

2014

BETWEEN:

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

and

NYANGUMARTA WARRARN ABORIGINAL CORPORATION RNTBC

**SECTION 56A
JOINT MANAGEMENT AGREEMENT
FOR THE EIGHTY MILE BEACH MARINE PARK (NYANGUMARTA
PART)**



State Solicitor's Office
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Ref: SSO 2680-12

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THIS AGREEMENT is made the 4th day of December 2014.

BETWEEN

THE CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF PARKS AND WILDLIFE, ACTING THROUGH THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY, a body corporate established under section 36 of the Conservation and Land Management Act, care of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia (**CEO**)

and

NYANGUMARTA WARRARN ABORIGINAL CORPORATION RNTBC a body corporate established for and on behalf of the Native Title Group, care of Pilbara Native Title Services, 3 Brand Street, South Hedland, Western Australia (**PBC**)

THE PARTIES AGREE AS FOLLOWS:

RECITALS

- A. The CEO is acting through the Conservation and Land Management Executive Body (the body corporate established under section 36 of the Conservation and Land Management Act).
- B. The PBC is the prescribed body corporate (as that term is used in Division 6 of Part 2 of the Native Title Act) in respect of the Native Title Group for the Determination.
- C. The State, the Minister for Lands, the Minister for Environment, the Conservation Commission, the Marine Authority, the CEO and the PBC entered into the ILUA.
- D. The ILUA provides for the joint management of the Eighty Mile Beach Marine Park (Nyangumarta Part).
- E. The Governor created the Eighty Mile Beach Marine Park (Nyangumarta Part) in accordance with Part II Division 3 of the Conservation and Land Management Act.
- F. In accordance with Part II Division 3 of the Conservation and Land Management Act, the Marine Authority prepared, and the Minister approved, the Management Plan.
- G. The Management Plan requires the CEO to manage the Eighty Mile Beach Marine Park (Nyangumarta Part) jointly with the PBC.
- H. This Agreement constitutes the agreement that is required to be attached to the Management Plan and that gives effect to joint management of the land and waters referred to in Recital D and sets out the role of the Joint Management Body.

1. JOINT MANAGEMENT OF THE EIGHTY MILE BEACH MARINE PARK (NYANGUMARTA PART)

The Eighty Mile Beach Marine Park (Nyangumarta Part) shall be jointly managed by the PBC and the CEO through the Joint Management Body in accordance with the Management Plan and this Agreement.

2. ESTABLISHMENT OF JOINT MANAGEMENT BODY

- (a) A Joint Management Body is established for the purposes of section 56A of the Conservation and Land Management Act.
- (b) The Joint Management Body comprises six Representative Members, nominated in accordance with clause 4.1.

3. ROLE OF THE JOINT MANAGEMENT BODY

3.1. Role of the Joint Management Body

- (a) The role of the Joint Management Body shall be to, consistently with the Conservation and Land Management Act and Wildlife Conservation Act and any regulations made under those Acts:
- (i) make management decisions consistent with the Management Plan;
 - (ii) in accordance with the Management Plan, assist in the preparation of policies, programs and other such management instruments for the management of the Eighty Mile Beach Marine Park (Nyangumarta Part);
 - (iii) strategically monitor the management of the Eighty Mile Beach Marine Park (Nyangumarta Part) including the implementation of the Management Plan;
 - (iv) provide advice to the CEO, Marine Authority and the PBC (as appropriate) on all aspects of the use, management and development of the Eighty Mile Beach Marine Park (Nyangumarta Part) including:
 - a. the value of the Eighty Mile Beach Marine Park (Nyangumarta Part) land and waters to the culture and heritage of Aboriginal people, or the methods to determine this;
 - b. the conduct of customary activities pursuant to the Conservation and Land Management Act, Conservation and Land Management Regulations, Wildlife Conservation Act and Wildlife Conservation Regulations;
 - c. the employment of Aboriginal staff to work in relation to the Eighty Mile Beach Marine Park (Nyangumarta Part);
 - d. the expenditure of the annual operational budget for the Eighty Mile Beach Marine Park (Nyangumarta Part) as it relates to the amount specified and purposes set out in clause 15 of the ILUA; and
 - e. any proposed new management plan, or any proposed amendments to the management plan, for the Eighty Mile Beach Marine Park (Nyangumarta Part);
 - (v) provide advice to other State Government agencies that are responsible for the implementation of specific management actions in the Management Plan; and
 - (vi) decide whether an activity proposed to be conducted by the CEO requires heritage approval in accordance clause 11.
- (b) For the purposes of paragraph (a)(iv)c, the CEO shall ensure that:

- (i) any selection panel appointed to advise the CEO on the employment of the two Aboriginal rangers referred to in clause 15.1(c)(1) of the ILUA to work on the Eighty Mile Beach Marine Park (Nyangumarta Part) includes a Member nominated by the Chairperson; and
 - (ii) where appropriate, any selection panel appointed to advise the CEO on the employment of persons to work on the Eighty Mile Beach Marine Park includes a Member nominated by the Chairperson.
- (c) The role of the Joint Management Body does not include undertaking the day-to-day management of the Eighty Mile Beach Marine Park (Nyangumarta Part).

