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THIS Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**BETWEEN:**

The State of Western Australia (“State”) acting through the Department of Biodiversity, Conservation and Attractions, of 17 Dick Perry Avenue, Technology Park, Western Precinct KENSINGTON WA 6151 (“Department”)

**AND**

[ ] (“Recipient”), of [insert address]

**RECITALS**

- A. The Aboriginal Ranger Program is funded by the State of Western Australia with the objectives of:
  - a. working with Aboriginal communities to develop and implement a successful and sustainable Aboriginal Ranger employment program to provide new jobs, protect the environment and provide social and economic benefits to Aboriginal people in regional and remote areas.
  - b. providing training for Aboriginal people to develop their skills in conservation and land management to better meet the demand for ranger work.
  - c. scaling up and expanding the Aboriginal Ranger Program by leveraging funds from other State and Commonwealth agencies, industry and philanthropic groups.
  - d. increasing Aboriginal ranger employment within the Department that is additional, but complementary, to the Aboriginal Ranger Program.
- B. The Recipient has applied to the State for funding to undertake initiatives consistent with the Aboriginal Ranger Program’s objectives and the State has agreed to provide funding subject to the terms and conditions of this Agreement.
- C. The Department and the Recipient each have responsibilities relating to the successful delivery of the Aboriginal Ranger Program referred to in this Agreement.

**OPERATIVE PART**

**THE PARTIES AGREE as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless repugnant to the context:

**Aboriginal Ranger Program** means the program of that name described in the Recitals hereto.

**Agreement** means this Funding Agreement, including its recitals and any schedules or annexures.

**Acquittal** occurs when the Department has advised the Recipient that the reports and financial information provided by the Recipient in accordance with Schedule 5 are satisfactory.

**Approved Annual Project Plan** means an annual Project Plan, inclusive of an annual Project budget, to be submitted to and approved by the Department.

**Approved Budget** (or any like expression) means any budget of the Recipient to spend or commit money, as approved in writing by the State.

**Approved Funds** means the funding approved by the Department and set out in Schedule 4.

**Auditor** means a Registered Company Auditor or a member of the Institute of Chartered Accountants in Australia, of the National Institute of Chartered Accountants, or the Australian Society of Certified Practising Accountants and who is independent of the Recipient.

**Auditor General** means the Auditor General for the State of Western Australia.

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for general banking business in Western Australia.

**Commencement Date** means the execution date of this Agreement.

**Commonwealth** means Commonwealth of Australia.

**Department** means Department of Biodiversity, Conservation and Attractions.

**Evaluation or Audit** includes to audit, examine, investigate, inspect, review or evaluate.

**Funding** means the amount specified in Schedule 4, including any interest accrued on that amount.

**Insolvency Event** means the happening of any of these events:

- a. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- b. except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- c. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is

- convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- d. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
  - e. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
  - f. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or
  - g. a body corporate:
    - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
    - (ii) stops or suspends payment of all, or a class of, its debts; or
    - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
      - (a) insolvent or unable to pay its debts when they fall due; or
      - (b) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
    - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
    - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
  - h. a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken that could result in that event; or
  - i. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Leverage Funding** is the additional financial or in-kind contributions obtained for the Project from other sources which are in addition to the State's Funding specified in schedule 4.

**Milestones** means the milestones, activities, outputs, outcomes and performance measures howsoever expressly or impliedly set out in Schedule 4.

**Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth).

**Native Title Party** as defined in the *Native Title Act 1993* (Cth).

**Obligation** means obligation under this Agreement.

**Party** means each of the Department or the Recipient as the context requires, and **Parties** means both of them.

**Project** means the initiative or activities funded for the Purpose described in Schedule 4.

**Project Completion Date** means that date for completion of the Project as specified in, or ascertainable from, Schedule 4.

**Provision** means any term, condition, undertaking, promise, obligation, representation or warranty of or under this Agreement.

**Purpose** means the purpose of carrying out the Project.

**Registered Company Auditor** means a person who is, for the time being, registered as an auditor or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.

**Schedule** means any schedule to, and forming part of, this Agreement.

**Special Conditions** means any terms and conditions specified as such in Schedule 4.

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

**Term** means the currency of this Agreement.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement include its recitals, schedules and annexures;

- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) references to currency are to Australian currency unless otherwise stated;
- (o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually but nothing herein means that part performance of an obligation amounts to full performance thereof;
- (q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (r) if the word "including" or "includes" is used, the words, "without limitation" are taken to immediately follow; and
- (s) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them.

