



Government of **Western Australia**  
**Housing Authority**

# Housing Management Agreement

Housing Authority

[Aboriginal Corporation/Entity]

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For [Community Name]

# Housing Management Agreement

[Aboriginal Corporation/Entity]

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<b>Details</b>	<b>3</b>
<b>Background</b>	<b>4</b>
<b>Agreed Terms</b>	<b>4</b>
<b>1. Defined terms and interpretation</b>	<b>4</b>
1.1 Defined terms	4
1.2 Interpretation	6
<b>2. Purpose of Agreement</b>	<b>7</b>
<b>3. Term</b>	<b>8</b>
<b>4. The Authority's Obligations</b>	<b>8</b>
4.1 General	8
4.2 Tenancy Agreements	8
4.3 Tenancy Management	8
4.4 Asset Management	9
4.5 Allocation of Nominated Lots and Nominated Houses	9
<b>5. The Authority takes no Interest in Land</b>	<b>9</b>
<b>6. Organisation's Obligations</b>	<b>10</b>
6.1 General	10
6.2 Surrender, Transfer or Encumber Interests in Nominated Lots and Nominated Houses	10
<b>7. Organisation's Representations and Warranties</b>	<b>10</b>
<b>8. Nominated Lots and Nominated Houses</b>	<b>11</b>
8.1 Nominated Lots	11
8.2 Nominated Houses	11
<b>9. Cultural Circumstances</b>	<b>12</b>
<b>10. Employment and Contracting</b>	<b>12</b>
<b>11. Audit</b>	<b>13</b>
<b>12. Delegation, Assignment and Agency</b>	<b>13</b>
12.1 The Authority	13
12.2 Organisation	13
<b>13. Variation</b>	<b>13</b>
<b>14. Extension of Agreement</b>	<b>14</b>
<b>15. Termination</b>	<b>14</b>
<b>16. Disputes and Mediation</b>	<b>15</b>
<b>17. General Provisions</b>	<b>15</b>

17.1 Notices and Service of Notices 15

17.2 Effective on Receipt 15

17.3 Costs, Fees and Charges 16

17.4 Waiver and Exercise of Rights 16

17.5 Schedule and Annexure 16

17.6 Confidentiality 16

17.7 Previous Housing Management Agreement 16

  

**Signing Page 17**

  

**Schedule A 18**

  

**Schedule B 19**

  

**Schedule C 20**

  

**Schedule D 21**

  

**Annexure A 22**

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SAMPLE

## Details

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Date

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

This agreement is between the Housing Authority and [Aboriginal Corporation/ Entity] the organisation that represents [Community Name].

OR

(DELETE whichever is NOT applicable and this note)

This agreement is between the Housing Authority and the Aboriginal Lands Trust (the Aboriginal entity with the power to make this agreement) that represents [Community Name].

## Parties

Name **Housing Authority**, a body corporate continued under section 6(1) of the *Housing Act 1980* (WA)  
Short form name Authority  
Notice details 99 Plain Street, East Perth, Western Australia, 6004  
Contact Director General or his nominee from time to time

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

## Background

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- A. The Parties have agreed, in accordance with the *Housing Act 1980* (WA) (“Housing Act”), for the Authority to let and lease Nominated Lots or Nominated Houses, provide services to those Nominated Lots and Nominated Houses and enter into arrangements for the provision of such services.
- B. The Organisation and the Authority are committed to providing public housing standards and management practices in selected Communities which are consistent with those standards and practices provided for in the *Residential Tenancies Act 1987*(WA).
- C. The Authority acknowledges the independence of the Organisation and the right of the Community to self-determination.
- D. The Authority further acknowledges the rights of the Organisation in respect of the Nominated Lots and Nominated Houses and confirms that nothing in this Agreement confers upon the Authority any proprietary interest of any nature whatsoever in the Nominated Lots or Nominated Houses.

The Parties agree as follows:

## Agreed Terms

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### 1. Defined terms and interpretation

#### 1.1 Defined terms

The following definitions apply unless the contrary intention appears:

**Aboriginal Land** means Crown land, or freehold land that is owned by the Aboriginal Affairs Planning Authority, the Aboriginal Lands Trust or the State over which an Aboriginal entity has power to grant a lease.

