



# **BROWSE LNG PRECINCT PROJECT AGREEMENT**

**June 2011**

# Browse LNG Precinct Project Agreement

State of Western Australia  
Goolarabooloo Jabirr Jabirr Peoples  
Woodside Energy Limited  
Broome Port Authority  
LandCorp

# Browse LNG Precinct Project Agreement

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<b>Date</b>	30 June 2011
<b>Parties</b>	<ol style="list-style-type: none"><li><b>The State of Western Australia</b>, acting through the Premier of the State of Western Australia, the Honourable Colin James Barnett MLA (<i>State</i>).</li><li><b>Minister for Lands</b>, a body corporate constituted under section 7(1) of the <i>Land Administration Act 1997</i> (WA) (<i>Minister for Lands</i>).</li><li><b>Land Authority of Western Australia</b>, established under section 5 of the <i>Western Australian Land Authority Act 1992</i> (WA), of Wesfarmers House, 40 The Esplanade, Perth, Western Australia, 6000 (<i>LandCorp</i>).</li><li><b>Broome Port Authority</b>, established under section 4 of the <i>Port Authorities Act 1999</i> (WA), of 401 Port Drive, Broome, Western Australia 6725 (<i>Port Authority</i>).</li><li><b>Woodside Energy Limited</b> (ABN 63 005 482 986) of 240 St Georges Terrace, Perth, Western Australia 6000 (<i>Foundation Proponent</i>).</li><li><b>Rita Augustine, Anthony Edward Watson and Ignatius Paddy in their capacity as the applicant under section 61 of the Native Title Act for and on behalf of themselves and the Native Title Claim Group</b>, care of Principal Legal Officer, Kimberley Land Council, PO Box 2145 Broome, Western Australia, 6725 (<i>Native Title Party</i>).</li></ol>
<b>Recitals</b>	<p>A The Native Title Party is the registered native title claimant for the land and waters the subject of the Native Title Claim. The area the subject of the Native Title Claim includes the land and waters in the vicinity of James Price Point. The Native Title Claim Group say this about their country:</p> <p style="padding-left: 40px;"><i>Wanjubjin Bur (Mother Country)</i></p> <p style="padding-left: 40px;"><i>This place is Mother's country.</i></p> <p style="padding-left: 40px;"><i>It gives life.</i></p> <p style="padding-left: 40px;"><i>It is a place with gullies and springs that fill with water in the rains.</i></p> <p style="padding-left: 40px;"><i>When I am far from Mother's country, she is always in my heart, travelling with me.</i></p> <p>B The State intends establishing the LNG Precinct (to be controlled and managed by the State) in the vicinity of James Price Point.</p> <p>C By agreement dated 6 February 2008, the State and the Commonwealth Government of Australia entered into an agreement pursuant to section 146(1) <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) relating to the assessment of actions under the plan</p>

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- for the Browse Basin Common User Liquefied Natural Gas Hub and associated activities (*Strategic Assessment Agreement*).
- D The State, the Foundation Proponent, the Native Title Party and the KLC, authorised by the Native Title Claim Group, have been negotiating to reach broad agreement on the establishment of the LNG Precinct. On 21 April 2009, the State, the KLC, authorised by the Native Title Claim Group, and the Foundation Proponent entered into a Heads of Agreement as the basis for establishing the LNG Precinct.
- E The State has issued notices, with a notification date of 22 September 2010, of intention to take interests, including any native title rights and interests under:
- (a) section 29 of the Native Title Act and section 170 of the LAA, in relation to the s29 Notice area; and
  - (b) section 24MD(6A) and sections 24MD(6A) and (6B) of the Native Title Act and section 170 of the LAA in relation to the Subdivision M Notices area.
- The State also issued notices, with a notification date of 22 September 2010, under subdivision N of the Native Title Act in relation to the declaration of the Port and other matters.
- F In accordance with Part 2, Division 3, Subdivision P of the Native Title Act, the parties have negotiated this Agreement in good faith. The parties also acknowledge that they have complied with the requirements of Part 2, Division 3, Subdivisions M and N of the Native Title Act.
- G The Native Title Party and the members of the Native Title Claim Group have authorised the entering into of this Agreement and the effect of the contents of this Agreement, including the giving of all consents and releases and the doing of all things.
- H This Agreement is an agreement under section 28(1)(f) and section 31 of the Native Title Act:
- (a) in satisfaction of the Native Title Party's procedural rights under the Native Title Act, including subdivisions M, N and P;
  - (b) in satisfaction of the Native Title Party's procedural rights under the LAA, including Parts 9 and 10; and
  - (c) in full and final satisfaction of any Compensation to which the Native Title Party is or may be entitled to under the Native Title Act and as otherwise provided under this Agreement.
- I The parties recognise that the establishment of the LNG Precinct represents an opportunity to address Indigenous disadvantage for Aboriginal people across the Kimberley. Accordingly, in addition to the benefits provided in connection with the effect of the LNG Precinct on the Native Title Claim Group, the parties have committed to delivering regional benefits through the Regional Benefits Agreement to assist and improve the educational, health, social and economic wellbeing of Aboriginal people across the Kimberley.

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J	<p>The State and the Native Title Party have contemporaneously entered into the State Agreement in relation to:</p> <ul style="list-style-type: none"><li>(a) the remediation and rehabilitation of the land within the LNG Precinct at the End of Precinct Life;</li><li>(b) the grant of title to land within the LNG Precinct for the benefit of the Native Title Claim Group at the End of Precinct Life; and</li><li>(c) limitations on further LNG development on the Kimberley coast.</li></ul>
K	<p>In the spirit of reconciliation, cooperation and partnership, the Native Title Party, the State, LandCorp, Port Authority and the Foundation Proponent wish to develop and conduct their relationship in a spirit of goodwill, mutual advantage and mutual recognition of their respective interests. This Agreement forms the foundation of that relationship and sets out the terms on which the Native Title Party has agreed to the development of the LNG Precinct.</p>

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**It is agreed** as follows.

## Chapter 1 – General Provisions

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Access Roads** 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, as referred to in the Subdivision M Notices and set out on the map contained in Schedule 1. 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.

**Accommodation Facilities** means a Proponent's workers' accommodation and ancillary facilities within that area of the Workers' Accommodation Site to which title or an interest has been Granted to that Proponent.

**Activities** means the lawful activities, works, processes and operations of each Site Manager (as the case may be) as permitted under the Project Rights and approved in the Endorsed Plan and Project Approval and means, in relation to:

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- (a) the Foundation Proponent: the Foundation Proponent Project and all operations, works or activities carried out by the Foundation Proponent for the purposes of the Foundation Proponent Project within the LNG Precinct;
- (b) an Additional Proponent: the Additional Proponent Project and all operations, works or activities carried out by an Additional Proponent for the purposes of the Additional Proponent Project within the LNG Precinct;
- (c) the Port Authority: all operations, works or activities carried out by the Port Authority within the Port;
- (d) LandCorp: all operations, works or activities carried out by LandCorp within the LNG Precinct;
- (e) the Native Title Party: all operations, works or activities carried out by the Native Title Party within the Third Party Contractors' Site and the LNG Precinct; and
- (f) the State: all operations, works or activities carried out by the State within the LNG Precinct.

**Additional Proponent** means a person or persons appointed by the State in accordance with clause 36 to develop and conduct an Additional Proponent Project in the LNG Precinct who has ratified this Agreement by signing a Ratification Deed.

**Additional Proponent Project** means the Additional 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 hydrocarbons and the establishment and operation of the Precinct Supply Base;
- (b) pre-treatment and processing of hydrocarbons into LNG;
- (c) the storage, loading and transporting of LNG; and
- (d) all things necessary and incidental to paragraphs (a) to (c) above.

**Administrative Body** means the body corporate established under clauses 20 and 21.

**Administrative Body Default** has the meaning given in clause 25.1.

**Administrative Body Entity** means a wholly owned subsidiary of the Administrative Body acting in its own right or as the trustee of a trust (which may be a discretionary or charitable trust) provided the trust deed provides those matters referred to in clause 22. For the avoidance of doubt, a body corporate may be an Administrative Body Entity whether it is established under the CATSI Act or the Corporations Act.

**Administrative Body Office Land** means Lot 363, located on the corner of Ivy Link and Gwendoline Crossing in the Blue Haze Light Industrial Estate, Broome.

**Administrative Body Ratification Date** means the date on which a Ratification Deed is executed by the Administrative Body in accordance with clause 20.3.

**Administrative Funds** means funding referred to in clause 21.14.

**Agreement** means this agreement and includes all schedules and annexures and as amended from time to time.

# Browse LNG Precinct Project Agreement

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**Ancillary Infrastructure** means all infrastructure or works which are necessary or incidental but subordinate to the design, investigation, construction, operation, maintenance or decommissioning of the LNG Precinct, or a Proponent Project, including roads, gas pipelines, water pipelines or conveyance systems, transmission lines, bores, wells and other water facilities, compressor stations, pumping stations and cathodic protectors, but does not include airstrips or passenger transportation depots.

**Approval** means an approval from a Government Agency and includes:

- (a) any clearance, consent, registration, filing agreement, notarisation, certificate, licence, approval, permit, accreditation, authority, entitlement or exemption from a Government Agency; and
- (b) in relation to anything which will be fully or partly prohibited or restricted by Law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Arbitral Tribunal** has the meaning given in clause 19.5.

**ASIC** means the Australian Securities and Investment Commission.

**ATSIHP Act** means the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

**Australian Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Australian Auditing Standards** means the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Benefits** means monetary and non-monetary benefits, Compensation, commitments and all consideration provided by the State and any Proponent to the Native Title Party for and on behalf of the members of the Native Title Claim Group under this Agreement, the Early Benefits Letter, the State Agreement and the Regional Benefits Agreement.

**Board** has the meaning given in clause 21.6.

**Browse Joint Venture** means the unincorporated joint ventures for the Petroleum Title Areas which as at the date of this Agreement are between Woodside Energy Ltd, BHP Billiton Petroleum (North West Shelf) Pty. Ltd., BP Developments Australia Pty. Ltd., Chevron Australia Pty Ltd and Shell Development (Australia) Proprietary Limited or any joint venture replacing all or part of the Browse Joint Venture.

**Browse Joint Venturer** means, from time to time, a party to or owner of the Browse Joint Venture.

**Buffer Zone** means the buffer zone created by the State under clause 4.2(d), the boundary of which will be approximately 3 km landward of the land areas of the Port and the Industrial Precinct.

**Business Day** means a weekday on which banks are open in Perth.

**Business Development Organisation** means an organisation nominated by the Native Title Party which has, in the reasonable opinion of the Foundation Proponent, appropriate governance



# Browse LNG Precinct Project Agreement

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procedures in place and a capability in business development capacity building for Indigenous persons in Australia.

**CAA** means the *Commercial Arbitration Act 1985* (WA).

**Capacity Partners** means third parties capable of entering into a joint venture, partnership or other similar arrangement with members of the Administrative Body and having particular skills, experience, training, contacts or financial capacity that is beneficial to the relevant members of the Administrative Body.

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**CATSI Act Non-Compliance** means if at any time after the Administrative Body Ratification Date one or more of the following occurs:

- (a) the Administrative Body fails to comply with sections 69-20, 304-5, 180-1, 322, 327 or 330 of the CATSI Act;
- (b) the Board of the Administrative Body does not take action specified in a notice under section 439-20 of the CATSI Act within the period specified in the notice; or
- (c) the CATSI Registrar is granted an injunction under 576-25 of the CATSI Act.

**CATSI Corporation** means a body incorporated under the CATSI Act.

**CATSI Registrar** means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed under section 653-1 of the CATSI Act.

**Chair** means the person occupying the position of chair of the board of the Corporate Trustee.

**Chairperson** has the meaning given in clause 19.5.

**Charitable Trust Deed** means a charitable purposes trust deed capable of endorsement by the Australia Taxation Office as an Income Tax Exempt Charity.

**Claim** means any claim, application, action, dispute, suit, proceedings, demand and includes without limitation any claim for Compensation, Benefits or Loss.

**Commencement Date** means the date that this Agreement is signed by all of the State, LandCorp, the Port Authority, the Native Title Party and the Foundation Proponent.

**Compensation** means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under Law or otherwise, including in connection with TO Rights or any actual and/or potential extinguishment of, and/or effect or negative impact on, any native title or claimed native title as a consequence of or arising out of or in relation to the:

- (a) acts comprised in the s29 Notice, Subdivision M Notices and Subdivision N Notices;
- (b) the Project Rights; and
- (c) the establishment and operation of the LNG Precinct.

**Confidential Information** has the meaning given to that term in clause 43.2.

**Corporate Entities** means, jointly or severally as the context requires, the Administrative Body and the Corporate Trustee.

**Corporate Trustee** means the body corporate established under clauses 20 and 22.

# Browse LNG Precinct Project Agreement

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**Corporate Trustee Ratification Date** means the date on which a Ratification Deed is executed by the Corporate Trustee in accordance with clause 20.3.

**Corporations Act** means the *Corporations Act 2001* (Cth).

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

**Cultural Awareness Training Schedule** means the cultural awareness training schedule referred to in clause 35.

**Cultural Heritage Management Schedule** means the cultural heritage management schedule referred to in clause 31.

**Dampier Peninsula** means the Dampier Peninsula region of Western Australia as depicted on the map in Schedule 1.

**Dampier Peninsula Planning Strategy** means the strategic land use and infrastructure plan developed by the Western Australian Planning Commission and the Department of Planning.

**Decommissioning** means the process of decommissioning a Proponent Project, in accordance with the Decommissioning Management Schedule.

**Decommissioning Management Schedule** means the decommissioning management schedule referred to in clause 38 and set out in Schedule 11.

**Deed of Assignment and Assumption** means a deed by which a person agrees to be bound by the terms of this Agreement and to assume rights and obligations of a Party under this Agreement to the extent of the interest assigned by that Party under clause 51, in a form substantially similar to that set out in Schedule 18.

**Default** means a Native Title Party Default, Administrative Body Default or a Trust Default as the case may be.

**Default Notice** has the meaning given in clause 24.2 or clause 25.5 as relevant.

**Determination** means a determination of native title, including a determination of the Native Title Claim, by the Federal Court which has not been appealed within 21 days, or if an appeal has been lodged, the final determination of that appeal or any subsequent appeal.

**Discloser** has the meaning given in clause 43.

**Early Benefits Letter** means the letter from the State to the Native Title Party dated 3 November 2009 in relation to the provision of early benefits.

**Economic Development Fund** means the fund established under clauses 9 and 21.

**Economic Development Fund Trust** means a trust, established under a Trust Deed that is consistent with the provisions of clause 9 and the remainder of this Agreement, that is able to hold a payment made under clause 9.1 and establish the Economic Development Fund.

**EDF Report** means an annual report prepared by the Administrative Body on the operation of the Economic Development Fund under clause 9.6.

**End of Precinct Life** has the meaning given in the State Agreement and which must not be before the end of a Proponent Project.

**Endorsed Plan** means the plan for the LNG Precinct as endorsed by the Commonwealth Minister for the Environment pursuant to the Strategic Assessment Agreement.

# Browse LNG Precinct Project Agreement

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**Englobo Land** has the meaning given in clause 13.4(a)(ii).

**Environment** includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

**Environment Management Schedule** means the environmental management schedule referred to in clause 32.

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

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

**Existing Approvals** means the Approvals set out in Schedule 19.

**Existing Titles** means the Titles set out in Schedule 19.

**Export** means leaves a Proponent Project by sea.

**Facilities** means man made structures built within the LNG Precinct.

**Financial Year** means 12 months commencing on 1 July and ending on 30 June.

**First LNG Cargo** means, as applicable:

- (a) the date upon which the first LNG cargo is produced from the Foundation Proponent Project and loaded on to a ship destined for a Foundation Proponent Project customer; or
- (b) the date upon which the first LNG cargo is produced from an Additional Proponent Project and loaded on to a ship destined for an Additional Proponent Project customer

**Foundation Proponent Benefits** means the Benefits provided or to be provided by the Foundation Proponent under the Regional Benefits Agreement and this Agreement.

