



Government of **Western Australia**
Housing Authority

Housing Management Agreement

Housing Authority

[Aboriginal Corporation/Entity]

For [Community Name]

Housing Management Agreement

[Aboriginal Corporation/Entity]

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Details

Date _____ / _____ / _____
(day) (month in full) (year)
[insert (by handwriting) date of last signing]

This agreement is between the Housing Authority and [Aboriginal Corporation/ Entity] in respect of [Community Name].

OR

(DELETE whichever is NOT applicable and this note)

This agreement is between the Housing Authority and the Aboriginal Lands Trust (the Aboriginal Entity with the power to make this agreement) in respect of [Community Name].

Parties

Name **Housing Authority**, a body corporate continued under section 6(1) of the *Housing Act 1980* (WA)
Short form name Housing Authority
Notice details Locked Bag 5000, Fremantle, WA, 6959
Contact Director General or his nominee from time to time

Name [Aboriginal Corporation/ Entity]
Short form name Organisation
Notice details [Address, include facsimile number]
Contact [Details - CEO, Director or Company Secretary]

Background

- A. In accordance with Section 62B of the Housing Act the Parties have entered into this Agreement to enable the Housing Authority to control and manage the letting and leasing of housing on Aboriginal Land, that is the subject of this agreement, for and on behalf of the Organisation.
- B. This Agreement represents the shared commitment of the Parties to implement public housing standards and management practices for all Nominated Lots and Nominated Houses, and to ensure that residential premises located on the Aboriginal Land, the subject of this Agreement, are maintained to a standard consistent with the Residential Tenancy Act.
- C. The Parties confirm that the Agreement does not confer or create any proprietary interest in favour of the Housing Authority of any nature whatsoever in the Nominated Lots or Nominated Houses, and that it is only a tenancy and property management arrangement.
- D. The Housing Authority acknowledges the independence and right of the Organisation to self-determination.

The Parties agree as follows:

Agreed Terms

1. Defined terms and interpretation

1.1. Defined terms

The following definitions apply unless the contrary intention appears:

Aboriginal Entity has the meaning as that term is defined in section 62A of the Housing Act.

Aboriginal Land has the meaning as that term is defined in section 62A of the Housing Act and regulation 6A of the Housing Regulations.

Aboriginal Person has the meaning as that term is defined in the *Aboriginal and Torres Strait Islander Act 2005* (Cth).

Agreement means this Housing Management Agreement, including its schedules and annexures.

Annexure means annexure or attachment to this Agreement.

Annual Report means a report prepared by the Housing Authority for the benefit of the Organisation which contains, as far as can be reasonably ascertained, the following information:

- (a) the Nominated Lots and Nominated Houses that are leased pursuant to a Residential Tenancy Agreement;

- (b) the names of all Tenants leasing the above Nominated Lots and Nominated Houses;
- (c) the total Rent received by the Housing Authority for the Nominated Lots and Nominated Houses leased pursuant to a Residential Tenancy Agreement;
- (d) the total expenditure by the Housing Authority on repairs and maintenance of Nominated Lots and Nominated Houses; and
- (e) any other relevant information.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

CLP means a plan of survey, sketch plan or community layout plan that depicts Lots and Nominated Lots for the purpose of this Agreement and included in Schedule B of this Agreement.

Commonwealth means the Commonwealth of Australia.

Commencement Date means the date shown on the details page of this Agreement.

Cultural Circumstance means any one or more of the circumstances listed at clause 1 of Annexure A.

Eligible Persons means a person eligible, under the provisions set out in clause 2.1 of Annexure A, to enter into a Tenancy Agreement in respect of a given Nominated Lot or Nominated House.

Encumber means to place a mortgage, charge or lien over Aboriginal Land, whether registered or equitable, of any nature whatsoever.

Essential Services means services which are reasonably necessary for the proper maintenance and enjoyment of the Nominated Lots and Nominated Houses, including electricity supply, water supply, sewerage and plumbing, road access and gas supply.

Government Agency means the Commonwealth or Western Australian government or any Commonwealth or State governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

House has the meaning as that term is defined in the Housing Act.

Household Assessable Income means the calculation by the Housing Authority of the income of all household members between the age of 16 and 99 years who receive or are eligible to receive income or benefits, but excluding those non-assessable income types as set down in the Housing Authority's Aboriginal Housing Policy Manual (as varied from time to time).

Housing Act means the *Housing Act 1980* (WA).

Housing Management Agreement has the meaning as that term defined in section 62A of the Housing Act.

Housing Regulations means the *Housing Regulations 1980* (WA).

