



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

DEED OF GRANT OF ASSET/S

BETWEEN

INDIGENOUS LAND AND SEA CORPORATION

ABN 59 912 679 254

(ILSC)

AND

[INSERT NAME OF RECIPIENT]

ABN [insert]

(Recipient)

The parties will not be legally bound unless and until this Deed is executed and exchanged by both parties. Any actions taken by the proposed Recipient in anticipation of execution would be at its risk.

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DEED OF GRANT OF ASSET/S dated in **Item 1**

BETWEEN:

INDIGENOUS LAND AND SEA CORPORATION ABN 59 912 679 254 of Level 7, 70 Franklin Street, Adelaide SA 5000 (**ILSC**)

AND:

The body corporate whose name and contact details are in **Item 2 (Recipient)**

INTRODUCTION

- A. ILSC is a body corporate established under the ATSI Act.
- B. The Recipient is an Aboriginal or Torres Strait Islander Corporation.
- C. This Deed provides for ILSC acting under section 191D(1) or section 191E(1) to grant the Assets to the Recipient, subject to some initial conditions precedent and also some continuing conditions.

TERMS

PART A - PRELIMINARY

1. DICTIONARY

In this Deed:

Agreed Value means, in respect of an Asset, a sum specified against that Asset in the Schedule and that is agreed to be the market value of that Asset (before GST) as at the Effective Date.

Applicable Law means:

- (a) the *Australian Meat and Live-stock Industry Act 1997* (Cwth), *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwth), *Environment Protection and Biodiversity Conservation Act 1999* (Cwth), *Fair Work Act 2009* (Cwth);
- (b) the following legislation of South Australia (or if an Asset is at the time located or being exploited in a State or Territory of Australia other than South Australia, then in relation to that Asset the substantially equivalent legislation in that other State or Territory) – the *Aboriginal Heritage Act 1988*, *Animal Welfare Act 1985*, *Development Act 1993*, *Dog Fence Act 1946*, *Environment Protection Act 1993*, *Equal Opportunity Act 1984*, *Heritage Places Act 1993*, *Livestock Act 1997*, *Local Government Act 1999*, *Native Vegetation Act 1991*, *Natural Resources Management Act 2004*, *Work Health and Safety Act 2012*;
- (c) any other legislation that covers conduct relating to the ownership, occupation, use, occupation of an Asset.

Assets mean, as applicable, individually and collectively, any of the Land, Goods or Other Property.

ATSI Act means the *Aboriginal and Torres Strait Islander Act 2005* (Cwth) and, unless otherwise stated, reference to a **section** (or **s.**) means a section of that legislation.

Business Day means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday or bank holiday in South Australia or in the other State or Territory of Australia (if any) in which the Recipient's mailing address specified in **Item 2** is located; or
- (c) a day that falls between any 22 December in any year and 10 January in the following year (inclusive).

Caveat means a document or filing to protect or note ILSC's interest in any Asset under clause 12.1 and / or section 191SA(1)(b), and that either or both:

- (a) forbids (absolutely or permissively) registration of a dealing with an Asset on a public or private register on which that Asset is registered;
- (b) requires the registrar notify ILSC of a proposed future dealing with an Asset on the register.

Conditions Precedent mean condition/s stated in **Item 8**.

CPI Indexed means an amount is to be adjusted by multiplying the amount by a proportion obtained by dividing the CPI for the calendar quarter last occurring before a Review Date by the CPI for the calendar quarter last occurring before the Effective Date (with the amount so adjusted being rounded up to the nearest whole dollar), and for this purpose:

- (a) **CPI** means Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under *Census and Statistics Act 1905* (Cwth). If after its first publication for any reference period of time that Index is revised, use only the first publication;
- (b) **Review Date** means each anniversary of the Effective Date.

Effective Date means the date 20 Business Days after all Conditions Precedent are either waived in writing by ILSC or are satisfied, or such earlier date as the parties may agree in writing.

Goods mean, individually and collectively:

- (a) goods of the kind and quantity described in **Item 4**;
- (b) any accessories / parts / operator's manual / tools supplied with those goods;
- (c) any components or parts (including in case of a motor vehicle, replacement tyres) on or after the Effective Date added to the original goods by or for the Recipient.

GST and other expressions in clause 62 have their meaning in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) (**GST Act**).

Item means an item in the Schedule.

Land means:

- (a) an estate or interest in real property described in **Item 3**;
- (b) in case of a freehold estate, any permanent improvements or other things upon that real property having the legal character of fixtures on the Effective Date;

- (c) in case of a freehold estate, any permanent improvements on or after the Effective Date made to that real property by or for the Recipient.

Other Property means, individually and collectively, any rights, privileges or personal property described in **Item 5**.

Permitted Use means as regards an Asset the use/s stated for that kind of Asset in **Item 6**.

Proposal means at any time in relation to an Asset a proposal (by whatever name) by the Recipient for its proposed acquisition, exploitation, management or development of that Asset and last approved in writing by:

- (a) the Indigenous Land and Sea Corporation Chief Executive Officer (or acting Indigenous Land and Sea Corporation Chief Executive Officer) for the time being; or
- (b) another member of ILSC's staff at the time holding sufficient delegated authority for that purpose under section 193T.

PPSA means the Personal Property Securities Act 2009 (Cwth)

Security Interest means any:

- (a) mortgage, charge, hypothecation, pledge, lien or trust;
- (b) security interest within the meaning of the PPSA.

Transaction Cost Contribution means money of the amount/s, at the time/s and for the purpose/s stated in **Item 9**.

Transfer Document means, in relation to an Asset, any instrument required to perfect transfer of title of that Asset to the Recipient.

Trigger Event means any of the following events or circumstances occurring in relation to the Recipient:

- (a) it commits a breach of this Deed not capable of remedy; or
- (b) it commits a breach of this Deed capable of remedy but fails to remedy that breach within 20 Business Days after written notice from ILSC identifying the breach and requiring its remedy; or
- (c) any other contract made or later made between these same parties is terminated by reason of the Recipient's breach; or
- (d) it allows anything that brings ILSC into disrepute; or
- (e) it ceases to be an Aboriginal or Torres Strait Islander Corporation; or
- (f) it suffers the appointment of a special administrator under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwth); or
- (g) it is deregistered, suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets, becomes a Chapter 5 body corporate, or for 10 Business Days is the subject of a statutory demand not withdrawn, stayed or dismissed (all within the meaning of the *Corporations Act 2001* (Cwth) whether or not the Recipient is registered under that legislation).

Subject to all the above, expressions in this Deed have the same meaning as in a provision of the ATSI Act that deals with the same matter.

2. INTERPRETATION

The Introduction is correct and forms part of this Deed. In this Deed: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Deed or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to legislation includes: (i) the legislation as at any time amended or replaced; (ii) any subordinate legislation under that legislation; and (iii) any orders, standards or codes of practice under that legislation; reference to a section of legislation includes that section as at any time amended or replaced.

3. ACKNOWLEDGEMENT

The Recipient acknowledges that before commitment to this Deed the Recipient had fair opportunity to read, understand, take independent advice on, and to negotiate with ILSC on the terms and conditions of, this Deed.

