



# **BROWSE (LAND) AGREEMENT**

**June 2011**

# Browse (Land) Agreement

The State of Western Australia

Goolarabooloo Jabirr Jabirr Peoples

# Browse (Land) Agreement

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<b>Date</b>	30 June 2011
<b>Parties</b>	<p><b>The Honourable Brendon John Grylls, MLA</b>, the Minister for Lands, acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (the <i>State</i>).</p> <p><b>Kimberley Land Council Aboriginal Corporation</b> (ABN 96 724 252 047 ICN) for and on behalf of the Native Title Party (in every respect other than clause 17 in which respect it is signing both as agent for the Native Title Party and in its own capacity), PO Box 2145 Broome, Western Australia, 6725 (the <i>KLC</i>).</p>
<b>Recitals</b>	
A	The Native Title Party are the registered native title claimants in relation to the land and waters the subject of the Native Title Claim.
B	The State intends establishing an LNG Precinct in the vicinity of James Price Point. The LNG Precinct is proposed to be developed within the area the subject of the Native Title Claim.
C	The State considers that the LNG Precinct is a unique and important project for the State of Western Australia, the particular circumstances of which justify the State's entry into this Agreement.
D	<p>The State has committed to entering into this Agreement in relation to:</p> <ul style="list-style-type: none"><li>(a) limiting the use of the LNG Precinct;</li><li>(b) limiting further LNG development on the Kimberley Coastline;</li><li>(c) the remediation and rehabilitation of the land within the LNG Precinct at the End of Precinct Life; and</li><li>(d) the Grant of title within the LNG Precinct to the Native Title Party at the End of Precinct Life,</li></ul> <p>each on and subject to the terms of this Agreement.</p>
E	The Native Title Party has authorised the KLC to execute this Agreement on their behalf.

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It is agreed as follows.

## 1. Definitions and Interpretation

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### 1.1 Definitions

In this Agreement subject to the context:

*'advise', 'apply', 'approve', 'approval', 'consent', 'certify', 'direct', 'notice', 'notify', 'request', or 'require'*, means advise, apply, approve, approval, consent, certify, direct, notice, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words shall have a corresponding meaning.

**Access Road** means the access road from the Broome-Cape Leveque Road to the LNG Precinct as set out on the map in Annexure 2, and more specifically means those parts of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, being a total area of approximately 291 ha within the 1422.6 ha area marked G on Deposited Plan 68246, and within the 1000 ha and 2000 ha areas marked C and D on Deposited Plan 68246 respectively. In particular:

- (a) an area of approximately 191 ha within the 1422.6 ha area marked G on Deposited Plan 68246;
- (b) an area of approximately 40 ha within the 1000 ha area marked C on Deposited Plan 68246 and/or the 1422.6 ha area marked G on Deposited Plan 68246;
- (c) an area of approximately 60 ha within the 2000 ha area marked D on Deposited Plan 68246 and/or the 1422.6 ha area marked G on Deposited Plan 68246.

**Administrative Body** means the Administrative Body, as approved by the State and the Native Title Party, created to deliver benefits to or for the benefit of the Native Title Party and hold land Granted for the benefit of the Native Title Party under this Agreement, and, to the extent relevant as the holder of land Granted under this Agreement, to perform the obligations of the Native Title Party under this Agreement.

**Closure Decision** means a decision to close the LNG Precinct in accordance with clause 4.

**Commencement Date** means the date on which all of the provisions of this Agreement come into effect by operation of clause 2(d).

**Completion of Remediation** means the date on which Remediation and Rehabilitation Works are completed or deemed to be completed under clause 6.5.

**Contamination** has the same meaning as the CS Act.

**CS Act** means the *Contaminated Sites Act 2003* (WA).

**End of Precinct Life** occurs on the date determined under clause 4.2.

**Environmental Status Report** has the meaning given in clause 6.4(e).

**EP Act** means the *Environmental Protection Act 1986* (WA).

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Excluded Facilities** means:

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- (a) man-made alterations to the shoreline;
- (b) the Access Road and any other public or gazetted roads;
- (c) any other ancillary infrastructure within the Onshore Service Corridor or infrastructure corridors located within road reserves or otherwise servicing the LNG Precinct;
- (d) port infrastructure (including any facilities) within the Port Waters;
- (e) breakwaters;
- (f) any part of the seabed, including navigation channels and turning basins; and
- (g) if under this Agreement or any other agreement any Facilities (including a Proponent's accommodation facilities within the Workers' Accommodation Site) are to be transferred to the Native Title Party, then:
  - (i) those Facilities; and
  - (ii) that part of the Precinct Land or Port Land (as the case may be) connected to those Facilities as set out in the agreement contemplated above.

**Facilities** means all man made structures built within the LNG Precinct, but excludes the Excluded Facilities.

**Grant** means the grant, making, creation, declaration, dedication, proclamation, order or vesting of a right or interest in, or authority to, land and waters under any Law.