Insolvency Event means any one or combination of the following or any event or circumstance reasonably approximating the following:

- (a) the Organisation disposes of the whole or any part of its operations or business other than in the ordinary course of business, including infrastructure necessary for the supply of Essential Services to the Nominated Lots or Nominated Houses;
- (b) the Organisation becomes insolvent or ceases to carry on operations or is deemed to be so under statute or otherwise;
- (c) the Organisation ceases to be able to pay its debts as and when they become due;
- (d) any step is taken by the Organisation to enter into any arrangement for debt management between the Organisation and its creditors, without the prior written consent of the Housing Authority; or
- (e) any step is taken to appoint an administrator to administer the Organisation.

Law means the written law (including any subsidiary legislation) of the State and the Commonwealth, applying in and to the State.

Lessor has the meaning as that term is defined in the Residential Tenancies Act.

Lot means an area of land which is depicted and numbered on the CLP.

Minister means the Minister of the State for the time being administering the Housing Act.

Nominated House in relation to a Housing Management Agreement has the meaning given in section 62D(2) of the Housing Act and is listed in Schedule 1.

Nominated Lot in relation to a Housing Management Agreement has the meaning given in section 62D(1) of the Housing Act and is listed in Schedule 1.

Party means either the Housing Authority or the Organisation, as the case requires, and Parties means both of them.

Practical Completion means the practical completion of construction or refurbishment of a Nominated House that is ready for occupation and there are no omissions or defects which could have a materially adverse impact on the occupation or use of the Nominated House.

Records means any financial or other records that the Organisation is required to keep under Law or otherwise at the direction of a Government Agency.

Rent has the meaning as that term is defined in the Residential Tenancies Act.

Rent Setting Model has the meaning as that term is defined at clause 8.1 in Annexure A.

Residential Tenancies Act means the *Residential Tenancies Act 1987 (WA)*.

Residential Tenancy Agreement has the meaning as that term is defined in the Residential Tenancies Act section 3.

Schedule means a Schedule to this Agreement.

State means the State of Western Australia.

Tenant has the meaning as that term is defined in the Residential Tenancies Act.

Tenant Debt means arrears arising from non-payment of Rent or Tenant Liability Charges.

Tenant Liability Charges means charges raised and applied by the Housing Authority pursuant to the obligation on the Tenant to indemnify the Lessor for the cost of damage (other than fair wear and tear) to the House or common areas caused by the Tenant, their householders, or their visitors.

Tenancy Agreement means the Residential Tenancies Agreement between the Housing Authority and the Tenant entered into on behalf of the Organisation.

Term means 30 years from the Commencement Date, unless terminated pursuant to clause 17 of this Agreement.

1.2. Interpretation

(a) In this Agreement:

- (i) headings are for convenience only and do not affect interpretation unless the context indicates a contrary intention;
- (ii) words importing the singular include the plural and vice versa;
- (iii) words importing any gender include the other gender;
- (iv) a reference to persons includes a firm, a body corporate, an unincorporated association or an authority;
- (v) a reference to a person includes that person's executors, administrators, successors, substitutes and assignees, to the extent that the same are permitted by the terms of this Agreement;
- (vi) where the day on which or by which any act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing will be done on the immediately following Business Day;
- (vii) this Agreement shall be interpreted, applied and will take effect as a contract made in Western Australia;
- (viii) except to any extent provided in Part VIIA of the Housing Act, nothing in this Agreement shall be construed so as to make a Party a partner,

agent or representative of the other Party or to create any partnership, association or agency for a joint venture or any other purpose;

- (ix) this Agreement will be binding upon the Parties and their respective successors and assigns who become Parties under the terms of this Agreement, to the extent permitted under the terms of this Agreement.
 - (x) this Agreement will apply to all Nominated Houses and Nominated Lots, as amended by the Parties from time to time in accordance with clause 8 of this Agreement;
 - (xi) references to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
 - (xii) this Agreement replaces any previous agreement between the Parties related to management of the Nominated Lots and/or Nominated Houses;
 - (xiii) a reference to a clause is a reference to a clause in this Agreement;
 - (xiv) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
 - (xv) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function; and
 - (xvi) a reference to a thing includes each and every part of a thing.
- (b) Neither Party shall be bound by any representations or warranties made to any third parties by the other Party.

2. Purpose of Agreement

This Agreement establishes the following:

- (a) the terms upon which the Housing Authority is to control and manage the letting and leasing of the Nominated Lots and Nominated Houses for the Organisation pursuant to section 62B(2) of the Housing Act;
- (b) the entitlement of the Housing Authority to lease a Nominated Lot or Nominated House to Tenants under a Tenancy Agreement pursuant to section 62F(c) of the Housing Act;
- (c) the general obligations and responsibilities of the Housing Authority in relation to the management and maintenance of the Nominated Houses and Nominated Lots;

- (d) the obligations and responsibilities of the Organisation in relation to facilitating the operation of this Agreement; and
- (e) the obligations of the Parties generally.