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

**Agreement** means this Housing Management Agreement pursuant to section 62B(1) of the Housing Act.

**Annexure** means annexure or attachment to this Agreement.

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

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

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

**Commonwealth** means the Commonwealth of Australia.

**Community** means a community wholly or principally composed of Aboriginal Persons.

**Compensation** means any monies payable to a Party pursuant to Law.

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

**Cultural Circumstance** means any one or more of the circumstances listed in Schedule D of this Agreement.

**Eligible Persons** means a person eligible to enter into a Tenancy Agreement in respect of a given Nominated Lot or Nominated House.

**Encumbrance** means any mortgage, charge or lien over Aboriginal Land, whether registered or equitable, of any nature whatsoever.

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

**Expiration Date** means [insert date]

**Extended Term** means:

- (a) **First Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date];
- (b) **Second Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date];
- (c) **Third Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date];
- (d) **Fourth Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date];
- (e) **Fifth Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date];
- (f) **Sixth Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date]; and
- (g) **Seventh Extended Term** means five (5) years commencing on [insert date] and expiring on [insert date].

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

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

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

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

- (a) the Organisation disposes of the whole or any part of its operations or business other than in the ordinary course of business, including infrastructure necessary for the supply of Essential Services to the Nominated Lots or Nominated Houses;
- (b) the Organisation becomes insolvent or ceases to carry on operations or is deemed to be so under statute or otherwise;
- (c) the Organisation ceases to be able to pay its debts as and when they become due;

(d) any step is taken by the Organisation to enter into any arrangement for debt management between the Organisation and its creditors, without the prior written consent of the Authority; or

(e) any step is taken to appoint an administrator to administer the Organisation.

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

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

**Lot** means an area of land which is shown on a plan of survey, sketch plan or community layout plan (CLP).

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

**Nominated House** in relation to a housing management agreement has the meaning given in section 62D(2) of the Housing Act and is listed in Schedule B for the period specified in that Schedule.

**Nominated Lot** in relation to a housing management agreement has the meaning given in section 62D(1) of the Housing Act and is listed in Schedule A for the period specified in that Schedule.

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

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

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

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

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

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

**Schedule** means a Schedule to this Agreement.

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

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

**Term** means the term of this Agreement which term shall commence on the Commencement Date and expire on the Expiration Date and include any extension or renewal of the Term.

## 1.2 Interpretation

In this Agreement headings are for convenience only and do not affect interpretation unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other gender;
- (c) a reference to persons includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes that person's executors, administrators, successors, substitutes and assignees, to the extent that the same are permitted by the terms of this Agreement.

- (e) where the day on which or by which any act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing will be done on the immediately following Business Day;
- (f) this Agreement shall be interpreted, applied and will take effect as a contract made in Western Australia;
- (g) nothing in this Agreement shall be construed so as to make a Party a partner, agent or representative of the other Party or to create any partnership, association or agency for a joint venture or any other purpose;
- (h) this Agreement will be binding upon the Parties and their respective successors and assigns who become Parties under the terms of this Agreement, to the extent permitted under the terms of this Agreement.
- (i) this Agreement will apply to all Nominated Houses and Nominated Lots, as amended by the Parties from time to time in accordance with Clause 8 of this Agreement;
- (j) references to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (k) this Agreement replaces any previous agreement between the Parties related to management of the Nominated Lots and/or Nominated Houses;
- (l) a reference to a clause is a reference to a clause in this Agreement;
- (m) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow; and
- (n) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function and
- (o) a reference to a thing includes each and every part of a thing.

Neither Party shall be bound by any representations or warranties made to any third parties by the other Party.

## 2. Purpose of Agreement

This Agreement establishes the following:

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



### 3. Term

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

### 4. The Authority's Obligations

#### 4.1 General

The Authority agrees:

- (a) to determine, subject to the provisions of any relevant Law, the terms of a Tenancy Agreement for the Nominated Lots and Nominated Houses and to execute the same with a Tenant on behalf of the Organisation.
- (b) to be taken to be the Lessor, pursuant to section 62G(1)(b) of the Housing Act, of all Nominated Lots and Nominated Houses subject to a relevant Tenancy Agreement and for the purposes of the Residential Tenancies Act.

#### 4.2 Tenancy Agreements

The Parties agree that all Tenancy Agreements will be consistent with the minimum requirements in respect of rights and obligations of a Lessor and Tenant set out in Part IV and Part V of the Residential Tenancies Act.