**Industrial Precinct** means that part of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, being an area of approximately 1980 ha within the 2019.9 ha area marked B on Deposited Plan 68246, as referred to in the notice and set out on the map contained in Annexure 2 comprising:

- (a) the industrial blocks for any Proponent; and
- (b) the common user area.

**Kimberley Coastline** means the coastline of the land so described on the map which forms Annexure 1 to this Agreement.

**LandCorp** means the Western Australian Land Authority, established under section 5 of the *Western Australian Land Authority Act 1992* (WA), of Wesfarmers House, 40 The Esplanade, Perth, Western Australia, 6000.

**Law** means any law of the Commonwealth or Western Australia and includes the common law and equity, any written law, statute, regulation or other instruments made under statute.

**LNG** means liquefied natural gas and includes any associated condensate and liquefied petroleum gas.

**LNG Precinct** means the development required to produce, store and ship LNG including:

- (a) the Petroleum processing facility;
- (b) all land, waters, infrastructure and land or water use (including shipping) associated with or required for the Petroleum processing facility; and
- (b) ancillary facilities including power, gas and water processing to support the LNG Precinct, to be built in the vicinity of James Price Point within the area of the Native Title Claim.

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**LNG Precinct Baseline Report** has the meaning given in clause 6.2(a).

**Loss** means any loss, liability, claim, action, damage, cost, charge, expense (including legal fees on a solicitor-client basis), diminution in value or deficiency, but does not include loss of profit, loss of production, loss of reputation or any indirect or consequential loss.

**Minister** means the Minister in the Government of the State for the time being responsible for the administration of the Act that ratifies this Agreement and pending the passing of that Act means the Minister for Lands or such other Minister for the time being designated in a notice from the State to the Native Title Party and includes the successors in office of the Minister.

**Native Title Act** means the *Native Title Act 1993* (Cth).

**Native Title Claim** means the application pursuant to the Native Title Act made on behalf of the Goolarabooloo / Jabirr Jabirr Peoples (Federal Court No WAD 6002/1998; NNTT Number WC99/36) and as amended from time to time.

**Native Title Claim Group** has the meaning set out in the Native Title Act in relation to the Native Title Claim.

**Native Title Party** means the registered native title claimants under the Native Title Act for and on behalf of the Native Title Claim Group.

**Onshore Service Corridor** means those parts of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, being a total area of 232 ha within the 1422.6 ha area marked G on Deposited Plan 68246, and within the 1000 ha and 2000 ha areas marked C and D on Deposited Plan 68246 respectively, as set out on the map contained in Annexure 2. In particular:

- (a) an area of approximately 172 ha within the 1422.6 ha area marked G on Deposited Plan 68246;
- (b) an area of approximately 24 ha within the 1000 ha area marked C on Deposited Plan 68246 and/or the 1422.6 ha area marked G on Deposited Plan 68246;
- (c) an area of approximately 36 ha within the 2000 ha area marked D on Deposited Plan 68246 and/or the 1422.6 ha area marked G on Deposited Plan 68246.

**Permitted Assignee** has the meaning given in clause 9.

**Petroleum** has the meaning given in the *Petroleum and Geothermal Resources Act 1967* (WA).

**Port** means the port vested in and operated by the Port Authority under the *Port Authorities Act 1999* (WA) within the Port Land and Port Waters.

**Port Authority** means Broome Port Authority.

**Port Land** means that area of approximately 110 ha within the 240.31 ha area comprising:

- (a) that part of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, that is within the 226.3 ha area marked A on Deposited Plan 68246; and
  - (b) the area of 14.01 ha of Lot 3001 on Deposited Plan 68245,
- as set out on the map contained in Annexure 2.

**Port Waters** means that area set out on the map contained in Annexure 2.



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**Post Contamination** means Contamination that satisfies each of the following sub-clauses (a) to (c) inclusive:

- (a) did not exist prior to the creation of the LNG Precinct; and
- (b) does not arise out of any Contamination that did exist prior to the creation of the LNG Precinct as identified in the LNG Precinct Baseline Report; and
- (c) is not, and does not arise out of any, Contamination caused by the Native Title Party.

**Precinct Land** means the land comprised in the Industrial Precinct, Third Party Contractors' Site and Workers' Accommodation Site for the purposes of clause 7.

**Precinct Supply Base** means an area within the LNG Precinct used by a Proponent to supply that Proponent's (including a joint venture in which a Proponent has a participating interest) offshore facilities that are supplying or intended to supply Petroleum to the LNG Precinct or that Proponent's activities relating to the exploration for or production of Petroleum intended for supply to the LNG Precinct.