3. Term

The Agreement is for the Term subject to the terms and conditions contained herein.

4. The Housing Authority's Obligations

4.1. General

- (a) The Housing Authority, for the purposes of this Agreement and the Residential Tenancies Act, is to be taken as if it were the Lessor of all Nominated Lots and Nominated Houses that are subject to a relevant Tenancy Agreement (as per section 62G of the Housing Act).
- (b) For the avoidance of doubt, the Housing Authority is not the Lessor of a Lot or House that is not a Nominated Lot or Nominated House (or a Nominated Lot or Nominated House that has not been let under a Tenancy Agreement) and not the Lessor for purposes outside of the Residential Tenancies Act.

5. Tenancy and Asset Management

5.1. Allocation of Nominated Lots and Nominated Houses

- (a) the Housing Authority is, subject to subclause 5.1(c), solely responsible for the allocation of Tenancy Agreements for Nominated Lots and Nominated Houses to Eligible Persons;
- (b) in performing its obligations under subclause 5.1(a), the Housing Authority, under section 62F(b) of the Housing Act, decides which Eligible Person will be granted a Tenancy Agreement to occupy a Nominated Lot or Nominated House;
- (c) in making a decision under subclause 5.1(a), the Housing Authority must have regard to the wishes of the Aboriginal inhabitants of the Aboriginal Land within the area of Nominated Lots and Nominated Houses to the extent that those wishes can be ascertained and are practicable; and
- (d) the Parties agree that allocations of Tenancy Agreements for Nominated Lots and Nominated House conducted in accordance with clause 7 of Annexure A amounts to having regard to the wishes of the Aboriginal inhabitants of the Aboriginal Land within the area of Nominated Lots and Nominated Houses.

5.2. Tenancy Agreements

- (a) The Housing Authority is solely responsible for determining the term and the terms and conditions of a Tenancy Agreement for all Nominated Lots and Nominated Houses pursuant to section 62F of the Housing Act.

- (b) The Parties confirm that all Tenancy Agreements executed by the Housing Authority are entered into for and on behalf of the Organisation in accordance with section 62F(c) of the Housing Act.
- (c) The Parties agree that the Housing Authority must execute Tenancy Agreements consistent with the minimum rights and obligations of a Lessor and Tenant set out in the Residential Tenancies Act, unless otherwise excluded under the *Residential Tenancies Regulations 1987*.

5.3. **Determination, Payment, and Collection of Rent and Rent Arrears**

- (a) The Rent Setting Model:
 - (i) is used for calculating the amount of Rent payable for a Nominated Lot or Nominated House; and
 - (ii) has been determined by the Housing Authority and approved by the Minister under section 62E(3) of the Housing Act.
- (b) All Rent (if any) to be paid by a Tenant for a Nominated Lot or Nominated House is payable to the Housing Authority pursuant to section 62E(2) of the Housing Act.
- (c) The Housing Authority, at its sole discretion, may seek to recover Tenant Debt from Tenants where it is economical to do so and there is reasonable prospect of successfully recovering the Tenant Debt.
- (d) The Housing Authority is required to issue a receipt for all Rent collected only upon the request of a Tenant or Government Agency or otherwise required by the Residential Tenancies Act or any other Law.
- (e) All Rent collected by the Housing Authority must be spent on repairs and maintenance of Nominated Houses.

5.4. **Issuing Statutory Notices**

- (a) The Housing Authority must, subject to subclause 5.4(b), issue all notices required under the Residential Tenancies Act (where necessary), including but not limited to property inspections, variations of Rent, tenancy default or breach notices, and termination notices.
- (b) For the avoidance of doubt, the Housing Authority may, but is not required to, elect to issue a termination notice or commence a no grounds termination pursuant to section 64 of the Residential Tenancies Act.

5.5. **Asset Management**

- (a) The Housing Authority as Lessor is required to:
 - (i) maintain the Nominated Houses in a reasonable state of repair having regard to their age and character;
 - (ii) undertake any repairs to the Nominated Houses within a reasonable period of time after the need for a repair arises; and

- (iii) comply with all statutory building and health and safety requirements applicable to the Houses under any other written law in so far as they apply to the Nominated Houses.
- (b) The Housing Authority is responsible for maintaining Nominated Lots that do not contain a Nominated Houses in accordance with subclause 8.2(b) of this Agreement.
- (c) The Housing Authority may at its discretion undertake rectification works in relation to damage arising from a wilful or negligent act or omission by the Organisation or the Tenant or any other third party who has gained access to an affected Lot or House with or without the express or implied consent of the Organisation or the Tenant.
- (d) If the Housing Authority undertakes rectification works in relation to damage referred to in subclause 5.3(c), the Housing Authority may seek recompense from the Tenant, the Organisation, or any other person deemed responsible for that damage (determinable by the Housing Authority on a case-by-case basis).

