clearly indicates those items that the Government Proponent will be asked to pay in advance under clause 11(b).~~
- (d) During the Survey Agreement Period, the ~~Native Title Group~~PBC and the Government Proponent shall agree on a budget for the proposed Survey (such agreement not to be unreasonably withheld or delayed by either the ~~Native Title Group~~PBC or the Government Proponent) ("**Approved Budget**").



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

- (a) If the ~~Native Title Group~~PBC's Activity Notice Response does not identify the ~~Native Title Group~~PBC's nominated proposed Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) Principal Aboriginal Heritage Consultant, then the ~~Native Title Group~~PBC will advise the Government Proponent of these nominations during the Survey Agreement Period.
- (b) Subject to clause 9.6(c), the Parties acknowledge that the Government 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 Government Proponent under clause 6.1(f)(iii) in the event of delays.
- (c) If the Government Proponent has reasonable concerns about the competence or professionalism of the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) nominated by the ~~Native Title Group~~PBC, it may request that the ~~Native Title Group~~PBC consider another anthropologist or archaeologist to act as Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be). In such circumstances, the ~~Native Title Group~~PBC shall consider in good faith the Government Proponent's request.

## **9.7 Estimate of time for Survey commencement or completion**

If following the Activity Notice Response the ~~Native Title Group~~PBC and the Government 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 ~~Native Title Group~~PBC or the ~~Native Title Group~~PBC'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 Aboriginal Consultants, unless the Survey Area is outside of the Determination Area, in which case, the Survey Team will include up to 6 individuals who are either Aboriginal Consultants or Other Aboriginal

Consultants, with appropriate knowledge, experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), to examine the Survey Area and assist in the Survey; and

- (ii) if considered necessary by the ~~Native Title Group~~PBC and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) and agreed to by the Government Proponent, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
  - (iii) where considered necessary by the ~~Native Title Group~~PBC and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the Government 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 ~~Native Title Group~~PBC and the Government Proponent, including during the course of the Survey, an archaeologist.
- (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 ~~Native Title Group~~PBC and the Government Proponent, more than one archaeologist may be appointed to the Survey Team.
  - (c) The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i). Additional members of the Native Title Group and/or PBC may accompany the Survey Team but the Government Proponent will not be liable for additional costs.
  - (d) The Government 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. Such persons will at all times respect the privacy of the Aboriginal Consultants when sensitive cultural matters are being discussed.

## **10.2 Commencement and conduct of Survey**

- (a) The ~~Native Title Group~~PBC will use its best endeavours to facilitate the commencement of the Survey within the time agreed by the ~~Native Title~~



~~Group~~PBC and the Government Proponent, or in the absence of such agreement, within 30 Business Days after the Survey Agreement Date.

- (b) The Government Proponent will provide to members of the Survey Team (and any other attending members of the Native Title Group and/or PBC) before the Survey commences:
  - (i) details and explanation of any safety and other procedures and policies implemented from time to time by the Government Proponent over the Survey Area; and
  - (ii) protective clothing and equipment if reasonably necessary in all the circumstances.
- (c) The ~~Native Title Group~~PBC acknowledges that the Government 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; and
  - (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 a GPS; and
    - (B) record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided and an explanation as to why it is reasonably suspected that the area contains an Aboriginal Site, on a Heritage Information Submission Form; and
    - (C) 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; and
    - (D) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
    - (E) when an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is to be lodged,

record sufficient information to address the Heritage Department's ~~DAA's~~ requirements for such an application; and

- (F) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to ~~Aboriginal Heritage~~ concerns raised by the Aboriginal Consultants about an Aboriginal Site or an Aboriginal Object, the representatives of the Government Proponent nominated under clause 10.1(d):
  - (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information ~~or other information pertaining to Aboriginal Sites~~; and
  - (ii) may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.

## 11. Payment for Surveys

- (a) The Government Proponent shall pay the costs and expenses of the Survey at the rates set out in schedule 5.
- (b) The Government Proponent agrees to pay 50% of the Approved Budget in advance of the commencement of the Survey.

~~The Government Proponent agrees to pay, in advance of the commencement of the Survey, the following components of the approved estimated costs:~~

- ~~(i) 50% of the estimated administration fee; and~~
- ~~(ii) any disbursements that are to be paid by the Aboriginal Heritage Service Provider prior to the fieldwork component of the Survey being completed.~~
- (c) If the Government Proponent does not pay ~~that component~~ 50% of the Approved Budget ~~costs~~ referred to in clause 11(b)(i) 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), the ~~Native Title Group~~ PBC may, at its discretion, advise the Government Proponent by notice in writing that:
  - (i) the Survey cannot commence until payment has been made;
  - (ii) notwithstanding any other provisions of this GSHA:

- (A) the date on which that payment is made 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 Government Proponent fails to make payment within 14 Business Days after receipt of the notice under this clause, the default provisions of clause 17 will apply.

- (d) If the Survey is cancelled by the Government Proponent before it is completed, the part of the Approved Budget ~~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 Government Proponent.
- (e) Subject to clause 11(f), the balance of the Approved Budget-Survey costs will be paid by the Government Proponent within 21 days after the later to occur of:
  - (i) receipt by the Government Proponent of the final Survey Report (clause 12.1(c); and
  - (ii) receipt by the Government Proponent of proof of delivery of the final Survey Report to the Heritage Department (clause 12.6(a)(i)); and
  - (iii) in the case of a Site Identification Survey, receipt by the Government Proponent of proof of delivery to the Heritage Department of a completed Heritage Information Submission Form in respect of each Aboriginal Site identified during the Survey (clause 12.6(a)(ii)).
- (f) ~~receipt of the Survey Report by the Government Proponent. The Native Title GroupPBC must provide a tax invoice of the Survey costs that reconciles the costs estimated, and the any-costs monies 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 Native Title GroupPBC.~~

## **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 ~~Native Title Group~~PBC will provide the Government Proponent with:

- (a) Preliminary Advice (if requested on reasonable grounds by the Government Proponent in the Activity Notice or at any other time under clause 12.2, and agreed to by the ~~Native Title Group~~PBC (such agreement not to be unreasonably withheld)), as soon as reasonably practicable, and in any event within 7 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (if requested by the Government Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event within 20 Business Days after the Last Fieldwork Day, to enable the Government Proponent to comment in writing to the ~~Native Title Group~~PBC within 5 Business Days of receipt of the draft Survey Report on any identified technical, apparent factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of schedule 6 (as applicable); and
- (c) a final Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant as soon as reasonably practicable, and in any event within 45 Business Days after the Last Fieldwork Day.

### **12.2 Requests for reports**

- (a) Notwithstanding the relevant nominations by the Government Proponent in the Activity Notice under part 1.2(f) of schedule 4, the Government Proponent may by notice in writing request the ~~Native Title Group~~PBC to provide a Preliminary Advice or draft Survey Report, prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant at any time, subject to this clause.
- (b) The State and the Government parties acknowledge that a notification under clause 12.2(a) may impact on the times and costs for the Survey, and the ~~Native Title Group~~PBC shall ensure that any revised times and costs are notified promptly to the relevant Government Proponent.

### **12.3 Preliminary Advice**

- (a) A Preliminary Advice shall record at least the information referred to in clause 12.4(ea)(i).



- (b) Upon receipt by the Government Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Government 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 Government Proponent to:
  - (i) plan and, subject to the law and this GSHA, 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.
- (b) The Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will, in consultation with the Survey Team, be responsible for preparing a Survey Report:
  - (i) as per the guidelines-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 guidelines-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:~~
  - ~~(vi) (i) describe which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, may result in a breach of the Aboriginal Heritage Act; and~~
  - ~~(ii) record sufficient information to enable the Government Proponent to plan and, subject to the law and this GSHA, undertake the things that are the subject of the Activity Notice.~~
- (d) The intellectual property rights in the Survey Report are governed by the provisions of clause 13.
- (e) In the case of a Survey Report where the Site Avoidance Model has been used, in addition to the Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant in accordance with sub-clause 12.4(b)(i) (the "**Non-Redacted Survey Report**"), the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will prepare an

identical copy of the Survey Report with the names and gender of the Aboriginal Consultants redacted (the "**Redacted Survey Report**").

- (f) The ~~Native Title Group~~PBC will hold the Non-Redacted Survey Report and ensure it is kept in a secure location.
- (g) The Government Proponent may only request, and the ~~Native Title Group~~PBC must provide, the Non-Redacted Survey Report if the veracity of the Redacted Survey Report is or becomes an issue in any legal, judicial or statutory proceedings related to the Survey Area.

## **12.5 Reliance on Survey Report**

- (a) The Parties each acknowledge that they may rely upon the contents of a Survey Report.
- (b) The Government Proponent shall consult with the PBC if it intends to undertake things that are the subject of the Activity Notice in a manner that is contrary to the recommendations contained in the Survey Report.

## **12.6 Provision of Information to the Heritage Department**

- (a) Within 15 Business Days of providing the Government Proponent with the final Survey Report, the the PBC must ensure that the Aboriginal Heritage Service Provider provides the following information to the Heritage Department : ~~Aboriginal Heritage Act Registrar:~~
  - (i) copy of the Survey Report; and
  - (ii) if Aboriginal Sites have been identified during the Survey and are not already recorded on the Aboriginal Heritage Register, a (accessible via the Heritage Department's website at [www.dplh.wa.gov.au](http://www.dplh.wa.gov.au)) with respect to each site.
- (b) The State shall ensure that the Heritage Department maintains the confidentiality of all Survey Reports as referred to in clause 12.6(a)(i) which are in the Heritage Department's possession, in accordance with the provisions of clause 19.