**Project Rights** means the rights, consents, permits, authorisations, leases, titles, tenures, easements, licences or approvals and other entitlements necessary to comply with obligations imposed in relation to, the LNG Precinct within the area of the LNG Precinct (together **Approvals**), including all Grants, renewals, extensions, regrants and remaking of such rights, and including but not limited to:

- (a) Approvals for any act done by the State, Proponents, LandCorp or the Port Authority for the purposes of the LNG Precinct, including works necessary for the construction, operation, maintenance, decommissioning and rehabilitation of facilities for any part of the LNG Precinct; and
- (b) the making of necessary regulations or by-laws or other legislative or administrative acts by the State as required for the construction, operation, maintenance, decommissioning and rehabilitation of the LNG Precinct.

**Proponent** means each person who is an occupier of an industrial block within the LNG Precinct and who operates a Proponent Project.

**Proponent Project** means a Proponent's project for the processing and exporting of LNG within and from the LNG Precinct carried out pursuant to and in accordance with the Project Rights and includes:

- (a) receiving Petroleum and the establishment and operation of the Precinct Supply Base;
- (b) pre-treatment and processing of Petroleum into LNG and other products;
- (c) the storage, loading and transporting of LNG and other products; and
- (d) all things necessary and incidental to paragraphs (a) to (c) above.

**Remediation and Rehabilitation Works** means the remediation and rehabilitation of the LNG Precinct and includes:

- (a) decommissioning and dismantling the Facilities; and
- (b) remediation of any Post Contamination,

but does not include any remediation or rehabilitation of or to the Excluded Facilities.

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**Taking Orders** means the orders or instruments for the taking of rights and interests, including native title rights and interests, in the land comprised in the Precinct Land or otherwise registrable under Part 9 of the *Land Administration Act 1997* (WA).

**Third Party Contractors' Site** means that part of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, being an area of approximately 200 ha within the 1000 ha area marked C on Deposited Plan 68246, as set out on the map contained in Annexure 2.

**Workers' Accommodation Site** means that part of Lot 259 on Deposited Plan 220696, being part of the land in qualified certificate of Crown land title volume 3015 folio 565, being an area of approximately 200 ha within the 2000 ha area marked D on Deposited Plan 68246, as referred to in the notice and set out on the map contained in Annexure 2.

## 1.2 Interpretation

- (a) In this Agreement, clause headings do not affect interpretation or construction and, unless the context otherwise requires:
  - (i) monetary references are references to Australian currency unless otherwise specifically expressed;
  - (ii) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
  - (iii) one gender includes the other genders;
  - (iv) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
  - (v) reference to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
  - (vi) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause, paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
  - (vii) a reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
  - (viii) 'including' means, 'including, but not limited to';
  - (ix) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
  - (x) a reference to a 'person' includes a body corporate;
  - (xi) references to statutes, regulations, ordinances and by-laws when contained in this Agreement:
    - (A) include amendments, re-enactments or consolidations of any of them;

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- (B) include any statute, regulation, ordinance or by-law made in substitution thereof; and
  - (C) a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute; and
- (xii) if a government department, authority, body or tribunal (including, without limitation, the Port Authority or LandCorp) is replaced or made defunct, the reference to that body shall include a reference to the replacement body or such other body that most closely performs the functions of the defunct body.
- (b) Nothing in this Agreement shall be construed to exempt the parties from compliance with, or to require the parties to do anything contrary to, any Law relating to native title or any lawful obligation or requirement imposed on the parties pursuant to any Law relating to native title.
- (c) Nothing in this Agreement shall be construed to exempt the parties or any other person from compliance in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made pursuant to the EP Act, CS Act or the Act that ratifies this Agreement.

## 2. Ratification and Operation

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- (a) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia as soon as reasonably practicable and in any event prior to 30 June 2012 or such later date as may be agreed between the parties to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.
- (b) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the Bill referred to in paragraph (a) has been passed by the State Parliament of Western Australia and comes into operation as an Act.
- (c) If by 30 June 2014 or such later date as may be agreed between the parties the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (d) On the date on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any other enactment or other law.

## 3. Permitted use of LNG Precinct

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- (a) The State agrees, subject to clause 5.1 and the balance of this clause 3, that:
  - (i) the LNG Precinct will be used only for the receipt of Petroleum, pre-treatment and processing of Petroleum into LNG and other products (excluding downstream processing), the storage, loading and transporting of LNG and all things necessary and incidental thereto, including the Precinct Supply Base and purposes associated

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with the administration and management of the Port by the Port Authority (the *Permitted Precinct Use*);

- (ii) it will not use or permit any other person to use the LNG Precinct otherwise than for a Permitted Precinct Use; and
  - (iii) it will procure that neither LandCorp nor the Port Authority will use or permit any other person to use the LNG Precinct otherwise than for a Permitted Precinct Use.
- (b) Nothing in this clause 3:
- (i) displaces the obligations of the Port Authority under international custom or convention or under common law relating to seas and ports; or
  - (ii) limits the Port Authority's ability to conduct exercises by itself or with others for the purpose of emergency and safety drills (whether related to a Proponent Project or not); or
  - (iii) limits the Port Authority from refuelling, supplying or providing assistance to any Commonwealth vessel; or
  - (iv) limits the Port Authority from providing assistance to vessels or third parties in an actual or perceived emergency.