## **2. RECIPIENT'S REPRESENTATIONS AND WARRANTIES**

The Recipient represents and warrants that:

- (a) the Project (including but not limited to any land management activities) will provide a benefit to the Native Title Party or where native title is not claimed or has been determined not to exist, the Aboriginal group/s with traditional rights and interests in the area over which the Project will take place;
- (b) the Project is supported by the Native Title Party, or where native title is not claimed or has been determined not to exist, the Aboriginal group/s with traditional rights and interests in the area over which the Project will take place;
- (c) it has authority to enter into and observe its Obligations under this Agreement;
- (d) its Obligations under this Agreement are valid and binding and are enforceable against the Recipient in accordance with their terms;
- (e) all authorisations, registrations, consents, approvals, licences and permits which are or will be required in connection with the performance by the Recipient of its Obligations under this Agreement have been or will be obtained or effected and are or will be and will remain in force and effect for as long as necessary;
- (f) there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Recipient which could

have a materially adverse effect on the Recipient's ability to perform any Obligation under this Agreement;

- (g) to the best of the Recipient's knowledge, information and belief, the Recipient is not in default or breach under a law, regulation, official directive, instrument, undertaking or obligation materially affecting it and /or its ability to perform any Obligation under this Agreement;
- (h) this Agreement and performance under it does not violate its constituent documents, any law, regulation or government order or decree or any consent, registration, approval, licence or permit or any agreement, order or award binding on the Recipient;
- (i) it is unaware of any act, matter, thing or circumstance by reason of which it would be unable to perform any Obligation under this Agreement;
- (j) all information provided by or on behalf of the Recipient to the Department relating to the Recipient's affairs, the Project and this Agreement are true, accurate and complete in all material respects and, without limiting this clause, all financial information provided by or on behalf of the Recipient to the Department is, in all material respects, a true, fair and accurate statement of its financial position as at the date of preparation of the information; and
- (k) it has, after diligent inquiry and investigation, fully disclosed to the Department all information which could reasonably be regarded as material to the State's decision to enter into this Agreement.

### **3. SCOPE OF THIS AGREEMENT**

- (a) The Recipient shall:
  - (i) carry out all aspects of the Project and perform all aspects of the Purpose in a competent, diligent, satisfactory and professional manner, and to a high standard;
  - (ii) comply with this Agreement (including to achieve the Milestones);
  - (iii) provide and procure appropriate funding and other resources, including staff with the capacity to meet its Obligations;
  - (iv) provide leverage with wider stakeholders to facilitate strong stakeholder ownership and involvement where required in the Project; and
  - (v) seek to facilitate additional financial investment in the Project.
- (b) The Department shall:
  - (i) pay to the Recipient the Funding in the manner set out in Schedule 4 and Schedule 6; and
  - (ii) indemnify and keep indemnified the Recipient for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which the Department issues a recipient-created tax invoice under this Agreement.
- (c) The Recipient must:

- (i) notify the Department of legal proceedings, arbitration or administrative proceedings or debt recovery actions pending or threatened against the Recipient as soon as practicable after the institution of those proceedings or that debt recovery action;
- (ii) notify the Department immediately if the Recipient is in breach of any law, receives an audit qualification, or is under scrutiny through an inquiry or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient;
- (iii) notify the Department immediately if the Recipient becomes aware of any fraud or corruption with regards to the Project or the Funding;
- (iv) keep and maintain accurate, complete, up-to-date, properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide the Department with information or documentation (relating in any way to the Project or this Agreement) requested by the Department. The Recipient will ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive; and
- (v) establish a separate interest-bearing bank account in its name and which it controls solely for expenditure of the Funding and other financial Leverage Funding. The Recipient must report any interest accrued to the Department and all interest accrued is to be retained for the purposes of the Funding.

#### **4. OBLIGATIONS OF RECIPIENT**

##### **4.1 Use of Funding**

The Recipient will use the Funds and any Leverage Funding for the carrying out of the Project in accordance with this Agreement and any approved budget, and expend such funds by the Project Completion Date. All such expenditure must be effected in a commercially prudent, sensible and reasonable manner. Furthermore, the Recipient shall properly comply with and deliver all Milestones in accordance with Schedule 4.