3.2. Decisions of the Joint Management Body

For the purposes of sections 33(1) and 33(3) of the Conservation and Land Management 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.

4. MEMBERSHIP OF THE JOINT MANAGEMENT BODY

4.1. Representative Members

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 6.1 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 Conservation and Land Management 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 PBC shall nominate:
 - a. three persons to be Representative Members of the Joint Management Body; and
 - b. three persons to be Alternate Members of the Joint Management Body; and
 - (ii) the CEO shall nominate:
 - a. three persons to be Representative Members of the Joint Management Body; and
 - b. three persons to be Alternate Members of the Joint Management Body.
- (b) Unless otherwise agreed by the Parties, the Members nominated by the CEO shall be employees of the department of the Public Service principally assisting in the administration of the Conservation and Land Management Act and if possible, include regional staff with operational responsibility for the Eighty Mile Beach Marine Park (Nyangumarta Part).

- (c) Representative Members and Alternate Members shall be nominated for a term of three years and may be renominated.
- (d) Before the first meeting of the Joint Management Body, each Party shall give to the other Parties notice, in accordance with clause 26, of the nominated Representative Members or, where applicable, the nominated Alternate Members.

4.2. Alternate Representative Members

- (a) Upon receiving notice of a meeting, if a Representative Member nominated by the PBC is temporarily unable to attend the meeting by reason of sickness, absence or incapacity he shall, as soon as possible after he becomes aware of that fact, inform the Chairperson and the Chairperson shall, as soon as possible, inform the CEO:
 - (i) of the Representative Member's inability to attend the meeting; and
 - (ii) which Alternate Member nominated by the PBC will attend the meeting.
- (b) If the CEO is informed under paragraph (a), the CEO shall notify the Alternate Member referred to in paragraph (a) to attend the meeting.
- (c) Upon receiving notice of a meeting, if a Representative Member nominated by the CEO is temporarily unable to attend the meeting by reason of sickness, absence or incapacity, he shall, as soon as possible after he becomes aware of that fact, inform the Chairperson and the Chairperson shall, as soon as possible, inform the CEO.
- (d) If the CEO is informed under paragraph (c) that a Representative Member nominated by the CEO is temporarily unable to attend a meeting, the CEO shall notify an Alternate Member nominated by the CEO to attend the meeting.
- (e) An Alternate Member notified under paragraph (b) or (d) shall attend the meeting in place of the absent Representative Member.
- (f) When acting in the place of the absent Representative Member, the Alternate Member has the rights and responsibilities of the absent Representative Member and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 4.2.

4.3. Chairperson

- (a) At the first meeting of the Joint Management Body, the Representative Members shall elect a Chairperson from the Representative Members nominated by the PBC, to serve for a twelve month term.

- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he is re-elected.
- (c) The Chairperson shall preside at a meeting of the Joint Management Body, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

4.4. Persons ineligible to be members

Unless otherwise agreed by the Parties, a member of the Native Title Group who is an employee of the CEO is not eligible to be nominated as a Member.

4.5. Vacancy of Member

- (a) The position of a Member becomes vacant if he:
 - (i) resigns his position by notice delivered to the Chairperson; or
 - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he has had notice under clause 26;
 - (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 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 PBC, the PBC 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 25.5, of a nominated new Member.

4.6. Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if he:
 - (i) resigns his position by notice delivered to the CEO; or
 - (ii) is absent without leave from the CEO for three consecutive meetings of which he has notice under clause 26; 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 becomes aware of that fact, disclose it to the other Representative Members (**Remaining Representative Members**) who are at that meeting (**Disclosure**), and the Disclosure shall be recorded in the minutes.

- (c) Following a Disclosure under paragraph (b), the Remaining Representative Members shall vote in accordance with clause 10 as to whether the disclosing Member shall be removed from the Joint Management Body, the results of which vote shall be recorded in the minutes.
- (d) If the remaining Representative Members vote to remove a Member from the Joint Management Body under paragraph (c) the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.8. Removal for misbehaviour etc

- (a) In this clause, misbehaviour includes behaving in a manner that renders the Member unfit to be a Member even if the conduct does not relate to any function of the Joint Management Body.
- (b) A Representative Member may move that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness.
- (c) Where paragraph (b) applies, the Representative Members other than the Affected Member (**Remaining Representative Members**) shall vote, as to whether the Affected Member's performance is impaired by misbehaviour or incompetence or mental or physical incapacity other than temporary illness, the results of which shall be recorded in the minutes.
- (d) If the remaining Representative Members vote under paragraph (c) that the Affected Member's performance is impaired by misbehaviour or

incompetence or mental or physical incapacity other than temporary illness, the position of that Member becomes vacant for the purposes of clause 4.5 or, if it is the Chairperson, for the purposes of clause 4.6.