**Foundation Proponent Business Development and Contracting Opportunities Management Schedule** means the management schedule referred to in clause 34.3.

**Foundation Proponent Employment and Training Management Schedule** means the management schedule referred to in clause 33.3.

**Foundation Proponent Project** means the Foundation 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 hydrocarbons and the establishment and operation of the Precinct Supply Base;
- (b) pre-treatment and processing of hydrocarbons into LNG;
- (c) the storage, loading and transporting of LNG; and
- (d) all things necessary and incidental to paragraphs (a) to (c) above.

**Future Ancillary Approval** means an Approval described in clause 4.4(c).

**Future Ancillary Title** means a Title for Ancillary Infrastructure, and which is not a Title to which clause 4.2 applies.

# Browse LNG Precinct Project Agreement

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**Government Agency** means any government or governmental or semi governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government Minister, agency, instrumentality or entity.

**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.

**Grant Land** has the meaning given in clause 11.

**Grant Land ILUA** means an indigenous land use agreement in a form substantially similar to that set out in schedule 17.

**GST** has the same meaning as in the GST Law, where GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Heads of Agreement** means the Heads of Agreement between the State of Western Australia and the Kimberley Land Council Aboriginal Corporation on its own behalf and for the Goolarabooloo Jabirr Jabirr Native Title Claimants, and Woodside Energy Limited dated 21 April 2009.

**Identified Amount** has the meaning given in clause 25.5.

**IHF Report** means an annual report prepared by the Administrative Body on the operation of the Indigenous Housing Fund under clause 10.6.

**Index** means the Consumer Price Index (All Groups) number Australia Series ID A2325846C or if that index is no longer published an equivalent index published by the Australian Bureau of Statistics and nominated by a Party pursuant to clause 56.2.

**Indigenous Housing Fund** means the fund referred to in clause 10 of this Agreement.

**Indigenous Housing Fund Trust** means a trust, established under a Trust Deed consistent with the provisions of clause 10 and the remainder of this Agreement, that is able to hold payment made under clause 10.1 and establish the Indigenous Housing Fund.

**Industrial Lease** means a lease or sub-lease Granted to a Proponent by LandCorp within the Industrial Precinct for the purposes of the construction, operation, maintenance and decommissioning of a Proponent's LNG facility.

**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 s29 Notice and set out on the map contained in Schedule 1 comprising:

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

**Interest Rate** means the Reserve Bank of Australia Cash Rate plus 1 per cent. If the Reserve Bank of Australia ceases to publish that rate, an alternative published base rate of interest will apply which will, failing agreement between the parties be determined by a person agreed upon by the parties and, in the absence of such agreement, by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make a binding determination acting as an expert.

**Joint Venture Participant** means a party to or owner of a joint venture with an Additional Proponent for the purposes of an Additional Proponent Project.

# Browse LNG Precinct Project Agreement

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**Kimberley** means the Kimberley region of Western Australia as depicted on the map in Schedule 1.

**Kimberley Indigenous People** means Indigenous people residing in the Kimberley from time to time.

**KLC** means the Kimberley Land Council Aboriginal Corporation ABN 96 724 252 047 ICN 21 of 36 Pembroke St, Broome WA 6725, which is at the date of this Agreement an incorporated body under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and a Representative Aboriginal and Torres Strait Islander Body pursuant to the Native Title Act for the Kimberley region of Western Australia.

**LAA** means the *Land Administration Act 1997* (WA).

**Land Access Management Schedule** means the land access management schedule referred to in schedule 10.

**Land Trust** means a trust established under a Trust Deed for the purpose of holding land for the benefit of the Native Title Party including land Granted pursuant to clause 11 and the State Agreement, the Administrative Body Office Land and the Native Title Party Housing Land.

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

**Lender** means any person providing finance or financial support to a Proponent in any form in connection with that Proponent's Project and includes any export credit agency, funding agency, bondholder, insurance agency or similar institution in relation to the provision of finance or financial support.

**LNG** means all or any of liquefied natural gas, condensate and liquefied petroleum gas.

**LNG Precinct** means the development the subject of the Strategic Assessment Agreement required to produce, store and ship LNG, including:

- (a) the hydrocarbon processing facility;
- (b) all land, waters, infrastructure and land or water use (including shipping) associated with or required for the hydrocarbon processing facility;
- (c) the Access Roads, Workers' Accommodation Site, Third Party Contractors' Site, Industrial Precinct, Pipeline Corridors, Service Corridors, Buffer Zone, Port Land and Port Waters; and
- (d) ancillary facilities including power, gas and water processing to support it,

to be built in the vicinity of James Price Point within the area of the Native Title Claim.

**Local Indigenous Community** means, in the circumstances set out in clause 7.1, persons who would have been members of the Native Title Claim Group if the Native Title Claim were on foot or had been positively determined.

**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.

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**Main Roads** means the Commissioner of Main Roads constituted under section 7 of the *Main Roads Act 1930* (WA).

**Management Group** means the group referred to in clause 21.7.

**Management Schedules** means the schedules referred to in clause 30.

**Mining Act** means the *Mining Act 1978* (WA).

**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 Default** has the meaning given in clause 24.

**Native Title Party Directors** has the meaning given in clause 22.9.

**Native Title Party Housing Land** means the housing land to be provided pursuant to clause 13 and comprises the Stage 1 Housing Land, Stage 2 Housing Land, Stage 3 Housing Land and Englobo Land.

**New Native Title Party** has the meaning given in clause 7.2.

**Notice of Satisfaction** has the meaning given in clause 20.2.

**Other Benefits** means benefits outside of State Benefits and Proponent Benefits provided for in this Agreement that may arise out of the development of the LNG Precinct, including:

- (a) income or revenue from Native Title Party projects;
- (b) income, donations or assets provided to the Administrative Body; and
- (c) income, revenue or assets arising out of the Administrative Body performing its obligations under this Agreement.

**Parties** means the parties to this Agreement.

**Party Nominated Arbitrators** has the meaning given in clause 19.5.

**Personnel** means a Party's agents, officers, employees, contractors, subcontractors and professional advisers.

**PBF Report** has the meaning given in clause 17.7.

**Petroleum Title Areas** means the retention leases WA-28-R, WA-29-R, WA-30-R, WA-31-R, WA-32-R under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth), R/2 under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) and TR/5 under the *Petroleum (Submerged Lands) Act 1982* (WA) and any title, including any production licence, which is granted by way of conversion, replacement or substitution for those retention leases.

**Pipeline Corridors** means the area as referred to in the Subdivision M Notices and set out on the map contained in Schedule 1 comprising:

- (a) an area of approximately 245 ha within the 435.197 ha area comprising:



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- (i) 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 423 ha area marked E on Deposited Plan 68246; and
  - (ii) the area of 12.197 ha of Lot 3007 on Deposited Plan 68252; and
- (b) an area of approximately 200 ha within the 340.377 ha area comprising:
  - (i) 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 335.4 ha area marked F on Deposited Plan 68246; and
  - (ii) the area of 4.977 ha area of Lot 3004 on Deposited Plan 68251.

**Port** means the port vested in and operated by the Port Authority under the Port Authorities Act within the Port Land and Port Waters as depicted as such on the map in Schedule 1.

**Port Authorities Act** means the *Port Authorities Act 1999* (WA).

**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 referred to in the Subdivision M Notices and set out on the map contained in Schedule 1.

**Port Waters** means that area as referred to in the Subdivision N Notices and set out on the map contained in Schedule 1.

**Precinct Agreements** means this Agreement and the:

- (a) Regional Benefits Agreement; and
- (b) State Agreement.

**Precinct Approval** has the meaning given in clause 4.4(a).

**Precinct Management Committee** or **Committee** means the committee established under clause 27.

**Precinct Notices** means the s29 Notice, the Subdivision M Notices and the Subdivision N Notices.

**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 hydrocarbons to the LNG Precinct or that Proponent's activities relating to the exploration for or production of hydrocarbons intended for supply to the LNG Precinct.

**Principal Acts** means the Native Title Act, LAA, *Racial Discrimination Act 1975* (Cth), Port Authorities Act, *Petroleum Pipelines Act 1969* (WA), *Petroleum and Geothermal Energy Resources Act 1967* (WA), *Petroleum (Submerged Lands) Act 1982* (WA), *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth), *Western Australian Land Authority Act 1992* (WA) and the *Main Roads Act 1930* (WA).

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**Project Approval** means a Commonwealth and State Governments' approval for the LNG Precinct, Foundation Proponent Project or the Additional Proponent Project (as the case may be) pursuant to the Strategic Assessment and any approvals derived from the Strategic Assessment.

**Project FID** means the date on which the Foundation Proponent approved the final investment decision for the Foundation Proponent Project.

**Project Rights** means all and any:

- (a) Title;
- (b) Approval;
- (c) Existing Title;
- (d) Existing Approval;
- (e) Future Ancillary Title;
- (f) Future Ancillary Approval;
- (g) regulations or by-laws or other legislative or administrative acts necessary to be made by the State as required for the construction, operation, maintenance, decommissioning and rehabilitation of the LNG Precinct,

Granted or Renewed in relation to the area of the LNG Precinct.

**Proponent** means a Foundation Proponent or any Additional Proponent.

**Proponent Benefits Fund** means the fund referred to in clause 17 of this Agreement.

**Proponent Benefits Fund Trust** means a trust, established under a Trust Deed consistent with the provisions of clause 17 and the remainder of this Agreement, that is able to hold payment made under clauses 17.1 and 17.2 and establish the Proponent Benefits Fund.

**Proponent Closure Decision** means a decision to end a Proponent Project as notified under clause 37.1.

**Proponent Closure Notice** means a notice of a Proponent's decision to end a Proponent Project under clause 37.1.

**Proponent Decommissioning Plan** means the Site Manager Decommissioning Plan defined in the Decommissioning Management Plan.

**Proponent Project** means the Foundation Proponent Project or an Additional Proponent Project as the case may be.

**Ratification Deed** means a deed by which a person agrees to be bound by the terms of this Agreement and to assume certain rights and obligations under this Agreement, in a form substantially similar to that set out in Schedule 16.

**RCTI** has the meaning given in clause 40.5.

**Recipient** has the meaning given in clause 43.

**Rectification Period** has the meaning given in clause 25.5.

**Reference Base Period** means the period for which the Australian Bureau of Statistics declares from time to time that the Index is recalibrated to 100.00 (or is otherwise zeroed).



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**Regional Benefits Agreement** means the agreement entered into between the State, Foundation Proponent, Conservation Commission of Western Australia, Aboriginal Lands Trust, Aboriginal Affairs Planning Authority and the KLC to deliver Benefits to Indigenous people of the Kimberley region and executed on or about the date of this Agreement.

**Regional Benefits Body** means the body corporate established to administer Benefits under the Regional Benefits Agreement.

**Regional Component** has the meaning given in clause 19.6.

**Related Body Corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

**Renewal** means renewal, re-grant, re-making, extension, conversion, amalgamation, variation, replacement or substitution.

**Replacement Trustee** means the trustee referred to in clause 26.

**s29 Notice** means the notice as set out in Annexure 1, including any amendment to it or any notice issued in substitution or replacement for it (provided that the proposed Taking under such notice is for the same purpose, for no greater areas and within the areas notified under the notice set out in Annexure 1).

**Secured Foundation Proponent Date** means the date the Foundation Proponent becomes secured, being the later of:

- (a) Project FID; or
- (b) the Granting of the Foundation Proponent's Industrial Lease.

**Security Interest** includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of or arrangement with, any creditor to have its claim satisfied in priority to other creditors, or from the proceeds of, any asset.

**Service Corridors** 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 referred to in the Subdivision M Notices and set out on the map contained in Schedule 1. 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.

**Services** means the provision of public utility services to the same standard as are provided to residential lots in the Broome North Development by LandCorp.

**Site Manager** means, as the case may be:

- (a) the Foundation Proponent;
- (b) an Additional Proponent;

# Browse LNG Precinct Project Agreement

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- (c) the Port Authority;
- (d) the Native Title Party;
- (e) LandCorp; and
- (f) the State,

in relation to their respective Activities.

**Stage 1 Housing Land** has the meaning given in clause 13.2.

**Stage 2 Housing Land** has the meaning given in clause 13.3.

**Stage 3 Housing Land** has the meaning given in clause 13.4.

**State Agreement** means the agreement between the State and the Native Title Party intended to be a 'Government agreement' to which the *Government Agreements Act 1979* (WA) applies and executed on or about the date of this Agreement.

**State Employment and Business Development Management Schedule** means the management schedule referred to in clauses 33.2 and 34.2.

**State Implementing Agency** means the State Government Agency with responsibility for the implementation of this Agreement.

**Strategic Assessment** means the strategic assessment process contemplated by the Strategic Assessment Agreement and undertaken under Part IV of the EP Act and s146 of the EPBC Act in relation to the establishment of the LNG Precinct.

**Strategic Assessment Agreement** has the meaning given in Recital C.

**Subdivision M Notices** means the notices as set out in Annexure 2, including any amendment to it or any notice issued in substitution or replacement for it (provided that the proposed Taking under such notice is for the same purpose, for no greater areas and within the areas notified under the notice set out in Annexure 2).

**Subdivision N Notices** means the notices as set out in Annexure 3, including any amendment to it or any notice issued in substitution or replacement for it (provided that the proposed Taking under such notice is for the same purpose, for no greater areas and within the areas notified under the notice set out in Annexure 3).

**Suspension Notice** has the meaning given in clause 24.2 and clause 25.5 as the case may be.

**Taking** means the taking of rights and interests, including native title rights and interests, in the land comprised in the Precinct Notices or otherwise by the registration of a taking order under Part 9 of the LAA.

**Term** means the term of this Agreement, as set out in clause 41.

**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 referred to in the s29 Notice and set out on the map contained in Schedule 1.

**Title** means a title to, interest in or authority to land or waters including any lease, licence, pipeline licence, permit, authority, easement, tenure, gazettal, reservation, proclamation, dedication, or sub-interest.

# Browse LNG Precinct Project Agreement

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**TO Rights** means the Traditional Rights, and any other rights in relation to land or waters held by Aboriginal people in the LNG Precinct, other than rights obtained by Grant under statute.

**Traditional Rights** means the native title rights and interests claimed, and ultimately determined to be held as the case may be, by the Native Title Claim Group and other rights and interests held by members of the Native Title Claim Group under Aboriginal laws and customs in relation to and in respect of the LNG Precinct, including rights and interests which, although not recognised by Law are, subject to this Agreement, exercisable in relation to and in respect of the LNG Precinct.

**Trust** means a trust established pursuant to clause 22.6 of this Agreement.

**Trust Account** means an account to hold Trust Assets established in accordance with clause 22.7.

**Trust Assets** means the assets of any Trust.

**Trust Deeds** means, jointly or severally as the context requires, the Charitable Trust Deeds or discretionary trust deeds created by the Corporate Trustee pursuant to clause 22.5 and to be executed pursuant to 22.6.

**Trust Default** has the meaning given in clause 25.2.

**WAPC** means the Western Australian Planning Commission.

**Workers' Accommodation Lease** means a lease or sub-lease Granted to a Proponent by LandCorp within the Workers' Accommodation Site for the purposes of the construction, operation, maintenance and decommissioning of a Proponent's Accommodation Facilities.