4. STATUS OF THE RECIPIENT

The Recipient warrants and represents that the Recipient:

- 4.1 is and on the Effective Date will be, an Aboriginal or Torres Strait corporation;
- 4.2 is and on the Effective Date will be, able to pay all its debts, as and when they become due and payable;
- 4.3 has the power and authority to enter into this Deed and perform its obligations under this Deed, and it is able to do so without the consent of any other person;
- 4.4 has taken all necessary action to authorise its execution, delivery, observance and performance of this Deed in accordance with its terms;
- 4.5 unless otherwise stated in this Deed, enters into this Deed and would receive the Assets on its own account and not as trustee, agent or other fiduciary capacity.

5. ABOUT THIS DEED

For the purposes of section 191D(1A), without limiting any other function of this Deed, this Deed states the terms and conditions of the grant of the Land and any water-related right (if any) effected under this Deed.

6. SEVERANCE

If a provision of this Deed would, but for this clause 6, be unenforceable:

- 6.1 the provision must be read down to the extent necessary to avoid that result; or
- 6.2 if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Deed.

PART B - GRANT

7. AGREEMENT FOR THE GRANT

The parties agree for ILSC to grant the Assets to the Recipient on the Effective Date and generally on the terms of this Deed.

8. CONDITIONS PRECEDENT TO THE GRANT

- 8.1 The grant of the Assets under clause 7 is not effective unless and until the Conditions Precedent are in writing waived by ILSC or satisfied no later than the applicable date/s stated in **Item 8**.
- 8.2 Neither party may hinder the satisfaction of a Condition Precedent.
- 8.3 Within 5 Business Days after a party has actual knowledge a Condition Precedent is satisfied or is incapable of being satisfied, and the other party lacks that knowledge, that party must notify that fact to the other party.
- 8.4 A Condition Precedent is not satisfied if a third party's consent, approval, authorisation, agreement or other step required to satisfy that Condition Precedent:
- 8.4.1 issues upon terms and conditions not customary and not acceptable to these parties acting reasonably; or
 - 8.4.2 is the subject of an appeal, administrative review or judicial review not finally disposed of; or
 - 8.4.3 before the Effective Date expires, is revoked or ceases to be effective by failure of a condition attached to that above step and not replaced.
- 8.5 If a Condition Precedent is not waived or satisfied within time, either party not in default under clause 8.2 may terminate this Deed upon giving notice to the other party, and in that case:
- 8.5.1 ILSC may yet retain all information it holds about the Recipient (including any copies or extracts thereof) obtained in negotiations for this Deed;
 - 8.5.2 obligations of confidentiality in clause 48 continue;
 - 8.5.3 otherwise, neither party has further rights against the other in connection with this Deed except in respect of prior default under this Deed.

9. WHEN THE GRANT IS EFFECTIVE

Effective on the Effective Date, ILSC grants the Assets to the Recipient and the Recipient accepts that grant.

10. HANDOVER OF GOODS

- 10.1 On the Effective Date, title, risk and right to possession of any Goods pass from ILSC to the Recipient.
- 10.2 If on the Effective Date the Recipient does not have custody of the Goods, ILSC at its cost will arrange transport of the Goods to the Recipient. However, except to the extent caused by ILSC's wilful default, ILSC is not liable for any delay in delivery nor for damage to the Goods in course of delivery.

- 10.3 If on or after the Recipient obtains custody of the Goods ILSC so requires, the Recipient must give written confirmation of that fact to ILSC.
- 10.4 On first taking custody of Goods, the Recipient must:
- 10.4.1 inspect the Goods and advise ILSC of any manifest damage or problem - otherwise Goods are taken to be free from manifest damage or problem at that time;
 - 10.4.2 become familiar with any operational parameters / characteristics of the Goods; and
 - 10.4.3 know any laws regulating custody or use of the Goods.

11. TRANSFER OF TITLE

If perfection of the grant of an Asset under this Deed requires a Transfer Document, then:

- 11.1 if the Asset is Land a registration of transfer of which is able to be effected electronically in accordance with the *Electronic Conveyancing National Law (South Australia)* (or equivalent legislation in the jurisdiction in which the Land is situated) (**EC Law**), then in a timely manner each party must do all things reasonably necessary to achieve transfer on the Effective Date in conformity with the EC Law and the *Participation Rules* made under the EC Law, and:
- 11.1.1 the Representative acting for the Recipient must be the Responsible Subscriber (within the meaning of the *Participation Rules*);
 - 11.1.2 subject to clause 59, the Recipient must provide sufficient funds to its Representative to enable payment of stamp duty (if any) and lodgement of the transfer to be effected electronically on the Effective Date;
- 11.2 if and to the extent clause 11.1 does not apply, then:
- 11.2.1 if a Transfer Document is executed before the Effective Date, that Transfer Document is not effective pending the Effective Date;
 - 11.2.2 (if not done beforehand) as soon as practicable after the Effective Date the Recipient at its expense must have prepared, dated, duly executed by the Recipient and then given to ILSC such Transfer Document as required to perfect the grant;
 - 11.2.3 as soon as practicable after receiving such Transfer Document, ILSC must duly execute, have a lawyer / conveyancer certify ILSC's execution (if law so requires), and then return that Transfer Document to the Recipient; and
 - 11.2.4 thereafter the Recipient at its expense must cause the Transfer Document to be stamped (if required by law to be stamped) and lodged promptly with the proper authorities;
- 11.3 subject to all the above, the parties must do all things necessary to perfect the grant of the Assets in accordance with law;
- 11.4 any failure by either or both parties to comply with any above provisions of this clause 11 does not affect the grant and acceptance of the Assets given effect by clause 9.

Notes: Under section 193R(2) stamp duty is not payable in respect of the grant of an 'interest' in land, or 'water-related right' by ILSC under section 191DA(1)(a) if the grant occurs within 12 months after the interest or right was acquired by ILSC.

12. CHARGE

- 12.1 Effective on the Effective Date, the Recipient charges the Assets as security for the Recipient's observance and performance of this Deed, including payment of all costs and expenses incurred by ILSC in respect of its enforcement of the Recipient's liability or obligation in this Deed.
- 12.2 The charge in clause 12.1 is intended to be, and must remain, a first-ranking Security Interest.
- 12.3 The charge in clause 12.1 adds to the charge of the Land (and any water-related right comprised in the Assets) given force by section 191SA(1)(b).

Notes: Section 191SA(1)(b) is that the Recipient's obligation not to dispose of or charge the Land or any 'water-related right' comprised in the Assets without ILSC's consent is taken to be an interest of ILSC in that Land or water-related right. Section 191SA(2) is that the Land or water-related right is charged with payment of all costs and expenses incurred by ILSC in respect of its enforcement of the obligation. Section 191SA(2) on its own would support a Caveat lodged by ILSC as regards that Land or water-related right (but not any other Assets).

13. PPSA

If the charge under clause 12.1 extends to any personal property to which the PPSA applies, then in relation to that charge the parties contract out of those provisions of the PPSA capable of being contracted out of.