##### **4.2 No Changes**

The Recipient will not make any material changes to the Project, Project Completion Date, or any agreed budget without the prior written consent of the Department, which consent may be withheld at the Department's discretion.

##### **4.3 No Endorsement**

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the Department of any goods or services provided by the Recipient.

##### **4.4 Communications and Publicity**

- (a) The Recipient must obtain the Department's written approval before making any public communications (media releases; pre-arranged

media interviews; responses to media questions; publications, signage, articles, newsletters and other literary works; public awareness campaigns, displays, educational programs and activities, etc), or organising or being involved in media events relating to the Project or this Agreement, the sole or predominant purpose of which is to publish, promote or market the existence or details of this Project..

- (b) The Aboriginal Ranger Program must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.
- (c) The Recipient agrees to notify the Department of any potential media opportunities in relation to project achievements or work on country and agrees to provide updates and information on initiatives as they are about to happen.
- (d) The Parties shall:
  - (i) work cooperatively at the senior management and officer levels, including responding to requests for approvals or permissions for public communications in an appropriate timeframe;
  - (ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;
  - (iii) share information and knowledge as practicable; and
  - (iv) advise any shared stakeholders about arrangements between the Parties.
- (e) The Recipient agrees to Department staff accessing their worksites and/or activities to photograph and/or film events as they naturally evolve, and to interviewing nominated Recipient staff on camera. Photographs and/or video, audio and interview notes will be used for the purpose of promoting the Program to the community subject to approvals via agreed protocols.
- (f) The Department will only access worksites and/or activities for filming, interviewing and/or photography by prior arrangement with, and consent of, the Recipient.
- (g) Following any filming, interviewing or photography on country, the Department will provide the Recipient with the names of Aboriginal people who participated in the interviews, filming or photography. If it is no longer appropriate for such persons to appear in photographs or video, the Recipient must notify the Department.
- (h) The Department will be the custodian and final editor of photographs and/or videos that it collects and seek written permission from the Recipient prior to publishing them in a variety of ways including, but not limited to: online and printed newsletters, magazines, reports and other materials; department websites, social media platforms; Ministerial/Government of Western Australia online and printed

information; and electronic and printed external third party media outlets. The Department agrees to publish the photographs and/or videos only for the purposes of promoting the Project and the Aboriginal Ranger Program.

- (i) The timing of the publishing of any photographs, interviews and/or video will be at the Department's discretion, however the Department will as a courtesy advise the Recipient prior to publication.

#### **4.5 Accounts, Reporting and Acquittal**

- (a) The Recipient will provide the Department with the reports detailed in Schedule 5 and any other reports or information as reasonably determined from time to time by the Department, until the completion of the Project and the release of its Obligations.
- (b) The reports should be substantially in the form of the templates provided by the Department or as otherwise notified.
- (c) The Recipient agrees, at no cost during the term of the project, to participate in a case study assessment of the Project if required by the Department, which will include formal and informal interviews, audio recordings and written notes of interviews.

#### **4.6 General Undertakings of the Recipient**

The Recipient must:

- (a) at all times duly perform and observe its Obligations and will promptly inform the Department of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (d) comply with all State and Commonwealth laws, relevant policies and guidelines, and industry/accounting standards; and
- (e) cooperate fully with the Department in the administration of this Agreement.

#### **4.7 Negation of Employment, Partnership and Department**

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the Department or as otherwise able to bind or represent the State, or Department.

- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

## **5. EVALUATION OR AUDIT RIGHTS**

- (a) The Department may arrange for an Evaluation or Audit to be carried out in respect of the Project. If the Department arranges for an Evaluation or Audit:
  - (i) the Department must notify the Recipient that the Department has arranged or will arrange for an Evaluation or Audit to be carried out; and
  - (ii) the Recipient must allow all persons appointed by the Department to carry out the Evaluation or Audit to have full access to the records, premises, lands in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit in respect of the Project and use of Funding.
  - (iii) The Recipient agrees to the Department sharing any information, including the Evaluation or Audit Report with any other State, Territory or Commonwealth government agencies for similar Evaluation or Audit purposes.
- (b) Clause 5 survives the end of this Agreement by five (5) years.

## **6. CONTACT OFFICERS**

- (a) The Parties agree to appoint Contact Officers. The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under the Agreement.
- (b) The details of each Party's Contact Officer are set out in Schedule 1.
- (c) If a Party changes its Contact Officer that Party will notify the other Party in writing of the new contact details within five (5) Business Days after the change.