5.6. Annual Report

The Housing Authority is to provide an Annual Report to the Organisation NO later than 5pm on [30 September] each calendar year.

6. Organisation's Obligations

6.1. General

The Organisation agrees to do all things reasonably necessary to facilitate the operation of this Agreement, including but not limited to:

- (a) organising regular meetings with Tenants, the Housing Authority (or their representatives), and applicants for housing regarding Nominated Lots and Nominated Houses to discuss the operation of this Agreement and any Tenancy Agreement;
- (b) making all reasonable efforts to assist Tenants to comply with their obligations arising out of their Tenancy Agreement; and
- (c) allowing the Housing Authority, its employees, agents and contractors reasonable thoroughfare access through Aboriginal Land in order for the Housing Authority to exercise its rights and comply with its obligations under this Agreement and the Residential Tenancies Act.

6.2. Surrender, Transfer or Encumber Interests in Nominated Lots and Nominated Houses

- (a) The Organisation must not, without the prior written consent of the Housing Authority assign, transfer, let, lease, surrender or otherwise dispose of its interest in any of the Nominated Lots or Nominated Houses.

- (b) The Organisation must not, after the Commencement Date, Encumber or dispose of its interest in any of the Nominated Lots or Nominated Houses.
- (c) For the avoidance of doubt, the Housing Authority is not bound to provide the consent referred to in subclause 6.2(a).

7. Organisation's Representations and Warranties

The Organisation represents and warrants that:

- (a) it is an Aboriginal Entity that holds Aboriginal Land;
- (b) it is duly authorised and has the power to enter into and perform its obligations under this Agreement for the Term;
- (c) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (d) it has in full force and effect the authorisations, registrations, consents, approvals licenses or permits which are, or will be, required in connection with its obligations under this Agreement;
- (e) there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Organisation which will or may have a materially adverse effect on the Organisation's ability to perform its obligations under this Agreement;
- (f) it is unaware of any act, matter, thing or circumstance or the reasonable possibility of an act, matter, thing or circumstance which would impede or prevent the performance of any obligation under this Agreement;
- (g) it is not in default under a Law or obligation which affects its operational capacity or its assets;
- (h) it has received legal advice regarding its rights and obligations under this Agreement, prior to signing this Agreement, or it elects not to obtain such advice;
- (i) to the best of its knowledge and belief there is no legal impediment to the Nominated Lots and Nominated Houses being occupied by a Tenant pursuant to a Tenancy Agreement;
- (j) it is the wish of the Aboriginal Persons who inhabit the Aboriginal Land that:
 - (i) the Organisation enter into this Agreement with the Housing Authority;
 - (ii) the Agreement applies to the Nominated Lots and Nominated Houses listed in Item 2 of Schedule 1; and
 - (iii) this Agreement provides the Housing Authority with the ability to unilaterally cause Houses on Nominated Lots to be Nominated Houses if it determines that the House is of an appropriate standard and condition to be managed in accordance with its obligations under this Agreement.

- (k) the representations and warranties made by the Organisation under clause 7 are taken to be made continuously for the Term.

8. Nominated Lots and Nominated Houses

8.1. General

- (a) The Housing Authority will not agree to add a Nominated Lots or Nominated Houses to this Agreement unless it is satisfied that doing so would accord with the wishes of the Aboriginal inhabitants of the Aboriginal Land subject to the proposed Nominated Lot or Nominated House to the extent that those wishes can be ascertained and are practicable.
- (b) The Parties may, by mutual agreement in writing, add or remove Nominated Lots or Nominated Houses from Schedule 1.
- (c) Any addition or removal of a Nominated Lot or Nominated House is a variation to this Agreement and must comply with clause 14 of this Agreement.
- (d) For the avoidance of doubt, the Housing Authority is under no obligation to provide Essential Services, or to upgrade, refurbish, demolish, or replace a Nominated House or a House on a Nominated Lot.

8.2. Nominated Lots

- (a) The Housing Authority may, by written notice to the Organisation, remove a Nominated Lot that does not contain a Nominated House from Schedule 1 if it does not expect to list a Nominated House for the Nominated Lot.
- (b) In relation to Nominated Lots that do not contain a Nominated House, the Housing Authority shall only be responsible for maintaining the perimeter fence and for ensuring that the Nominated Lot complies with health, safety, fire, and environmental standards and obligations.