## 4. Precinct Closure

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### 4.1 Closure Decision

- (a) The State:
  - (i) subject to paragraph (b), may make a Closure Decision in respect of the LNG Precinct at any time after the Commencement Date;
  - (ii) subject to paragraph (b), must consider whether a Closure Decision should be made at the date that is 50 years following the Commencement Date and notify the Native Title Party as to whether or not a Closure Decision will be made; and
  - (iii) must make a Closure Decision in respect of the LNG Precinct prior to or on the date that is 100 years from the Commencement Date, unless the parties to this Agreement otherwise agree.
- (b) The State must not make a Closure Decision under paragraphs (a)(i) or (a)(ii) during the establishment and operation of a Proponent Project.

### 4.2 Notification of Closure Decision

If the State makes a Closure Decision under clause 4.1, the State must promptly notify the Native Title Party to that effect and the End of Precinct Life will take effect on the date set out in the notice.

### 4.3 Closure of Precinct where no Proponent

- (a) If, at any time following registration of the Taking Orders under the *Land Administration Act 1997* (WA):

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- (i) for a continuous period of 10 years, there is no interest in land within the LNG Precinct held by a Proponent;
- (ii) there has been no exercise of rights under any interest in land within the LNG Precinct held by a Proponent within 10 years of the creation of the interest;
- (iii) for a continuous period of 10 years, there is no legally enforceable right between the State and a potential Proponent for the Grant of an interest within the LNG Precinct to that Proponent for the purpose of conducting a Proponent Project; or
- (iv) there has been no exercise of a legally enforceable right between the State and a potential Proponent for the Grant of an interest within the LNG Precinct to that Proponent for the purpose of conducting a Proponent Project within 5 years of the creation of the right,

and provided that if the circumstance in paragraph (iv) is being relied upon, at least 10 years have lapsed since the registration of the Taking Orders, the Native Title Party may give notice requiring the State, acting reasonably, to:

- (v) make a Closure Decision under clause 4.1(a)(i); or
- (vi) make a decision that in the State's opinion a legally enforceable right between the State and a potential Proponent for the Grant of an interest within the LNG Precinct to that Proponent for the purpose of conducting a Proponent Project is likely to be entered into in the foreseeable future (an ***Extension Decision***),

and the State will give the Native Title Party notice of the decision contemplated by paragraphs (v) or (vi) as soon as reasonably practicable thereafter.

- (b) If the State gives notice of an Extension Decision and a legally enforceable right between the State and a potential Proponent for the Grant of an interest within the LNG Precinct to that Proponent for the purpose of conducting a Proponent Project is not entered into within 2 years of the notice of the Extension Decision, the Native Title Party may again give notice requiring the State, acting reasonably, to:
  - (i) make a Closure Decision under clause 4.1(a)(i); or
  - (ii) make a further Extension Decision.
- (c) If the State has made 3 consecutive Extension Decisions under paragraphs (a)(vi) and (b), and the Native Title Party again gives notice to the State in accordance with paragraph (b), then the State must make a Closure Decision under clause 4.1(a)(i).

## 5. Port at End of Precinct Life

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### 5.1 Port to continue operation at discretion of the State

- (a) Notwithstanding clause 3, and notwithstanding that a Closure Decision may have been made under clause 4, the State may, in its absolute discretion but following consultation with the Native Title Party, determine that the Port will continue to operate after the End of Precinct Life as a port under, and for any purpose permitted under, the *Port Authorities Act 1999* (WA).

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- (b) As soon as practicable following the State making a Closure Decision, the State will notify the Native Title Party as to whether the Port will continue to operate beyond the End of Precinct Life and the manner of operation, including the capacity, permitted use and purpose of the Port.
- (c) The Native Title Party or any member of the Native Title Claim Group may make any representation (including an action, objection or submission) in relation to any approval for the continued operation, capacity, permitted use or purpose of the Port.