## **7. REPAYMENT AND RETENTION OF THE FUNDING**

At the completion of the Project or the conclusion of this Agreement (whichever occurs first) the Recipient must remit to the Department within twenty (20) Business Days any Funding that the Department has paid and that has not been used or committed in accordance with this Agreement.

## **8. LIMITATION OF LIABILITY**

The Department shall have no responsibility or liability for the success or otherwise of the Project and is not liable for any losses suffered by the Recipient in undertaking the Project. If the Funding is insufficient for the Recipient to

properly meet all of its Obligations, then the Recipient is solely responsible for funding any shortfall.

## **9. INSURANCE AND INDEMNITY**

- (a) The Recipient shall effect and maintain throughout the Term adequate insurance, with a reputable insurer, to provide cover for the Project undertaken by the Recipient, including Public Liability (in an amount of \$20 million or more) and Workers' Compensation insurances (including at least \$50 million cover for common law liability) and property insurance covering loss of or damage to any equipment that the Recipient provides for use on the Project, for its full replacement value. If the Department requests the Recipient to increase its insurance cover, the Recipient must promptly do so and provide the Department with evidence of the same.
- (b) If and when requested by the Department, the Recipient must provide either or both of the following:
  - (i) A written statement of the applicable insurance cover held by the Recipient; and
  - (ii) A copy of any policy of insurance, a Certificate of Currency, and receipts for premiums in connection with any policy of insurance.
- (c) The Recipient hereby indemnifies and shall keep indemnified the State and the Department and to hold them and their respective officers, employees and agents harmless from and against all reasonably foreseeable damages, losses, liabilities, cost and expenses (including legal fees) claimed, suffered or incurred by the State or the Department or any of their respective officers, employees and agents whether before or after the date of this Agreement to the extent caused by any:
  - (i) breach of any Provision by the Recipient;
  - (ii) act or omission of the Recipient or its employees, contractors, officers or agents; or
  - (iii) breach of a State or Commonwealth law by the Recipient or any of its employees, contractors, officers or agents.
- (d) The Recipient's liability to indemnify and hold harmless the State and the Department under this clause will be reduced proportionately to the extent an act or omission of the State or the Department or their respective officers, employees or agents caused or contributed to the relevant damage, loss, liability, cost or expense.
- (e) This indemnity shall survive expiration or termination of this Agreement.

## **10. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006**

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992*. The Department may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.

- (b) Despite any express or implied provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* and the *Auditor General Act 2006* are not limited or affected by this Agreement. The Recipient must allow the Auditor General, or an authorised representative, to have access to and examine the Recipient's records and information concerning this Agreement.

## **11. INTELLECTUAL PROPERTY**

- (a) To avoid doubt, all intellectual property rights in information, data and reports created by the Recipient for the purposes of this Agreement, and the results of research created, undertaken, compiled or collected by the Recipient for the purposes of the Project or this Agreement will vest upon creation in the Recipient.
- (b) This Agreement does not affect the ownership of intellectual property rights in any material owned by a third party, or the ownership of any intellectual property in any material which pre-exists this Agreement or is independently developed outside this Agreement, and which is disclosed for the purposes of this Agreement or the Project.
- (c) The Recipient shall promptly forward onto the Department and allow the Department to use, for non-commercial purposes, all information, data, and reports created by the Recipient for the purposes of this Agreement, and the results of research created, undertaken, compiled or collected by the Recipient for the purposes of the Project or this Agreement.
- (d) If any such information, data, reports, or results are culturally sensitive, or contains secret and sacred material (e.g. any information or knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition, within the meaning of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)) or is otherwise confidential, the Recipient will provide the information, data, reports or results in a format that will provide the greatest level of information to the Department without disclosing the culturally sensitive or secret and sacred material
- (e) The Recipient must promptly notify the Department of any belief that any information, data, report or research results, referred to in paragraph (a), is confidential information or culturally sensitive, giving detailed written reasons therefor.