## 13. Intellectual property

### 13.1 Intellectual property of the ~~Native Title Group~~ PBC

All intellectual property rights in the Survey Report vest absolutely and irrevocably in the ~~Native Title Group~~ PBC.

### 13.2 Licence to use intellectual property

Subject to clause 19, the ~~Native Title Group~~ PBC grants to the Government Proponent an irrevocable, transferable, non-exclusive, unrestricted, royalty-free licence to utilise any Survey Report for the purposes of the Government Proponent:

- (a) conducting its Activities; and
- (b) seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act; and
- (c) enforcing its rights, and complying with its obligations, under this GSHA.

## 14. Environmental Protection

- (a) In co-operation with the ~~Native Title Group~~ PBC, the State and Government Parties agree to rehabilitate the Aboriginal Heritage Area as a result of their Activities as required by law.
- (b) The State shall respond to any complaint or concern raised by the ~~Native Title Group~~ PBC regarding a failure to rehabilitate the Aboriginal Heritage Area as required by law.
- (c) Where the Government Proponent intends to engage a contractor to conduct environmental rehabilitation on the Aboriginal Heritage Area, it will:
  - (i) undertake a procurement process as required by law or Government policy, including the State's Buy Local Policy;
  - (ii) advise the ~~Native Title Group~~ PBC of the procurement process and invite the ~~Native Title Group~~ PBC to advise each contractor which is significantly controlled by, or employs members of, the Native Title Group or PBC (Native Title Group Contractor) that it may submit a tender or quote (as applicable) as part of the procurement process; and
  - (iii) engage the Native Title Group Contractor if the Government Proponent determines (in its absolute discretion) that the Native Title Group Contractor's tender or quotation (as applicable) achieves the best value for money outcome for the Government Proponent.

## 15. Identification and Relocation of Ancestral Remains or Objects

- (a) Where, as a result of an Activity, the Government Proponent uncovers skeletal remains or identifies an area or object which it reasonably suspects of being an Aboriginal Site or Aboriginal Object, the Government Proponent must:
  - (i) cease all operations and activities in the immediate vicinity of such remains, area or objects;
  - (ii) immediately notify the Heritage Department DAA and other relevant authorities in accordance with the Aboriginal Heritage Act and other applicable statutory law; and
  - (iii) notify the ~~Native Title Group~~PBC of the findings and, subject to other statutory requirements, meet on site where the ~~Native Title Group~~PBC and Government Proponent 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.

## 16. Consultation about Aboriginal Heritage Act applications

### 16.1 State or Government Party must consult about Aboriginal Heritage Act applications

- (a) Subject to the provisions of this clause 16.1, each Party acknowledges the benefit of the ~~Native Title Group~~PBC being consulted about a proposal by a Government 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 Government Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application without first giving the ~~Native Title Group~~PBC prior written notice of its intention to do so (**Notice of Application**) and the opportunity for consultation.
- (c) If the Government Proponent gives the ~~Native Title Group~~PBC a Notice of Application under clause 16.1(b):

- (i) the ~~Native Title Group~~PBC must, if it wishes to proceed to consultation under clause 16.1(d), within 15 Business Days of receiving the Notice of Application, give to the Government Proponent a written notice stating that the ~~Native Title Group~~PBC would like to proceed to consultation (**Notice to Consult**); or
  - (ii) if the ~~Native Title Group~~PBC does not give a Notice to Consult to the Government Proponent within the time period specified in clause 16.1(c)(i), the Government 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 ~~Native Title Group~~PBC under this clause 16.1.
- (d) If the Government Proponent receives a Notice to Consult within the period specified in clause 16.1(c)(i), the Government Proponent must consult with the ~~Native Title Group~~PBC for a minimum of 30 Business Days immediately after receipt of such Notice to Consult, including by making reasonable efforts to meet with the ~~Native Title Group~~PBC, 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 Government Proponent considers that agreement under clause 16.1(d)(ii) 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).
- (e) If the Parties do not agree in respect of any matter arising from the consultation under clause 16.1(d), then such matter may be determined, at the election of either Party, as a dispute pursuant to the provisions of clause 18 subject to the following:
- (i) the requirements to give a dispute notice pursuant to clause 18.2 and to endeavour to resolve the dispute pursuant to clause 18.3 are satisfied, respectively, by the giving of the Notice to Consult and consultation by the Parties pursuant to this clause 16.1; and

- (ii) the arbitration provisions of clause 18 will not apply in respect of such dispute.
- (f) Subject to compliance with clauses 16.1(b) to (e), nothing in this GSHA prevents the Government Proponent lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.

## 16.2 Justifiable delay

- (a) A delay caused by an event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.1.
- (b) A Party asserting the existence of a delay to which clause 16.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate (to the extent applicable) that delay.

## 17. Default and enforcement

### 17.1 Interpretation

- (a) In this clause 17 a reference to a Party means a party to the default or dispute.
- (b) An **Event of Default** occurs where:
  - (i) a Party breaches an obligation under this GSHA; or
  - (ii) in the case of the ~~Native Title Group~~PBC, the ~~Native Title Group~~PBC commits an Insolvency Event.

### 17.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default under clause 17.1(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 5 Business Days after receiving the Default Notice.
- (b) If the Event of Default occurs under clause 17.1(b)(ii), the ~~Native Title Group~~PBC shall as soon as possible notify the State and the Government Parties:
  - (i) that the Event of Default has occurred;
  - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the ~~Native Title Group~~PBC; and

- (iii) when the relevant Event of Default ceases to exist.
- (c) The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this GSHA until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (d) Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this GSHA or otherwise at law (including the right to seek interlocutory relief and specific performance).

## **18. Dispute resolution**

### **18.1 No arbitration or court proceedings**

- (a) Subject to clause 18.1(b), if a dispute arises under this GSHA including a dispute in respect of this clause 18.1 (**Dispute**), a party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 18 are subject to clause 8.4.

### **18.2 Notification**

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

### **18.3 Parties to resolve Dispute**

During the 20 Business Days after a notice is given under clause 18.2 (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 18.4.

### **18.4 Mediation**

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chairman of the Resolution Institute LEADR will appoint a mediator at the request of either Party.
- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Parties agree in advance in writing.



- (c) Any information or documents disclosed by a Party under this clause 18:
  - (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 18.4. 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 mediator appointed under this clause commencing the mediation, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 18.6) referring the matter to arbitration or commencing legal proceedings.

#### **18.5 Arbitration**

- (a) If the Parties to a Dispute have complied with clauses 18.2 to 18.4 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 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural and/or native title matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

#### **18.6 Breach of this clause**

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.



## **18.7 Obligations continue**

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 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 GSHA 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.

## **18.8 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 GSHA, 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.

# **19. Confidentiality**

## **19.1 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 19.3:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this GSHA, including any Sensitive Heritage Information; and
- (b) information given by the Government Proponent to the ~~Native Title Group~~PBC in respect of the Activities of the State or the Government Party, where the State or Government Party advises the ~~Native Title Group~~PBC that the relevant information is confidential; and
- (c) the information described in clause 19.2; and
- (d) any other information disclosed by one Party to another under this GSHA which is identified by the disclosing Party as confidential,

but not including information:

- (e) the receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the disclosing Party; or

- (f) that is public knowledge (otherwise than as a result of a breach of confidentiality by the receiving Party or any of its permitted disclosees).

## **19.2 Unrelated information obtained during Survey is confidential**

In the course of a Survey being conducted the Aboriginal Heritage Liaison Officer may obtain, or cause to be obtained, information in relation to the native title rights and interests of the ~~Native Title Group~~PBC that is not related to the purpose of the Survey. Such information is separate from the Survey and is confidential to the ~~Native Title Group~~PBC.

## **19.3 Permitted disclosure**

- (a) Subject to clauses 19.3(b) and 19.3(c) and 19.4, a receiving Party may disclose Confidential Information in any of the following circumstances:
  - (i) if it has the prior written 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 reasonably 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 GSHA 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, and related bodies corporate, or a Principal Aboriginal Heritage Consultant or Aboriginal Heritage Service Provider appointed under this GSHA;
  - (vi) to another State or Commonwealth department or office, or another Government Party;
  - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
  - (viii) to a proposed registered native title body corporate assignee of the ~~Native Title Group's~~PBC's rights, title and interests under this GSHA;
  - (ix) in accordance with clause ~~19.5~~12.6;
  - (x) where disclosure is required by the Government 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 GSHA.

- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Government Proponent may disclose that Confidential Information to the DAA Heritage Department and ACMC, including for the purposes of:
  - (i) the Government Proponent making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application; or
  - ~~(ii) providing a copy of each Survey Report to the DAA for DAA's collection of Aboriginal Heritage Survey reports; or~~
  - (iii) the Government Proponent seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act.
- ~~(c) The State shall ensure that the DAA maintains the confidentiality of all such Survey Reports as referred to in clause 19.3(b)(ii) which are in the DAA's possession, in accordance with the provisions of this clause 19.~~
- (d) To avoid doubt, except for the circumstances described in clause 19.3(b), disclosure of Sensitive Heritage Information may only occur if the Native Title Group PBC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (e) The ~~Native Title Group PBC~~ must inform the Government Proponent of any information which it discloses during the course of the Survey to the Government Proponent, including by inclusion in a Survey Report, which comprises Sensitive Heritage Information.

#### **19.4 Disclosure requirements**

Before making any disclosure to a person under clause 19.3 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 GSHA; and
- (b) before doing so notify the disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clauses 19.3(a)(v), 19.3(a)(vi), 19.3(a)(vii) or 19.3(a)(viii), but with the exception of employees or officers of a receiving Party or another department or office of the State, 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 clause 19.