#### 4.3 Tenancy Management

The Authority agrees:

- (a) to exercise all rights and obligations accruing to a Lessor under the Residential Tenancies Act in respect of Nominated Lots and Nominated Houses, except as otherwise lawfully provided for in this Agreement or any Tenancy Agreement entered into in respect of the Nominated Lots and Nominated Houses, including:
  - (i) executing Tenancy Agreements in accordance with clause 4.1(a) of this Agreement; and
  - (ii) determining the term of Tenancy Agreements;
- (b) to be responsible for issuing of all required notices, of any nature whatsoever, in respect of any Tenancy Agreement regarding a given Nominated Lot and Nominated House, including:
  - (i) notices for variation of Rent;
  - (ii) default or breach notices;
  - (iii) termination of a Tenancy Agreement; and
  - (iv) all other notices as provided for in the Residential Tenancies Act;
- (c) to ensure allocation of Nominated Lots and Nominated Houses to Eligible Persons in accordance with subclause 4.5;
- (d) to determine, with the approval of the Minister, the amount of Rent payable in respect of a Tenancy Agreement;
- (e) to collect and receive all Rent paid by a Tenant of the Nominated Lot or Nominated House pursuant to a Tenancy Agreement, including the issuing receipts for all Rent collected when requested by a Tenant or Government Agency or when otherwise required by the Residential Tenancies Act or any other Law;

- (f) to only pursue rental arrears of vacated tenants where it is economical to do so and where there are reasonable prospects of successfully recovering the vacated debt. Such decisions on pursuing vacated debts to be taken on a case by case basis and at the Authority's sole discretion; and
- (g) to provide an Annual Report to the Organisation no later than 5:00pm on 30 September each calendar year.

#### **4.4 Asset Management**

- (a) The Authority is responsible for:
  - (i) all inspections, repairs and maintenance of Nominated Houses, to ensure that the Nominated Houses are maintained in a good state of repair and condition and that they comply with any health, safety or building Laws; and
  - (ii) Lots to the extent identified in Schedule A.
- (b) If the Authority is required to repair any damage to, or replace any damaged aspect of, any Lots or Houses which results from:
  - (i) a wilful or negligent act or omission by the Organisation or the Tenant or any other third party who has gained access to an affected Lot or House with the express or implied consent of the Organisation or the Tenant; or
  - (ii) any breach of any term of this Agreement by the Organisation, its employees, agents or contractors.

the Authority may determine, at its absolute discretion, whether it will seek recompense from the Tenant, the Organisation or any other person deemed responsible for that damage for any repairs to or replacement of the damaged property, and the amount of any recompense will be determined having regard to the individual circumstances of each case.

#### **4.5 Allocation of Nominated Lots and Nominated Houses**

- (a) The Authority is responsible for the allocation of Nominated Lots and Nominated Houses to Eligible Persons.
- (b) In performing their obligation under subclause 4.5(a), the Authority has the right to determine which Tenant will be leased which Lot or House under a Tenancy Agreement.
- (c) In making a determination under subclause 4.5(b), the Authority must have regard to the wishes of the Organisation and the Aboriginal Persons to the extent those wishes can be ascertained and are practicable.

#### **5. The Authority takes no Interest in Land**

- (a) This Agreement does not create in favour of the Authority any interest in Aboriginal Land (including Nominated Lots) of any nature whatsoever.
- (b) For the avoidance of doubt, the Authority does not acquire ownership of any of the Nominated Lots or Nominated Houses as a result of:
  - (i) execution of this Agreement; or
  - (ii) the inclusion of a Nominated Lots or Nominated Houses to Schedule A or Schedule B of this Agreement.

## 6. Organisation's Obligations

### 6.1 General

The Organisation agrees to do all things reasonably necessary to facilitate the operation of this Agreement, which include:

- (a) organising regular meetings regarding Nominated Lots and Nominated Houses to discuss the operation of this Agreement and any Tenancy Agreement;
- (b) making all reasonable efforts to assist Tenants to comply with the provisions of a Tenancy Agreement to which a Tenant is a Party; and
- (c) allowing the Authority, its employees, agents and contractors reasonable thoroughfare access through Aboriginal Land in order for the Authority to comply with and carry out its rights and its obligations under this Agreement and the Residential Tenancies Act.

