

**ESPERANCE TJALTJRAAK NATIVE TITLE ABORIGINAL  
CORPORATION RNTBC (ICN 8212) ON BEHALF OF THE ESPERANCE  
NYUNGAR NATIVE TITLE GROUP**

**AND**

**CHIEF EXECUTIVE OFFICER  
OF THE DEPARTMENT OF BIODIVERSITY, CONSERVATION AND  
ATTRACTIONS**

---

**SECTION 56A**

**JOINT MANAGEMENT  
AGREEMENT FOR THE WUDJARI  
MARINE PARK (ESPERANCE  
WUDJARI COUNTRY)**



State Solicitor's Office  
141 St Georges Terrace Perth WA 6000  
Ref: 3198-21



## TABLE OF CONTENTS

<b>RECITALS.....</b>	<b>6</b>
<b>1. DEFINITIONS AND INTERPRETATION .....</b>	<b>7</b>
1.1 General Definitions .....	7
1.2 Specific Definitions.....	7
1.3 Interpretation .....	10
<b>2. JOINT MANAGEMENT OF THE WUDJARI CONSERVATION ESTATE... 11</b>	<b>11</b>
<b>3. ESTABLISHMENT OF JOINT MANAGEMENT BODY..... 12</b>	<b>12</b>
<b>4. ROLE AND DECISIONS OF THE JOINT MANAGEMENT BODY..... 12</b>	<b>12</b>
4.1 Role of the Joint Management Body .....	12
4.2 Decisions of the Joint Management Body.....	13
<b>5. MEMBERSHIP OF THE JOINT MANAGEMENT BODY .....</b>	<b>14</b>
5.1 Representative Members and Alternate Members .....	14
5.2 Representative Member unable to attend a JMB meeting.....	14
5.3 Chairperson .....	15
5.4 Persons not eligible to be members .....	15
5.5 Vacancy of Member .....	15
5.6 Vacancy of Chairperson .....	16
5.7 Removal for bankruptcy .....	16
5.8 Removal for misbehaviour etc.....	17
5.9 Conflict of Interest.....	17
<b>6. PROTECTION FROM PERSONAL LIABILITY..... 18</b>	<b>18</b>
<b>7. CONVENING MEETINGS..... 18</b>	<b>18</b>
7.1 First meeting.....	18
7.2 Convening and frequency of meetings .....	18
7.3 Administrative responsibility .....	18
7.4 Invitation to attend a meeting of the Joint Management Body .....	18
<b>8. PROCEDURE..... 19</b>	<b>19</b>
<b>9. SUB-COMMITTEES..... 19</b>	<b>19</b>
<b>10. QUORUM .....</b>	<b>19</b>
<b>11. VOTING..... 19</b>	<b>19</b>
<b>12. JOINT MANAGEMENT BODY DISPUTE .....</b>	<b>20</b>
12.1 Interpretation .....	20
12.2 Referral to CEO and ETNTAC .....	20

12.3	Referral to Mediation .....	21
12.4	Referral to Minister .....	21
12.5	Obligations continue.....	21
<b>13.</b>	<b>REVIEW .....</b>	<b>22</b>
<b>14.</b>	<b>VARIATION.....</b>	<b>22</b>
<b>15.</b>	<b>OBLIGATION OF PARTIES IN RESPECT OF MEMBERS.....</b>	<b>22</b>
<b>16.</b>	<b>DEFAULT AND ENFORCEMENT .....</b>	<b>23</b>
16.1	Events of Default.....	23
16.2	Default under clause 16.1 .....	23
16.3	ETNTAC Insolvency Event .....	24
16.4	Suspension of Obligations .....	24
16.5	Duty to mitigate.....	24
16.6	Remedies do not prejudice other rights of a Party .....	24
<b>17.</b>	<b>PARTY DISPUTES .....</b>	<b>25</b>
17.1	No Court proceedings.....	25
17.2	Notification.....	25
17.3	Parties to resolve Party Dispute.....	25
17.4	Mediation.....	25
<b>18.</b>	<b>CONFIDENTIALITY .....</b>	<b>26</b>
18.1	Between Parties .....	26
18.2	Between Members of the Joint Management Body.....	26
18.3	Permitted disclosure .....	26
18.4	Disclosure requirements .....	27
18.5	Party may seek injunction.....	27
18.6	No waiver or transfer of intellectual property rights .....	27
<b>19.</b>	<b>TERM AND TERMINATION .....</b>	<b>27</b>
19.1	Term .....	27
19.2	Termination .....	28
<b>20.</b>	<b>INTELLECTUAL PROPERTY.....</b>	<b>28</b>
<b>21.</b>	<b>ACTS BY STATE – NO FETTER UPON DISCRETION .....</b>	<b>28</b>
<b>22.</b>	<b>NO ASSIGNMENT WITHOUT CONSENT .....</b>	<b>28</b>
<b>23.</b>	<b>FORCE MAJEURE .....</b>	<b>29</b>
<b>24.</b>	<b>GENERAL .....</b>	<b>30</b>
24.1	Entire agreement.....	30
24.2	Governing law and jurisdiction .....	30
24.3	Severance.....	30

24.4 Election and waiver .....30

24.5 Survival.....31

**25. NOTICE .....31**

25.1 Requirements for giving notices and other communication.....31

25.2 Address for notices and other communications .....31



## **Introduction**

### ***Text Boxes***

*In some parts of this Agreement there will be a text box to give a basic explanation of the clause below it. Text boxes are not part of the Agreement and are not to be used to resolve issues that may arise in understanding or applying this Agreement.*

### ***What is this Agreement?***

*The Management Plan for the Wudjari Conservation Estate provides for it to be jointly managed by the Esperance Tjaltjraak Native Title Aboriginal Corporation RNTBC (ICN 8212) (ABN 7587 1386093) (ETNTAC) and the CEO of the Department that assists the Minister in administering the CALM Act, being, at present, the Department of Biodiversity, Conservation and Attractions.*

*Where joint management is provided for in a management plan, the CALM Act requires an agreement to be signed that establishes the joint management body to manage the land and waters and to cover, such things as, the membership of the joint management body and its rules and procedures. This Agreement is intended to meet that requirement of the CALM Act by giving effect to joint management and setting out the role of the Joint Management Body.*