Notes: See PPSA s. 115 for the list of PPSA provisions capable of being contracted out of by a grantor and / or the secured party.

Under PPSA s. 8 the PPSA does not apply to certain kinds of personal property (such as a licence to hold or take water).

The parochial law of a State / Territory may also exclude certain kinds of property from the PPSA – see, for example, the *Statutes Amendment (Personal Property Securities) Act 2011 (SA)* which had the effect of excluding, amongst other things, aquaculture licences, fisheries licences, mining tenements, water licences.

14. CAVEAT

- 14.1 At any time during the Term, ILSC may register and maintain at its cost a Caveat to protect ILSC's interest in any Asset under clause 12.1 and / or section 191SA(1)(b).
- 14.2 If at any time the registration or continuance of an above Caveat requires the Recipient grant a written consent or other instrument, within 5 Business Days after ILSC's written request the Recipient must sign and deliver that instrument to ILSC for delivery to the body administering the register on which the Caveat is registered or intended to be registered.

15. PERFECTION OF THE CHARGE

If at any time during the Term ILSC so requires in writing and at its cost, within 20 Business Days the Recipient must:

- 15.1 execute in favour of ILSC such registrable mortgage or other collateral security document over any Asset as ILSC requires and in form ILSC requires, provided that such document is in the minimum form required to protect ILSC's interest in that Asset under clause 12.1 and / or section 191SA(1)(b);
- 15.2 take any steps in writing directed by ILSC to perfect ILSC's interest in that Asset under clause 12.1 and / or section 191SA(1)(b).

16. THIRD PARTY MORTGAGES OR CHARGES

- 16.1 Except with ILSC's consent, the Recipient must not grant a mortgage or charge (legal or equitable, registrable or not) of any of its legal or beneficial interest in an Asset to any third party.
- 16.2 As a matter of record, section 191S(2) is that the Recipient must not, without ILSC's consent, give a charge of the Land or any 'water-related right' comprised in the Assets.

PART C - RISK**17. ILSC'S LIABILITY**

- 17.1 To the extent the law allows and subject to clause 17.2, ILSC does not warrant, represent, guarantee or grant other assurance as to the state, condition, history, fitness for purpose, other characteristic or lawful uses that may be made of any Asset.
- 17.2 If and to the extent however, a third party who conveyed the Assets to ILSC (before ILSC grants those Assets to the Recipient) extended and honours any warranty, representation or guarantee about those Assets to ILSC, ILSC extends the same warranty, representation or guarantee to the Recipient.
- 17.3 ILSC does not warrant, represent, guarantee or grant other assurance as to the prospects or profitability of any enterprise the Recipient may carry on in using or exploiting the Assets (despite any support or training arranged by ILSC).

Notes: If an Asset is a vehicle or trailer acquired for use principally in the transport of goods on public roads, the Recipient might be a 'consumer' as regards that Asset under the *Australian Consumer Law* and so entitled to various 'consumer guarantees' as regards that Asset that cannot be contracted out of.

18. NO DUTY OF CARE

A recommendation, approval, consent or inspection by ILSC in connection with the making or performance of this Deed:

- 18.1 does not create a liability to the Recipient or any third party;
- 18.2 is not an assumption of a duty of care, nor implies the exercise of any care or skill;
- 18.3 does not relieve the Recipient from its liabilities or obligations under this Deed.

19. INSURANCES

On and after the Effective Date, as applicable, the Recipient must insure against:

- 19.1 risk of loss / damage to improvements at that time upon the Land, to replacement values;
- 19.2 public liability in respect of the Land or any other area upon which the Recipient is undertaking an activity in exploitation of the Assets, to a prudent level of cover (at least \$20 million per event);
- 19.3 risk of loss / damage to the Goods to replacement values;
- 19.4 any risk stated in **Item 7**.

If at any time ILSC requires, within 5 Business Days the Recipient must produce credible evidence of such insurance/s (at least certificates of currency issued by an insurance broker).

20. INDEMNITY

As a continuing obligation, except to the extent caused by ILSC's wilful default or negligence, effective on the Effective Date the Recipient indemnifies and holds harmless ILSC from and against all loss, costs (including legal costs and expert's fees on an indemnity basis), liability and expenses in connection with the ownership, occupation, use or exploitation of any Asset occurring at any time on or after the Effective Date, including for:

- 20.1 claims or allegations in respect of personal injury or death, or loss of or damage to any property, or infringement of any right;
- 20.2 costs or expenses incurred as a result of a claim or allegation as above.

PART D - ABOUT THE ASSETS

Notes: Under section 191E(3), in performance of its 'management functions' ILSC must give priority to pursuing sound land, water and environmental management practices.

21. APPLICABLE LAWS

On and after the Effective Date the Recipient must not allow to be contravened any Applicable Law in respect of the ownership, occupation, use or exploitation of any Asset.

22. PROPOSALS

Except with ILSC's consent, on and after the Effective Date the Recipient must:

- 22.1 use and exploit an (each) Asset in the manner and within the time/s forecast in the Proposal (if any) for that Asset;
- 22.2 not allow any Asset to be used or exploited except in conformity with, and not extending beyond, the Proposal (if any) for that Asset.

23. PERMITTED USE

Except with ILSC's consent, on and from the Effective Date the Recipient must not allow any Asset to be used or exploited substantially or repetitively for other than its Permitted Use (if any).

24. OUTGOINGS

The Recipient must pay and bear when due all outgoings in respect of the ownership, occupation, use or exploitation of an Asset in so far as incurred on or after Effective Date, including, without limitation, costs of:

- 24.1 in case of Land, rates, taxes, levies or charges imposed by government – and in particular the Recipient must not allow any such outgoings as are a statutory charge on the Land to remain unpaid more than 10 months after first due;
- 24.2 in case of Land, electricity, gas, water, telecommunications and other utilities, site security patrols;
- 24.3 insurance (includes comprehensive insurance of any road vehicles, public liability insurance, insurance against loss or damage);
- 24.4 maintenance, repair, alterations or additions;
- 24.5 fuels, oils, hydraulic fluids, tyres or other consumables;

24.6 training of operators;

24.7 government registrations, certifications, licences or permits.

Where an outgoing is referable to a period of time some of which is before and some of which is on or after the Effective Date, such outgoing is taken to accrue on a daily basis.

25. TITLE TO LAND

Except with ILSC's consent or as exists at the Effective Date, the Recipient must not as regards the Land:

25.1 grant or allow any restrictive covenant, *profit à prendre*, easement or (excepting a caveat lodged by the Recipient or ILSC) caveat or order of Court over the Land;

25.2 transfer any carbon rights as might accrue in respect of the Land;

25.3 sub-divide or consolidate the Land.

