

**2. DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

In this deed, unless the contrary intention appears:

*Aboriginal Development Package* means a deed of agreement between the MG Corporation and a Developing Party which addresses each of the matters in Schedule 3

*Aboriginal Development Undertaking* means a deed between a Proponent and the

Area and the Packsaddle Acquisition Area to be used for the extraction of raw materials; and

- (b) any additional areas to be used for the extraction of raw materials within the

*Additional Section 29 Notice* means the notice of intention to take interests including native title rights and interests pursuant to section 29 of the NTA and section 170 of

**Buffer Freehold Area** means the Buffer Original Freehold Area and any Buffer

Additional Freehold Areas.

RECOGNITION OF THE BUFFER ORIGINAL FREEHOLD AREA AND BUFFER

**Buffer Reserve** has the meaning in clause 50.2.

**Business Day** means any day other than a Saturday, Sunday or public holiday observed in the State of Western Australia.

*Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord)*  
means a deed dated [@@@] on or about 6 October 2005 entered into by the State of

*EDU Budget* has the meaning in clause 22.8(2)(b);

*EDU Payment* has the meaning in clause 22.7(1)(b);

*EDU Payment Purpose* means the expenditure of moneys for the costs associated

with operating the Economic Development Unit and the administration of MG Charitable Trustees Pty Ltd, including payment of fees to the Independent Directors of MG Charitable Trustees Pty Ltd and any other relevant expenses.

*Election Notice* means a written notice in response to an option within a Development Notice, electing the Town Lots to be transferred to the MG Corporation under that option.

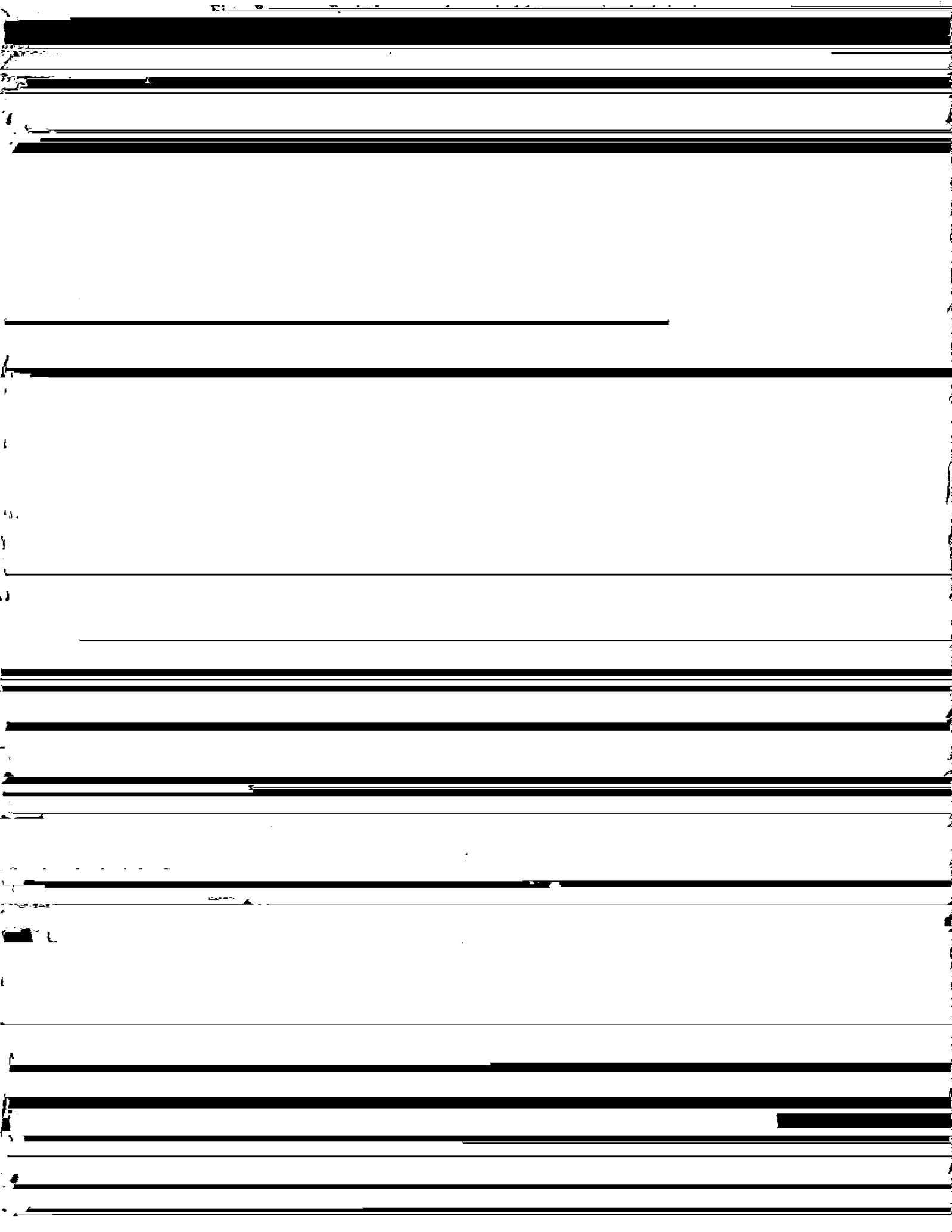
*Election and Valuation Notice* means a written notice, in response to a Development Notice, specifying:

