

Schedule 10

South West Settlement Terms

Background

- A. The Noongar people together assert that they hold Native Title Rights and Interests in relation to the Settlement Area, including pursuant to the "Noongar Claims".
- B. The Noongar people have agreed with the State of Western Australia to settle all current and future claims of the Noongar people for determinations both of Native Title and for compensation in respect of their traditional country around the south west of Western Australia.
- C. Under the terms of that Settlement, in exchange for the payment and provision of the benefits to be provided in accordance with these Settlement Terms, the Noongar people have entered into 6 separate Agreements with the State dealing with the surrender of Native Title Rights and Interests in the Settlement Area, the validation of acts that may previously have been done invalidly in the Settlement Area and the loss, diminution, impairment, and other effects on Native Title Rights and Interests in relation to the Settlement Area.
- D. In other words, while the separate Native Title Agreement Groups comprising the Noongar people have given their consent to the surrender and the validation of invalid acts, and the loss, diminution, impairment, and other effects on Native Title Rights and Interests in relation to the Settlement Area, in their separate Agreements, all Parties have agreed that the benefits to be paid or provided by the State to the Noongar people under those Agreements are as recorded in this document.
- E. Accordingly, these Settlement Terms form part of each of the Agreements, have been adopted as such by each of the Parties to each of the Agreements and are binding on each of the Parties to each of the Agreements.

Operative Provisions

1. Defined terms and interpretation

1.1 Definitions by reference to statute

In these Settlement Terms, any capitalised term for which a definition is not included in clause 1.3 of these Settlement Terms will:

- (a) where the term is defined in the NT Act, have the same meaning as given to it in the NT Act, as at the Execution Date;
- (b) where the term is defined in the LAA, have the same meaning as given to it in the LAA, as at the Execution Date; and

- (c) where the term is defined in the TLA, have the same meaning as given to it in the TLA, as at the Execution Date.

1.2 Definitions by reference to Trust Deed and Security Deed

In clauses 2, 3 and 5 of these Settlement Terms, any capitalised term for which a definition is not included in clause 1.3 of these Settlement Terms will, where the term is defined in the Trust Deed and the Security Deed, have the same meaning as given to it in the Trust Deed and the Security Deed.

1.3 Other definitions

In these Settlement Terms:

Aboriginal Cultural Business means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Regional Corporation or Native Title Agreement Groups are required to attend or that prevents the members of the Regional Corporation or Native Title Agreement Groups from attending to day-to-day business.

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

Aboriginal Heritage Due Diligence Guidelines means the document of that name that is referred to in the NSHA and a copy of the current guidelines is attached at Annexure D to these Settlement Terms.

Agreement means each of the 6 ILUAs that is proposed to be entered into by the State and a Native Title Agreement Group with respect to the land and waters within the Settlement Area.

Agreement Area, with respect to an Agreement, means the land and waters that are described in Part 1 of Schedule 1, and shown on the map in Part 2 of Schedule 1, to the Agreement in question.

Allocation has the meaning given in the Land Base Strategy set out at Annexure J to these Settlement Terms, and Allocate has a corresponding meaning.

Business Day means a day that is not a Saturday, Sunday or public holiday, and on which banks are open for business generally, in Western Australia.

By-laws means the by-laws under section 34 of the *Water Agencies (Powers) Act 1984* (WA) that are attached at Annexure R to these Settlement Terms.

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

CATSI Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

CATSI Corporation means an Aboriginal and Torres Strait Islander corporation as that term is defined in section 16-5 of the CATSI Act, namely a corporation registered under the CATSI Act.

Central Services Corporation or **CSC** means the corporation that is to be established pursuant to clause 4 of these Settlement Terms, and appointed by the

Trustee under clause 5 of the Trust Deed, and includes any replacement corporation that may be appointed by the Trustee from time to time.

Compensation means the total of the benefits and compensation (including monetary payments) to be paid or provided to or for the benefit of, or derived by or on behalf of, all Native Title Agreement Groups, including through the Trust, under all Agreements in consideration for:

- (a) the extinguishment of Native Title by the surrender of Native Title in relation to the Settlement Area;
- (b) any loss, diminution, impairment and other effects on Native Title Rights and Interests in relation to the Settlement Area; and
- (c) the validation of any Invalid Acts in relation to the Settlement Area.

Conclusively Registered has the meaning given in each Agreement.

Conditions means:

- (a) the Recognition Bill as enacted being proclaimed in the *Gazette* to come into operation;
- (b) either the Enabling Bill as enacted being proclaimed in the *Gazette* to come into operation or other measures being adopted that the State and SWALSC (acting reasonably) agree in writing are sufficient to enable the State to comply with its obligations under clauses 8 and 13.1 of these Settlement Terms;
- (c) the By-laws being published in the *Gazette* or other measures being adopted that the State and SWALSC (acting reasonably) agree in writing provide for a substantially similar range of customary activities in Public Drinking Water Source Areas to that provided for in the By-laws; and
- (d) all of the Agreements being Conclusively Registered.

Conservation Estate has the same meaning as 'land to which this Act applies' in section 5(1) of the CALM Act.

CPI means the Consumer Price Index (Perth) (All Groups) as determined by the Australian Bureau of Statistics, and if that index is discontinued, then such other index in substitution for that index:

- (a) as may be provided by the Australian Bureau of Statistics; or
 - (b) if no index is provided by the Australian Bureau of Statistics, as may be agreed by the Parties; or
 - (c) if no index is provided by the Australian Bureau of Statistics and the State and SWALSC are unable to agree within 20 Business Days, as may be provided, at the request of either of the Parties, by the President for the time being of the Institute of Actuaries of Australia, or by that person's nominee,
- provided that:

- (d) such substituted index provides a basis for comparison equivalent to the Consumer Price Index (Perth) (All Groups); and
- (e) any CPI adjustment will exclude from the application of the CPI, the one-off effects of a reset of the index numbers for any index referred to in this definition or of any similar change event determined or published by the Australian Bureau of Statistics or other person or body referred to in this definition.

CPI Calculation means:

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

where:

A = the current amount, from time to time, of a payment under this Agreement;

CPI_n = the latest published quarterly CPI number immediately preceding the due date of the payment;

CPI_{base} = the CPI number applicable as at the Trust Effective Date.

DAA means the Department of Aboriginal Affairs.

DAFWA means the Department of Agriculture and Food WA.

Deemed Settlement Effective Date means the Deemed Settlement Effective Date of any of the Agreements.

DMP means the Department of Mines and Petroleum.

DoL means the Department of Lands.

DoP means the Department of Planning.

DoW means the Department of Water.

DPaW means the Department of Parks and Wildlife.

DPC means the Department of the Premier and Cabinet.

Eligible Noongar Entity has the meaning given in the Trust Deed.

Enabling Bill means the bill referred to in clause 7 of these Settlement Terms containing the features described in Annexure B to these Settlement Terms.

Execution Date, when used:

- (a) in relation to a specific Agreement, means the date of the execution of the Agreement in question by the State; and
- (b) generally, mean the date on which the State executes the last of the Agreements.

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 these Settlement Terms and which is unforeseeable and beyond the reasonable control of the affected Party including but not limited to (provided that the foregoing criteria are satisfied):

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

but does not include:

- (o) lack of or inability to use funds for any reason;
- (p) any occurrence which results from the negligent or wilful act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;
- (q) 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;
- (r) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of the matters set out in paragraphs (a) to (n) above;
- (s) any act or omission of an agent of the affected Party.