#### ~~19.5~~ **Provision of Aboriginal Heritage Information to DAA**

~~Following the preparation of the Survey Report, the Native Title Group must ensure that the Aboriginal Heritage Service Provider provides the following information to the Aboriginal Heritage Act Registrar:~~

- ~~(a) — copy of the Survey Report; and~~
- ~~(b) — if Aboriginal Sites have been identified during the Survey, a Heritage Information Submission Form (see website details at schedule 7) with respect to each site.~~

## **20. Assignment**

### **20.1 Assignment by Native Title Group PBC**

- ~~(a) — The Native Title Group must assign its rights and obligations under this GSHA to the PBC in accordance with the following process:~~
  - ~~(i) — within 15 Business Days after the RNTBC Orders come into effect, the Native Title Group must give DPC notice of that fact;~~
  - ~~(ii) — within 20 Business Days of receipt of the notice referred to in clause 20.1(a), DPC must cause to be prepared for execution a deed of assignment (Deed of Assignment) substantially in the form set out in schedule 8 and submit it to the Native Title Group to arrange execution;~~
  - ~~(iii) — the Native Title Group authorises the Registered Native Title Claimants to execute the Deed of Assignment on their behalf;~~
  - ~~(iv) — within 20 Business Days of receipt of the Deed of Assignment from DPC, the Native Title Group must arrange for the Registered Native Title Claimants to execute it, cause it to be executed by the PBC, and return it to DPC; and~~
  - ~~(v) — the State and Government Parties will then execute the Deed of Assignment, have it stamped if necessary, and provide copies of the fully executed (and stamped if necessary) Deed of Assignment to the Registered Native Title Claimants and the PBC.~~



~~Once assigned to the PBC under this clause 20.1, t~~The PBC may not assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under or in respect of this GSHA except as provided for in the Deed of Assignment entered into on 3 August 2017.

## **20.2 No Assignment by State or Government Parties**

- (a) Neither the State nor a Government Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this GSHA in any circumstances other than as a result of any 'Machinery of Government' changes.
- (b) If the State or a Government Proponent carries out any Activities through contractors, then the State or the Government Proponent, as applicable, will provide such contractors with a copy of this GSHA and ensure that such contractors are made aware of the obligations of this GSHA.

## **20.3 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 Agreement.

# **21. Notices**

## **21.1 General**

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) subject to clause 21.2, must be delivered to the intended recipient by registered mail or by hand or fax to the intended recipient's address or fax number specified in schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to the Native Title Group under clause 8.2); and
- (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 (which shall be by registered mail), 2 Business Days after the date of posting; and
  - (iii) 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 4.00 pm (local time), it will be taken to have been duly given or made at 9.00 am on the next Business Day.

## **21.2 Notice recipients – State and Government Parties**

- (a) Subject to clauses 21.2(c) and 21.2(d), if the ~~Native Title Group~~PBC intends to give a notice which concerns Activities undertaken by a Government Party, the ~~Native Title Group~~PBC shall send the notice to the Government Party that is conducting or proposing to conduct the Activities, as identified in the relevant Activity Notice.
- (b) Subject to clauses 21.2(c) and 21.2(d), if the ~~Native Title Group~~PBC intends to give a notice which concerns Activities undertaken by the State, the ~~Native Title Group~~PBC shall send the notice to the relevant department of the State through which the State is conducting or proposing to conduct the Activities, as identified in the relevant Activity Notice.
- (c) If the ~~Native Title Group~~PBC intends to give a notice under clauses 8 to 11 (inclusive), the ~~Native Title Group~~PBC shall give the notice:
  - (i) in the case of the State, to the department of the State which issued the Activity Notice on behalf of the State; or
  - (ii) to the LA Act Department if the Activity Notice was initiated by or on behalf of the Minister for Lands; or
  - (iii) to the Mining Act Department if the Activity Notice was initiated by or on behalf of the Minister for Mines and Petroleum; or
  - (iv) otherwise to the other Government Party which initiated the Activity Notice.
- (d) Where a matter relates to this GSHA generally or it is not clear to the ~~Native Title Group~~PBC to whom the notice should be given, the ~~Native Title Group~~PBC shall give notice to the State. Any notice given under this clause 21.2(d) shall make it clear that it is the sole notice (not a copy of another notice), so that the State is not left uncertain as to whether it needs to act on the notice.
- (e) The ~~Native Title Group~~PBC shall use reasonable endeavours to notify the appropriate responsible department of the State (in the case of a notice to the State), or Government Party, for the Activity. In the event that a notice is sent to the incorrect department of the State (in the case of a notice to the State), or Government Party, the State shall provide all reasonable assistance

to ensure that the ~~Native Title Group~~PBC is promptly informed of the correct recipient of the notice.

- (f) Where a Government Party or department of the State receives a notice from the ~~Native Title Group~~PBC pursuant to this clause 21.2, that Government Party or department of the State shall forward a copy of the notice to the DPC.

## **22. GST**

### **22.1 Interpretation**

Any reference in this clause 22 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.

### **22.2 Amounts exclusive of GST**

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

### **22.3 GST payable**

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

## **23. Costs and duties**

- (a) The State shall bear any duties or fees or taxes of a similar nature associated with this Agreement.

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

## 24. Force Majeure and Aboriginal Cultural Business

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

## 25. Review and variation

### 25.1 General principles

- (a) The State and the ~~Native Title Group~~ PBC acknowledge that this GSHA forms part of a framework (set out in the ILUA) for the way in which the State and the Government Parties will do business in the Determination Area after the Effective Date. The ~~Native Title Group~~ PBC acknowledges neither itself nor any individual Government Party is free to vary this GSHA. The State will consider variations to this GSHA as part of the broader review process under the ILUA.

- (b) Notwithstanding clause 25.1(a), where the ILUA has been de-registered or terminated, the State and the ~~Native Title Group~~PBC may reach an agreement to vary the terms of this GSHA pursuant to the review process set out in subclauses 25.2, 25.3 and 25.4 hereunder.

## **25.2 Review Committee**

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

## **25.3 Informal Review**

The Review Committee shall meet annually, on or near the anniversary of the Effective Date of this GSHA, to review this GSHA and its operation including any Events of Default or disputes arising in connection with this GSHA and any future acts done under this GSHA in the Determination Area.

## **25.4 Formal Review**

- (a) The Review Committee shall undertake a formal review of this GSHA on or near the third anniversary of the Effective Date, and every 5 years thereafter, or such other period as agreed, for the purpose of:
  - (i) considering recommendations under clause 25.3 made by the Review Committee in previous years, including recommendations concerning proposed amendments to this GSHA; and
  - (ii) considering any changes to the law which indirectly or directly affect this GSHA; and
  - (iii) considering any submissions made by the ~~Native Title Group~~PBC concerning proposed variations of this GSHA; and

- (iv) considering any variations of this GSHA necessitated by changes in political or economic circumstances or variations to the Determination Area.
- (b) The Review Committee shall also meet to undertake a formal review of this GSHA if the following events occur more than 6 months prior to a formal review under clause 25.4:
  - (i) there is a change to the law which materially affects this GSHA; or
  - (ii) there is a variation to the Determination Area which materially affects this GSHA.

## **26. General**

### **26.1 Entire agreement**

This GSHA 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.

### **26.2 Governing law and jurisdiction**

- (a) This GSHA 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.

### **26.3 Severance**

If any provisions of this GSHA 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 GSHA to the extent necessary unless it would materially change the intended effect and objectives of this GSHA.

### **26.4 Waiver**

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or



power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and

- (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.

#### **26.5 No merger**

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

#### **26.6 Further action**

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

## Schedule 1 – Party Details

(Clause 21 Notices)

**~~PBC Esperance Nyungar~~  
~~Native Title Group~~**  
Notice details

Address: Esperance Tjaltjiraak Native Title Aboriginal Corporation  
18 Andrew Street  
PO Box 1451  
Esperance WA 6450  
~~14 Throssell Street, Kalgoorlie;~~  
~~PO Box 10006 Kalgoorlie WA 6430~~

Fax No.: ~~(08) 9091 1662~~

**State of Western Australia**  
Notice details

Address: C/- Department of the Premier and Cabinet  
Dumas House, 2 Havelock Street  
West Perth WA 6005

Fax No.: (08) 6552 5001

**Minister for Lands**  
Notice details

Address: C/- Department of Planning, Lands & Heritage  
Level 2, 140 William Street, Perth WA 6000

Fax No.: (08) 6552 4417

**Conservation & Parks  
Commission of  
of Western Australia**  
Notice details

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

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

Address: C/- Department of Parks and Wildlife  
Locked Bag 104, Bentley Delivery Centre  
Bentley WA 6983

Fax No.: (08) 6467 5562

**Commissioner of  
Main Roads**  
Notice details

Address: C/- Main Roads  
Don Atkinson Centre  
PO Box 6202  
East Perth WA 6892

Fax No.: (08) 9323 4400

**Western Australian Land  
Authority**  
Notice details

Address: C/- Landcorp  
Level 6, Wesfarmers House, 40 The Esplanade  
Perth WA 6000

Fax No.: (08) 9481 0861

**Housing Authority**  
Notice details

Address: C/- Department of Housing  
99 Plain Street, East Perth WA 6004

Fax No.: (08) 9221 1388

**Minister for Mines and  
Petroleum**  
Notice details

Address: C/- Department of Mines, Industry Regulation &  
Safety and Petroleum  
Mineral House, 100 Plain Street  
East Perth WA 6004