- (a) Town Lots to be transferred to the MG Corporation; and
- (b) in respect of those Town Lots for which the MG Corporation considers the List Price is not the Market Value ("*Disputed Town Lots*"):
  - (i) the MG Corporation's estimate of the Market Value of the Town Lots; and
  - (ii) the reasons why the MG Corporation considers the List Price is not the Market Value.

*EME* means an Environmental Management Entity being a body incorporated in

***Encumbrances*** means any:

- (a) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power to retain title);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) personal equity, legal or equitable interest or writ of execution; or
- (d) other right or interest of any Party other than the registered proprietor or lessee  
(as the case may be) of the land \_\_\_\_\_



IIIA (Quasi-Conservable) Area means the area subject to any Provisions





- (b) has expertise (whether by qualification or experience) in one or more of the following areas:
  - (i) financial management;
  - (ii) legal practice;
  - (iii) accounting;
  - (iv) business development; or
  - (v) community development.

*Independent Expert* means a person who:

- (a) would be considered by a reasonable person to be independent of the State, the

- (b) has at least 5 years recent experience in accounting, economics, business

*Kunturwa, Additional 20 Acquisition Area means:*

(a) the contents of lot 711 on Deposited Plan 40694 (not including the Government

Land Acquisition Area (about 11.5 hectares); and

(b) the following lots or part lots on Deposited Plan 40691 (about 127 hectares):



**Livistona Area** means the area (approximately 70,050 hectares) as generally depicted on Map 8 in Schedule 2.

**Lot** has the meaning given to that term under the *Town Planning and Development Act 1928* (WA).

**Lot Payment** means the sum of money equal to 5% of the Lot Payment Gross Amount.

**Lot Payment Advice** means a written statement containing:

- (a) a copy of the registered transfer form for a Town Lot; and
- (b) the date upon which the Developing Party and the Third Party Purchaser entered into a legally enforceable contract for the sale of the Town Lot; and
- (c) if the Developing Party considers that the Sale Price is less than the Market Value of the Town Lot, then a statement to that effect and the Developing

Party's estimate of the Market Value of the Town Lot

**Lot Payment Gross Amount** means:

- (a) the Sale Price of a Town Lot, less GST; or
- (b) if the Developing Party considers that the Sale Price of a Town Lot is less than

such on Maps 1A in Schedule 2.

*Map 1A in Schedule 2 is a map of the part of lot 710 on Deposited Plan 40697 (Sheet*

*Martinez Other Area* means those parts of the Martinez Development Area to be

nominated by the State to the MG Corporation in accordance with clause 32.5 as required for:

- (a) residential, rural residential, commercial or industrial purposes; and
- (b) irrigation, drainage, road and power infrastructure and flood protection levies ancillary to or associated with residential, rural residential, commercial or industrial Developed Lots.

(a) MG#1 Native Title Holders and, where the context requires, the MG#1 PBC;  
and

(b) the MG#4 Native Title Claim Group and any other persons who hold native

title in the MG#4 Claim Area.

At MG#4 Native Title Claim Group and any other persons who hold native



*Ord West Bank Acquisition Area* means part of lot 1013 (about 168 hectares) and

Deposited Plan 40683 to the west of the Ord River, as generally depicted on Map 1 in

Schedule 2.

*Ord West Bank Buffer Area* means:

- (a) Ord West Bank Special Buffer Area A, Ord West Bank Special Buffer Area B and Old Station Billabong Buffer Area; and

**Packsaddle Freehold Area** means approximately 774 hectares of land (not including the Packsaddle Creek Reserve Area nor Jimbilum, Yirrallelem 1 and Yirrallelem 2 GI As) as generally depicted on Map 10 in Schedule 2.