Future Fund Payment means the annual payment referred to in clause 5.1 of these Settlement Terms.

Gazette has the meaning given in the *Interpretation Act 1984* (WA).

Government Party means any one of the Government Parties to the Agreements.

Government Proponent means:

- (a) the State;
- (b) a Government Party; or
- (c) any other agency or instrumentality of the State that the State at any time during the currency of this Agreement notifies the Regional Corporation (or, if there is no Regional Corporation at the relevant time, notifies SWALSC) is to be regarded (whether during the remaining currency of this Agreement or for a more limited time) as falling within this definition.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Rate means that rate of GST payable from time to time under the GST Act.

ILUA has the meaning given to "Indigenous Land Use Agreement" in section 24CA of the NT Act.

Invalid Act means any Future Act (other than an Intermediate Period Act) that:

- (a) was, or is, carried out by the State or any State Party prior to the Settlement Effective Date in relation to any part of the Settlement Area; and
- (b) to the extent that such Future Act affects Native Title, is invalid as a result of section 24OA of the NT Act.

LAA means the *Land Administration Act 1997* (WA).

Land Base Strategy means the strategy set out at Annexure J to these Settlement Terms.

Land Sub means the subsidiary company to be established by the Trustee under clause 22.1 of the Trust Deed to hold any interest in land and with which the care, control and management of reserves will be placed.

Native Title Agreement Group, with respect to each Agreement, means the people who have been identified as people who hold or may hold Native Title in relation to land and waters within the Agreement Area in question.

NLE (or Noongar Land Estate) means the land Allocated to the Noongar people pursuant to clause 8 of these Settlement Terms.

Noongar Corporations Committee has the meaning given in the Trust Deed.

Noongar Future Fund has the meaning given in the Trust Deed.

Noongar Land Fund has the meaning given in clause 9(a) of these Settlement Terms.

NSHA means an agreement entered into by a Regional Corporation (or, if there is no Regional Corporation at the relevant time, a Native Title Agreement Group) on or after the applicable Execution Date with any Government Proponent and other third parties that is, or is substantially, in the form of the "Noongar Standard Heritage Agreement" attached at Annexure C to these Settlement Terms.

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

Operations Fund has the meaning given in the Trust Deed.

Operations Fund Payment means the annual payment referred to in clause 5.2 of these Settlement Terms.

Parliament has the meaning given in the *Interpretation Act 1984* (WA).

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

Principles means the principles relevant to the incorporation and operation of the Regional Corporation and Central Services Corporation that are referred to in clause 8 of the Agreement and clause 4 of these Settlement Terms, and which are set out at Annexure E to these Settlement Terms.

Public Drinking Water Source Areas means water reserves and catchment areas constituted from time to time under section 9 of the *Country Areas Water Supply Act 1947* (WA) or section 13 of the *Metropolitan Water Supply Sewerage and Drainage Act 1909* (WA).

Recognition Bill means the bill entitled *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014* that is referred to in clause 6 of these Settlement Terms, a copy of which is attached at Annexure F to these Settlement Terms.

Regional Corporation means each corporation that is to be:

- (a) established on behalf of the Native Title Agreement Group pursuant to clause 8 of each Agreement; and
- (b) appointed by the Trustee under clause 4 of the Trust Deed,

and includes any replacement corporation that may be appointed by the Trustee from time to time.

Rulebook means the rulebook for the CATSI Corporation that constitutes a Regional Corporation or the CSC, as mentioned in the Trust Deed.

Secured Property has the meaning given in the Security Deed.

Security Deed means the security deed that is to be granted by the Trustee in favour of the State pursuant to clause 3 of these Settlement Terms, a copy of which is attached at Annexure H to these Settlement Terms.

Settlement, as between the State and the members of the Native Title Agreement Groups for all of the Agreements to which the Settlement Effective Date or a Deemed Settlement Effective Date applies (**Settlement Effective Agreements**), means the settlement of all current and future native title and compensation

applications under the NT Act relating to the combined area of the Settlement Effective Agreements.

Settlement Area means the area shown on the map at Annexure A to these Settlement Terms, which comprises the aggregate of all of the Agreement Areas.

Settlement Effective Date means the date that is 20 Business Days after the date of a Settlement Effective Date Notice or, if the State fails to issue a Settlement Effective Date Notice under clause 3.3(a)(i) of each Agreement where it is required to do so, the date that is 40 Business Days after the last of the Conditions are satisfied.

Settlement Effective Date Notice has the meaning given in clause 3.3(a) of each Agreement.

Settlement Terms means this document, which is attached at Schedule 10 to each Agreement.

State Party means the State of Western Australia and all of its Ministers, departments, agencies, instrumentalities and bodies corporate expressed to be agents of the Crown, and those entities listed in Schedule 1 to the *Public Sector Management Act 1994* (WA).

Sunset Date means 30 December 2016, or such later date or dates as, from time to time, may be agreed in writing between the State and SWALSC in accordance with clause 3.2 of each Agreement.

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

Transition Principles means the transition principles set out in Annexure Y.

Trust means the Noongar Boodja Trust established by the Trust Deed.

Trust Deed means the trust deed that establishes the Trust, a copy of which is attached at Annexure G to these Settlement Terms.

Trust Effective Date means the date of the declaration of the Trust under clause 2 of these Settlement Terms.

Trustee means the trustee of the Trust from time to time.

1.4 Interpretation – General

In these Settlement Terms:

- (a) headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of these Settlement Terms;

and unless the contrary intention appears:

- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a recital, clause, schedule or annexure is, as applicable and as the context requires, a reference to:

- (i) a recital or clause to or of either these Settlement Terms or any of the Agreements;
- (ii) a schedule to any of the Agreements; or
- (iii) an annexure to these Settlement Terms,
and a reference to these Settlement Terms includes all recitals and annexures;
- (d) a reference to a document (including these Settlement Terms) is to that document as varied, amended, supplemented, or replaced from time to time;
- (e) a "person" includes a company, partnership, firm, joint venture (whether incorporated or unincorporated), association, authority, corporation or other body corporate, trust, public body or Government Party;
- (f) a reference to a "person" (including a Party to any of the Agreements) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including people taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporated) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or substantially similar function;
- (h) a reference to a department or agency of the State includes any future department or agency of the State pursuant to an Order under the *Alteration of Statutory Designations Act 1974 (WA)*.
- (i) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) 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;
- (m) a reference to "dollars" or "\$" is a reference to the currency of Australia;
- (n) a reference to a "day" is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) 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;

- (p) references to time are to local time in Perth, Western Australia;
- (q) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (r) if the day on or by which a person must do something under these Settlement Terms is not a Business Day, the person must do it on or by the next Business Day; and
- (s) if any conflict arises between the terms and conditions contained in the clauses of these Settlement Terms and any recitals, schedules or annexures to these Settlement Terms, the terms and conditions of the clauses of these Settlement Terms will prevail to the extent of the inconsistency.

1.5 Interpretation – liabilities and benefits

In these Settlement Terms, unless the contrary intention appears:

- (a) the members of each Native Title Agreement Group, including the Representative Parties who are signatories to each Agreement, are jointly (and not severally or jointly and severally):
 - (i) entitled to the benefits conferred on the Native Title Agreement Group under the relevant Agreement; and
 - (ii) liable to perform the obligations of the Native Title Agreement Group under the relevant Agreement;
- (b) neither the State nor a Government Party may bring proceedings in respect of these Settlement Terms against a member of the Native Title Agreement Group, including any of the Representative Parties who are signatories to this Agreement, in his or her individual capacity. Any such proceedings may only be brought in a court of competent jurisdiction against the Representative Parties on behalf of the Native Title Agreement Group jointly; and
- (c) 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.