**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 s29 Notice and set out on the map contained in Schedule 1.

## 1.2 Interpretation

In this Agreement, clause headings do not affect interpretation or construction and, unless the context otherwise requires:

- (a) words expressed in the singular include the plural and vice-versa;
- (b) words expressed in one gender include the other genders;
- (c) “including” and similar expressions are not, and must not be treated as, words of limitation;
- (d) if a word is defined its cognate meanings and other grammatical forms have a corresponding definition;
- (e) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- (f) a reference to a thing includes a part of that thing;
- (g) references to parts, clauses and Parties are references to parts and clauses of, and Parties to, this Agreement;
- (h) the clauses in this Agreement will prevail over any inconsistent provisions in any schedule or annexure to this Agreement;

# Browse LNG Precinct Project Agreement

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- (i) a reference to a party to this Agreement includes that party's successors and permitted assigns;
- (j) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (k) if a time period is specified and dates from a given day or the day of an act or event, the period of time is to be calculated as inclusive of that day;
- (l) monetary references are to Australian currency;
- (m) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (n) 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;
- (o) words and expressions defined in the Native Title Act have the same meaning where used in this Agreement;
- (p) references to statutes, regulations, ordinances and by-laws when contained in this Agreement include amendments, re-enactments or consolidations of any of them and a reference to a statute includes every regulation, proclamation, ordinance and by-law issued under that statute;
- (q) if a government department, authority, body or tribunal is replaced or made defunct, the reference to that body will include a reference to the replacement body or such other body that most closely performs the functions of the defunct body; and
- (r) a reference to an area is a reference to the land and waters comprised within that area.

## **1.3 Agreement takes effect as a deed**

This Agreement is executed as and takes effect as a deed.

## **2. Provision of Information**

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### **2.1 Information to be in a form that is readily understood**

Where, under this Agreement, a Party is required to provide information to another Party it must ensure that such information is explained in a manner that ought reasonably be readily understood by that other Party or, where applicable, by an expert engaged by that Party.

### **2.2 Sufficient time to consider information**

Where a Party is entitled to comment on or make recommendations in relation to any information or report provided to it and there is no timeframe set out in this Agreement in relation to the entitlement:

- (a) the Party providing the information must ensure that the recipient Party is given sufficient time and opportunity to reasonably consider and comment on the information; and
- (b) time will be of the essence.

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## **3. Warranties**

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### **3.1 Native Title Party warranties**

The Native Title Party represents and warrants that:

- (a) the Native Title Party has instructed the KLC to make all reasonable efforts to ensure that all persons who hold or may hold native title in relation to the area of the Native Title Claim have been identified;
- (b) the making of the Native Title Claim in accordance with section 251B of the Native Title Act is properly authorised;
- (c) the Native Title Claim Group has authorised those who sign this Agreement to enter into this Agreement in the manner required by the Native Title Act on behalf of the Native Title Claim Group and that the Native Title Party has the full power and authority to enter into and perform the obligations of the Native Title Party under this Agreement;
- (d) they have received independent legal and some technical advice during the negotiation of this Agreement and about the content and effect of this Agreement;
- (e) they enter into this Agreement as negotiation parties under sections 30A and 31 of the Native Title Act;
- (f) the consents and obligations of the Native Title Party under this Agreement have not been given on the basis of any gift, entertainment, commission, fee, rebate or other benefit of significant value to or from any director, officer, employee or agent of a Proponent, the State, LandCorp or the Port Authority or entering into any business arrangement with any director, officer, employee or agent of a Proponent, the State, LandCorp or the Port Authority (other than the Benefits); and
- (g) this Agreement is valid and binding, and enforceable in accordance with its terms against the Native Title Party.

### **3.2 Foundation Proponent warranties**

The Foundation Proponent represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement;
- (b) it (or any of its directors, employees or agents) has not provided any gift, entertainment, commission, fee, rebate or other benefit of significant value to the Native Title Party or entered into any business arrangement with any director, employee or agent of the Native Title Party to procure the consents and obligations of the Native Title Party under this Agreement (other than the Benefits); and
- (c) this Agreement is valid and binding, and enforceable in accordance with its terms against the Foundation Proponent.

### **3.3 State warranties**

The State represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement;

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- (b) it (or any of its officers, employees or agents) has not provided any gift, entertainment, commission, fee, rebate or other benefit of significant value to the Native Title Party or entered into any business arrangement with any director, employee or agent of the Native Title Party to procure the consents and obligations of the Native Title Party under this Agreement (other than the Benefits); and
- (c) this Agreement is valid and binding, and enforceable in accordance with its terms against the State.

## 3.4 Port Authority warranties

The Port Authority represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement;
- (b) this Agreement is duly executed in accordance with section 134(2) of the Port Authorities Act;
- (c) it (or any of its directors, employees or agents) has not provided any gift, entertainment, commission, fee, rebate or other benefit of significant value to the Native Title Party or entered into any business arrangement with any director, employee or agent of the Native Title Party to procure the consents and obligations of the Native Title Party under this Agreement (other than the Benefits); and
- (d) this Agreement is valid and binding, and enforceable in accordance with its terms against the Port Authority.

## 3.5 LandCorp warranties

LandCorp represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement;
- (b) this Agreement is duly executed in accordance with section 45(2) of the *Western Australian Land Authority Act 1992* (WA);
- (c) it (or any of its directors, employees or agents) has not provided any gift, entertainment, commission, fee, rebate or other benefit of significant value to the Native Title Party or entered into any business arrangement with any director, employee or agent of the Native Title Party to procure the consents and obligations of the Native Title Party under this Agreement (other than the Benefits); and
- (d) this Agreement is valid and binding, and enforceable in accordance with its terms against LandCorp.

## 3.6 Reliance on warranties

For the purpose of this Agreement, the Parties are entitled to rely on:

- (a) the warranties contained in this Agreement;
- (b) any authorisation, consent or notice given by the Native Title Party in writing apparently in compliance with this Agreement as being given for and on behalf of the Native Title Claim Group;

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- (c) any authorisation, consent or notice given by the State, LandCorp, the Port Authority, the Foundation Proponent or any Additional Proponent in writing apparently in compliance with this Agreement; and
- (d) any authorisation, consent or notice given by a joint venture as being given for and on behalf of each joint venturer and with full and proper authority to do so.

## Chapter 2 – Establishment of the Precinct

### 4. Consent to the LNG Precinct

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#### 4.1 Consent to notified future acts

On and from the Commencement Date:

- (a) the Parties consent to and will not object to the doing of the future acts comprised in the s29 Notice pursuant to section 31(1)(b) of the Native Title Act;
- (b) the Parties consent to and will not object to the doing of the future acts comprised in the Subdivision M Notices pursuant to section 24MD(6A) and sections 24MD(6A) and (6B) of the Native Title Act; and
- (c) the Parties consent to and will not object to the doing of the future acts comprised in the Subdivision N Notices.

#### 4.2 Consent to Grant and Renewal of Titles

- (a) The Native Title Party consents to, and will not object to the Grant to the State, LandCorp, the Port Authority, Main Roads or a Proponent or any or all of them of all Titles which are:
  - (i) necessary or incidental for the establishment, operation, maintenance or decommissioning of the LNG Precinct or a Proponent Project or both of them; and
  - (ii) within the area comprised in the Precinct Notices; and
  - (iii) applied for, sought, or proposed to be Granted at any time during the Term.
- (b) The Native Title Party consents to, and will not object to the Grant to the Foundation Proponent of all Titles which are:
  - (i) necessary or incidental for the establishment, operation, maintenance or decommissioning of the LNG Precinct or the Foundation Proponent Project or both of them;
  - (ii) outside the area comprised within Precinct Notices, but within the land and waters the subject of the Native Title Claim as at the date of this Agreement;
  - (iii) notified to the Native Title Party by the Foundation Proponent in writing at any time prior to Project FID; and
  - (iv) applied for, sought, or proposed to be Granted within 5 years of Project FID.
- (c) The Native Title Party consents to and will not object to the Renewal of:
  - (i) each of the Titles referred to in paragraph (a);
  - (ii) each of the Titles referred to in paragraph (b); and
  - (iii) any Existing Titles.
- (d) The State will not create tenure to establish the Buffer Zone. The State will do such legislative acts as may be necessary to limit activities in the Buffer Zone as required. The Native Title Party does not consent to the surrender of native title rights in the Buffer Zone.



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## 4.3 Consent to Future Ancillary Titles

- (a) Subject to paragraphs (b) and (d), nothing prevents the State, LandCorp, the Port Authority or a Proponent or any of them from, at any time, applying for the Grant or Renewal of a Future Ancillary Title in the manner prescribed by Law and following the procedures at Law (including the Native Title Act) in pursuit of the Grant or Renewal of any such Future Ancillary Title.
- (b) Prior to the Grant of a Future Ancillary Title within the land and waters the subject of the Native Title Claim:
  - (i) the State and the applicant party must negotiate with the Native Title Party for no less than 6 months from the date upon which the State or the applicant party notify the Native Title Party that it considers a Future Ancillary Title may be required:
    - (A) as to whether the Future Ancillary Title is necessary or incidental for the establishment, operation, maintenance or decommissioning of the LNG Precinct or a Proponent Project;
    - (B) as to whether there is an area within the area subject to the Taking under the Precinct Notices that is suitable for the purpose sought or to Grant a Title in substitution for the Future Ancillary Title being sought; and
    - (C) as to the conditions to be complied with by any of the Parties in relation to that Grant (including the payment of Compensation).
  - (ii) the State must have regard to the following principles:
    - (A) to minimise the area required for the LNG Precinct;
    - (B) maximisation of shared infrastructure corridors; and
    - (C) whether the activity to be conducted on the Future Ancillary Title is necessary for the establishment, operation, maintenance or decommissioning of the LNG Precinct or a Proponent Project,and must be satisfied that there is no area within the area comprised in the Precinct Notices that is suitable to be used for the Future Ancillary Title being sought.
- (c) The Parties agree that the Native Title Party:
  - (i) is not obliged to consent to any Future Ancillary Title; and
  - (ii) retains its legal rights including as to objections and compensation in relation to any Future Ancillary Title.
- (d) Save that the State will not seek to rely upon its rights under the Native Title Act until the process under paragraph (b) has been completed, the Parties agree that the obligation to negotiate in paragraph (b) above does not, and is not intended to, alter or derogate from the rights of any Party under the Native Title Act or the procedures set out in the Native Title Act that may apply to the Grant of a Future Ancillary Title.

## 4.4 Consent to Grant and Renewal of Approvals

- (a) Subject to paragraphs (b) and (c), the Native Title Party consents to and will not object to the Grant and Renewal of all Approvals necessary or incidental for the establishment,

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operation, maintenance, or decommissioning of the LNG Precinct and the Foundation Proponent Project (*Precinct Approvals*).

- (b) The Parties acknowledge that the Native Title Party:
  - (i) may make representations (including objections or submissions) to Government Agencies in relation to the Grant and Renewal of Precinct Approvals, as long as those objections or submissions are as to conditions upon which the Precinct Approval can be Granted or Renewed and not that the Precinct Approval cannot be given; or
  - (ii) may seek judicial review of the Government Agency's decision. To the extent the review allows a substitution by the judicial officer of the original decision maker's decision, the limitation as to the scope of the objections or submissions as to conditions in paragraph (i) applies.
- (c) If a Proponent:
  - (i) applies for, seeks or is Granted a Future Ancillary Title; and
  - (ii) requires a wholly new, stand alone Approval in relation to that Proponent's activities proposed for that Future Ancillary Title; then

the consents and commitments in paragraphs (a) and (b) do not apply to the Grant of that Approval, and the Native Title Party preserves and may exercise any rights it may have in respect of it.

## 4.5 No further Benefits

- (a) The Native Title Party agrees that the State will not provide any further Benefits under the Principal Acts other than the Benefits set out in this Agreement and the Foundation Proponent will not provide any further Benefits other than the Benefits set out under this Agreement.
- (b) For the avoidance of doubt, paragraph (a) does not apply in relation to the Grant of Future Ancillary Titles as contemplated under clause 4.3 above.

## 5. Acknowledgment and Indemnity

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### 5.1 Compensation

The Native Title Party acknowledges that the Benefits as set out in Chapters 3 and 4 will be provided to the Native Title Party on behalf of the members of the Native Title Claim Group in consideration for:

- (a) the consent to future acts provided in clause 4;
- (b) the Native Title Party entering into this Agreement and procuring the Regional Benefits Agreement; and
- (c) the ongoing obligations of the Native Title Party under this Agreement.

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## 5.2 Further assurances and Acknowledgements

- (a) The Parties acknowledge that this Agreement has been made as a result of good faith negotiations by each Party under Subdivision P of the Native Title Act.
- (b) The Parties will do all things and execute all documents that are necessary to give effect to this Agreement.
- (c) Subject to clauses 4.3(c), 4.4(b) and 4.4(c), the Native Title Party will not do anything to challenge or adversely affect the Takings, Precinct Notices or the Project Rights under the Principal Acts or otherwise at Law including on the basis that the Takings, Precinct Notices or the Project Rights are not valid, effective, enforceable, or not within power under the Principal Acts or otherwise at Law.
- (d) The Parties acknowledge that this Agreement:
  - (i) is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the Native Title Act in relation to the future acts the subject of the s29 Notice;
  - (ii) satisfies the requirements of Subdivision M of the Native Title Act in relation to the future acts the subject of the Subdivision M Notices;
  - (iii) satisfies the requirements of Subdivision N of the Native Title Act in relation to the future acts the subject of the Subdivision N Notices; and
  - (iv) satisfies the requirements of Part 9 and Part 10 of the LAA in relation to the s29 Notice and the Subdivision M Notices.
- (e) The Native Title Party will use its reasonable endeavours to remove or procure to be removed any objections made in relation to the s29 Notice, the Subdivision M Notices or Subdivision N Notices at any time by any member of the Native Title Party.

## 5.3 State to perform administrative requirements

- (a) The Parties authorise the State, and the State agrees, to give a copy of this Agreement to the arbitral body and to advise the relevant Minister in writing of the making of this Agreement pursuant to section 41A(1) of the Native Title Act.
- (b) The Parties agree that the State may make and register taking orders under Part 9 of the LAA consistent with the Precinct Notices.
- (c) The State will notify each Proponent and the Native Title Party when the relevant Minister is advised pursuant to paragraph (a).

## 5.4 Extinguishment

- (a) The Parties acknowledge that the registration of a taking order and the doing of the future acts comprised in the s29 Notice and Subdivision M Notices will have the effect of extinguishing any native title rights and interests in relation to the land and waters comprised within the s29 Notice and Subdivision M Notices.
- (b) If:
  - (i) a Determination has been made that (but for extinguishment of native title in the area of the LNG Precinct) native title exists in respect of the area of the Native Title Claim; then

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- (ii) the State, at the conclusion of the Term, shall support any application made by the Native Title Party for a determination that native title exists over the areas of the LNG Precinct, unless that determination is precluded by Law.