Fax No.: (08) 9222 3862

**Western Australian  
Agriculture Authority**  
Notice details

Address: C/- Department of Agriculture and Food  
Locked Bag 4  
Bentley Delivery Centre WA 6983

Fax No.: (08) 9474 2405

**Water Resources  
Ministerial Body**  
Notice details

Address: C/- Department of Water  
PO Box K822  
Perth WA 6842

Fax No.: (08) 6364 7601

**Water Corporation**  
Notice details

Address: Customer Correspondence  
Water Corporation Locked Bag  
Bentley Delivery Centre WA 6916

Fax No.: (08) 9473 7722

**FES**  
**Ministerial Body**  
Notice details

Address: C/- Department of Fire and Emergency Services  
GPO Box P1174  
Perth WA 6844

Fax No.: (08) 9395 9384

~~**Horizon Power**~~  
~~Notice details~~

~~Address: Horizon Power~~  
~~PO Box 1066~~  
~~Bentley Delivery Centre WA 6983~~

~~Fax No.: (08) 6310 1010~~

## Schedule 2 – Determination and Aboriginal Heritage Agreement Details

Item No.	Item Description	Details
<b>Details of Determination</b>		
Item 1	Name of Determination (or name of Native Title Group)	Esperance Nyungars
Item 2	Date of Determination	14 March 2014
Item 3	Federal Court or High Court decision in which the Determination was made (including any decisions varying the original decision, where applicable)	<i>Bullen on behalf of the Esperance Nyungar People v State of Western Australia</i> [2014] FCA 197 <u>Varied pursuant to orders of the Court dated 10 October 2017</u>
<b>Details of ILUA (as recorded on the Register of Indigenous Land Use Agreements)</b>		
Item 4	Short name of ILUA	Esperance Nyungar Government Indigenous Land Use Agreement
Item 5	National Native Title Tribunal file no.	<u>WI2014/006</u>
Item 6	Date registered	<u>21 November 2014</u>
Item 7	Local government region(s)	Shire of Esperance and Shire of Ravensthorpe
<b>Details of PBC</b>		
Item 8	PBC's Indigenous corporation number (ICN), as recorded on the Register of Aboriginal and Torres Strait Islander Corporations under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)	ICN <u>8212</u>
Item 9	Whether PBC holds native title on trust for, or acts as a non-trustee agent or representative of, the Native Title Group	<del>Trustee</del> Non-trustee <u>agent</u> <del>(Delete as applicable)</del>



Item No.	Item Description	Details
<b>Details of period under clause 6.2(b)</b>		
Item 10	The 5 Business Days preceding Christmas Day and the 15 Business Days following Christmas Day.	
<b>Pre-existing Aboriginal Heritage Agreements</b>		
Item 11	Details of all pre-existing Aboriginal Heritage Agreements	Nil
Item 12	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this GSHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write 'whole agreement')	N/A
<b>Item 13 – Details of RNTBC Orders</b>		
Item 13(a)	Date on which RNTBC Orders come into effect	<u>21 April 2015</u>
Item 13(b)	Federal Court or High Court decision in which the RNTBC Orders were made (including any decision(s) varying the original decision, where applicable)	as varied by

## Schedule 3 – Aboriginal Heritage Area

(Clause 1.1 Definition of **Aboriginal Heritage Area**; and Clause 4)

All those lands and waters commencing at the intersection of the Lowest Astronomical Tide with Longitude 120.465236° East and extending north to Latitude 33.966954° South, Longitude 120.465236° East; Then northerly to intersect the land division boundary between South West and Eucla Land Divisions (being the Rabbit Proof Fence) at Latitude 33.692936° South; Then generally northwesterly along that land division boundary to the intersection of the prolongation westerly of the southern boundary of Reserve 27023; Then easterly along that prolongation to the southernmost southwestern corner of Reserve 27023; Then easterly and generally northeasterly along boundaries of that reserve until it intersects the prolongation westerly of the southern boundary of Reserve 36004; Then easterly to and along the southern boundary of Reserve 36004 to its southeastern corner; Then easterly to the southwestern corner of Lot 1276 as shown on Deposited Plan 152267; Then northwesterly along the western boundary of that lot and western and northern boundaries of Lot 1241 as shown on Deposited Plan 152283 to the southwestern corner of Lot 1255 as shown on Deposited Plan 152557; Then northwesterly and northeasterly along boundaries of that lot to intersect with a prolongation southeasterly of the western boundary of Lot 1403 as shown on Deposited Plan 152558; Then northwesterly to and along the western boundary of that lot to a southern boundary of Lot 702 as shown on Deposited Plan 152282; Then southwesterly and northwesterly along boundaries of that lot to its northwestern corner; Then northwesterly to the southwestern corner of Lot 1249 as shown on Deposited Plan 152286; Then northwesterly and northeasterly along boundaries of that lot and onwards to the southwestern corner of Lot 1245 as shown on Deposited Plan 152285; Then northwesterly and northeasterly along the boundaries of that lot to its northeastern corner; Then northwesterly to the westernmost southwestern corner of the northeastern severance of Lot 1433 as shown on Deposited Plan 152563; Then northwesterly along boundaries of that severance to the southernmost southwestern corner of Lot 1538 as shown on Deposited Plan 172656; Then generally northeasterly along boundaries of that lot to the northwestern corner of Lot 579 as shown on Deposited Plan 202841; Then southeasterly and northeasterly along boundaries that lot and onwards to the northwestern corner of Lot 562 as shown on Deposited Plan 201880; Then southeasterly, northeasterly and northwesterly along the boundaries of that lot to the southwestern corner of Lot 556 as shown on Deposited Plan 201879; Then northwesterly and northeasterly along boundaries of that lot and onwards to the northwestern corner of Lot 555 as shown on Deposited Plan 201879; Then southeasterly along the western boundary of that lot and southeasterly and northeasterly along western and southern boundaries of Lot 554 as shown on Deposited Plan 201879 to the western boundary of Reserve 20487; Then northwesterly and easterly along boundaries of that reserve and onwards to the northwestern corner of Lot 553 as shown on Deposited Plan 201879; Then easterly along the northern boundary of that lot to a western side of the Coolgardie-Esperance Highway; Then generally northwesterly along western sides of that highway to the northeastern corner of the southern severance of Lot 112 as shown on Deposited Plan 141275; Then northwesterly to the southernmost southeastern corner of Reserve 19875; Then northerly and northwesterly along eastern boundaries of that reserve to a southeastern corner of the northern severance of Lot 112 as

shown on Deposited Plan 141275; Then generally northwesterly, generally northerly and westerly along boundaries of that severance to its northernmost northwestern corner; Then southerly to the northeastern corner of Lot 931 as shown on Deposited Plan 203675; Then westerly along the northern boundary of that lot to its northwestern corner; Then southerly to the easternmost southeastern corner of Lot 928 as shown on Deposited Plan 203686; Then generally westerly and northerly along boundaries of that lot to a southern boundary of Lot 927 as shown on Deposited Plan 203697; Then westerly, northerly and generally easterly along the boundaries of that lot and onwards to the northwestern corner of Lot 933 as shown on Deposited Plan 203675; Then southerly and easterly along western and southern boundaries of that lot and onwards to the northwestern corner of the eastern severance of Lot 932 as shown on Deposited Plan 203675; Then easterly along the northern boundary of that severance to a western side of the Coolgardie-Esperance Highway; Then northerly along the western side of that highway to the intersection of the prolongation westerly of the southern boundary of Reserve 42943; Then easterly to and generally easterly along the southern boundary of that reserve to the southernmost southwestern corner of Lot 966 as shown on Deposited Plan 203731; Then northeasterly along the southern boundary of that lot to the western boundary of Reserve 19439; Then northwesterly, generally easterly and southerly along the boundaries of that reserve to its southeastern corner; Then southerly to northernmost northwestern corner of the eastern severance of Lot 1552 as shown on Deposited Plan 210892; Then easterly and southerly along boundaries of that severance and onwards to the northern boundary of Lot 987 as shown on Deposited Plan 203725; Then southwesterly along the northern boundary of that lot and onwards to the northeastern corner of Lot 986 as shown on Deposited Plan 203725; Then southwesterly and southeasterly along boundaries of that lot to the northwestern corner of Lot 991 as shown on Deposited Plan 203725; Then southeasterly along the western boundary of that lot and onwards to the northwestern corner of Lot 998 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot and onwards to the northwestern corner of Lot 999 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot to the westernmost northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly along the northern boundary of that lot to the northwestern corner of Reserve 19873; Then northeasterly along the northern boundary of that reserve to a northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly and southeasterly along boundaries of that lot to the northeastern corner of Lot 1001 as shown on Deposited Plan 203623; Then southeasterly along the eastern boundary of that lot and onwards to the northeastern corner of Lot 1012 as shown on Deposited Plan 203623; Then southeasterly along eastern boundaries of that lot and Lot 1013 as shown on Deposited Plan 203623 to the northeastern corner of Lot 1024 as shown on Deposited Plan 203621; Then southeasterly along eastern boundaries of that lot and Lot 1025 as shown on Deposited Plan 203621 to the northern side of Holt Road; Then northeasterly and southeasterly along sides of that road to the northwestern corner of Lot 574 as shown on Deposited Plan 202847; Then northeasterly and generally southeasterly along boundaries of that lot to the northeastern corner of Lot 577 as shown on Deposited Plan 202847; Then southeasterly along the eastern boundary of that lot to a northern side of Swann Road; Then generally easterly and generally south easterly along northern sides of Swann Road and McCrea Road to the intersection with the eastern side of Davies Road; Then southeasterly to the northernmost corner of Lot 491 as shown on



Deposited Plan 215215; Then southeasterly along the northeastern boundary of that lot to its easternmost corner; Then southeasterly to the intersection of the Lowest Astronomical Tide with Longitude 123.754068° East, being a point southwest of Point Malcolm; Then generally westerly along the Lowest Astronomical Tide back to the commencement point.