1.6 Interpretation – application of clauses 9.6, 9.7, 10, 12 and 14

Any obligation under these Settlement Terms to make a payment, or to do any other act or thing, is subject to clauses 9.6, 9.7, 10, 12 and 14 of each Agreement.

2. Trust to be Established

- (a) The State and SWALSC must, within 60 Business Days after (but not before) the earlier of the:
 - (i) first of any Deemed Settlement Effective Dates; and
 - (ii) Settlement Effective Date,

procure that the Settlor and the Trustee declare the Trust (**Trust Effective Date**).

- (b) The Parties acknowledge and agree that the Trust Deed may be amended:
 - (i) between the Execution Date and the date on which the Trust is declared, by agreement between the State and SWALSC (and following consultation between SWALSC and members of the Native Title Agreement Groups); and
 - (ii) after the date on which the Trust is declared, in accordance with the provisions of the Trust Deed,

without reference to the other Parties to this Agreement, and any such amendments may be made without the need to simultaneously amend the document attached at Annexure G to these Settlement Terms.

3. Security Deed

The Native Title Agreement Groups acknowledge that:

- (a) the Trustee will enter into the Security Deed with the State;
- (b) the State may call on the Security Deed on the occurrence of:
 - (i) an ILUA Termination Default (as defined in the Security Deed); or
 - (ii) an Indemnified Amount Default (as defined in the Security Deed),

and may have recourse to the Secured Property; and

- (c) the Security Deed may be amended:
 - (i) between the Execution Date and the date on which the Security Deed is executed, by agreement between the State and SWALSC (and following consultation between SWALSC and members of the Native Title Agreement Groups); and
 - (ii) after the date on which the Security Deed is executed, in accordance with the provisions of the Security Deed,

without reference to the other Parties to this Agreement, and any such amendments may be made without the need to simultaneously amend the document attached at Annexure H to these Settlement Terms.

4. Establishment of Central Services Corporation

The Parties acknowledge and agree that:

- (a) the Trustee will (in accordance with clause 5 of the Trust Deed) appoint an entity to be the CSC;

- (b) an entity may only be appointed by the Trustee to be the CSC if:
 - (i) it meets the eligibility requirements prescribed in the Trust Deed, including the eligibility requirements for an Eligible Noongar Entity; and
 - (ii) its Rulebook complies with the applicable Principles;
- (c) the CSC must:
 - (i) adhere to the criterion stipulated in clause 4(b)(i) of these Settlement Terms; and
 - (ii) comply with the applicable Principles,at all times during the currency of its appointment.

5. State financial payments and funding

5.1 Future Fund Payment

- (a) No later than 60 Business Days after the Trust Effective Date, but subject to the Trustee having:
 - (i) entered into the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms; and
 - (ii) provided a tax invoice in accordance with clause 5.3(a) of these Settlement Terms,the State will pay to the Trustee the amount of \$50,000,000 (**Future Fund Payment**), which must be deposited in the Noongar Future Fund.
- (b) Subject to clause 5.1(c) of these Settlement Terms, and to the Trustee having provided a tax invoice in accordance with clause 5.3(c) of these Settlement Terms, the State will pay to the Trustee, annually, 11 further payments each also of \$50,000,000 (each also a **Future Fund Payment**), each of which must also be deposited in the Noongar Future Fund.
- (c) The State will pay each of the 11 further Future Fund Payments referred to in clause 5.1(b) of these Settlement Terms to the Trustee within 60 Business Days after the anniversary of the payment of the Future Fund Payment for the preceding year.
- (d) The amount of each of the 11 further Future Fund Payments referred to in clause 5.1(b) of these Settlement Terms will be adjusted in accordance with the CPI Calculation, but never so as to reduce in any year the amount of a Future Fund Payment in comparison with the equivalent amount that was paid in the preceding year.

5.2 Operations Fund Payment

- (a) No later than 60 Business Days after the Trust Effective Date, but subject to the Trustee having:

- (i) entered into the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms; and
- (ii) provided a tax invoice in accordance with clause 5.3(a) of these Settlement Terms,

the State will pay to the Trustee the amount of \$10,000,000 (**Operations Fund Payment**), which must be deposited in the Operations Fund.

- (b) Subject to clause 5.2(c) of these Settlement Terms, and to the Trustee having provided a tax invoice in accordance with clause 5.3(c) of these Settlement Terms, the State will pay to the Trustee, annually, 11 further payments each also of \$10,000,000 (each also an **Operations Fund Payment**), each of which must also be deposited in the Operations Fund.
- (c) The State will pay each of the 11 further Operations Fund Payments referred to in clause 5.2(b) of these Settlement Terms to the Trustee within 60 Business Days after the anniversary of the payment of the Operations Fund Payment for the preceding year.
- (d) The amount of each of the 11 further Operations Fund Payments referred to in clause 5.2(b) of these Settlement Terms will be adjusted in accordance with the CPI Calculation, but never so as to reduce in any year the amount of an Operations Fund Payment in comparison with the equivalent amount that was paid in the preceding year.

5.3 Invoicing

- (a) No later than 20 Business Days before the due date for the payment of the:
 - (i) first of the Future Fund Payments, as referred to in clause 5.1(a) of these Settlement Terms; and
 - (ii) first of the Operations Fund Payments, as referred to in clause 5.2(a) of these Settlement Terms,

the Trustee must submit to the State a tax invoice for the applicable amounts, to be transferred via an Electronic Funds Transfer to the approved bank accounts operated by the Trustee for, respectively, the Noongar Future Fund and the Operations Fund.

- (b) For each subsequent year in which the Future Fund Payment and the Operations Fund Payment are payable, on or before the anniversary of the payment made in the preceding year, the State must issue a notice (**Funds Payment Notice**) to the Trustee setting out the total amounts of each of the Future Fund Payment and the Operations Fund Payment for the year in question, as adjusted in accordance with the CPI Calculation.
- (c) No later than 20 Business Days before the due dates for the payment of each of the:
 - (i) remaining Future Fund Payments, pursuant to clause 5.1(c) of these Settlement Terms; and

- (ii) remaining Operations Fund Payments, pursuant to clause 5.2(c) of these Settlement Terms,

the Trustee must submit to the State a tax invoice for the amount of each payment for the year in question, to be transferred via an Electronic Funds Transfer to, respectively, the approved bank accounts operated by the Trustee for, respectively, the Noongar Future Fund and the Operations Fund.

- (d) The amount specified by the Trustee in each tax invoice issued in accordance with clause 5.3(c) of these Settlement Terms will be the amount that is either:
 - (i) set out by the State in the Funds Payment Notice issued for the year in question (with any dispute with respect to the quantum of such amount to be resolved in accordance with the procedure in clause 15 of each Agreement); or
 - (ii) (for any year in which the State fails to issue a Funds Payment Notice by the deadline stipulated in clause 5.3(b) of these Settlement Terms) assessed by the Trustee as being payable after having itself performed the required CPI Calculation.

