

Kimberley Regional Group Governance Agreement

Shire of Broome

Shire of Derby West Kimberley

Shire of Halls Creek

Shire of Wyndham East Kimberley

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Kimberley Regional Group Governance Agreement

Date ►

Between the parties Shire of Broome **ABN 94 526 654 007**
a local government under the *Local Government Act 1995 (WA)*,
having its principal office at Weld Street, Broome, Western Australia

Shire of Derby West Kimberley **ABN 99 934 203 062**
a local government under the *Local Government Act 1995 (WA)*,
having its principal office at 30 Loch Street, Derby, Western Australia

Shire of Halls Creek **ABN 58 251 691 051**
a local government under the *Local Government Act 1995 (WA)*,
having its principal office at Thomas Street, Halls Creek, Western
Australia

Shire of Wyndham East Kimberley **ABN 35 647 145 756**
a local government under the *Local Government Act 1995 (WA)*,
having its principal office at 115 Coolibah Drive, Kununurra
(the **Participants**)

Recitals

- 1 In September 2010, as part of the Western Australian State Government's local government reform agenda, the four Participants came together as the Kimberley Regional Collaborative Group by the signing of the Agreement for the Kimberley Zone Regional Collaborative Group with the State of Western Australia.
- 2 The agreement governing the Kimberley Regional Collaborative Group has a finite life and is to terminate on 30 June 2015.
- 3 In view of this and consistent with the WA State Government's local government reform agenda, the Participants are desirous of coming together as the Kimberley Regional Group (**KRG**) for the purpose of undertaking shared regional initiatives in the Kimberley Region.
- 4 The Participants have resolved to enter into this agreement to govern how they will work together as the KRG.

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Absolute Majority	is defined in the Act.
Accounting Period	the period from the Date of this Agreement to the following 30 June and then each period of 12 months ending on 30 June in each year, or any other period that the Board decides from time to time.
Act	the <i>Local Government Act 1995 (WA)</i> .
APRA	the Australian Prudential Regulation Authority.
Board	the KRG board described in clause 4.
Breach	any of the following events: <ol style="list-style-type: none">1 a Participant engages in fraud, collusion or misleading or deceptive conduct in performing its obligations in accordance with this agreement;2 a representation given by a Participant in accordance with a Project or this agreement is found to be materially incorrect;3 a Participant fails to comply with its financial obligations in accordance with clause 11;4 a Participant fails to diligently and expeditiously perform its obligations under this agreement;5 a failure by a Participant to approve an annual Operational Plan and budget, provided that the amount of the Participant's contribution under the budget is no more than the contribution provided by that Participant at the Date of this Agreement, by 30 September of the financial year to which the budget relates; and6 a failure by a Participant to carry out any of its obligations under this agreement.
Breach Notice	is defined in clause 19.1.
Business Case	a proposal prepared and recommended by the Board and approved

Term	Meaning
	by the Participants for a Project.
Business Day	a day on which banks are open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday in that city.
CEO	the chief executive officer of a Participant appointed in accordance with the Act.
CEO Advisory Group	the group comprised of the CEO's of each of the Participants, with the functions set out in clause 9(b).
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Date of this Agreement	the date on which this agreement is executed by all Participants to this agreement or, if not executed on the same date, the date on which the last of the Participants executes this agreement.
Defaulting Participant	a Participant who has committed a breach of this agreement.
Delegate	the person appointed by the Participant as a member of the Board of the KRG in accordance with clause 5.1.
Dispute	any real or perceived conflict, difference of opinion or unresolved issue.
Election	the election of Delegates to the Office Bearer Positions at the first meeting of the Board following the local government elections every 2 years.
GST	the tax levied on goods and services under the GST Act.
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act, ordinance, regulation, public binding ruling or subordinate legislation relating to the imposition of GST.
Governmental Agency	any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity in Australia.

Term	Meaning
Host Shire	the Participant whose Delegate is elected as chairperson.
Insurance Policies	includes: <ol style="list-style-type: none"> 1 Officers and Members Indemnity policy; 2 Public Liability policy; 3 Fidelity Guarantee policy; 4 Local Government Business Practices Protection (including Employment Practices Liability) policy; and 5 Workcare, as further described in clause 18.
Kimberley Region	the collective districts (as that term is defined in the Act) of the Participants.
KRG	the Kimberley Regional Group, which is the subject of this agreement.
Late Payment Rate	the rate of interest prescribed from time to time under section 8 of the <i>Civil Judgments Enforcement Act 2004 (WA)</i> per annum, calculated as simple interest.
Law	<ol style="list-style-type: none"> 1 Commonwealth and Western Australian legislation, including statutes, ordinances, instruments, codes, requirements, regulations, by-laws and other subordinate legislation; 2 common law; and 3 principles of equity.
Negotiation Period	the period following notification of a Dispute during which the Participants must use their reasonable efforts to resolve the dispute, as defined in clause 22.3(a).
Office and Incidental Support	office space, office equipment (desk, chair, computer, drawers, telephone etc), photocopying facilities, information technology support, human resources support, reception support, meeting room use, kitchen facilities, finance support and record keeping support for the KRG, but not which would be provided by the Host Shire for its CEO in any event.
Office Bearer Positions	the positions of: <ol style="list-style-type: none"> 1 chairperson; and 2 deputy chairperson.

Term	Meaning
Operating Expenses	the ongoing cost for the operation and management of the KRG, including Office and Incidental Support expenses.
Operational Plan	the plan setting out the day to day operation and management of the KRG.
Other Contributions	is defined in clause 11.4.
Outgoing Host Shire CEO	the Host Shire CEO at the time, which as at the Date of this Agreement is the Shire of Broome.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth), any regulations made at any time under the PPSA, or any amendment to the PPSA or those regulations, made at any time, as the context requires.
PPS Law	<ol style="list-style-type: none"> 1 the PPSA; 2 any regulations made at any time under the PPSA; 3 any provision of the PPSA or regulations made at any time under the PPSA; 4 any amendment to any of the above, made at any time; or 5 any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.
Project	<p>a temporary activity to create a unique product, service or result which when properly scoped:</p> <ol style="list-style-type: none"> 1 has a clearly defined commencement and completion timeframe; 2 is undertaken for the first time; 3 has defined and measurable outcomes; 4 has defined resources (eg cost, people, equipment, materials); 5 has identifiable tasks, activities and milestones; and 6 has defined roles and responsibilities, <p>and includes Shared Services.</p>
Project Participant	a Participant which has elected to participate in a Project.
Regional Business Plan	the plan set out in Schedule 5.

Term	Meaning
Regional Strategic Community Plan	the plan set out in Schedule 4.
Shared Services	services provided by one Participant for the benefit of one or more other Participants.
Standing Orders	is defined in the Act.
Strategic Goals and Outcomes	the strategic goals and outcomes set out in Schedule 3.
Termination Date	is defined in clause 3 as may be extended in accordance with this agreement.
WALGA	the Western Australia Local Government Association constituted under the Act.
Working Group	a group appointed by the Board to carry out the scoping, implementation or management of a Project.

1.2 Interpretation

In this agreement, unless the context requires otherwise:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (e) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (f) References to a person include the legal personal representatives, successors and assigns of that person.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A promise on the part of 2 or more persons binds them jointly and severally.

- (k) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (m) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (n) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (o) A right includes a benefit, remedy, discretion, authority or power.
- (p) An obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation.

1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Kimberley Regional Group

2.1 Formation

- (a) On and from the Date of this Agreement the Participants agree to form the KRG. The structure of the KRG is set out in Schedule 2.
- (b) The KRG is a meeting of the Participants for a common purpose and is not a separate legal entity.
- (c) This agreement sets out the operation of the KRG. To the extent that there is any inconsistency between Schedule 2 and the remainder of this agreement, the remainder of this agreement prevails.

2.2 Vision

The vision for the KRG is to maintain and enhance the rich diversity and liveability of the Kimberley Region for its people and the world.

2.3 Mission

The mission of the KRG is to work collaboratively for the benefit of the people and the land of the Kimberley Region.

