

Ballardong People ILUA

Gnaala Karla Booja ILUA

South West Boojarah #2 ILUA

Wagyl Kaip & Southern Noongar ILUA

Whadjuk People ILUA

Yued ILUA

Security Deed Variation Deed dated 29 March 2021 at 3:36 pm.

between

Perpetual Trustee Company Limited ACN 000 001 007 of Level 12, 123 Pitt Street,
Sydney, New South Wales (**Perpetual**)

and

State of Western Australia (State)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Document:

Agreements means:

- (a) the Ballardong People Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (b) the Gnaala Karla Booja Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (c) the South West Boojarah #2 Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;

- (d) the Wagyl Kaip & Southern Noongar Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (e) the Whadjuk People Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015; and
- (f) the Yued Indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015.

Document means this document and the annexure to it.

Effective Date means the date on which this Document is executed by the State.

Parties means the parties to this Document.

Security Deed means the Security Deed dated 29 March 2021 executed by the State and Perpetual as the Trustee for the Noongar Boodja Trust.

1.2 Definitions in the Agreements

Terms which are defined in the Agreements also apply to this Document.

1.3 Rules for interpreting this Document

The rules of interpretation which apply to the Agreements also apply to this Document.

2. OPERATIVE PROVISIONS

2.1 Parties to this Document

Pursuant to clause 3(c)(ii) of Schedule 10 of the Agreements and clause 22 of the Security Deed, the State and Perpetual have been authorised to execute this Document on behalf of the other parties to the Agreements.

2.2 Variation of Agreements

On the Effective Date the Parties agree that the document at Annexure H of Schedule 10 of the Agreement is amended in accordance with the document annexed to this Document.

2.3 Costs

Each Party to this Document must each pay their own legal and other costs in connection with the preparation and signing of this Document.

2.4 Governing law

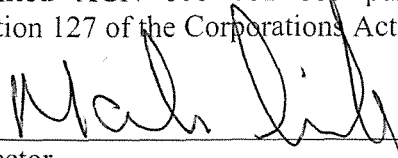
- (a) This Document is governed by the laws of Western Australia.
- (b) Each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

2.5 Counterparts

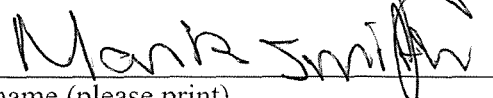
- (a) This Document may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Document by signing any counterpart.

Execution page


Executed by Perpetual Trustee Company
Limited ACN 000 001 007 pursuant to
Section 127 of the Corporations Act:



Director



Full name (please print)



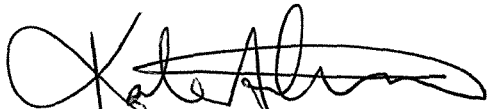
Director/Secretary



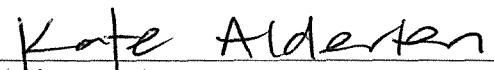
Full name (please print)

Executed for and on behalf of the State)
of Western Australia by Rebecca)
Brown, Director General of the)
Department of the Premier and)
Cabinet, in the presence of:)

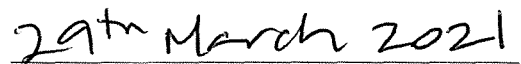




Witness Signature



(print name)



Date

Annexure
Amended Security Deed

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Security Deed – Trust Property

State of Western Australia
State

and

Perpetual Trustee Company Limited
Trustee

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Security Deed

Date

2021

Parties

State

State of Western Australia

c/o the Department of the Premier and Cabinet, 2
Havelock Street, West Perth, Western Australia

Trustee

Perpetual Trustee Company
Limited

Level 18, 123 Pitt Street, Sydney, New South Wales

Background

- A. The registered native title applicants of the Native Title Claims and others in the South West region of Western Australia (**Native Title Agreement Group**) propose to enter into Indigenous Land Use Agreements (**ILUAs**) with the State of Western Australia, in consideration of the resolution of the Native Title Claims and other matters, that includes:
- (i) a settlement package for the benefit of the Noongar People (**State Contribution**); and
 - (ii) the establishment of the Noongar Boodja Trust pursuant to the Trust Deed to receive and administer the settlement package.
- B. There are 6 ILUAs, covering the combined area of the Native Title Claims and adjacent land and waters.
- C. Where an ILUA Termination Event occurs in respect of an ILUA during the Conditional Period, the State may issue an ILUA Termination Notice requiring the Trustee to pay the State the ILUA Termination Amount. There can be more than 1 and up to 6 ILUA Termination Notices on issue at any single time.
- D. Where clause 12.1 of an ILUA applies, the State may issue an Indemnified Amount Notice requiring the Trustee to pay the State an amount set out therein. There can be more than 1 Indemnified Amount Notice on issue at any single time.
- E. Pursuant to the terms of the Trust Deed, the Trustee accepts the State Contribution provided by the State to the Trustee under the ILUAs on condition that the Trustee may become required to repay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State in accordance with the provisions of the Trust Deed.
- F. At the request of the State, the Trustee has agreed to grant a security interest in favour of the State:
- (i) during the Conditional Period in support of its obligation to repay any ILUA Termination Amount to the State; and

- (ii) before and after the Conditional Period Expiry Date, in support of its obligation to pay an amount payable under an Indemnified Amount Notice.