## **12. NOTICES**

Any notice or other communication that may or must be given under this Agreement, to be valid and effective:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving notice;
- (c) must be:

- (i) hand-delivered or sent by prepaid post to the address of the Party receiving the notice as set out in item 1 of Schedule 1; or
  - (ii) sent by email to the email address of the Party receiving the notice as set out in item 1 of Schedule 1;
- (d) subject to paragraph (e), is taken to be received:
- (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the seventh Business Day after posting; and
  - (iii) in the case of email, on the date of transmission; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

### **13. DEFAULT AND TERMINATION**

#### **13.1 Event of Default by the Recipient**

An Event of Default occurs if:

- (a) the Recipient breaches any Provision, which (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the Department; or
- (b) the Recipient breaches any Provision of this Agreement and such breach cannot be remedied; or
- (c) the Recipient suffers or is or becomes subject to an Insolvency Event; or
- (d) the Department has reasonable grounds to believe that the Recipient is unwilling or unable to comply with the Provisions; or
- (e) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or
- (f) the Recipient persistently, regularly, consistently or continually breaches the Provisions.

#### **13.2 Effect of Event of Default**

- (a) If an Event of Default occurs, the Department may terminate, either wholly or in part the Agreement by providing further notice in writing to the Recipient.
- (b) Whilst the Recipient is in breach of this Agreement, the Department may suspend the performance of all or any of its Obligations.

### **14. GOODS AND SERVICES TAX (GST)**

- (a) For the purposes of clause 14 and Schedule 6:
  - (i) "GST" means the goods and services tax applicable to any taxable supplies as determined by the GST Act;
  - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations; and

- (iii) the terms “supply”, “tax invoice”, “taxable supply” and “value” have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Funding shall be inclusive of GST.
- (c) The Obligation of the Department to pay the GST on any supply by the Recipient under this Agreement is conditional upon the prior issue by the Recipient to the Department of a tax invoice that complies with the GST Act. This provision applies notwithstanding any law to the contrary.

## **15. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party’s rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights.

## **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

## **17. ASSIGNMENT**

- (a) This Agreement is personal to the Recipient. The Recipient may not assign, transfer or contract out of its rights or Obligations without the Department's prior written consent, which may be withheld at the Department's discretion and which may be given conditionally. The Department may assign its rights and Obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 17, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the Department, to transfer, directly or indirectly, the management or control of the Recipient.

## **18. VARIATION**

Any modification, amendment or other variation to this Agreement must be made in writing, duly executed by both Parties.

## **19. RIGHTS AND REMEDIES**

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

## **20. LOCAL PRODUCTS AND SERVICES**

The Recipient agrees to comply with the Western Australian Government's Buy Local Policy and Building Local Industry Policy when purchasing goods or services or works for the Project.

## **21. GOVERNING LAW**

This Agreement is governed by the laws of Western Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

## **22. ACCESS TO LAND**

If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain and have in place for the duration of the Project an agreement or suitable authority to undertake the Project on that land. This Agreement does not by itself constitute approval from the State or the Department for the Recipient to access any land.

## **23. SCHEDULES**

- (a) Any express or implied provision of any Schedule hereto is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.
- (b) In clause 23(a), "provision" includes term, condition, term, warranty, stipulation, right, Obligation, representation and the like.
- (c) Without limiting the preceding provisions of this clause 23, the Recipient agrees to comply with the Special Conditions, if any.

## SCHEDULE 1 – CONTACT OFFICERS

### 1 Notice Addresses

#### 1.1 Department

Registered Mail:	Locked Bag 104, Bentley Delivery Centre WA 6983
Email	[client to insert]

#### 1.2 Recipient

Registered Mail:	[ ]
Email:	

### 2. Contact Officers

#### 2.1 Department

<b>Name:</b>	Denam Bennetts
<b>Job Title:</b>	Principal Planning Officer
<b>Phone:</b>	+ 61 8 9219 9933; 0437 615 317
<b>Email:</b>	<a href="mailto:Denam.Bennetts@dbca.wa.gov.au">Denam.Bennetts@dbca.wa.gov.au</a>
<b>Postal Address:</b>	Locked Bag 104, Bentley Delivery Centre WA 6983
<b>Street Address:</b>	17 Dick Perry Avenue, KENSINGTON WA 6151

#### 2.2 Recipient

<b>Name:</b>	
<b>Job Title:</b>	
<b>Phone:</b>	
<b>Email:</b>	
<b>Postal Address:</b>	
<b>Street Address:</b>	