26. LEASEHOLD ESTATE

If any of the Land comprises a lease, tenancy or right to occupy real property (**Lease**) granted by a third party (**Landlord**), then on and from the Effective Date the Recipient must:

26.1 observe and perform all its obligations under the Lease, and take reasonable steps to ensure the Landlord observes and performs the Lease;

26.2 (except with ILSC's consent) not:

26.2.1 vary the Lease (except to extend or renew the period of the Lease);

26.2.2 surrender the Lease in whole or in part;

26.2.3 abandon the premises the subject of the Lease;

26.3 if any time ILSC requires, obtain a covenant (in form acceptable to ILSC) between the Recipient, ILSC and the Landlord under which the Landlord agrees not to terminate the Lease:

26.3.1 if the Recipient defaults under the Lease - except after having notified ILSC of the default and allowed ILSC a reasonable period to cure the default;

26.3.2 if the Recipient becomes insolvent - except after allowing ILSC a reasonable period to introduce to the Landlord a reputable and creditworthy Aboriginal or Torres Strait Islander corporation to take an assignment of the benefit of the Lease from the Recipient.

27. IMPROVEMENTS ON LAND

Except with ILSC's consent, on and after the Effective Date the Recipient must not allow any improvements upon the Land to be:

27.1 in worse condition and state of repair than as at the Effective Date (fair wear and tear excepted);

27.2 removed or demolished unless replaced promptly with improvements of at least equal value and utility.

28. GENERAL CONDITION OF LAND

Except with ILSC's consent, on and after the Effective Date the Recipient must not allow the Land to be other than in good order and condition (having regard to seasons of the year, bushfire, and inclement weather) and reasonably tidy, free of weeds, vermin, plant or soil pests, viruses and diseases.

29. PRIMARY PRODUCTION LAND

If the Permitted Use of any of the Land is for the cultivation of the soil, the gathering in of crops, or the rearing of livestock, then on and after the Effective Date the Recipient must in relation to that Land:

29.1 maintain firebreaks;

29.2 ensure there is erected and kept in good repair all necessary rabbit-proof, wild dog-proof, livestock and other fencing;

29.3 ensure reasonable steps are taken to minimise erosion, soil salinity and soil compaction; and

29.4 generally ensure it is managed in accordance with sound land management practices.

30. POSSESSION

Except with ILSC's consent, on and after the Effective Date the Recipient must not:

30.1 part with or share right to possession of the Land (includes grant any lease, tenancy or licence to occupy the Land);

30.2 (except in an emergency or a person doing work for the Recipient) allow a third party to have custody of any moveable Asset.

31. LOCATION OF GOODS

On and after the Effective Date the Recipient must only allow any Goods to be habitually stored or garaged at locations known to ILSC and secured against theft or improper interference.

32. GENERAL CONDITION OF GOODS

On and after the Effective Date the Recipient must keep Goods in use in as good, safe, operating condition (fair wear and tear excepted) as when first taken into custody by the Recipient.

33. USING GOODS

On and after the Effective Date the Recipient must allow Goods to be used only:

33.1 for a use for which designed and supplied;

33.2 in compliance any operator's manual supplied with those Goods; and

33.3 in a safe manner.

34. SUBSTITUTIONS

Except as ILSC may agree in writing and in advance:

- 34.1 if an Asset is sold by the Recipient, the net proceeds of sale to the Recipient (and anything acquired with those proceeds) replace that Asset as if the subject of the original grant under this Deed;
- 34.2 if an Asset is traded-in or exchanged by the Recipient for another asset (whether of the same or different kind, and with or without payment of money), the thing so acquired replaces that Asset as if the subject of the original grant under this Deed;
- 34.3 if an Asset comprising a lease, tenancy or right to occupy gives the Recipient a right of extension or renewal:
- 34.3.1 the Recipient must exercise that right; and
- 34.3.2 the lease, tenancy or right to occupy as extended or renewed replaces the Asset as if the subject of the original grant under this Deed;
- 34.4 if an Asset comprising a lease, tenancy or right to occupy does not give the Recipient a right of extension or renewal but the landlord offers to grant a new lease, tenancy or right to occupy substantially the same premises to the Recipient:
- 34.4.1 the Recipient must accept that offer; and
- 34.4.2 the new lease, tenancy or right to occupy replaces the Asset as if the subject of the original grant under this Deed;
- 34.5 if an Asset comprising a lease from the Crown in right of the Commonwealth or the Crown in right of a State or Territory of Australia or an instrumentality of any of them is surrendered by the Recipient in exchange for the freehold of the premises (with or without payment of money), that freehold replaces the Asset as if the subject of the original grant under this Deed;
- 34.6 if any Asset comprising an occupational licence, permit or authorisation (such as, for example, a fisheries licence) issued by government gives the Recipient a right of extension or renewal:
- 34.6.1 the Recipient must exercise that right; and
- 34.6.2 the occupational licence, permit or authorisation as extended or renewed replaces the Asset as if the subject of the original grant under this Deed;
- 34.7 if any Asset is to any extent compulsorily acquired by government or an instrumentality of government, the net proceeds must be applied only to such uses as ILSC may consent.

When an Asset is sold or compulsorily acquired, pending its net proceeds being used as this clause 34 requires or allows, the Recipient holds that money on trust for the Recipient and ILSC.

35. DISPOSALS

- 35.1 On and from the Effective Date the Recipient must not dispose of any of its legal or beneficial interest in any Asset to any third party except:
- 35.1.1 with ILSC's consent;
- 35.1.2 any Goods or chattels beyond their effective life and being scrapped;

- 35.1.3 any Goods or chattels being exchanged or traded-in for as good or better items.
- 35.2 To avoid doubt, for the purposes of clause 35.1 a **disposal** includes:
- 35.2.1 a sale, exchange, gift, declaration of trust, transfer or surrender;
- 35.2.2 where an Asset is a licence or permit to catch fish, crabs, abalone, oysters, lobsters or other aquatic animal – a sale, lease or transfer of a right to catch a quantity of such produce separate from the licence or permit;
- 35.2.3 where an Asset is a licence or permit to take water – a sale, lease or transfer of a right to take a quantity of such water separate from the licence or permit.
- 35.3 As a matter of record, section 191SA(2) is that the Recipient must not, without ILSC's consent, dispose of the Land or any 'water-related right' comprised in the Assets.

Notes: Under section 191SA(2), the Recipient may dispose of an interest in the Land or a water-related right in the Assets to ILSC itself, upon terms and conditions to be agreed.

36. **THIRD PARTY CLAIMS**

The Recipient must not at any time:

- 36.1 breach its contract with a third party in respect of an Asset;
- 36.2 allow an Asset to be taken in execution by a third party judgment creditor.

37. **OCCUPATIONAL AUTHORISATION FROM GOVERNMENT**

If any Asset comprises an occupational licence, permit or authorisation (such as, for example, a fisheries licence) issued by government (**Authorisation**), the Recipient must:

- 37.1 observe and perform all the Recipient's obligations under the Authorisation and under the legislation under which the Authorisation issued;
- 37.2 (except with ILSC's consent) not:
- 37.2.1 vary the Authorisation (except to extend or renew the period of the Authorisation);
- 37.2.2 surrender the Authorisation in whole or in part.

38. **DE FACTO CONTROL OF ASSETS**

The Recipient must not, without ILSC's consent, enter into or give effect to any scheme by which the Recipient's effective control over, or interest in, any of the Assets is in practice diminished in favour of a third party.