### 5.2 Remediation and Grant if Port operation continues

- (a) If the State gives notice under clause 5.1(b) that the Port will operate beyond the End of Precinct Life, then the State will not be obliged to carry out Remediation and Rehabilitation Works for the Port Land pursuant to clause 6 until such time as specified in a notice given by the State to the Native Title Party that the Port will cease operation.
- (b) Subject to paragraph (d), the State will Grant the Port Land to the Native Title Party in accordance with clause 7 at the same time as the Grant of the Precinct Land occurs, notwithstanding that the Port Land has not been subject to Remediation and Rehabilitation Works in accordance with clause 6.
- (c) Unless the State and the Native Title Party otherwise agree, the State will retain all liability for Remediation and Rehabilitation of the Port Land as contemplated by this Agreement.
- (d) If the State has given notice under clause 5.1(b) that the Port will continue to operate as a port following the End of Precinct Life, the obligation of the State in relation to the Grant of Port Land will be conditional upon the Native Title Party and the State entering into an agreement to lease the Port Land to the State (or to any government or governmental, semi governmental or administrative body, department, commission or authority, any government Minister, agency or instrumentality, any port authority or entity nominated by the State) (the *Lessee*) to allow for the continued operation of the Port (*Lease*). The terms of the Lease will be agreed between the State, Lessee and the Native Title Party, including on the following conditions:
  - (i) the duration of the Lease, and the inclusion of any options to extend, will be fixed at the State's sole discretion;
  - (ii) the Lessee will have the exclusive possession of the Port Land (subject to any ongoing access rights that the Port Authority may have Granted the Native Title Party);
  - (iii) the form of title created to the Port Land must be consistent with the purpose of operating the Port;
  - (iv) the rental will be on commercial terms;
  - (v) a requirement that the State will carry out Remediation and Rehabilitation Works for the Port Land in a manner consistent with clause 6 once the Lease expires; and
  - (vi) policies and procedures to achieve increased and incremental Native Title Party involvement in the management and operations of the Port.

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## 5.3 Dispute in relation to terms of Port Lease

If the State, Lessee and the Native Title Party fail to agree the terms of the Lease under 5.2(d) within 12 months of the date of notification under clause 5.1(b), then in relation to any dispute or difference or claim as to the terms of the Lease (other than the terms set out in clause 5.2(d)(i) and the terms specifying the capacity, permitted use and purpose of the Port), the provisions of clause 16.2 will apply.

## 5.4 Remediation and Grant if Port ceases operation

If the State gives:

- (a) the notice under clause 5.1(b) that the Port will not operate beyond the End of Precinct Life; or
- (b) the notice referred to in clause 5.2(a) that the Port will cease operation,

then, subject to any agreement contemplated under clause 5.2(c), the State must carry out Remediation and Rehabilitation Works for the Port Land in accordance with its obligations under clause 6 and Grant the Port Land to the Native Title Party in accordance with clause 7.

## 6. Remediation of Precinct Land and Facilities

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### 6.1 State to remediate Precinct Land and Facilities following End of Precinct Life

- (a) Subject to:
  - (i) clause 5 and this clause 6; and
  - (ii) any agreement between the parties under which it is agreed that any Facilities will be transferred to the Native Title Party,the State will cause the Remediation and Rehabilitation Works to be carried out as soon as reasonably practicable following End of Precinct Life in accordance with this clause 6.
- (b) The Native Title Party will have no liability under this Agreement for Remediation and Rehabilitation Works, unless the State and the Native Title Party otherwise agree.

### 6.2 LNG Precinct Baseline Report

- (a) Unless prepared earlier, within six months of the Commencement Date, the State will prepare a report which identifies the current uses, any existing Facilities, the environmental condition and the presence of any known or suspected Contamination on the LNG Precinct (including for the avoidance of doubt the Industrial Precinct, Third Party Contractors' Site, Workers' Accommodation Site and Port Land) (*LNG Precinct Baseline Report*).
- (b) The aspects of the LNG Precinct Baseline Report relating to known or suspected Contamination will be reviewed by a contaminated sites auditor accredited under the CS Act.
- (c) The LNG Precinct Baseline Report will be used to inform the extent of Remediation and Rehabilitation Works required at the End of Precinct Life.

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- (d) As soon as practicable after preparing the LNG Precinct Baseline Report under paragraph (a), the State will provide the Native Title Party with a copy of the LNG Precinct Baseline Report. The Native Title Party may provide comments on the LNG Precinct Baseline Report within 3 months of the State providing the Report.
- (e) The State, in consultation with the Native Title Party, will prepare and publish a final LNG Precinct Baseline Report which:
  - (i) takes into account any comments received from the Native Title Party under paragraph (d); and
  - (ii) in the State's discretion will include the Native Title Party's comments, within 3 months of receiving comments from the Native Title Party on the Report under paragraph (d).

## **6.3 Remediation and Rehabilitation Works management plan**

As soon as practicable following the making of a Closure Decision, the parties will establish a Remediation and Rehabilitation Works management plan consistent with the principles outlined in this clause 6.

## **6.4 Carrying out of Remediation and Rehabilitation Works**

- (a) The State shall cause to be carried out the Remediation and Rehabilitation Works in accordance with the management plan developed pursuant to clause 6.3 and the remainder of this clause 6.4.
- (b) The Remediation and Rehabilitation Works must be designed to remediate and rehabilitate the LNG Precinct to a condition:
  - (i) consistent with applicable legislation, policy and relevant standards (including those relating to Contamination and environmental rehabilitation) at the time the Remediation and Rehabilitation Works are to be carried out;
  - (ii) having regard to the condition of the LNG Precinct as determined in the LNG Precinct Baseline Report; and
  - (iii) having regard to the use made of the LNG Precinct prior to the commencement of the Remediation and Rehabilitation Works.
- (c) Without affecting its obligation under paragraph (a) or elsewhere in this Agreement, the State may subcontract or delegate to a Proponent (including by an obligation imposed on a Proponent under the Project Rights) or to third parties at its absolute discretion to carry out any of the Remediation and Rehabilitation Works.
- (d) For the avoidance of doubt, the subcontracting or delegation by the State under paragraph (c) does not, as between the State and the Native Title Party, relieve the State from its obligations under this Agreement to carry out the Remediation and Rehabilitation Works.
- (e) Once the State considers the Remediation and Rehabilitation Works are complete, the State will procure the preparation of a report which sets out whether the Remediation and Rehabilitation Works have been carried out and the objectives in paragraph (b) of this



