

## Annexure N

### Joint Management Agreement

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**THIS AGREEMENT** is made the                      day of                      2013.

**BETWEEN**

**THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS**



- (b) The Joint Management Body is comprised of [insert no.] Representative Members, including up to six members nominated by the Corporation in accordance with clause 4.1.

### **3.2. Decisions of the Joint Management Body**

- (a) For the purposes of sections 33(1) and 33(3) of the CALM Act, the CEO shall take into account advice given by the Joint Management Body and shall not unreasonably fail to give effect to a management decision of the Joint Management Body, where that advice is not inconsistent with the CALM Act, the Wildlife Conservation Act, any regulations made under those Acts and the Management Plans.
- (b) Should the CEO not follow the advice, or implement a management decision, of the Joint Management Body, the CEO shall provide the Joint Management Body with brief written reasons why the advice was not followed or the management decision was not implemented.
- (c) Where the advice of the Joint Management Body in relation to the management of [insert name of Park etc] is inconsistent with the advice which has been given by the Co-operative Management Committee in respect of the [Park] the advice of the Joint Management Body shall be preferred to the extent of the inconsistency.

## **4. MEMBERSHIP OF THE JOINT MANAGEMENT BODY**

### **4.1. Nomination of Representative and Alternate Members**

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1 and thereafter, at the last meeting before the expiry of each three year term referred to in (c), for the purposes of section 56A(6) of the CALM Act, the Parties shall each nominate persons to be Representative Members of the Joint Management Body and Alternate Members of the Joint Management Body in the following manner:
  - (i) The Corporation shall nominate:
    - a. [up to six] persons to be Representative Members of the Joint Management Body; and
    - b. [up to six.] persons to be Alternate Members of the Joint Management Body; and
  - (ii) the CEO shall nominate:
    - a. [up to six] persons to be Representative Members of the

- (d) Before the first meeting of the Joint Management Body, each Party shall give to the other Party, written notice, in accordance with clause 24, of the nominated Representative Members and Alternate Members.

**4.2. Alternate Representative Members**

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the Corporation is temporarily unable to attend the meeting by reason of

- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
  - (i) If the Member was nominated by the Corporation, the Corporation shall nominate the new Member.
  - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
  - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

#### **4.6. Vacancy of Chairperson**

- (a) The position of Chairperson becomes vacant if he or she:
  - (i) resigns their position by notice delivered to the CEO; or
  - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 24; or
  - (iii) is removed from the position by the Joint Management Body under clause 4.7 or 4.8; or
  - (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of paragraph (a), a new Chairperson shall be elected in accordance with clause 4.3 for the remainder of the twelve month term.

#### **4.7. Removal for bankruptcy**

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member who is:
  - (i) according to the *Interpretation Act 1984* (WA) section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (ii) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

shall at the first meeting after he or she becomes aware of that fact, disclose it to the Representative Members (**Remaining Representative Members**) who are at that meeting (



#### **4.10. Invitation to attend a meeting of the Joint Management Body**

- (a) The Joint Management Body or the Chairperson (the inviting party) may invite an organisation or individual to attend a Joint Management Body meeting to provide advice on any issue the Joint Management Body deems necessary.
- (b) The inviting party has absolute discretion to determine at which meeting, or part of a meeting its invitee shall be present.
- (c) Invitees do not have a right to vote at a Joint Management Body meeting.

### **5. CONVENING MEETINGS**

#### **5.1. First meeting**

Within 60 days of the Commencement Date, the CEO shall convene the first meeting of the Joint Management Body, to be held at a place agreed to by the Parties.

#### **5.2. Subsequent meetings**

- (a) Subject to paragraph 5.3(b) the CEO shall be responsible for convening meetings.
- (b) At the first meeting, or at any subsequent meeting, the Joint Management Body shall decide the venue for the subsequent meeting or meetings.

#### **5.3. Frequency**

- (a) The Joint Management Body shall meet at least three times per year.
- (b) The Joint Management Body may meet more often in the following circumstances:
  - (i) the Corporation's CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.; or
  - (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.

#### **5.4. Administrative responsibility**

The CEO shall provide administrative support for the Joint Management Body, including preparing and circulating meeting notices, agendas and papers, and the Corporation may assist with that support.

### **6. PROCEDURE**

The Joint Management Body may adopt such further rules and procedures from time to time as it considers necessary, but if there is any inconsistency between those rules and procedures and this Agreement, this Agreement prevails.

### **7. SUB-COMMITTEES**

The Joint Management Body may appoint sub-committees (comprising any Member and any other persons) to investigate, consider and advise, or to make recommendations to, the Joint Management

**8. QUORUM**

[insert number] Representative Members constitute a quorum, comprising at least [x] Representative Member nominated by the Corporation and at least [x] Representative Member nominated by the CEO.