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

- (a) The Organisation must not, without the prior written consent of the Authority assign, transfer, let, lease, surrender or otherwise dispose of its interest in any of the Nominated Lots or Nominated Houses.
- (b) The Organisation must not, after the Commencement Date, encumber or dispose of its interest in any of the Nominated Lots or Nominated Houses.
- (c) For the avoidance of doubt, the Authority is not bound to provide the consent referred to in subclause 6.2(a).

## 7. Organisation's Representations and Warranties

The Organisation represents and warrants that:

- (a) it is an Aboriginal Corporation or Incorporated Association established under the *Corporations (Aboriginal And Torres Strait Islander) Act 2006 (Cth)* or the *Associations Incorporation Act 1987* or a government agency that holds Aboriginal Land;
- (b) it is duly authorised and has the power to enter into and perform its obligations under this Agreement for the Term;
- (c) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (d) it has in full force and effect the authorisations, registrations, consents, approvals licenses or permits which are, or will be, required in connection with its obligations under this Agreement;
- (e) there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Organisation which will or may have a materially adverse effect on the Organisation's ability to perform its obligations under this Agreement;
- (f) it is unaware of any act, matter, thing or circumstance or the reasonable possibility of an act, matter, thing or circumstance which would impede or prevent the performance of any obligation under this Agreement;

- (g) it is not in default under a Law or obligation which affects its operational capacity or its assets;
- (h) it has the interest in the Nominated Lots as set out in Schedule C;
- (i) it has received legal advice regarding its rights and obligations under this Agreement, prior to signing this Agreement, or it elects not to obtain such advice;
- (j) there is no legal impediment to the Nominated Lots and Nominated Houses being occupied by a Tenant pursuant to a Tenancy Agreement for the period(s) specified in Schedule A and Schedule B; and
- (k) it is the wish of the Aboriginal Persons who inhabit the Aboriginal Land that:
  - (i) the Organisation enter into this Agreement with the Housing Authority;
  - (ii) the Nominated Lots are listed in Schedule A and Schedule C; and
  - (iii) the Nominated Houses are listed in Schedule B,
 to the extent that those wishes can be ascertained.
- (l) The representations and warranties made by the Organisation under clause 7 are taken to be made continuously for the Term.

## 8. Nominated Lots and Nominated Houses

### 8.1 Nominated Lots

- (a) The Parties may by mutual agreement in writing, add or remove any Nominated Lot from Schedule A of this Agreement.
- (b) The Parties may by mutual agreement in writing, vary the period listed in Schedule A for which a Nominated Lot is subject to this Agreement.
- (c) Any Nominated Lot added to Schedule A is subject to this Agreement.
- (d) The Parties agree that once a Nominated Lot is added to Schedule A, that Nominated Lots must be added to Schedule C of this Agreement, which records the Organisation's interest in the Nominated Lots.
- (e) The Parties may not add a Nominated Lot to Schedule A of this Agreement, until such time as the Authority is satisfied that doing so would accord with the wishes of the Organisation, and Aboriginal Persons who inhabit the land on which the Nominated Lots are located to the extent that those wishes can be ascertained.
- (f) For the avoidance of doubt, any addition or removal of a Nominated Lot pursuant to subclause 8.1(a) or amendment of the period described in subclause 8.1(b) is a variation to this Agreement and must comply with the Variation provisions in clause 13 of this Agreement.

### 8.2 Nominated Houses

- (a) The Parties may by mutual agreement in writing, add or remove any Nominated Houses from Schedule B of this Agreement.

- (b) The Parties may by mutual agreement in writing, vary the period listed in Schedule B for which a Nominated House is subject to this Agreement.
- (c) The Parties agree to enter an existing House on Schedule B of this Agreement, if the Authority determines that it is appropriate for the existing House to be included in that Schedule;
- (d) The Parties agree that where the Authority constructs a new house or refurbishes an existing house, the Authority shall upon written notice to the Organisation, enter that House into Schedule B, upon Practical Completion.
- (e) The Organisation acknowledges that the Authority cannot make the Houses available to Tenants until:
  - (i) Practical Completion is achieved; and
  - (ii) it is agreed between the Parties to enter an existing House to Schedule B of this Agreement and the House is so entered.
- (f) The Parties may not add a Nominated House to Schedule B of this Agreement, until such times as the Authority is satisfied that doing so would accord with the wishes of the Organisation, and Aboriginal Persons who inhabit the land on which the Nominated Houses are located to the extent that those wishes can be ascertained.
- (g) For the avoidance of doubt:
  - (i) any addition or removal of Nominated Houses from Schedule B pursuant to subclause 8.2(a); or
  - (ii) a variation of the period described in subclause 8.2(b); or
  - (iii) any addition of an existing House pursuant to subclause 8.2(c),
 is a variation to this Agreement and must comply with the Variation provisions in clause 13 of this Agreement.