8.3. Nominated Houses

- (a) The Housing Authority may, by written notice to the Organisation, cause a House located on a Nominated Lot to be listed as a Nominated House on Schedule 1 if it determines (at its sole discretion and acting reasonably) that the House is of an appropriate standard and condition to be managed in accordance with its obligations under this Agreement.
- (b) If the Housing Authority upgrades or refurbishes a House, replaces a House or constructs a new House that is within a Nominated Lot, the Housing Authority shall, upon written notice to the Organisation, list that House as a Nominated House in Schedule 1, upon Practical Completion.
- (c) The Organisation acknowledges that the Housing Authority may not be able to make a Nominated Houses available to a Tenant if the Nominated House is being upgraded, refurbished, replaced or prepared for a new Tenant.
- (d) If, in the reasonable opinion of the Housing Authority or Government Agency, a Nominated House is not fit for habitation or unable to be let because of the

need for prior significant refurbishment works, the Housing Authority can, upon written notice to the Organisation, remove that Nominated Lot and Nominated House from Schedule 1.

9. The Housing Authority takes no Interest in Land

- (a) This Agreement does not create in favour of the Housing Authority any interest in Land (including Nominated Lots and Nominated Houses) of any nature whatsoever.
- (b) For the avoidance of doubt, the Housing Authority does not acquire ownership of or an interest in any of the Nominated Lots or Nominated Houses as a result of execution of this Agreement.

10. Cultural Circumstances

- (a) In the event that a Cultural Circumstance occurs, the Organisation agrees to promptly inform the Housing Authority of any Tenant absence from a Nominated House as soon as the Organisation becomes aware of the absence.
- (b) In the event of a Cultural Circumstance, the Housing Authority may suspend the charging of Rent for any Tenancy Agreement applying to a Nominated Lot or Nominated House for the period set out in clause 1.1 of Annexure A or such other time as agreed between the Parties, both acting reasonably.

11. Employment and Contracting

The Authority agrees that, if in the course of performing its obligation under this Agreement it is required to engage any person under a contract of service (as an employee) or to engage any person under a contract for services (contractor or subcontractor) it will make all reasonable efforts to engage Aboriginal Persons where practical to do so.

12. Audit

The Parties agree that:

- (a) in the event of an Insolvency Event, or where, in the opinion of the Housing Authority, there is the reasonable likelihood of an Insolvency Event occurring, the Housing Authority may request that the Organisation provide the Housing Authority with access to all Records (relating in any way to this Agreement) in the control or possession of the Organisation.
- (b) if a request is made pursuant to subclause 12(a), the Organisation must within ten (10) Business Days, provide the Housing Authority with access to all Records.
- (c) upon being provided with access to the Records under this clause 12, the Housing Authority has the right to appoint a qualified auditor to audit the Records.
- (d) before exercising its rights under subclause 12(c) of this Agreement, the Housing Authority will endeavour to advise the Government Agency

responsible for the registration of the Organisation of its intention to audit the Records.

- (e) the Housing Authority bears all costs associated with an audit under this clause.

13. Delegation, Assignment and Agency

13.1. The Housing Authority

- (a) The Housing Authority may:
 - (i) assign its rights and obligations under this Agreement to a Government Agency after providing the Organisation with no less than ten (10) Business Day's written notice;
 - (ii) delegate any or all of its rights and obligations under this Agreement to a Government Agency after providing the Organisation with no less than ten (10) Business Day's written notice;
 - (iii) enter into an agreement with a person or body (including any contractors the Housing Authority deems necessary) under which the person or body is authorised to exercise as the Housing Authority's agent or contractor, to exercise any or all of its rights, powers, duties and obligations conferred on the Housing Authority pursuant to this Agreement; and
 - (iv) appoint an agent or contractor pursuant to subclause 13.1(a)(iii) to exercise all rights, powers and duties exercisable by the Housing Authority in accordance with this Agreement, the relevant agency agreement and the Housing Act.
- (b) For the avoidance of any doubt, the provisions of clause 11 may apply to the appointment of agents and contractors under this clause.

13.2. Organisation

- (a) This Agreement is personal to the Organisation and may not be assigned by the Organisation without the prior written approval of the Housing Authority, such approval not to be unreasonably withheld.
- (b) If requested in writing by the Housing Authority, the Organisation will use its best efforts to assign this Agreement to an Aboriginal Entity which has the power to grant a lease over the Aboriginal Land subject to the Nominated Lots and Nominated Houses should the Organisation no longer be an Aboriginal Entity with the power to grant a lease over that Aboriginal Land.