**Packsaddle Freehold ILUA Area** means that part of the Packsaddle Freehold Area which is outside the Packsaddle Acquisition Area, as depicted on Map 10 in Schedule 2.

**Packsaddle Road Area** means the land and waters depicted as such on Map 10 in Schedule 2.

**Packsaddle Swamp Area** means Lot 959 on Deposited Plan 31611 and excludes any infrastructure established prior to the Execution Date within the area depicted on Map 8 Schedule 2.

infrastructure established prior to the Execution Date within the area depicted on Map 8 Schedule 2.

- (d) the Ord West Bank Development Area for agriculture; or
- (e) the Kununurra Additional Acquisition Area for residential, commercial or industrial purposes,

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*Quarrying Future Act* means a lease, licence, permit or authority to mine, extract or explore for soil, limestone, rock, gravel, shale (other than oil shale), sand (other than mineral sand, silica sand or garnet sand), clay (other than kaolin, bentonite, ~~perlite or montmorillonite~~) or ~~chingle~~ (including river chingle)

required for a public work within the meaning of that term in the *Public Works Act 1902* (WA) or for government or public purposes.

irrigation infrastructure and, where appropriate, power but does not include any lot nominated by the State or shown on an approved plan of subdivision to be required for a public work within the meaning of that term in the *Public Works Act 1902* (WA) or for government or public purposes.

**State Contribution** has the meaning in clause 26.6.

**State Contribution Period** means the period of time commencing on the Satisfaction Date and ending:

- (a) 9 years after the Satisfaction Date; or
- (b) if MGCT Suspension Notices have been issued then 9 years after the Satisfaction Date plus the aggregate of the periods during which the MGCT



- (4) a reference to associated nurseries includes nurseries ancillary or associated

with the stated purposes including but not limited to irrigation, drainage, road

and power infrastructure, flood protection levies, provision of construction materials and land for the management of biodiversity and protection of Aboriginal heritage;

- (5) a reference to commercial purposes includes tourism, and a reference to

- (6) the singular includes the plural, and vice versa;

- (7) the word person includes a firm, body corporate, statutory corporation, an unincorporated association or an authority or government department or agent of the State and a reference to a person includes a reference to a person's ~~executors administrators successors substitutes (including but not limited to~~

(2) public works as defined in the Public Works Act 1902 (PWA), or

(3) the development and use of the land for that purpose.

3. PERFORMANCE AND BREACH

~~Notwithstanding any reference in this deed to an obligation that the State must do an act or ensure that an act is done, the Parties acknowledge and agree that:~~

*clause 21 1*

3.1 **No fetter on statutory powers of discretions**

Notwithstanding any reference in this deed to an obligation that the State must do an act or ensure that an act is done, the Parties acknowledge and agree that:

- (1) nothing in this deed can fetter or control the exercise by any person (including a Minister of the Crown) of a statutory power or discretion otherwise than in



- (b) except in the circumstances referred to in clause 3.3(1)(c)(i), the MG#1 PBC, the MG#4 Claimants and the MG Corporation shall not bring any proceedings challenging any transfer or intended transfer of a Developed Lot, or Serviced Farm Lot or Undeveloped Town Land (whether by way of declaration, injunction or otherwise) and this clause 2.2 may be

[REDACTED]



**5. VARIATION**

**5.1 Variation by all Parties**

~~Subject to clause 5.2, this deed may only be varied by a deed executed by all the~~

Parties

**5.2 Variation of Part 4**

- (1) Without limiting clause 5.1, Part 4 of this deed (including any schedules referred to in Part 4 and any corresponding definitions in clause 2.1 insofar as they apply to Part 4), other than Part 4 Division 4D (dealing with CPC Provisions) and clause 38.3 (dealing with Lease to Baines River) may be varied by a deed executed by the State, LandCorp, the Conservation Commission, MG#1 PBC and the MG#4 Claimants.
- (2) Clause 54 (dealing with CPC Obligations and Benefits) except clause 54.2 may be varied by a deed executed by the CPC Parties and the State.
- (3) Clauses 54.2 and 55 (dealing with CPC commitments), may be varied by a deed executed by the State, the CPC Parties, MG#1 PBC and the MG#4 Claimants.

**6. TERMINATION**

**6.1 No termination of deed**

Subject to the following subclauses of this clause 6, no Party is entitled to terminate this deed for any reason, including by reason of any breach or repudiation of this deed by any other Party.