2.4 Objectives

The objectives of the KRG are:

- (a) to strive to achieve the Strategic Goals and Outcomes of the KRG in accordance with the KRG's Regional Strategic Community Plan, in a manner that enhances and assists the advancement of the Kimberley Region;
- (b) to encourage cooperation and resource sharing on a regional basis; and
- (c) not to detract from the relationships a Participant holds within its community with the State and Federal Governments and other entities it interacts with in the course of usual business.

2.5 Local Government Act

Nothing in this agreement affects or operates to prevent the operation of the Act. Each of the Participants must comply with, and must ensure that their Delegates comply with, the Act when exercising any rights or performing any obligations under this agreement.

3 Term

- (a) This agreement terminates 4 years from the Date of this Agreement (**Termination Date**).
- (b) Prior to the Termination Date, the Participants may, by agreement in writing, extend the term of this agreement.

4 KRG Board

4.1 Establish Board

- (a) The Board is established for the purpose of carrying out the functions referred to in clause 4.2.
- (b) Subject to this agreement and the Act, each of the Participants consents to the Board making decisions in the performance of the functions set out in clause 4.2, in respect of that Participant's district.
- (c) The Board does not have the powers of a local government nor of a council of a local government and cannot make decisions which bind a local government in the exercise of its statutory functions.
- (d) The Board will be constituted of 4 delegates in total, comprising of one Delegate from each council of the Participants.
- (e) The Delegates are appointed in accordance with clause 5.1.
- (f) Each Delegate of the KRG has the right to one vote in decisions of the Board.

4.2 Function of the Board

The primary functions of the Board are to:

- (a) lead and provide strategic direction for the KRG;
- (b) be the custodian of the vision and mission of the KRG;
- (c) strive to achieve the performance of the work or services under this agreement to achieve the Strategic Goals and Outcomes of the KRG;
- (d) approve the Operational Plan and budget in accordance with clause 10.7;
- (e) identify projects aligned to the Regional Business Plan and Regional Strategic Community Plan;
- (f) ensure the preparation of a Business Case for proposed Projects in accordance with clause 13.2 and clause 13.3
- (g) recommend whether the KRG should pursue a Project following consideration of a Business Case;
- (h) establish the composition and nature of the work to be undertaken by any Working Group;
- (i) authorise any Working Group to deliver and manage Projects;
- (j) approve the appointment of independent consultants to assist a Working Group pursuant to clause 14(g); and
- (k) authorise the Host Shire to enter into contracts in accordance with clause 7.1.

4.3 Quorum

- (a) No resolution may be made, and no instructions given, at a meeting of the KRG unless a quorum is present.
- (b) A quorum consists of 3 Delegates.
- (c) A quorum cannot consist of more than one CEO.

4.4 Effect of absence of quorum

If a quorum is not present within half an hour from the time appointed for a meeting (or such longer time as agreed by the Delegates present), the meeting stands adjourned to a further date, time and place to be determined by the Delegates present.

4.5 Board decisions

- (a) A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in, or exercisable by the Board under this agreement, subject to the limitations set out in this agreement.
- (b) Questions arising at a meeting of the Board are to be decided by a majority of votes cast by the Delegates present and any such decision is for all purposes a decision of the Board.
- (c) If votes are equal on a proposed resolution, the chairperson will declare a no decision.
- (d) Except as set out in this agreement, decisions of the Board are binding on all Participants.
- (e) A Participant need not comply with a decision of the Board if to do so would oblige the Participant or any officer, agent, employee or councillor of the

Participant to do or omit to do any act, matter or thing which is unlawful or contravenes any statutory requirements, or any duty or obligation which is imposed on that Participant or the officers, agents, employees or councillors of the Participant. If this situation arises, the affected Participant must immediately notify the Board and the other Participants in writing.

5 Appointment of Delegates, their deputies and voting rights

5.1 Delegates

- (a) At the first council meeting following a local government ordinary election in accordance with the Act, each Participant must appoint one of its councillors to be a Delegate of the KRG with the initial Delegates being those identified in Schedule 1.
- (b) Each Participant must ensure that its Delegate appointed to the Board:
 - (1) is duly authorised to represent and bind that Participant on any matter within the powers of the Board; and
 - (2) has an understanding of the work of the KRG sufficient to make decisions on any matter within the power of the Board.
- (c) Each Participant must also appoint one of its councillors to be a deputy Delegate of the KRG.
- (d) The deputy Delegate may act temporarily in place of that Delegate appointed by the Participant during any period in which that Delegate is unable by reason of illness or temporary absence from the State or for any other cause, to perform the functions of the office. The deputy Delegate can attend meetings of the Board with the Delegate, but does not have a vote if the Delegate is present.
- (e) Each Participant must ensure that its deputy Delegate:
 - (1) is duly authorised to represent and bind that Participant on any matter within the powers of the Board; and
 - (2) has an understanding of the work of the KRG sufficient to make decisions on any matter within the power of the Board.
- (f) The CEO of a Participant may act temporarily in the place of that Delegate or deputy Delegate during any period in which that Delegate and the deputy Delegate are unable by reason of illness or temporary absence from the State or for any other cause, to perform the functions of the office.
- (g) Each Participant must ensure that its CEO is duly authorised to represent and bind that Participant on any matters within the powers of the Board..

5.2 Role of Delegates

The role of the Delegate is to:

- (a) carry out the functions of the Board referred to in clause 4.2;
- (b) make decisions of the Board having regard to:
 - (1) the mission, vision and objectives of the KRG set out in clause 2;
 - (2) the interests of the council of the Participant to whom it was appointed from; and
 - (3) elect and fill the Office Bearer Positions under clause 6.1.

- (c) Each Delegate acts as a councillor for its district. Without limiting clause 4.1(c), in performing its role as a delegate of the Board, the Delegate continues to have all of the powers of a councillor under the Act, as limited by this agreement.

5.3 Tenure of Delegates

A Delegate or deputy Delegate will hold office until:

- (a) the Delegate ceases to be a councillor of the Participant by which the Delegate was appointed;
- (b) the Delegate resigns as a Delegate;
- (c) the Delegate is removed by the Participant by which the Delegate was appointed (in which case they are to be replaced by a new Delegate appointed by that Participant);
- (d) a further appointment is made in accordance with clause 5.1(a); or
- (e) this agreement is terminated,

whichever occurs first.

5.4 Conflict of interest

- (a) Participants must ensure that each Delegate appointed to the Board discloses any actual or potential conflict of interest he or she may have in respect of any action, decision or determination to be taken or made by the Board (**Conflict of Interest**) before the Board considers any action or makes a decision or determination on a matter.
- (b) The Participants agree that a Delegate's appointment as a councillor of the Participant, by itself, will not amount to a Conflict of Interest.

6 Office Bearer Positions

6.1 Election

- (a) The Delegates of the KRG must elect or re-elect a:
 - (1) chairperson; and
 - (2) deputy chairperson;

(Office Bearer Positions),

at the first item of business at the first meeting of the Board following the appointment of the Delegates as described in clause 5.1(a).

(Election).
- (b) The Office Bearer Positions are declared vacant at the time of the local government elections.
- (c) The Outgoing Host Shire CEO or their delegate will chair the meeting until a chairperson is elected.
- (d) Only appointed Delegates to the Board pursuant to clause 5.1 are eligible to be nominated at the Election.
- (e) Nominations for the Office Bearer Positions must be made in writing to the Outgoing Host Shire CEO or their delegate, two weeks prior to the scheduled time for the Election. Nominations received after this date will not be accepted.

- (f) Where there is more than one nomination for each Office Bearer Position, the Election will be conducted using a secret ballot. The Outgoing Host Shire CEO or their delegate will act as the returning officer for the Election.
- (g) Prior to the ballot, nominees for each Office Bearer Position will be extended an opportunity to provide a two minute election bid to Delegates.
- (h) A Delegate cannot hold more than one Office Bearer Position.
- (i) All voting members of the Board are entitled to cast one vote in the ballot process.
- (j) The candidate with the majority of votes will be elected to the Office Bearer Position.
- (k) If two or more candidates receive the same number of votes, the returning officer is to draw lots in accordance with the procedures set out in the *Local Government (Elections) Regulations 1997 (WA)*, to determine which candidate is elected.