5.4 Overdue payments

- (a) If the State has not paid a Future Fund Payment or an Operations Fund Payment as at the later of:
 - (i) the applicable due date for payment in accordance with this clause 5;
 - (ii) (where no tax invoice for the payment is received from the Trustee by the date that is 20 Business Days before the due date for payment) the date that is 20 Business Days after receipt of the tax invoice; or
 - (iii) (where the Trustee has not entered the Security Deed with the State in accordance with clause 3(a) of these Settlement Terms) the date that is 20 Business Days after the date the State receives the Security Deed executed by the Trustee

(Due Date),

the State will pay interest on the outstanding amount at the interest rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA). Any such interest will be payable by the State into either (or both, as applicable) of the approved bank accounts operated by the Trustee for the Noongar Future Fund and the Operations Fund, on demand from the Trustee.

- (b) Any interest payable by the State under clause 5.4(a) of these Settlement Terms will:
 - (i) accrue daily from, and including, the Due Date up to, but excluding, the actual date of payment; and

- (ii) be capitalised on the first day of each calendar month.

The accumulation of capitalised interest will continue until the relevant Future Fund Payment or Operations Fund Payment has been paid in full.

- (c) The Trustee's right to require payment of interest under clause 5.4(a) of these Settlement Terms will not affect any other rights and remedies that any Native Title Agreement Group may have in relation to any failure by the State to pay a Future Fund Payment or an Operations Fund Payment in accordance with any of the Agreements or with these Settlement Terms.

6. Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill

- (a) As soon as reasonably practicable after the Execution Date, the State will introduce and sponsor the Recognition Bill in the Parliament.
- (b) The State will use all reasonable endeavours to secure the timely passage of the Recognition Bill.
- (c) If it is at all reasonably practicable to do so the State will consult with SWALSC on behalf of the Native Title Agreement Groups if any amendments (other than amendments that the State, acting reasonably, considers to be trivial or immaterial) are proposed to the Recognition Bill. Failure by the State to comply with this clause 6(c) for any reason does not constitute a breach of the Agreements.
- (d) If, other than in a manner that SWALSC (acting reasonably) considers to be trivial or immaterial, the Recognition Bill is amended, or once enacted is repealed, by the State Parliament of Western Australia before the first of the Deemed Settlement Effective Dates (if any), or otherwise the Settlement Effective Date, then within 20 Business Days of any such amended Recognition Bill being enacted, or once enacted being repealed, SWALSC on behalf of the Native Title Agreement Groups may by notice in writing to the State terminate the Agreements.

7. Enabling Bill

- (a) As soon as reasonably practicable after the Execution Date, the State will introduce and sponsor the Enabling Bill in the Parliament.
- (b) The State will use all reasonable endeavours to secure the timely passage of the Enabling Bill.
- (c) If it is at all reasonably practicable to do so the State will consult with SWALSC on behalf of the Native Title Agreement Groups if any amendments (other than amendments that the State, acting reasonably, considers to be trivial or immaterial) are proposed to the Enabling Bill. Failure by the State to comply with this clause 7(c) for any reason does not constitute a breach of the Agreements.
- (d) If an Enabling Bill is enacted by the State Parliament of Western Australia which SWALSC (acting reasonably) considers does not enable

the State to comply with its obligations under clauses 8 and 13.1 of these Settlement Terms, then within 20 Business Days of such Enabling Bill being enacted SWALSC on behalf of the Native Title Agreement Groups may by notice in writing to the State terminate the Agreements.

8. Establishment of the Noongar Land Estate

8.1 Principles underpinning the establishment of the Noongar Land Estate

- (a) The State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar community.
- (b) The establishment of the NLE under this Agreement provides a significant opportunity for the Noongar community to achieve sustainable economic, social and cultural outcomes. The State recognises that the creation of an economic and culturally sustainable NLE is in the long term interest of both the State and the Noongar community.
- (c) The State, SWALSC and the Native Title Agreement Groups recognise that the creation of the NLE is a fundamental part of this Agreement and all parties commit to working together to maximise Noongar outcomes in regards to the NLE. It is the intention of all parties that the NLE reach the maximum hectare targets for transfer set out in the Land Base Strategy.
- (d) The State, SWALSC and the Native Title Agreement Groups acknowledge that the creation of the NLE is unprecedented in Australia, and will only reach its full potential if all Parties engage in the process in a spirit of cooperation. In particular, any concerns about inclusion of parcels of land in the NLE must be resolved in a timely and cooperative manner, with no Party placing unrealistic expectations on another.
- (e) The State commits to developing long-term and productive partnerships with the Trustee and the Regional Corporations to assist in achieving these outcomes.
- (f) The State recognises the role of the Trustee and the Regional Corporations in representing the interests of the Noongar people, who are the custodians and traditional knowledge holders of the Settlement Area.

8.2 Land Base Strategy

- (a) The Parties agree that:
 - (i) the Land Base Strategy contains all of the arrangements that exist between the Parties with respect to the establishment and implementation of the Noongar Land Estate; and
 - (ii) in that regard, the Land Base Strategy is hereby imported into and forms part of each Agreement.
- (b) The Parties agree that, notwithstanding the terms of clause 8.2(a) of these Settlement Terms:

- (i) the Land Base Strategy is to be read and construed subject to each Agreement (including these Settlement Terms); and
 - (ii) in the event of any inconsistency between the provisions of any Agreement and the Land Base Strategy, the provisions of the Agreement will prevail.
- (a) The Parties agree that each of Annexure J, Annexure K and Annexure L to these Settlement Terms may only be amended after the establishment of the Noongar Corporations Committee by agreement between the Trustee, the Noongar Corporations Committee and the State. Such amendment may be agreed without reference to the other Parties and without the need simultaneously to amend the documents attached at Annexure J, Annexure K and Annexure L to these Settlement Terms.

9. Noongar Land Fund

- (a) Within 60 Business Days after the Trust Effective Date the State will establish a Noongar land fund (**Noongar Land Fund**)
- (b) The purpose of the Noongar Land Fund is, to the extent the moneys in the Noongar Land Fund permit, to meet the land, joint management and heritage objectives set out in these Settlement Terms through the development of effective partnerships between the Regional Corporations and the State's key land agencies. These agencies comprise DoL, DPaW, DAA and DAFWA. In some regions, other State departments may be involved.
- (c) The State will distribute up to a maximum of \$46,850,000 from the Noongar Land Fund over a 10 year period.
- (d) External administrative costs will be paid out of the Noongar Land Fund distribution referred to in clause 9(c) of these Settlement Terms. Unallocated funds will be rolled over into subsequent years. The Noongar Land Fund will facilitate amongst other matters:
 - (i) the transfer of land from the Crown estate into the NLE;
 - (ii) site inspections for all parcels of land to be transferred into the NLE, including Aboriginal Heritage surveys where necessary;
 - (iii) land surveys required for the creation of certificates of title to allow transfer to occur;
 - (iv) remediation for those land parcels that may require the removal of any bio-security risks (e.g. feral animal control, invasive weeds), contaminant removal or the removal of rubbish, derelict buildings or sheds;
 - (v) assistance to joint management partnerships between DPaW and the Regional Corporations;
 - (vi) the development of Noongar land management capacity;

- (vii) land management programs in partnership with DAFWA on the NLE;
 - (viii) a priority program for the identification and protection of highly significant or "at risk" heritage sites across the South West region; and
 - (ix) other activities relevant to conservation, heritage and land management.
- (e) While the State may, at its discretion, outsource certain administrative and decision making functions to an external party, the State will retain final decision-making authority in order to progress the land and partnership objectives.
- (f) Access to annual funding will be determined by budget proposals submitted jointly by State Parties and individual Regional Corporations. If some budget lines are not fully used in any one year, the Noongar Land Fund will have the capacity to shift resources between budget lines to reflect priorities. The State will retain discretion over the movement of funds.
- (g) With respect to clause 9(d)(v) of these Settlement Terms, a sum of \$83,000 per annum (adjusted annually in accordance with the CPI Calculation) will be paid to each Regional Corporation from the Noongar Land Fund to facilitate joint management arrangements in relation to the Conservation Estate within each region. This amount is intended to cover the costs of the Regional Corporation's participation in the joint management governance arrangements and to provide for the funding of joint management projects agreed to by the Co-operative and Joint Management Committees.