#### 2.3 Recipient financial contact

<b>Name:</b>	
<b>Job Title:</b>	
<b>Phone:</b>	
<b>Email:</b>	

## **SCHEDULE 2 – FINANCIAL REPORT**

*The Department will provide relevant templates to assist the Recipient in completing its reporting Obligations under this Schedule as per Clause 4.5 and Schedule 5 of the Agreement.*

*The Financial report must include but need not be limited to, the following information:*

1. Total approved Aboriginal Ranger Program budget for the current financial year.
2. Balance brought forward from previous reporting period and any unexpended funds.
3. Aboriginal Ranger Program Funding received from the Department to date.
4. Total committed in the current period from Aboriginal Ranger Program funds received.
5. Amount of interest earned.
6. Amount of Leverage Funding from other sources.
7. Use or expenditure of funds: Employment / Operations / Activity.
8. Explanation of variances between the approved budget and actual expenditure.

### **SCHEDULE 3 – PROJECT REPORT**

*The Department will provide relevant templates to assist the Recipient in completing its reporting Obligations under this Schedule as per Clause 4.5 and Schedule 5 of the Agreement.*

*The Project report must include but need not be limited to, the following information:*

1. Details of work undertaken and tasks completed for the reporting period.
2. Details of progress against the Approved Annual Project Plan, including Milestone targets and actual achievements completed for the reporting period.
3. Explanation of variances between target and actual achievements, including impediments encountered, action taken to overcome these and potential future impediments if any.
4. A statement of any issues, delays or areas of non-compliance and an explanation of any actions being taken or proposed to address this and the expected effects (if any) that they will have on the Project.
5. Linkage to Project and Aboriginal Ranger Program outcomes.
6. A report on the outcome of biological survey work.
7. Photographic evidence of work undertaken and rangers working on country that is authorised by the Recipient to be used in promotion of the Project.

## SCHEDULE 4 – ABORIGINAL RANGER PROGRAM PROJECT DETAILS

### 1. Project Title

### 2. Project Description

### 3. Purpose

### 4. Location

(Describe the physical location where the Project will be delivered, including mapping coordinates and a detailed map. If the Project is to be delivered at multiple locations, describe each location.)

### 5. Project Period

The Recipient agrees to commence the Project within [ ] months after execution of the Agreement, undertake the Activities noted in the table below, and finalise the Project within [ ] months after the Project Completion Date specified below.

No.	Activity/Milestone	Completion Date
	<b>Project Completion Date</b>	

### 6. Outcomes

6.1. The Recipient must meet the Program level outcomes and performance measures, where relevant, in the table below:

Aboriginal Ranger Program Outcome	Aboriginal Ranger Program Performance Measure
	(Draft measures are listed below)

Aboriginal Ranger Program Outcome	Aboriginal Ranger Program Performance Measure  (Draft measures are listed below)
New jobs for Aboriginal people looking after country	Number of rangers and proportion of Aboriginal people employed
	Number of female rangers employed
Increased capacity within the Aboriginal community to undertake land and sea management and tourism operations	Number of rangers undertaking training
	Number of rangers completing training
	Number of rangers undertaking on-the-job training

6.2. The Recipient must meet the project level outcomes, outputs and performance measures within the timelines shown in the table below:

(Draft measures are listed below)

Outcome	Output	Performance Measure  (Draft measures are listed below)	Completion Date
Enhanced protection of cultural values		Number of cultural sites that have been better managed because of the ranger program	
		Number of trips to significant sites	
Improved weed management		Number of hectares of weed management carried out in a year	
Improved feral animal management		Number of hectares with feral animals actively managed in a year	
Improved soil and vegetation management		Number of hectares actively managed for improved land	

Outcome	Output	Performance Measure (Draft measures are listed below)	Completion Date
		management in a year e.g. habitat restoration, fencing, erosion management	
Improved fire management		Average number of hectares burned in a year (prescribed burning and bushfire suppression)	
Improved native plant and animal management		Number of threatened flora and/or fauna surveys carried out in a year	
Improved track management		Number of kilometres of track managed	
Strengthened capacity of organisations to facilitate and provide a range of services enabling ongoing employment and income generation opportunities		Number of funding and external employment opportunities since ranger funding  Amount of leverage funding received	

## 7. Funding Amount

Funding of \$[ ] (including GST) over [ ] financial years from the Aboriginal Ranger Program. Funding for the implementation of the Project as outlined in item 9 below.