1. Definitions and interpretation

Terms defined in (or incorporated by reference into) the Trust Deed, unless defined herein, have the same meanings when used in this deed with all consequential amendments.

1.1 Definitions

Accounts means each of the bank accounts and securities accounts established from time to time to hold all or any part of the Trust Fund.

Ancillary Security means an agreement other than this deed that is intended to be security for Secured Debt.

Attorney means an attorney appointed under this deed or an Ancillary Security.

Business Day means a day on which the major trading banks are open for business in Perth, except a Saturday, Sunday or public holiday.

Conditional Period means the period from the date of this deed to (and including) the Conditional Period Expiry Date.

Conditional Period Expiry Date has the meaning given to that term in the Trust Deed.

Encumbrance means a Security Interest and any other security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements).

Future Fund means the sub fund of the Noongar Boodja Trust called the “Future Fund” and established pursuant to the Trust Deed.

ILUA means each of the Indigenous Land Use Agreements entered into by the State and the following native title claim groups:

- (a) Whadjuk;
- (b) Yued;
- (c) Gnaala Karla Booja and Harris Family;
- (d) South West Boojarah and Harris Family;
- (e) Wagyl Kaip and Southern Noongar; and
- (f) Ballardong,

which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act, and which are collectively referred to as the ILUAs.

ILUA Termination Amount means the amount expressed to be the amount payable to the State by the Trustee under any ILUA Termination Notice.

ILUA Termination Event has the meaning given in the ILUAs.

ILUA Termination Default means the occurrence of an event whereby the Trustee is served any ILUA Termination Notice during the Conditional Period and fails to pay the State the ILUA Termination Amount on the date specified for payment under the Trust Deed.

ILUA Termination Notice has the meaning given to that term in the Trust Deed.

Indemnified Amount Default means the occurrence of an event whereby the Trustee is served any Indemnified Amount Notice and fails to pay the State the amount set out therein, on the date specified for payment under the Trust Deed.

Indemnified Amount Notice has the meaning given to that term in the ILUAs.

Investment Property means an intermediated security, an investment instrument and a negotiable instrument not evidenced by a certificate.

Native Title Claims means the Claimant Applications lodged in the Federal Court and allocated numbers as follows:

- (a) **Ballardong** WC2000/007 and WAD6181/1998;
- (b) **Gnaala Karla Booja / Harris Family** WC1998/058, WC1996/041 and WAD6274/1998, WAD6085/1998;
- (c) **South West Boorah / Harris Family** WC2006/004, WC1996/041 and WAD253/2006, WAD6085/1998;
- (d) **Whadjuk** WC2011/009 and WAD242/2011;
- (e) **Wagyl Kaip / Southern Noongar** WC1998/070, WC1996/109 and WAD6286/1998, WAD6134/1998; and
- (f) **Yued** WC1997/071 and WAD6192/1998.

Noongar Boodja Trust means the trust established pursuant to the Trust Deed.

Officer in relation to the State means the Director General of the Department of the Premier and Cabinet.

Operations Fund means the sub fund of the Noongar Boodja Trust called the "Operations Fund" and established pursuant to the Trust Deed.

Permitted Encumbrance means any arrangement described below that is in furtherance of the Trust Purpose, has been effected pursuant to the proper exercise

of the Trustee's powers under the Trust Deed, and is duly authorised in accordance with the procedures set out in the Trust Deed:

- (a) a netting or set-off arrangement entered into in the ordinary course of banking arrangements for the purpose of netting or setting off debit and credit balances;
- (b) a netting or set-off arrangement under any derivative transaction entered into as part of the ordinary operation of the business of the Noongar Boodja Trust and not for speculative purposes;
- (c) a right of set-off arising in the ordinary course of ordinary business of the Noongar Boodja Trust;
- (d) an Encumbrance in favour of a party holding Secured Property on behalf of the Trustee or with whom the Secured Property is deposited (whether as intermediary, custodian or otherwise) which secures obligations to be performed by the Trustee to that party under terms on which that party has agreed to be the holder of, or receive a deposit of, the Secured Property, provided that those obligations of the Trustee have arisen as part of the ordinary operation of the business of the Noongar Boodja Trust;
- (e) a deemed security interest under section 12(3) of the PPSA which does not in substance secure payment or performance of an obligation; or
- (f) an Encumbrance created or granted with the prior written consent of the State.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

Receiver means a person appointed as a receiver or receiver and manager under this deed or an Ancillary Security that the Trustee grants.

Relevant Documents means the Transaction Documents and the ILUAs.

Remedy Proceeds means monies received from the exercise of any right against the Secured Property.

Secured Debt means the Trustee's obligation (if any arises) to pay any ILUA Termination Amount or any amount payable under an Indemnified Amount Notice to the State upon becoming required to do so under the Trust Deed.

Secured Property means at any time the assets of the Future Fund and Operations Fund of the Noongar Boodja Trust at that time, including (without limitation):

- (a) Investment Property including all additions to, renewals and replacements of Investment Property; and
- (b) Accounts including all amounts in or credited to Accounts at any time and all additions to, renewals and replacements of Accounts.

Security Interest has the meaning given to that term in the PPSA.

Tax means:

- (a) a tax, levy, impost, charge and duty which any governmental authority imposes; and
- (b) any interest, penalty, fine or expense relating to the tax, levy, impost charge or duty.