**Excluded Areas**

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

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

**AREA IN WHICH THE ESPERANCE NYUNGARS HOLD EXCLUSIVE HERITAGE KNOWLEDGE:**

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

**Excluded Areas**

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

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

**AREA IN WHICH THE ESPERANCE NYUNGARS SHARE HERITAGE KNOWLEDGE WITH OTHERS:**

All those lands and waters commencing at the southwestern corner of Lot 1276 as shown on Deposited Plan 152267 and extending northwesterly along the western boundary of that lot and western and northern boundaries of Lot 1241 as shown on Deposited Plan 152283 to the southwestern corner of Lot 1255 as shown on Deposited Plan 152557; Then northwesterly and northeasterly along boundaries of that lot to intersect with a prolongation southeasterly of the western boundary of Lot 1403 as shown on Deposited Plan 152558; Then northwesterly to and along the western boundary of that lot to a southern boundary of Lot 702 as shown on Deposited Plan 152282; Then southwesterly and northwesterly along boundaries of that lot to its northwestern corner; Then northwesterly to the southwestern corner of Lot 1249 as shown on Deposited Plan 152286; Then northwesterly and northeasterly along boundaries of that lot and onwards to the southwestern corner of Lot 1245 as shown on Deposited Plan 152285; Then northwesterly and northeasterly along the boundaries of that lot to its northeastern corner; Then northwesterly to the westernmost southwestern corner of the northeastern severance of Lot 1433 as shown on Deposited Plan 152563; Then northwesterly along boundaries of that severance to the southernmost southwestern corner of Lot 1538 as shown on Deposited Plan 172656; Then generally northeasterly along boundaries of that lot to the northwestern corner of Lot 579 as shown on Deposited Plan 202841; Then southeasterly and northeasterly along boundaries that lot and onwards to the northwestern corner of Lot 562 as shown on Deposited Plan 201880; Then southeasterly, northeasterly and northwesterly along the boundaries of that lot to the southwestern corner of Lot 556 as shown on Deposited Plan 201879; Then northwesterly and northeasterly along boundaries of that lot and onwards to the northwestern corner of Lot 555 as shown on Deposited Plan 201879; Then southeasterly along the western boundary of that lot and southeasterly and northeasterly along western and southern boundaries of Lot 554 as shown on Deposited Plan 201879 to the western boundary of Reserve 20487; Then northwesterly and easterly along boundaries of that reserve and onwards to the northwestern corner of Lot 553 as shown on Deposited Plan 201879; Then easterly along the northern boundary of that lot to a western side of the Coolgardie-Esperance Highway; Then generally northwesterly along western sides of that highway to the northeastern corner of the southern severance of Lot 112 as shown on Deposited Plan 141275; Then northwesterly to the southernmost southeastern corner of Reserve 19875; Then northerly and northwesterly along eastern boundaries of that reserve to a southeastern corner of the northern severance of Lot 112 as shown on Deposited Plan 141275; Then generally northwesterly, generally northerly and westerly along boundaries of that severance to its northernmost northwestern corner; Then southerly to the northeastern corner of Lot 931 as shown on Deposited Plan 203675; Then westerly along the northern boundary of that lot to its northwestern corner; Then southerly to the easternmost southeastern corner of Lot 928 as shown on Deposited Plan 203686; Then generally westerly and northerly along boundaries of that lot to a southern boundary of Lot 927 as shown on Deposited Plan 203697; Then westerly, northerly and generally easterly along the boundaries of that lot and onwards to the northwestern corner of Lot 933 as shown on Deposited Plan 203675; Then southerly and easterly along western and southern boundaries of that lot and onwards to the northwestern corner of the eastern severance of



Lot 932 as shown on Deposited Plan 203675; Then easterly along the northern boundary of that severance to a western side of the Coolgardie-Esperance Highway; Then northerly along the western side of that highway to the intersection of the prolongation westerly of the southern boundary of Reserve 42943; Then easterly to and generally easterly along the southern boundary of that reserve to the southernmost southwestern corner of Lot 966 as shown on Deposited Plan 203731; Then northeasterly along the southern boundary of that lot to the western boundary of Reserve 19439; Then northwesterly, generally easterly and southerly along the boundaries of that reserve to its southeastern corner; Then southerly to northernmost northwestern corner of the eastern severance of Lot 1552 as shown on Deposited Plan 210892; Then easterly and southerly along boundaries of that severance and onwards to the northern boundary of Lot 987 as shown on Deposited Plan 203725; Then southwesterly along the northern boundary of that lot and onwards to the northeastern corner of Lot 986 as shown on Deposited Plan 203725; Then southwesterly and southeasterly along boundaries of that lot to the northwestern corner of Lot 991 as shown on Deposited Plan 203725; Then southeasterly along the western boundary of that lot and onwards to the northwestern corner of Lot 998 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot and onwards to the northwestern corner of Lot 999 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot to the westernmost northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly along the northern boundary of that lot to the northwestern corner of Reserve 19873; Then northeasterly along the northern boundary of that reserve to a northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly and southeasterly along boundaries of that lot to the northeastern corner of Lot 1001 as shown on Deposited Plan 203623; Then southeasterly along the eastern boundary of that lot and onwards to the northeastern corner of Lot 1012 as shown on Deposited Plan 203623; Then southeasterly along eastern boundaries of that lot and Lot 1013 as shown on Deposited Plan 203623 to the northeastern corner of Lot 1024 as shown on Deposited Plan 203621; Then southeasterly along eastern boundaries of that lot and Lot 1025 as shown on Deposited Plan 203621 to the northern side of Holt Road; Then northeasterly and southeasterly along sides of that road to the northwestern corner of Lot 574 as shown on Deposited Plan 202847; Then northeasterly and generally southeasterly along boundaries of that lot to the northeastern corner of Lot 577 as shown on Deposited Plan 202847; Then southeasterly along the eastern boundary of that lot to a northern side of Swann Road; Then generally easterly and generally south easterly along northern sides of Swann Road and McCrea Road to the intersection with the eastern side of Davies Road, being a point on a present boundary of Native Title Determination Application WAD6020/1998 Ngadjju (WC1999/002); Then southeasterly along that application boundary to Latitude 33.018101<sup>o</sup> South; Then westerly to Latitude 33.016047<sup>o</sup> South, Longitude 121.657724<sup>o</sup> East; Then northerly to the easternmost southeastern corner of the Salmon Gums Townsite boundary; Then northerly, westerly, generally southerly, again westerly and southerly along that townsite boundary to the easternmost northeastern corner of the western severance of Reserve 19549; Then southerly along the eastern boundary of that severance to Latitude 32.997899<sup>o</sup> South and then westerly back to the commencement point.

**Note:**

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

**Datum:** Geocentric Datum of Australia 1994 (GDA94)

**Prepared By:** Native Title Spatial Services (Landgate) 21<sup>th</sup> February 2014

**Use of Coordinates:**

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

## Schedule 4 – Contents of Activity Notice

### Part 1 – Primary contents of Activity Notice

(Clause 8.2 Giving the Activity Notice)

#### 1.1 Basic information

(Clause 8.2(c)(i))

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this GSHA (by reference to the name of the Determination or ILUA as set out in item 1 or item 2 of schedule 2); and
- (b) if the State is issuing the Activity Notice:
  - (i) the name of the department of the State through whom the State will be acting; and
  - (ii) an address in Western Australia for service of notices under this GSHA on the State; and
  - (iii) full contact details (name, telephone number and fax number) for a primary contact person within the department of the State through whom the State will be acting; or
- (c) if a Government Party is issuing the Activity Notice, the name of that Government Party and:
  - (i) an address in Western Australia for service of notices under this GSHA on the Government Party; and
  - (ii) full contact details (name, telephone number and fax number) for a primary contact person within the Government Party.

#### 1.2 Key statement 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 Government Proponent; and
- (b) a statement of whether the Government Proponent considers that a Survey is required (taking into consideration the matters referred to in clause 8.3); and



- (c) a nomination, by the Government 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 Government 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 Government Proponent, of a proposed Survey fieldwork start date or end date; and
- (f) a nomination, by the Government Proponent, as to whether it requires:
  - (i) a Preliminary Advice (see clause 12.1(a)); or
  - (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)(iii))

In accordance with clause 8 of this GSHA, 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; and
- (b) aerial photographs (if available) or smaller scale maps; and
- (c) where applicable, identifying numbers (or other identifying information) of any tenures to which the Activity Notice relates; and
- (d) all known vehicular access routes to the area the subject of the Activity Notice; and
- (e) any ground disturbing Activities that the Government Party intends to undertake; and

- (f) the nature, scope, objectives and estimated timeframe of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
- (g) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and
- (h) any requirement to restrict access by any persons to the area, and if so, the nature and extent of that restriction; and
- (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; and
- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
- (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 Native Title Group 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 GSHA, 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 ( <del>Native Title Group</del> PBC and Government 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.