For this purpose:

- (a) **control** includes the capacity to make decisions affecting the Assets including decisions regarding the physical or legal possession thereof, access thereto or the granting of rights therein;
- (b) **scheme** means any agreement, arrangement, understanding, promise or undertaking, or any scheme, plan, proposal, course of action or course of conduct, whether express or implied and whether legally enforceable or not, and whether done alone or in association with others.

PART E - INFORMATION

39. RECORDS

During the Term, the Recipient must keep commercially sensible records of its ownership, use and exploitation of the Assets.

40. ANNUAL AND HALF-YEARLY REPORTS

40.1 If a Proposal states that for any whole or part financial years after the Effective Date the Recipient would give a report to ILSC, then to that extent the Recipient must give to ILSC (preferably by email):

40.1.1 no later than each 21 January a report as regards the then immediately preceding 1 July to 31 December (both inclusive);

40.1.2 no later than each 15 July a report as regards the then immediately preceding 12 months ended 30 June.

40.2 Except as expressly otherwise stated in a Proposal, a report under this clause 40 must:

40.2.1 use a template ILSC provides for that purpose;

40.2.2 contain a review of the Recipient's observance and performance of this Deed, and the results of that review for the period of time concerned;

40.2.3 address any schemes (see clauses 38 and 65) entered into by the Recipient relevant to any of the Assets or the governance, management, regulation or decision-making functions of the Recipient;

40.2.4 the activities undertaken with benefit of the Assets since the last such report;

40.2.5 the benefits achieved for Aboriginal persons and Torres Strait Islanders through ownership, use and exploitation of the Assets since the last such report;

40.2.6 also address any other matters the parties last agreed should be reported.

40.3 ILSC may require that any report be certified as correct by a director or senior executive of the Recipient.

40.4 If the Recipient fails to give with time a report this clause 40 requires, then in addition to its other rights and remedies ILSC may make such assumptions of fact, opinion or law as ILSC thinks appropriate, including assumptions adverse to the Recipient.

41. AD HOC INFORMATION

If at any time during or after the Term ILSC reasonably requires, within 10 Business Days the Recipient must give freely to ILSC complete and accurate information about the past or future performance by the Recipient of this Deed.

42. ILSC MAY MAKE DIRECT ENQUIRIES

The Recipient irrevocably authorises and directs a Relevant Person to at any time disclose and discuss with ILSC or ILSC's auditors any and all information about the past performance by the Recipient of this Deed.

For this purpose, a **Relevant Person** means at any time any past or present:

- (a) director, secretary, auditor, employee or volunteer of the Recipient;
- (b) consultant or contractor of the Recipient, including, without limitation, a lawyer acting or having acted for the Recipient.

43. ACCESS RIGHTS

At any reasonable time, without notice to the Recipient, ILSC and its contractors may:

- 43.1 enter upon and inspect the Land;
- 43.2 enter upon any other area upon which Goods are believed to be located, and inspect those Goods;
- 43.3 take copies or extracts of the Recipient's records so far as concern any Assets.

44. INVESTIGATIVE ACCOUNTANT

44.1 If ILSC acting reasonably believes the Recipient is insolvent, or is at real risk of becoming insolvent in the proximate future, ILSC may appoint accountants (**Investigative Accountants**) to investigate the financial position and prospects of the Recipient.

44.2 The Recipient irrevocably:

44.2.1 authorises the Investigative Accountants (without however, conferring a power of management in respect of the Recipient's enterprise on the Investigative Accountants) to take all actions which may be reasonably necessary for the investigation;

44.2.2 undertakes to give the Investigative Accountants all reasonable assistance and access to financial records for that purpose, but if the Recipient so requires conditional upon the Investigative Accountants first providing such confidentiality undertaking as the Recipient may reasonably require, while permitting the Investigative Accountants to report their findings under clause 44.2.3;

44.2.3 authorises the Investigative Accountants to disclose to ILSC and ILSC's legal and other professional advisers all information and documents obtained or generated in the investigation.

44.3 If the Investigative Accountants give written opinion the Recipient is insolvent, or that the Recipient's financial records are insufficient for the Investigative Accountants to form an opinion one way or the other, then:

44.3.1 ILSC must give promptly a copy of that opinion to the Recipient; and

44.3.2 the Recipient is taken to be insolvent for the purposes of this Deed.

44.4 ILSC bears the costs of the Investigative Accountants.

45. INFORMATION REGARDING THE RECIPIENT

Within 5 Business Days, the Recipient must notify ILSC if:

- 45.1 any of the Recipient's legal or trading name, ABN, contact details or Contract Manager changes;
- 45.2 a Trigger Event comes to exist against the Recipient.

PART F - GOODWILL

46. CONTRACT ADMINISTRATION

- 46.1 At all times after this Deed is executed each party must have appointed (and notified to the other party) the name, phone number and email address of an individual within its enterprise (**Contract Manager**).
- 46.2 ILSC's Contract Manager has authority to manage this Deed for ILSC, but does not in that role have authority to agree to amend or give a consent under this Deed.
- 46.3 The Recipient's Contract Manager has authority to form opinions for, and generally act for and on behalf of, the Recipient under this Deed.
- 46.4 A party knows a matter known to its Contract Manager; a notice to a Contract Manager is effective notice to his or her appointor.

47. PUBLICITY

The Recipient must not make public comment (including on social media) about this Deed or its performance except as required by law or with ILSC's consent.

48. CONFIDENTIALITY

A party must not at any time make improper use or disclosure of any information about the other party obtained in investigations leading to, the negotiations for or performance of, this Deed and not then in the public domain (other than by prior breach of this clause).

49. BREACH OF DEED

- 49.1 If ILSC:
 - 49.1.1 acting reasonably believes the Recipient is in breach of this Deed (whether or not capable of remedy); and
 - 49.1.2 has not yet taken a step in enforcement of its charge under clause 12 nor operated a transfer back of any Assets under clause 52; and
 - 49.1.3 believes the Recipient remains able to perform substantially this Deed to the economic, environmental, social or cultural benefit of Aboriginal persons or Torres Strait Islanders,then ILSC may (but is not obliged to) give notice to the Recipient:
 - 49.1.4 of the alleged breach (with reasonable details);
 - 49.1.5 inviting the Recipient to a meeting of the parties' respective agents at some mutually convenient location in the next 10 Business Days.
- 49.2 If ILSC gives notice as above, each party must send to the meeting an agent with authority to bargain, and at the meeting make a good faith attempt to agree steps the Recipient will take (and a timetable) to, without admission of liability:

- 49.2.1 investigate the underlying causes of the alleged breach;
 - 49.2.2 report to ILSC as to the underlying causes and proposed remedial action;
 - 49.2.3 take action to rectify the underlying causes;
 - 49.2.4 report to ILSC on the status of the rectification efforts;
 - 49.2.5 ensure the alleged breach does not (re)occur.
- 49.3 This clause 49 does not prejudice the right of ILSC to seek injunctive relief to prevent immediate and irreparable harm, nor a right of either party to request the matter be referred to mediation.