4.9. Conflict of Interest

- (a) A Representative Member who has a material personal or financial interest in a matter that is being considered by a meeting of the Joint Management Body (**Conflict of Interest**) shall, as soon as possible after he is aware of this interest, disclose the nature of his Conflict of Interest to the other Representative Members who are at that meeting, and that disclosure shall be recorded in the minutes.
- (b) Subject to paragraph (c), if a Representative Member discloses a Conflict of Interest in a matter under paragraph (a) the Representative Member shall not:
 - (i) take part in the consideration or discussion of the matter; or
 - (ii) vote on the matter.
- (c) Following the disclosure of a Conflict of Interest under paragraph (a):
 - (i) the remaining Representative Members (other than the Representative Member with a Conflict of Interest) shall vote in accordance with clause 10 as to whether the Representative Member with the Conflict of Interest may take part in the consideration or discussion of the matter and/or vote on the matter; and
 - (ii) the results of that vote shall be recorded in the minutes of the meeting.
- (d) A Representative Member shall not be taken to have a Conflict of Interest solely due to that Representative Member's particular traditional interest or seniority in relation to an area of sea or land country within or adjoining the Eighty Mile Beach Marine Park (Nyangumarta Part) or because he or she is a native title holder or a director of the PBC.

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

- (a) The Joint Management Body 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) For the first twelve (12) months after this Agreement is executed, the Representative Members nominated by the PBC may invite an advisor to attend a Joint Management Body meeting to assist and advise the Representative Members nominated by the PBC.
- (c) The Joint Management Body has absolute discretion to determine at which meetings, or part of a meeting an invitee shall be present.
- (d) Invitees do not have a right to vote at a Joint Management Body meeting.

- (e) Other than the advisors referred to in paragraph (b) (which may be paid by the PBC), invitees may be paid fees for attending meetings of the Joint Management Body at the discretion of the Joint Management Body.

5. PROTECTION FROM PERSONAL LIABILITY

5.1. Application

- (a) This clause applies until legislative amendments are made (if and when that occurs) to provide, in effect, that:
 - (i) a member of a joint management body referred to in section 56A(6) of the Conservation and Land Management Act and a party to a joint management agreement referred to in section 56A(4) of the Conservation and Land Management Act, is each protected from personal liability for anything done or omitted to be done by him or it in good faith in, or in connection with, the performance or purported performance of his or its functions under the Conservation and Land Management Act or the Wildlife Conservation Act; and
 - (ii) for the avoidance of doubt, the performance of a role referred to in clause 3 and the fulfilment of an obligation under the joint management agreement constitutes an act or omission in connection with the performance or purported performance of a function under the Conservation and Land Management Act or the Wildlife Conservation Act.
- (b) Nothing in this clause requires the CEO or any other State agency or the State to take any step to progress the type of legislative amendment referred to in paragraph (a).

5.2. Indemnity

- (a) Subject to this clause 5, the CEO indemnifies and keeps indemnified any Member (other than any Member nominated by the CEO who is an employee of the department of the Public Service principally assisting in the administration of the Conservation and Land Management Act) and the PBC from any Personal Liability for anything done or omitted to be done by the Member or the PBC in good faith in, or in connection with:
 - (i) the performance or purported performance of his or its functions under the Conservation and Land Management Act or the Wildlife Conservation Act; and
 - (ii) the performance or purported performance of a role referred to in clause 3 and the fulfilment of an obligation under this Agreement.
- (b) For the avoidance of doubt, this clause shall not be construed as purporting to alter the meaning or effect of section 132 of the Conservation and Land Management Act.

5.3. Member's or the PBC's obligations

- (a) A Member and the PBC (as the case may be) must:
- (i) notify the CEO in accordance with clause 26 as soon as reasonably practicable after a Potential Claim arises or a Claim is made against a Member (or the Member as comprising the Joint Management Body) or the PBC (as the case may be);
 - (ii) provide to the CEO at the time of notification in accordance with paragraph (a)(i) any information or documents which he, the Joint Management Body or the PBC (as the case may be) has in his or its possession or control which may potentially be relevant to any Claim or Potential Claim;
 - (iii) act in good faith in his or its dealings with the CEO;
 - (iv) make full and frank disclosure to the CEO of any information of which he or it is aware and which is relevant in any way to any Claim or Potential Claim; and
 - (v) co-operate fully with the CEO including by responding as soon as reasonably practicable to any requests for information from, or providing assistance to, the CEO in relation to any Claim or Potential Claim.
- (b) If a Member or the PBC fails to comply with the obligations in subparagraphs (a)(iii), (a)(iv) and (a)(v), and that failure materially prejudices the CEO's ability to deal with the Claim or Potential Claim, the indemnity may be withdrawn by the CEO by notice in writing to the Member or the PBC (as the case may be) in accordance with clause 26 and then will cease to have any force and effect in respect of the Claim or Potential Claim.

5.4. Defence of Claims

- (a) The CEO shall have full discretion and control in respect of the Claim or Potential Claim, including but not limited to, the power to:
- (i) defend any civil legal proceedings; and
 - (ii) settle any legal proceedings at the CEO's sole and absolute discretion and whether or not involving an admission of liability.
- (b) If requested by the Member or the PBC, the CEO will advise the Member or the PBC (as the case may be) about the progress of any Claim or Potential Claim from time to time.
- (c) A Member or the PBC (as the case may be) must not:
- (i) make any admission of liability in respect of any Claim or Potential Claim or part thereof; or

- (ii) make any payment or settlement of any Claim or Potential Claim;
or
 - (iii) do or omit to do anything which materially compromises the ability of the CEO to defend the Claim or Potential Claim.
- (d) If a Member or the PBC does not comply with paragraph (c), this protection from Personal Liability may be withdrawn by the CEO in writing to the Member or the PBC (as the case may be) in accordance with clause 26 and then will cease to have any force and effect in respect of the Claim or Potential Claim.