## 9. Cultural Circumstances

- (a) In the event that a Cultural Circumstance occurs, the Organisation agrees to promptly inform the Authority of any Tenant vacating a Nominated House as soon as the Organisation becomes aware of the same.
- (b) In the event of a Cultural Circumstance, the Authority may suspend the operation of any Tenancy Agreement applying to a Nominated Lot or Nominated House for the period set out in Schedule D of this Agreement or such other time as agreed between the Parties, both acting reasonably.

## 10. Employment and Contracting

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

## 11. Audit

- (a) In the event of an Insolvency Event, or where, in the opinion of the Authority, there is the reasonable likelihood of an Insolvency Event occurring, the Authority may request that the Organisation provide the Authority with access to all Records (relating in any way to this Agreement) in the control or possession of the Organisation.
- (b) If a request is made pursuant to subclause 11(a), the Organisation must within ten (10) Business Days, provide the Authority with access to all Records.
- (c) Upon being provided with access to the Records under this clause 11, the Authority has the right to appoint a qualified auditor to audit the Records.
- (d) Before exercising its rights under subclause 11(c) of this Agreement, the Authority will endeavour to advise the Government Agency responsible for the registration of the Organisation of its intention to audit the Records.
- (e) The Authority bears all costs associated with an audit under this clause.

## 12. Delegation, Assignment and Agency

### 12.1 The Authority

- (a) The Authority may:
  - (i) assign its rights and obligations under this Agreement to a Government Agency after providing the Organisation with no less than ten (10) Business Day's written notice;
  - (ii) delegate any or all of its rights and obligations under this Agreement to a Government Agency after providing the Organisation with no less than ten (10) Business Day's written notice;
  - (iii) enter into an agreement with a person or body (including any Contractors the Authority deems necessary) under which the person or body is authorised to exercise as the Authority's agent or contractor, to exercise any or all of its rights, powers, duties and obligations conferred on the Authority pursuant to this Agreement; and
  - (iv) appoint an agent or contractor pursuant to subclause 12.1(iii) to exercise all rights, powers and duties exercisable by the Authority in accordance with this Agreement, the relevant agency agreement and the Housing Act.
- (b) For the avoidance of any doubt, the provisions of clause 10 may apply to the appointment of agents and Contractors under this clause.

### 12.2 Organisation

This Agreement is personal to the Organisation and may not be assigned by the Organisation without the prior written approval of the Housing Authority, such approval not to be unreasonably withheld.

## 13. Variation

- (a) The Parties may by mutual agreement, in writing, vary any provision of this Agreement.

- (b) Unilaterally by the effect of a notice from the Authority under clause 8.2(d).
- (c) Any variation to this Agreement will not affect the operation of any Tenancy Agreement unless provided for in the terms of the variation itself.
- (a)

#### 14. Extension of Agreement

- (a) Subject to and conditional upon clause 14(b) and the other terms and conditions contained herein, either Party may upon written notice to the other of not more than six (6) months and not less than three (3) months before the expiration of the relevant period set out in this clause below, terminate this Agreement:
  - (i) on the Expiration Date;
  - (ii) on the expiration of the First Extended Term;
  - (iii) on the expiration of the Second Extended Term;
  - (iv) on the expiration of the Third Extended Term;
  - (v) on the expiration of the Fourth Extended Term;
  - (vi) on the expiration of the Fifth Extended Term;
  - (vii) on the expiration of the Sixth Extended Term;
  - (viii) on the expiration of the Seventh Extended Term.(together **Notice**).
- (b) If Notice is not provided strictly in accordance with the terms and conditions contained herein, the relevant Extended Term will automatically extend for each corresponding Extended Term period as the context of this Agreement so requires.
- (c) The Parties acknowledge and agree that clause 14 will apply notwithstanding any other provision that may be contained in this Agreement to the contrary.