50. DEFAULT RIGHTS AND REMEDIES

Subject to clause 49, if a Trigger Event exists, ILSC may:

- 50.1 operate clause 52 as regards all or some only of the Assets remaining;
- 50.2 by notice to the Recipient suspend or terminate payment of the Transaction Cost Contribution unpaid;
- 50.3 in relation to its charge under clause 12 (and any collateral security) exercise all or any of its rights, powers and remedies under common law, principles of equity or legislation.

51. DISPUTE RESOLUTION

- 51.1 Subject to clause 51.3, any dispute in connection with this Deed must not be the subject of litigation pending the party raising the dispute (**Party 1**):
- 51.1.1 notifying the other party (**Party 2**) as to the nature of the dispute (with reasonable details), and what action Party 1 thinks will resolve the dispute;
 - 51.1.2 by the same notice, inviting Party 2 to a meeting of the parties' respective agents at some mutually convenient location in the next 10 Business Days with a view to resolving the dispute.
- 51.2 If a Party 1 gives notice of a meeting as above, each party must send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute.
- 51.3 This clause does not prejudice the right of a party to seek injunctive relief to prevent immediate and irreparable harm, nor the right of ILSC to take a step under clause 50 where the existence of a Trigger Event is not in dispute.

PART G - FORFEITURE OF ASSETS

52. FORFEITURE UPON A TRIGGER EVENT

- 52.1 If the Recipient suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets or becomes a Chapter 5 body corporate (all within the meaning of the *Corporations Act 2001* (Cwth) whether or not the Recipient is registered under that legislation), by force of this Deed the Recipient transfers all or any of the Assets remaining to ILSC (or nominee) and in accordance with any written directions later given by ILSC.

52.2 If a Trigger Event exists against the Recipient and clause 52.1 does not apply, ILSC may by notice to the Recipient require the Recipient within 20 Business Days transfer all or any of the Assets remaining to ILSC (or nominee) and in accordance with any written directions given by ILSC.

52.3 The Recipient bears any stamp duty, government registration fee or other cost of giving effect to this clause 52 and the transfer back to ILSC (or nominee) of the Asset concerned.

Notes: Section 193R is that a disposal by the Recipient to ILSC of an interest in land or a water-related right (as was acquired under the grant) is exempt from stamp duty.

53. FORFEITURE COSTS

If:

53.1 an Asset is transferred back under clause 52; and

53.2 ILSC (or nominee) incurs any Forfeiture Costs,

then ILSC may recover those Forfeiture Costs from the Recipient as debt.

For this purpose, **Forfeiture Costs** mean any money ILSC (or nominee) was required to pay in relation to the Asset transferred back to:

- (a) obtain custody of any Goods so transferred back (including transport costs);
- (b) register the transfer on any public or private register (including conveyancer's fees, stamp duty, registration fee);
- (c) obtain from the Recipient ownership free of any Security Interest to which ILSC had not previously consented;
- (d) obtain vacant possession of the Land free of any lease or licence to occupy to which ILSC had not previously consented;
- (e) put the thing so transferred back in that state and condition this Deed required of the Recipient immediately before the transfer back (and in case of Goods replace any components or parts missing).

54. MONETARY CLAIM

If a liquidator of the Recipient acting under Division 7A of Part 5.6 of Chapter 5 of the *Corporations Act 2001* (Cwth) (or, if the Recipient is registered under other legislation, the equivalent provisions of that other legislation):

54.1 disclaims this Deed or disclaims any particular Asset;

54.2 by reason of that disclaimer or for any other reason does not transfer the Assets or that particular Asset (as the case may be) to ILSC (or nominee) as clause 52 would require,

then ILSC may recover the Current Value of the Assets or of that particular Asset (as the case may be) from the Recipient as a debt (including prove for that Current Value in the liquidation).

For this purpose, **Current Value** means in relation to an Asset the greater of:

- (a) its Agreed Value CPI Indexed to the date ILSC is paid the Current Value;

- (b) its *in situ* market value as agreed between the liquidator and ILSC or, if they cannot so agree within 10 Business Days, as conclusively determined in writing by a valuer (acting as an expert and not as an arbitrator) at the instigation of either of them appointed by the person at the time holding or acting in the office of President of the Australian Property Institute Limited (or successor organisation), and with ILSC and the Recipient each liable to pay one half respectively of the valuer's fees and expenses.

PART H - REGULATORY MATTERS

55. ATSI ACT

Despite any other provision in this Deed, if a provision of this Deed is or becomes inconsistent with the ATSI Act, that provision must be read down or failing that severed from this Deed to the extent of the inconsistency.

56. PRIVACY

Each party must comply with the *Privacy Act 1988* (Cwth) and the *Australian Privacy Principles* as applicable to personal information or credit information obtained by that party in investigations leading to, the negotiations for or performance of, this Deed and not then in the public domain (other than by prior breach of this clause).

57. FREEDOM OF INFORMATION

ILSC offers no assurance this Deed, or any written communication exchanged in negotiations for or in performance of this Deed, would be exempt from disclosure under the *Freedom of Information Act 1982* (Cwth).

58. PUBLIC LAW GOVERNANCE

- 58.1 This Deed must be read subject to any binding instrument made by the Finance Minister under section 105C of the *Public Governance, Performance and Accountability Act 2013* (Cwth) and applicable to this Deed or any transaction this Deed contemplates.
- 58.2 Nothing in this Deed prevents ILSC performing its obligations to inform and give information to the Finance Minister under section 19 of the *Public Governance, Performance and Accountability Act 2013* (Cwth).
- 58.3 If ILSC has obligations by mandatory operation of law ILSC cannot fulfil without the Recipient providing information in connection with this Deed or the Assets, the Recipient must provide promptly and freely that information to ILSC to the extent the Recipient is reasonably able.
- 58.4 Nothing in this Deed derogates from the powers of the Auditor-General for Australia under the *Auditor-General Act 1997* (Cwth).

PART I - MONEY MATTERS

59. TRANSACTION COSTS CONTRIBUTION

Effective on the Effective Date, ILSC acting under section 191D(1)(c) or section 191E (1)(d) agrees to grant the Transaction Cost Contribution to the Recipient.

60. COSTS GENERALLY

Subject to clause 59, a party bears its own costs of negotiations for, the preparation of and the observance and performance of this Deed.

61. RECOVERY COSTS

ILSC may recover from the Recipient as a debt any reasonable costs (including legal costs on an indemnity basis) incurred in the recovery or attempted recovery of moneys owing by the Recipient under this Deed or in otherwise enforcing ILSC's rights or remedies under this Deed.

62. GST

62.1 If a party (**Party 1**) becomes liable to pay GST in respect of a taxable supply it makes to the other party (**Party 2**) under this Deed, then (unless this Deed expressly states that the consideration includes GST) the consideration payable by Party 2 to Party 1 for that taxable supply must be increased by an amount equal to the amount of the GST imposed in respect of that taxable supply, and such additional amount paid at the same time as when the consideration for the relevant taxable supply is required to be paid by Party 2.