**6.2 Agreement to terminate deed**

- (1) This deed may be terminated by agreement in writing of the State, LandCorp, Conservation Commission, the CPC Parties, the Green Swamp Parties, Baines River, the MG#1 PBC and the MG#4 Claimants.
- (2) Unless otherwise agreed in writing by all Parties, if this deed is terminated in accordance with clause 6.2(1) then:

(b) all rights and obligations which accrued before or on the date of termination of the deed shall remain binding and enforceable by or against each Party (as the case may be)

(b) all rights and obligations which accrued before or on the date of termination of the deed shall remain binding and enforceable by or against each Party (as the case may be)

7. AUTHORISATION AND WARRANTIES

7.1 Warranty by MG#1 PBC

(1) The MG#1 PBC warrants that:

(a) all necessary authorisations have been obtained from the MG#1 Native Title Holders to enter into this deed of grant.

MG#1 Native Title Holders; and

(b) this deed is valid, binding and enforceable in accordance with its terms against the MG#1 PBC and the MG#1 Native Title Holders.

(2) The MG#1 PBC acknowledges and agrees that, but for the representations and warranties in clause 7.1(1) made by the MG#1 Native Title Holders,

authority or body corporate established under a law of the State (other

**8. INDEMNITY AND RELEASE IN RESPECT OF OTHER NATIVE TITLE HOLDERS**

**8.1 Indemnity**

(1) If:

the determination of native title under which native title is determined to exist or to have existed in the ILUA Area;

determination of native title under which native title is determined to exist or to have existed in the ILUA Area; and

(b) the native title holders are, or include, persons other than the MG#1

Native Title Holders and the MG#1 Native Title Claim Group

Conservation Commission or LandCorp (as the case may be) under this deed.

- (4) To the extent that the State, the Conservation Commission or LandCorp has paid any monies to the MG Corporation or MG Charitable Trustees Pty Ltd under this deed then the State, the Conservation Commission or LandCorp (as

the case may be) may recover the Indemnified Amount from the MG Corporation or MG Charitable Trustees Pty Ltd (as the case may be) as a debt owing by the MG Corporation or MG Charitable Trustees Pty Ltd to the State, the Conservation Commission or LandCorp (as the case may be).



9. APPLICATION FOR REGISTRATION OF ILUA

[REDACTED]

- (1) The Parties agree to the State applying in writing to the Registrar for this deed to be registered on the Register as an Indigenous Land Use Agreement Area Agreement under sections 24CA to 24CL (inclusive) of the NTA and regulation

(Cth).

10. NOTICES

(1) A notice, nomination or other communication in connection with this deed:

(a) must be given to a Party in either of the following ways:

(i) sent by prepaid ordinary post to, or left at the address of, the

address of the address set out in Schedule 1, or such other address

(c) must be given to a Party in either of the following ways:

(i) sent by prepaid ordinary post to, or left at the address of, the

**11. MISCELLANEOUS**

**11.1 Severance**

If any clause of this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

**11.2 Waiver**

As with the other provisions of this deed, the following provisions shall apply to the provisions of this deed.

upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the Party granting the waiver.

- (2) A failure or delay in exercise, or partial exercise, of:
  - (a) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (b) a power created or arising upon default under this agreement or upon the occurrence of an Event of Default,does not result in a waiver of that right or power.
- (3) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this deed or on a default under this deed or on the occurrence of an event of default as constituting a waiver of that right

**11.6 Further assurances**

Each Party must do all things and execute all further documents necessary to give full effect to this agreement.

**11.7 Entire agreement and previous agreements**

- (1) Subject to clause 11.7(2), this deed supersedes the Ord Global Negotiations Memorandum of Understanding dated 12 November 2004 and all previous agreements between any of the Parties in respect of its subject matter, and embodies the entire agreement between the Parties in respect of its subject matter.
- (2) This deed does not terminate or replace the Land Exchange Agreement. However, this deed varies the Land Exchange Agreement in relation to:
  - (a) the way in which the State acquires native title rights and interests;
  - (b) the grants to CPC or CPC's nominees of any licence, easement or right of way in accordance with clauses 2.3(b) and 2.3(c) of the Land Exchange Agreement; and
  - (c) the timing of the transfer of freehold title to CPC,and to that extent the provisions of this deed prevail over the Land Exchange Agreement.

**11.8 Other agreements**

~~Notwithstanding clause 11.7(1), this deed does not supersede the Ord Global Negotiations Memorandum of Understanding dated 12 November 2004 and all previous agreements between any of the Parties in respect of its subject matter, and embodies the entire agreement between the Parties in respect of its subject matter.~~

11.12 Governing law

11.12.1 The law of the State of Western Australia shall apply to the

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11.12.2 The law of the State of Western Australia shall apply to the

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