## 6. Satisfaction of Obligations

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### 6.1 Full and final compensation

- (a) The Native Title Party acknowledges and agrees that the Benefits, including the obligations and other commitments made by the State and Proponents as set out in chapter 3 and chapter 4, are in full and final satisfaction of:
  - (i) any obligation of the State or a Proponent to provide any Compensation to the Native Title Party or the members of the Native Title Claim Group under the Principal Acts or any other Law arising out of or in relation to the Takings or the Grant, Renewal or lawful exercise of the Project Rights (other than Future Ancillary Titles);
  - (ii) any obligation of the State to provide Compensation to the Native Title Party or members of the Native Title Claim Group in connection with the appointment of the Foundation Proponent to the LNG Precinct;
  - (iii) subject to clause 6.4, any obligation of the State to provide Compensation to the Native Title Party or members of the Native Title Claim Group in connection with the appointment of any Additional Proponent to the LNG Precinct; and
  - (iv) any obligation of the State or a Proponent to provide procedural rights to the Native Title Party under the Principal Acts or at Law arising out of or in connection with the Takings or the Grant, Renewal or exercise of the Project Rights (other than Future Ancillary Titles).
- (b) For the avoidance of doubt, paragraph (a) does not extend to the following:
  - (i) Loss arising as a consequence of a breach of this Agreement, the Regional Benefits Agreement or the State Agreement by any Party other than the Native Title Party;
  - (ii) Loss resulting from any act or omission arising out of the unlawful exercise of the Project Rights, occurring after the Commencement Date; or
  - (iii) Loss resulting from any act or omission arising out of the exercise of the Project Rights, occurring after the Commencement Date, which causes:
    - (A) personal injury to; or
    - (B) damage to the property (other than native title rights and interests) of, a member of the Native Title Claim Group.
- (c) Paragraph (a) applies for the benefit of the State, Foundation Proponent, Port Authority, LandCorp and any Additional Proponent (provided such Additional Proponent has entered into a Ratification Deed) and is separately enforceable by the State, Foundation Proponent, Port Authority, LandCorp and any Additional Proponent accordingly.

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- (d) Nothing in this clause 6.1 derogates from clause 4.3(c)(ii).

## **6.2 No Claim and plea in bar**

- (a) The Native Title Party acknowledges and agrees that:
  - (i) the Native Title Party will not make or threaten to make any Claim against the State or a Proponent arising out of or in connection with the Precinct Notices, Takings or the Grant, Renewal or exercise of the Project Rights (other than Future Ancillary Titles); and
  - (ii) if the Native Title Party or any member of the Native Title Claim Group makes, or threatens to make any Claim as contemplated by paragraph (i), the State or any Proponent may plead the terms of this Agreement in bar of that Claim.
- (b) Nothing in paragraph (a) derogates from clauses 4.3(c)(ii) or 6.1(b).

## **6.3 Set Off**

If:

- (a) the State or any Proponent suffer any Loss; or
- (b) a judgment or order for Compensation is made against the State or any Proponent, arising from any Claim or threatened Claim made in breach of this Agreement by the Native Title Party or with the authority of the Native Title Claim Group then:
- (c) the State and any Proponent may set off any Benefits due and payable or yet to be due and payable against that Loss; and
- (d) the obligations of the State or any Proponent in relation to that judgment or order for Compensation is wholly satisfied, by the Benefits, whether already paid or otherwise.

## **6.4 Release in relation to Additional Proponents**

The Native Title Party acknowledges and agrees that upon the date of commencement of the Ratification Deed required by clause 36.3 of this Agreement and pursuant to which the Additional Proponent agrees to be bound by the obligations under this Agreement, including the requirement to provide Benefits, the State is fully and finally released from the obligations set out in clause 6.1(a)(iii).

## **6.5 Commitments in relation to certain challenges**

- (a) The Foundation Proponent's commitment to the Native Title Party in relation to the management of certain challenges is set out in confidential item 6 of Schedule 5.
- (b) If a person purports to act on behalf of the Native Title Party or the Native Title Claim Group and takes an action which if they were the Native Title Party would be a breach of clauses 3, 4, 5 or 6 of this Agreement, then:
  - (i) the State or a Proponent may notify the Native Title Party of the action; and
  - (ii) the Native Title Party must:
    - (A) inform the State or a Proponent as to whether the action has been authorised by the Native Title Party; and

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- (B) if the action was not authorised by the Native Title Party or the Native Title Claim Group, provide a letter to the State or Proponent (as the case may be) stating that the person is not acting on behalf of, and is not authorised to act on behalf of, the Native Title Party.

## 7. Changes to the Native Title Claim

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### 7.1 Determination that native title does not exist over the LNG Precinct area

- (a) If a Determination is made that, but for extinguishment of native title pursuant to the Precinct Notices, native title does not exist at all over the whole of the area of the LNG Precinct (as the LNG Precinct stands at the date of the Determination), the obligations of the State and Proponents to provide Benefits, as referred to in clause 6.1 above, to the Native Title Party cease from the date of that Determination, but this Agreement will otherwise continue in full force and effect.
- (b) Notwithstanding that the obligations of the State and Proponents to provide Benefits have ceased, following a Determination as contemplated by paragraph (a):
  - (i) the State will deliver the Benefits (or any part of them) that the State would otherwise have been obliged to pay to the Native Title Party, in a manner consistent with the Regional Benefits Agreement, including Benefits that were previously contemplated to be delivered to the Native Title Party under this Agreement; and
  - (ii) the Proponents will:
    - (A) continue to deliver any non-monetary Benefits; and
    - (B) continue to pay any monetary Benefits that are contemplated under this Agreement to be paid into the funds established under the Regional Benefits Agreement; and
    - (C) pay any monetary Benefits which were previously contemplated to be delivered directly to the Native Title Party under this Agreement to the trustee of the Proponent Benefits Fund on the condition that those monetary Benefits be applied for the benefit of the Local Indigenous Community.
- (c) For the avoidance of doubt, notwithstanding this clause 7.1, the members of the Native Title Claim Group would still be entitled to access Benefits through the Regional Benefits Agreement, to the extent such Benefits are delivered through that agreement, subject to those members of the Native Title Claim Group being eligible in accordance with the provisions of that Agreement.

### 7.2 Native Title Claim is dismissed, withdrawn or discontinued

- (a) If the Native Title Claim is dismissed, withdrawn or otherwise discontinued in relation to the whole of the LNG Precinct (as it stands at the date of the withdrawal, dismissal or discontinuance), the obligations of the State and Proponents to provide Benefits, as referred to in clause 6.1 above, to the Native Title Party cease from the date of dismissal,

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withdrawal or discontinuance, but this Agreement will otherwise continue in full force and effect.

- (b) Notwithstanding that the obligations of the State and Proponents to provide Benefits have ceased, following such event as contemplated by paragraph (a):
  - (i) subject to paragraph (c), the State must:
    - (A) deliver the Benefits that the State would otherwise have been obliged to deliver to the Native Title Party under this Agreement, to the Administrative Body in a manner consistent with chapter 3 of this Agreement; and
    - (B) continue to pay any monetary Benefits that are contemplated under this Agreement to be paid into the funds established under the Regional Benefits Agreement, to those funds; and
  - (ii) subject to paragraph (iii) and paragraph (c), each Proponent will hold the Benefits that would otherwise have been payable in an interest bearing account; and
  - (iii) the Proponents may elect to deliver any non-monetary Benefits, and any monetary Benefits which are contemplated under this Agreement to be paid into the funds established under the Regional Benefits Agreement, not including any monetary Benefits which were previously contemplated to be delivered directly to the Native Title Party under this Agreement.
- (c) If, after any of the events set out in paragraph (a) occur, a new application for determination of native title is made in relation to the area of the LNG Precinct, then the Benefits that would otherwise have been payable under this Agreement will be held in an interest bearing account until such time as:
  - (i) a Determination is made that a party other than the Native Title Party holds native title over any part of the area of the LNG Precinct (*New Native Title Party*), after which clause 7.3 will apply; or
  - (ii) the new application for determination of native title is dismissed, withdrawn or otherwise discontinued wholly or in relation to the area of the LNG Precinct, after which the procedure for delivering Benefits as set out in paragraph (b) will again apply.
- (d) For the avoidance of doubt, notwithstanding this clause 7.2, the members of the Native Title Claim Group would still be entitled to access Benefits through the Regional Benefits Agreement, to the extent such Benefits are delivered through that Agreement, subject to those members of the Native Title Claim Group being eligible in accordance with the provisions of that Agreement.

## **7.3 Determination that persons other than the Native Title Party hold native title over the LNG Precinct area**

- (a) If a Determination is made that a New Native Title Party holds native title over any part of the area of the LNG Precinct, the obligations of the State and Proponents to provide Benefits, as referred to in clause 6.1 above, to the Native Title Party cease from the date of that Determination, but this Agreement will otherwise continue in full force and effect.

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- (b) Following a Determination as contemplated by paragraph (a), if the prescribed body corporate for the New Native Title Party executes a deed by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned or assumed, the State and each Proponent must commence delivery of Benefits to the New Native Title Party in a manner consistent with the terms of this Agreement on and from the date of execution of the deed, including delivery of Benefits that accrued or would have been payable during the period between the date of Determination of the New Native Title Party and the date of execution of the deed.
- (c) If the prescribed body corporate for the New Native Title Party does not execute a deed as contemplated under paragraph (b), and notwithstanding paragraph (a), the State or a Proponent may, at their absolute discretion:
  - (i) suspend or continue to deliver Benefits for regional benefit pursuant to the Regional Benefit Agreement; and
  - (ii) suspend or reallocate and deliver for regional benefit pursuant to the Regional Benefits Agreement, those Benefits that were previously contemplated to be delivered to the Native Title Party under this Agreement,until the prescribed body corporate for the New Native Title Party executes a deed as contemplated under paragraph (b).



## Chapter 3 – State Benefits

### 8. Content of State Benefits

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#### 8.1 Content of State Benefits

The Benefits provided by the State consist of:

- (a) the Benefits as set out under Chapter 3 of this Agreement;
- (b) all benefits or commitments made by the State as set out in the Regional Benefits Agreement and the State Agreement;
- (c) the commitments made by the State under Chapter 6 in relation to the operation of the LNG Precinct and in Chapter 7 in relation to the end of Proponent Projects and in the remainder of this Agreement; and
- (d) the Benefits or commitments of the Port Authority and LandCorp under this Agreement.

#### 8.2 Discharge of payment obligations

- (a) Any amount deposited by the State and cleared by a Trust Account under this Agreement will be deemed to:
  - (i) have been paid to and received by the Native Title Party for and on behalf of the members of the Native Title Claim Group; and
  - (ii) be a valid discharge of the obligations of the State to make payment of that amount under this Agreement.
- (b) Any amount deposited by the State and cleared by a Trust Account under the Regional Benefits Agreement will be deemed to:
  - (i) have been paid to and received by the body under the Regional Benefits Agreement; and
  - (ii) be a valid discharge of the obligations of the State to make payment of that amount under this Agreement.
- (c) The State makes the payments to the Native Title Party for and on behalf of the Native Title Claim Group as a whole. However, and notwithstanding anything else in this Agreement:
  - (i) the State will not be bound to enquire as to the manner in which any payments made under this Agreement are applied or as to the members or beneficiaries of the body in receipt of the payments; and
  - (ii) if the State:
    - (A) makes enquiries as contemplated by subparagraph (i); or
    - (B) exercises any power as contemplated by clauses 24, 25 and 26,then paragraph (d) applies.
- (d) The State will not be responsible for any act, omission, neglect or breach of trust by the Native Title Party, Administrative Body, Corporate Trustee or otherwise under the

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Regional Benefits Agreement, or otherwise including without limitation any misuse or wrongful application of payments unless:

- (i) the act, omission, neglect or breach of trust is attributable to an independent director nominated by the State (as contemplated by clause 22.9(a)(ii)) or a Replacement Trustee appointed by the State (as contemplated by clause 26.1); and
- (ii) at the time of the appointment of the independent director or Replacement Trustee (as the case may be) referred to in paragraph (i), the State failed to procure that person to obtain professional indemnity insurance in relation to the matters contemplated under this paragraph (d).

## 8.3 Corporate Entities Set Off

The State may set off the Benefits, whether already paid or otherwise and including Benefits subject to a Suspension Notice under clauses 24 and 25, against any judgment or order for Compensation against the State arising from the breach of this Agreement by the Administrative Body and the Corporate Trustee.

## 8.4 Rules of Funds

- (a) The Native Title Party will:
  - (i) formulate the rules of the Economic Development Fund and Indigenous Housing Fund by reference to the purposes and objects of each fund or Benefit; and
  - (ii) provide the State with a copy of the proposed rules formulated under paragraph (i).
- (b) Upon the receipt of a copy of the proposed rules under paragraph (a)(ii), the State will, within 30 days, consider those rules and if the State considers that the proposed rules are:
  - (i) consistent with this clause 8.4 and Schedule 15, the State must notify the Native Title Party that the proposed rules are approved and the rules will come into effect and govern the relevant fund on such day after the notification that the Native Title Party resolves to adopt them; or
  - (ii) inconsistent with this clause 8.4 or Schedule 15:
    - (A) the State must:
      - (1) notify the Native Title Party that the proposed rules are not approved; and
      - (2) provide reasonable details of the inconsistency; and
    - (B) the Native Title Party must:
      - (1) take reasonable action to address those reasons; and
      - (2) propose new rules in accordance with this clause 8.4.
- (c) If the State fails to give notice in accordance with paragraph (b), then it is deemed to have given a notification under paragraph (b)(i).
- (d) The omission of one relevant factor in Schedule 15 from the rules of the relevant fund under consideration does not, by reason of that omission alone, provide the State a reason to reasonably withhold its approval.

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## **9. Economic Development Fund**

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### **9.1 State commitment**

- (a) Subject to paragraph (b), the State must pay \$10 million for the Economic Development Fund within 60 days of the registration under the LAA of the first of the taking orders in relation to the s29 Notice.
- (b) Until the Corporate Trustee establishes the Economic Development Fund Trust as contemplated by this Agreement, the payment under paragraph (a) will be held by the State on trust for the benefit of the Native Title Claim Group in an interest bearing account.
- (c) Payment of the sum in paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Trust Account for the Economic Development Fund Trust within 60 days of the Corporate Trustee notifying the State in writing of the establishment of the Economic Development Fund.

### **9.2 Reallocation of Economic Development Fund**

- (a) Subject to paragraph (b), the Native Title Party may reallocate all or part of the funds contained in the Economic Development Fund to the Indigenous Housing Fund (by way of transfer to the Indigenous Housing Fund Trust), or any other Trust established by the Corporate Trustee in accordance with this Agreement.
- (b) The Native Title Party must obtain the written consent of the State prior to effecting any reallocation, which consent cannot be unreasonably withheld or delayed.

### **9.3 Purpose of the Economic Development Fund**

The initial purpose of the Economic Development Fund is to assist the Native Title Party to benefit from economic opportunities, including those arising out of the establishment and ongoing operation of the LNG Precinct, and to develop and increase the capacity of the members of the Native Title Claim Group to generate wealth and self-sufficiency and address disadvantage, including through:

- (a) sustainable business and employment opportunities;
- (b) creating and expanding businesses in which members of the Native Title Claim Group have equity;
- (c) investment; and
- (d) building asset ownership.

### **9.4 Objects of the Economic Development Fund**

- (a) The initial specific objects of the Economic Development Fund include:
  - (i) facilitating engagement with Proponents to nominate specific training, employment (including supervisory and management positions) contracting and self-employment opportunities for members of the Native Title Claim Group within or directly related to the LNG Precinct;
  - (ii) facilitating engagement with Proponents to nominate enterprise and equity and other investment opportunities for members of the Native Title Claim Group within or directly related to the LNG Precinct; and

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- (iii) establishing Administrative Body Entities to secure contracts, employ significant numbers of members of the Native Title Claim Group, provide training, traineeships and apprenticeships and return a profit to the members of the Native Title Claim Group.
- (b) The initial general objects of the Economic Development Fund include:
  - (i) increasing the number of members of the Native Title Claim Group in:
    - (A) sustainable employment, self-employment and business;
    - (B) traineeships and apprenticeships; and
    - (C) supervisory, technical, professional and management positions within all sectors of government and the economy;
  - (ii) increasing the number of businesses owned and operated by members of the Native Title Claim Group and expanding those businesses in a sustainable manner;
  - (iii) identifying and facilitating joint ventures between members of the Native Title Claim Group and Capacity Partners that will have clear and measurable economic outcomes for the members of the Native Title Claim Group;
  - (iv) identifying and utilising assets and commercial advantage of the Native Title Claim Group to generate employment and enterprise;
  - (v) increasing the number of members of the Native Title Claim Group participating in the Kimberley economy;
  - (vi) encouraging women and mature-age members of the Native Title Claim Group to consider sustainable economic opportunities and apply for funding from the Economic Development Fund;
  - (vii) providing funding and other assistance for:
    - (A) business start up;
    - (B) business expansion or growth;
    - (C) establishing and participating in joint ventures;
    - (D) investment and asset acquisition; and
    - (E) other activities as determined by the Administrative Body consistent with the purpose of the Economic Development Fund and this Agreement.