*The Parties to this Agreement are the CEO and ETNTAC.*

**THIS AGREEMENT** is made on the

day of

2025

**BETWEEN**

The **CHIEF EXECUTIVE OFFICER** of the Department of Biodiversity Conservation and Attractions acting through the **CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY**, a body corporate established under section 36 of the Conservation and Land Management Act, of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia (**CEO**)

AND

**ESPERANCE TJALTJRAAK NATIVE TITLE ABORIGINAL CORPORATION RNTBC** (ICN 8212) (ABN 7587 1386093) a body corporate established for and on behalf of the Esperance Nyungar Native Title Group, of 11A Shelden Road, Esperance, Western Australia (**ETNTAC**)

**RECITALS**

- A. The CEO is acting through the Conservation and Land Management Executive Body (the body corporate established under section 36 of the CALM Act).
- B. Pursuant to section 37 of the CALM Act, the Conservation and Land Management Executive Body is established to provide a body corporate through which the CEO can perform any of his or her functions under specified Acts, including the CALM Act. A function of the CEO is to manage land and waters to which the CALM Act applies, which includes national parks, nature reserves, conservation parks and marine parks.
- C. By section 56A of the CALM Act, a management plan may require the CEO to manage the land and waters jointly with one or more other persons specified in the plan.
- D. ETNTAC 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 Esperance Nyungar Native Title Group for the purposes of the Determination, and is the body corporate that the Esperance Nyungar Native Title Group would like to jointly manage the Wudjari Conservation Estate with the CEO.
- E. The State, the Minister for Lands, the Commission, the CEO and ETNTAC entered into the ILUA which, among other things, provides for the joint management of the Wudjari Conservation Estate.
- F. In accordance with Part V, Division 1 of the CALM Act, the Commission and ETNTAC prepared, and the Minister approved, the Management Plan.
- G. The Management Plan requires the CEO to manage the Wudjari Conservation Estate jointly with ETNTAC.
- H. This Agreement constitutes the agreement that:
  - (i) is required to be attached to the management plans, and that gives effect to joint management of the land and waters comprising the Wudjari Conservation Estate; and



- (ii) sets out the role of the Joint Management Body.

**THE PARTIES AGREE AS FOLLOWS:**

*In this Agreement there are words and terms that have specific meanings and they are explained in this clause.*

*This clause also sets out rules for reading, or that apply to understanding, this Agreement.*

**1. DEFINITIONS AND INTERPRETATION**

**1.1 General Definitions**

In this Agreement, unless it is a defined term in clause 1.2, words and expressions defined in the CALM Act have the same meaning when used in this Agreement.

**1.2 Specific Definitions**

In this Agreement, unless the context otherwise requires:

**Aboriginal Cultural Business** means any ceremonial and other cultural obligation:

- (a) that:
- (i) a Member; or
  - (ii) the directors of ETNTAC,
- as relevant to the application of clause 23, are required to meet under traditional laws and customs; or
- (b) which otherwise affects the capacity of ETNTAC to perform its obligations under this Agreement.

**Agreement** means this joint management agreement.

**Alternate Member** means a person who is nominated under clause 5.2.

**BC Act** means the *Biodiversity Conservation Act 2016* (WA).

**BC Regulations** means the *Biodiversity Conservation Regulations 2018* (WA).

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

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

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

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

**CEO Alternate Member** means a person nominated by CEO under clause 5.1(a)(ii)(B) or a person nominated by CEO under clause 5.5(b)(ii) to replace a Vacating Member that was an Alternate Member, as applicable.

**CEO Representative Member** means a person nominated by CEO under clause 5.1(a)(i)(B) or a person nominated by CEO under clause 5.5(b)(ii) to replace a Vacating Member that was a Representative Member, as applicable.

**Chairperson** means a Representative Member elected to be Chairperson of the Joint Management Body under clause 5.3.

**Commencement Date** means the date on which this Agreement is executed by the last of the Parties to do so.

**Commission** means the Conservation and Parks Commission, a body corporate established under section 18 of the CALM Act.

**Confidential Information** means, as the context requires, "Party Confidential Information" (as defined in clause 18.1(a)) or "JMB Confidential Information" (as defined in clause 18.2(a)), or both "Party Confidential Information" and "JMB Confidential Information" or a combination of these.

**Department** means the department of the Public Service principally assisting in the administration of the CALM Act being, at the Commencement Date, the Department of Biodiversity, Conservation and Attractions.

**Determination** means the determination by the Federal Court of Australia in *Bullen on behalf of the Esperance Nyungar People v State of Western Australia* [2014] FCA 197 that native title exists over specified land and waters.

**Disclosing Party** means, as the context requires, a Party who discloses information under clause 18.1 or clause 18.2.

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

- (a) acts of God, lightning, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) impact of vehicles or aircraft;
- (c) failure of a public utility;
- (d) epidemic or pandemic;
- (e) industrial action (other than industrial action limited to the affected Party);
- (f) civil unrest, war (including civil war), act of a public enemy, sabotage, blockade, revolution, riot, insurrection and acts of terrorism;
- (g) Aboriginal Cultural Business;
- (h) radioactive or biological contamination; or
- (i) the effect of any Law or authority exercised by government official by Law (other than a State Law or a State government official).

**ILUA** means the Body Corporate Indigenous Land Use Agreement for the creation, joint vesting and joint management of the Wudjari Conservation Estate entered into by the State of Western Australia (represented by the Minister), the Minister for Lands, the Conservation and Parks Commission, the CEO and ETNTAC on or about 28 February

2025, which was entered on the Register of Indigenous Land Use Agreements on 20 May 2025.

**Insolvency Event** means, in respect of ETNTAC, where it:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the CATSI Act;
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) is placed under external administration, or special administration, under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is wound up or deregistered under the CATSI Act.

**Joint Management Body** or **JMB** means the body established in clause 3.

**JMB Dispute** has the meaning given in clause 11(d).

**Law** means any written law of the Commonwealth or the State of Western Australia, including all regulations and other instruments made under any statute.