# Browse (Land) Agreement

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clause have been met (*Environmental Status Report*). The report must be prepared by a suitably qualified expert.

- (f) As soon as practicable after completing the Environmental Status Report, the Native Title Party is to be given a copy of the Environmental Status Report. The Native Title Party may provide comments on the Environmental Status Report within 6 months of the Native Title Party receiving the Report. The State in its discretion will include the Native Title Party's comments in the Environmental Status Report prior to the submission (if any) of the Environmental Status Report to any regulatory body.
- (g) The State must consider the Native Title Party's comments on the Environmental Status Report, and:
  - (i) take such action as it considers appropriate (acting reasonably) to address the matters raised in the comments; and
  - (ii) give the Native Title Party a revised copy of the Environmental Status Report that sets out the State's response to the Native Title Party's comments and action taken (if any).

## 6.5 Completion of Remediation and Rehabilitation Works

The Remediation and Rehabilitation Works will be deemed to have been completed when one of the following takes place:

- (a) the State has provided an Environmental Status Report to the Native Title Party and the Native Title Party has either not given any comments under clause 6.4(f) within the period required or has notified the State that it agrees that the Remediation and Rehabilitation Works have been completed; or
- (b) an Expert appointed under clause 16.2 so determines,

(*Completion of Remediation*).

## 6.6 Dispute in relation to Remediation and Rehabilitation Works

If there is a dispute or difference or claim as to whether the Remediation and Rehabilitation Works have been completed, clause 16.2 will apply to the resolution of that dispute.

# 7. Grant of Precinct Land

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## 7.1 Grant of land following closure of the LNG Precinct

- (a) The obligations on the State in paragraphs (b) and (c) are conditional upon, and will not take effect in accordance with their terms until, each of the Taking Orders has been registered under the *Land Administration Act 1997* (WA).
- (b) Subject to paragraph (a), the State will Grant to the Native Title Party the land required for the Industrial Precinct, Third Party Contractors' Site and Workers' Accommodation Site (*Precinct Land*) following the End of Precinct Life and in accordance with the procedure set out in this clause 7.

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- (c) Subject to paragraph (a) and clauses 5 and 6, the State will Grant to the Native Title Party the Port Land following the End of Precinct Life and in accordance with the procedure set out in this clause 7.

## **7.2 State and Native Title Party to determine form of title**

- (a) As soon as is reasonably practicable following the End of Precinct Life, the State will consult with the Native Title Party as to the Native Title Party's desired use of the Precinct Land and Port Land and the appropriate title or interest in the Precinct Land and Port Land to be Granted in accordance with clause 7.3.
- (b) If, by a date 12 months after Completion of Remediation, the State and Native Title Party have not agreed on the appropriate form of title or interest in the Precinct Land and Port Land to be Granted to the Native Title Party the State will, as soon as is reasonably practicable after that date, Grant unconditional freehold title to the Precinct Land and Port Land in accordance with clause 7.3.

## **7.3 Administrative Body to hold Grant Land**

Unless the Native Title Party nominates an alternative body and the State agrees to that nomination, the Precinct Land and Port Land must be registered in the name of the Administrative Body who will hold the land on trust for the benefit of the Native Title Party.

## **7.4 State not liable**

The State is not liable for any Loss arising out of or connected with the Grant of any interest in the Precinct Land and Port Land to any person on the direction or advice of the Native Title Party.

## **7.5 Costs arising in relation to Grant**

- (a) The State will pay for the following establishment costs arising out of the Grant of the Precinct Land and Port Land:
  - (i) creation of title to the Precinct Land and Port Land and transfer of the title to the Administrative Body (including survey costs); and
  - (ii) registration fees at the Western Australian Land Information Authority (Landgate).
- (b) For the avoidance of doubt, the State is not liable to pay for:
  - (i) establishment costs not referred to in paragraph (a), including the provision of services to the Precinct Land and Port Land (including any which are a usual pre-condition to the creation of title) such as road upgrades, service connections and headworks charges, unless the State in its sole discretion agrees to pay for these costs; and
  - (ii) all holding costs including local government rates and other taxes that are normally borne by the land owner.
- (c) The Native Title Party agrees that the State will not pay the following costs arising out of the Grant of the Precinct Land and Port Land;
  - (i) all costs referred to in paragraph (b); and

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- (ii) any costs incurred by the Native Title Party under clause 7.1 or 7.2, other than those costs identified in paragraph (a).