The payment of the Funding will be subject to the Recipient meeting the Milestones outlined in items 5 and 6 of this Schedule.

Disbursal of Funding will be subject to availability of funds through the State Budget and mid-year review of the State Budget each financial year.

## 8. Leverage Funding

The current Leverage Funding is as follows:

<b>Contributor</b>	<b>Type of Contribution (financial or in-kind)</b>	<b>Details of Contribution</b>	<b>Amount (incl. GST) \$</b>	<b>Timing</b>
<b>Total</b>				

If the Leverage Funding is not provided in accordance with this clause, then the Department may:

- (a) suspend payment of the Funding until the Partner and Co-contributions are provided; or
- (b) terminate this Agreement.

### 9. Project Budget

The Recipient must comply with the following budgets (which, subject to Schedule 5, hereby are approved budgets).

9.1. A breakdown of the Project budget across financial years is shown in the table below:

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>TOTAL</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>State's Funding (including GST)</b>	\$	\$	\$	\$
<b>GST</b>	\$	\$	\$	
<b>State's Funding (excluding GST)</b>	\$	\$	\$	

9.2. A breakdown of the Project budget is shown in the table below:

Item of Expenditure	Budget \$	Source of Funding
<b>Total Budget</b>		

Any shortfall in expenditure that may be achieved with respect to the Total Budget for the Project, as identified above, will be returned in full to the Department within 60 days after the end of the Project or this Agreement (whichever first occurs).

## 10. Payments

After this Agreement has been executed by both Parties, the Department will authorise the payment of the Funding to the Recipient in the manner described below and in Schedule 6.

The transfer of the Funding to the Recipient will be subject to an assessment, with the Department being satisfied with the results of that assessment, of actual Project expenditure and material cash at bank balances of the Funding previously paid and available to the Recipient.

<b>Deliverable</b>	<b>Report Due</b>	<b>Payment date</b>	<b>Amount \$ (incl GST)</b>	<b>GST \$</b>	<b>Amount \$ (excl GST)</b>
Receipt of an Approved Annual Project Plan	15 July 2019	1 August 2019	[\$insert 60%]		
Receipt of Progress report, which report must be to the total satisfaction of the Department	30 December 2019	1 March 2020	[\$insert 40%]		
Receipt of Approved Annual Project Plan	1 May 2020	1 July 2020	[\$insert 50%]		
Receipt of Annual report, which report must be to the total satisfaction of the Department	31 August 2020	30 October 2020	[\$insert 40%]		
Receipt of Progress report, which report must be to the total satisfaction of the Department	30 December 2020	1 March 2021	[\$insert 10%]		
Receipt of Approved Annual Project Plan	1 May 2021	1 July 2021	[\$insert 50%]		
Receipt of Annual report, which report must be to the total satisfaction of the Department	31 August 2021	30 October 2021	[\$insert 40%]		
Receipt of Progress report, which report must be to the total satisfaction of the Department	30 December 2021	1 March 2022	[\$insert 10%]		
<b>Total payment:</b>			<b>[\$insert]</b>		

## 11. Term of the Agreement

The Agreement remains valid from the date of this Agreement until the time the Recipient has properly complied with its Obligations. The previous sentence is subject to those provisions of this Agreement that expressly or impliedly survive expiration of this Agreement, and those provisions that relate to either or both of contractual breach/es and termination.

## 12. Special Conditions

The following Special Conditions apply for this Project:

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## **SCHEDULE 5 – ACCOUNTS, REPORTING AND ACQUITTAL**

- (a) The Recipient is to provide to the Department an Annual Project Plan for the Department's approval, which must include, but need not be limited to, the following information:
- (i) detail of the activities, consistent with Schedule 4, to be undertaken for the relevant year of the Project; and
  - (ii) a detailed allocation of the annual project budget (see item 9 of Schedule 4).

Note – Annual Project Plan is to be submitted by 1 May in each year of the project.

- (b) The Recipient is to provide to the Department progress reports until the completion of the Project, which shall include:
- (i) a financial report (certified by the Chief Financial Officer of the Recipient), as detailed in Schedule 2;
  - (ii) a project report as per Schedule 3, showing how and to what extent the Funding was spent and the extent to which the Milestones and outcomes were achieved; and
  - (iii) an Aboriginal employment and training summary, including:
    - (A) the positions held by Indigenous and non-Indigenous personnel;
    - (B) the number of Aboriginal rangers employed and the number of days worked by each ranger;
    - (C) the number of Full Time, Part Time and Casual positions held as well as the total FTE; and
    - (D) the number and type of training undertaken.