**Management Plan** means the management plan approved under section 60 of the CALM Act in respect of the Wudjari Conservation Estate and titled, "Wudjari Marine Park Joint Management Plan 2024 (Management Plan 103)".

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

**Minister** means the Minister to whom the administration of the CALM 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 1997* (WA).

**Esperance Nyungar Native Title Group** means the persons determined to be the common law holders of native title under the Determination.

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

**Party** means a party to this Agreement and **Parties** means all of the parties to this Agreement.

**Receiving Party** means, as the context requires, a Party to whom information has been disclosed under clause 18.1 or clause 18.2.

**RNTBC Orders** means the orders of the Federal Court under section 56 or 57 of the Native Title Act in respect of the Determinations.

**Replacement RNTBC** means a prescribed body corporate that, in accordance with the provisions of the Native Title Act (including due to the RNTBC Orders being vacated or replaced by a subsequent determination of the Federal Court under sections 56 or 57 of the Native Title Act and an order being made under section 199C(1A) of the Native Title Act), becomes the registered native title body corporate for holding the native title rights

and interests determined under the Determination for the Esperance Nyungar Native Title Group in place of ETNTAC .

**Representative Member** means a person specified under clause 3 and nominated under clause 5.1.

**Reserve** means land, waters or land and waters, that has been reserved and to which the CALM Act applies within the meaning of its section 5.

**Resolution Institute** means the dispute resolution organisation of that name. If the Resolution Institute ceases to exist as an organisation, then "Resolution Institute" is to be taken to mean any other dispute resolution organisation with similar objects:

- (a) that is agreed to by the Parties; or
- (b) that, if no agreement can be reached by the Parties, is decided by the Party that first notified the relevant dispute.

**State** means the State of Western Australia.

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

**ETNTAC Alternate Member** means a person nominated by ETNTAC under clause 5.1(a)(i)(B) or a person nominated by ETNTAC under clause 5.5(b)(i) to replace a Vacating Member that was an Alternate Member, as applicable.

**ETNTAC Representative Member** means a person nominated by ETNTAC under clause 5.1(a)(i)(A) or a person nominated by ETNTAC under clause 5.5(b)(i) to replace a Vacating Member that was a Representative Member, as applicable.

**Wudjari Conservation Estate** means the "Wudjari Marine Park" as that term is defined in the ILUA, and any other Reserves as may be agreed by the Parties.

### 1.3 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) information in a 'text box' is a summary to aid understanding of the provisions it relates to and does not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any information in a 'text box' or the Recitals, the terms and conditions of the clauses of this Agreement will prevail to the extent of the inconsistency;
- (c) words and expressions defined in the Native Title Act have the same meaning where used in this Agreement;
- (d) 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;
- (e) words expressed in the singular include the plural and vice versa;
- (f) words expressed in one gender include other genders;
- (g) 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;

- (h) an expression importing a natural person includes a company, partnership, joint venture, association, authority, registered native title body corporate or other body corporate or governmental or semi-governmental entity;
- (i) 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;
- (j) a reference to a person established under any Law includes a reference to any person or body (corporate or unincorporate) established or continuing to perform the same or a substantially similar function;
- (k) a reference to the "CEO" includes, as the context may require, the Conservation and Land Management Executive Body (or any replacement of it under the CALM Act) if the CEO chooses (or may choose) to act through that body as permitted under the CALM Act;
- (l) 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;
- (m) a reference to a clause is a reference to a clause of this Agreement;
- (n) 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;
- (o) 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;
- (p) 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;
- (q) 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;
- (r) 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;
- (s) 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;
- (t) a term that is defined in a clause of this Agreement has the meaning given to it wherever that term is then used in the provisions of that clause; and
- (u) "including" means "including, but not limited to".

## **2. JOINT MANAGEMENT OF THE WUDJARI CONSERVATION ESTATE**

The Wudjari Conservation Estate will be jointly managed by ETNTAC and the CEO through the Joint Management Body in accordance with the Management Plan and this Agreement.

### **3. ESTABLISHMENT OF JOINT MANAGEMENT BODY**

*The Joint Management Body is established and has 15 Representative Members who are nominated by ETNTAC and the CEO as provided by clause 5.1.*

- (a) A Joint Management Body is established for the purposes of section 56A of the CALM Act.
- (b) The Joint Management Body will consist of fifteen Representative Members, nominated in accordance with clause 5.1.

### **4. ROLE AND DECISIONS OF THE JOINT MANAGEMENT BODY**

*This clause sets out the sorts of matters that the Joint Management Body will do, consider and advise on, as relevant to its management role of the Wudjari Conservation Estate and what the Management Plan provides for the Wudjari Conservation Estate*

#### **4.1 Role of the Joint Management Body**

- (a) The role of the Joint Management Body is to, consistently with the CALM Act, the CALM Regulations, the BC Act and the BC Regulations:
  - (i) make management decisions that are consistent with the Management Plan and this Agreement;
  - (ii) assist in the preparation of policies, programs and other similar management instruments for the management of the Wudjari Conservation Estate;
  - (iii) strategically monitor the management of the Wudjari Conservation Estate including the implementation of the Management Plan and the delivery of on-ground operations;
  - (iv) provide advice to the CEO, Commission and ETNTAC (as appropriate) on all aspects of the use, management and development of the Wudjari Conservation Estate including:
    - A. the value of the Wudjari Conservation Estate 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 CALM Act, CALM Regulations, BC Act and BC Regulations;
    - C. approval and oversight of the annual works program for the Wudjari Conservation Estate;
    - D. expenditure of the budget for the joint management of the Wudjari Conservation Estate as it relates to the amount specified, and purposes set out, in clause 14 of the ILUA;
    - E. any proposed amendments to the Management Plan or any management plan to replace the Management Plan, for the Wudjari Conservation Estate;
    - F. proposals to grant CALM Act leases and licences within the Wudjari Conservation Estate;