Transaction Document means:

- (a) this deed;
- (b) the Trust Deed;
- (c) an Ancillary Security;
- (d) a document relating to the priority of this deed; and
- (e) a document relating to the priority of a Security Interest, which is an Ancillary Security.

Trust Deed means the document titled 'Noongar Boodja Trust Deed' dated 29 March 2021 between the Trustee and William Michael Gerard Lawrie.

Trust Purpose has the meaning given in the Trust Deed.

1.2 Interpretation

In this deed, unless inconsistent with the context:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) a heading is for convenience only and does not affect interpretation;
- (e) a reference to a clause or schedule is a reference to a clause of or schedule to this document;
- (f) the word *includes* is not a word of limitation and does not restrict the interpretation of a word or phrase in this deed;
- (g) a reference to a document includes a variation or replacement of it;
- (h) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
- (i) a reference to person includes a reference to:

- (i) an individual, a body corporate, a trust, a partnership, a joint venture, and an unincorporated body or other entity, whether or not it is a separate legal entity; and
 - (ii) that person's successors and permitted assigns and a person who by novation replaces that person as a party to this deed;
- (j) a reference to a thing, including a right, is a reference to either the whole thing or a part of the thing;
- (k) a reference to performing an obligation or exercising a right includes on as many occasions as requested or required, or from time to time;
- (l) an agreement, representation or warranty in favour of or on the part of two or more people benefits or binds them jointly and severally;
- (m) a reference to currency is to Australian currency;
- (n) a reference to time is to Western Standard Time in Australia;
- (o) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;
- (p) a reference to a day is a reference to the period which starts at midnight and ends 24 hours later;
- (q) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (r) a reference to a specific time for performance of an obligation is a reference to that time in the State or Territory where the obligation is to be performed;
- (s) a reference to the liquidation of a person includes the dissolution, winding-up and bankruptcy of that person and any analogous procedure under the law of a jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- (t) each of these terms has the meaning given to it in the PPSA:
 - (i) account;
 - (ii) commercial property;
 - (iii) control (within the meaning of Part 2.3 of the PPSA);
 - (iv) financing statement;
 - (v) financing change statement;
 - (vi) intermediated security;
 - (vii) investment instrument;
 - (viii) negotiable instrument;

- (ix) possession;
- (x) securities account; and
- (xi) security agreement.

1.3 Trustee's Limitation of Liability

- (a) The Trustee enters this deed only in the capacity of Trustee and in no other capacity.
- (b) The Trustee is entitled to the indemnities provided for in clause 22.7 of the Trust Deed, subject to the limitations specified in clause 22.8 of the Trust Deed.

2. Security

2.1 Secured Debt

The Trustee must pay the Secured Debt when due.

2.2 Security Interests granted by this deed

- (a) To secure the due payment of the Secured Debt, the Trustee grants to the State a Security Interest over all of its right title and interest (whether present or future and whether actual or contingent) from time to time in the Secured Property.
- (b) The Security Interest granted under this deed ranks in priority to all other Security Interests.

2.3 Continuing security

This deed and the Security Interest created under this deed:

- (a) is a continuing security, despite intermediate payments, settlement of accounts or anything else;
- (b) is in addition to any Ancillary Security; and
- (c) does not merge in any Ancillary Security.

2.4 Security Interest is unconditional

The Security Interest created under this deed is not discharged nor are the obligations of the Trustee in relation to the Security Interest affected by:

- (a) any time, indulgence, waiver or consent at any time given to another person, including a party to any Relevant Document;
- (b) an amendment to a Relevant Document, whether or not that amendment increases the liability of the Trustee;
- (c) the existence, validity or enforceability of a Relevant Document;

- (d) the enforcement of or failure to enforce a Relevant Document;
- (e) the release of a person or property from a Relevant Document;
- (f) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of another person, including any party to a Relevant Document; or
- (g) the commencement of steps to effect the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of another person, including any party to a Relevant Document.

2.5 No liability

The State is not liable to the Trustee in relation to a matter described in clause 2.4, even though it may prejudice the Trustee's rights, including its rights in subrogation.

2.6 Release of security

The Security Interest will automatically be released on the last day of the Conditional Period with respect to payment of any ILUA Termination Amount but without prejudice to any rights or obligations that existed on or before that date. The Security Interest will not be automatically released on the last day of the Conditional Period with respect to payment of any amount payable under an Indemnified Amount Notice.

2.7 Trustee must assist State

- (a) At the State's request, the Trustee must do everything within its power that the State requires to allow the State to:
 - (i) obtain the full benefit of its rights under the Transaction Documents;
 - (ii) obtain a more effective security or obtain the priority that the State requires over any Encumbrance given by the Trustee relating to any Transaction Document; and
 - (iii) perfect a Security Interest relating to this deed including by:
 - A. providing details about Secured Property;
 - B. providing details about the Trustee; and
 - C. registering a financing statement or a financing change statement for a Security interest.
- (b) Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, if required by the State the Trustee must give the State possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property, including by:
 - (i) delivering an instrument of title or a blank transfer to the State or its nominee or signing an authority and giving a mandate, in favour of the State, to operate an Account;