**9. V**

- (f) If the CEO and the Corporation's CEO are unable to agree what course of action to take under paragraph 10.1(c), they shall refer the Dispute to a

**10.4. Obligations continue**

If a Dispute is being dealt with under any part of this clause 10, the Joint Management Body shall, pending the making of a decision on the Dispute, continue to perform its obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision on the Dispute.

**11. REVIEW**

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
  - (i) when a substitute management plan for the Management Plan is





the Party Dispute except if the Party agrees in advance in writing to be so bound.

- (c) Any information or documents disclosed by a Party under this clause 15.4:
  - (i) shall be kept confidential; and
  - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party shall pay its own costs of complying with this clause 15.4. The Parties shall equally pay the costs of any mediator.
- (e) The Parties shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Party Dispute. If the Parties fail to achieve a resolution of the Party Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to paragraph (f)) commencing legal proceedings.
- (f) If a Party breaches clauses 15.2, 15.3 or 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before



**16.6. No waiver or transfer of intellectual property rights**

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

**17. TERM**

**20. ACTS BY STATE NO FETTER UPON DISCRETION**

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the statute.

**21. NO ASSIGNMENT WITHOUT CONSENT**

The Corporation may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

**22. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS**

- (a) In the event that a Party becomes wholly or partly unable to perform any of its obligations under the Agreement because of Force Majeure or Aboriginal Cultural Business, then the Agreement shall nevertheless continue and remain in force and effect but that Party shall not be in default for as long as it continues to be prevented or delayed by such Force Majeure or Aboriginal Cultural Business, and the time within which such a Party is required to perform any work or satisfy any obligation shall be extended by a period equivalent to that during which such prevention or delay continues, provided that:
- (i) the cause of the Force Majeure or Aboriginal Cultural Business as far as possible shall be remedied as soon as is reasonably practicable by the affected Party; and
  - (ii) no Party shall be required to

Agreement until the Force Majeure or Aboriginal Cultural Business has ceased.

**23. GENERAL**

**23.1. Entire agreement**

The Agreement constitutes the entire agreement between the Parties as to its subject matter and, in relation to that



- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

**Forest Management Regulations** means the *Forest Management Regulations 1993*.

**ILUA** means the Indigenous Land Use Agreement entered into by the State and others and the [INSERT NAME] Group as part of the South West Native Title Settlement which was entered on to the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the *Native Title Act 1993*(Cth).

**Insolvency Event** means where any one or more of the following occurs to the Corporation:

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

**Joint Management Body** means the body established in clause 2.

**Land Partnership Fund** means the fund established and administered by the Department of the Premier and Cabinet pursuant to the South West Native Title Settlement for the purpose of facilitating the implementation of the ILUAs including making provision for certain funding for joint management arrangements.

**LEADR** means LEADR, a company limited by guarantee, ACN: 008 651 232.

**Management Plan** means the management plan approved under section 60 of the CALM Act in respect of the [insert name of Park].

**Marine Parks and Reserves Authority** means the body established by section 26A of the CALM Act.

**Member** means a Representative Member or an Alternate Member.

**Minister** means the Minister to whom the administration of the Conservation and Land Management Act is committed, which for the time being is the Minister for Environment.

**Minister for Lands** means the body corporate continued under section 7 of the Land Administration Act.

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

**Noongar Boodja Trust** means the trust established pursuant to the Noongar Boodja Trust Deed as required by the ILUA.

**Party** means a party to this Agreement.

**Replacement Corporation** means a replacement corporation appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed.

**Representative Member** means a person specified under clause 2 and nominated under clause 4.1.

**South West Native Title Settlement** means the six regional ILUAs under which the native title claims in relation to those areas of the south west of Western Australia

- (i) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (j) where the day on or by which a thing is required to be done is not a Business Day that thing shall be done on or by the succeeding Business Day;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;
- (l) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (m) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (n) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (p) "including" means "including, but not limited to".

EXECUTION

Executed by the Parties as an agreement.

THE COMMON SEAL of )  
The CONSERVATION AND )  
LAND MANAGEMENT )  
EXECUTIVE BODY a body )  
corporate established under )  
section 36 of the Conservation )  
and Land Management Act )  
was affixed hereto in the presence of )

Signature of Chief Executive Officer

Signature of witness

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

**SIGNED** by the **CHIEF EXECUTIVE** )

	_____
_____	_____
_____	
_____	
_____	_____

**SCHEDULE 1.      [insert name of Park]**

**SCHEDULE 2.      Map of [insert name of Park etc]**