Note – progress reports are to be submitted by 30 December each year of the project.

- (c) The Recipient is to provide to the Department an annual report on the Project based on a financial year ending 30 June that shall include:
- (i) a financial report (certified by the Chief Financial Officer or Accountable Officer of the Recipient and audited by an Auditor), outlining receipts and payments in respect to the Project as detailed in Schedule 2;
  - (ii) a project report as per Schedule 3, showing how and to what extent the Funding and any Leverage Funding was spent and the extent to which the Milestones and outcomes were achieved; and
  - (iii) an Aboriginal employment and training summary, including:
    - (A) the positions held by Indigenous and non-Indigenous personnel;
    - (B) the number of Aboriginal rangers employed and the number of days worked by each ranger;
    - (C) the number of Full Time, Part Time and Casual positions held as well as the total FTE; and

(D) the number and type of training undertaken.

Note – the annual report on the Project is to be submitted by 31 August in each year of the Project with the exception of the first year.

- (d) The Recipient is to provide to the Department a report (the Acquittal) at the completion of the Project or the conclusion of this Agreement (whichever occurs first), which shall include:
- (i) a financial report (certified by the Chief Financial Officer of the Recipient and audited by an Auditor) certifying that the Funding and any Leverage Funding was used for the Project; such certification to address the issues itemised in Schedule 2; and
  - (ii) a project report as per Schedule 3, showing how and to what extent the Funding and any Leverage Funding was spent and the extent to which the Milestones were achieved.

Note – the Acquittal is to be submitted within three (3) months after the completion of the Project.

In this Schedule:

- (a) Full Time means ongoing employees who work 35 or more hours (five days) per week;
- (b) Part Time means ongoing employees who work at least 21 hours (equivalent to three days) but less than 35 hours per week; and
- (c) Casual means non-ongoing employees who work on an irregular or seasonal basis.
- (d) FTE means a unit of measurement equal to an employee working a minimum of 35 hours in a five day week.

## SCHEDULE 6 – PAYMENT OF THE FUNDING

Funding will be made available specifically for the delivery of the Project outlined in Schedule 4.

The Recipient will forward an invoice to the Department for the amount of the Funding outlined in Schedule 4. The payment will be processed by the Department and the payment to the Recipient will then be electronic funds transferred to:

<b>Account name:</b>	
<b>BSB:</b>	
<b>Account number:</b>	

The Department through its internal process may raise a recipient-created tax invoice (RCTI) for the Funding amount identified in Schedule 4. The terms of the RCTI are governed by the following:

- (a) The Recipient warrants that it has an Australian Business Number and is registered for GST.
- (b) The Recipient will immediately notify the Department in writing of any change to the Recipient's registration.
- (c) The Department warrants that it is registered for GST.
- (d) The Department will immediately notify the Recipient in writing of any change to the Department's Registration.
- (e) If any supply is made by the Recipient after the date of this Agreement in connection with the Funding, the Department may issue a RCTI in respect of the supply and the Recipient will not issue a tax invoice in respect of that supply.
- (f) The Recipient and the Department may agree that the provisions of the agreement to use recipient-created tax invoices will not apply in respect of a particular supply, in which case the Recipient will issue a tax invoice in respect of that supply.
- (g) The Department or the Recipient may terminate agreement to use RCTIs at any time by giving written notice to the other Party.
- (h) In this Agreement the terms "supply", "registered", "tax invoice", "recipient-created tax invoice" and "GST" have the same meaning as in the GST Act and "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999*.

**EXECUTION OF THIS AGREEMENT**

**EXECUTED** by the Parties as an Agreement.

**SIGNED** for and on behalf of the  
**STATE OF WESTERN AUSTRALIA**  
by Mr Mark Webb, Director General of  
the Department of Biodiversity  
Conservation and Attractions in the  
presence of:

**SIGNED** for and on behalf of **##name**  
of recipient **##** by **##**

\_\_\_\_\_  
Signature of the Department witness

\_\_\_\_\_  
Signature of the Recipient witness

\_\_\_\_\_  
Full name and position of the  
Department witness

\_\_\_\_\_  
Full name and position of the Recipient  
witness