5.5. Confidentiality

For the purposes of clause 18, all information in relation to a Claim or Potential Claim is confidential.

5.6. Definitions in clause 5

In this clause 5:

- (a) **Claim** means any claim, demand, action, lawsuit or proceeding howsoever described and of a civil nature whether against a Member (or the Member as comprising the Joint Management Body) or the PBC (as the case may be);
- (b) **Personal Liability** means the total amount which a Member (or the Member as comprising the Joint Management Body) or the PBC becomes personally liable to pay on account of all Claims and Potential Claims made against him or it including but not limited to reasonable legal costs incurred in the defence of Claims and Potential Claims and appeals therefrom, damages (other than punitive, aggravated or exemplary damages as a result of his or its conduct) and settlement costs, but does not include fines or penalties, and excludes Claims or Potential Claims if the conduct of a Member or the PBC is:
 - (i) reckless, malicious, or carried out with wilful or intentional disregard to the consequences;
 - (ii) criminal;
 - (iii) defamatory;
 - (iv) discriminatory (whether sexual, racial or otherwise) or otherwise constitutes harassment; or
 - (v) done or omitted to be done as a consequence of being under the influence of alcohol or illicit drugs.
- (c) **Potential Claim** means where:
 - (i) a Member or the PBC does, or omits to do, anything which he or it knows or reasonably ought to know may give rise to a Claim; or

- (ii) an allegation is made against a Member (or the Member as comprising the Joint Management Body) or the PBC which is of such a nature as to reasonably suggest that a Claim may be made against a Member (or the Member as comprising the Joint Management Body) or the PBC.

6. CONVENING MEETINGS

6.1. First meeting

Within sixty (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 by the Parties.

6.2. Subsequent meetings

- (a) Subject to paragraph 6.3(b)(i) or 6.3(b)(ii), 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 place for the subsequent meeting or meetings.

6.3. Frequency

- (a) The Joint Management Body shall meet at least once every six (6) months.
- (b) The Joint Management Body may meet more often in the following circumstances:
 - (i) a Representative Member requests a meeting of the Joint Management Body by giving at least fifteen Business Days' notice in writing to the CEO and the Chairperson; or
 - (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen Business Days' notice to the Members.

6.4. Administrative responsibility

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

6.5. Travel Allowance

The Representative Members nominated by the PBC shall be paid a travel allowance consistent with an amount determined from time to time to be reasonable by the Australian Commissioner of Taxation (being, for example, the amount determined to be reasonable for the substantial exception in Subdivision 900-B of the *Income Tax Assessment Act 1997*).

7. 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.

8. 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 Body on such matters as the Joint Management Body sees fit.

9. QUORUM

At any meeting of the Joint Management Body, three (3) members constitute a quorum, comprising at least one (1) Representative Member nominated by the PBC and at least one (1) Representative Member nominated by the CEO.

10. VOTING

- (a) Each Representative Member present at a meeting of the Joint Management Body, including the Chairperson, has one vote and shall exercise that vote, subject to clause 4.9(b).
- (b) Subject to paragraph (c), the Joint Management Body shall try to reach a unanimous decision.
- (c) If the Joint Management Body cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by the PBC present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) Except for the purposes of clause 11.2, if a majority of each of the Representative Members nominated by the PBC present at a meeting and the Representative Members nominated by the CEO present at a meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Joint Management Body then the business which is the subject of that agenda item becomes a Dispute for the purposes clause 12.

11. HERITAGE MATTERS

11.1. Permitted Activities Guide

- (a) Within three (3) months after the Commencement Date, the CEO shall prepare, in consultation with the Joint Management Body, a Permitted Activities Guide for the Eighty Mile Beach Marine Park (Nyangumarta Part).

- (b) Following preparation of a Permitted Activities Guide under paragraph (a), it shall be submitted to the PBC for approval. The Permitted Activities Guide shall not come into operation until it is approved by the PBC.
- (c) Following a request from the Joint Management Body or at his own initiative, the CEO, may amend the Permitted Activities Guide in consultation with the Joint Management Body, and may not unreasonably fail to do so. For such an amendment to take effect it must also be consented to by the PBC.
- (d) The Permitted Activities Guide shall:
 - (i) list the permitted activities that, subject to subparagraph (ii), may be undertaken without further consideration of heritage matters by the Joint Management Body under this Agreement; and
 - (ii) identify and describe the areas to which the Permitted Activities Guide does not apply (**Exclusion Areas**).