The conditions for payment are as follows:

- (i) the Regional Corporation must invoice the State for the money which will be paid on a pro-rata basis for that part of a financial year that remains. Within 20 Business Days of the end of each financial year the Regional Corporation must report in a detailed manner acceptable to the State on the expenditure of the moneys provided to it;
- (ii) the Regional Corporation must keep the moneys received from the Noongar Land Fund separate from other moneys it receives and roll over any unexpended moneys into the same budget line item;
- (iii) the moneys received from the Noongar Land Fund must only be used to support the Regional Corporation's costs of its representatives participating in the Joint and Co-operative Management Committee meetings or for joint management projects which have been approved in writing by either the Co-operative Management Committee or a Joint Management Committee for any part of the Conservation Estate for the region; and

- (iv) where a Regional Corporation fails to comply with these conditions the State may by notice to the Regional Corporation suspend future payments to the Regional Corporation until it is satisfied that the conditions will be fully met. Once the suspension is lifted, the Regional Corporation will only be paid on a pro-rata basis for the remaining part of the relevant financial year (if any). Any moneys not paid to a Regional Corporation in such circumstances will be rolled into the Noongar Land Fund and may be allocated for other purposes.

10. LandCorp Payment

- (a) In this clause 10:

Approved Use means either:

- (i) residential use; or
- (ii) light or general industrial use.

Former UCL means land that was UCL immediately before it was either leased or transferred in fee simple to LandCorp under Part 6 of the LAA.

Pre-existing Native Title Agreement means an agreement made:

- (i) under section 31 of the NT Act between the State, LandCorp or another Government Party and any members of the Native Title Agreement Group; or
- (ii) in relation to the withdrawal of an objection under section 26MD(6B) of the NT Act between the State, LandCorp or another Government Party and any members of the Native Title Agreement Group.

Price means the purchase price received by LandCorp for any Sale inclusive of GST.

Sale means the first sale of a parcel of Former UCL or UCL for an Approved Use by LandCorp in the Settlement Area after the date on which the Surrender takes effect under clause 6.2(b) of each Agreement.

UCL has the meaning given in section 3 of the LAA.

- (b) Within 60 Business Days of the settlement of each Sale LandCorp will pay to the Trustee 5% of the Price.
- (c) The Trustee must deposit the moneys received in accordance with clause 10(b) of these Settlement Terms using electronic funds transfer in the relevant ENE Operations Account (as defined in the Trust Deed) of the Regional Corporation for the Agreement Area, or if more than one Regional Corporation and more than one Agreement Area is involved, in the ENE Operations Account of each relevant Regional Corporation in shares to be agreed by LandCorp with the relevant Regional Corporations and, if no agreement is reached, as determined by the Trustee the decision of which is final. If there is no ENE Operations

Account for a Regional Corporation at the relevant time the Trustee must deposit the moneys in the Operations Account pending the relevant ENE Operations Account being established and once established the Trustee must then transfer the moneys to the relevant ENE Operations Account.

- (d) If the State, LandCorp or another Government Party:
 - (i) has a Pre-existing Native Title Agreement with any members of the Native Title Agreement Group which it has entered into prior to the date on which the Surrender takes effect under clause 6.2(b) of each Agreement; and
 - (ii) that Pre-existing Native Title Agreement applies to land or waters to which this clause 10 would otherwise apply,

then the provisions of the Pre-existing Native Title Agreement will prevail over this clause 10.

11. Co-operative Management Agreement

- (a) Within 40 Business Days after appointment of the Regional Corporation by the Trustee, the Conservation and Land Management Executive Body and the Regional Corporation will, unless otherwise agreed in writing, execute the document in the form of or substantially in the form of the document entitled "**Co-operative Management Agreement**" attached to this Agreement at Annexure M to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Co-operative Management Agreement to reflect changing circumstances, and accordingly the Co-operative Management Agreement may be amended by the Conservation and Land Management Executive Body and the relevant Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure M to these Settlement Terms.

12. Joint Management Agreement

- (a) The document entitled "**Joint Management Agreement**" which is referred to in the Co-operative Management Agreement referred to in clause 11 of these Settlement Terms is attached at Annexure N to these Settlement Terms.
- (b) The Parties agree that their intent is that they will put in place:
 - (i) at least one Joint Management Agreement for land and waters in the Conservation Estate in the Agreement Area within five years of the Trust Effective Date; and
 - (ii) unless the parties agree otherwise, at least one further Joint Management Agreement in relation to another part of the Conservation Estate in the Agreement Area within ten years of the Trust Effective Date.

- (c) Unless clause 12(d) to these Settlement Terms applies, the Parties acknowledge and agree that a Joint Management Agreement for a particular part of the Conservation Estate should be in the form of or substantially in the form of the Joint Management Agreement at Annexure N to these Settlement Terms.
- (d) Where the Conservation and Land Management Executive Body and the relevant Regional Corporation agree, the Joint Management Agreement for a particular part of the Conservation Estate may be amended before or after its execution without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure N to these Settlement Terms.

13. Land Access and activities

13.1 Land Access Licence

- (a) The document entitled "**Noongar Regional Corporations Land Access Licence**" attached to this Agreement at Annexure O to these Settlement Terms applies to this clause 13.
- (b) Within 60 Business Days after the appointment of the Regional Corporation by the Trustee, DoL will prepare and submit to the Regional Corporation the Noongar Regional Corporations Land Access Licence for execution. The Regional Corporation must execute and return the Noongar Regional Corporations Land Access Licence to DoL within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the State and the Regional Corporation in writing). DoL will then arrange for execution of the Noongar Regional Corporations Land Access Licence by the Minister for Lands, have it stamped if necessary, and provide a copy of the fully executed (and stamped if necessary) Noongar Regional Corporations Land Access Licence to the Regional Corporation.
- (c) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Regional Corporations Land Access Licence to reflect changing circumstances, and accordingly the Noongar Regional Corporations Land Access Licence may be amended by the Minister for Lands and the Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure O of this Agreement.
- (d) The Parties acknowledge and agree that the Minister for Lands must grant a further Noongar Regional Corporations Land Access Licence to a replacement Regional Corporation in circumstances where the Noongar Regional Corporations Land Access Licence terminates because the former Regional Corporation ceases to exist or to be appointed a Regional Corporation under the Trust Deed.

13.2 No assertion of Noongar Regional Corporations Land Access Licence

- (a) Where any person makes any application under any law for any lawful use of the Licence Area and the Surrounding Area (as those terms are defined in the Noongar Regional Corporations Land Access Licence), or any part thereof, neither a Native Title Agreement Group, SWALSC nor any person claiming under or through either of them may assert the terms of the Noongar Regional Corporations Land Access Licence as the basis of any objection to any such application.
- (b) Nothing in this clause 13.2 precludes a Native Title Agreement Group or SWALSC from making any other objection available to them at law.