- (ii) vesting title in or ownership of the Secured Property in the State or its nominee;
 - (iii) confirming in writing to any person the State's or its nominee's right to transfer or deal with Secured Property, and where applicable, instructing those persons to act accordingly, and to hold Secured Property on behalf of the State or its nominee;
 - (iv) agreeing, or arranging for, the State or its nominee, to be able to initiate or control the sending of electronic messages or other electronic communications by which Secured Property can be transferred or otherwise dealt with; or
 - (v) executing and delivering any document necessary to effect a withdrawal or fund transfer from an Account.
- (c) Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, the State may have possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property until the State is obliged to release the Secured Property from the Security Interests created by this deed.
- (d) The Trustee must give the State immediate notice if the Trustee's details change in a way which requires the State to register a financing change statement.
- (e) The Trustee must:
 - (i) upon request, provide to the State any financial and other information in relation to the Secured Property, any Ancillary Security or any Encumbrance which the State grants or permits to exist; and
 - (ii) do everything necessary and provide to the State all documents, evidence and information necessary to enable the State to establish that it has a purchase money security interest or any other Security Interest.
- (f) The Trustee must act under this clause promptly and at its own cost.

3. Dealings with Secured Property

- (a) At all times prior to the occurrence of an ILUA Termination Default or an Indemnified Amount Default and subject to clause 3(b), the Trustee may deal with the Secured Property in the manner set out in the Transaction Documents, including without limitation by exercising the Trustee's powers under the Trust Deed and at law, but not otherwise.
- (b) The Trustee agrees that it will not create or permit to subsist any Encumbrance other than Permitted Encumbrances in any Secured Property in favour of any person, without the prior written consent of the State which will not be unreasonably withheld.

4. Warranties

4.1 Nature of a Trustee's warranty

- (a) The Trustee acknowledges that each Trustee warranty is and must be true, accurate and complete and is not misleading, deceptive or likely to mislead or deceive.
- (b) Only written exceptions to a Trustee warranty, which the State has acknowledged in writing, can vary a Trustee's warranty.
- (c) Each Trustee warranty is a separate warranty.
- (d) A Trustee warranty is not restricted by reference to or inference from another clause, including another warranty.
- (e) After the date of this deed and each time an item of after-acquired property becomes Secured Property, the Trustee repeats its Trustee warranties.

4.2 General representations and warranties

The Trustee represents and warrants to the State that:

- (a) it has full power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party;
- (b) if it is a corporation, it is registered (or taken to be registered) and validly existing under the Corporations Act;
- (c) if it is a corporation, it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (d) it has taken all necessary action to authorise the execution and performance of the Transaction Documents in accordance with their terms;
- (e) it has obtained all necessary action to authorise the execution, delivery and performance of the Transaction Documents to which it is a party;
- (f) the Transaction Documents to which it is a party constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity;
- (g) the execution, delivery and performance by it of the Transaction Documents to which it is a party do not and will not violate, breach, or result in a contravention of:
 - (i) any law, regulation or authorisation;
 - (ii) its constitution or other constituent documents; or
 - (iii) an Encumbrance or document which is binding on it or on its assets;
- (h) it has complied with all material laws applicable to it or its business; and

- (i) it has not created any Encumbrance over its interest in the Secured Property except as contemplated by a Transaction Document.

4.3 Trust representations and warranties

The Trustee represents and warrants to the State that:

- (a) it has been properly appointed as trustee of the Trust and is the only trustee of the Trust;
- (b) no meeting has been called, no resolution has been passed, no direction or notice been given and no other action has been taken to remove it as trustee of the Trust;
- (c) the Trust is duly and properly constituted as a trust in accordance with all applicable laws and the Trust Deed complies with all applicable laws;
- (d) it has full power and authority in its own right and as trustee of the Trust to enter into and perform its obligations under the Transaction Documents;
- (e) the performance by it of the Transaction Documents does not and will not violate any law, regulation, authorisation, ruling, consent, judgment, order or decree of any government agency, its constitution or other constituent documents, any document which is binding upon it, any of its assets, or on any part of the assets of the Trust, or the Trust Deed;
- (f) the execution, delivery and performance of the Transaction Documents and the transactions contemplated by them do not breach the Trust Deed;
- (g) it has a right to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under the Transaction Documents;
- (h) its right of indemnity and any equitable lien or other encumbrance which it has against or over the assets of the Trust have not been modified, waived, released, lost, diminished or rendered unenforceable, void or voidable, by any agreement, act or omission;
- (i) it has complied with all of its duties as trustee of the Trust;
- (j) it is not in default under the Trust Deed;
- (k) it has complied with the terms of the Trust Deed and all trustee duties and powers arising under the terms of the Trust Deed and under law;
- (l) no resolution has been passed or direction given for the winding up or termination of the Trust or distribution of the assets of the Trust;
- (m) it is the sole legal owner of all of the right, title and interest in the Accounts;
- (n) no property of the Trust has been re-settled or set aside or transferred to any other person (as trustee or otherwise) or mixed with any other property; and
- (o) it is entering into the Transaction Documents for the proper purpose of the Trust.

4.4 Survival and Repetition

- (a) The representations and warranties given in this clause 4:
 - (i) survive the execution of this deed; and
 - (ii) are repeated on each day during the term of this deed with reference to the facts and circumstances at the time.
- (b) The Trustee acknowledges that the State has entered into this deed in reliance on the representations and warranties given in this clause 4.