## 9.5 Rules of the Economic Development Fund

The rules of the Economic Development Fund must:

- (a) be determined in accordance with clause 8.4;
- (b) be consistent with this clause 9;
- (c) be fair, equitable, transparent, capable of implementation and consistent with contemporary governance standards; and
- (d) provide for:
  - (i) audit requirements consistent with clause 23 of this Agreement;

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- (ii) the manner in which applications for funding must be made;
- (iii) eligibility criteria for members of the Native Title Claim Group to access the Economic Development Fund;
- (iv) a specified distribution policy or policies; and
- (v) the ability to reallocate funds to other Trusts as contemplated by clause 9.2.

## 9.6 Reporting and review of the Economic Development Fund

- (a) The Administrative Body must prepare annual reports on the operation of the Economic Development Fund (*EDF Reports*).
- (b) The Administrative Body must provide EDF Reports to the State Implementing Agency and any other parties that make a financial contribution to the Economic Development Fund and make each EDF Report available to members of the Native Title Claim Group.
- (c) Each EDF Report must contain:
  - (i) a statement of grant acquittals, including:
    - (A) an outline of how funds were intended to be spent;
    - (B) the outcomes of the funded activity;
    - (C) the forecasts of the funded activity; and
    - (D) information about the purpose of the grant and the funded activity; and
  - (ii) a true and fair view of the financial position of the Economic Development Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The Administrative Body and the State will agree the scope and frequency of the review of the Economic Development Fund.

## 10. Indigenous Housing Fund

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### 10.1 State commitment to the Indigenous Housing Fund

- (a) Subject to paragraph (b), the State must pay \$20 million into the Indigenous Housing Fund within 60 days of the registration under the LAA of the first of the taking orders in relation to the s29 Notice.
- (b) Until the Corporate Trustee establishes the Indigenous Housing Fund Trust as contemplated by this Agreement, the payment under paragraph (a) will be held by the State on trust for the benefit of the Native Title Claim Group in an interest bearing account.
- (c) Payment of the sum in paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Trust Account for the Indigenous Housing Fund Trust within 60 days of the Corporate Trustee notifying the State in writing of the establishment of the Indigenous Housing Fund.

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## **10.2 Reallocation of Indigenous Housing Fund**

- (a) Subject to paragraph (b), the Native Title Party may reallocate all or part of the funds contained in the Indigenous Fund to the Economic Development Fund (by way of transfer to the Economic Development Fund Trust), or any other Trust established by the Corporate Trustee in accordance with this Agreement.
- (b) The Native Title Party must obtain the written consent of the State prior to effecting any reallocation, which consent cannot be unreasonably withheld or delayed.

## **10.3 Purpose of the Indigenous Housing Fund**

The initial purpose of the Indigenous Housing Fund is to:

- (a) assist and encourage members of the Native Title Claim Group to enter into home ownership and participate in Indigenous housing development projects in the Kimberley;
- (b) increase the number of members of the Native Title Claim Group entering into home ownership and residing in secure, safe, suitable and sustainable accommodation in the Kimberley; and
- (c) assist the members of the Native Title Claim Group to generate wealth and address disadvantage and poverty through investment and building asset ownership.

## **10.4 Objects of the Indigenous Housing Fund**

- (a) The initial specific objects of the Indigenous Housing Fund include:
  - (i) establishing a safe and appropriate housing program and home ownership programs to provide affordable entry into home ownership, particularly for members of the Native Title Claim Group with low incomes;
  - (ii) identifying and facilitating training and employment (including traineeship and apprenticeship) opportunities for members of the Native Title Claim Group in housing construction and maintenance and associated areas;
  - (iii) identifying and facilitating joint ventures between members of the Native Title Claim Group and Capacity Partners in housing construction and maintenance and associated areas; and
  - (iv) identifying and facilitating suitable housing development projects for members of the Native Title Claim Group including:
    - (A) establishing a corporate housing company;
    - (B) joint ventures with other Kimberley Indigenous People;
    - (C) housing for the aged;
    - (D) supportive accommodation for apprentices and trainees;
    - (E) private or social housing development; and
    - (F) worker accommodation.
- (b) The initial general objects of the Indigenous Housing Fund include:

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- (i) increasing the number of members of the Native Title Claim Group in sustainable employment in housing construction and maintenance and associated areas;
- (ii) increasing the number of businesses owned and operated by members of the Native Title Claim Group, and expanding those businesses in a sustainable manner, in housing construction and maintenance and associated areas; and
- (iii) encouraging women and mature-aged members of the Native Title Claim Group to consider home ownership to secure safe and sustainable accommodation for themselves and their family.

## 10.5 Rules of the Indigenous Housing Fund

The rules of the Indigenous Housing Fund must:

- (a) be determined in accordance with clause 8.4;
- (b) be consistent with this clause 10;
- (c) be fair, equitable, transparent, capable of implementation and consistent with contemporary governance standards; and
- (d) provide for:
  - (i) audit requirements consistent with clause 23 of this Agreement;
  - (ii) the manner in which applications for funding must be made;
  - (iii) eligibility criteria for members of the Native Title Claim Group to access the Indigenous Housing Fund;
  - (iv) a specified distribution policy or policies; and
  - (v) the ability to reallocate funds to other Trusts as contemplated by clause 10.2.

## 10.6 Reporting and review of the Indigenous Housing Fund

- (a) The Administrative Body must prepare annual reports on the operation of the Indigenous Housing Fund (*IHF Reports*).
- (b) The Administrative Body must provide IHF Reports to the State Implementing Agency and any other parties that make a financial contribution to the Indigenous Housing Fund and make each IHF Report available to members of the Native Title Claim Group.
- (c) Each IHF Report must contain:
  - (i) a statement of grant acquittals, including:
    - (A) an outline of how funds were intended to be spent;
    - (B) the outcomes of the funded activity;
    - (C) the forecasts of the funded activity; and
    - (D) information about the purpose of the grant and the funded activity; and
  - (ii) a true and fair view of the financial position of the Indigenous Housing Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.

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- (d) The State and the Native Title Party will agree the scope and frequency of the review of the Indigenous Housing Fund.

## 11. Grant of Freehold Land

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### 11.1 State commitment

On and from the Secured Foundation Proponent Date, the State agrees to grant to the Native Title Party an area totalling 2900 hectares of freehold or other land (**Grant Land**) in accordance with the procedure set out in this clause 11.

### 11.2 Entity to hold Grant Land

Unless the Native Title Party nominates an alternative body, and the State (acting reasonably) agrees to that nomination, the Grant Land must be registered in the name of the Administrative Body who must hold the Grant Land on trust for the benefit of the Native Title Party.

### 11.3 Native Title Party to elect form of tenure

- (a) Subject to clauses 11.4 to 11.8 and paragraph (c) below, the Native Title Party must elect whether the Grant Land be granted as unconditional freehold land or conditional freehold land under the LAA.
- (b) Notwithstanding paragraph (a), if the Native Title Party nominates another form of tenure and the State (acting reasonably) agrees to that nomination, the Grant Land may be granted in the nominated form.
- (c) Nothing in this Agreement requires the State to Grant unconditional freehold land over an area where native title rights and interests exist, other than under clause 11.8(b).

### 11.4 Criteria for Grant Land

- (a) The locations of Grant Land agreed between the State and the Native Title Party under clause 11.6 must have regard to:
  - (i) the economic development, living, social, cultural, heritage, conservation and other aspirations of the Native Title Party;
  - (ii) any State planning, development, townsite expansion and environmental requirements and policies provided by the State to the Native Title Party;
  - (iii) legally binding commitments made by the State to third parties up to the time of grant;
  - (iv) geographical considerations; and
  - (v) any proposal for national heritage listing for the Kimberley.
- (b) The locations of Grant Land must be entirely within the boundaries of the Native Title Claim.
- (c) The State will not purchase or acquire land or any third party interest in land to satisfy its obligation under this clause 11.



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- (d) The State will not pay to unburden Crown land or remove third party encumbrances over land in order to create freehold title.
- (e) The grant of freehold must be consistent with Laws, and government policy which has effect as legislation or delegated legislation, as provided by the State to the Native Title Party from time to time, including:
  - (i) a requirement for a mining clearance under section 16(3) of the Mining Act;
  - (ii) a requirement for a clearance under the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
  - (iii) planning and environmental policies created under the *Planning and Development Act 2005* (WA) or the EP Act.
- (f) The Grant Land must have legal access to a public road (whether by grant of an easement or otherwise). If such legal access does not exist, the State will use its best endeavours to assist the Native Title Party to obtain that access, including upon request, seeking to procure the relevant local government or other authority to gazette a road. For the avoidance of doubt, nothing in this clause requires the State to create roads or acquire third party interests.
- (g) The use of the Grant Land by the Native Title Party must be consistent with and in accordance with relevant planning instruments and any other Laws that apply in relation to the Grant Land including:
  - (i) the Dampier Peninsula Planning Strategy once it is endorsed by the WAPC;
  - (ii) the *Aboriginal Heritage Act 1972* (WA); and
  - (iii) planning and environmental policies and instruments which have binding effect as a legal instrument created under the *Planning and Development Act 2005* (WA), the EP Act or any other Law.
- (h) If the Dampier Peninsula Planning Strategy has not been endorsed by the WAPC when the Parties are determining the locations of the Grant Land, the State must advise the Native Title Party as to the areas that will meet the criteria in this clause 11.4 pending that endorsement.

## **11.5 Land Quarantined for Grant Land Commitment**

- (a) Following the Secured Foundation Proponent Date, the Native Title Party may nominate 6000 hectares of land, that (at the date of nomination) the Native Title Party considers reasonably satisfies the criteria for Grant Land under clauses 11.4(a) to 11.4(f).
- (b) The State will consider such nomination and advise the Native Title Party, acting reasonably and without delay, as to whether the land within the nominated area is likely to be subject to a major impediment to meeting the criteria for Grant Land under clauses 11.4(a) to 11.4(f).
- (c) The State will use its best endeavours to ensure no further interests are created in relation to this land without consultation with the Native Title Party, for a period of up to 5 years from the date the nomination is made under paragraph (a), for the purpose of forming an area

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within which the Grant Land can be located in satisfaction of the State's commitment in clause 11.1.

- (d) The procedure for determining the ultimate locations of the Grant Land will occur in accordance with clause 11.6 and, for the avoidance of doubt, the locations of the Grant Land are not required to be within the area nominated under this clause 11.5.
- (e) If the circumstances contemplated under clause 7.1 or 7.2 arise, the rights under this clause 11.5 will vest in and be exercisable by the Administrative Body.

## **11.6 Procedure for determining the locations of Grant Land**

- (a) Subject to clauses 11.4 and 11.5 and following the Secured Foundation Proponent Date, the State and the Native Title Party will agree the locations of the Grant Land in accordance with the following procedure:
  - (i) the State and the Native Title Party must investigate potential locations for the Grant Land and meet within three months of the Secured Foundation Proponent Date to identify possible locations for the Grant Land subject to the criteria in clause 11.4;
  - (ii) within 90 days of the meeting in paragraph (i), the Native Title Party must nominate in writing to the State the preferred locations of the Grant Land;
  - (iii) within 90 days of receipt of the Native Title Party's nomination, the State must consider the nomination and advise the Native Title Party in writing whether the nominated locations are approved by the State which approval must not be unreasonably withheld or delayed; and
  - (iv) if the nominated locations:
    - (A) are approved by the State, the State and the Native Title Party must execute, and seek to have registered on the Register of Indigenous Land Use Agreements, one or more Grant Land ILUAs to facilitate the grant of the Grant Land; or
    - (B) are not approved by the State, the Native Title Party must make a further nomination of its preferred locations of the Grant Land in accordance with this paragraph (a) process.
- (b) If the State gives written notice three times to the Native Title Party that the locations nominated under paragraph (a) are not approved, the State will refer the decision in relation to the locations of the Grant Land to the Minister for Lands after:
  - (i) notifying the Native Title Party of the referral; and
  - (ii) inviting the Native Title Party to make recommendations to the Minister for Lands in relation to the locations for the Grant Land.
- (c) The Minister for Lands will decide the locations of the Grant Land, and notify the Native Title Party of the decision, within 60 days of the referral being made in paragraph (b) having regard to:
  - (i) the recommendations of the Native Title Party; and

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- (ii) the criteria for the Grant Land as provided for in clause 11.4.
- (d) The decision in relation to the locations of the Grant Land made by the Minister for Lands under paragraph (c) of this clause is final.
- (e) The timeframes for the process outlined under paragraph (a) may be renegotiated by mutual agreement between the State and the Native Title Party.
- (f) The procedure for determining the locations of the Grant Land set out in this clause 11.6 is not subject to the dispute resolution process set out in clause 42 and no Party may declare a Dispute in relation to the process contained in this clause 11.6.
- (g) For the avoidance of doubt, nothing in paragraphs (d) or (f) prevents the Native Title Party from seeking judicial review of the Minister's decision.

## 11.7 Costs arising in relation to Grant Land

- (a) The State agrees to pay for the following establishment costs arising out of the Grant of Grant Land process:
  - (i) the direct cost of effecting the transfer of freehold land to the Administrative Body;
  - (ii) duty payable under the *Duties Act 2008* (WA);
  - (iii) survey costs for the Grant Land as determined following the clause 11.6 selection process (including costs of surveying easement areas); and
  - (iv) 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 general or legal expenses incurred by the Native Title Party or the provision of services to the Grant Land (including any which are a usual pre-condition to the creation of freehold title) such as road upgrades, service connections and headworks charges, unless the State in its sole discretion considers these costs would be paid for by the State under normal circumstances; 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 to pay the following costs arising out of the grant of the Grant Land:
  - (i) all costs associated with the Native Title Party investigating potential locations for Grant Land and engaging in the selection process under clause 11.6; and
  - (ii) negotiating for land or interests in land created as freehold or in relation to any easements over land including the Grant Land as determined under clause 11.6.

## 11.8 Effect on Native Title

- (a) If native title exists over the locations of the Grant Land, the creation of tenure for the Grant Land will not require a surrender of native title rights and interests and result in the extinguishment of those native title rights and interests if the State and the Native Title

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Party enter into, and have registered on the Register of Indigenous Land Use Agreements, a Grant Land ILUA which applies the non-extinguishment principle.

- (b) If native title exists over the locations of the Grant Land, the creation of tenure for the Grant Land will require a surrender of native title rights and interests and result in the extinguishment of those native title rights and interests if:
  - (i) the State and the Native Title Party do not enter into, and have registered on the Register of Indigenous Land Use Agreements, a Grant Land ILUA which applies the non-extinguishment principle; or
  - (ii) the Native Title Party elects a form of tenure for the Grant Land which allows the Grant Land to be used for a purpose that is not compatible with the continued exercise of native title rights and interests.

For the avoidance of doubt, if the proposed use of the Grant Land is not compatible with the existence of native title, then the creation of tenure for the Grant Land will require a surrender of native title rights and interests.