13.3 No caveats

- (a) In this clause 13.3, **Encumbrance** means:
 - (i) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
 - (ii) right of set-off, assignment of income, garnishee order or monetary claim;
 - (iii) equity, interest or enforcement order; or
 - (iv) any other right or interest of any third party.
- (b) The Native Title Agreement Group and the Regional Corporation must not lodge a caveat or Encumbrance over any part of the Licence Area to protect any interest or purported interest of the Native Title Agreement Group or the Regional Corporation under or relating to the Noongar Regional Corporations Land Access Licence. If the Native Title Agreement Group or the Regional Corporation lodge any caveat in contravention of this clause, each of them appoints the Director General of the Department of Lands as their attorney for the purpose of executing a withdrawal of caveat.

13.4 Release

- (a) In this clause 13.4:
 - (i) **Indemnified Parties** means the State, the Government Parties, any State Party and all officers, employees, agents, contractors, workmen, licensees, consultants and invitees of any of them and any person entering into the Licence Area with the express or implied authority of any of them.
 - (ii) **Claims** means actions, claims, proceedings, suits, judgements, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand whether based in contract, statute, torts (including negligence), equity, indemnity or otherwise.

- (iii) **Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003* (WA).
 - (iv) **Environmental Harm** has the meaning given by section 3A of the *Environmental Protection Act 1986* (WA).
 - (v) **Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permissions, permits or licences issued there under.
 - (vi) **Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.
 - (vii) **Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
 - (viii) **Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.
 - (ix) **Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986* (WA), which is not authorised under any Law.
- (b) The Native Title Agreement Group and the Regional Corporation release, to the fullest extent permitted by law, the Indemnified Parties from:
- (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Licence Area;
 - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Licence Area at any time throughout the duration of the Land Access Licence whether or not identified in an audit undertaken by the Native Title Agreement Group or the Regional Corporation; and
 - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Native Title Agreement Group or the Regional Corporation,
- directly or indirectly caused by or arising out of or in connection with:
- (iv) the use or enjoyment of the Licence Area or any part of the Licence Area by the Native Title Agreement Group or the Regional Corporation;
 - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Native Title Agreement

Group or the Regional Corporation under the Noongar Regional Corporations Land Access Licence;

- (vi) any Contamination Pollution or Environmental Harm in, on, under or to the Licence Area caused or contributed to by the Native Title Agreement Group or the Regional Corporation;
- (vii) any remediation required in respect of the Licence Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use or enjoyment of the Licence Area by the Native Title Agreement Group or the Regional Corporation;
- (viii) any default by the Native Title Agreement Group or the Regional Corporation in the due and punctual performance of or compliance with any of the conditions of the Noongar Regional Corporations Land Access Licence or any other Law that apply to the exercise of the Native Title Agreement Group or the Regional Corporation's rights in respect of the Licence Area; or
- (ix) any negligent or other tortious act or omission of the Native Title Agreement Group or the Regional Corporation,

except to the extent that such loss or damage is caused or contributed to by the negligence of the Indemnified Parties.

- (c) The release contained in this clause 13.4 continues in full force and effect notwithstanding the expiry or the termination of the Noongar Regional Corporations Land Access Licence for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or the termination of the Noongar Regional Corporations Land Access Licence.

13.5 Public Drinking Water Source Areas

- (a) Before the Deemed Settlement Effective Date or the Settlement Effective Date whichever is earlier, the Minister for Water must make the By-laws to provide for certain customary activities to take place in Public Drinking Water Source Areas.
- (b) As soon as reasonably practicable after the Trust Effective Date, the Minister for Water must:
 - (i) if the Padbury and Mullalyup water reserve or catchment areas are not required for use as emergency drinking water sources after 2016, seek to have abolished the proclamation of those areas as water reserve or catchment areas;
 - (ii) ensure that the DoW advises the Minister on the possibility of de-proclamation of, or removal of access restrictions from the Deep River Water Reserve (WR), Warren River WR, Scotsdale Brook WR, Donnelly River WR and Kent River WR; and

- (iii) if there are other Public Drinking Water Source Areas identified in the future that are not needed for public drinking water supply, seek to have abolished the proclamation of any such areas as water reserve or catchment areas so that they are only subject to DPaW legislation and policy (in DPaW managed areas) with respect to customary purposes.

13.6 Water Corporation

As soon as reasonably practicable after the Trust Effective Date, the Water Corporation, recognising the need and benefit of working with the Noongar community and Regional Corporations in the Agreement Area, will work with the Regional Corporations to identify suitable persons to participate in its existing "National Water Industry Traineeship Program".

14. Housing Program

- (a) In this clause 14:

Housing Properties means the properties the general particulars of which are set out in Part 2 of Annexure P to these Settlement Terms and any 'like to like' substitutes of those properties in accordance with the terms of the Property Transfer Deed.

Property Transfer Deed means the document attached at Part 1 of Annexure P to these Settlement Terms.

Funding Agreement means the document attached at Annexure Q to these Settlement Terms.

- (b) Subject to and in accordance with the terms of the Property Transfer Deed the Housing Authority agrees to transfer 121 Housing Properties to the Land Sub.
- (c) Within 60 Business Days after the later of the Trust Effective Date and the incorporation of the Land Sub, the Housing Authority will prepare and submit to the Trustee the Property Transfer Deed and Funding Agreement for execution. The Trustee must execute the Property Transfer Deed and Funding Agreement, cause them to be executed by the Land Sub, and return the Property Transfer Deed and Funding Agreement to the Housing Authority within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the Trustee and the Housing Authority in writing). The Housing Authority will then itself execute the Property Transfer Deed and Funding Agreement, have them stamped if necessary, and provide a copy of the fully executed (and stamped if necessary) Property Transfer Deed and Funding Agreement to the Trustee.
- (d) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Property Transfer Deed and Funding Agreement to reflect changing circumstances, and accordingly the Property Transfer Deed and Funding Agreement may be amended by the Housing Authority, the Trustee and the Land Sub without reference to the other Parties to this Agreement and any such amendments may be made

without the need to simultaneously amend the documents attached at Annexure P and Annexure Q to these Settlement Terms.

15. Capital Works Program

The State will provide to the Trust:

- (a) \$6,500,000 of funding (**CW Funding**) over a two year period (which may be in instalments as determined by the State), commencing on the date being 60 Business Days after the Trust Effective Date, to establish administrative offices for the Regional Corporations and the Central Services Corporation subject to the following terms and conditions:
 - (i) all offers made for a potential property must include a condition that *"This offer is subject to the written approval of the Trustee of the Noongar Boodja Trust and the Department of the Premier and Cabinet within 60 days of acceptance."*;
 - (ii) any property must be owned or leased by the Land Sub;
 - (iii) approval for release of the CW Funding will require (for each Regional Corporation and the Central Services Corporation) the submission of a business case from the Trustee to the State - which must be submitted within 24 months of the Trust Effective Date (or such later date as may be agreed in writing by the State and the Trustee) in a standard format template to be provided by Building, Management and Works division of the Department of Finance (**BMW**) which must include as a minimum:
 - A. the address of the property;
 - B. the cost of the property - to construct, purchase and refurbish or to lease and fit out;
 - C. any stamp duty and other disbursements payable;
 - D. a copy of the Offer and Acceptance document for the property;
 - E. current floor plan of the property and, if applicable, any proposed refurbishments required;
 - F. the relevant Corporation's staffing structure;
 - G. details of the programs and services that will be undertaken at the property;
 - H. suitability of the property (or proposed property) in terms of size, location and standard of services for current and future needs indicating value for money;
 - I. an asset management plan including provisions for life of the assets costs within the relevant Corporation's budget; and