62.2 If Party 1 incurs an expense or cost (a **Taxed Outgoing**) to be reimbursed (wholly or in part) by Party 2, the cost to Party 1 of the Taxed Outgoing is taken to be the result of:

62.2.1 the amount in fact paid or payable by Party 1 for the Taxed Outgoing;

62.2.2 minus any input tax credit allowed or allowable to Party 1 for that supply;

62.2.3 plus an amount equal to any GST Party 1 is liable to pay in respect of that Taxed Outgoing as a taxable supply by Party 1 to Party 2.

62.3 If an adjustment event occurs in respect of a taxable supply made by a Party 1 to Party 2 under this Agreement, any party aware of that adjustment event must notify the other party as soon as practicable, and the parties must take whatever steps are necessary (including to issue an adjustment note) and make whatever adjustments are required to ensure that any GST or additional GST on that taxable supply is accounted for between these parties.

62.4 If so indicated in **Item 10** and the Recipient is registered or required to be registered under the GST Act, the parties agree ILSC may issue recipient created tax invoices and recipient created adjustment notes for the Recipient in connection with the performance of this Deed.

PART J - OTHER**63. THE RECIPIENT'S CONSTITUTION**

Except with ILSC's consent, after the execution of this Deed the Recipient must not vary or repeal its Constitution or other constituent document in so far as relates to the objects or membership of the Recipient.

64. THE RECIPIENT AS A TRUSTEE

If the Recipient enters into this Deed as trustee of a trust or settlement (in either case, a **Trust**), the Recipient warrants and represents:

- 64.1 the Recipient is the only trustee of the Trust;
- 64.2 any instrument given by the Recipient to ILSC as the instrument (**Trust Deed**) that constitutes or evidences the Trust is a true and up-to-date copy of the instrument that constitutes or evidences the trust;
- 64.3 the Recipient enters into this Deed and the transactions contemplated in or referred to in this Deed as part of the proper administration of the Trust;
- 64.4 the Recipient's rights of indemnity against the assets of the Trust will be on the Effective Date unlimited;
- 64.5 except with ILSC's prior written consent, the Recipient will not:
- 64.5.1 amend or revoke the Trust Deed;
- 64.5.2 allow any profits or corpus of the Trust to be distributed to any person who is not either:
- (a) an Aboriginal person; or
 - (b) a Torres Strait Islander; or
 - (c) an Aboriginal or Torres Strait Islander Corporation; or
 - (d) a trust, charity or benevolent institution established and maintained wholly or principally for the benefit of Aboriginal persons, Torres Strait Islanders or one or more Aboriginal or Torres Strait Islander Corporations;
- 64.5.3 exercise or permit to be exercised any power of appointment under the Trust;
- 64.6 the Recipient would cause any new trustee of the Trust to execute any documents ILSC requires to ensure this Deed and the transactions contemplated in or referred to in this Deed binds that new trustee in law and in equity.

65. **DE FACTO CONTROL OF THE RECIPIENT**

The Recipient must not, without ILSC's consent, enter into or give effect to any scheme by which by the control of the Recipient by Aboriginal persons or Torres Strait Islanders is in practice diminished in favour of persons not meeting either description.

For this purpose:

- (a) **control** includes the capacity or power to govern, manage, regulate or oversee decisions within the Recipient or the capacity to dominate decision-making, directly or indirectly;
- (b) **scheme** means any agreement, arrangement, understanding, promise or undertaking, or any scheme, plan, proposal, course of action or course of conduct, whether express or implied and whether legally enforceable or not, and whether done alone or in association with others.

66. **CORPORATE GOVERNANCE**

If before or within 12 months of the Effective Date ILSC offers the Recipient corporate governance training at a convenient location and at least 40 Business Days in advance, the

Recipient must cause all its directors (or if not a company, all its managing committee members) and executives to attend and participate in such training.

67. INJUNCTION

In the event of a breach or threatened breach of this Deed by the Recipient, then without limiting its other rights or remedies ILSC may obtain an injunction restraining the Recipient from committing or continuing a breach of this Deed without proving any actual damage sustained by ILSC. The Recipient irrevocably agrees its breach of this Deed may cause injury for which damages may not be an adequate remedy.

68. CIRCUMSTANCES NOT PROVIDED FOR

68.1 In any circumstances in which this Deed is silent, incapable of taking effect or being implemented according to its strict provisions, the Indigenous Land and Sea Corporation Board may determine what action may be taken to ensure the effective administration of this Deed consistent with ILSC's role under the ATSI Act.

68.2 The Recipient may make an application to the Administrative Appeals Tribunal for review of any decision so made, and ILSC would submit to the jurisdiction of the Tribunal in that matter.

69. CONSENTS BY ILSC

Except to any extent otherwise stated in this Deed, a consent of ILSC:

69.1 need not be considered by ILSC unless and until the Recipient makes request in writing to ILSC;

69.2 may be conditional;

69.3 means prior written consent signed by either:

69.3.1 the Indigenous Land and Sea Corporation Chief Executive Officer (or acting Indigenous Land and Sea Corporation Chief Executive Officer) for the time being;

69.3.2 another member of ILSC's staff at the time holding sufficient delegated authority for that purpose under section 193T.

70. LEGAL RELATIONSHIP

This Deed constitutes the parties as independent contractors and not as partners, joint venturers, (except under clause 71) principal and agent, or trustee and beneficiary for any purpose.

71. POWER OF ATTORNEY

71.1 The Recipient irrevocably appoints ILSC and each Indigenous Land and Sea Corporation Chief Executive Officer or acting Indigenous Land and Sea Corporation Chief Executive Officer for the time being severally to be the attorneys of the Recipient to (in the name of the Recipient, or in the names of the Recipient and ILSC) do anything on the Recipient's behalf that the Recipient can lawfully do by an attorney in connection with this Deed including, without limitation, any transfer back to ILSC (or nominee) of an Asset under clause 52.

71.2 The Recipient must if so requested, ratify the exercise of any power by an attorney.

71.3 An attorney may benefit itself, act despite a conflict of interest, exercise a power of and perform an obligation of the Recipient in any capacity.

71.4 An attorney may not exercise any right or power under this clause 71 unless:

71.4.1 the Recipient is in breach of this Deed; and

71.4.2 ILSC gave notice of that breach to the Recipient; and

71.4.3 the Recipient has failed to remedy the breach within 5 Business Days or such longer period as stated in the notice.

72. NO ASSIGNMENT

Except with ILSC's consent, the Recipient may not assign (in law or equity) or declare a trust of any of its rights (includes right to a payment) under this Deed.

73. FORCE MAJEURE

A party is not liable for failure to observe or perform this Agreement to the extent and for so long as its performance is prevented or delayed because of circumstances (a **force majeure**) outside the party's direct control and without fault or negligence by that party, but only if that party:

73.1 within 2 Business Days notifies the other party, giving reasonable details;

73.2 does everything reasonable to remedy the cause quickly.

74. TIME

Time is of the essence as regards any date or period of time under this Deed.