11.2. Considering heritage matters

- (a) Nothing in this clause 11.2 purports to authorise any act or omission that would be in breach of the *Aboriginal Heritage Act 1972* (WA).
- (b) This clause 11.2 applies only if a Permitted Activities Guide has been prepared in accordance with 11.1(a) and approved in accordance with clause 11.1(b).
- (c) When considering:
 - (i) an Annual Works Programme for the Eighty Mile Beach Marine Park (Nyangumarta Part); and/or
 - (ii) individual projects or proposed works in the Eighty Mile Beach Marine Park (Nyangumarta Part),

the Joint Management Body shall decide, in accordance with this clause 11.2, whether an activity contained in the annual works programme or comprising the individual project or work:

- (iii) is listed in the Permitted Activities Guide and is not proposed to be carried out in an Exclusion Area (in which case the activity may be carried out without modification or condition and does not need to be the subject of an Activity Notice under the Heritage Agreement); or
- (iv) is not listed in the Permitted Activities Guide or is to be carried out in an Exclusion Area, but may nevertheless be carried out (in which case, the activity may be carried out without modification or condition and does not need to be the subject of an Activity Notice under the Heritage Agreement); or

- (v) is not listed in the Permitted Activities Guide or is to be carried out in an Exclusion Area, but may nevertheless be carried out, subject to modification or conditions (in which case, the activity does not need to be the subject of an Activity Notice under the Heritage Agreement); or
 - (vi) is not listed in the Permitted Activities Guide or is to be carried out in an Exclusion Area, and must be the subject of an Activity Notice under the Heritage Agreement.
- (d) When performing its obligations under paragraph (a), the Joint Management Body may consult any other persons or request further information about the proposed activity, so as to address any concerns regarding the impact of the proposed activity on heritage matters.
 - (e) If a majority of each of the Representative Members nominated by the PBC present at a meeting and the Representative Members nominated by the CEO present at a meeting cannot reach agreement for the purposes of paragraph (a) at two (2) consecutive meetings of the Joint Management Body then the activity automatically becomes the subject of an Activity Notice under the Heritage Agreement.

11.3. Heritage Agreement Terminated

This clause 11 does not apply where:

- (a) the Heritage Agreement is not executed; or
- (b) the Heritage Agreement is terminated.

12. JOINT MANAGEMENT BODY DISPUTE

12.1. Referral to CEO and PBC

- (a) If the circumstances in clause 10(d) arise, the CEO of the PBC shall, within five (5) Business Days of the second meeting, give notice of the Dispute to the CEO and the PBC, setting out details of the Dispute.
- (b) Upon receiving notice of a Dispute under paragraph (a), the CEO and the PBC, shall, within twenty (20) Business Days of the date of that notice:
 - (i) decide the Dispute; or
 - (ii) refer the Dispute to a Mediator in accordance with clause 12.2; or
 - (iii) remit the Dispute to the Joint Management Body to decide; or
 - (iv) refer the Dispute to the Minister to decide under clause 12.3.
- (c) When deciding the Dispute under sub paragraph (b)(i), the CEO and the PBC may consult with any person.

- (d) A determination of the Dispute by the CEO and the PBC under subparagraph (b)(i) shall be deemed to be a determination of the Joint Management Body.
- (e) If the CEO and the PBC are unable to agree what course of action to take under paragraph (b), they shall refer the Dispute to a Mediator and clause 12.2 applies.

12.2. Referral to Mediation

- (a) The CEO and the PBC will try to agree a mediator, who is a member of a recognised professional mediation group, to mediate the Dispute.
- (b) If within 10 Business Days after a referral under clause 12.1(b)(ii) or 12.1(e) the CEO and the PBC cannot agree on a mediator, the Chairman of LEADR will appoint a mediator at the request of either Party.
- (c) The CEO and the PBC shall engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which, the CEO and the PBC may decide the Dispute.
- (e) Any information or documents disclosed by the CEO and the PBC under this clause 12:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (f) The CEO and the PBC shall pay its own costs of complying with this clause 12 and the CEO and the PBC shall equally pay the costs of any mediator.
- (g) If the CEO and the PBC fail to resolve the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and the PBC, either the CEO or the PBC may refer the Dispute to the Minister under clause 12.3.

12.3. Referral to Minister

- (a) If the CEO and the PBC refer the Dispute to the Minister for a decision, the Minister shall consult with the CEO and the PBC regarding how the Dispute ought to be determined, and do one or both of the following:
 - (i) decide as to how the Dispute is to be determined; or
 - (ii) decide the Dispute.
- (b) For the avoidance of doubt, the Minister is not required to act in accordance with any advice or recommendation made by the CEO or the PBC in the course of the consultation process.

- (c) A determination of the Dispute by the Minister under this clause 12.3 shall be deemed to be a decision of the Joint Management Body.

12.4. Obligations continue

If a Dispute is being dealt with under any part of this clause 12, 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.

13. REVIEW

- (a) The Parties shall review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever is the sooner:
 - (i) a substitute management plan for the Management Plan is being prepared for the purposes of Part II Division 3 of the Conservation and Land Management Act; or
 - (ii) they agree that a review is necessary.
- (b) A review under paragraph (a) shall be commenced within 6 months of the circumstances in subparagraphs (a)(i) or (a)(ii) occurring.

14. VARIATION

The Parties may vary this Agreement by Deed of Variation.

15. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS

The Parties shall procure that:

- (a) Members perform their role and comply with their obligations as members of the Joint Management Body under this Agreement, having regard to and in accordance with:
 - (i) the role of the Joint Management Body in clause 3; and
 - (ii) the Conservation and Land Management Act; and
 - (iii) any other applicable State legislation.
- (b) for the purposes of clause 16.1(b)(iv), the required number of Representative Members nominated by each Party are present at every meeting of the Joint Management Body.

16. DEFAULT AND ENFORCEMENT

16.1. Events of Default

- (a) In this clause 16, a reference to a Party means a party to the Event of Default.
- (b) A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 16:
 - (i) where a Party commits a breach of this Agreement that is incapable of being remedied; or
 - (ii) where the Party breaches clauses 4.1, 17.1, 18 or 23; or
 - (iii) where the Party breaches its obligation in clause 15 in respect of a Member's obligation in clauses 4.7, 4.8, 4.9; or
 - (iv) where the Party breaches its obligation in clause 15(b) in respect of three (3) consecutive meetings; or
 - (v) a Party commits three (3) breaches of its obligations under this Agreement over any twelve (12) month period, provided that the Party not in breach has given the Defaulting Party notice of any such breaches and whether or not the Defaulting Party has rectified such breaches; or
 - (vi) when an Insolvency Event occurs.

16.2. Default under clauses 16.1(b)(i) to 16.1(b)(v)

- (a) If a Defaulting Party causes an Event of Default under clauses 16.1(b)(i), 16.1(b)(ii), 16.1(b)(iii), 16.1(b)(iv) or 16.1(b)(v), the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default.
- (b) Upon receiving a Default Notice, the Defaulting Party shall:
 - (i) where the Event of Default is capable of being remedied:
 - a. remedy the Event of Default within twenty (20) Business Days; or
 - b. if the Event of Default cannot reasonably be remedied in 20 Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the default must be remedied by no later than 3 months from the date of the Default Notice; or
 - (ii) where the Event of Default is not capable of being remedied, and within a period of twenty (20) Business Days commencing on the date of the Default Notice, take all steps, to the satisfaction of the

Non-defaulting Party (acting reasonably), to ensure that further breaches of this Agreement do not occur.

16.3. Default under clause 16.1(b)(vi)

- (a) If an Event of Default occurs under clause 16.1(b)(vi), the PBC shall:
- (i) as soon as possible, notify the CEO:
 - (i) that the Event of Default has occurred;
 - (ii) of the appointment of any administrator, receiver or manager to the PBC; and
 - (iii) when the relevant Event of Default ceases to exist.
- (b) where the Event of Default results in an order to wind up the PBC, the Native Title Group shall take steps to cause a replacement registered native title body corporate to be determined as soon as possible.

16.4. Suspension of Obligations

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this Agreement until clause 16.2(b) is complied with, or the Event of Default no longer exists, as applicable.

16.5. Duty to mitigate

A Party must take all reasonable steps open to it to mitigate the effects of an Event of Default.

16.6. Remedies exercised under this clause 16 do not prejudice any other rights a Party may have

Any remedy exercised under this clause 16 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law (including the right to seek interlocutory relief and specific performance).

17. PARTY DISPUTES

17.1. No Court proceedings

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a dispute of the type referred to in clause 12, a Party must comply with this clause 17 before commencing court proceedings (except proceedings for urgent interlocutory relief).

17.2. Notification

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

17.3. Parties to resolve Party Dispute

During the twenty (20) Business Days after a notice is given under clause 17.2 (or longer period if the Parties agree in writing), each Party must use its reasonable endeavours to resolve the Party Dispute. If the Parties cannot resolve the Party Dispute within that period, any Party may request that the Party Dispute be referred to a mediator and, if a Party so requests, the Party Dispute must be referred to mediation in accordance with clause 17.4.

17.4. Mediation

- (a) If the Parties cannot agree on a mediator within 10 Business Days after a request under clause 17.3, the Chairman of LEADR will appoint a mediator at the request of either Party.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute. A mediator may not make a binding decision on a Party to the Party Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 17.4:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Party Dispute.
- (d) Each Party must pay its own costs of complying with this clause 17.4. The Parties must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the 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 17.2, 17.3 and 17.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

18. CONFIDENTIALITY

18.1. Between Parties

- (a) Subject to paragraph (b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and shall not be disclosed except as permitted by this clause 18 (**Confidential Information**).

- (b) The following information is not Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

18.2. Gender sensitive information

Any information disclosed by the PBC to the State Parties, during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified as gender sensitive (women only) or gender sensitive (men only), shall not be disclosed, respectively, to a person of the opposite gender, except as permitted by this clause 18.

18.3. Between Members of the Joint Management Body

- (a) Subject to paragraph (b), all information disclosed by a member of the Joint Management Body (**Disclosing Party**) to another member of the Joint Management Body (**Receiving Party**) during the term of this Agreement and operation of the Joint Management Body, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and will not be disclosed except as permitted by clause this clause 18 (**Confidential Information**).
- (b) The following information is not Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

18.4. Permitted disclosure

A Receiving Party may, in turn, disclose Confidential Information or gender sensitive (women only) information to a man or gender sensitive (men only) information to a woman:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by law or applicable securities regulation or rule;
- (c) subject to clause 18.5, in connection with any dispute or litigation concerning the Agreement or its subject matter;

- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;
- (e) subject to clause 18.5, to a proposed registered native title body corporate assignee of the PBC's interest under this Agreement; and
- (f) to any judicial, legislative or executive arm of the Government of Western Australia.