- (c) Subject to paragraph (d), within 2 years of the date the locations of the Grant Land are determined in accordance with clause 11.6, the Native Title Party must enter into, and seek to have registered on the Register of Indigenous Land Use Agreements, a Grant Land ILUA to:
  - (i) allow for the creation of tenure subject to the non-extinguishment principle (as contemplated under paragraph (a)) or
  - (ii) surrender, and allow for the extinguishment of, native title rights and interests over the locations of the Grant Land as required under paragraph (b),as the case may be.
- (d) No further compensation other than that provided for under this Agreement will be payable by the State to the Native Title Party, or in relation to any other native title rights and interests, under the Native Title Act to allow for the creation of tenure for the Grant Land.

## **11.9 Satisfaction of State's commitment**

Subject to the balance of this clause 11.9:

- (a) the State will not be in breach of its commitment under clause 11.1 if the Native Title Party fails to enter into, or fails to have registered on the Register of Indigenous Land Use Agreements, other than through action of the State, a Grant Land ILUA within the timeframe required under clause 11.8(c); but
- (b) the State will remain obliged to fulfil that commitment; and
- (c) nothing in this clause 11.9 releases the State from any of its obligations to execute documents and to take other steps pursuant to clause 57.

## **12. Administrative Body Office Land**

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- (a) Subject to paragraph (b), the State agrees to transfer to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, the Administrative

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Body Office Land as soon as reasonably practicable, but no more than 6 months, following the Administrative Body Ratification Date.

- (b) The State agrees to pay for:
  - (i) the direct cost of effecting the transfer of the Administrative Body Office Land to the Administrative Body;
  - (ii) duty payable under the *Duties Act 2008* (WA); and
  - (iii) registration fees at the Western Australian Land Information Authority (Landgate),  
for the avoidance of doubt, the State is not liable to pay for:
  - (iv) establishment costs not referred to in paragraphs (i) to (iii) above, including general or legal expenses incurred by the Native Title Party or the provision of services to the Administrative Body Office Land (to the extent such services have not already been provided); and
  - (v) all holding costs including local government rates and other taxes that are normally borne by the land owner.

## 13. Native Title Party Housing Land

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### 13.1 State commitment

The State agrees to provide to the Native Title Party the Native Title Party Housing Land as soon as reasonable practicable following the Commencement Date in accordance with the procedure set out in this clause 13.

### 13.2 Stage 1 Housing Land

- (a) The first stage of the Native Title Party Housing Land, will comprise:
  - (i) 10 Serviced residential lots to be located in the Broome North Development (with an approximate 2011 value of \$2 million); and
  - (ii) 3 house and land packages to be located in the Broome North Development (with an approximate 2011 value of \$2.25 million).

#### *(Stage 1 Housing Land)*

- (b) The Stage 1 Housing Land will be transferred to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, as soon as reasonably practicable following the Administrative Body Ratification Date and with an indicative timeframe of the transfer being effected in the years 2012/2013.
- (c) For the avoidance of doubt, the house and land package component of the Stage 1 Housing Land will be transferred to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, when construction has been completed and final approvals (including a certificate of occupancy) obtained.
- (d) The State agrees to pay for:
  - (i) the direct cost of effecting the transfer of the Stage 1 Housing Land to the Administrative Body;

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- (ii) duty payable under the *Duties Act 2008* (WA); and
  - (iii) registration fees at the Western Australian Land Information Authority (Landgate),for the avoidance of doubt, the State is not liable to pay for:
- (iv) establishment costs not referred to in paragraphs (i) to (iii) above, including general or legal expenses incurred by the Native Title Party or the provision of services (other than the Services) to the Stage 1 Housing Land; and
  - (v) following the transfer of the Stage 1 Housing Land to the Administrative Body, all holding costs including local government rates and other rates and taxes that are normally borne by the land owner.
- (e) The Stage 1 Housing Land will be held and used consistently with the objects, purposes and rules of the Indigenous Housing Fund and the following principles:
  - (i) Stage 1 Housing Land will be consistent with the approximate values set out in paragraph (a) unless the Native Title Party elects to contribute funding to allow for the components of the Stage 1 Housing Land to have a greater value;
  - (ii) the final timeframe for the delivery of the Stage 1 Housing Land is subject to the development timeframes of the Broome North Development by LandCorp and the Parties acknowledge and agree that LandCorp is not obliged to commence development works for the sole purpose of effecting the delivery of the Stage 1 Housing Land;
  - (iii) housing constructed on both the residential lots referred to in paragraph (a)(i) and as part of the house and land packages referred to in paragraph (a)(ii) must be consistent with LandCorp's Build to Design Guidelines;
  - (iv) the State will, in consultation with the Administrative Body, manage the construction process for the house and land packages and will deliver completed house and land packages with final approvals, including a certificate of occupancy, obtained (unless the State and the Administrative Body agree an alternative process); and
  - (v) to the extent reasonably practicable the State Employment and Business Development Management Schedule will apply in relation to the delivery of the Stage 1 Housing Land.
- (f) The final nature, location and type of Stage 1 Housing Land will be determined by LandCorp in accordance with the following procedures:
  - (i) LandCorp will consult with the Native Title Party through the Administrative Body in relation to finalising the Stage 1 Housing Land and will endeavour to contribute to meeting the housing needs and aspirations of the Native Title Party;
  - (ii) following consultation under paragraph (i), LandCorp will identify residential lots and house and land packages suitable for delivering the Stage 1 Housing Land at its discretion and based on its ordinary development plan and policies and the provisions of this clause 13.2;

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- (iii) LandCorp will notify the Administrative Body of the residential lots and house and land packages that it proposes will comprise the Stage 1 Housing Land;
- (iv) the Administrative Body may within 30 days of receiving notice from LandCorp under paragraph (iii), provide comments in relation to the lots proposed under paragraph (iii);
- (v) LandCorp will take into account any comments under paragraph (iv) and after doing so:
  - (A) transfer the residential lot component of the Stage 1 Housing Land to the Administrative Body as soon as reasonably practicable thereafter; and
  - (B) transfer the house and land component of the Stage 1 Housing Land to the Administrative Body as soon as reasonably practicable following:
    - (1) receiving notice from the Administrative Body under paragraph (iv); and
    - (2) completion of construction of the houses.
- (g) If the Administrative Body does not accept the transfer of the Stage 1 Housing Land (whether in whole in part) within three months of a transfer duly executed by LandCorp being presented to it, LandCorp:
  - (i) may sell the Stage 1 Housing Land on an arm's length basis; and
  - (ii) if it sells the land, must deliver the proceeds to the Indigenous Housing Fund by direct deposit into the Trust Account for the Indigenous Housing Fund Trust within 60 days of settlement of any such sale.

## 13.3 Stage 2 Housing Land

- (a) The second stage of the Native Title Party Housing Land, will comprise:
    - (i) 10 Serviced residential lots to be located in the Broome North Development (with an approximate 2011 value of \$2 million); and
    - (ii) 3 house and land packages to be located in the Broome North Development (with an approximate 2011 value of \$2.25 million).
- (Stage 2 Housing Land)***
- (b) The Stage 2 Housing Land will be transferred to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, as soon as reasonably practicable following the Administrative Body Ratification Date and with an indicative timeframe of the transfer being effected in the years 2013/2014.
  - (c) For the avoidance of doubt, the house and land package component of the Stage 2 Housing Land will be transferred to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, when construction has been completed and final approvals (including a certificate of occupancy) obtained.
  - (d) The State agrees to pay for:
    - (i) the direct cost of effecting the transfer of the Stage 2 Housing Land to the Administrative Body;



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- (ii) duty payable under the *Duties Act 2008* (WA); and
  - (iii) registration fees at the Western Australian Land Information Authority (Landgate),for the avoidance of doubt, the State is not liable to pay for:
- (iv) establishment costs not referred to in paragraphs (i) to (iii) above, including general or legal expenses incurred by the Native Title Party or the provision of services (other than the Services) to the Stage 2 Housing Land; and
  - (v) following the transfer of the Stage 2 Housing Land to the Administrative Body, all holding costs including local government rates and other rates and taxes that are normally borne by the land owner.
- (e) The Stage 2 Housing Land will be held and used consistently with the objects, purposes and rules of the Indigenous Housing Fund and the following principles:
  - (i) Stage 2 Housing Land will be consistent with the approximate values set out in paragraph (a) unless the Native Title Party elects to contribute funding to allow for the components of the Stage 2 Housing Land to have a greater value;
  - (ii) the final timeframe for the delivery of the Stage 2 Housing Land is subject to the development timeframes of the Broome North Development by LandCorp and the Parties acknowledge and agree that LandCorp is not obliged to commence development works for the sole purpose of effecting the delivery of the Stage 2 Housing Land;
  - (iii) housing constructed on both the residential lots referred to in paragraph (a)(i) and as part of the house and land packages referred to in paragraph (a)(ii) must be consistent with LandCorp's Build to Design Guidelines;
  - (iv) the State will, in consultation with the Administrative Body, manage the construction process for the house and land packages and will deliver completed house and land packages with final approvals, including a certificate of occupancy, obtained (unless the State and the Administrative Body agree an alternative process); and
  - (v) to the extent reasonably practicable the State Employment and Business Development Management Schedule will apply in relation to the delivery of the Stage 2 Housing Land.
- (f) The final nature, location and type of Stage 2 Housing Land will be determined by LandCorp in accordance with the following procedures:
  - (i) LandCorp will consult with the Native Title Party through the Administrative Body in relation to finalising the Stage 2 Housing Land and will endeavour to meet the housing needs and aspirations of the Native Title Party;
  - (ii) LandCorp will identify residential lots and house and land packages suitable for delivering the Stage 2 Housing Land at its discretion and based on its ordinary development plan and policies and the provisions of this clause 13.3;
  - (iii) LandCorp will notify the Administrative Body of the residential lots and house and land packages that it proposes will comprise the Stage 2 Housing Land;



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- (iv) the Administrative Body may within 30 days of receiving notice from LandCorp under paragraph (iii), provide comments in relation to the lots proposed under paragraph (iii);
- (v) LandCorp will take into account any comments under paragraph (iv) and after doing so:
  - (A) transfer the residential lot component of the Stage 2 Housing Land to the Administrative Body as soon as reasonably practicable thereafter; and
  - (B) transfer the house and land component of the Stage 2 Housing Land to the Administrative Body as soon as reasonably practicable following:
    - (1) receiving notice from the Administrative Body under paragraph (iv); and
    - (2) completion of construction of the houses.
- (g) If the Administrative Body does not accept the transfer of the Stage 2 Housing Land (whether in whole in part) within three months of a transfer duly executed by LandCorp being presented to it, LandCorp:
  - (i) may sell the Stage 2 Housing Land on an arm's length basis; and
  - (ii) if it sells the land, must deliver the proceeds to the Indigenous Housing Fund by direct deposit into the Trust Account for the Indigenous Housing Fund Trust within 60 days of settlement of any such sale.

## 13.4 Stage 3 Housing Land

- (a) The third stage of the Native Title Party Housing Land, will comprise:
  - (i) 5 residential lots to be located in the Broome North Development (with an approximate 2011 value of \$1 million) (*Stage 3 Housing Land*); and
  - (ii) 15 hectares of englobo developable land located on the corner of Fairway Drive and Magabala Road in the Broome North Development, being Lot 514 of deposited plan 71189 (*Englobo Land*).
- (b) The Stage 3 Housing Land and the Englobo Land will be transferred to the Administrative Body, to be held on trust for the benefit of members of the Native Title Claim Group, as soon as reasonably practicable following the Administrative Body Ratification Date and with an indicative timeframe of the transfer being effected in the years 2014/2015, whichever is the later, but subject to paragraph (d)(vi) in the case of the Englobo Land.
- (c) The State agrees to pay for:
  - (i) the direct cost of effecting the transfer of the Stage 3 Housing Land to the Administrative Body;
  - (ii) the direct cost of effecting the transfer of the Englobo Land to the Administrative Body and developer development contribution payable to the Shire of Broome as required under the Shire of Broome Town Planning Scheme No.4 up to an amount of \$1.6 million;
  - (iii) duty payable under the *Duties Act 2008* (WA); and

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- (iv) registration fees at the Western Australian Land Information Authority (Landgate), for the avoidance of doubt, the State is not liable to pay for:
  - (v) establishment costs not referred to in paragraphs (i) to (iv) above, including general or legal expenses incurred by the Native Title Party or the provision of services, other than the Services, to the Stage 3 Housing Land or the provision of services to the Englobo Land; and
  - (vi) following the transfer of the Stage 3 Housing Land and the Englobo Land to the Administrative Body, all holding costs including local government rates and other rates and taxes that are normally borne by the land owner.
- (d) The Stage 3 Housing Land will be held and used consistently with the objects, purposes and rules of the Indigenous Housing Fund and the following principles:
  - (i) Stage 3 Housing Land will be consistent with the approximate values set out in paragraph (a) unless the Native Title Party elects to contribute funding to allow for the components of the Stage 3 Housing Land to have a greater value;
  - (ii) the final timeframe for the delivery of the Stage 3 Housing Land is subject to the development timeframes of the Broome North Development by LandCorp and the Parties acknowledge and agree that LandCorp is not obliged to commence development works for the sole purpose of effecting the delivery of the Stage 3 Housing Land;
  - (iii) housing constructed on the Stage 3 Housing Land must be consistent with LandCorp's Build to Design Guidelines;
  - (iv) future housing constructed on the Englobo Land must be consistent with LandCorp's Build to Design Guidelines;
  - (v) to the extent reasonably practicable the State Employment and Business Development Management Schedule will apply in relation to the delivery of the Stage 3 Housing Land; and
  - (vi) the Administrative Body may request the State hold the Englobo land until such time as it has the necessary capacity to hold or hold, develop and subdivide the land, provided that the transfer of the Englobo land to the Administrative Body must be completed by 31 December 2020.
- (e) The final nature, location and type of Stage 3 Housing Land will be determined by LandCorp and the State in accordance with the following procedures:
  - (i) LandCorp will consult with the Native Title Party through the Administrative Body in relation to finalising the Stage 3 Housing Land and will endeavour to meet the housing needs and aspirations of the Native Title Party;
  - (ii) LandCorp will identify residential lots suitable for delivering the Stage 3 Housing Land at its discretion and based on its ordinary development plan and policies and the provisions of this clause 13.4;
  - (iii) LandCorp will notify the Administrative Body of the residential lots that it proposes will comprise the Stage 3 Housing Land;

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- (iv) the Administrative Body may within 30 days of receiving notice from LandCorp under paragraph (iii), provide comments in relation to the lots proposed under paragraph (iii); and
- (v) LandCorp will take into account any comments under paragraph (iv) and, after doing so, transfer the residential lot component of the Stage 3 Housing Land to the Administrative Body as soon as reasonable practicable following receiving notice from the Administrative Body under paragraph (iv).
- (f) If the Administrative Body does not accept the transfer of the of the Stage 3 Housing Land or the Englobo Land (whether in whole in part) within three months of a transfer duly executed by LandCorp being presented to it, LandCorp:
  - (i) may sell the Stage 3 Housing Land or Englobo Land on an arm's length basis; and
  - (ii) if it sells the land, must deliver the proceeds to the Indigenous Housing Fund by direct deposit into the Trust Account for the Indigenous Housing Fund Trust within 60 days of settlement of any such sale.

## 14. Precinct Facilities Transfer

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### 14.1 State commitment

- (a) The State agrees to consider the transfer of Facilities in the LNG Precinct to the Native Title Party in accordance with the procedures set out in clauses 14.2 or 14.3 (as applicable).
- (b) Any arrangements for the transfer of Facilities owned by a Proponent, must be agreed between the Native Title Party, the State and that Proponent.