## Schedule 5 – Costs for conduct of a Survey

(Clauses 9.5(a) Estimate of costs of Survey; and Clause 11 Payment for Surveys)

No.	Item	Rate	GST	Description
<b>Ethnographic Assessment</b>				
1.	Aboriginal Heritage Service Provider	At cost (usually \$900–\$1200) (Indexed to CPI)		
2.	Principal Aboriginal Heritage Consultant (if agreed)	At cost (usually \$900–\$1200) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
3.	External Consultant Anthropologist	At cost {Usually \$900–\$1200 (Indexed to CPI)}	+GST	per person per day or pro rata for part thereof
4.	Aboriginal Heritage Act Register Search	\$200 or as advised by DAA	+GST	per person per day or pro rata for part thereof
5.	Aboriginal Liaison Officer (if required)	\$500 (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Archaeological Assessment (if necessary and agreed)</b>				
6.	Archaeologist (archaeological team external contractors)	At cost {Usually \$900–\$1200 (Indexed to CPI)}		
7.	Fieldwork and reporting	At cost {Usually \$900–\$1200 (Indexed to CPI)}		
<b>Aboriginal Consultants (Clause 10.1(a)(i))</b>				
8.	Aboriginal Consultants—up to 6	\$500 (max) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof where a day is 7.5 hours.

No.	Item	Rate	GST	Description
<b>Regional Allowance (in addition to the Aboriginal Consultants' Costs set out above)</b>				
9.	Aboriginal 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 <i>District Allowance (Government Officers) General Agreement</i> , as adjusted from time to time,	+GST	per person per 5 day week or pro-rata for part thereof
<b>Field Expenses</b>				
10.	Principal Aboriginal Heritage Consultant (if agreed) accommodation/meals	At cost	+GST	
11.	Aboriginal Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
12.	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
13.	Aboriginal Consultants accommodation/meals	At cost	+GST	
<b>Travel Expenses</b>				
14.	Vehicle mileage (km)	\$ As per Australian Taxation Office tax schedule for location	+GST	per km



No.	Item	Rate	GST	Description
15.	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel		
16.	Aboriginal Consultants travel expenses (if required)	Rate as per tax schedule for location	+GST	per km
17.	Airfares	At cost (economy)		
18.	Taxi travel (to and from airports or meetings)	At cost		
<b>Incidental Expenses</b>				
19.	Film, maps, report production and expendables	At cost	+GST	
<b>Administration Fee and Disbursements</b>				
20.	Administration Fee	10% of total expenditure	+GST	
21.	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.

(Clause 9.5(a) Estimate of costs of Survey; Clause 11 Payment for Surveys; and Clause 22 GST payable)

<u>No.</u>	<u>Item</u>	<u>Rate</u>	<u>Description</u>
<b><u>Ethnographic Assessment</u></b>			
22.	<u>Aboriginal Heritage Service Provider</u>	<u>At cost</u> <u>[Usually \$900 - \$1200;</u> <u>Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
23.	<u>Principal Aboriginal Heritage Consultant (if agreed)</u>	<u>At cost</u> <u>[Usually \$900 - \$1200;</u> <u>Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
24.	<u>External Consultant Anthropologist</u>	<u>At cost</u> <u>[Usually \$900 – \$1200;</u> <u>Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
25.	<u>Aboriginal Heritage Act Register Search</u>	<u>\$200 or as advised by</u> <u>the Heritage Department</u>	
26.	<u>Aboriginal Liaison Officer (if required)</u>	<u>\$500</u> <u>[Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
<b><u>Archaeological Assessment (if necessary and agreed)</u></b>			
27.	<u>Archaeologist (archaeological team external contractors)</u>	<u>At cost</u> <u>[Usually \$900 – \$1200;</u> <u>Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
28.	<u>Fieldwork and reporting</u>	<u>At cost</u> <u>[Usually \$900 – \$1200;</u> <u>Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
<b><u>Aboriginal Consultants (Clause 10.1(a)(i))</u></b>			
29.	<u>Aboriginal Consultants - up to 6</u>	<u>\$500 (max)</u> <u>[Indexed to CPI]</u>	<u>per person per day or pro</u> <u>rata for part thereof</u> <u>where a day is 7.5 hours.</u>
<b><u>Aboriginal Monitors (Clause 8.3(b)(iii))</u></b>			
30.	<u>Aboriginal Monitors – up</u>	<u>\$500 (max)</u>	<u>per person per day or pro</u> <u>rata for part thereof</u>



<u>No.</u>	<u>Item</u>	<u>Rate</u>	<u>Description</u>
	<u>to 2</u>	<u>[Indexed to CPI]</u>	<u>where a day is 7.5 hours.</u>
<b><u>Regional Allowance (in addition to the Aboriginal Consultants' Costs set out above)</u></b>			
31.	<u>Aboriginal Consultants - up to 6 unless otherwise agreed</u>	<u>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 <i>District Allowance (Government Wages Employees) General Agreement</i>, as adjusted from time to time.</u>	<u>per person per 5 day week or pro rata for part thereof</u>
<b><u>Field Expenses</u></b>			
32.	<u>Principal Aboriginal Heritage Consultant (if agreed) accommodation/meals</u>	<u>At Australian Taxation Office rates</u>	
33.	<u>Aboriginal Liaison Officer or Anthropologist accommodation/meals</u>	<u>At Australian Taxation Office rates</u>	
34.	<u>Archaeologist or Archaeological Team accommodation/meals</u>	<u>At Australian Taxation Office rates</u>	
35.	<u>Aboriginal Consultants accommodation/meals</u>	<u>At Australian Taxation Office rates</u>	
<b><u>Travel Expenses</u></b>			
36.	<u>Vehicle mileage (km)</u>	<u>As per Australian Taxation Office tax schedule for location</u>	<u>per km</u>

<u>No.</u>	<u>Item</u>	<u>Rate</u>	<u>Description</u>
37.	<u>Hire Vehicle (if survey vehicle is hired)</u>	<u>Commercial rates, plus fuel</u>	
38.	<u>Aboriginal Consultants travel expenses (if required)</u>	<u>As per Australian Taxation Office tax schedule for location</u>	<u>per km</u>
39.	<u>Airfares</u>	<u>At cost (economy)</u>	
40.	<u>Taxi travel (to and from airports or meetings)</u>	<u>At cost</u>	
<b><u>Incidental Expenses</u></b>			
41.	<u>Film, maps, report production and expendables</u>	<u>At cost</u>	
<b><u>Administration Fee and Disbursements</u></b>			
42.	<u>Administration Fee</u>	<u>10% of total expenditure</u>	
43.	<u>Disbursements, including telephone calls, facsimiles, etc.</u>	<u>At cost</u>	

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 1 – ~~Guidelines~~ Standard Requirements for all Survey Reports

### 1.1 Copyright and confidentiality

Insert a statement to the effect that the report may only be copied in accordance with this GSHA and subject to any other restrictions agreed to, from time to time, by the Government Proponent and the ~~Native Title Group~~ PBC.

### 1.2 Survey personnel

- (a) Author's name in full and occupation and author's business or company name.
- (b) Subject to clauses 12.4(~~ed~~), the full name and gender of each Aboriginal Consultant, and their cultural identity (e.g. the native title holding group and/or cultural group they represent).
- (c) Full names and gender of other personnel participating in the Survey and the purpose of their attendance.
- (d) Confirmation that the Aboriginal Heritage Service Provider considers the Aboriginal Consultants to be appropriate to speak for Aboriginal Heritage in relation to the area Surveyed.

### 1.3 Survey date(s)

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

### 1.4 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.



### **1.5 ~~Other information~~ Search of the Aboriginal Heritage Act Register**

- (a) ~~Summary of~~ 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.

### **1.6 Fieldwork and methodology**

- (a) A general description of the fieldwork undertaken.
- ~~(c) Details of ethnographic and/or archaeological consultation and assessment carried out during the Survey.~~
- (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.
- ~~(c) In respect of any Aboriginal Objects identified:~~
  - ~~(i) a description of such Aboriginal Objects;~~
  - ~~(ii) the location of any Aboriginal Objects so identified; and~~
  - ~~(iii) the date on which each Aboriginal Object was identified.~~
- ~~(d) Any discussion and recommendations.~~

## **Part 2 – Additional guidelines ~~requirements~~ for Survey Reports where Site Avoidance Model is used**

### **2.1 Details of areas where Activity should not be undertaken (because of the presence 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, including an explanation as to why it is reasonably suspected that the area contains an Aboriginal Site.
- (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) Subject to clauses 12.4(ed) to (gf) inclusive, full names of person(s) who provided the information set out at (a) – (d) above.



## Part 3 – Additional ~~guidelines~~requirements for Survey Reports where Site Identification Model is used

### 3.1 Description of Aboriginal Sites

- (a) Description of all Aboriginal Site(s) (whether identified on the Aboriginal Heritage Register or not) 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 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 Aboriginal Site identified and not already recorded on the Aboriginal Heritage Register, please complete and attach a copy of the Heritage Information Submission Form – see clause 12.6.

### ~~Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information~~

~~Please complete and attach copy of the *Heritage Information Submission Form* – see clause 19.5 and schedule 7.~~

### 3.2 ~~Recommendations and comments~~Impact of the Activity on Aboriginal Sites

- (a) Identify whether any aspects of the Activity Program are likely to adversely impact any Aboriginal Site(s) within the Survey Area and, if so, an explanation as to why this is thought to be the case.

(b) Describe any practical measures that may be taken to avoid or mitigate potential harm to any Aboriginal Site(s) within the Survey Area.