6.2 Tenure of Office Bearer positions

- (a) The Delegates elected to the Office Bearer Positions will hold office from the time of the Election until:
 - (1) the positions are declared vacant as described in clause 6.1(b);
 - (2) the Delegate elected to that position ceases to be a Delegate in accordance with clause 5.3;
 - (3) the Delegate elected to that position is removed by resolution of the Board; or
 - (4) the Delegate elected to that position resigns from that office,
 whichever occurs first.
- (b) If the office of the chairperson or deputy chairperson becomes vacant prior to the next scheduled local government elections, then the Delegates of the Board must elect a new Delegate to that vacant position. Clause 6.1 applies to the election for a casual vacancy.
- (c) A Delegate can be re-appointed to an Officer Bearer Position for any consecutive term.

6.3 Role of chairperson

The chairperson must:

- (a) preside at meetings of the KRG;
- (b) provide leadership to the KRG for all aspects of its work;
- (c) speak on behalf of the KRG in public forums (but not on behalf of Participants);
- (d) liaise with the Host Shire CEO or their delegate of the KRG regarding the affairs and performance of its functions as the Host Shire CEO;
- (e) communicate a vision for the future for the KRG;
- (f) lead the KRG to sound decision-making;
- (g) monitor effective KRG processes as those processes are described in this agreement;
- (h) facilitate discussion on issues of conflict within the KRG in an effort to resolve that conflict;

- (i) foster a positive KRG culture;
- (j) motivate Delegates to contribute meaningfully to the KRG deliberations; and
- (k) give the KRG a sense of power to achieve its Strategic Goals and Outcomes.

6.4 Role of deputy chairperson

The deputy chairperson will perform the functions of chairperson if:

- (a) the office of chairperson is vacant; or
- (b) the chairperson is not available or is unable or unwilling to perform the functions of chairperson.

7 Host Shire

7.1 Appointment of Host Shire

- (a) The Participant whose Delegate is elected as chairperson under clause 6.1 must act as the Host Shire.
- (b) The Host Shire is authorised by the Participants to enter into contracts which the Board has resolved are to be entered into in accordance with this agreement, in its own name on behalf of the KRG.

7.2 Role of Host Shire

- (a) The Host Shire must, and is authorised by the Participants to, enter into contracts which the Board determines in accordance with this agreement, are necessary to implement the decisions of the Board and business of the KRG. This clause 7.2(a) does not apply to contracts for the implementation of Projects.
- (b) The Host Shire must receive all money to the account of the KRG including contributions made by Participants under clause 11.3 and pay all money which it is authorised to pay, either as part of the Regional Business Plan, a Business Case or otherwise by the Board.
- (c) The Board must not authorise the Host Shire to pay any money or incur any obligation for which it will seek to recover from a Participant, without the prior written approval of the Participant.
- (d) The Host Shire must provide all Office and Incidental Support to the Host Shire CEO and any support staff for the KRG, as set out in the budget approved by the Board under clause 10.7, to enable it to carry out its functions in accordance with this agreement.
- (e) The Host Shire must issue invoices to, and receive financial contributions from, Participants pursuant to clause 11.3.
- (f) The Host Shire must continue to comply with the Act in the performance of its role as Host Shire.

7.3 Indemnity of Host Shire

- (a) Each Participant (other than the Host Shire) must indemnify and keep indemnified the Host Shire, its employees, servants or agents, for all costs, expenses, damages and claims arising out of, or in connection with the performance of its obligations under clause 7.2 (including the performance of its

obligations under any contract entered into pursuant to clause 7.2) (**Indemnified Obligations**), except to the extent that those costs, expenses, damages and claims are caused by:

- (1) the default or negligence of the Host Shire; its employees, servants or agents;
 - (2) the non-performance by the Host Shire of the Indemnified obligations; or
 - (3) the Host Shire acting otherwise than in accordance with this agreement.
- (b) The Host Shire must take all reasonable steps to mitigate any amounts payable under the indemnity.
- (c) Each Participant's liability under clause 7.3(a) is limited to one quarter of the total liability incurred by the Host Shire in respect of the Indemnified Obligation.
- (d) References to the Host Shire in this clause 7.3 are references to the Host Shire as at the date that the Indemnified Obligations arose or the contract containing the Indemnified Obligation was entered into.
- (e) The indemnity in clause 7.3(a) continues in respect of an Indemnified Obligation notwithstanding that the Host Shire is no longer the Host Shire under this agreement or that this agreement is terminated.

8 Host Shire CEO or their Delegate

8.1 Role of Host Shire CEO or their delegate

The role of the Host Shire CEO or their delegate is to:

- (a) convene all meetings of the KRG;
- (b) attend all meetings of the KRG;
- (c) organise the selection of personnel from the Participants to act as members of Working Groups as determined by the Board and in consultation with the CEO's of the other Participants;
- (d) advise the Board in relation to the functions of the KRG;
- (e) ensure that advice and information is available to the Board so that informed decisions can be made;
- (f) manage the day to day operations of the KRG;
- (g) liaise with the chairperson of the Board on the KRG's business and the performance of the functions of the KRG;
- (h) speak on behalf of the KRG if the chairperson agrees;
- (i) prepare the Operational Plan and budget for the Board approval;
- (j) ensure that records and documents of the KRG are kept in accordance with Law, the Act and good accounting practice;
- (k) cause Board decisions to be implemented;
- (l) report to the Board at each meeting on the status of all Projects being undertaken on behalf of the KRG and the Operational Plan and budget;
- (m) prepare an end of year performance report for the KRG;
- (n) prepare and store the minutes of the meetings of the Board; and

- (o) perform any other function specified by the Board.

8.2 Role of Outgoing Host Shire CEO or their delegate

The role of the Outgoing Host Shire CEO or their delegate is to:

- (a) write to all Participants no later than one month prior to the first meeting of the Board at which the Election is to be held, calling for nominations from Delegates for the Office Bearer Positions, setting out the nomination requirements referred to in clause 6.1;
- (b) receive written nominations from Delegates for the Office Bearer Positions and provide written confirmation of receipt of those nominations to the Board; and
- (c) act as the returning officer for the Election where there is more than one nomination for the Office Bearer Positions.

9 CEO Advisory Group

- (a) The CEO Advisory Group is comprised of the CEO's from each of the Participants.
- (b) The role of the CEO Advisory Group is to:
 - (1) provide a forum for discussion amongst the CEO's from each Participant;
 - (2) obtain members for the Working Groups requested by the Board;
 - (3) have a high level of awareness of emerging issues that affect the KRG, and of knowledge exchange;
 - (4) contribute significantly to the achievement of the Strategic Goals and Outcomes of the KRG; and
 - (5) improve group cohesion.
- (c) A CEO may use information obtained from the CEO Advisory Group to inform the Delegate of that CEO's Participant of the matters affecting the KRG, including the interests of Participants and electors and residents of the Kimberley Region.

10 Governance rules

10.1 Convening of meetings

- (a) A meeting of the Board must be held once every three months or at any other time resolved by the Board.
- (b) The Host Shire CEO or their delegate is responsible for convening meetings of the Board.
- (c) The chairperson or two of the Delegates may request the Host Shire CEO or their delegate to convene a special meeting of the Board and must include with the request details of the business to be discussed. The Host Shire CEO or their delegate must convene a special meeting so that it is held within 20 Business Days after receipt of the request.

10.2 Notice of meetings

- (a) The Host Shire CEO or their delegate must provide each Delegate with at least 10 Business Days' notice of a meeting of the Board.
- (b) The notice must specify the date, time and venue and include an agenda of the business to be transacted.
- (c) A Delegate may include an item on the agenda if it gives the Host Shire CEO or their delegate notice with reasonable detail of the item at least 15 Business Days prior to the meeting.
- (d) No notice or agenda is necessary if Delegates who represent each Participant and make up a quorum are present at a Board meeting and unanimously agree that a meeting be held and the business to be transacted at that meeting.