14. Variation

- (a) The Parties may by mutual agreement in writing vary any provision of this Agreement.
- (b) The Housing Authority may unilaterally vary this Agreement by written notice pursuant to subclauses 8.2(a), 8.3(a), 8.3(b) and 8.3(d).

- (c) Any variation to this Agreement will not affect the operation of any Tenancy Agreement unless otherwise provided for in the terms and conditions of the variation itself.

15. Review of Agreement

The Parties agree to review the terms and operation of this Agreement upon the written request of either Party.

16. Extension of Agreement

The Parties may, by mutual agreement in writing, extend the Term of this Agreement.

17. Termination

- (a) The Parties may, by mutual agreement in writing and signed by both Parties, terminate this Agreement at any time.
- (b) If this Agreement is terminated in accordance with subclause 17(a), or is otherwise lawfully terminated or in any other way ceases to have effect by operation of Law, the Parties agree that the Housing Authority:
 - (i) is not to be treated, for the purposes of the Residential Tenancies Act, as the Lessor of any of the Nominated Lots or Nominated Houses; and
 - (ii) ceases for the purposes of that Act to have any rights or obligations of a Lessor in any of the Nominated Lots or Nominated Houses.
- (c) Notwithstanding this clause 18, the Parties' rights at common law, in equity and under statute (arising from or related to any breach of, or right to terminate this Agreement) are preserved.

18. Disputes and Mediation

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Agreement has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute.
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties cannot resolve the Dispute within a period of ten (10) Business Days after commencing negotiations, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, after concluding negotiations under subclause 18(d), the Parties to the Dispute cannot agree on a particular mediator to be appointed within ten (10) Business Days, the Parties may request the Chair of Resolution Institute (as WA State Chair of the Institute of Arbitrators and Mediators Australia) to appoint a Mediator.

- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within ten (10) Business Days, either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or by arbitration.
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

19. General Provisions

19.1. Notices and Service of Notices

A notice, waiver, variation or extension of agreement, mutual termination, demand, consent, approval or communication under this Agreement must be:

- (a) in writing, in English and signed by an authorised person; and
- (b) hand delivered or sent by prepaid post to the Party's Address for notices specified on the Details page of this Agreement (or as varied by any notice given by a Party); or
- (c) forwarded to the Party's email address as specified on the Details page of this Agreement (or as varied by any notice given by a Party).

19.2. Notices Effective on Receipt

A notice waiver, variation or extension of agreement, mutual termination, demand, consent, approval or communication given in accordance with clause 19.1 takes effect when received (or at a later time specified in the notice), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second (2nd) Business Day after the date of posting (or on the seventh (7th) day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless the recipient immediately informs the sender that it has not received the entire notice;
- (d) if sent by email when the sender's email system confirms the email has been sent,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

19.3. **Costs, Fees and Charges**

- (a) Each Party agrees to bear its own costs and expenses associated with the negotiation, preparation, execution and implementation of this Agreement.
- (b) The Authority must not pay the Organisation and the Organisation is not entitled to be paid for:
 - (i) the Organisation entering into this Agreement; or
 - (ii) the Authority doing anything that is required or permitted to do under this Agreement.
- (c) Neither Party can require the payment of any fee or charge from the other Party for entering into this Agreement or doing anything that the Party is required or permitted to do under the terms of this Agreement consistent with section 62I of the Housing Act.

19.4. **Waiver and Exercise of Rights**

- (a) A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
- (b) A Party does not waive a right, power, or remedy, if it fails to exercise or delays in exercising the right. The exercise of a right does not prevent the further exercise of that right, power, or remedy or the exercise of any other right.
- (c) A single or partial exercise of a right, power, or remedy does not prevent another or further exercise of that or another right, power, or remedy.

19.5. **Schedule and Annexure**

Any provision expressly or impliedly set out in a Schedule or an Annexure is deemed to be a provision of this Agreement and must be complied with (in accordance with its express or implied terms).

19.6. **Confidentiality**

- (a) From the Commencement Date nothing in this Agreement is considered confidential.
- (b) For the avoidance of doubt, all Parties may provide this Agreement to any person.

19.7. **Severability**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of this jurisdiction, if possible, so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or the validity or enforceability of that provision in any other jurisdiction.

19.8. **Entire Agreement**

- (a) The Parties acknowledge and agree that there may be other communications, negotiations, arrangements and agreements, whether oral or written, made between the Parties with respect to the subject matter of this Agreement.
- (b) In the event of any conflict, contradiction or inconsistency between those communications, negotiations, arrangements, and agreements the provisions of this Agreement shall prevail.

19.9. Previous Housing Management Agreement

The Parties agree that this Agreement shall be taken to terminate any or all previous Housing Management Agreements, effective from the Commencement Date of this Agreement.