### 14.2 Grant of Port Facilities to Native Title Party

- (a) If the State gives notice under the State Agreement that the Port will:
  - (i) not operate beyond the End of Precinct Life; or
  - (ii) cease operation,

the Native Title Party may request the transfer of any Facilities on the Port Land and the State will consider such request, including by considering third party interests in the Facilities and the Native Title Party's capacity and expertise to hold, maintain and operate the Facilities in question, as part of its commitment in relation to the Grant of title within the LNG Precinct to the Native Title Party under the State Agreement.
- (b) A decision by the State in relation to a request made by the Native Title Party under paragraph (a) will be determined at the sole discretion of the State (taking into account the factors in paragraph (a)) and is conditional upon the Native Title Party and the State entering into an agreement on terms to be fixed by agreement between the Parties.
- (c) The State and the Native Title Party agree that if the Native Title Party elects to take a transfer of any Facilities on the Port Land in accordance with this clause 14.2, the State will not be required to comply with the remediation and rehabilitation obligations under the State Agreement in relation to the Port Land (or such part of the Port Land as may be set out in the agreement contemplated under paragraph (b)).

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## **14.3 Grant of other Facilities to Native Title Party**

- (a) Within 6 months of the End of Precinct Life, the Native Title Party may request the transfer of any Facilities within the Industrial Precinct and Third Party Contractors' Site and the State will consider such request, including by considering third party interests in the Facilities and the Native Title Party's capacity and expertise to hold, maintain and operate the Facilities in question, as part of its commitment in relation to the Grant of title within the LNG Precinct to the Native Title Party under the State Agreement.
- (b) A decision by the State in relation to a request made by the Native Title Party under paragraph (a) will be determined at the sole discretion of the State (taking into account the factors in paragraph (a)) and is conditional upon the Native Title Party and the State entering into an agreement on terms to be fixed by agreement between the State and the Native Title Party.
- (c) The State and the Native Title Party agree that if the Native Title Party elects to take a transfer of any Facilities in accordance with this clause 14.3, the State will not be required to comply with the remediation and rehabilitation obligations under the State Agreement in relation to the Precinct Land (or such part of the Precinct Land as may be set out in the agreement contemplated under paragraph (b)).

## **15. Administrative Body Funding**

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### **15.1 State commitment**

- (a) Subject to paragraph (b), the State will pay \$5 million to fund the establishment and operation of the Administrative Body (and Corporate Trustee), including the performance by the Administrative Body of its roles and obligations under this Agreement.
- (b) Payment of the funding under paragraph (a) will be made in two stages as follows:
  - (i) the Establishment Funds will be paid in accordance with clause 20.4; and
  - (ii) the balance of the State commitment, being \$5 million less the Establishment Funds, will be paid to the Administrative Body within 60 days following the Administrative Body Ratification Date consistent with clause 21.14(c).
- (c) Prior to the Administrative Body Ratification Date, payment under paragraph (b)(ii) will be held by the State on trust for the benefit of the Native Title Claim Group in an interest bearing account.
- (d) Payment of the sum in paragraph (b)(ii), together with any interest earned under paragraph (c), will be made by direct deposit to an account nominated by the Administrative Body (and approved by the State, acting reasonably) to be held on trust for the benefit of members of the Native Title Claim Group in an interest bearing account.

## Chapter 4 – Proponent Benefits

### 16. Foundation Proponent Benefits

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#### 16.1 Foundation Proponent Commitment

The Foundation Proponent will provide to the Native Title Party the Benefits set out in Schedule 5 in accordance with this Agreement and in the manner set out in Schedule 5.

#### 16.2 Discharge of payment obligations

Any amount deposited by the Foundation Proponent and cleared by the relevant bank will be deemed to have been paid to and received by the Native Title Party or other body as provided for in Schedule 5 and to be a valid discharge of the obligations of the Foundation Proponent to make payment of that amount under this Agreement.

#### 16.3 Manner of distribution

The Foundation Proponent makes the payments to the Native Title Party for the benefit of the Native Title Claim Group as a whole. However, the Foundation Proponent will not be bound to enquire as to the manner in which any payments made under clause 16.1 are applied nor as to the members or beneficiaries of the body in receipt of the payments.

#### 16.4 Trustees

The Foundation Proponent will not in any manner be responsible for any act, omission, neglect or breach of trust by the Native Title Party, Administrative Body, Corporate Trustee, or otherwise in relation to any Benefits delivered under the Regional Benefits Agreement or this Agreement or the trustees or managers of the relevant funds held by those bodies or otherwise including without limitation any misuse or wrongful application of payments.

### 17. Proponent Benefits Fund

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#### 17.1 Foundation Proponent Commitment

- (a) The Foundation Proponent agrees to make payments into the Proponent Benefits Fund in accordance with clause 16 and Schedule 5.
- (b) If the circumstances contemplated by clause 7.1 arise, then the Foundation Proponent agrees to make payments into the Proponent Benefits Fund in accordance with clause 7.1 and Schedule 5 with a condition attached to those payments that they be applied for the purpose of addressing impacts of the conduct of the Foundation Proponent Project on the Local Indigenous Community.
- (c) Until the Corporate Trustee establishes the Proponent Benefits Fund Trust as contemplated by this Agreement, the payment under paragraph (a) will be held by the Proponent on trust for the benefit of the Native Title Claim Group in an interest bearing account.

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- (d) Payment of the sum in paragraph (a), together with any interest earned under paragraph (c), will be made by direct deposit into the Trust Account for the Proponent Benefits Fund Trust.

## **17.2 Additional Proponent Commitment**

Each Additional Proponent must make payments into the Proponent Benefits Fund in accordance with clause 19.

## **17.3 Purpose of the Proponent Benefits Fund**

The purpose of the Proponent Benefits Fund is to deliver to the Native Title Party and the members of the Native Title Claim Group any Benefits that Proponents have committed to provide solely for the members of the Native Title Claim Group under this Agreement.

## **17.4 Objects of the Proponent Benefits Fund**

- (a) The specific objects of the Proponent Benefits Fund will be determined by the Native Title Party.
- (b) The objects of the Proponent Benefits Fund must include objects which will enable the Proponent Benefits Fund to receive, manage and disburse funds received in accordance with 17.1(b) with a condition attached to those payments that they be applied for purposes including addressing impacts of the conduct of the Foundation Proponent Project on the Local Indigenous Community.

## **17.5 Rules of the Proponent Benefits Fund**

- (a) Subject to paragraph (b), the rules of the Proponent Benefits Fund will be determined by the Native Title Party and approved by the Foundation Proponent before that fund is established, with such approval not to be unreasonably withheld or delayed.
- (b) The rules of the Proponent Benefits Fund must be consistent with this clause 17 and must provide for:
  - (i) audit requirements consistent with clause 23 of this Agreement;
  - (ii) the manner in which applications for funding must be made; and
  - (iii) a specified distribution policy or policies.

## **17.6 Eligibility to access the Proponent Benefits Fund**

- (a) Access to the Proponent Benefits Fund is limited to members of the Native Title Claim Group.
- (b) If the circumstances contemplated by clause 7.1 arise, then access to the Proponent Benefits Fund is limited to persons who would have been members of the Native Title Claim Group if the Native Title Claim were on foot, or had been positively determined.

## **17.7 Reporting and review of the Proponent Benefits Fund**

- (a) The Administrative Body must prepare annual reports on the operation of the Proponent Benefits Fund (*PBF Report*).

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- (b) The Administrative Body must provide PBF Reports to Proponents, the State Implementing Agency and any other parties that make a financial contribution to the Proponent Benefits Fund and make each PBF Report available to members of the Native Title Claim Group.
- (c) Each PBF Report must contain:
  - (i) a statement of grant acquittals, including:
    - (A) an outline of how funds were intended to be spent;
    - (B) the outcomes of the funded activity;
    - (C) the forecasts of the funded activity; and
    - (D) information about the purpose of the grant and the funded activity, and
  - (ii) a true and fair view of the financial position of the Proponent Benefits Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The State, Proponents and the Native Title Party will agree the scope and frequency of the review of the Proponent Benefits Fund.

## **18. Proponent Asset Transfer**

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### **18.1 Foundation Proponent Commitment**

- (a) Subject to the Foundation Proponent receiving the Grant of the last of the Project Rights necessary for the operation of the Foundation Proponent Project, the Foundation Proponent grants the Native Title Party a right to request the transfer of the ownership of the Foundation Proponent's Accommodation Facilities (as remaining at the LNG Precinct at the time the request is made) to the Administrative Body at the written down book value at the earlier of:
  - (i) end of the Foundation Proponent Project (after completion of Decommissioning of the Project); or
  - (ii) 30 years following First LNG Cargo.
- (b) Subject to this clause 18, any transfer of the ownership of the Foundation Proponent's Accommodation Facilities will occur in accordance with the commitments and procedure set out in clause 39.

### **18.2 Additional Proponent Commitment**

- (a) Unless agreed otherwise between an Additional Proponent and the Native Title Party under clause 19 and subject to an Additional Proponent receiving the Grant of the last of the Project Rights necessary for the operation of the Additional Proponent Project, the Additional Proponent grants the Native Title Party a right to request the transfer of the ownership of the Additional Proponent's Accommodation Facilities (as remaining at the LNG Precinct at the time the request is made) to the Administrative Body at the written down book value at the earlier of:

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- (i) end of the Additional Proponent Project (after completion of Decommissioning of the Project); or
  - (ii) 30 years following First LNG Cargo.
- (b) Subject to this clause 18, the transfer of the ownership of the Additional Proponent's Accommodation Facilities will occur in accordance with the commitments and procedure outlined in clause 39.

## **19. Additional Proponents Benefits**

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### **19.1 Additional Proponent Benefits to be at least commensurate to Foundation Proponent Benefits**

- (a) Subject to the remainder of this clause 19, an Additional Proponent will provide the Additional Proponent Benefits as set out in Schedule 4, being Benefits at least commensurate to the Foundation Proponent Benefits.
- (b) Following receipt of notice from the State under clause 36.2, the Native Title Party may give notice to the Additional Proponent requesting that the Native Title Party and the Additional Proponent negotiate an Additional Proponent Benefits package different to that set out in Schedule 4.
- (c) If the Native Title Party fails to give notice to the Additional Proponent under paragraph (b) within 6 months of receipt of notice from the State under clause 36.2, then the Additional Proponent Benefits package will be deemed to be as set out in Schedule 4 and clauses 19.2 to 19.4 will not apply.
- (d) If the Native Title Party requests to negotiate the Additional Proponent Benefits package under paragraph (b), then the Additional Proponent Benefits will be as determined in accordance with the procedure outlined in clauses 19.2 to 19.4.

### **19.2 Additional Proponent and Native Title Party to negotiate in good faith**

Following notification under clause 19.1(b), the Additional Proponent and the Native Title Party must commence good faith negotiations to agree on an Additional Proponent Benefits package that is:

- (a) in the reasonable opinion of the Additional Proponent and the Native Title Party, at least commensurate to the Foundation Proponent Benefits;
- (b) in the reasonable opinion of the Native Title Party, tailored to suit the specific requirements and opportunities of the Native Title Party at the time the Additional Proponent is negotiating entry into the LNG Precinct; and
- (c) inclusive of a regional component that in the reasonable opinion of the State, Additional Proponent and the Native Title Party, is reflective of the proportion of the Benefits solely for the benefit of the Native Title Party (and delivered through this Agreement) and for regional benefit (and delivered pursuant to the Regional Benefits Agreement).



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## 19.3 Costs to be borne by Additional Proponent

The Additional Proponent must pay their own costs and the reasonable costs incurred by the Native Title Party in relation to the negotiation of an Additional Proponent Benefits package under clause 19.2 and any arbitration process required pursuant to clause 19.4.

## 19.4 Failure to agree a revised Benefits package

- (a) If the Additional Proponent and Native Title Party fail to agree an Additional Proponent Benefits package under clause 19.2 within 9 months of the date of notification under clause 19.1(b), then the Additional Proponent or the Native Title Party may give notice, that it commences the arbitration process set out in clause 19.5.
- (b) If notice is given in accordance with paragraph (a), the Additional Proponent Benefits package will be determined in accordance with the arbitration process set out in clause 19.5 within a period of 3 months from the date notice is given in accordance with paragraph (a).

## 19.5 Determination of Additional Proponent Benefits package by arbitration

The arbitration process to determine a final Additional Proponent Benefits package for the purposes of clause 19.4(b), will be governed by the CAA, subject to the following principles:

- (a) within 14 days of the date notice is given under paragraph 19.4(a), the Additional Proponent and the Native Title Party must each appoint an arbitrator (who is suitably qualified to determine the Additional Proponent Benefits package in the reasonable opinion of the Additional Proponent and the Native Title Party respectively) (each a ***Party Nominated Arbitrator***);
- (b) within 14 days of their appointment, the Party Nominated Arbitrators must jointly nominate a third arbitrator to preside over the arbitration (who in the reasonable opinion of the Party Nominated Arbitrators is suitably qualified to determine the Additional Proponent Benefits Package) (***Chairperson***);
- (c) together the Chairperson and each Party Nominated Arbitrator will comprise the arbitration tribunal (***Arbitral Tribunal***);
- (d) within 14 days of the appointment of the Chairperson under paragraph (b), the Native Title Party must provide the Arbitral Tribunal with the Precinct Agreements and submit to the Arbitral Tribunal and serve on the Additional Proponent its position as to the appropriate Additional Proponent Benefits package to be provided;
- (e) within 14 days of the submission by the Native Title Party under paragraph (d), the Additional Proponent must respond to the Native Title Party's submission and submit to the Arbitral Tribunal and serve on the Native Title Party its position as to the appropriate Additional Proponent Benefits Package to be provided;
- (f) the submissions made by the Native Title Party under paragraph (d) and by the Additional Proponent under paragraph (e) must take into account:
  - (i) the benchmark Additional Proponent Benefits Package as set out in Schedule 4:
  - (ii) the quantum of the Foundation Proponent Benefits package;

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- (iii) the capacity of the Foundation Proponent Project in comparison to the proposed Additional Proponent Project;
- (iv) the impacts of the Additional Proponent Project (including social impacts);
- (v) the matters set out in clauses 19.2 and 19.6; and
- (vi) appropriate indexation;
- (g) the Arbitral Tribunal must provide a final determination, made and reasoned solely on the basis of the submissions received pursuant to paragraphs (d) and (e) and the matters contemplated under the Precinct Agreements, within 30 days of receipt of the Additional Proponent's submission under paragraph (e); and
- (h) the determination will be final and binding and will be subject to review only on the grounds provided for under the CAA.

## **19.6 Regional Component of Additional Proponent Benefits package to be delivered under the Regional Benefits Agreement**

- (a) The Additional Proponent Benefits package, whether:
  - (i) agreed in accordance with clause 19.2;
  - (ii) deemed under clause 19.1(c) to comprise the package set out in Schedule 4; or
  - (iii) determined pursuant to clauses 19.4(b) and 19.5,must contain a component that is for the benefit of regional beneficiaries and not solely for the benefit of the Native Title Party (*Regional Component*).
- (b) The Parties agree that the Regional Component is to be delivered to the regional beneficiaries pursuant to the Regional Benefits Agreement and not through the provisions of clause 17 and Chapter 5 of this Agreement.
- (c) For the avoidance of doubt, any component of the Additional Proponent Benefits package that is payable solely for the benefit of the Native Title Party is to be delivered in accordance with the provisions of this Agreement.