- J. for an existing property, a building condition report and building compliance assessment by an appropriately qualified provider,

(Business Case);

- (iv) assessment of the Business Case for each Regional Corporation and the Central Services Corporation's office accommodation will be undertaken on behalf of the State by BMW which will make a recommendation to the State. The assessment will include obtaining a market valuation by the State Valuation Services;
- (v) if either the State or BMW requests further information from the Trustee, that information must be provided within 5 Business Days of receipt of the request;
- (vi) if the State is satisfied that the Business Case:
 - A. has included all of the relevant information specified in clause 15(a)(iii) of these Settlement Terms; and
 - B. demonstrates that the properties (or proposed properties) will provide the Noongar community with value for money and suitable facilities to provide programs and services as identified in the relevant Corporation's strategic plan,it will provide written confirmation to the Trustee within 20 Business Days of receipt of the Business Case that the transaction may proceed;
- (vii) the State's decision is final;
- (viii) it is acknowledged that different amounts may be allocated to each Regional Corporation and the Central Services Corporation;
- (ix) the State will engage a property consultant to assist it in the assessment of the Business Case the costs of which will be paid out of the CW Funding;
- (x) the Trustee must submit to the State tax invoices for any amounts to be paid out of the CW Funding via an Electronic Funds Transfer to a nominated bank account operated by the Trustee. Each tax invoice must set out in reasonable detail what the funds are to be used for;
- (xi) in the case of leasehold property, the amount to be paid will be the capitalised rent as agreed between the State and the Trustee and failing agreement as determined by the State;
- (xii) the State must transfer the relevant funds into the nominated Trust bank account within 10 Business Days of receiving the tax invoices from the Trustee; and

- (xiii) the Trustee must provide the State with a copy of any Certificate of Title or a copy of any lease for each property acquired or leased within 20 Business Days of the completion of the purchase or lease as the case may be.

If at the expiry of the two year period referred to in this clause 15(a), the CW Funding has not been fully expended the State in its discretion may elect to roll over the remaining moneys for a 3rd year or terminate the CW Funding.

- (b) \$5,300,000 (with up to \$300,000 to be allocated for development of a preliminary business case) and up to 2 hectares of land in the Perth metropolitan area towards the development of a "Noongar Cultural Centre", which is to be owned by the Land Sub and will be conditional upon external funding (i.e. Commonwealth Government and/or private sector), to meet the Centre's full construction costs and ongoing maintenance and otherwise on terms and conditions (including as to timing) to be agreed by the State, the Trustee, the Regional Corporations and the Central Services Corporation.

16. Noongar Economic Participation Framework

- (a) The State and the Native Title Agreement Groups will as soon as reasonably practicable after the Trust Effective Date give effect to the document entitled "**Noongar Economic Participation Framework**" attached at Annexure S to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Economic Participation Framework to reflect changing circumstances, and that the Noongar Economic Participation Framework may be amended by the State and the Central Services Corporation (after consultation with the Regional Corporations) without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure S to these Settlement Terms.

17. Community Development

- (a) The State and the Native Title Agreement Groups will as soon as reasonably practicable after the Trust Effective Date give effect to the document entitled "**Community Development Framework**" attached to this Agreement at Annexure T to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Community Development Framework to reflect changing circumstances, and that the Community Development Framework may be amended by the State and the Central Services Corporation (after consultation with the Regional Corporations) without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure T to these Settlement Terms.

18. Recognition and protection of Aboriginal Heritage

18.1 NSHAs

- (a) This clause 18 operates from the Execution Date.
- (b) In this clause 18:
 - (i) **Aboriginal Heritage Agreement** means an agreement between a Proponent and a Native Title Agreement Group (or, following an assignment under clause 8 of an Agreement, a Regional Corporation) concerning Aboriginal Heritage Surveys in the relevant Agreement Area. To avoid doubt, the NSHA is a form of Aboriginal Heritage Agreement.
 - (ii) **Aboriginal Heritage Survey** means a survey conducted to assess the potential impacts of an Activity on Aboriginal Heritage, whether or not conducted under an Aboriginal Heritage Agreement and may include anthropological, ethnographic or archaeological investigations as appropriate.
 - (iii) **Aboriginal Object** means an object to which the AHA applies by operation of section 6 of the AHA.
 - (iv) **Aboriginal Site** means a place to which the AHA applies by operation of section 5 of the AHA, including sites that are not on the Aboriginal Heritage Register established and maintained under section 38 of the AHA.
 - (v) **Access Authority** means:
 - A. a miner's right or a permit under the Mining Act;
 - B. a special prospecting authority under section 105 of the PGER Act; and
 - C. an access authority under section 106 of the PGER Act.
 - (vi) **Activity** means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).
 - (vii) **AHA** means the *Aboriginal Heritage Act 1972* (WA).
 - (viii) **Mining Tenement** has the meaning given in the Mining Act.
 - (ix) **Mining Act** means the *Mining Act 1978* (WA).
 - (x) **PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).
 - (xi) **PGER Tenement** means a permit, drilling reservation, retention lease, production licence, petroleum title, and geothermal title granted under the PGER Act.

- (xii) **Proponent** means the registered holder, other than any Government Party, at the relevant time or from time to time as the case may be of a Mining Tenement, a PGER Tenement or an Access Authority granted in respect to any part of the Agreement Area after the Execution Date.
- (c) The State and the Government Parties agree that they will, when conducting Aboriginal Heritage Surveys in an Agreement Area (and when required), enter into a NSHA with SWALSC on behalf of the relevant Native Title Agreement Group or, following an assignment under clause 8 of the relevant Agreement, with the relevant Regional Corporation.
- (d) The State and the Native Title Agreement Group acknowledge their intention that Government Proponents when conducting Aboriginal Heritage Surveys in an Agreement Area (and when required), also enter into Aboriginal Heritage Agreements in the form of an NSHA with SWALSC on behalf of the relevant Native Title Agreement Group or, following an assignment under clause 8 of the relevant Agreement, with the relevant Regional Corporation.
- (e) In respect of the grant to a Proponent of a Mining Tenement, a PGER Tenement or of an Access Authority, the Minister for Mines and Petroleum in granting such tenure must impose the following condition on such tenure (subject to any necessary modifications of terminology as required for the relevant tenure):

*"As the [XX ILUA)] (**relevant ILUA**) applies to this [type of tenement. e.g. exploration licence], the [tenement holder, e.g. licensee] must before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the relevant ILUA:*

- (i) *subject to paragraph (ii), execute and enter into in respect of this [type of tenement] an Aboriginal Heritage Agreement (as defined in the relevant ILUA) with the Native Title Agreement Group or Regional Corporation (as the case requires) for the relevant ILUA on terms and conditions agreed by the [tenement holder, e.g. licensee] and the Native Title Agreement Group or Regional Corporation (as the case may be) for the relevant ILUA (**the Parties**) or, failing such agreement being reached between the Parties within 20 Business Days of the commencement of negotiations, execute and enter into a NSHA subject only to any necessary modifications in terminology required for the tenure;*
- (ii) *where:*
 - A. *the Parties have been unable to reach agreement on the terms and conditions of an Aboriginal Heritage Agreement under paragraph (i); and*
 - B. *the [tenement holder] executes a NSHA (subject only to any necessary modifications in terminology required for the tenure); and*