~~1. Recommendations regarding the Aboriginal Site(s), e.g. whether the site is:~~

~~a place of importance or significance where persons of Aboriginal descent have, or appear to have left, any object used for, or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or~~

~~a sacred/ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or~~

~~a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or~~

~~a place where Aboriginal objects to which the Aboriginal Heritage Act applies are traditionally stored.~~

~~Recommendations for how the Aboriginal Site(s) should be protected.~~

## ~~Schedule 7 – DAA Heritage Information Submission Form~~

~~(Clause 19.5 Provision of Aboriginal Heritage Information to DAA)~~

~~The Department of Aboriginal Affairs Heritage Information Submission Form is available for download on the DAA's website by accessing:~~

~~[www.daa.wa.gov.au](http://www.daa.wa.gov.au)~~

~~and searching for Heritage Information Submission Form.~~

~~Please download, complete and submit this form to the Department of Aboriginal Affairs in compliance with clause 19.5.~~

## Schedule 8—Deed of Assignment

# ~~Deed of Assignment~~

~~Esperance Nyungar~~

~~Government Standard Heritage Agreement~~

---

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

~~[insert name] (Native Title Prescribed Body Corporate)~~

~~State of Western Australia~~

~~Minister for Lands~~

~~Conservation Commission of Western Australia~~

~~Conservation and Land Management Executive Body~~

~~Main Roads Western Australia~~

~~Western Australian Land Authority~~

~~Housing Authority~~

~~Minister for Mines and Petroleum~~

~~Western Australian Agriculture Authority~~

~~Minister for Water~~

~~Water Corporation~~

~~FES Ministerial Body~~

~~Horizon Power~~

**THIS DEED OF ASSIGNMENT** is made on [insert date on which last party signs] ("**Assignment Date**")

**BY:**

~~Veronica Williams-Bennell, Diane Clinch, Jarman Jamieson, Graham Tucker, Elaine Bullen and Jenny Woods (Registered Native Title Claimants)~~ for and on behalf of the Native Title Group [insert name] (Native Title Prescribed Body Corporate) (**PBC**)

**State of Western Australia (State)**

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

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

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

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

~~Commissioner of Main Roads Western Australia, a body corporate established by section 9 of the Main Roads Act 1930 (WA)~~

~~Western Australian Land Authority, a body corporate established by section 5(1) of the Western Australian Land Authority Act 1992 (WA) (**LandCorp**)~~

~~Housing Authority, the body corporate referred to in section 6(4) of the Housing Act 1980 (WA)~~

~~Minister for Mines and Petroleum, being the Minister in the Government of the State for the time being responsible for the administration of the Mining Act 1978 (WA) and the Petroleum and Geothermal Energy Resources Act 1967 (WA)~~

~~Western Australian Agriculture Authority, a body corporate established under the Biosecurity and Agriculture Management Act 2007~~

~~Minister for Water, acting through the Water Resources Ministerial Body, a body corporate established under section 11 of the Water Agencies (Powers) Act 1984 (WA)~~

~~Water Corporation, a body corporate established by section 4 of the Water Corporation Act 1995 (WA)~~

~~FES Ministerial Body, a body corporate established by section 5 of the Fire and Emergency Services Act 1998 (WA)~~

~~Regional Power Corporation, trading as **Horizon Power** (ABN 57 955 011 697) in accordance with section 135 of the Electricity Corporations Act 2005 (WA)~~



## **BACKGROUND:**

- A. ~~On [insert date] the Registered Native Title Claimants for and on behalf of the Native Title Group, the State of Western Australia and each of the Government Parties entered into the Esperance Nyungar Government Standard Heritage Agreement ("GSHA").~~
- B. ~~The [insert name] PBC was registered by the Office of the Registrar of Indigenous Corporations on [date].~~
- C. ~~The RNTBC Orders came into effect on [date].~~
- D. ~~Pursuant to clause 20.1 of the GSHA, the Native Title Group must, within the timeframes specified in that clause, procure the Registered Native Title Claimants and the PBC to execute, and deliver to DPC for execution by the State and Government Parties, a deed in which the Native Title Group assigns its rights and obligations under the GSHA to the PBC.~~
- E. ~~This Deed of Assignment is the deed contemplated under clause 20.1(b) of the GSHA.~~

## **THE PARTIES AGREE AS FOLLOWS:**

### **1. ~~DEFINITIONS~~**

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

## **ASSIGNMENT, ASSUMPTION AND RELEASE**

### **2.1 ~~Assignment~~**

~~With effect on and from the Assignment Date, the Native Title Group assigns to the PBC all of its rights, titles and interests in the GSHA and the PBC accepts the assignment with effect on and from the Assignment Date.~~

### **2.2 ~~Assumption of liabilities~~**

~~With effect on and from the Assignment Date:~~

- (a) ~~the PBC assumes all of the Native Title Group's liabilities and obligations (present or future, actual or contingent) under the GSHA, whether those liabilities and obligations arose before or after the Assignment Date; and~~
- (b) ~~the PBC indemnifies and will keep indemnified the Native Title Group against all losses, costs, liabilities, expenses and taxes incurred by the Native Title~~

~~Group arising from or in connection with the PBC failing to comply with the liabilities and obligations referred to in clause 2.2(a).~~

### **~~2.3 Mutual release~~**

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

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

## **~~3. WARRANTIES AND RELIANCE~~**

### **~~3.1 Warranties~~**

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

- ~~(a) it is a 'prescribed body corporate' within the meaning of section 59 of the NT Act and regulation 4 of the PBC Regulations and it is, pursuant to the RNTBC Orders, the 'registered native title body corporate' (as defined in section 253 of the NT Act) for the Determination Area; and~~
- ~~(b) it is authorised to enter into this Deed on behalf of the Native Title Group; and~~
- ~~(c) it also represents the Native Title Group in respect of Aboriginal Heritage matters within the Determination Area; and~~
- ~~(d) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Deed and the GSHA have been fulfilled or done; and~~
- ~~(e) it knows of no impediment to it performing its obligations under this Deed or the GSHA.~~

### **~~3.2 Reliance~~**

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

#### ~~4. RATIFICATION~~

- ~~(a) The parties agree that the GSHA is ratified and confirmed by this Deed.~~
- ~~(b) The parties agree that execution of this Deed by all parties is in full satisfaction of all parties' obligations under clause 20.1 of the GSHA.~~

#### ~~5. ASSIGNMENT BY PBC~~

- ~~(a) Subject to the State's and the Government Parties' prior written consent, which may not be unreasonably withheld or delayed, the PBC may assign the whole of its rights, titles and interests under the GSHA to a registered native title body corporate in accordance with the provisions of the NT Act (including due to the RNTBC Orders being vacated or replaced by a subsequent determination under sections 56 or 57 of the NT Act of the Federal Court) provided:~~
  - ~~(i) the PBC gives the State and the Government Parties at least 20 Business Days' notice prior to the proposed assignment;~~
  - ~~(ii) within 20 Business Days after giving the State and Government Parties the notice referred to in clause 5(a)(i), the proposed new registered native title body corporate enters into a deed, in a form acceptable to the State and the Government Parties (each acting reasonably), by which it agrees to be bound by the GSHA and to assume all of the PBC's obligations under the GSHA, and provides a copy of that deed to the State and Government Parties; and~~
  - ~~(iii) the PBC does all other things necessary to give effect to the assumption by the new registered native title body corporate of the obligations under this GSHA.~~
- ~~(b) Once an assignment of the GSHA has occurred under clause 5(a), the assigning PBC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of the GSHA 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 5 shall not affect the operation of the GSHA.~~

#### ~~6. GENERAL~~

- ~~(a) The parties must do anything (including execute any document), and must ensure that their employees and agents do anything (including execute any~~

~~document), that another party may reasonably require to give full effect to this Deed.~~

- ~~(b) Each party must pay its own costs and expenses incurred in negotiating, executing and registering this Deed. The State must pay any stamp duty payable on or with respect to this Deed.~~
- ~~(c) This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument.~~
- ~~(d) This Deed is governed by the law in force in Western Australia.~~

**Executed as a deed.**

**SIGNED BY THE REGISTERED NATIVE TITLE CLAIMANTS**

**SIGNED** by **VERONICA WILLIAMS-** }

**BENNELL** for and on behalf of the Native }

Title Claim Group in the presence of: }

\_\_\_\_\_  
Veronica Williams Bennell

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



~~SIGNED by DIANE CLINCH for and on }  
behalf of the Native Title Claim Group in }  
the presence of: }~~

~~\_\_\_\_\_~~  
~~Diane Clinch~~

~~\_\_\_\_\_~~  
~~Signature of Witness~~

~~\_\_\_\_\_~~  
~~Date~~

~~\_\_\_\_\_~~  
~~Full name of Witness (print)~~

~~\_\_\_\_\_~~  
~~Address of Witness~~

~~\_\_\_\_\_~~  
~~Occupation of Witness~~

**SIGNED** by **JARMAN JAMIESON** for and }  
on behalf of the Native Title Claim Group }  
in the presence of: }

\_\_\_\_\_  
Jarman Jamieson

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~SIGNED by GRAHAM TUCKER for and on }  
behalf of the Native Title Claim Group in }  
the presence of: }~~

\_\_\_\_\_  
Graham Tucker

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~SIGNED by ELAINE BULLEN for and on~~ }  
~~behalf of the Native Title Claim Group in~~ }  
~~the presence of:~~ }

\_\_\_\_\_  
Elaine Bullen

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

**SIGNED** by **JENNY WOODS** for and on }  
behalf of the Native Title Claim Group in }  
the presence of: }

\_\_\_\_\_  
Jenny Woods

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



~~EXECUTED~~ in accordance with section 99.5 →  
of the *Corporations (Aboriginal and Torres* →  
*Strait Islander) Act 2006* (Cth) on behalf of →  
{XX—insert name of PBC}; →

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Director or secretary (signature)  
(Delete whichever is not applicable)

\_\_\_\_\_  
Director (print full name)

\_\_\_\_\_  
Director or secretary (print full name)