#### 15. Termination

- (a) The Parties may, by mutual agreement in writing and signed by both Parties, terminate this Agreement at any time.
- (b) If this Agreement is terminated in accordance with subclause 15(a), or is otherwise lawfully terminated or in any other way ceases to have effect by operation of Law, the Parties agree that the Housing Authority:
  - (i) is not to be treated, for the purposes of the Residential Tenancies Act, as the Lessor of any of the Nominated Lots or Nominated Houses; and
  - (ii) ceases for the purposes of that Act to have any rights or obligations of a Lessor in any of the Nominated Lots or Nominated Houses.
- (c) Notwithstanding this clause 16, the Parties' rights at common law, in equity and under statute (arising from or related to any breach of, or right to terminate this Agreement) are preserved.



## 16. Disputes and Mediation

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Agreement has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute.
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties cannot resolve the Dispute within a period of ten (10) Business Days after commencing negotiations, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, after concluding negotiations under subclause 17(d), the Parties to the Dispute cannot agree on a particular mediator to be appointed within ten (10) Business Days, the Parties may request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a Mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within ten (10) Business Days, either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or by arbitration.
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

## 17. General Provisions

### 17.1 Notices and Service of Notices

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

- (a) in writing, in English and signed by an authorised person; and
- (b) hand delivered or sent by prepaid post to the Organisation's Address for Notices specified on the Details page of this Agreement, or sent by facsimile to the Organisation's facsimile number specified on the Details page of this Agreement, or forwarded to the Organisation's email address (if known) or as varied by any Notice given by the Organisation to the sender.

### 17.2 Effective on Receipt

A notice waiver, variation or extension of agreement, mutual termination, demand, consent, approval or communication given in accordance with clause 17.1 takes effect when received (or at a later time specified in the Notice), and is taken to be received:



- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second (2<sup>nd</sup>) Business Day after the date of posting (or on the seventh (7<sup>th</sup>) day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless the recipient immediately informs the sender that it has not received the entire Notice;
- (d) if sent by email when the sender's email system confirms the email has been sent, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### **17.3 Costs, Fees and Charges**

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

### **17.4 Waiver and Exercise of Rights**

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

### **17.5 Schedule and Annexure**

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

### **17.6 Confidentiality**

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

### **17.7 Previous Housing Management Agreement**

- (a) The Parties agree that this Agreement shall be taken (where the context requires) to terminate any or all previous housing management agreements, effective from the Commencement Date of this Agreement.
- (b) This clause 17.7 only applies where there are existing housing management agreements.

# Signing Page

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**EXECUTED** as an agreement

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

\_\_\_\_\_  
Signature of Authorised Officer

←

\_\_\_\_\_  
Signature of Authorised Officer

←

\_\_\_\_\_  
Name of Authorised Officer (please print)

\_\_\_\_\_  
Name of Authorised Officer (please print)

\_\_\_\_\_  
Signature of Authorised Officer

←

\_\_\_\_\_  
Name of Authorised Officer (please print)

**[Insert Organisation's appropriate execution clause]**

\_\_\_\_\_  
Signature of Authorised Officer

←

\_\_\_\_\_  
Signature of Authorised Officer

←

\_\_\_\_\_  
Name of Authorised Officer (please print)

\_\_\_\_\_  
Name of Authorised Officer (please print)

# Schedule A

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The following identified Lots are Nominated Lots for the purposes of this Agreement:

[insert Community Name] Community Layout Plan (CLP) No. [insert number] Version [insert number] dated [insert date - dd/mm/yyyy] issued by the Western Australian Planning Commission.

CLP Lot number	CT Vol/No.	Tenure Type	Land Description	Category (refer below)	End date for Agreement

## Descriptions of Category

1. Single house lot – The Authority is responsible for ensuring that the whole lot, including the perimeter line, is maintained in a good state of repair and condition and that it complies with any health, safety and building laws.
2. Duplex house lot – The Authority is responsible for ensuring that the whole lot, including the perimeter line, is maintained in a good state of repair and condition and that it complies with any health, safety and building laws.
3. Single or duplex lot agreed for new housing development within years – The Authority is responsible for ensuring only that the perimeter line is maintained in a good state of repair and condition and that it complies with any health, safety or building laws.
4. Special Single or duplex lot - The Authority is responsible for ensuring only that the perimeter line is maintained in a good state of repair and condition and that it complies with any health, safety or building laws.
5. Multiple housing lot – The Authority is responsible for ensuring only that the perimeter line is maintained in a good state of repair and condition and that it complies with any health, safety or building laws.