- G. the names to be given to places and interpretive and other signage, within the Wudjari Conservation Estate;
  - H. the development or approval of research protocols or cultural management protocols for activities undertaken within the Wudjari Conservation Estate;
  - I. the development of new business and employment opportunities for the Esperance Nyungar Native Title Group and businesses associated with the Wudjari Conservation Estate;
  - J. the recruitment of persons for joint management employment positions in relation to work to be undertaken in respect of the Wudjari Conservation Estate; and
  - K. proposals for carbon farming projects, blue carbon projects and projects which create credits for any future biodiversity and/or nature repair markets within the Wudjari Conservation Estate;
- (v) work co-operatively with the CEO to obtain the information contemplated in subclause (b);
  - (vi) provide advice to other State Government agencies responsible for the implementation of specific management actions in the Management Plan; and
  - (vii) work cooperatively with the CEO and ETNTAC to obtain additional funding for the joint management of the Wudjari Conservation Estate, through State and Federal funding programs and other relevant third parties.
- (b) The CEO each acknowledges and agrees to provide to the Joint Management Body such information as it may reasonably request as to the operational budget for, and operational expenditure on, the Wudjari Conservation Estate, to assist the Joint Management Body to undertake its role under clause 4.1(a).
  - (c) The role of the Joint Management Body does not include undertaking the day-to-day management of the Wudjari Conservation Estate.

#### **4.2 Decisions of the Joint Management Body**

For the purposes of sections 33(1) and 33(3) of the CALM Act, the CEO is to 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.

## 5. MEMBERSHIP OF THE JOINT MANAGEMENT BODY

*This clause deals issues that are relevant for Members of the Joint Management Body including:*

- *the appointment of Representative Members of ETNTAC and the CEO to attend Joint Management Body meetings;*
- *the appointment of other persons as Alternate Members for ETNTAC and the CEO in case one their Representative Members cannot attend a meeting;*
- *the appointment of the Chairperson from one of ETNTAC 's Representative Members*
- *filling vacancies in the positions mentioned;*
- *removal for bankruptcy or because of misbehaviour, incompetence or mental or physical incapacity that is not temporary; and*
- *how a matter before the Joint Management Body where a person may have personal or financial interest in its outcome (called a 'conflict of interest') is to be handled.*

### 5.1 Representative Members and Alternate Members

- (a) After the Commencement Date but before the first meeting convened pursuant to clause 7 and thereafter, at the last meeting before the expiry of a Member's term referred to in clause 5.1(c), for the purposes of section 56A(6) of the CALM Act, the Parties must each nominate persons to be Representative Members and Alternate Members of the Joint Management Body in the following manner:
- (i) ETNTAC must nominate:
- A. twelve (12) persons to be Representative Members; and
  - B. twelve (12) persons persons to be Alternate Members; and
- (ii) the CEO must nominate:
- A. three (3) persons to be Representative Members of the Joint Management Body; and
  - B. three (3) persons to be Alternate Members.
- (b) Unless otherwise agreed by the Parties, the Members nominated by the CEO must be employees of the Department and, if possible, include regional staff with operational responsibility for the Wudjari Conservation Estate.
- (c) Representative Members and Alternate Members are to be nominated for a term of 3 years.
- (d) A person who has been a Representative Member or an Alternate Member may be nominated again for one of those positions.
- (e) Before the first meeting of the Joint Management Body, each Party must give to the other Party, notice of their nominated Representative Members and Alternate Members.

### 5.2 Representative Member unable to attend a JMB meeting

- (a) Upon receiving notice of a meeting, if a ETNTAC Representative Member is temporarily unable to attend a JMB meeting due to sickness, absence or incapacity



they must, as soon as possible after they become aware of that fact, inform the Chairperson and ETNTAC.

- (b) If ETNTAC is informed under clause 5.2(a), ETNTAC must:
  - (i) notify an ETNTAC Alternate Member to attend the meeting; and
  - (ii) prior to the meeting, notify the Chairperson and the CEO of which ETNTAC Alternate Member will be attending the meeting.
- (c) Upon receiving notice of a meeting, if a CEO Representative Member is temporarily unable to attend a JMB meeting due to sickness, absence or incapacity, they must, as soon as possible after they become aware of that fact, inform the Chairperson and the CEO.
- (d) If the CEO is informed under clause 5.2(c), the CEO must:
  - (i) notify a CEO Alternate Member to attend the meeting; and
  - (ii) prior to the meeting, notify the Chairperson and ETNTAC of which CEO Alternate Member will be attending the meeting.
- (e) An Alternate Member notified under clause 5.2(b) or (d) must attend the JMB meeting in place of the absent Representative Member.
- (f) When acting in the place of the absent Representative Member:
  - (i) the Alternate Member has the rights and responsibilities of the absent Representative Member; and
  - (ii) any reference to a Representative Member in this Agreement is to be taken to include an Alternate Member acting in the position of a Representative Member,including the obligations under this clause 5.

### **5.3 Chairperson**

- (a) At the first meeting of the Joint Management Body, the Representative Members must elect a Chairperson from the ETNTAC Representative Members, to serve for a twelve (12) month term.
- (b) Notwithstanding clause 5.3(a), the Chairperson remains in that position after the expiry of a twelve (12) month term until either they are re-elected, or another ETNTAC Representative Member is elected, Chairperson.
- (c) The Chairperson must be present at a meeting of the Joint Management Body, but if the Chairperson is absent from, or unable to attend, a meeting, the attending Representative Members must elect a Representative Member to chair the meeting.

### **5.4 Persons not eligible to be members**

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

### **5.5 Vacancy of Member**

- (a) The position of a Member becomes vacant if they:
  - (i) resign their position by notice delivered to the Chairperson;

- (ii) are absent, without leave from the Chairperson, for three (3) consecutive meetings of which they had notice;
  - (iii) are removed from the position by the Joint Management Body under clause 5.7 or clause 5.8; or
  - (iv) die.
- (b) If the position of any Member becomes vacant for any reason (**Vacating Member**), including because of clause 5.5(a), a new Member shall be nominated for the remainder of the Vacating Member's term in the following way:
- (i) if the Vacating Member was nominated by ETNTAC, ETNTAC must nominate a new Member;
  - (ii) if the Vacating Member was nominated by the CEO, the CEO must nominate a new Member; and
  - (iii) a Party shall give to the other Party, written notice of the new Member nominated by them.