\_\_\_\_\_  
Date

**SIGNED** for and on behalf of the **State of** }  
**Western Australia** by **The Honourable Colin** }  
**James Barnett MLA** in the presence of: }  
}

\_\_\_\_\_  
Colin Barnett MLA

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~THE COMMON SEAL~~ of the ~~Minister for~~  
~~Lands~~, a body corporate continued under  
section 7 of the ~~Land Administration Act~~  
~~1997 (WA)~~, was hereunto affixed in the  
presence of: }

\_\_\_\_\_  
Terry Redman MLA

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~EXECUTED by the Conservation Commission  
of Western Australia by an authorised  
member in accordance with section 26AB of  
the Conservation and Land Management Act  
1984 (WA) in the presence of:~~

}  
}  
}  
}  
}

\_\_\_\_\_  
~~Signature of Authorised Member,  
Mr Brian Easton~~

\_\_\_\_\_  
~~Signature of Witness~~

\_\_\_\_\_  
~~Date~~

\_\_\_\_\_  
~~Full name of Witness (print)~~

\_\_\_\_\_  
~~Address of Witness~~

\_\_\_\_\_  
~~Occupation of Witness~~

~~EXECUTED by the Conservation and Land  
Management Executive Body by the Chief  
Executive Officer in accordance with section  
38 of the Conservation and Land Management  
Act 1984 (WA) in the presence of:~~

}  
}  
}  
}  
}

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



~~THE COMMON SEAL of The Commissioner of  
Main Roads was affixed to this deed by Reece  
Waldock the Commissioner of Main Roads for  
the time being in the presence of:~~

}  
}  
}  
}

\_\_\_\_\_  
~~Signature of the Commissioner of Main  
Roads~~

\_\_\_\_\_  
~~Signature of Witness~~

\_\_\_\_\_  
~~Date~~

\_\_\_\_\_  
~~Full name of Witness (print)~~

\_\_\_\_\_  
~~Address of Witness~~

\_\_\_\_\_  
~~Occupation of Witness~~

~~THE COMMON SEAL of the Western }  
Australian Land Authority, a body corporate }  
established by section 5(1) of the Western }  
Australian Land Authority Act 1992 (WA), was }  
hereunto affixed in the presence of: }~~

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~THE COMMON SEAL of the Housing~~ }  
~~Authority, a body corporate referred to in~~ }  
~~section 6(4) of the Housing Act 1980 (WA) was~~ }  
~~hereunto affixed in the presence of:~~ }

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

SIGNED by The Honourable W. R. Marmion }  
MLA, Minister for Mines and Petroleum in }  
the presence of: }

\_\_\_\_\_  
W. R. Marmion MLA

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~SIGNED on behalf of the Western Australian  
Agriculture Authority by a person authorised  
under section 155(5) of the Biosecurity and  
Agriculture Management Act 2007 (WA) in  
the presence of:~~

}  
}  
}  
}  
}

\_\_\_\_\_  
Rob Delane, Director General  
Department of Agriculture and Food

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness



**SIGNED** on behalf of the **Water Resources**  
**Ministerial Body** by the Chief Executive  
Officer of the Department of Water in  
accordance with section 13(2)(c) of the *Water*  
*Agencies (Powers) Act 1984* (WA) in the  
presence of:

}  
}  
}  
}  
}  
}

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~THE COMMON SEAL~~ of the ~~Water~~  
~~Corporation~~ was affixed hereto in the  
presence of:

}

}

}

}

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

~~SIGNED~~ on behalf of the ~~FES Ministerial Body~~ }  
by ~~Wayne Gregson APM~~ in the presence of: }  
}

\_\_\_\_\_  
~~Wayne Gregson APM~~

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

~~SIGNED~~ on behalf of ~~Horizon Power~~ by the  
authorised representative of ~~Regional Power~~  
Corporation in accordance with the authority  
of the Board and section 135 of the ~~Electricity~~  
~~Corporations Act 2005 (WA)~~ in the presence  
of:

}  
}  
}  
}  
}  
}  
}

\_\_\_\_\_  
Signatory of Authorised Representative

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Representative  
(print)

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Designation of Authorised Representative

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Occupation of Witness

## Signing Pages

~~EXECUTED as a deed~~

~~SIGNED BY THE REGISTERED NATIVE TITLE CLAIMANTS~~

~~SIGNED by VERONICA WILLIAMS-  
BENNEL for and on behalf of the Native  
Title Claim Group in the presence of:~~ }  
}  
}

\_\_\_\_\_  
Veronica Williams Bennell

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)



---

Address of Witness

---

Occupation of Witness

~~SIGNED by DIANE CLINCH for and on~~ }  
~~behalf of the Native Title Claim Group in~~ }  
~~the presence of:~~ }  
}

---

Diane Clinch

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness



~~SIGNED by JARMAN JAMIESON for and }  
on behalf of the Native Title Claim Group  
in the presence of: }  
}~~

---

Jarman Jamieson

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~SIGNED by GRAHAM TUCKER for and on~~ }  
~~behalf of the Native Title Claim Group in~~ }  
~~the presence of:~~ }

---

Graham Tucker

---

Signature of Witness

---

Date



---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

**SIGNED** by **ELAINE BULLEN** for and on }  
behalf of the Native Title Claim Group in }  
the presence of: }

}

---

Elaine Bullen

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~SIGNED by JENNY WOODS for and on~~ }  
~~behalf of the Native Title Claim Group in~~ }  
~~the presence of:~~ }

---

~~Jenny Woods~~

---

~~Signature of Witness~~

---

~~Date~~

---

~~Full name of Witness (print)~~

---

~~Address of Witness~~

---

Occupation of Witness

~~SIGNED~~ for and on behalf of the ~~State of~~ }  
~~Western Australia~~ by ~~The Honourable Colin~~  
~~James Barnett MLA~~ in the presence of: }  
}

\_\_\_\_\_  
Colin Barnett MLA

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)



---

Address of Witness

---

Occupation of Witness

~~THE COMMON SEAL of the Minister for  
Lands, a body corporate continued under  
section 7 of the Land Administration Act  
1997 (WA), was hereunto affixed in the  
presence of:~~

}

}

}

}

}

---

Terry Redman MLA

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~EXECUTED by the Conservation Commission }  
of Western Australia by an authorised }  
member in accordance with section 26AB of }  
the Conservation and Land Management Act }  
1984 (WA) in the presence of: }~~  
  
~~}~~  
  
~~}~~

\_\_\_\_\_  
~~Signature of Authorised Member,~~

~~Mr Brian Easton~~

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~EXECUTED by the Conservation and Land  
Management Executive Body by the Chief  
Executive Officer in accordance with section  
38 of the Conservation and Land Management  
Act 1984 (WA) in the presence of:~~

}

}

}

}

}

---

~~Signature of Chief Executive Officer~~

---

~~Signature of Witness~~

---

~~Date~~

---

~~Full name of Witness (print)~~



---

Address of Witness

---

Occupation of Witness

~~THE COMMON SEAL of The Commissioner of  
Main Roads~~ was affixed to this deed by Reece  
~~Waldock the Commissioner of Main Roads for~~  
the time being in the presence of:

}

}

---

Signature of the Commissioner of Main  
Roads

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~THE COMMON SEAL of the Western }  
Australian Land Authority, a body corporate  
established by section 5(1) of the Western~~

~~Australian Land Authority Act 1992 (WA), was  
hereunto affixed in the presence of:~~

}

}

}

}

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Date

\_\_\_\_\_

Full name of Witness (print)

\_\_\_\_\_

Address of Witness

\_\_\_\_\_

---

Occupation of Witness

~~THE COMMON SEAL~~ of the ~~Housing~~  
~~Authority~~, a body corporate referred to in  
section 6(4) of the ~~Housing Act 1980 (WA)~~ was,  
hereunto affixed in the presence of:

}

}

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

---

Occupation of Witness



~~SIGNED by The Honourable W. R. Marmion }  
MLA, Minister for Mines and Petroleum in  
the presence of: }~~  
  
~~}~~

\_\_\_\_\_  
W. R. Marmion MLA

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

**SIGNED** on behalf of the **Western Australian** }  
**Agriculture Authority** by a person authorised }  
under section 155(5) of the *Biosecurity and* }  
*Agriculture Management Act 2007 (WA)* in }  
the presence of: }

}

}

}

---

Rob Delane, Director General

Department of Agriculture and Food

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

**SIGNED** on behalf of the **Water Resources** }  
**Ministerial Body** by the Chief Executive }  
Officer of the Department of Water in }  
accordance with section 13(2)(c) of the *Water* }  
*Agencies (Powers) Act 1984 (WA)* in the }  
presence of: }

}

}

}

---

Chief Executive Officer

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~THE COMMON SEAL~~ of the ~~Water~~  
~~Corporation~~ was affixed hereto in the  
presence of:

}

}

}

}

---

Signature of Witness

---

Date

---

Full name of Witness (print)



~~SIGNED on behalf of the FES Ministerial Body }~~  
~~by Wayne Gregson APM in the presence of:~~

}

}

\_\_\_\_\_  
Wayne Gregson APM, FES Commissioner

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

---

Address of Witness

---

Occupation of Witness

~~SIGNED~~ on behalf of ~~Horizon Power~~ by the }  
authorised representative of Regional Power }  
Corporation in accordance with the authority }  
of the Board and section 135 of the *Electricity* }  
*Corporations Act 2005 (WA)* in the presence }  
of: }

}

}

}

---

Signatory of Authorised Representative

---

Signature of Witness

---

Name of Authorised Representative  
(print)

---

Full name of Witness (print)

---

Designation of Authorised Representative

---

Address of Witness

---

Date

---

Occupation of Witness