18.5. Disclosure requirements

Before making any disclosure to a person under clause 18.4(c) or 18.4(e) the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) before doing so notify the Disclosing Party and give that Disclosing Party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 18.4(e), ensure that the person or entity executes a deed with the PBC, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect to this clause 18.

18.6. Party may seek injunction

The Parties acknowledge that:

- (a) they are aware that any breach of this clause 18 may result in the other Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 18 or any obligation of confidentiality under this Agreement, any adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 18.

18.7. 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.

19. TERM AND TERMINATION

19.1. Term

Subject to clause 19.2, this Agreement remains in force from the Commencement Date for as long as the Management Plan remains in force.

19.2. Termination

- (a) This Agreement shall terminate in the following circumstances, whichever is the sooner:
- (i) the Management Plan expires and a new plan is substituted for it; or
 - (ii) the Management Plan is revoked and a new plan is substituted for it; or
 - (iii) a new Agreement is substituted for this Agreement; or
 - (iv) the Management Plan is amended so that joint management is no longer required; or
- (b) In the circumstances outlined in subparagraphs (a)(i) and (a)(ii), the CEO shall attach a new joint management agreement, identical to this Agreement or this Agreement varied as agreed by the parties, for the purposes of section 56A(3) of the Conservation and Land Management Act, unless the new plan does not require joint management.
- (c) If the Conservation and Land Management Act is amended to provide, in effect, that a Joint Management Agreement does not have to be signed each time a new management plan is substituted for an existing management plan, then this Agreement shall continue until:
- (i) the Management Plan, as amended or replaced from time to time, is amended so that joint management is no longer required; or
 - (ii) a new Agreement is substituted for it.

20. INTELLECTUAL PROPERTY

No change of ownership which may exist in any Party's intellectual property will occur by its being made available to the Joint Management Body, the Department, the State, PBC or any other party pursuant to this Agreement.

21. OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS

Any reference to the CEO or the PBC in this Agreement includes a reference to the CEO or PBC acting through the agency of a Departmental officer or authorised corporate employee, as the case may be.

22. 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.

23. NO ASSIGNMENT WITHOUT CONSENT

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

24. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS

- (a) In the event that a Party becomes wholly or partly unable because of Force Majeure or Aboriginal Cultural Business to perform any of its obligations under the Agreement, 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 settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (b) The Party affected by any event of Force Majeure or Aboriginal Cultural Business shall immediately give notice to the other Parties of the occurrence of such event and the likely period of delay. The notice must:
- (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure or Aboriginal Cultural Business;
 - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or Aboriginal Cultural Business.
- (c) The Party affected by the Force Majeure or Aboriginal Cultural Business shall give immediate notice of the cessation of the delay.
- (d) 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 Party as a result of its failure to carry out its obligations under this Agreement.
- (e) If the Force Majeure or Aboriginal Cultural Business cannot be overcome within three (3) months, either Party may, by notice to the other Party, suspend the performance of its obligations and the affected Party's rights

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

25. GENERAL

25.1. Entire agreement

The Agreement constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

25.2. Governing law and jurisdiction

- (a) The Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

25.3. Severance

If any provision of the Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

25.4. Election and waiver

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

25.5. Survival

Clauses 17, 18, 25 (except 25.4), 26 and 27 survive termination of this Agreement.

26. NOTICE

Each notice or other communication given under this Agreement:

- (a) shall be in writing;
- (b) shall be delivered to the intended recipient by prepaid post or by hand to the address below or the address last notified by the intended recipient to the sender;
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, seven (7) days after the date of posting.

27. DEFINITIONS AND INTERPRETATION

27.1. General Definitions

Words and expressions defined in the Conservation and Land Management Act have the same meaning when used in this Agreement.

In this Agreement, unless the context otherwise requires:

Aboriginal Cultural Business means a funeral or other ceremony that the directors of the PBC are required to attend under traditional laws and customs.

Agreement means this joint management agreement and includes the Schedules.

Alternate Member means a person who is nominated under clause 4.2.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia, commencing at 8.30am WST and finishing at 5.00pm WST.

Chairperson means a Representative Member elected to be Chairperson under clause 4.3.

Conservation Commission means a body corporate established under section 18 of the Conservation and Land Management Act.

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

Conservation and Land Management Act Regulations means the *Conservation and Land Management Regulations 2002* (WA).

Commencement Date means the date on which this Agreement is executed by all Parties.

Determination means the determination by the Federal Court of Australia in *Nyangumarta People (Part A), Hunter v State of Western Australia* [2009] FCA 654.

Eighty Mile Beach Marine Park means the whole of Reserve # 16.

Eighty Mile Beach Marine Park (Nyangumarta Part) means that part of the waters reserved under section 13 of the Conservation and Land Management Act for the

purpose of "Marine Park", described in SCHEDULE 1 and shown on map in SCHEDULE 2.

Force Majeure means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (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.