10.3 Minutes

- (a) The Host Shire CEO or their delegate must prepare full and accurate minutes covering all business conducted and decisions reached at each Board meeting and submit them to each Delegate for approval no later than 10 Business Days from the date of the meeting.
- (b) A Delegate must promptly notify the Host Shire CEO or their delegate and each other Delegate of any change that it believes should be made to the minutes.
- (c) A Delegate that does not give approval under clause 10.3(a) or notice under clause 10.3(b) within 10 Business Days of receipt of the minutes is taken to have approved them.
- (d) Following approval of the minutes, the chairperson must sign them as a true and correct record and forward one copy to each Participant.

10.4 Delegates' costs

A Participant must pay all travel, accommodation and other costs incurred by its Delegate to attend meetings.

10.5 Resolutions in writing

- (a) A resolution in writing signed by each Delegate is as valid as if it had been passed at a duly convened and conducted meeting.
- (b) A resolution may consist of several documents, including a facsimile or electronic copy of a signed original, each signed by one or more Delegates.

10.6 Participation in meetings

- (a) All meetings of the Board will be held at the offices of the Host Shire or in another location agreed by the Participants.
- (b) A meeting may be held by telephone, video conference or other electronic means in accordance with the requirements set out in regulation 14A of the *Local Government (Administration) Regulations 1996 (WA)*.
- (c) A Delegate who has given prior notice of his or her intention to attend a meeting by telephone or video conference and who verbally participates from the beginning and throughout the meeting is taken to have been present at the meeting.
- (d) A Delegate cannot be present at a meeting by electronic means for more than half of the meetings in a financial year.

- (e) The meetings of the KRG may be attended by the deputy Delegates, CEO's and WALGA council representatives, who may participate in discussions but do not have a vote. Other persons may attend meetings of the KRG but may be asked to leave the meeting if a confidential item is to be discussed.

10.7 Annual Operational Plan and budget

- (a) The Host Shire CEO or their delegate must, in consultation with the Board, prepare an annual Operational Plan and budget for the KRG.
- (b) The initial Operational Plan and budget will be prepared by the Host Shire CEO or their delegate in consultation with the Board and submitted to the Board for approval within 2 months of the Date of this Agreement.
- (c) The Operational Plan and budget for each financial year following 30 June 2017 must be submitted to the Board for approval no later than one month prior to the commencement of the year to which the Operational Plan and budget applies. Once approved by the Board, the Operational Plan and budget will be submitted by the Host CEO or their delegate to each of the Participants for approval.
- (d) The Participants must approve the Operational Plan and budget as soon as practicable following its receipt and, in any event, within one month of approval of its own budget for the relevant financial year. If a Participant is aware of any matter which may prevent the Participant from approving the Operational Plan and budget prior to the council meeting at which the Operational Plan and budget will be considered, it must notify the other Participants of that matter as soon as it becomes aware, in accordance with the notice requirements set out in clause 23. The Board may amend the Operational Plan and budget to take into account any matter brought to its attention and the amended budget will be resubmitted to the Participants for their approval. If the budget has not been approved by 30 September of the year to which it relates (or such later date agreed by the Participants), the matter may be referred to Dispute resolution in accordance with clause 22 by any of the Participants.
- (e) The Operational Plan and budget may be amended or replaced by an Absolute Majority resolution of the Board.

10.8 Performance report

Within two months after 30 June each year, the Host Shire CEO or their delegate must, in consultation with the Board, prepare and provide to each Participant an end of year performance report setting out the annual performance of the KRG and addressing the matters referred to below:

- (a) a description of the activities carried out by the KRG with reference to the Strategic Goals and Outcomes;
- (b) a reasonable itemisation of the Operating Expenses incurred;
- (c) a comparison of Operating Expenses incurred with budget estimates and comments on any significant variations;
- (d) a brief description of the KRG's planned activities for the next period, including details of any Projects anticipated to commence in the next 12 months;
- (e) any other information that the Board directs to be included; and
- (f) any other report the Participants may reasonably require to comply with their reporting obligations.

11 Financial contributions

11.1 General

- (a) Without limiting the indemnity in clause 7.3, the Host Shire will only be entitled to payment for the work performed under this agreement in accordance with clause 11.3 and clause 11.4.
- (b) All recommendations made by the Board for payment in accordance with clauses 11.2, 11.4 and 11.6 must be approved by the Participants, unless that amount is contained in the Operational Plan and budget for the KRG for the relevant year.

11.2 Operating expenses

- (a) Each Participant agrees to fund the KRG in accordance with this agreement.
- (b) The Host Shire's Operating Expenses will be shared equally between the Participants.
- (c) The Host Shire must not incur Operating Expenses in an amount greater than the amount provided for in the budget for the KRG in any year.

11.3 Claim by Host Shire

- (a) The Host Shire must issue an invoice to each Participant for that Participant's Operating Expenses for the following quarter, by 30 March, 30 June, 30 September and 30 December of each year.
- (b) Each Participant must pay to the Host Shire its portion of the Operating Expenses by no later than 20 days after the date of the invoice and 14 days of the adoption of the annual budget of each Participant, whichever is the later.
- (c) The Host Shire must deposit the amounts received from each Participant pursuant to clause 11.3(b), and the Host Shire's portion of the Operating Expenses in a separate bank account in accordance with the requirements set out in clause 17.9. The Host Shire may draw on the funds in the bank account to reimburse Operating Expenses incurred by it, in accordance with the KRG's budget for that year. The Host Shire must not apply the funds in the bank account to any other purpose, unless approved by the Board.

11.4 Other Contributions

- (a) Where the Board recommends that the Participants will be required to make any contribution (other than the annual contribution referred to in clause 11.2(b) or any capital contributions for a Project under a Business Case) including, any contribution towards the acquisition of any asset of a capital nature to the Host Shire, then the recommendation must be provided to each of the Participants in writing for approval. If the recommendation is approved by all of the Participants, then the Participants must make those contributions in the same proportions as set out in clause 11.2(b), or as recommended by the Board and approved by the Participants (**Other Contributions**).
- (b) The Other Contributions must be disclosed in an adjusted budget of the KRG for that financial year.
- (c) Clause 11.3 applies to the issue of invoices for Other Contributions, the payment of Other Contributions and the application of funds by the Host Shire.

11.5 Late payment

Unless otherwise agreed, if a Participant fails to pay to the Host Shire a sum of money owing under this clause 11 on or before the due date for payment, that Participant must, in addition to the sum of money due and payable, pay to the Host Shire interest accruing daily, at the Late Payment Rate, calculated from the date on which the payment was originally due until (but not including) the date that the payment was made.

11.6 Cost overruns

- (a) The Host Shire must not incur any expense, if that expense has not been allowed for in any annual budget approved by the Board or Business Case for a Project which has been approved and is proceeding.
- (b) The Host Shire must obtain a recommendation from the Board, approved by the Participants, prior to incurring any expense that has not been allowed for in any annual budget or Business Case described in clause 11.6(a).
- (c) Any expense that has been incurred by the Host Shire, without a recommendation of the Board and approval by the Participants, will be the Host Shire's responsibility.

11.7 Surplus of Operating Expenses

Where there is any surplus of Operating Expenses, the Host Shire will include that surplus in the budget for the next financial year to be applied to the Operating Expenses for that financial year, unless this agreement is terminated, in which case clause 20.3 applies.

12 GST

12.1 General

- (a) Unless the context indicates otherwise, words or expressions used in this clause which are defined in the GST Act have the same meaning in this clause as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this agreement are exclusive of GST and where the value of any supply is to be calculated with reference to a monetary turnover figure, the GST exclusive value of the monetary turnover will be used in calculating the value of the supply.