5. Role of the State

5.1 Secured Property

- (a) The Trustee acknowledges that the Security Interest granted to the State over the Secured Property is provided for the purpose of ensuring the due and faithful performance of the Trustee's obligations under the Transaction Documents.
- (b) The Trustee agrees that:
 - (i) the State is not responsible for the Trustee's performance of its obligations in relation to any Secured Property; and
 - (ii) the State has no duties in relation to any Secured Property except as specified in a Transaction Document, and will not be liable for any error of judgment or any mistake of fact or law, except to the extent of its own gross negligence or fraud.

5.2 State's rights on ILUA Termination Default or Indemnified Amount Default

Upon the occurrence of an ILUA Termination Default or an Indemnified Amount Default, if required by the State the Trustee must:

- (a) immediately do everything necessary to give the State sole control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property, including signing an authority and giving a mandate in favour of the State so that it or its nominee is the sole signatory to each Account and is solely authorised to operate it; and
- (b) not attempt to withdraw or transfer any funds or intermediated securities from any Account without the signature of the State or its nominee.

6. Further Security Interest or Encumbrance

The Trustee must not permit any of the Secured Property to be the subject of an Encumbrance created by law. This clause 6 does not apply to a Security Interest in favour of the State.

7. No prejudicial actions or omissions

The Trustee must not do, omit or allow anything that might:

- (a) render the Secured Property or a Security Interest created under this deed or any Ancillary Security, unenforceable or liable to forfeiture or cancellation; or
- (b) adversely affect the security of the State under a Transaction Document.

8. Contracting out and Confidentiality

8.1 Contracting out of PPSA enforcement clauses

- (a) If, and to the extent permitted by s.115(1) and s.115(7) of the PPSA, the parties agree to contract out of the provisions of the PPSA listed in s.115(1) and s.115(7) and the following additional provisions:
 - (i) section 121(4) (enforcement of liquid asset security notice to Trustee);
 - (ii) section 125 (obligation to dispose of or retain collateral);
 - (iii) section 129(2) and 129(3) (disposal by purchase);
 - (iv) section 132 (State to give statement of account);
 - (v) section 142 (redemption of collateral); and
 - (vi) section 143 (reinstatement of security agreement).
- (b) Without limiting clause 8.1(a), the State is required to give a notice under the PPSA, including notice of a verification statement, only if:
 - (i) the notice is obligatory under the PPSA; and
 - (ii) the giving of notice cannot be excluded under the PPSA,and the Trustee hereby waives any rights to receive any notices unless they are required to be given and cannot be excluded.

8.2 Maintaining confidentiality of information relating to a Security Interest

To the extent permitted under the PPSA, including section 275(6) of the PPSA, the parties must not disclose information, including the Transaction Documents and any other documents relating to the Security Interest, to or at the request of an interested person as defined in section 275(9) of the PPSA.

9. Default powers

9.1 State's powers following ILUA Termination Default or Indemnified Amount Default

If an ILUA Termination Default or an Indemnified Amount Default has occurred, the State may exercise one or more of the rights listed in this clause.

9.2 State's exercise of rights

- (a) The State's rights under this clause are in addition to its right to:
 - (i) make good a default under another Transaction Document; and
 - (ii) the rights conferred by common law, legislation and equity, in relation to the Secured Property.
- (b) The State may exercise the rights referred to in this clause:
 - (i) in any manner; and
 - (ii) whether or not a Receiver has been appointed.

9.3 General Powers

The State may:

- (a) if it has not already done so, take possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property;
- (b) dispose of Secured Property in any way and upon terms that it determines, whether or not the State has taken possession or control (within the ordinary meaning of that term or as defined in the PPSA) of the Secured Property;
- (c) to the maximum extent permitted by law, purchase or offset Secured Property against the Secured Debt;
- (d) deal with the Secured Property in any way, including by becoming a party to an agreement or other arrangement relating to any item of Secured Property, or exercising rights under that agreement or arrangement; and
- (e) in relation to the Secured Property:
 - (i) exercise the Grantor's rights and remedies;
 - (ii) comply with the Grantor's obligations;
 - (iii) cause and permit another person to comply with that person's obligations;
 - (iv) vary, replace or release a right or interest of the Grantor;
 - (v) surrender or accept the surrender of Secured Property;
 - (vi) exchange a part of the Secured Property for other property;
 - (vii) if there is a difference in value between the property exchanged, then give or receive consideration so that each person receives equal value for the exchange;
 - (viii) acquire or grant a benefit;

- (ix) grant options and rights of first refusal to acquire Secured Property;
- (x) protect the Secured Property;
- (xi) carry out, vary, replace, rescind, enforce or terminate an agreement relating to Secured Property to which the Trustee is a party;
- (xii) give a guarantee or a Security Interest to protect or enhance Secured Property;
- (xiii) give an indemnity in case a person fails to protect Secured Property;
- (xiv) open and operate a bank account to hold any funds relating to Secured Property;
- (xv) sell or assign Secured Property to a person, which person then assumes the Grantor's obligations;
- (xvi) exercise a right or power, including a voting right over Secured Property; and
- (xvii) surrender, make, enforce, compromise or settle a claim relating to a contract forming part of the Secured Property.

9.4 Investment of money

- (a) If the State receives money that it does not need to use immediately to comply with this deed, then the State may invest that money.
- (b) The State may vary or dispose of the investment.

9.5 Administrative powers

The State may on behalf of the Trustee:

- (a) draw, accept, make or endorse a negotiable instrument;
- (b) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to any Secured Property;
- (c) enter into and execute and deliver a document for the purposes of a Transaction Document; or
- (d) give a receipt and release, discharge or compromise a debt or other obligation owed to or by the Trustee and which is part of the Secured Property.