## 8. Limitation of further LNG Development on the Kimberley Coastline

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- (a) The State agrees not to:
  - (i) operate, authorise or permit the operation of; or
  - (ii) Grant any right, title, interest, approval or permission which would have the effect of authorising,  
  
a Gas Processing Facility located on the Kimberley Coastline but outside the LNG Precinct.
- (b) In paragraph (a), **Gas Processing Facility** means a facility for the liquefaction of Petroleum produced from any area seaward of the low water mark of the mainland coast of Western Australia, but does not include:
  - (i) any other facility which uses or refines Petroleum; or
  - (ii) storage or transportation facilities.

## 9. Assignment

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- (a) The Native Title Party may not assign its rights and obligations under this Agreement unless the assignment is to a body (**Permitted Assignee**):
  - (i) as provided under paragraph (b); or
  - (ii) where the Native Title Party has obtained the consent of the State to the assignment, which consent shall not be unreasonably withheld.
- (b) Within 2 months of:
  - (i) a determination by the Federal Court under sections 56 and 57 of the Native Title Act of the Native Title Claim; and
  - (ii) the incorporation of a prescribed body corporate for the purposes of the Native Title Act which is or will be authorised to act as agent for the Native Title Party,the Native Title Party will assign its rights and obligations under this Agreement to the body which is the prescribed body corporate identified in that determination or incorporated as a consequence of the determination.
- (c) If the Native Title Party wishes to assign its rights and obligations, it must procure the Permitted Assignee to execute a deed by which the Native Title Party assigns and the Permitted Assignee assumes all of the Native Title Party's rights and obligations under this Agreement and by which the parties agree to vary this Agreement.
- (d) From the date of execution of the deed referred to in paragraph (c) the Native Title Party is released from further performance of this Agreement but remains liable for all obligations which accrued prior to the date of execution of the deed.
- (e) The Minister shall cause the deed referred to in paragraph (c) to be tabled in both Houses of Parliament.

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## 10. Variation

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### 10.1 Parties may vary Agreement

The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement or any other lease, licence, easement or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

### 10.2 Minister to table variations in Parliament

- (a) The Minister shall cause any agreement made pursuant to clause 10.1 in respect of any addition, substitution, cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (b) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

## 11. Term

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This Agreement terminates on the date when the last of the State's obligations under clauses 5, 6 and 7 has been fulfilled and either the State or the Native Title Party serves a notice to that effect.

## 12. Power to extend periods

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Notwithstanding any provision of this Agreement the Minister may at the request of the Native Title Party from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

## 13. Duties

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- (a) Subject to paragraph (b), the State must pay all duties on and in relation to:
  - (i) this Agreement;
  - (ii) any instrument, document or transaction to which the State is a party required by this Agreement; and
  - (iii) any instrument or document required under any relevant Law in connection with any transaction to which the State is a party required by this Agreement,even if another party is primarily liable for the payment of the duty.
- (b) The State will not pay any duties on and in relation to any dutiable transaction:
  - (i) to which the State is not a party; and

# Browse (Land) Agreement

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- (ii) which does not arise out of an obligation of the State contemplated by this Agreement.

## 14. Notices

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### 14.1 Manner of notice

Any notice required to be given to a party under this Agreement:

- (a) must be in writing and in English and signed by or on behalf of the sending party;
- (b) addressed to that party in accordance with the details nominated in clause 14.2 below (or any alternative details nominated to the sending party by Notice); and
- (c) shall either be left at the party's address specified in clause 14.2 or sent to the party's address or fax number specified in clause 14.2. If it is sent by mail, it is taken to have been received 7 days after it is posted. If it is sent by fax, it is taken to have been received when the sender's facsimile system generates a message confirming that the notice was transmitted in its entirety to the facsimile number of the recipient.

### 14.2 Parties' notice details

The parties' addresses and fax numbers for the receipt of notices are, unless otherwise advised in writing:

- |      |                            |  |
|------|----------------------------|--|
| (i)  | to the State:              | Minister for Lands<br>Level 10 Dumas House<br>2 Havelock St<br>West Perth WA 6005<br>Fax Number: (08) 9226 4050      |
| (ii) | to the Native Title Party: | C/- Chief Executive Officer<br>Kimberley Land Council<br>PO Box 2145<br>Broome WA 6725<br>Fax Number: (08) 9193 6279 |

## 15. Applicable law

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This Agreement is to be interpreted according to the law for the time being in force in Western Australia.