12.2 Taxable supplies

- (a) This clause sets out the GST consequences of this agreement.
- (b) If a party (**supplier**) makes a taxable supply under or in connection with this agreement:
 - (1) the consideration otherwise payable or to be provided for that supply is increased by, and the party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;
 - (2) subject to the supplier complying with clause 12.2(b)(3), the recipient must pay the GST amount in Australian dollars, at the same time and

to the same extent as it must pay or provide the consideration for that supply; and

- (3) the supplier must issue a valid tax invoice or adjustment note to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (c) Where an amount is payable to a party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that party, then such amount must be reduced by any part of that loss, cost, expense or other amount which is attributable to GST for which that party, or the representative member of any GST group of which that party is a member, is entitled to an input tax credit.
- (d) If a party becomes aware of an adjustment event, that party agrees to provide notice to the other party as soon as practicable after becoming so aware, and the parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part of GST) is paid as soon as practicable but no later than 10 Business Days after the party has satisfied itself that the adjustment event has occurred.
- (e) Where a party has obtained a private ruling from the Australian Taxation Office regarding the GST treatment of any supply made under this agreement, a copy of the ruling is to be provided by notice to the other party. The copy of the ruling is to be provided at the same time as the first tax invoice or adjustment note is issued for a supply subject to the ruling.
- (f) Where a taxable supply is made under this agreement and no monetary consideration is described as being payable for that supply, the parties agree that for the purposes of the Commissioner of Taxation's GST Ruling GSTR 2001/8:
 - (1) the supply shall be ascribed a NIL value for the purpose of calculating GST; and
 - (2) it is incidental to those taxable supplies which have a monetary value.
- (g) Where a party grants a right or licence to the other party under this agreement or a party transfers, or grants rights of occupation or use of, any property for that thing, then the parties agree that the thing is done for no consideration other than the mutual covenants and provisions contained in the agreement.

13 Projects

13.1 Requirements

- (a) The Board must investigate and undertake Projects in accordance with the requirements of this clause.
- (b) A Project must not be undertaken unless the Board has provided a recommendation in accordance with clause 13.4 and two or more Participants have elected to undertake the Project in accordance with clause 13.5.

13.2 Business Case to be prepared

If the Board identifies a Project, it may procure a Business Case to be prepared.

13.3 Preparation of Business Case

A Business Case for any Project must include:

- (a) the Project purpose and key business drivers;
- (b) linkage to the Regional Business Plan and Regional Strategic Community Plan;
- (c) Project outputs, objectives and scope, including benefit analysis for each Participant;
- (d) a business impact analysis including Participant resources, links and interdependencies, information technology requirements and other activities;
- (e) Project delivery options including the contractual documentation required for the delivery of the Project;
- (f) the governance and management structure to be adopted for the duration of the Project;
- (g) the roles and responsibilities of Participants;
- (h) the details of the expected cost including if one or more Participant does not participate in the Project;
- (i) the level of financial contribution required by each Participant including the manner and timing of payment;
- (j) the service levels to be applied (if any);
- (k) a budget, including internal and external costs, assumptions, contribution from each Participant and scheduling;
- (l) initial Project scheduling;
- (m) risk assessment;
- (n) key performance indicators; and
- (o) any insurance required to be taken out.

13.4 Board recommendation

- (a) At its next meeting following completion of the Business Case, the Board must:
 - (1) review the Business Case;
 - (2) resolve whether to recommend to proceed with the Project; and
 - (3) give notice to each of the Participants of its recommendation.
- (b) The Board may request further information from the Working Group that prepared the Business Case prior to making its resolution.

13.5 Election to participate in Project

- (a) If the Board recommends that a Project proceed, each Participant must within a reasonable period determined by the Board upon receipt of the Business Case and the Board's recommendation, elect whether to participate in the Project by giving notice of its decision to the Board.
- (b) Subject to clause 13.5(c), a Participant that does not elect to be a Project Participant within the time frame determined by the Board in accordance with clause 13.5(a), can elect to join the Project later by giving notice of its decision in accordance with the notice requirements set out in clause 23 to the Board and each Participant.

- (c) Upon receipt of a notice given by a Participant in accordance with clause 13.5(b), the Board must determine that Participant's financial contribution to the Project having regard to the expenses already incurred in respect of the Project and the original Business Case recommended by the Board. If the Participant does not agree with the Board's determination and the Board and the Participant are unable to agree on the financial contribution to be made, the matter may be referred to Dispute resolution, in accordance with the procedures set out in clause 22.

13.6 Project Participants

- (a) Subject to a Project proceeding as described in clause 13.5(b), the Participants who elect to participate in a Project, which proceeds as a Project of the KRG, are the Project Participants in respect of that Project.
- (b) For a Project to be considered a Project of the KRG and to proceed in accordance with this agreement, it must have not less than three contributing Participants. If there are two contributing Participants, those Participants may elect to implement the Project independently of this agreement and the KRG.

13.7 Project Participants to be bound

- (a) Each Project Participant must implement the Project in accordance with the terms of the Business Case approved by the Board as if those terms were set out in this Agreement.
- (b) A Project Participant may not withdraw from the Project, except in accordance with the procedures set out in clause 15.

14 Working Groups

- (a) The Board may establish any number of Working Groups for the purpose of investigating Projects identified by the Board in accordance with clause 13.1 and implementing Projects for which there are Project Participants in accordance with clause 13.
- (b) Working Groups will investigate Projects identified by the Board and prepare a Business Case for the Project in accordance with clause 13.
- (c) Following the review of the Business Case, if the Board resolves that the Project should proceed, and three or more Participants elect to participate in the Project in accordance with clause 13, a Working Group will be established to implement the Project.
- (d) The Working Groups will comprise of employees of the Participants and independent consultants (if required), as determined by the Board.
- (e) The work to be undertaken by a Working Group, and the number of people to comprise a Working Group, the deliverables and the timing for providing the deliverables, is to be determined by the Board, having regard to the requirements of the Project.
- (f) The Host Shire CEO or their delegate is to organise the appointment of members of the Working Groups in consultation with the other CEO's, when required by the Board.
- (g) If the Board recommends that a Working Group requires an independent consultant, that independent consultant must be approved by the Board and will be appointed under a separate contract with the Host Shire.

15 Withdrawal of a Project Participant

15.1 Withdrawal

- (a) A Project Participant may at any time between 1 July and 31 December in any year, give to the Board notice in writing of its intention to withdraw from a Project.
- (b) A Project Participant may only withdraw from a Project if:
 - (1) it has complied with the timing provisions set out in clause 15.1(a);
 - (2) the request to withdraw has been endorsed by a resolution of the Board; and
 - (3) any conditions imposed by the Board, including as to payment, are complied with by the Participant.
- (c) Once a Project Participant has withdrawn from a Project it may not elect to be a Project Participant at a subsequent date.

15.2 When withdrawal takes effect

The withdrawal of a Project Participant will take effect from the end of the financial year, after the financial year in which notice of withdrawal under clause 15.1(a) is given.

16 Winding up of Projects

16.1 Notice

- (a) If all of the Project Participants wish to wind up a Project, they must give notice to the Board in accordance with the notice requirements set out in clause 23.
- (b) Upon receipt of notice under clause 16.1(a), the Board must direct that the Project be wound up.

16.2 Division of assets

- (a) Subject to clause 16.2(b), if a Project is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Project, then the property and assets must be realised and the proceeds along with any surplus funds must be divided among the Project Participants in the proportions referred to in the Business Case.
- (b) Clause 16.2(a) will not apply where the Project Participants advise the Board that a realisation of the property and assets is not necessary.

16.3 Division of liabilities

If a Project is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Project, then the liability or debt is to be met by the Project Participants in the proportions referred to in the Business Case.

17 Records, documentation and audits

17.1 Accounts and records

- (a) The Host Shire must keep and maintain separate, correct and accurate accounts and financial records for the KRG in accordance with the requirements set out in the Act and associated regulations, accounting principles and practices generally accepted in Australia, consistently applied, except to the extent disclosed in them.
- (b) The Host Shire must keep the accounts and financial records up to date and ready for inspection at any time by persons authorised to do so under the Act or another written law.
- (c) The accounts and records must fully and fairly explain all Operating Expenses and Other Contributions and any material payments and receipts.

17.2 Annual financial statements

No later than 2 months after 30 June each year, the Host Shire must prepare an annual financial report of the KRG that represents a true and fair view of the financial position of the KRG including the results of its operation for the Accounting Period in compliance with, and in the form required by, the Act and associated regulations including the *Local Government (Financial Management) Regulations 1996 (WA)*.

17.3 Statement of financial activity

The Host Shire must prepare and submit to each of the Participants, a bi-monthly statement of the financial activity of the KRG, in accordance with the requirements of the Act and the *Local Government (Financial Management) Regulations 1996 (WA)*.

17.4 Audit

- (a) The Host Shire must arrange to have the KRG's accounts and records for each Accounting Period audited by the Host Shire's auditor in accordance with the requirements of the Act and the *Local Government (Audit) Regulations 1996 (WA)*, and have the auditor's report delivered to the Participants. The audit may form part of the Host Shire's annual auditing of its own accounts.
- (b) The Host Shire must arrange for the KRG's auditor to conduct an audit review of the KRG's accounts and records once a year.
- (c) The cost of an audit and audit review to the extent it relates to the KRG is an Operating Expense.
- (d) At the request of a Participant that is not the Host Shire, the Host Shire may permit that Participant's auditor, at reasonable intervals and on reasonable prior notice, to audit the KRG's accounts to enable that Participant to comply with its statutory and regulatory obligations.
- (e) The Host Shire CEO must make available to the auditor the KRG's accounts and records for the purpose of any audit carried out under this agreement.

17.5 Statements

Any financial contribution requested by the Host Shire under clause 11 must provide an itemised statement of the Operating Expenses or Other Contribution the subject of that request and must:

- (a) include any charge and credit to the KRG summarised by classification showing the nature of the expenditure;
- (b) separately identify and describe in detail an unusual charge or credit; and
- (c) reconcile previous financial contributions with the actual Operating Expenses or Other Contribution expenses incurred in relation to those financial contributions.

17.6 Statement deemed true unless disputed

A statement issued by the Host Shire under clause 17.5 is deemed to be true and correct unless a Participant provides a written claim for adjustment to the Host Shire CEO within 12 months of the date of issue.

17.7 Continuity of financial and document record keeping

The Host Shire must:

- (a) **(books and records)**: maintain the KRG's books and records in accordance with applicable law including, but not limited to, the Act, *Income Tax Assessment Act 1936 (Cth)* or the *Income Tax Assessment Act 1997 (Cth)* or *Corporations Act 2001 (Cth)* as the context requires;
- (b) **(incorporation in Participant's accounts)**: maintain the KRG's books and records which enable a Participant to incorporate the KRG's financial results in its accounts so as to comply with any applicable law and generally accepted accounting practices and principles;
- (c) **(minimum record keeping period)**: notwithstanding clauses 17.7(a) or 17.7(b), retain all records prepared under this clause 17 and clause 10, for a minimum of 7 years from the date that the relevant records were created.

17.8 Access to financial and other information

Each Delegate and Participant must have access to all information, including financial information of the KRG.

17.9 KRG bank account

The Host Shire must:

- (a) establish one or more separate bank accounts in the name of the KRG (**KRG bank account**);
- (b) nominate the signatories to the KRG bank account;
- (c) pay all Operating Expenses and Other Contributions from the KRG bank account; and
- (d) pay into the KRG bank account:
 - (1) all funds contributed by the Participants under this agreement until they are disbursed or invested; and
 - (2) all other money accruing for the benefit of the KRG.

18 Insurance

18.1 General

- (a) The Host Shire must as a minimum, effect and maintain insurance cover for the Insurance Policies:
- (1) on the terms and amounts acceptable to the Participants; and
 - (2) with insurers which either:
 - (A) carry on business in Australia and are authorised by APRA; or
 - (B) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia,
 which cover the Participants risk in carrying out their obligations in the operations of the KRG under this agreement.
- (b) At the times of placement and each renewal, the Insurance Policies must be in the name of the Host Shire and name the other Participants as insureds.
- (c) The Host Shire must:
- (1) pay all premiums and deductibles applicable to the Insurance Policies when due; and
 - (2) promptly reinstate any Insurance Policy if it lapses or if cover is exhausted.
- (d) The cost of the Insurance Policies is an Operating Expense.
- (e) The Participants can agree to waive the requirements to comply within this clause having regard to the activities being undertaken by the KRG.

18.2 Term

- (a) The Insurance Policies must come into effect on the Date of this Agreement.
- (b) The Insurance Policies must be maintained until the host shire is terminated.

18.3 Proof of Insurance Policies

On or before the Date of this Agreement, or at the request of the Participants, the Host Shire must provide to the Participants:

- (a) certificates of currency for the Insurance Policies; and
- (b) copies of the Insurance Policies.

18.4 Notice of potential claims

Each Participant must:

- (a) as soon as practicable, inform the other Participants in writing of any occurrence that may give rise to a claim under the Insurance Policies; and
- (b) keep the other Participants informed on subsequent developments concerning the claim.

18.5 Participants' further obligations

- (a) The Participants must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- (b) The Host Shire must give the Participants 5 Business Days notice of cancellation, non-renewal or material alteration to any of the Insurance Policies.

19 Breach

19.1 Notification of breach

- (a) If the Board or a Participant considers that a Participant (**Defaulting Participant**) has committed a Breach of this agreement, the Board or that Participant, must as soon as practicable upon becoming aware of the alleged Breach, give the Defaulting Participant notice of the alleged Breach.
- (b) The notice must contain:
 - (1) details of the Breach;
 - (2) if the Breach is capable of being remedied, a reasonable date of not less than 10 Business Days by which the Defaulting Participant must remedy the Breach

(Breach Notice).
- (c) If the Breach is not capable of being remedied, the Breach Notice must state a date by which the Defaulting Participant must comply with any reasonable requirements in respect of the Breach, in order to reinstate the Participants to their position prior to the Breach occurring.

19.2 Compliance

The Defaulting Participant must comply with the Breach Notice or refer the matter to Dispute resolution in accordance with clause 22.

19.3 Failure to comply

- (a) If the Defaulting Participant fails to comply with a Breach Notice or refer the matter to Dispute resolution within a reasonable time of receipt of the Breach Notice, the Board may determine whether to terminate this agreement in accordance with clause 20 or remove the Defaulting Participant from participating in this agreement.
- (b) If the Defaulting Participant is removed from participating in this agreement in accordance with clause 19.3(a):
 - (1) this agreement is terminated in respect of the Defaulting Participant only;
 - (2) clause 20.3 does not apply; and
 - (3) the non-defaulting Participants may recover from the Defaulting Participant any and all loss, damages, costs and expenses suffered by the non-defaulting Participants arising out of any, all or any combination of the default or removal under this clause 19.
- (c) If the non-defaulting Participants elect to terminate this agreement in accordance with clause 20.1:

- (1) this agreement is terminated in respect of all Participants;
- (2) clause 20.3 applies; and
- (3) the non-defaulting Participants may recover from the Defaulting Participant any and all losses, damages, costs and expenses suffered by the non-defaulting Participants arising out of any, all or any combination of the default or termination under this clause 19.

20 Termination

20.1 Termination by agreement

- (a) Subject to clause 20.1(b), an Absolute Majority vote will be required by the Board to terminate this agreement.
- (b) A majority vote of 3 Delegates is required to terminate this agreement in the circumstances described in clause 19.3(a).
- (c) This agreement terminates on the date of the resolution to that effect by the Board.
- (d) A Participant may terminate its participation in this agreement by notice to the other Participants on the date specified in the notice. In that case:
 - (1) clause 15 applies in respect of any Projects which the Participant has opted to participate in; and
 - (2) clause 20.3 does not apply.

20.2 Repudiation

If one of the Participants repudiates this agreement, nothing in this agreement prejudices any of the remaining Participants' rights to recover damages or to exercise any other right in connection with that repudiation.

20.3 Division of assets and meeting of liabilities

If this agreement is terminated in accordance with clauses 19.3(c), 20.1, or 20.2 then:

- (a) each Project is to be wound up separately in accordance with this agreement; and
- (b) if there are any remaining property, assets, debts or liabilities then the debts and liabilities are to be satisfied and the property and assets are to be realised and:
 - (1) the proceeds, if any, are to be divided amongst the Participants; or
 - (2) the liability or debt is to be met by the Participants,
 in the same proportions as all of the financial contributions of a particular Participant bear to the total of the financial contributions by all Participants.

21 PPSA

21.1 Participant Personal Property

For the purposes of this clause 21, “**Participant Personal Property**” means all personal property the subject of a security interest granted under this agreement.

21.2 Further assurance

- (a) If a Participant determines that this agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Host Shire agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which a Participant asks and considers necessary for the purposes of:
- (1) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (2) enabling the Participant to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Participant has the priority required by it; and/or
 - (3) enabling the Participant to exercise rights in connection with the security interest.
- (b) The Host Shire agrees to cause any financing statements required pursuant to clause 17 above to be registered in accordance with the PPS Law and, in any event, at such times as may be directed by the Participant to maintain the priority required by a Participant.

21.3 No requirement for PPSA notices

A Participant need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

21.4 Priority of Participant’s interest

Nothing in this agreement will be taken or construed as an agreement or consent by a Participant to:

- (a) subordinate the Participant’s interest in Participant Personal Property (or any part thereof) to any other encumbrance or interest affecting Participant Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under this agreement attaches to the relevant collateral.

21.5 Notices to be given to Participant

The Host Shire must notify the Participants as soon as the Host Shire becomes aware of any of the following:

- (a) if any personal property which does not form part of Participant Personal Property becomes an accession to Participant Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
- (b) if any Participant Personal Property is located or situated outside Australia; and

- (c) upon request by a Participant, of the present location or situation of any Participant Personal Property.

21.6 Negative undertakings

The Host Shire must not:

- (a) create any security interest or lien over any Participant Personal Property whatsoever (other than security interests granted in favour of the Participants under this agreement);
- (b) sell, lease or dispose of its interest in or control or use of any Participant Personal Property;
- (c) give possession of Participant Personal Property to another person other than the Participants or where the Participants expressly authorises it to do so;
- (d) permit any Participant Personal Property to become an accession to or commingled with any asset that is not part of a Project;
- (e) change its name without first notifying the Participants of the new name not less than 15 Business Days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any Participant Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Participant Personal Property at any time.

21.7 Assistance with registration

- (a) The Host Shire must provide all necessary information and take all necessary action and execute all necessary documents as requested by the Participants to enable the Participants to perfect, within the time limit specified in the PPSA, any security interest created or provided for by this agreement in relation to any personal property including any security interest granted temporary perfection under the PPSA at any time.
- (b) The Host Shire must promptly provide all necessary information and take all necessary action (including obtaining any consent or agreement or giving any notice) to enable the Participants to register fully valid and effective financing statements or financing change statements with respect to any security interest held or intended to be held by a Participant under this agreement at any time.

21.8 Participant's interest remains unaffected

A Participant's interest in Participant Personal Property is not affected by anything which, but for this provision might have that effect, including any failure to perfect or to continuously perfect (within the meaning of the PPSA) the security interest in relation to any personal property forming part of Participant Personal Property at any time.

21.9 Costs and expenses relating to PPSA and registration

Everything the Host Shire is required to do under this clause 21 is considered an Other Contribution and is to be paid by the Participants in accordance with clause 11.

21.10 Confidentiality for the purposes of the PPSA

- (a) A Participant must not disclose information of the kind mentioned in section 275(1) of the PPSA and a Participant will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- (b) Clause 21.10(a) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

22 Dispute resolution

22.1 No proceedings

A Participant must not start arbitration proceedings in respect of a dispute arising out of this agreement (**Dispute**) unless it has complied with this clause.

22.2 Notification of Dispute

A Participant claiming that a Dispute has arisen must notify the other Participants to the Dispute and the Board, giving details of the Dispute, in accordance with the notice requirements in clause 23.

22.3 Reasonable efforts to resolve Dispute

- (a) During the 14 day period after a notice is given under clause 22.2 (or longer period agreed in writing by the Board) (**Negotiation Period**), the Participants must use their reasonable efforts to resolve the Dispute.
- (b) Within the first 7 days of the Negotiation Period, if the Dispute continues, the CEO's of the Participants must meet and use their reasonable endeavours to resolve the Dispute.

22.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation Period, the Participants must meet and endeavour to agree on:

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedural rules and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent persons engaged by the parties to assist in resolution of the Dispute; and
- (e) whether or not the Participants should seek the assistance of a dispute resolution organisation.

22.5 Arbitration

- (a) If the Participants are unable to agree on a process for resolving the Dispute in accordance with clause 22.4 within 21 days after the Negotiation Period, then

any Participant may notify the others in writing of the Dispute and that it requires the Dispute to be referred to arbitration.

- (b) The Dispute must be submitted to arbitration in accordance with, and subject to, “The IAMA Arbitration Rules” as published by the Institute of Arbitrators & Mediators Australia, current as at the date of the Dispute being referred to arbitration.
- (c) Unless the Participants agree an arbitrator, any Participant may request a nomination from either the President or the chairperson for the time being of the Western Australian Chapter of the Institute of Arbitrators and Mediators Australia.
- (d) Such arbitration must be held in the State of Western Australia.

22.6 Legal representation

For the purposes of the *Commercial Arbitration Act 1985 (WA)*, the Participants consent to each other being legally represented at any such arbitration.

22.7 Standing Orders

Where appropriate, if a Dispute can be resolved by the application of the Standing Orders under the Act, the procedures under the Standing Orders apply.

23 Notice

- (a) A notice given under this agreement must be:
 - (1) in writing; and
 - (2) signed by the Participant making it or (on that Participant’s behalf) by the solicitor for, or any attorney, chief executive officer, secretary or authorised agent, of that Participant.
- (b) All notices must be:
 - (1) delivered or posted by prepaid post to the address; or
 - (2) sent by email in the form of a .pdf file letter (or such other form agreed by the Board) to the email address (provided that the email contains a read receipt request),

to the address set out in Schedule 1 (or as otherwise notified by that party to each other party from time to time).
- (c) A notice is to be treated as given at the following times:
 - (1) if it is delivered, when it is received at the relevant address; or
 - (2) if it is sent by email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient stated in Schedule 1.
- (d) If a notice is delivered after normal business hours, it is to be treated as having been delivered the next day.

24 Miscellaneous provisions

24.1 Publicity and media statements

- (a) Each Participant must not issue any information, publication, document or article relating to this agreement, the KRG or the work under this agreement, without the prior written approval of the Board.
- (b) All media enquiries relating to this agreement, the KRG or the work under this agreement must be immediately referred to the Board.

24.2 Governing law

- (a) This agreement is governed by and must be construed in accordance with the laws in force in the State of Western Australia.
- (b) Each Participant irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of that State, and of any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

24.3 Severance

If any term or part of this agreement is or becomes for any reason invalid or unenforceable at law, then in that event that term or part of this agreement is and is hereby deemed to be severed from this agreement without thereby affecting the remainder of this agreement, and the remainder of this agreement continues to be valid and enforceable.

24.4 Relationship of Participants

- (a) This agreement is not intended to create, nor will it be construed as creating any partnership, joint venture, fiduciary obligations or any other obligation or liability with regard to any one or more of the Participants.
- (b) No Participant may:
 - (1) act as an agent for, or make representations or commitments on behalf of any other Participant;
 - (2) bind or impose any obligation on any other Participant; or
 - (3) incur any joint or joint and several liability on behalf of any other Participant,without the other Participant's consent in writing or except as expressly provided in this agreement.

24.5 Entire agreement

This agreement embodies the entire agreement between the Participants. The Participants agree that this agreement creates binding obligations on each of them.

24.6 Waiver

- (a) Waiver of any right arising from a breach of this agreement or arising upon default under this agreement must be in writing and signed by the Participant granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:

- (1) a right arising from a breach of this agreement or the occurrence of a default; or
- (2) a right or power created or arising upon default under this agreement, does not result in a waiver of that right or power.
- (c) A Participant is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a Breach of this agreement or on a default under this agreement as constituting a waiver of that right or power.
- (d) This clause may not itself be waived except in writing.

24.7 Power and authority

Each of the Participants represents and warrants to the others that it has full power to enter into and perform its obligations under this agreement and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

24.8 Financial difficulties

A Participant must immediately notify all other Participants in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

24.9 Civil Liability Act

The Participants agree that Part 1F of the *Civil Liability Act 2002 (WA)* has no operation in relation to liability under this agreement.

24.10 No assignment

This agreement may not be assigned without the consent of the Participants.

24.11 Amendment

Any amendment to any term of this agreement must be agreed in writing and signed by each of the Participants.

24.12 Reconstitution or cessation

If districts of the Participants are reconstituted or the Participants cease to exist, this agreement will come to an end.

24.13 Further assurances

Each Participant must do all things and execute all further documents necessary to give full effect to this agreement.

Signing page

Executed as an agreement

The Common Seal of
Shire of Wyndham East Kimberley
was hereunto affixed by authority of a
resolution of the Council in the presence of:

Shire President

*print name
of Shire
President*



Chief Executive Officer

*print name
of Chief
Executive
Officer*

The Common Seal of
Shire of Halls Creek
was hereunto affixed pursuant to a
resolution of the Council in the presence of:

Shire President

*print name
of Shire
President* _____

▶ _____
Chief Executive Officer

*print name
of Chief
Executive
Officer* _____

The Common Seal of
Shire of Broome

was hereunto affixed pursuant to a
resolution of the Council in the presence of:

Shire President

*print name
of Shire
President* _____

▶ _____
Chief Executive Officer

*print name
of Chief
Executive
Officer* _____

The Common Seal of
Shire of Derby West Kimberley
was hereunto affixed pursuant to a
resolution of the Council in the presence of:

Shire President

*print name
of Shire
President* _____



Chief Executive Officer

*print name
of Chief
Executive
Officer* _____

Schedules

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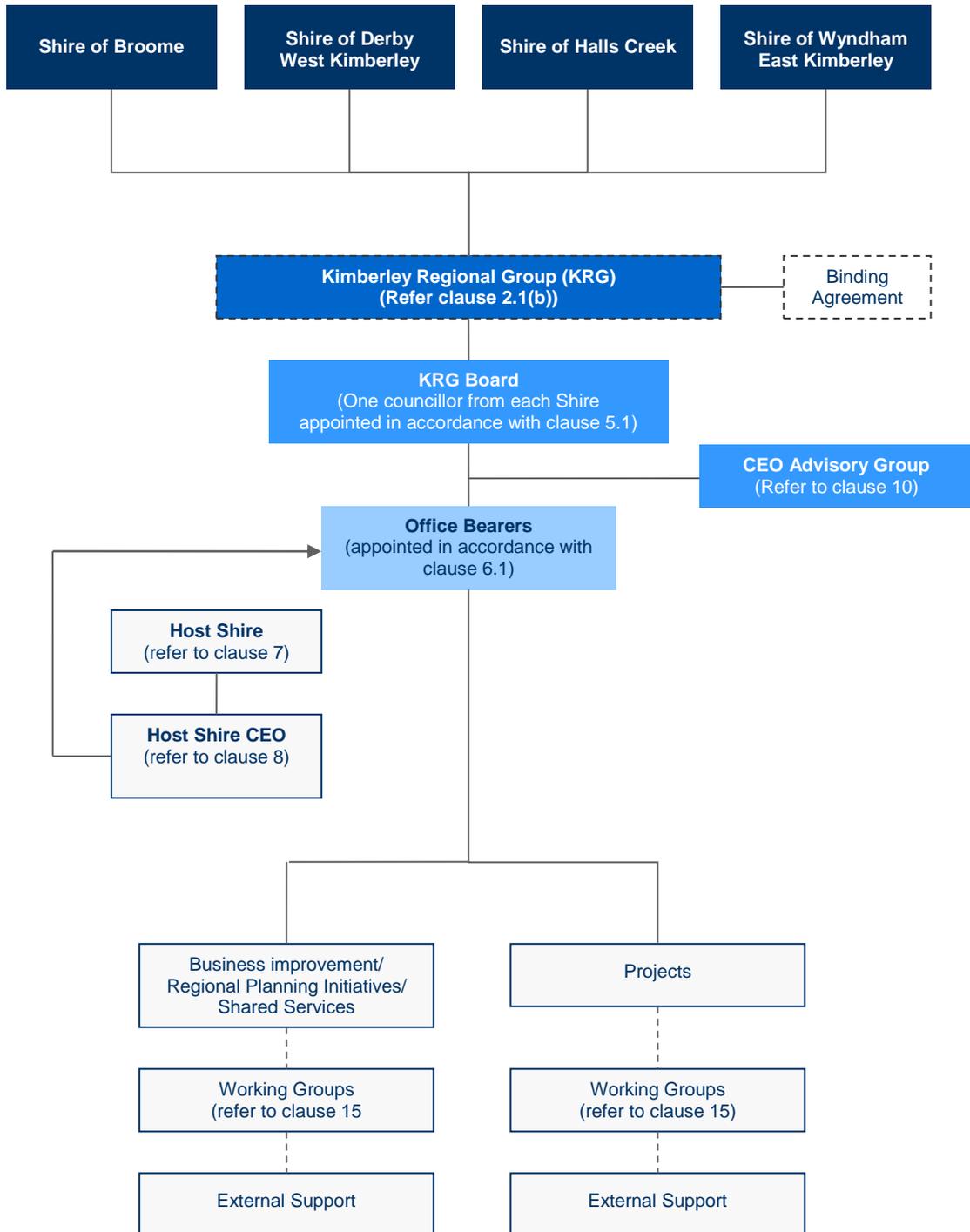
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Schedule 1

Agreement Particulars

Item	Clause	Description	Particulars
7	5	Appointment of Delegates, their deputies and voting rights	Shire of Broome Cr Chris Mitchell Shire of Wyndham East Kimberley Cr David Menzel Shire of Derby West Kimberley Cr Geoff Haerewa Shire of Halls Creek Cr Malcolm Edwards
8	23	Notice	Shire of Broome 27Weld Street, Broome, Western Australia 6725

Structure of the KRG



Schedule 3

Strategic Goals and Outcomes

Vision: Maintain and enhance the rich diversity and liveability of the Kimberley for its people and the world.

Governance	Natural Environment	Built Environment	Community	Economy
<p>Goal 1: A collaborative group demonstrating strong regional governance.</p>	<p>Goal 2: Responsible management of the environment.</p>	<p>Goal 3: Improved and secure transport, communications, community and essential services.</p>	<p>Goal 4: A vibrant community based on equity, inclusion and opportunity for all.</p>	<p>Goal 5: A sustainable and diverse economy.</p>
<p>Outcome 1.1 Effective governance protocols and systems for business efficiency and improved services through collaboration.</p> <p>Outcome 1.2 Secure funding for regional priorities (<i>Links to Outcomes 3.2 & 5.7</i>).</p> <p>Outcome 1.3 Effective engagement with Aboriginal governance structures (<i>Links to Outcomes 2.2, 2.3, 3.4, 4.1 & 5.5</i>).</p> <p>Outcome 1.4 Recognition of Kimberley Local Government issues and opportunities at the regional, state, national and international levels.</p> <p>Outcome 1.5 Alignment and integration of regional and local priorities for Member Councils.</p>	<p>Outcome 2.1 Secure quality water supply.</p> <p>Outcome 2.2 Integrated waste management.</p> <p>Outcome 2.3 Reuse of waste water.</p> <p>Outcome 2.4 Recognition of significant heritage areas.</p>	<p>Outcome 3.1 Liveable towns supporting regional communities.</p> <p>Outcome 3.2 Improved regional arterial road network, ports and airports.</p> <p>Outcome 3.3 Adequate land supply.</p> <p>Outcome 3.4 High standard of infrastructure planning.</p> <p>Outcome 3.5 Reliable and adequate power and communications.</p>	<p>Outcome 4.1 Innovative and joined up approach to housing development, ownership and design through community participation.</p> <p>Outcome 4.2 Improved Kimberley regional outcomes in health.</p> <p>Outcome 4.3 Improved Kimberley regional outcomes in education.</p> <p>Outcome 4.4 Greater participation in the community and workforce.</p> <p>Outcome 4.5 Better alcohol management across the Kimberley.</p>	<p>Outcome 5.1 Generational advantage that captures the wealth for the region.</p> <p>Outcome 5.2 Improved outcomes in employment.</p> <p>Outcome 5.3 Sustainable tourism market and tourism experiences.</p> <p>Outcome 5.4 Sustainable primary industries.</p> <p>Outcome 5.5 Energy sustainability.</p> <p>Outcome 5.6 Sustainable Local Government revenue.</p> <p>Outcome 5.7 Improved regional infrastructure.</p>

Schedule 4

Regional Strategic Community Plan

Regional Business Plan