### 5.6 Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if they:
- (i) resign their position by notice delivered to the Joint Management Body;
  - (ii) are absent without leave from the Joint Management Body for three (3) consecutive JMB meetings of which they had notice;
  - (iii) are removed from the position by the Joint Management Body under clause 5.7 or clause 5.8; or
  - (iv) die.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of clause 5.6(a), a new Chairperson must be elected in accordance with clause 5.3 for the remainder of the twelve (12) month term.

### 5.7 Removal for bankruptcy

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member (**Disclosing 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 CATSI Act,
- must at the first JMB meeting after becoming aware of that fact, disclose it (**Disclosure**) to the other Members who are at that meeting (**Remaining Members**). The Disclosure must be recorded in the minutes of the meeting.
- (c) Following a Disclosure, the Remaining Members must vote, in accordance with clause 11, as to whether the Disclosing Member is to be removed from the Joint Management Body. The results of the vote must be recorded in the minutes of the meeting.

- (d) If, the result of the vote referred to in clause 5.7(c) is that the Disclosing Member is to be removed from the Joint Management Body, their position becomes vacant for the purposes of, and needs to be filled pursuant to, clause 5.5 or clause 5.6 if it is the Chairperson.

#### **5.8 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 Member may move at a meeting of the Joint Management Body that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour, incompetence or mental or physical incapacity other than temporary illness.
- (c) Where clause 5.8(b) applies, the Members, other than the Affected Member, who are at that meeting (**Remaining Members**) must vote, as to whether the Affected Member's performance is impaired by misbehaviour, incompetence or mental or physical incapacity other than temporary illness. The results of the vote must be recorded in the minutes of the meeting.
- (d) If, the result of the vote referred to in clause 5.8(c) is that the Affected Member's performance is impaired by misbehaviour, incompetence or mental or physical incapacity other than temporary illness, the position of that Member becomes vacant for the purposes of, and needs to be filled pursuant to, clause 5.5 or clause 5.6 if it is the Chairperson.

#### **5.9 Conflict of Interest**

- (a) A Member (**Disclosing Member**) who has a material personal or financial interest (**Conflict of Interest**) in respect of a matter that is being considered by a meeting of the Joint Management Body (**relevant matter**) must, as soon as possible after becoming aware of the Conflict of Interest, disclose the nature of it to the other Members who are at that meeting (**Remaining Members**). Disclosure of a Conflict of Interest must be recorded in the minutes of the meeting.
- (b) Subject to clause 5.9(c), a Disclosing Member must not:
  - (i) take part in the consideration or discussion of the relevant matter; or
  - (ii) vote on the relevant matter.
- (c) Following the disclosure of a Conflict of Interest, the Remaining Members must vote, in accordance with clause 11, as to whether:
  - (i) the Disclosing Member may take part in the consideration or discussion of the relevant matter; and
  - (ii) the Disclosing Member may, following consideration or discussion of the relevant matter (whether or not the Disclosing Member was permitted to take part), vote on the matter,and the results of the vote must be recorded in the minutes of the meeting.
- (d) A Disclosing Member may choose not to take part in the consideration or discussion of, or voting on, a relevant matter notwithstanding that the vote of the Remaining Members under clause 5.9(c) is that they may do so.

- (e) For the avoidance of doubt, a Member does not have a Conflict of Interest solely because:
  - (i) of their particular traditional interest or seniority in relation to an area of sea or land country within or adjoining the Esperance Nyungar Marine Conservation Estate; or
  - (ii) they are a member of the Esperance Nyungar Native Title Group or a director of ETNTAC.

## **6. PROTECTION FROM PERSONAL LIABILITY**

Members of the Joint Management Body are protected from personal liability in accordance with section 132 of the CALM Act.

## **7. CONVENING MEETINGS**

*This clause sets out such things as when the first Joint Management Body meeting is to happen, where and how often meetings are to take place. The CEO is to provide the administrative support for the meetings.*

### **7.1 First meeting**

Within forty (40) days of the Commencement Date, the CEO is to convene the first meeting of the Joint Management Body, to be held at a place agreed by the Parties.

### **7.2 Convening and frequency of meetings**

- (a) Subject to clause 7.2(c)(i) and clause 7.2(c)(ii), the CEO is responsible for convening meetings.
- (b) At the first JMB meeting, or at any subsequent meeting, the Joint Management Body must decide the place for the subsequent meeting or meetings.
- (c) The Joint Management Body must meet at least once every four (4) months but may meet more often in the following circumstances:
  - (i) the Chairperson requests a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice in writing to the CEO and Representative Members; or
  - (ii) the CEO calls a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice to the Chairperson and Representative Members.

### **7.3 Administrative responsibility**

- (a) The CEO will provide administrative support for the Joint Management Body, including preparing and circulating meeting notices, agendas and papers.
- (b) ETNTAC may assist the CEO with providing the support noted in clause 7.3(a).

### **7.4 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 considers necessary.

- (b) The Joint Management Body has an absolute discretion to determine at which meetings, or part of a meeting, an invitee may be present.
- (c) Invitees do not have a right to vote at a Joint Management Body meeting.

## 8. PROCEDURE

*The Joint Management Body can agree other rules for how it will operate than what is set out in this Agreement as long as they are not inconsistent with what is provided in this Agreement.*

The Joint Management Body may adopt other 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.

## 9. 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.

## 10. QUORUM

*This clause sets out how many ETNTAC Representative Members and CEO Representative Members need to attend a Joint Management Body meeting (the 'quorum') for the Joint Management Body to be able to consider matters and make decisions on them.*

The minimum number of Members (including the Chairperson) that must be present at each Joint Management Body meeting for the Joint Management Body to conduct its business is eight (8) being made up of 6 (6) ETNTAC Representative Members and two (2) CEO Representative Members.