Signing Page

EXECUTED as an agreement

The common seal of the Housing Authority was hereunto affixed in the presence of:

Signature of Authorised Officer

↵

Signature of Authorised Officer

↵

Name of Authorised Officer (please print)

Name of Authorised Officer (please print)

Signature of Authorised Officer

↵

Name of Authorised Officer (please print)

[Insert Organisation's appropriate execution clause]

Signature of Authorised Officer

↵

Signature of Authorised Officer

↵

Name of Authorised Officer (please print)

Name of Authorised Officer (please print)

Schedule 1: Nominated Lots, Nominated Houses and Organisation Land Interests

Item 1 – Community Name Layout Plan

The applicable Community Layout Plan, which is referred to for Lot numbers is the Community Name Layout Plan 1 - Amendment x – stamped and approved by the former Department of Planning or endorsed by the Western Australian Planning Commission on x date and included at Schedule 2.

[Or]

The applicable Community Layout Plan, which is referred to for Lot numbers is the Community Name Layout Plan included at Schedule 2.

Item 2 – Nominated Lots and Nominated Houses

Note: an existing House should not be listed unless it meets the requirements in subclause 8.3(a) of this Agreement.

The following are Nominated Lots and Nominated Houses (unless stated otherwise as a Nominated Lot only) for the purposes of this Agreement:

CLP Lot No.	Nominated House	House No.	Tenure Type	Land Description	Interest of the Organisation	End Date for Listing
1	Yes	1A	Crown Grant (Freehold) in Trust to Aboriginal Lands Trust	Lot .., Deposited Plan, Volume, Folio	Unregistered Lease to commencing for x years	5 years from the Commencement Date
1	Yes	1B	Crown Grant (Freehold) in Trust to Aboriginal Lands Trust	L....., Deposited Plan, Volume, Folio	Unregistered Lease to commencing 1 January 1977 for 99 years	5 years from the Commencement Date
2	No	NA	Crown Grant (Freehold) in Trust to Aboriginal Lands Trust	L....., Deposited Plan, Volume, Folio	Unregistered Lease to commencing 1 January 1977 for 99 years	5 years from the Commencement Date

Schedule 2: Community Layout Plan

Annexure A: Cultural Circumstances, Eligibility, Allocation and Management Conditions

1. Cultural Circumstances

- 1.1. The following events are considered Cultural Circumstances if endorsed by the Organisation:
 - (a) in the event of Sorry Business, that is notified to the Housing Authority under clause 1.2 of Annexure A, the head Tenant may be absent from their rented House for a period of up to [insert timeframe - e.g. six (6) months], during this time Rent charges will not apply; or
 - (b) in the event of Law Business, that is notified to the Housing Authority under clause 1.2 of Annexure A, the head Tenant may be absent from their rented property for up to [insert timeframe - e.g. six (6) months], during this time Rent charges will continue to apply.
- 1.2. The Organisation is required to promptly notify the Housing Authority of the absence and their endorsement of the applicable Cultural Circumstance, if the head Tenant is absent from their rented House due to a Cultural Circumstance described in subclauses 1.1(a) or 1.1(b) of Annexure A.
- 1.3. If the head Tenant, due to Sorry Business, cannot return to their rented House within the timeframe specified in subclause 1.1(a) of Annexure A then:
 - (a) a transfer may be arranged within the community by the Housing Authority after consultation and endorsement of the Organisation; and/or
 - (b) a “smoking” of the property may also be undertaken by members of the Community anytime during this period to assist residents to move back into the House.
- 1.4. At no time during Sorry Business will the Housing Authority, trades persons, or the Organisation be permitted to access the rented House unless:
 - (a) either requested by the Tenant or remaining occupiers of the rented House; or
 - (b) entry is required to undertake emergency repairs to prevent danger to any persons or significant property damage.

2. Eligible Person

- 2.1. To be an Eligible Person (applicant) a person must:
 - (a) be at least 16 years of age (with no upper limit); and
 - (b) not be a non-eligible person as per clause 3.1 of Annexure A;

- (c) have a connection to, or family connected to the Community as determined by the Organisation; and

2.2. A person may be considered to have a connection for the purpose of subclause 2.1(c) of Annexure A if the person is living or working as a Community member for a period of not less than **[insert time frame - ie; two (2) months]**.

3. Non-eligible persons

3.1. A person (applicant) is NOT ELIGIBLE for housing, unless otherwise specifically approved by the Housing Authority in consultation with the Organisation, if:

- (a) the applicant has an outstanding Tenant Debt owed to the Housing Authority or to the Organisation; or
- (b) the applicant has previously been evicted from a Housing Authority property for failure to pay Rent or for a breach of a tenancy agreement; or
- (c) the person is a Tenant or listed household member of a House that is in a town, on a town-based community or any other location, including outstations.