C. *the [tenement holder] provides a copy of the NSHA to the Native Title Agreement Group or Regional Corporation (as the case requires) for the relevant ILUA for execution;*

if the Native Title Agreement Group or Regional Corporation (as the case requires) does not execute the NSHA and provide a copy of the executed NSHA to the [tenement holder] within 20 Business Days of receipt of the NSHA, the requirements of paragraph (i) do not apply; and

(iii) *provide to the Department of Mines and Petroleum a statutory declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form contained in Annexure U to the Settlement Terms (as defined in the relevant ILUA), as evidence that the [tenement holder] has complied with the requirements of paragraph (i) of this condition or that paragraph (ii) of this condition applies."*

(f) A Native Title Agreement Group (or, once assigned under clause 8 of an Agreement, a Regional Corporation) will use best endeavours to execute and provide to the Government Party or Proponent as the case may be a copy of the executed:

(i) NSHA with any Government Party; or

(ii) Aboriginal Heritage Agreement with any Proponent or, failing agreement being reached between those parties within 20 Business Days of the commencement of negotiations on the terms and conditions of the Aboriginal Heritage Agreement, a NSHA subject only to any necessary modifications in terminology required for the tenure,

within 20 Business Days of receipt of an Aboriginal Heritage Agreement or NSHA executed by a Government Party or Proponent for the purpose of conducting Aboriginal Heritage Surveys in their Agreement Area.

(g) The Native Title Agreement Groups authorise SWALSC and, once assigned to the Regional Corporation under clause 8 of the relevant Agreement, the Regional Corporations to execute any Aboriginal Heritage Agreement or NSHA on their behalf.

(h) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the NSHA to reflect changing circumstances, and accordingly the NSHA may be amended by the State and the Regional Corporations or, if there are no Regional Corporations at the relevant time, by the State and SWALSC without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure C to these Settlement Terms.

18.2 Noongar Heritage Partnership Agreement

- (a) Within 40 Business Days after appointment of the Regional Corporation by the Trustee, the Minister for Aboriginal Affairs and the Regional Corporation will, unless otherwise agreed in writing, execute a document in the form of or substantially in the form of the document entitled **"Noongar Heritage Partnership Agreement"** that is attached at Annexure V to these Settlement Terms.
- (b) The Parties acknowledge and agree that it may be necessary over time to amend the terms of the Noongar Heritage Partnership Agreement to reflect changing circumstances, and accordingly the Noongar Heritage Partnership Agreement may be amended by the Minister for Aboriginal Affairs and the relevant Regional Corporation without reference to the other Parties to this Agreement and any such amendments may be made without the need to simultaneously amend the document attached at Annexure V to these Settlement Terms.

19. Review and variation of this Agreement

19.1 General principle

The Parties recognise the importance of engaging in regular dialogue regarding the various matters arising under the Agreements to promote their effective implementation and, where appropriate, their variation, to meet their shared and individual objectives in a spirit of partnership and of building long-term relationships.

19.2 Review Committee

- (a) The Parties will establish a Review Committee comprising representatives of the State, the Government Parties, the Regional Corporations and the Central Services Corporation as follows:
 - (i) 6 representatives nominated by the State and Government Parties;
 - (ii) 2 representatives nominated by each Regional Corporation (or, pending the establishment of each Regional Corporation, by each of the Representative Parties);
 - (iii) 2 representatives nominated by the Central Services Corporation; and
 - (iv) 1 representative of the Trustee.
- (b) The Review Committee will maintain minutes of its meetings.
- (c) The quorum for a meeting of the Committee will be a simple majority of people entitled to attend, and must include at least one representative from each of the State and the Government Parties, each of the Regional Corporations (or, as the case may be, the Representative Parties), the Central Services Corporation and the Trustee.

19.3 Purpose of review

The Review Committee will meet on or about the 3rd anniversary of the Trust Effective Date, and every 5 years thereafter, to review the implementation of the Agreements, and in particular to consider any:

- (a) recommendations made by the Review Committee in previous years, including recommendations concerning proposed amendments to the Agreements;
- (b) changes to the law that directly or indirectly affect the Agreements;
- (c) submissions made by the Regional Corporations and the Central Services Corporation, the State, a Government Party or the Trustee concerning proposed variations of the Agreements; and
- (d) variations of the Agreements necessitated by changes in political or economic circumstances.

19.4 Decisions not binding

Recommendations and decisions of the Review Committee are not binding on the Parties.

19.5 Variation

- (a) Subject to clause 19.5(e), each of the Agreements may be varied, but only by an agreement in writing that is executed by or on behalf of all of the Parties to it.
- (b) If an Agreement has been Registered, the Parties to it each agree that they will not, without the written consent of each of the other Parties to it first had and received, make any application to revoke or vary the Registration of the Agreement.
- (c) If the Parties to an Agreement that has been Registered agree to vary any of the details of that Agreement that are included on the ILUA Register (other than the details required by section 199B(1)(b) of the NT Act), the agreed variation will only take effect upon the entry of those varied details on the ILUA Register.
- (d) If the Parties to an Agreement that has been Registered agree to vary that Agreement, then each of those Parties also agrees to do all things necessary to vary the details of the Agreement that are included on the ILUA Register including, if necessary, having the Agreement removed from the ILUA Register and replaced with a varied Agreement.
- (e) Except as expressly provided in these Settlement Terms, these Settlement Terms may only be varied by an agreement in writing that is executed by or on behalf of:
 - (i) the State;
 - (ii) each of the Government Parties;
 - (iii) in relation to each Agreement:

- A. the Regional Corporation, if there has been an assignment to it under clause 8 of an Agreement; or
 - B. otherwise, the relevant Native Title Agreement Group; and
- (iv) if the variation is to occur:
 - A. before the establishment and appointment of the Central Services Corporation, SWALSC; or
 - B. after the establishment and appointment of the Central Services Corporation:
 - 1) if the appointment of the Central Services Corporation is in effect at the material time, the Central Services Corporation; or
 - 2) otherwise, the Trustee.

20. Transition Principles

- (a) Subject to clause 20(b) of these Settlement Terms, the State and SWALSC will as soon as reasonably practicable after the Execution Date give effect to the document entitled "**Transition Principles**" attached at Annexure Y to these Settlement Terms.
- (b) The obligations in clause 20(a) are subject to the State and SWALSC each receiving adequate funding for the implementation of the Transition Principles.

21. State, Government Parties and State Parties not liable for acts and omissions of the Trustee

- (a) The Trustee is solely responsible for administration and operation of the Trust.
- (b) The State, the Government Parties and each State Party are under no duty, liability or obligation to the Native Title Agreement Groups, SWALSC, the Regional Corporations, the Central Services Corporation or any person who is, or may be, entitled to benefit from the Trust, whether arising expressly or impliedly under any of the Agreements, these Settlement Terms, the Trust, by statute, at common law or in equity, in connection with or arising out of the administration and operation of the Trust by the Trustee.
- (c) If any person makes a claim for compensation or otherwise that is inconsistent with clause 21(b) of these Settlement Terms, the State, each Government Party and each State Party may each plead the terms of this clause 21 in bar of that claim.

22. Goods and Services Tax

22.1 General

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

22.2 GST payable

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this Agreement (whether that amount is specified or can be calculated in accordance with this Agreement), it does not include GST and must be increased by the GST Rate. The Party making a Taxable Supply under this Agreement must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act.
- (b) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this Agreement, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (c) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

23. Force Majeure and Aboriginal Cultural Business

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this Agreement 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) sufficiently 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 Agreement will 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 Agreement 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 Parties as a result of its failure to carry out its obligations under this Agreement.