## 11. VOTING

*Each Representative Member at a Joint Management Body meeting has one vote. The Joint Management Body is to try and come to a unanimous decision on matters but, if that is not possible, then a decision will be made by a majority of the ETNTAC Representative Members, and a majority of CEO Representative Members, at the meeting ("Representative majority").*

*If at three (3) consecutive Joint Management Body meetings, the Representative majority cannot come to a decision on the same agenda item, then it becomes a Joint Management Body Dispute to which clause 12 applies.*

- (a) Each Representative Member present at a meeting of the Joint Management Body, including the Chairperson, has one vote and must exercise that vote, subject to clause 5.9(b).
- (b) Subject to clause 11(c), the Joint Management Body must try to reach a unanimous decision.
- (c) If the Joint Management Body cannot reach a unanimous decision, then decisions must be made by a majority of:

- (i) the ETNTAC Representative Members; and
  - (ii) the CEO Representative Members,
- present at the meeting.
- (d) If a majority of:
- (i) the ETNTAC Representative Members; and
  - (ii) the CEO Representative Members,
- present at the meeting cannot agree the outcome of the same agenda item at three (3) consecutive meetings of the Joint Management Body, then the business the subject of that agenda item becomes a dispute for the purposes of clause 12 (**JMB Dispute**).

## **12. JOINT MANAGEMENT BODY DISPUTE**

*The Parties are to try and work out JMB Disputes by negotiation. If that doesn't work then this clause sets out a process to work through to try and resolve the dispute, including referral to a mediator or the Minister.*

### **12.1 Interpretation**

In this clause 12, the "CEO" means the CEO or a person nominated by the CEO, and "ETNTAC" means the Chairperson of ETNTAC or a person nominated by the Chairperson of ETNTAC.

### **12.2 Referral to CEO and ETNTAC**

- (a) If the circumstances in clause 11(d) arise, the Chairperson must, within five (5) Business Days of the third meeting, give notice of the JMB Dispute to the CEO and ETNTAC setting out details of the JMB Dispute.
- (b) Upon receiving notice of a JMB Dispute under clause 12.2(a), the CEO and ETNTAC must, within twenty (20) Business Days of the date of that notice, in respect of the JMB Dispute:
  - (i) decide it;
  - (ii) refer it to a mediator in accordance with clause 12.3;
  - (iii) send it back to the Joint Management Body to decide; or
  - (iv) refer it to the Minister to decide.
- (c) When deciding the JMB Dispute under clause 12.2(b)(i), the CEO and ETNTAC may consult with any person.
- (d) A determination of the JMB Dispute by the CEO and ETNTAC under clause 12.2(b)(i) is deemed to be a determination of the Joint Management Body.
- (e) If the CEO and ETNTAC are unable to agree what course of action to take under clause 12.2(b) they must refer the JMB Dispute to a mediator, in which case, clause 12.3 applies.

### **12.3 Referral to Mediation**

- (a) The CEO and ETNTAC will try to agree a mediator, who is a member of a recognised professional mediation group, to mediate the JMB Dispute.
- (b) If within ten (10) Business Days after a referral under clause 12.2(b)(i) or clause 12.2(e) the CEO and ETNTAC cannot agree on a mediator, either the CEO or ETNTAC will request the Chairperson of the Resolution Institute to appoint a mediator.
- (c) The CEO and ETNTAC must engage in the mediation process in good faith and with the aim of reaching a resolution of the JMB Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the JMB Dispute, during or following which, the CEO and ETNTAC may decide the JMB Dispute.
- (e) Any information or documents disclosed by the CEO and ETNTAC under this clause 12:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the JMB Dispute.
- (f) The CEO and ETNTAC will pay their own costs of complying with this clause 12.3 and they are to equally pay the costs of any mediator.
- (g) If the CEO and ETNTAC fail to resolve the JMB 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 ETNTAC, then either the CEO or ETNTAC may refer the JMB Dispute to the Minister under clause 12.4.

### **12.4 Referral to Minister**

- (a) If the CEO and ETNTAC refer the JMB Dispute to the Minister for a decision, the Minister is to consult with the CEO and ETNTAC regarding how the JMB Dispute ought to be determined and do one or both of the following:
  - (i) decide the process for determining the JMB Dispute; or
  - (ii) determine the JMB Dispute.
- (b) The Minister is not required, when making a determination under clause 12.4(a), to act in accordance with any advice or recommendation made by the CEO or ETNTAC in the course of the consultation process.
- (c) A determination of the JMB Dispute by the Minister under clause 12.4(a)(ii) or, a determination of the JMB Dispute by the process decided upon by the Minister under clause 12.4(a)(i), will be deemed to be a decision of the Joint Management Body.

### **12.5 Obligations continue**

If a JMB 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 JMB 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 JMB Dispute.

### **13. REVIEW**

*The CEO and ETNTAC are to review the Agreement if a management plan is to be substituted for the Management Plan or they both agree a review is necessary.*

- (a) The Parties must review this Agreement, including assessing its operation and implementation, in the following circumstances, whichever occurs first:
  - (i) a substitute management plan for the Management Plan is being prepared for the purposes of Part V Division 1 of the CALM Act; or
  - (ii) the Parties agree that a review is necessary.
- (b) A review under clause 13(a) must be commenced within six (6) months of a circumstance in clause 13(a) occurring.
- (c) The review must be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties.
- (d) The costs of the review agreed by the Parties are to be met by the CEO.

### **14. VARIATION**

The Parties may vary this Agreement by deed of variation executed by both Parties.

### **15. OBLIGATION OF PARTIES IN RESPECT OF MEMBERS**

*This clause requires the CEO and ETNTAC to ensure that their chosen Members meet their obligations as Members, such as, attending Joint Management Body meetings.*

ETNTAC and the CEO must make sure that:

- (a) their Members perform their roles 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 4; and
  - (ii) the CALM Act and any other applicable State legislation; and
- (b) as required by clause 10, the required number of Representative Members nominated by them are present at every meeting of the Joint Management Body.