9.6 Receiver

- (a) The State may:
 - (i) either before or after it has taken possession of the Secured Property, appoint in writing one or more people as a receiver or receiver and manager of Secured Property; and

- (ii) appoint a substitute receiver or receiver and manager for different parts of the Secured Property.
- (b) If more than one person is appointed as Receiver of property, then the State may empower them to act jointly or jointly and severally.
- (c) The State may:
 - (i) remove a Receiver;
 - (ii) appoint a substitute Receiver if a Receiver is removed, retires or dies;
 - (iii) reappoint a Receiver, who had retired or been removed; and
 - (iv) fix or vary the remuneration of a Receiver.

9.7 Agent

- (a) The State may appoint a person or two or more people jointly and severally, as its agent to exercise a right under this deed.
- (b) The State must instruct the agent that this clause applies, as if the agent were a Receiver.

9.8 Rights not restricted

The State's rights under this clause are not restricted by reference to or inference from another right.

10. Receivers

10.1 Receivers as agent

- (a) Subject to clauses 10.1(c) and 10.1(d), a Receiver is the agent of the Trustee.
- (b) The Trustee is solely responsible for the Receiver's acts, omissions and remuneration.
- (c) The State may appoint a Receiver as the agent of the State and delegate to a Receiver the State's rights under this deed.
- (d) If an order is made or a resolution passed for the liquidation or winding up of the Trustee, then to the extent of that order or resolution:
 - (i) a Receiver ceases to be the agent of the Trustee; and
 - (ii) a Receiver immediately becomes the agent of the State.

10.2 Powers

- (a) A Receiver has the right to do anything that the Trustee may authorise an agent to do on the Trustee's behalf, to property, in relation to which the Receiver is appointed.

- (b) A Receiver may exercise:
 - (i) the rights conferred under a law, including the Corporations Act, upon receivers and receivers and managers;
 - (ii) the rights set out in clause 11; and
 - (iii) the rights of the Trustee and its directors.
- (c) Despite anything in this clause, a Receiver has no right to appoint a Receiver.
- (d) The State may by written notice to a Receiver give further rights to that Receiver.

11. Proceeds of enforcement

11.1 Order of application

The Remedy Proceeds may, subject to any mandatory statutory requirements, be applied by the State, any Receiver or any Attorney towards any amount and in any order which the State, any Receiver or any Attorney, as the case may be, determines in its absolute discretion, or if no determination is made in the following order:

- (a) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the balance of this clause;
- (b) second, towards the payment or reimbursement of the costs and expenses incurred by the State, any Receiver or any Attorney in the exercise or enforcement or attempted exercise or enforcement of its rights under this deed or any Ancillary Security;
- (c) third, towards the payment or reimbursement of the other outgoings in relation to the Secured Property that the State, any Receiver or any Attorney determines;
- (d) fourth, towards:
 - (i) the remuneration of any Receiver or Attorney; and
 - (ii) any money owing by the Trustee to any officer, employee, contractor or agent of the State, any Receiver or any Attorney;
- (e) fifth, in payment and discharge in order of their priority of any Encumbrances of which the State, Receiver or any Attorney is or are aware and which has priority to the Encumbrances granted by this deed;
- (f) sixth, towards the Secured Debt which is then due for payment and the Remedy Proceeds shall be applied as against interest, principal and any other amount as the State, Receiver or Attorney determines; and
- (g) seventh, to any person entitled to the Secured Property (including the Trustee) or authorised to give receipts for those monies.

11.2 Certificate and disputes

- (a) The State, any Receiver or any Attorney may rely upon a certificate issued by any person who claims to be entitled to receive any of the Remedy Proceeds to the effect that money is owing by the Trustee to it and stating the amount owing, without being obliged to make any further enquiry.
- (b) If there is any dispute between any persons as to who is entitled to receive the Remedy Proceeds, the State may pay the money into court and when that is done the State, any Receiver or any Attorney will have no further obligations in relation to that money.

11.3 No interest on Remedy Proceeds

The State is not obliged to pay interest to any person upon the Remedy Proceeds.

11.4 Payment into bank account

If the State, any Receiver or any Attorney pays any money into a bank account in the name of any person to whom the State is obliged to pay money under clause 11.1, and notifies that person of the particulars of the account, the State will have no further obligation in relation to that money.

11.5 Reinstatement of rights

If any transaction, or any payment or transfer received by the State, relating to the Secured Debt is void, voidable, or is otherwise unenforceable or refundable:

- (a) the State will be immediately entitled as against the Trustee to all rights in respect of the Secured Debt (whether under this deed, any Ancillary Security or otherwise) that it would have had if that transaction had not occurred or that payment or transfer had not been received and any of that money received by the State will be deemed never to have been received by the State;
- (b) any release, discharge or settlement given or made as a result of that transaction or the receipt of that payment or transfer will be of no force and effect; and
- (c) the Trustee will immediately at the request of the State do all things and sign all deeds necessary or desirable to restore to the State:
 - (i) the security created by this deed and any Ancillary Security; and
 - (ii) the State's rights under this deed and any Ancillary Security,held by the State immediately before the transaction being entered into or the payment or transfer being received.