Heritage Agreement means the heritage agreement which will be executed by the CEO and the PBC concurrently with the execution of this Agreement.

ILUA means the Indigenous Land Use Agreement entered into by the State of Western Australia, the Minister for Lands, the Minister for Environment, the Marine Authority, the Conservation Commission, the CEO and the PBC, which was entered on the Register of Indigenous Land Use Agreements.

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

- (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.

Management Plan means the management plan approved under section 14 of the Conservation and Land Management Act in respect of the Eighty Mile Beach Marine Park.

Marine Authority is the body corporate established under section 26A of the Conservation and Land Management Act, by the name of the Marine Parks and Reserves Authority.

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).

Native Title Group means the common law holders of native title under the Determination.

Permitted Activities Guide means the list of activities that may be undertaken without any further heritage approval for the purposes of this Agreement or the Heritage Agreement and the areas in which no activities may be undertaken, which is to be prepared and approved under clause 11.1.

Party means a party to this Agreement.

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

State means the State of Western Australia through the Department of the Attorney General.

Term means the term of this Agreement specified in clause 19.1.

Wildlife Conservation Act means the *Wildlife Conservation Act 1950* (WA).

Wildlife Conservation Regulations means the *Wildlife Conservation Regulations 1970* (WA).

27.2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words and expressions defined in the Native Title Act have the same meaning where used in this Agreement;
- (b) headings and subheadings are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (c) words expressed in the singular include the plural and vice versa;
- (d) words expressed in one gender include the other;
- (e) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (f) an expression importing a natural person includes a company, partnership, joint venture, association, authority, PBC or other body corporate or governmental or semi-governmental entity;
- (g) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (h) a reference to a person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;

- (i) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;
- (j) a reference to a clause, Schedule or annexure is a reference to a clause of or Schedule or annexure to this Agreement;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) 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;
- (p) 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
- (q) "including" means "including, but not limited to".

28. 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

4.12.14

Date

Full name of witness (print)

Address of witness

Occupation of witness

EXECUTED in accordance with section 99-5 of the)
Corporations (Aboriginal and Torres Strait)
Islander) Act 2006 (Cth) on behalf of)
NYANGUMARTA WARRARN)
ABORIGINAL CORPORATION)

M. Rose
Director (Signature)

[Signature]
Director/Secretary (Signature)

Margaret Rose
Director (Print full name)

Diane Stewart
Director/Secretary (Print full name)

[Signature]
Witness (Signature)

[Signature]
Witness (Signature)

Lee Butler
Witness (Print full name)

ALAN ROBERT BYRNE
Witness (Print full name)

7 Blackford St. Mt Hawthorn
Address of witness

9 Miria Court BLOOMFIELD
Address of witness

4.12.2014
Date

4-12-14
Date

SCHEDULE 1. Eighty Mile Beach Marine Park (Nyangumarta Part)

The Eighty Mile Beach Marine Park (Nyangumarta Part) comprises Western Australian waters, the airspace above those waters, the seabed below those waters, and the subsoil to a depth of 200 metres below that seabed that are –

- (a) contained within and bounded by a line:
- commencing at the intersection of the seaward limit of the coastal waters of the State and longitude 120°57'00" east; and
 - extending south-easterly along the geodesic joining that point and the point at the intersection of longitude 120°58'48.2268" east and the lowest astronomical tide that is the northernmost corner of the determination by the Federal Court of Australia in *Nyangumarta People (Part A). Hunter v State of Western Australia* [2009] FCA 654;
 - thence south-easterly along the northernmost north-eastern boundary of that determination to the intersection of that boundary and the high water mark;
 - thence generally south-westerly along the high water mark, and along the high water mark of the unnamed intertidal creeks, to the point at the intersection of that water mark and the westernmost boundary of that determination;
 - thence northerly along that boundary to the intersection of that boundary and the lowest astronomical tide at longitude 120°03'50.7492" east that is the westernmost north-western corner of that determination;
 - thence north along that longitude to the seaward limit of the coastal waters of the State;
 - thence generally easterly and generally north-easterly along that limit to the point of commencement; and
- (b) within that line, seaward of the high water mark of all islands.

The Eighty Mile Beach Marine Park Intertidal Area comprises Western Australian waters, the airspace above those waters, the seabed below those waters, and the subsoil to a depth of 200 metres below that seabed that are seaward of the high water mark and landward of the lowest astronomical tide of the mainland and all islands contained within the Eighty Mile Beach Marine Park (Nyangumarta Part).

NOTES:

1. All geographic coordinates are expressed in terms of the Geocentric Datum of Australia 1994 (GDA94).
2. "Western Australian waters" means all waters -
(b) that are within the limits of the State; or
(c) that are "coastal waters of the State".
3. "coastal waters of the State" has the meaning given to that term in the Coastal Waters (State Powers) Act 1980 (Commonwealth) section 3(1).

4. "high water mark" means the ordinary (mean of) high water mark at spring tides as defined in the Land Administration Act 1997 section 3(1).
5. "lowest astronomical tide" means the lowest level to which the sea level can be predicted to fall under normal meteorological conditions.

SCHEDULE 2. Eighty Mile Beach Marine Park (Nyangumarta Part)