## 16. DEFAULT AND ENFORCEMENT

*This clause sets out what is to happen if a Party (defaulting party) does not comply with its obligations under this Agreement.*

*There will be a default when a party:*

- *commits a breach of this Agreement that is not able to be fixed;*
- *breaches a specific provisions in this Agreement;*
- *commits 3 breaches of this Agreement within a 12 month period; or*
- *in respect of ETNTAC, an Insolvency Event affects it.*

*The defaulting party gets a chance to fix the default if it is able to be fixed.*

*The clause sets out what is to happen if the default is not able to be fixed, or is able to be but the defaulting party hasn't fixed it within the relevant period to do so.*

### 16.1 Events of Default

A Party (the **Defaulting Party**) causes an **Event of Default** for the purposes of this clause 16 where they:

- (a) commit a breach of this Agreement that is incapable of being remedied;
- (b) breach clauses 5.1, 17.1, 18 or 22;
- (c) breach their obligation in clause 15(a) in respect of a Member's obligations in clauses 5.7, 5.8 and 5.9;
- (d) breach their obligation in clause 15(b) in respect of three (3) consecutive Joint Management Body meetings; or
- (e) commit three (3) breaches of their 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.

### 16.2 Default under clause 16.1

- (a) If a Defaulting Party causes an Event of Default under clause 16.1, 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 must:
  - (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 twenty (20) Business Days:
      1. demonstrate that it is taking steps in good faith to remedy the Event of Default; and
      2. continue to take such steps until the Event of Default is remedied,

provided that the default must be remedied by no later than three (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 ETNTAC Insolvency Event**

- (a) If an Insolvency Event occurs, ETNTAC (as the **Defaulting Party**) must, as soon as possible, notify the CEO (the **Non-defaulting Party**):
  - (i) of the Insolvency Event;
  - (ii) of the appointment of any administrator, receiver or manager to ETNTAC; and
  - (iii) subject to clause 16.3(b), when the relevant Insolvency Event ceases to exist.
- (b) If, pursuant to an Insolvency Event, ETNTAC is deregistered, or an order is made that ETNTAC be wound up, the Esperance Nyungar Native Title Group must:
  - (i) take steps for a Replacement RNTBC to be appointed in accordance with the Native Title Act; and
  - (ii) use reasonable endeavours to have the Replacement RNTBC execute a deed by which it agrees to be bound by the terms of this Agreement.

### **16.4 Suspension of Obligations**

The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations (other than obligations under clause 18), and the Defaulting Party's rights, under this Agreement:

- (a) where clause 16.2(a) applies:
  - (i) until clause 16.2(b) is complied with; or
  - (ii) the Event of Default no longer exists,as applicable; or
- (b) where clause 16.3(a) applies, until notice is given to the CEO under clause 16.3(a)(ii), that the relevant Insolvency Event has ceased or the Replacement RNTBC has been appointed, as applicable, and the CEO is satisfied that is the case.

### **16.5 Duty to mitigate**

A Party must take all reasonable steps open to it to mitigate the effects of an Event of Default and further, in ETNTAC's case, any Insolvency Event.

### **16.6 Remedies do not prejudice other rights of a Party**

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

*This clause applies to disputes (other than JMB Disputes). The Parties are to try and work out disputes by negotiation. If that doesn't work then this clause sets out a process to work through to try and resolve the dispute, starting with mediation.*

### 17.1 No Court proceedings

If a dispute arises under this Agreement between the Parties (**Party Dispute**), other than a JMB Dispute, 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 ten (10) Business Days after a request under clause 17.3, the Chairperson of the Resolution Institute is to be requested by either Party to appoint a mediator.
- (b) The role of the mediator is to assist in negotiating a resolution of the Party Dispute.
- (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 the Parties must equally pay the costs of a 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 with twenty (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 clause 17.4(f)) commencing legal proceedings.
- (f) If a Party breaches clause 17.2, clause 17.3 or clause 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

*If a Party discloses information that it has advised the other parties is confidential then it is not to be disclosed by them except if permitted by this Agreement or by law. This is also the position for information disclosed by ETNTAC as being gender sensitive.*

### 18.1 Between Parties

- (a) Subject to clause 18.1(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 (**Party Confidential Information**).
- (b) The following information is not Party 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; and
  - (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 Between Members of the Joint Management Body

- (a) Subject to clause 18.2(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 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 this clause 18 (**JMB Confidential Information**).
- (b) The following information is not JMB 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; and
  - (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).
- (c) Information identified by ETNTAC as gender sensitive (women only) or gender sensitive (men only) is JMB Confidential Information whether or not it meets the requirements of clause 18.2(b)(i) or clause 18.2(b)(ii).

### 18.3 Permitted disclosure

Subject to clause 18.4, a Receiving Party may disclose Confidential Information:

- (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) 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 (including legal advisers), financiers and consultants and related bodies corporate;
- (e) and subject to clause 22, to a proposed assignee of ETNTAC's interest (rights and obligations) under this Agreement; and
- (f) to any parliamentary or judicial body or any legislative or executive arm of the Government of Western Australia, including disclosure in response to parliamentary questions, ministerial inquiries and inquiries conducted by or on behalf of the Attorney General of the State.

#### **18.4 Disclosure requirements**

Before making any disclosure to a person 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) in the case of a disclosure under clauses 18.3(b) or 18.3(c), notify the Disclosing Party and give that 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 under clause 18.3(e), ensure that the person executes a deed with the Disclosing Party, in a form that is acceptable to the Disclosing Party (acting reasonably), imposing on the person an undertaking of confidentiality having substantially similar effect to this clause 18.

#### **18.5 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.

#### **18.6 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.

### **19. TERM AND TERMINATION**

*This Agreement commences when it is executed by the last Party to do so and continues while the Management Plan continues.*

#### **19.1 Term**

Subject to clause 19.2, this Agreement commences on the Commencement Date and continues for as long as the Management Plan remains in force.

## 19.2 Termination

- (a) This Agreement terminates in the following circumstances, whichever occurs first:
- (i) the Management Plan expires and a new management plan is substituted for it;
  - (ii) the Management Plan is revoked and a new management plan is substituted for it;
  - (iii) a new agreement is substituted for this Agreement; or
  - (iv) the Management Plan is amended so that joint management is no longer required.
- (b) In the circumstances outlined in clauses 19.2(a)(i) and (a)(ii), other than where the new management plan does not require joint management, for the purposes of section 56A(3) of the CALM Act, the CEO must attach a new joint management agreement, to the new management plan.
- (c) What is provided in clause 19.2(b) does not need to be complied with in the circumstance outlined in clause 19.2(a)(i) if the requirements of section 56B of the CALM Act are met and this Agreement is attached to the new management plan.