12. Protection

12.1 Protection of third parties

The Trustee accepts that:

- (a) a person dealing with the State, an Attorney or a Receiver is not required to enquire whether:
 - (i) a right is enforceable or properly exercised; or
 - (ii) the Receiver or Attorney is duly appointed;
- (b) a person dealing with the State, an Attorney or a Receiver is not affected by express notice that the exercise of a power was unnecessary or improper and to protect such a person:
 - (i) the irregular or improper exercise of a right is automatically validated under this deed; and
 - (ii) the Trustee authorises the exercise of the right.

12.2 Protection of the State, Receiver and Attorney

- (a) The State, an Attorney and a Receiver are not liable for loss or damage, including consequential loss or damage, arising directly or indirectly from:
 - (i) an omission or delay in the exercise or non-exercise of a right; or
 - (ii) the neglect of the Trustee, the State, a Receiver or an Attorney.
- (b) The State, an Attorney and a Receiver are not liable to account as a mortgagee in possession for Secured Property if any of them takes possession of the Secured Property.
- (c) This clause does not apply:
 - (i) to the State, in relation to a loss or damage which arises from the wilful default, fraud or gross negligence of the State or its officers, employees or agents; and
 - (ii) to a Receiver or Attorney, in relation to a loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney or their officers, employees or agents.

12.3 Ratification

The Trustee ratifies and agrees to ratify whatever the State, a Receiver or an Attorney does in the exercise of a right.

13. Indemnity

13.1 The Trustee indemnifies the State

- (a) The Trustee, in its capacity as Trustee of the Trust, indemnifies the State against a claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment that the State, a Receiver or an Attorney pays, suffers, incurs or is liable for (except to the extent caused or contributed by the wilful default, fraud or gross negligence of the State, Receiver or Attorney), which relates to:

- (i) an ILUA Termination Default;
 - (ii) an Indemnified Amount Default;
 - (iii) the State, an Attorney or a Receiver exercising its powers as a result of an ILUA Termination Default or otherwise;
 - (iv) the non-exercise, attempted exercise, exercise or delay in the exercise of a power under a Transaction Document;
 - (v) an act or omission of the Trustee or its employees or agents;
 - (vi) the Trustee's use or ownership of Secured Property;
 - (vii) a compulsory acquisition or statutory or judicial divestiture of Secured Property; and
 - (viii) any other thing in respect of the Secured Debt or the Secured Property.
- (b) This clause applies to the Receiver, whether the Receiver is acting as agent of the Trustee or of the State.

13.2 Foreign currency indemnity

If the State, an Attorney or a Receiver receives or recovers an amount on account of the Secured Debt, in a currency that is not the currency that the State requires under a Transaction Document, then the Trustee must indemnify the State against a shortfall between:

- (a) the amount due in the required currency; and
- (b) the amount that the State, an Attorney or a Receiver receives after converting the payment currency into the required currency.

13.3 Continuing indemnity

- (a) Despite the occurrence of anything, including a settlement of account, the Trustee's indemnities in this deed are continuing obligations of the Trustee.
- (b) The Trustee's indemnities in this deed remain in full force and effect until:
 - (i) all money owing, contingently or otherwise, under a Transaction Document is paid in full; and
 - (ii) the Secured Debt is finally discharged.
- (c) Each of the Trustee's indemnities is an additional, separate and independent obligation of the Trustee.
- (d) No single indemnity limits the generality of any other indemnity.
- (e) The Trustee's indemnities survive the termination of a Transaction Document.

14. No obligation to marshal

The State is not required to marshal, enforce or apply:

- (a) property or rights or obligations under a Transaction Document; or
- (b) money or property that it holds or is entitled to at any time.

15. Payment

15.1 Mode of payment

The Trustee must pay each payment to the State under a Transaction Document:

- (a) on the due date or on demand, as applicable;
- (b) in immediately available freely transferable funds; and
- (c) in the manner that the State specifies by a notice in writing to the Trustee.

15.2 Trustee's payments to be free and clear

The Trustee must pay each payment to the State payable under a Transaction Document:

- (a) free of a restriction or condition; and
- (b) subject to law, free and clear without a deduction or withholding for Tax or on another account, whether by way of set-off, counterclaim or otherwise.

15.3 Gross-up

- (a) This gross-up clause applies if:
 - (i) the Trustee must deduct or withhold an amount under a law from an amount that the Trustee must pay to the State under a Transaction Document; or
 - (ii) the State must pay an amount under a law relating to an amount that the Trustee must pay to the State under a Transaction Document.
- (b) The Trustee must increase the amount that it pays to the State, so that the State receives and retains a net amount equal to the amount that it would have received and retained if:
 - (i) the Trustee was not obliged to deduct or withhold an amount; or
 - (ii) the State was not obliged to pay an amount relating to the amount that the Trustee must pay.

16. Power of Attorney

16.1 Appointment

- (a) The Trustee irrevocably appoints each Receiver, the State and each Officer of the State, severally as its attorney for the purposes set out in this clause.
- (b) The appointment is effective:
 - (i) upon the occurrence of an ILUA Termination Default and until the ILUA Termination Default is remedied;
 - (ii) upon the occurrence of an Indemnified Amount Default and until the Indemnified Amount Default is remedied; or
 - (iii) at the time that the Trustee fails to fulfil an obligation requested under clause 2.7 and until that obligation is performed.
- (c) Each person, whom the Trustee appoints, has full power to appoint and remove a substitute and to sub-delegate on the Trustee's behalf.