## Schedule B

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### Nominated Houses

All individual Houses located on the Nominated Lots identified below are Nominated Houses for the purposes of this Agreement:

CLP Lot number	House Number	CT Vol/No.	Tenure Type	Land Description	End date for Agreement

SAMPLE

## Schedule C

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### ***The Interest of the Organisation in the Nominated Lots and Nominated Houses***

The Organisation has the interest in the Nominated Lots and Nominated Houses as specified below:

CLP Lot number	CT Vol/No.	Tenure Type	Land Description	Interest of the Organisation

SAMPLE

## Schedule D

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Cultural Circumstances Policy for [insert name of Aboriginal Organisation] (hereinafter “[insert community name or short name]”):

1. The following events are considered a cultural circumstance which requires endorsement from [insert community name/short name]:
  - (a) In the event of Sorry Business the head tenant may be absent from their rented house for a period of up to [insert timeframe - e.g. six (6) months]. During this time rental charges will not apply; or
  - (b) In the event of Law Business the head tenant may be absent from their rented house for a period of [insert timeframe - e.g. six (6) months], however, during this time rental charges will continue to apply.
2. The [insert community name/short name] Council is required to notify the Authority if the head tenant is absent from their rented house due to a cultural circumstance described in 1(a) or 1(b).
3. If the tenant cannot return to their rented house within the timeframe specified in clause 1(a) due to Sorry Business, a transfer will be arranged within the community after consultation and endorsement with [insert community name or short name]. A “smoking” of the property may also be undertaken by elected members of the community anytime during this period, to assist resident’s move back into the house.
4. At no time during Sorry Business will the Authority, Tradesperson or [insert community name or short name] Council be permitted to access the rented house, unless, it is to undertake emergency work which causes a danger or could cause long term damage to a property if left unattended.

# Annexure A

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The following conditions in this Annexure A is specific to [insert name of Aboriginal Organisation] (hereinafter “[insert community name or short name]”).

## 1. Eligibility Policy for housing in [insert community name/short name]

- 1.1. To be eligible for housing assistance at [insert community name/short name] an applicant must be at least 16 years of age with no upper limit; and
- 1.2. The applicant must have a connection to or family connected to [insert community name/short name] (determinable by [insert community name/short name] Council).
- 1.3. An applicant may be eligible if that person or persons is living and/or working as a community member for a period of not less than [insert time frame - ie; two (2) months].
- 1.4. ALL applications must be endorsed by [insert community name/short name] Council prior to listing on the wait list.

### *Eligible and Non-Eligible Applicants*

- 1.5. An applicant is eligible for housing if approved by the Authority and endorsed by [insert community name/short name] Council.
- 1.6. Eligible applicants will be placed on the Wait List from the date of approval.
- 1.7. An applicant is NOT ELIGIBLE for housing (unless otherwise approved by the Authority and endorsed by [insert community name/short name] Council) if:
  - (a) the applicant has an outstanding debt owed to the Authority or to the [insert community name/short name] community; or
  - (b) the applicant has previously been evicted from an Authority property for failure to pay rent or for breach of agreement; or
  - (c) the applicant is the head tenant[s] of a house that is in a town, on Town Based-Community, on a Community or other location including outstations. In these circumstances, the applicant can be placed on the wait list with the approval of both the Housing Authority and [insert community name/short name] Council, however if they are allocated a house at [insert community name/short name] they must vacate their current premises.

## 2. Allocations Policy for housing in [insert community name/short name]

- 2.1. All allocations for housing must be approved by the Authority [and endorsed by or in consultation with - delete whichever is not applicable] [insert community name/short name] Council.
- 2.2. When an applicants’ turn is reached on the wait list the Authority will locate an appropriate rental home for allocation according to the following criteria:
  - (a) length of waiting time;
  - (b) size of the family;
  - (c) personal factors, such as, health, disability or mobility issues;
  - (d) rental history, such as, prior or current rent arrears and tenant liability; and
  - (e) location of the property.

### *Allocation of New Constructions*

- 2.3. If [insert community name/short name] is allocated a number of properties under a ‘construction program or refurbishment program’ allocation preferences may be given to existing tenants who have maintained their properties and paid their rent regularly and on time.