## 20. INTELLECTUAL PROPERTY

*A Party's ownership of intellectual property rights is not affected by it being made available to the Joint Management Body, the Department, State or ETNTAC.*

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

## 21. ACTS BY STATE – NO FETTER UPON DISCRETION

*'Fetter' means to restrict. Nothing in this Agreement can restrict a person from exercising a power or discretion given to them by a Law.*

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

## 22. NO ASSIGNMENT WITHOUT CONSENT

*ETNTAC may only transfer its right and obligations under this Agreement with the written consent of the CEO*

ETNTAC must not assign, novate or otherwise dispose of its rights, obligations and interests under this Agreement without the written consent of the CEO.

## 23. FORCE MAJEURE

*"Force majeure" is a term used in legal documents to refer to an event that cannot be reasonably anticipated or controlled, and which prevents a party from complying with its obligations under a contract (e.g. storm, fire, flood, etc.). The term is defined, for the purposes of this Agreement, in clause 1.2*

*If an event of Force Majeure prevents a party (**Affected Party**) from performing its obligations under this Agreement, then the Affected Party will not be in default while the event exists.*

*The Affected Party must take reasonable steps to make sure the effect of the event on the other Parties is reduced as much as possible.*

*If the event is still happening 3 months after it started, then the other Party will be excused from performing their obligations under this Agreement and the Affected Party will not be able to enforce its rights under this Agreement, until the event stops.*

- (a) If because of Force Majeure a Party becomes wholly or partly unable to perform any of its obligations under the Agreement (**Affected Party**), then the Agreement nevertheless continues and remains in force subject to this clause 23.
- (b) The Affected Party will not be in default in respect of the obligation that it is unable to perform for as long as such Force Majeure continues, and the time within which the Affected Party is required to perform any work or satisfy any obligation will be extended by a period equivalent to that during which such prevention or delay continues, provided that:
  - (i) the cause of the Force Majeure, as far as possible, must be remedied as soon as is reasonably practicable by the Affected Party;
  - (ii) if the Force Majeure is Aboriginal Cultural Business, that it is attended to as soon as is reasonably practicable; and
  - (iii) no Party will be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (c) The Affected Party must:
  - (i) as soon as is reasonably practicable, give notice to the other Party of the occurrence of the Force Majeure and the likely period of delay. The notice must:
    - A. specify the obligations it cannot perform;
    - B. fully describe the event of Force Majeure;
    - C. estimate the time during which the Force Majeure will continue; and
    - D. specify the measures proposed to be adopted to remedy or abate the Force Majeure, or, where the Force Majeure is Aboriginal Cultural Business, the reasonable steps that will be taken to address it;
  - (ii) as soon as reasonably practicable, give notice of the cessation of the delay caused by the Force Majeure; and
  - (iii) 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.

- (d) If the Force Majeure cannot be overcome within three (3) months, either Party may, by notice to the other Party, suspend the performance of its obligations (other than obligations under clause 18) and the affected Party's rights under this Agreement until the Force Majeure has ceased.

## **24. GENERAL**

*Agreements usually include general or 'boilerplate' clauses that apply overall to the operation of the Agreement. The general clauses in this Agreement note:*

- *that this Agreement is the entire agreement on the subject covered by it;*
- *the law and courts that apply to this Agreement are the laws and courts of Western Australia;*
- *a provision that is not valid may be treated as if it does not apply to this Agreement without affecting the rest of the Agreement;*
- *a Party electing to waive compliance of an obligation by the other Party does not mean it does not have to be complied with in future or that any other right they have may not be exercised; and*
- *clauses that survive the Agreement coming to an end.*

### **24.1 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.

### **24.2 Governing law and jurisdiction**

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

### **24.3 Severance**

If any provisions of the Agreement is void, voidable by any Party, unenforceable or illegal according to the Law in force in the State, it is to 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), are to be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

### **24.4 Election and waiver**

A right or power under the Agreement is only to 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.

#### **24.5 Survival**

Clauses 1, 17, 18, 24 (except clause 24.4) and 25 survive termination of this Agreement.

### **25. NOTICE**

#### **25.1 Requirements for giving notices and other communication**

Each notice or other communication to be given under this Agreement:

- (a) must be in writing;
- (b) must be delivered to the intended recipient:
- (i) by prepaid post or by hand to the address noted in clause 25.2 below or the address last notified by the intended recipient to the sender; or
  - (ii) if the intended recipient has agreed in writing to receive notices or other communications by email, to the email address noted in clause 25.2 or the email address last notified in writing 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;
  - (ii) in the case of delivery by post, seven (7) Business Days after the date of posting; and
  - (iii) if by email, at the earlier of:
    - A. the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - B. the time that the intended recipient confirms receipt of the email by reply email; and
    - C. four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered,

but if the result is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

#### **25.2 Address for notices and other communications**

The address and email address for each Party for the purposes of clause 25.1 is:

##### **CEO**

Address: 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia, 6151

Attention: District Manager, Esperance

Email Address: [esperance\\_admin@dbca.wa.gov.au](mailto:esperance_admin@dbca.wa.gov.au)

**ETNTAC**

Address: 11A Shelden Road Esperance WA 6450 / PO Box 1451 Esperance WA 6450

Attention: The Chief Executive Officer, Esperance Tjaltjraak Native Title Aboriginal Corporation

Email Address: [ceo@etntac.com.au](mailto:ceo@etntac.com.au)

**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:

J. Potts  
Signature of witness

[Signature]  
Signature of Chief Executive Officer

Jane Potts  
Full name of witness (print)

03/11/25  
Date

17 Dick Perry Ave Kensington WA 6151  
Address of witness

Public Servant  
Occupation of witness

**EXECUTED for ESPERANCE  
TJALTJRAAK NATIVE TITLE  
ABORIGINAL CORPORATION  
RNTBC (ICN 8212)** in accordance with  
its rules and section 99.5(1) of the  
*Corporations (Aboriginal and Torres  
Strait Islander) Act 2006 (Cth)* by:

Henry Dabb  
Director (signature)

Henry Dabb

Director (print full name)

Donna Beach

Director/Secretary (signature)

DONNA BEACH

Director/Secretary (print full name)