16.2 Powers

- (a) An Attorney may do everything reasonably necessary to give effect to this deed, including to perfect and obtain the highest possible priority for the State's Security Interests.
- (b) An Attorney acts at the Trustee's expense.

17. Tax, costs and expenses

17.1 State's costs and expenses

- (a) The Trustee must pay or reimburse on demand all reasonable costs and expenses of the State, in connection with:
 - (i) preparing, registering and maintaining any 'financing statement' or 'financing change statement' (each as defined in the PPSA), including pursuant to section 167 of the PPSA, in respect of any Encumbrance in favour of the State;
 - (ii) complying with any amendment demand in accordance with Part 5.6 of the PPSA;
 - (iii) releasing any person from any obligations under this deed or any other Transaction Document;
 - (iv) giving a consent or approval or waiving a requirement in connection with this deed or any other Transaction Document; and
 - (v) inspecting or reporting on the Secured Property.

- (b) This includes legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

17.2 Enforcement costs

The Trustee must, on demand, reimburse the State for all costs, charges, expenses, fees, disbursements (including all legal costs on a full indemnity basis) paid or incurred by the State of or incidental to:

- (a) any breach, default or repudiation of this deed or any other Transaction Document by the Trustee (including the fees for all professional consultants properly incurred by the State in consequence of, or in connection with, any such breach, default or repudiation); and
- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the State under or by virtue of this deed, including all amounts incurred in preparation and service of a notice under this deed or any other Transaction Document and in repossessing the Secured Property from the Trustee under the terms of this deed or any other Transaction Document and in enforcing the Transaction Documents generally against the Trustee.

17.3 Trustee must pay interest on overdue amounts

- (a) The Trustee must pay interest on Secured Debt due and payable but unpaid.
- (b) Unless otherwise specified in a Transaction Document, interest accrues daily:
 - (i) from and including the due date for payment up to and including the date of payment;
 - (ii) in the case of an amount payable as reimbursement or indemnity, if the date of disbursement or loss is earlier than the date due and payable, from the date of the disbursement or loss; and
 - (iii) both before and after a judgment or other thing into which the liability to pay the Secured Debt becomes merged.
- (c) The State may capitalise the interest at monthly intervals.
- (d) The rate of interest payable is the higher of:
 - (i) a rate specified in another Transaction Document and if no such rate is specified 10 percent per annum; and
 - (ii) the rate fixed or payable under a judgment or other thing into which the liability to pay the Secured Debt becomes merged.
- (e) The Trustee must pay the interest on demand.

17.4 Trustee's costs and expenses

Before the Trustee pays to the State an ILUA Termination Amount or an Indemnified Amount, as the case may be, the Trustee may deduct from the Secured Property its

reasonable costs and expenses of acting in accordance with and complying with this deed (other than costs arising in respect of clauses 17.2 and 17.3), to the extent those costs and expenses specifically relate to the relevant ILUA Termination Event or Indemnified Amount Notice the subject of the payment to the State.

18. Certificate conclusive

A certificate that the State issues of an amount payable under this deed is conclusive evidence for any purpose, including for a proceeding.

19. Confidentiality

- (a) The Trustee must keep confidential:
 - (i) information it receives from the State; and
 - (ii) this deed.
- (b) Upon request, the Trustee must return confidential information that it has received.
- (c) This clause is additional to clause 8.

20. Notice

- (a) Any notice or other communication which is required to be given or served under this deed (Notice) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other party.
- (b) Subject to clause 20(c), Notice is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

21. Governing Law

- (a) The law of Western Australia governs this deed.
- (b) The parties submit to the exclusive jurisdiction of the courts of Western Australia and courts of appeal therefrom.

22. Variation

The parties can only vary this deed if the variation is in writing and each party signs.

23. Exclusion of legislation, to the extent permitted by law

To the extent permitted by law:

- (a) a provision of legislation which directly or indirectly lessens the Trustee's obligations under this deed or a Transaction Document is excluded from this deed;
- (b) a provision of legislation which directly or indirectly affects the State's exercise of a power is excluded from the deed and a Transaction Document; and
- (c) relief and protection conferred on the Trustee under that legislation is excluded.

24. Severance

- (a) If a provision of this deed is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this deed.
- (b) The remaining provisions of this deed remain in full force and effect.

25. No waiver

- (a) A party granting a waiver of a right under this deed must give written notice of that waiver to the party which benefits from the waiver.
- (b) A party's failure, partial failure or delay in exercising a right relating to this deed is not a waiver of that right.
- (c) A party may not claim that another party's delay or failure to exercise a right relating to this deed:
 - (i) constitutes a waiver of that right; or
 - (ii) is a defence to its own action or inaction.
- (d) The parties may not waive or vary this clause.

26. Further assurance

The Trustee must do everything necessary to give full effect to this deed.

27. Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one document. Where counterparts are used, this deed will come into effect on the last exchange of counterparts.

Executed as a deed.

Executed by
**Perpetual Trustee
Company Limited**
ACN **000 001 007**
pursuant to Section 127
of the Corporations Act

}

.....
Director

.....
Director/Secretary

.....
Full Name (please print)

.....
Full Name (please print)

Executed for and on behalf of the State
of Western Australia by
Rebecca Brown,
Director General of the Department
of the Premier and Cabinet,
in the presence of:

}

.....
Rebecca Brown

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness