

Draft – 4 August 2022

# Heads of Agreement: Lot 103 (No. 3) Bushman Glade, Byford

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Shire of Serpentine-Jarrahdale

East Metropolitan Health Service



**McLEODS**

Barristers & Solicitors

Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)

Ref: TF:SERP:49436

# Heads of Agreement

## Parties

### Shire of Serpentine-Jarrahdale

of 6 Paterson Street, Mundijong, Western Australia

(Shire)

### East Metropolitan Health Service

of 10 Murray Street, Western Australia

(EMHS)

## Background

- A The Shire has care, control and management of the Land.
- B EMHS has secured funding to construct and operate from the Land, a health facility to be known as the 'Byford Health Hub' (**Facility**).
- C The Shire also expects that a library and multi-agency building will also be constructed on the Land.
- D The Shire and EMHS wish to enter into negotiations to in relation to the lease of a portion of the Land for the Facility (**Lease**).

## Key Terms

The Parties agree the following terms will inform the preparation and negotiation of the Lease:

1	<b>Land</b>	Lot 103 on Deposited Plan 414923 and being the whole of the land comprised in Crown Land Title LR3173 Folio 472.
2	<b>Premises</b>	<p>The portion of the Land that the parties agree is reasonably required to facilitate the construction and use of the Facility in accordance with the approved Detailed Designs and all Approvals.</p> <p>For the avoidance of doubt, the Premises will include all improvements and services located on that portion of the Land during the Term. An indicative plan of the expected leased area is annexed hereto as <b>Annexure 1</b>.</p>

3	<b>Conditions Precedent</b>	<p>The Lease will be subject to and conditional upon:</p> <ul style="list-style-type: none"> <li>(a) the Shire (in its capacity as landlord and not as responsible local authority) approving the detailed designs for the Facility (<b>Detailed Designs</b>) in its discretion;</li> </ul> <p>EMHS obtaining all necessary statutory approvals (including a development approval and a building permit) (<b>Approvals</b>) to proceed with the Facility on terms acceptable to EMHS. EMHS acknowledges and agrees that the Shire will require EMHS to obtain such Approvals, even if EMHS is entitled to an exemption for the construction of the Facility under the <i>Public Works Act 1902</i> or similar such Acts;</p> <ul style="list-style-type: none"> <li>(b) The Minister for Lands extending the maximum duration in respect of which the Shire may grant a lease to 42 years. The Shire agrees to use its reasonable endeavours to vary the Management Order as may be required;</li> <li>(c) the Minister for Lands consenting to the Lease pursuant to section 18 of the <i>Land Administration Act 1997</i>;</li> <li>(d) the Shire providing notice to EMHS that it has resolved to proceed with the Lease, following compliance with the requirements of section 3.59 of the <i>Local Government Act 1995</i> (<b>Business Plan Process</b>);</li> <li>(e) the Shire and EMHS agreeing to a governance model for the strategic direction of the Facility and any shared facilities (i.e. car park, landscaping, shared services on the Land), such model is expected to include: <ul style="list-style-type: none"> <li>(i) methodology for the management and leasing of the Facility, including whether a single service provider will manage the Facility or separate tenancies will be granted, and the mix of tenancies at the Premises;</li> <li>(ii) agreement as to a template sublease, and what if any uses will require the Shire's approval;</li> <li>(iii) the possible provision of community space (such as conference rooms, meetings rooms) within the Facility for use by the Shire and the wider community;</li> </ul> </li> </ul>
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		(iv) management of any common areas and facilities (i.e., car park, landscaping, shared services on the Land).
4	Commencement Date	The day after the last of the Conditions Precedent is satisfied.
5	Term	21 years
6	Further Term	21 years subject to EMHS having complied with its obligations under the Lease or having remedied any breaches in a timely manner throughout the Term and not being in breach of its obligations under the Lease at the time of exercising the option.
7	Rent	<p>\$27,000 (calculated upon the basis of 3000m<sup>2</sup> @\$9.00/m<sup>2</sup>) per annum plus GST, payable by annually in advance.</p> <p>The Shire agrees that the Rent will be deposited into a reserve fund for use on the maintenance or repair of the Land and/or common areas and/or the Premises PROVIDED HOWEVER that any expenditure on the Premises is at the Shire's option and does not in any way relieve EMHS from maintenance and repair obligations under the Lease .</p>
8	Rent Commencement Date	Rent will commence upon Commencement Date.
9	Rent Review	<p>A market rent review every five years. CPI Reviews + 2% will be undertaken on each year a Market Rent Review is not carried out.</p> <p><b>CPI + 2% Review</b></p> <p>(1) A rent review based on CPI + 2% will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI + 2% having regard to the quarterly CPI published immediately prior to the later of the Rent</p>

		<p>Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date.</p> <p>(2) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with the market review clause.</p> <p><b>Market Review</b></p> <p>A rent review based on a market review will establish the current market rent for the Premises by agreement between the Parties and failing agreement will be determined in accordance with the following provisions:</p> <p>(a) The Shire shall notify EMHS of the amount that it reasonably considers is the current market rent for the Premises.</p> <p>(b) If EHMS notifies the Shire that it does not dispute the amount notified, that amount becomes the Rent.</p> <p>(c) If EMHS notifies the Shire that it disputes the amount notified by the Shire in the Rent Notice within 28 days after receiving the Rent Notice or if EHMS does not notify the Shire whether or not it disputes the amount in the Rent Notice, then the current market rent for the Premises will be determined by a valuer (<b>Valuer</b>) licensed under the <i>Land Valuers Licensing Act 1978 (WA)</i>, to be appointed by mutual consent of the Parties, or if no such agreement can be reached within a reasonable period of time, by the President, at the request of either Party, for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).</p> <p>(d) EHMS must pay the Valuer's costs.</p> <p>(e) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Valuer.</p>
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		<p>(a) In this clause, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to the Lease and on the same terms and conditions contained as the Lease, BUT will not include:</p> <p>(i) any improvements made or effected to the Land by EMHS; and</p> <p>(ii) any rent free periods, discounts or other rental concessions.</p>
10	Rates, charges and outgoings	<p>(2) EMHS agrees with the Shire that EMHS shall from the Commencement Date punctually pay to the Shire (or to such person as the Shire may from time to time direct) all of the following outgoings or charges assessed or incurred in respect of the Premises:</p> <p>(a) subject to (3) below, local government rates, taxes and charges and including charges for rubbish or garbage removal and the emergency service levy;</p> <p>(b) in so far as the Premises or any part of the Premises may be exempt from any rates or charges of a kind referred to in (a) by reason of the operation of section 6.26 of the Local Government Act 1995 or any other written law, an amount equivalent to the rates or charges that would have been payable but for that exemption, except in so far as a Contractually-Modified Rates Exemption applies;</p> <p>(c) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;</p> <p>(d) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection and EMHS shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of EMHS; and</p>

		<p>(e) any other statutory consumption charge or cost or statutory impost incurred or payable by reason of EMHS's use and occupation of the Premises.</p> <p>(3) If the Premises is not separately charged or assessed EMHS will pay to the Shire a proportionate part of any charges or assessments referred to in paragraph (1) above being the proportion that the area of the Premises bears to the total area of the Premises or premises included in the charge or assessment.</p> <p>(4) Where and to the extent that an exemption from rates or charges imposed by the local government applies under section 6.26 of the Local Government Act 1995 or any other written law, EMHS shall, notwithstanding such exemption, pay to the Shire an amount equivalent to the rates and charges that would have been payable but for the exemption, except in so far as any of below paragraphs apply (<b>Contractually-Modified Rates Exemptions</b>):</p> <ul style="list-style-type: none"> <li>(i) throughout the period prior to the commencement of the Development;</li> <li>(ii) during the carrying out of the Development works, terminating upon the first occupancy of any part of the Premises offering services to the public or any section of the public;</li> <li>(iii) after the point in time referred to in (ii), in respect of any portion of the Premises for so long as it satisfies both of the following criteria: <ul style="list-style-type: none"> <li>(A) it is in fact entirely unoccupied and and is in fact unused for any purpose; and</li> <li>(B) there is no sub-lease, licence or agreement for occupancy in respect of it, other than a sub-lease, licence or agreement for occupancy to an agency of the Crown;</li> </ul> </li> <li>(iv) after the point in time referred to in (ii), in respect of any portion of the Premises which is in fact occupied and is in fact used, for so long as it satisfies one or both of the following criteria: <ul style="list-style-type: none"> <li>(A) the occupation and the use are, at the most direct level, occupation</li> </ul> </li> </ul>
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		<p>and use by an agency of the Crown; and/or</p> <p>(B) the use is exclusively for charitable purposes.</p> <p>For avoidance of doubt, this sub-clause (3) does not operate so as to confer, or to have an effect equivalent to conferring, an exemption for rates or charges where such exemption does not exist under a written law. For example, with regard to (i) above, just because no Development has commenced does not, without more, mean that no rates are payable. The circumstances for an exemption under section 6.26 still need to be present in order for no rates to be payable.</p>
11	Permitted Use	Community purposes, including the construction and operation of a community health hub.
12	Insurance	<p>(1) EMHS must at a minimum effect and keep current during the Term and any holding over period policies of insurance:</p> <p>(a) to cover the full replacement costs of the Facility and EHMS's fixtures, on the Premises to their full insurable value against all usual risks against which in the reasonable opinion of the Shire from time to time a tenant should ordinarily insure; and</p> <p>(b) for public liability with a cover of not less than \$20,000,000 (subject to a review for adequacy every five years) in respect of any one occurrence (<b>Policies</b>).</p> <p>(2) The Policies must:</p> <p>(a) be with a reputable insurer;</p> <p>(b) note the Shire's interest on the policy; and</p> <p>(c) cover events occurring while the policy is current regardless of when claims are made.</p> <p>(3) EMHS must on demand produce to the Shire proper evidence of the Policies and their renewal.</p> <p>(4) Whilst EMHS is the State of Western Australia or a government tenant, the above paragraphs do not</p>



		<p>apply and are replaced by the following:</p> <ul style="list-style-type: none"> <li>(f) EMHS must at its own expense during the Term effect, maintain and keep current with the Western Australian government's self-insurance fund: <ul style="list-style-type: none"> <li>(i) public liability insurance for a sum not less than the sum \$20,000,000 (subject to a review for adequacy every five years);</li> <li>(ii) property insurance for the Facility and EMHS's fixtures to a full replacement value.</li> </ul> </li> <li>(g) As and when requested by the Shire, EMHS must give to the Shire's reasonable satisfaction sufficient evidence of the existence of those insurances or provide certificates of currency in respect of those insurances.</li> </ul>
13	Indemnity	<ul style="list-style-type: none"> <li>(1) EMHS indemnifies, and shall keep indemnified, the Shire and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Shire and/or the Minister for Lands, or brought, maintained or made against the Shire and/or the Minister for Lands, in respect of: <ul style="list-style-type: none"> <li>(a) any loss whatsoever (including loss of use);</li> <li>(b) injury or damage of, or to, any kind of property or thing; and</li> <li>(c) the death of, or injury suffered by, any person, to the extent caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly;</li> <li>(d) the use or occupation of the Premises by EMHS or EMHS's agents;</li> <li>(e) any work carried out by or on behalf of EMHS on the Premises;</li> <li>(f) EMHS's activities, operations or business on, or other use of any kind of, the Premises;</li> <li>(g) any default by EMHS in the due and punctual performance, observance and compliance with</li> </ul> </li> </ul>

		<p>any of EMHS's covenants or obligations under this Lease; or</p> <p>(h) a negligent or wrongful act or omission of EMHS.</p> <p>(2) The obligations of EMHS under this clause:</p> <p>(a) are unaffected by the obligation of EMHS to take out insurance, and the obligations of EMHS to indemnify are paramount, however if insurance money is received by the Shire for any of the obligations set out in this clause then EMHS's obligations under paragraph (1) above will be reduced by the extent of such payment; and</p> <p>(b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.</p> <p>(3) The parties agree that nothing in this clause shall require EMHS to indemnify the Shire, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Shire, or its servants, agents, contractors or invitees.</p>
14	Development Works	<p>(1) EMHS agrees to obtain all necessary approvals for the construction of the Facility (<b>Development</b>).</p> <p>(2) EMHS must carry out and complete the Development:</p> <p>(a) in accordance with all approvals; and the Detailed Designs; and</p> <p>(b) within 36 months of the Commencement Date (<b>Completion Date</b>).</p> <p>(3) In the event that the Development is not completed by the Completion Date or any extended date agreed by the Shire (in its absolute discretion), then the Shire may issue EMHS a notice requiring EMHS to complete the Development within the period specified in the notice (being a period not less than six months). In the event EMHS does not complete the Development within the timeframe specified in the Shire's notice, then the Shire may terminate the Lease upon written notice to EMHS.</p>

		<p><b>Standard of works</b></p> <p>(4) EMHS must ensure that all works which EMHS carries out or is required to carry out are carried out only:</p> <ul style="list-style-type: none"> <li>(a) by contractors and tradesmen of a standard consistent with the construction of a first-class development;</li> <li>(b) in a proper and workmanlike manner;</li> <li>(c) in accordance with plans, specifications and schedules of works materials and finishes required and approved by the Shire (including but not limited to those required) before any of those works are commenced; and</li> <li>(d) in accordance with all laws and requirements of all Authorities.</li> </ul> <p>(5) EMHS must keep the Shire informed of the works conducted pursuant to the Development.</p> <p>(6) EMHS must allow the Shire and its contractors, officers and agents, on reasonable notice, to inspect the Development site and the Development Works</p> <p>(7) At the completion of the Development, EMHS must provide a copy of all certificates from relevant Authorities evidencing that the works comply with all laws and the requirements of Authorities and remove any refuse in connection with EMHS's works from the Premises and the Land.</p> <p><b>Insurance obligations for Development</b></p> <p>EMHS, in relation to the Development, must ensure that its contractors maintain at all times during the carrying out of the Development:</p> <ul style="list-style-type: none"> <li>(a) the insurance required by any written law in respect of all persons employed by the contractors in connection with the Development;</li> <li>(b) public risk insurance for a sum of not less than \$20,000,000.00 in respect of any one claim, in the name of EMHS and the Shire, and, if required by the Shire, any other person, for their respective rights and interests; and</li> <li>(c) a "contractor's all risks" (or equivalent) policy in respect of the Development (to the full value of the Development and which policies are to remain in force until the last to expire of any defects liability</li> </ul>
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		<p>periods stipulated in EMHS's relevant building contract(s) for the Development.</p> <p><b>Cost of Development</b></p> <p>EMHS acknowledges that it is fully responsible for all works necessary to construct the Development, including without limitation design and development costs of the Development.</p>
15	Repair and Maintenance	<p>EMHS must, at EMHS cost repair, maintain and keep the Facility and EMHS' fixtures, fittings, equipment, furnishings and improvements in good, safe, substantial and tenable repair, order and condition.</p> <p>On and from the Commencement Date, EMHS must ensure that EMHS' fixtures, fittings, equipment, furnishings and improvements and improvements on the Premises comply with all relevant building codes and standards.</p>
16	Capital and Structural	<p>EMHS is responsible for:</p> <ul style="list-style-type: none"> <li>(a) all capital works and repairs of a structural nature</li> <li>(b) repairs due to fair wear and tear;</li> <li>(c) rectification of defects in all improvements on the Premises;</li> <li>(d) the costs to comply with all laws and statutory requirements; and</li> <li>(e) all redevelopment works, upgrades and replacements.</li> </ul> <p>For the avoidance of doubt the Shire has no obligation to:</p> <ul style="list-style-type: none"> <li>(a) repair and maintain the Premises or the improvements;</li> <li>(b) undertake any capital works or repairs of a structural nature; or</li> <li>(c) rectify any defects in the Premises or the improvements on the Premises.</li> </ul>
17	Alterations	<p><b>Consent to Major Alterations</b></p> <p>Following completion of the Development, EMHS must not without prior written approval:</p>

		<p>(a) from the Shire (in its capacity as landlord and not as responsible local authority) who must not withhold its consent unreasonably; and</p> <p>(b) required under any Written Law, including but not limited to the planning approval of the Shire under a local planning scheme of the Shire:</p> <p>make or allow to be made any major alteration, demolition, structural addition or improvements to or demolish any part of the Premises. For the purpose of completeness, the Parties acknowledge and agree that an alteration, demolition, structural addition or improvement will be “major”, and require consent under this clause, if a development approval is required for such alteration, demolition, structural addition or improvement.</p> <p><b>Shire’s consent to major alterations</b></p> <p>The Shire may:</p> <p>(a) consent subject to conditions; and</p> <p>(i) require that work be carried out in accordance with plans and specifications approved by the Shire or any other person giving consent, acting reasonably; and</p> <p>(ii) require that any alteration be carried out to the reasonable satisfaction of the Shire under the supervision of a qualified person; and</p> <p>(b) if the Shire consents to any matter referred to in this clause:</p> <p>(i) the Shire gives no warranty that the Shire will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and</p> <p>(ii) EMHS must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.</p> <p><b>Cost of Works</b></p> <p>All works undertaken under this clause will be carried out at EMHS’s expense.</p>
18	Damage or destruction	<p>(1) If the Facility is substantially damaged or destroyed, EMHS must either:</p>

		<p>(a) substantially commence the reinstatement of the Facility within thirty six (36) months of the damage and destruction occurring and reinstate the Facility to a standard (to the extent practicable) consistent with the standard of Facility which existed immediately prior to the event of damage or destruction; or</p> <p>(b) terminate this Lease by notice to the Shire.</p> <p>(2) Subject to paragraph (4) below, if EMHS does not substantially commence the reinstatement of the Facility within thirty six (36) months of the damage and destruction occurring, the Shire may terminate the Lease by notice to EMHS.</p> <p>(3) In this clause, substantially commencing the reinstatement of the Facility is satisfied if EMHS has commenced the construction of either the required reinstatement works or works that are preparatory to the reinstatement works.</p> <p>(4) If EMHS considers, acting reasonably, that the damage or destruction of the Facility renders it impractical or undesirable to reinstate the Facility:</p> <p>(a) EMHS may surrender this Lease by giving such period of notice as is reasonably necessary to allow for remediation of the Premises such that the Premises is delivered up to the Shire as a clean site; and</p> <p>(b) EMHS must demolish the Facility and deliver the Premises as a clean site to the Shire and on completion of such works:</p> <p>(i) this Lease will terminate; and</p> <p>(ii) EMHS must give to the Shire a signed surrender of lease and registration fees payable to enable that surrender of lease to be registered.</p> <p>(5) No fee or compensation shall be payable by the Shire to EMHS in relation to termination under this clause.</p>
19	Make good	<p>Before the expiry or sooner determination of the Lease, EMHS must:</p> <p>(a) deliver up vacant possession;</p> <p>(b) deliver up the Premises in a condition which is consistent with the performance by EMHS of its</p>

		<p>obligations in the Lease;</p> <p>(c) remove from the Premises all or any furnishings, moveable items and chattels (other than those items that form part of the Premises);</p> <p>(d) make good any damage caused to the Premises by that removal; and</p> <p>(e) ensure that the Premises and all improvements are safe, clean, freshly painted and that all improvements are functioning and in good working order to the extent required to comply with paragraph (b) above.</p> <p>The improvements which EMHS does not remove from the Premises (including without limitation the Facility) are to become the property of the Shire and the Shire will not be required to pay any consideration or compensation for those improvements.</p>
20	Subletting and Assignment	The subletting and assignment clause will be determined as part of the determination of the governance model for the Facility.
21	Fencing	EMHS agrees to install, prior to completion of the Development, a 1.8-metre-high black PVC coated chain link fence along the entire Eastern boundary of the Land in accordance with the reasonable requirements of the Public Transport Authority. EMHS will be responsible for the repair and maintenance of the fence during the term.
22	Reservation of Rights	<p>The Shire reserves for itself and occupiers of the Land the right to:</p> <p>(a) use vehicular accessways constructed on the Premises; and</p> <p>(b) grant easements for services and similar such rights as may be reasonably required for the use and enjoyment of the Land,</p> <p>provided that such rights do not impact EMHS's reasonable use and enjoyment of the Premises.</p>
23	Early Access	Subject to the successful completion of the Business Plan Process, the Shire agrees to grant to EMHS early access to the Premises for the purpose of preliminary works on reasonable terms and conditions.

24	Co-operation during construction	In the event that the Shire undertakes works on the remainder of the Land during the construction of the Facility, the Shire and EMHS agree to liaise with and consult with each other in relation to each party's works, and work collaboratively together to avoid any inference, delays, impediments or nuisance to each other works.
25	Other terms	The Lease will include other terms usually provided in leases of similar premises in Western Australia
26	Legal Costs	Each party must pay their own costs of and incidental to the preparation, negotiation and signing of the Lease.  The first draft of the Lease will be prepared by the Shire's solicitor.
27	Local Government matters	Nothing in this Heads of Agreement diminishes the Shire's rights and powers or fetters any discretion that the Shire has under a law, regulation or ordinance which confers any responsibility, function or duty on a 'local government' ( <b>Local Government Law</b> ).  The Shire is not required to have regard to this document when performing a function under a Local Government Law.  Nothing in this Heads of Agreement is an approval by the Shire, when performing a statutory function, to consent to, authorise or permit EMHS to do any of the things contemplated by this Heads of Agreement.  EMHS acknowledges that the Shire, for transparency purposes, has determined that it will comply with section 3.59 of the <i>Local Government Act</i> prior to entering into the Lease.  There is no binding agreement between the Shire and EMHS in relation to the Lease unless and until the Shire, in its discretion, signs a binding Lease and this sentence prevails over every other part of this Heads of Agreement.
28	Partly binding and partly non-binding Heads of Agreement	Except for the provisions of this clause and clause 23 (Local Government Matters) (together the <b>Binding Provisions</b> ), this Heads of Agreement is not, and is not intended to be, legally binding on either party.  Except for the Binding Provisions which are legally binding, no legally binding agreement will arise, despite the preparation and Lease document, unless and until the



		<p>Lease has been executed by the Shire and EMHS.</p> <p>If a party incurs any expenditure of any nature whatsoever in anticipation of the parties entering into a Lease with respect to the Premises and the other party for any reason in its absolute discretion does not enter into a Lease, the other party will not be liable for such expenditure or any part thereof.</p>
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## Signing Page

Executed by the SHIRE OF SERPENTINE  
JARRAHDAL (ABN 98 924 720 841) in  
accordance with s9.49A of the Local  
Government Act 1995 (WA) by its authorised  
officers:

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Signature of Chief Executive Officer

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Print Full

[insert execution clause for East Metropolitan Health Service]

## Annexure 1 – Proposed Leasing Plan