4. Eligible Applications

4.1. All applications for must be approved by the Housing Authority in consultation with the Organisation prior to listing on the waitlist.

5. Waitlist

5.1. Eligible Persons (applicants) will have their application placed on the waitlist from the date of approval.

5.2. A person (applicant) deemed to be ineligible may have their application placed on the waitlist if approved by the Housing Authority in consultation with the Organisation.

6. Allocation of housing

6.1. All allocations for housing must be approved by the Housing Authority in consultation with the Organisation.

7. Allocation policy

7.1. When an applicants' turn is reached on the waitlist, the Housing Authority will, in consultation with the Organisation, locate an appropriate rental home according to the following criteria:

- (a) length of waiting time;
- (b) size of the family;
- (c) personal factors, such as, health, disability or mobility issues;
- (d) rental history, such as, prior or current Tenant Debt; and

- (e) location of the property.

Allocation of new constructions

- 7.2. If a number of properties are constructed or refurbished, allocation preferences may be given to existing tenants who have maintained their properties and paid their Rent regularly and on time.
- 7.3. The allocation of newly constructed properties will be determined by the Housing Authority in consultation with the Organisation.

Allocation of premises where Tenant vacates the rented House or passes away

- 7.4. Where a Tenant or other signatory to the Tenancy Agreement leaves the rented House or passes away, other members of that household may apply to the Housing Authority to be granted a new or transferred Tenancy Agreement in their name.
- 7.5. Children of any Tenant who vacates the rented House or passes away will be given preference, subject to the following criteria:
 - (a) is 16 years of age or older;
 - (b) has been a household member for a minimum period of six (6) months;
 - (c) has applied for a tenancy for the rented House; and
 - (d) is eligible for the accommodation type; and
 - (e) is otherwise eligible for a Tenancy Agreement with the Housing Authority and is endorsed by the Organisation.
- 7.6. Other family members may apply subject to the following criteria:
 - (a) is 16 years of age or older;
 - (b) length of time the applicant has occupied the rented House;
 - (c) is eligible to be a Tenant in the Community (and is not Non-Eligible);
 - (d) is eligible for the accommodation type;
 - (e) whether or not they paid rental contributions at the rented House;
 - (f) whether they are applicants on the waitlist;
 - (g) previous tenancy history;
 - (h) need of the applicant; and
 - (i) is subject to approval by the Housing Authority in consultation with the Organisation.

8. Rent Setting Model

- 8.1. **The** method for calculating the amount of Rent payable for a Nominated Lot or Nominated House is the lesser of:
- (a) The Housing Authority assessed Rent based on up to 25% of the gross Household Assessable Income of all household members – discounted by the amount equivalent to LGA rates where these are not paid and the Community is responsible for providing the service;

OR

- (b) [The market Rent in the town] or [a cost recovery model reflecting different costs of construction, indexed annually to the Consumer Price Index as provided by the Department of Treasury] – discounted by the amount of LGA rates where these are not paid and the Community is responsible for providing the service.

8.2. All Rent collected in [insert community name/short name] will be spent on repairs and maintenance.

9. Notices of Breach, Termination and/or Eviction

9.1. The Housing Authority will notify the Organisation of:

- (a) any notice of breach of agreement and/ any notice of termination issued to a Tenant; and
- (b) any court action following the issuing of a termination notice.

10. Abandoned Houses

10.1. If a Tenant is absent from their rented House for a period exceeding twelve (12) weeks without the approval of the Housing Authority [and endorsement of the Organisation], the House will be considered abandoned, and action to terminate the tenancy will be explored.

11. Rent transition

11.1. The Organisation agrees to work with the Authority to progressively introduce the Rent Setting Model (“Rent Setting Model”).

11.2. The Rent per House is \$[amount] ([amount e.g fifty] dollars).

11.3. The level of Rent, described in clause 11.2 of Annexure, will remain in place for all Houses that have not been upgraded or refurbished.

11.4. All persons moving into newly constructed, refurbished or upgraded housing will be required to start transitioning to the new Rent Setting Model described in clause 8.1, whichever is applicable.

11.5. The Rent transition period described in clause 8.1 of Annexure A will commence upon Practical Completion as follows:

- (a) Tenants that pay less than the amount required under clause 8.1 of Annexure A will transition to the Rent Setting Model referred to in clauses 8.1 of Annexure A in **two increments over a period of 12 months**;
- (b) Tenants that pay more than the amount required under clauses 8.1 of Annexure A will immediately pay Rent in accordance with the Rent Setting Model referred to in clauses 8.1 of Annexure A.