# Browse (Land) Agreement

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## 16. Dispute Resolution

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### 16.1 General dispute resolution

- (a) Except as provided in this clause, any dispute or difference between the State and the Native Title Party arising out of this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement must, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* (WA) and each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (b) Except where otherwise provided in this Agreement, the provisions of this clause will not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (c) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either the State or the Native Title Party, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

### 16.2 Dispute as to terms of Port Lease or Remediation and Rehabilitation Works

- (a) This clause 16.2 applies to:
  - (i) a dispute between the State and the Native Title Party as contemplated in clause 5.3; or
  - (ii) a dispute between the State and the Native Title Party as contemplated in clause 6.6,(each a **Dispute**) and not otherwise.
- (b) If there is a Dispute, either party (in this clause the **Referring Party**) may give written notice to the other party of the Dispute, specifying in reasonable detail the nature of the Dispute, and the matters on which the parties are unable to agree at the date of the notice of dispute.
- (c) As soon as possible after the giving of a notice of dispute representatives of the Native Title Party and of the State (each such representative having full authority from their respective principals to resolve the Dispute) shall meet and attempt to resolve the Dispute in good faith.
- (d) If the Dispute is not resolved within 28 days of the giving of a notice of dispute, then the Dispute must be referred to expert determination in accordance with the following provisions:
  - (i) the Referring Party must refer the Dispute to the Australian Commercial Disputes Centre Limited (**ACDC**) by requesting in writing that the ACDC administer the resolution of the Dispute in accordance with this clause and the ACDC Expert

## Browse (Land) Agreement

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Determination Guidelines and within 14 days of receiving the request select and notify the parties of the members of a panel of three independent persons who would be suitably qualified to determine the Dispute (the **Panel**), together with the terms and conditions on which those persons would be prepared to be engaged. The Referring Party must send to the other party a copy of that written request on the same day it is sent to the ACDC;

- (ii) within 7 days after the receipt of the details of the Panel from the ACDC, the parties must agree on an expert selected from the Panel to determine the Dispute (the **Expert**). If the parties fail to agree on the expert within 7 days, either party may request the Chief Executive Officer of the ACDC (or his or her delegate) to nominate a suitably qualified expert from the Panel. The expert agreed or nominated under this paragraph shall be appointed by the parties as the Expert on the terms and conditions notified by the ACDC in accordance with paragraph (i) in the absence of any other agreement between the parties and the Expert on the Expert's terms and conditions of engagement;
- (iii) if the ACDC is no longer operating at the time of the Dispute, the parties must in good faith select a body that has as one of its objects the promotion of alternative dispute resolution, to perform the functions entrusted to the ACDC in paragraphs (i) and (ii);
- (iv) neither party may challenge or dispute the nomination or appointment of the Expert under this clause except in the case where there is a reasonable apprehension of, or actual, conflict of interest or apprehended bias that can be readily identified to the satisfaction of either the Chief Executive Officer of the ACDC (or his or her delegate) or the Expert both acting reasonably;
- (v) the parties must provide the Expert with a copy of this Agreement and the notice of dispute;
- (vi) each party may, within 21 days of the appointment of the Expert, make one written submission to the Expert as to how the Expert should resolve the Dispute;
- (vii) the Expert must by notice to the parties and within 42 days of their appointment determine the Dispute, having regard to their own expertise and the submissions of the parties;
- (viii) upon submission by either party, the Expert may amend the determination or finding to correct:
  - (A) a clerical mistake;
  - (B) an error from an accidental slip or omission; or
  - (C) a material miscalculation of figures or a material mistake in the description of any person, thing or matter;
- (ix) the determination by the Expert under this clause is final and binding on the parties in the absence of manifest error and neither party may commence proceedings in a court of competent jurisdiction unless that party has complied with this clause and any such proceeding must be commenced within 6 months of the Expert's

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determination. The determination of the Expert shall be treated as final and binding on the parties prior to the resolution of those proceedings but in any case subject to those proceedings;

- (x) the costs of the Expert shall be borne equally by each of the parties to the Dispute;
- (xi) the Expert must act as an independent expert and not an arbitrator; and
- (xii) the dispute resolution proceedings under this clause are not arbitration proceedings under the *Commercial Arbitration Act 1985* (WA) or otherwise.

### 17. Warranty

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The KLC on its own behalf and for and on behalf of the Native Title Party represents and warrants that:

- (a) it has been validly and lawfully instructed by the Native Title Party to enter into this Agreement; and
- (b) all necessary authorisations have been obtained:
  - (i) to enable the Native Title Party to enter into this Agreement; and
  - (ii) to enable the KLC to enter into this Agreement.



# Browse (Land) Agreement

Executed as an agreement in the State of Western Australia:

Signed by The Honourable Brendon John Grylls MLA for and on behalf of the State of Western Australia in the presence of:

Witness Signature

GARY HAMLEY

Print Name

Signature

Executed in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) by the Kimberley Land Council for and on behalf of the Native Title Party (in every respect other than clause 17 in which respect it is signing both as agent for the Native Title Party and in its own capacity):

Director

Print Name

Witness

Print Name

Director

Print Name

Witness

Print Name