75. NOTICES

To be effective, notice under this Deed must be in writing, signed by or for the party giving it (**Party 1**), and given to the other party (**Party 2**) either:

75.1 by hand delivery to a director or other senior executive of Party 2 or to Party 2's Contract Manager;

75.2 by registered post to Party 2's last known principal place of business (marked to attention of Party 2's Contract Manager), and is given at the time at which the letter would be delivered in the ordinary course of post;

75.3 by a means allowed by the *Electronic Transactions Act 1999* (Cwth) (marked to attention of Party 2's Contract Manager) (includes by email to Party 2's Contract Manager's last known email address for that purpose), and is given when that legislation specifies;

75.4 as permitted by legislation applicable to Party 2 (marked to attention of Party 2's Contract Manager).

If the Recipient is Party 2, service of a notice to its contact details last known to ILSC is effective even if not received by the Recipient.

76. ENTIRE AGREEMENT

This Deed is the whole contract between the parties about its subject.

	<p>2. Lease No. ##### of the land in CT Volume ### Folio ##, having the address ## Lot ##, Public Road, Adelaide SA 5000 and known as "Pinky Flat".</p> <p>3. Pastoral Lease No. ##### issued under the <i>Pastoral Land Management and Conservation Act 1989</i> (SA), having the address Lot ##, Public Road, Adelaide SA 5000 and known as "Pinky Flat".</p> <p>4. Crown Lease No. ##### issued under the <i>Crown Land Management Act 2009</i> (SA), having the address Lot ##, Public Road, Adelaide SA 5000 and known as "Pinky Flat".</p> <p>The Agreed Value of the Land is \$###,###.00 (before GST).</p>
ITEM 4	<p>Goods:</p> <ol style="list-style-type: none"> 1. One new / used [insert make and model] forklift. 2. One new / used [insert make and model] prime mover. 3. The fishing vessel "#####". 4. [insert detail / See the attached list of plant and equipment.] <p>The Agreed Value of the Goods is \$###,###.00 (before GST).</p> <p>Notes: If several Goods, allocate an Agreed Value to each.</p> <p>For any aircraft, motor vehicle or watercraft (all as defined in the <i>Personal Property Securities Regulations 2010</i>), specify the requisite identifiers (see Part 2 of Schedule 1 of those Regulations) e.g., for a motor vehicle its 'vehicle identification number', so any registered security interest can be found on a later search of the Register under the PPSA – delete these Notes.</p>
ITEM 5	<p>Other Property:</p> <ol style="list-style-type: none"> 1. Licence No. ##### for the Gulf St Vincent Prawn Fishery issued under the <i>Fisheries Management Act 2007</i> (SA). 2. Water Licence No. ### issued under the <i>Natural Resources Management Act 2004</i> (SA) / Water Supply Agreement dated ### 20## under the <i>Irrigation Act 2009</i> (SA) / Water Supply Agreement dated ### 20## under the <i>Renmark Irrigation Trust Act 2009</i> (SA). 3. Water allocation for ## ML attached to the above Water Licence. 4. [insert] <p>The Agreed Value of the Other Property is \$#####.00 (before GST).</p> <p>Notes: If several items of Other Property, allocate an Agreed Value to each.</p>
ITEM 6	<p>Permitted Use/s:</p> <ol style="list-style-type: none"> 1. Land: Cattle raising / sheep raising / feedlot / hay and grain cropping / forestry / agistment. 2. Goods: In the Recipient' enterprise upon the Land.

	<p>3. Other Property:</p> <ol style="list-style-type: none"> 1. Activities in catching and processing fish at sea. 2. Aquaculture. <p>Other <i>possible</i> choices -</p> <ul style="list-style-type: none"> • entering into leases and / or licences to occupy the Land with other parties for the purpose of income generation • horticultural and industry-specific activities and training • training in rural operations, forestry management and business operations • community development employment programs • drug and alcohol rehabilitation programs • plant operator training • cultural activities and cultural awareness services • conducting any other activities that ILSC may consent to from time to time
<p>ITEM 7</p>	<p>Additional Insurance: Nil.</p> <p>OR</p> <p>In addition to those insurances clause 19 requires, the Recipient must insure against business interruption to a prudent level of cover.</p>
<p>ITEM 8</p>	<p>Conditions Precedent: That no later than [insert date] (or as the parties may agree in writing):</p> <ol style="list-style-type: none"> 1. ILSC is provided evidence of insurances this Deed would require of the Recipient. 2. The Indigenous Land and Sea Corporation Board ratifies the execution of this Deed by the Chief Executive Officer of ILSC. 3. The Minister having administration of the <i>Crown Land Management Act 2009</i> (SA) approves the transfer to the Recipient of the Crown Lease comprised in the Land. 4. The Minister having administration of the <i>Natural Resources Management Act 2004</i> (SA) approves the transfer to the Recipient of the water licence comprised in the Other Property. 5. The Minister having administration of the <i>Fisheries Management Act 2007</i> (SA) approves the transfer to the Recipient of the fisheries licence comprised in the Other Property. 6. The Recipient at its cost obtains consents under the <i>Development Act 1993</i> (SA) to effect development of the Land as forecast in the Proposal. 7. Other.
<p>ITEM 9</p>	<p>Transaction Cost Contribution: Up to total \$[insert] (GST inclusive) apportioned towards the following costs or expenses incurred by the Recipient no later than 12 months after the Effective Date:</p>

	<ol style="list-style-type: none"> 1. \$[insert] to obtain professional advice in negotiations for this Deed. 2. \$[insert] for stamp duty (if any) / registration of transfer of the Assets. 3. \$[insert] to insure the Assets for an initial 12 months. 4. \$[insert] to take delivery of the Goods. 5. \$[insert] to make application to government for an occupational licence to use an Asset. 6. \$[insert] to conduct a grant ceremony. 7. \$[insert] to repair a pre-existing defect or lack of maintenance in an Asset. 8. \$[insert] to fit out or equip an Asset. 9. \$[insert] to familiarise and train Aboriginal persons or Torres Strait Islanders in the use and care of the Assets. 10. Other. <p>Payment of any above amount in advance may be conditional upon ILSC approving a quote from the supplier/s; payment of any above amount in arrears is conditional upon ILSC being provided credible evidence of the cost or expense – see sections 191D(2) and 191E(2).</p> <p>Payments by ILSC are to be made to the following account: Account Name: ##### Bank: ##### BSB: ##### Account No.: #####</p> <p>Where any above cost or expense earns the Recipient a GST input tax credit, count only the net cost or expense.</p> <p>This Item 9 is an exhaustive statement of ILSC's obligation to grant money to the Recipient for matters the subject of this Deed.</p>
<p>ITEM 10</p>	<p>Recipient Created Tax Invoices:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>ITEM 11</p>	<p>Special Conditions: Nil.</p>

EXECUTED

SIGNED for and on behalf of **INDIGENOUS**)
LAND AND SEA CORPORATION by its)
Chief Executive Officer acting under)
delegation made under section 193T of the)
Aboriginal and Torres Strait Islander Act 2005)
and in the presence of:)

.....
Signature

.....
Name of Signatory (PRINT)

.....
Witness Signature

.....
Name of Witness (PRINT)

The **COMMON SEAL** of **[INSERT NAME]** is)
fixed in accordance with its Constitution by:)
)

.....
Signature

.....
Signature

.....
Office held (PRINT)

.....
Office held (PRINT)

.....
Name (PRINT)

.....
Name (PRINT)