- 2.4. The allocation of newly constructed properties will be determined by the Authority and [insert community name/short name] Council.

*Allocation of Premises where Tenant leaves the rented house or passes away*

Where a tenant or other signatory to the tenancy agreement leaves the rented house or passes away, other members of that household may apply to have the tenancy agreement transferred into their name.

- 2.5. Adult children will be given preference, subject to the following criteria:
- (a) is 16 years of age or older;
  - (b) has been a household member for a minimum period of six (6) months;
  - (c) has applied for the tenancy; and
  - (d) is eligible for the accommodation type;
  - (e) is otherwise eligible for a tenancy with the Authority and is endorsed by [insert community name/short name] Council.
- 2.6. Other family members may apply subject to the following criteria:
- (a) is 16 years of age or older;
  - (b) length of time the other household members have occupied the property;
  - (c) eligibility to be a tenant of the community;
  - (d) eligibility for the accommodation type;
  - (e) whether or not they have paid rent at the tenancy;
  - (f) whether they are applicants on the wait list;
  - (g) previous tenancy history;
  - (h) need of the claimant; and
  - (i) is subject to approval by the Authority and endorsed by [insert community name/short name] Council.

**3. Rent Transition Process for [insert community name/short name]**

- 3.1. [insert community name/short name] agrees to work with the Authority to progressively introduce the Remote Aboriginal Community Rent Setting Model (“Rent Setting Model”).
- 3.2. The Rent Setting Model in remote Aboriginal Town Based communities:
- (a) is set at the Authority’s public housing level;
  - (b) based on the lesser of
    - (i) no more than 25% of the gross household assessable income of all household members
    - or
    - (ii) the market rent in town; and
  - (c) is discounted by an amount equivalent to local government rates (where those rates are not payable and the community is responsible for providing the service).
- 3.3. The Rent Setting Model in remote Aboriginal communities:
- (a) is set at the Authority’s public housing level;
  - (b) based on the lesser of
    - (i) no more than 25% of the gross household assessable income of all household members
    - or
    - (ii) a cost recovery model reflecting different costs of construction, indexed annually to the Consumer Price Index as provided by the Department of Treasury; and



- (c) is discounted by an amount equivalent to local government rates (where those rates are not payable and the community is responsible for providing the service).
- 3.4. The rent per house is \$[amount] ([amount e.g fifty] dollars).
- 3.5. The level of rent, described in clause 3.4 above, will remain in place for all houses that have not been upgraded or refurbished.
- 3.6. All persons moving into newly constructed, refurbished or upgraded housing will be required to start transitioning to the new Rent Setting Model described in clause 3.2 or clause 3.3 above, whichever is applicable.
- 3.7. The rent transition period for [insert community name/short name] described in clause 3.1 will commence upon Practical Completion as follows:
- (a) tenants that pay less than the amount required under clauses 3.2 or 3.3 (as the context requires) will transition to the Rent Setting Model referred to in clauses 3.2 or 3.3 in two increments over a period of 12 months;
  - (b) tenants that pay more than the amount required under clauses 3.2 or 3.3 will immediately pay rent in accordance with the Rent Setting Model referred to in clauses 3.2 or 3.3 (as the context requires).
- 3.8. All rent collected in [insert community name/short name] will be spent on repairs and maintenance.
- 4. Eviction Policy and Processes for [insert community name/short name]**
- 4.1. In accordance with the Residential Tenancies Act and the tenancy agreement, the Authority must give the tenant notice describing the breach of agreement and requiring the breach be remedied.
- 4.2. A breach of agreement may include but is not limited to:
- (a) non-payment of rent;
  - (b) anti-social behaviour committed by the tenant or the tenants' visitors; or
  - (c) using the premises for an illegal purpose; or
  - (d) damage to property (tenant liability).
- 4.3. If a tenant is absent from their rented house for a period exceeding [insert time frame - ie; two (2) months] without the approval of the Authority and endorsement of [insert community name/short name] Council the house will be considered ABANDONED and action will be taken to terminate the tenancy.
- 4.4. The [insert community name/short name] Council will be notified of any notice of breach of agreement issued to a tenant.
- 4.5. The [insert community name/short name] Council will be notified of any notice of termination of agreement issued to a tenant.
- 4.6. In tenancies where the Residential Tenancies Act does not apply, the Authority is encouraged to apply Residential Tenancies Act principles to ensure procedural fairness.