## Chapter 5 – Delivery of Benefits

### 20. Establishment of Corporate Entities and Ratification

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#### 20.1 Native Title Party to establish Corporate Entities

- (a) Subject to the payment of funds by the State under clause 20.4, the Native Title Party, must as soon as practicable after the Commencement Date, establish:
  - (i) the Administrative Body, in accordance with clause 21; and
  - (ii) the Corporate Trustee, in accordance with clause 22,  
(together the *Corporate Entities*).
- (b) In connection with its obligation under paragraph (a), the Native Title Party must convene a meeting to be attended by as many of the members of the Native Title Claim Group as reasonably practicable in order to establish the procedure for:
  - (i) determining the constitutions of the Corporate Entities;
  - (ii) determining the appointment of the first board of directors of the Administrative Body; and
  - (iii) determining the appointment of the first board of directors of the Corporate Trustee.
- (c) If no procedure is established under paragraph (b), those matters in paragraph (b) will be determined by the agreement of the simple majority of the members of the Native Title Claim Group at a meeting duly called for that purpose.
- (d) Notice of the meeting referred to in paragraph (b) must be sent to members of the Native Title Claim Group not less than 21 days prior to the meeting. Notwithstanding anything in clause 55, notice of any meeting is to be in the form that the Native Title Party considers appropriate for that meeting.

#### 20.2 Provision of information

- (a) The Native Title Party must finalise the constitutions of the Corporate Entities under clauses 21.3 and 22.3 prior to making any application for registration of the Corporate Entities pursuant to the CATSI Act or the Corporations Act (as the case may be).
- (b) The Native Title Party must provide the State and the Foundation Proponent with the following documentation within 30 days of the Corporate Entities being registered with the CATSI Registrar or ASIC (as the case may be):
  - (i) copies of:
    - (A) the certificate of incorporation issued by the CATSI Registrar pursuant to section 32-1(c) of the CATSI Act; or
    - (B) the certificate of registration issued by ASIC pursuant to section 118(1)(c) of the Corporations Act;
  - (ii) copies of the constitution:

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- (A) as registered by the CATSI Registrar pursuant to section 32-1(b) of the CATSI Act; or
  - (B) as lodged with the application made to ASIC for the registration of the relevant Corporate Entity pursuant to section 117(3) of the Corporations Act;
- (iii) copies of notices from the Australian Taxation Office:
  - (A) confirming that the Corporate Entities are registered for GST purposes (as required under clause 21.9 and 22.11); and
  - (B) quoting Australian Business Numbers for the Corporate Entities; and
- (iv) written notice of address and facsimile numbers for service of documents on the Corporate Entities.
- (c) If the State or the Foundation Proponent considers documentation provided under paragraph (b):
  - (i) is not inconsistent with this Agreement, the State or the Foundation Proponent must notify the Native Title Party that they are satisfied with the documentation (*Notice of Satisfaction*); or
  - (ii) is inconsistent with this Agreement, the State or the Foundation Proponent must notify the Native Title Party, with reasonable details of the inconsistency, and the Native Title Party must take reasonable action to address those reasons and provide the documentation to the State and the Foundation Proponent again in accordance with paragraph (b).
- (d) If the State and the Foundation Proponent fails to notify in accordance with paragraph (c) within 90 days of receipt of notice referred to in paragraph (b), then they are deemed to have given a notification under paragraph (c)(i).

## 20.3 Ratification of this Agreement

As soon as practicable after the State has provided the Native Title Party with Notice of Satisfaction in accordance with clause 20.2(c)(i):

- (a) The Administrative Body and the Parties must execute the Ratification Deed as set out in Schedule 16.
- (b) On and from the date of the Ratification Deed (*Administrative Body Ratification Date*):
  - (i) the Administrative Body will have the rights of and owe the obligations of the Administrative Body in accordance with the terms of this Agreement;
  - (ii) the Parties will have the same rights against, and owe the same obligations to, the Administrative Body as if the Administrative Body were a party to this Agreement.
- (c) The Corporate Trustee and the Parties must execute the Ratification Deed as set out in Schedule 16.
- (d) On and from the date of the Ratification Deed (*Corporate Trustee Ratification Date*):

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- (i) the Corporate Trustee will have the rights of and owe the obligations of the Corporate Trustee in accordance with the terms of this Agreement;
- (ii) the Parties will have the same rights against, and owe the same obligations to, the Corporate Trustee as if the Corporate Trustee were a party to this Agreement.

## **20.4 Corporate Entities Establishment Funding**

- (a) The State must, as soon as practicable after the Commencement Date, pay the sum of \$1.5 million to the Native Title Party for the purposes of establishing the Corporate Entities under clauses 21 and 22 of this Agreement (*Establishment Funds*).
- (b) The payment made under paragraph (a) will be made to an entity nominated by the Native Title Party (and approved by the State) to be held on trust for the benefit of members of the Native Title Claim Group in an interest bearing account.
- (c) The Native Title Party must use the Establishment Funds to meet its reasonable costs and disbursements incurred in performing its obligations under this clause 20 and clauses 21 and 22.
- (d) The Native Title Party must procure that the balance of the Establishment Funds not used in accordance with this clause 20 be paid to the Administrative Body on or as soon as practicable after the Administrative Body Ratification Date and be used by the Administrative Body for the benefit of the Native Title Party in a manner consistent with clause 21.14.
- (e) The Native Title Party must, within 30 days of receipt of a written request from the State or the Administrative Body, provide the State or the Administrative Body (as the case may be) with details of the expenditure of the Establishment Funds (including copies of receipts for disbursements over \$5000).

## **21. Administrative Body**

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### **21.1 Establishment and purpose of Administrative Body**

- (a) A body corporate will be established in accordance with this clause and clause 20 to support the implementation of this Agreement (*Administrative Body*).
- (b) The Administrative Body will have responsibility for:
  - (i) the operation and management of the Economic Development Fund, Indigenous Housing Fund and Proponent Benefits Fund for the benefit of the Native Title Party; and
  - (ii) holding and managing the Grant Land for the benefit of the Native Title Party.
- (c) The Administrative Body may be established under either the CATSI Act or the Corporations Act.
- (d) Subject to the CATSI Act or the Corporations Act, as the case may be, the Administrative Body may have any name chosen by its members.

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## 21.2 Objects of Administrative Body

The Parties agree that the initial objects of the Administrative Body include:

- (a) establishing and administering the Economic Development Fund, Indigenous Housing Fund, Proponent Benefits Fund and any other funds that may be established by the Administrative Body;
- (b) holding, managing and transferring the Grant Land for the benefit of the members of the Native Title Claim Group;
- (c) establishing the policy, guidelines, processes and documentation to implement the relevant components of the Benefits;
- (d) ensuring, to the extent that the Administrative Body is or may be concerned with the use and distribution of the Benefits, that the Benefits are used and distributed equitably amongst the Native Title Claim Group having regard to the needs and priorities of the members of the Native Title Claim Group both individually and collectively;
- (e) implementing the various components of the Benefits in accordance with the prescribed objects and purposes for each Benefit under this Agreement;
- (f) liaising with government and non-government agencies;
- (g) seeking funding from government and non-government agencies for the development of joint initiatives;
- (h) monitoring and reviewing the performance of this Agreement;
- (i) providing annual reports on the performance and outcomes of each component of the Benefits to the State Implementing Agency;
- (j) performance of its obligations under this Agreement;
- (k) performance of any obligations or functions relating to the Management Schedules and the operation of the Precinct Management Committee; and
- (l) undertaking community development for the benefit of the members of the Native Title Claim Group including undertaking specific activities relating to the welfare of members of the Native Title Claim Group for the purposes of:
  - (i) relief of poverty and illness;
  - (ii) child care and care for the aged or disabled;
  - (iii) provision of community and social infrastructure; and
  - (iv) cultural development.

## 21.3 Constitution of the Administrative Body

- (a) The constitution of the Administrative Body must:
  - (i) be determined in accordance with paragraphs (b) to (e);
  - (ii) be consistent with this clause 21;
  - (iii) be fair, equitable, transparent and consistent with contemporary governance standards; and

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- (iv) provide for audit requirements consistent with clause 23 of this Agreement.
- (b) The Native Title Party will:
  - (i) establish a constitution for the Administrative Body consistent with paragraph (a); and
  - (ii) provide the State and the Foundation Proponent with a copy of the proposed constitution.
- (c) Upon the receipt of the proposed constitution under paragraph (b)(ii), the State and Foundation Proponent will within 30 days consider the proposed constitution and if the State and Foundation Proponent consider that the proposed constitution:
  - (i) complies with paragraph (a), the State and the Foundation Proponent must notify the Native Title Party of that compliance;
  - (ii) does not comply with the requirements of paragraph (a), the State and the Foundation Proponent must:
    - (A) notify the Native Title Party that the proposed constitution is not approved;
    - (B) provide reasonable details of the inconsistency; andthe Native Title Party must:
    - (C) take reasonable action to address those reasons; and
    - (D) propose a new constitution in accordance with this clause 21.3.
- (d) If both the State and the Foundation Proponent fail to notify in accordance with paragraph (c), then notice is deemed to have been given under paragraph (c)(i).
- (e) In considering consent or non-consent under paragraph (c), the State and the Foundation Proponent may take into account the factors set out in item 5 of Schedule 15 in forming their view. The omission of one relevant factor in item 5 of Schedule 15 from the constitution does not, by reason of that omission alone, provide a reason to reasonably withhold consent to the constitution.

## **21.4 Amendment of Administrative Body's constitution**

- (a) The terms of the Administrative Body's constitution must not be amended in a manner inconsistent with the provisions of this Agreement or the constitution itself.
- (b) The terms of the Administrative Body's constitution must not be amended other than in accordance with its constitution, any applicable Law and the following process:
  - (i) The Native Title Party will provide the State and the Foundation Proponent with a copy of the proposed amended constitution.
  - (ii) Upon the receipt of a copy of the proposed amended constitution under paragraph (i), the State and the Foundation Proponent will within 30 days consider the proposed amended constitution and if the State or the Foundation Proponent considers that the proposed amended constitution:

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- (A) complies with paragraph (a), then the State or the Foundation Proponent must notify the Native Title Party;
  - (B) does not comply with the requirements of paragraph (a), the State or the Foundation Proponent may:
    - (1) notify the Native Title Party that the proposed amended constitution is not approved;
    - (2) provide reasonable details of its position; andthe Native Title Party must, if it still wishes to amend:
  - (C) take reasonable action to address those reasons; and
  - (D) propose a new amended constitution in accordance with this clause 21.4.
- (c) If the State or the Foundation Proponent fails to notify in accordance with paragraph (b) within 30 days of receipt of notice referred to in paragraph (b), then it is deemed to have given a notification under paragraph (b)(ii)(A).

## 21.5 Membership

Membership of the Administrative Body is open to all members of the Native Title Claim Group who are aged 18 years or over.

## 21.6 Board of the Administrative Body

- (a) The committee of directors of the Administrative Body (**Board**):
  - (i) must be consistent with the requirements of the CATSI Act or the Corporations Act, as the case may be; and
  - (ii) may otherwise be constituted in any manner that the members of the Administrative Body think fit.
- (b) The functions of the Board must include, but are not limited to:
  - (i) managing the Administrative Body for the benefit of the members of the Native Title Claim Group;
  - (ii) determining priorities for the Administrative Body and producing a strategic plan, which must be reviewed and updated by the Board at least every 5 years; and
  - (iii) appointing a Management Group in accordance with clause 21.7.
- (c) The Board may delegate general powers and specific powers to the Management Group, and may make the exercise of delegated powers subject to conditions regarding:
  - (i) the prior consent of the Board;
  - (ii) ratification by the Board;
  - (iii) reporting requirements; and
  - (iv) revocation of the delegation.



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## **21.7 Management Group**

- (a) The Board must appoint a Management Group of the Administrative Body comprising a chief executive officer, one or more members of the Board and such other persons as the Board considers appropriate.
- (b) The function of the Management Group is to:
  - (i) exercise the powers delegated to it under clause 21.6(c);
  - (ii) arrange for the Administrative Body to employ or contract relevant staff and consultants; and
  - (iii) oversee and take responsibility for the administration and staff of the Administrative Body.

## **21.8 Administration of Other Benefits by Administrative Body**

The Administrative Body may manage, control and distribute Other Benefits, subject to its constitution.

## **21.9 GST**

The Administrative Body must be registered for GST purposes and be capable of issuing tax invoices prior to executing the Ratification Deed.

## **21.10 Right to deal with assets**

Except as expressly provided, nothing in this Agreement prevents the Administrative Body from selling, transferring, leasing or otherwise disposing of any of its assets in any manner it sees fit, or otherwise structuring itself to provide for prudent business practice (including effective quarantining of risk and liability).

## **21.11 Establishment of Administrative Body Entities**

The Administrative Body may establish Administrative Body Entities as it considers necessary to perform its obligations under this Agreement or to provide for prudent business practice (including effective quarantining of risk and liability).

## **21.12 Substitution of Administrative Body**

- (a) If, after the Administrative Body Ratification Date:
  - (i) the Native Title Party considers and the State and the Foundation Proponent consent, which consent will not be unreasonably withheld or delayed, that another specified body corporate shall be the Administrative Body for the purposes of this Agreement in place of the existing Administrative Body;
  - (ii) the requirements in this clause 21 have been met in relation to that body corporate; and
  - (iii) that body corporate and the Parties have entered into a Ratification Deed in accordance with the procedure set out in clause 20.3,

then that body corporate will on and from the date agreed by the Native Title Party and the State, be the Administrative Body for the purposes of this Agreement.

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- (b) The Native Title Party, the State and the Foundation Proponent must make a decision under paragraph (a):
  - (i) after first making reasonable efforts to consult with:
    - (A) the Board; and
    - (B) any Additional Proponent;
  - (ii) after taking any such consultations into account; and otherwise
  - (iii) within 30 days of the Native Title Party notifying the State that it wishes to substitute the Administrative Body.
- (c) If a new body corporate is substituted as the Administrative Body in accordance with paragraph (a) then, on and from the date of the substitution, the former Administrative Body will retain any liability incurred before that date under this Agreement and will remain entitled to any benefit which accrued under this Agreement prior to that date, but will not be entitled to any of the benefits and will not have any liability under this Agreement in respect of anything done or not done on or after that date.

## 21.13 Employment and Contracting Register

- (a) The Administrative Body will keep a record of members of the Native Title Claim Group seeking employment, training, business or contracting opportunities in relation to any Proponent Project and the LNG Precinct.
- (b) The Administrative Body must maintain contact with the other Parties to this Agreement in relation to the employment and training opportunities provided for under clause 33 and the business development and contracting opportunities provided for in clause 34.

## 21.14 Funding of Administrative Body

- (a) The Foundation Proponent agrees that the Foundation Proponent Benefits outlined in item 2.4 of Schedule 5 are for the purpose of funding the operation of the Administrative Body.
- (b) Subject to an alternative Additional Proponent Benefits package being agreed under clause 19, the Additional Proponent agrees that the Additional Proponent Benefits outlined in item 3.3 of Schedule 4 are for the purpose of funding the operation of the Administrative Body.
- (c) The State agrees that the payments made under clause 15, including the Establishment Funds outlined in clause 20.4, are for the purposes of:
  - (i) establishing the Corporate Entities in the manner set out in clause 20.4; and
  - (ii) funding the operation of the Administrative Body.
- (d) For the avoidance of doubt, the Administrative Body may use other sources of funds to assist with the operation of the Administrative Body,  
(together the *Administrative Funds*).

## 21.15 Reporting and review of the Administrative Funds

- (a) The Administrative Body must prepare annual reports on the distribution of the Administrative Funds (*AF Reports*).

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- (b) The Administrative Body must provide AF Reports to the State Implementing Agency and make each AF Report available to Proponents and members of the Native Title Claim Group.
- (c) Each AF Report must contain:
  - (i) a statement of payment acquittals, including:
    - (A) an outline of how funds were intended to be spent;
    - (B) the outcomes of the funded activity; and
    - (C) the forecasts of the funded activity; and
  - (ii) a true and fair view of the financial position of the Administrative Funds:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The Native Title Party and the State will agree the scope and frequency of the review of the Administrative Funds.

## 22. Corporate Trustee

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### 22.1 Establishment and purpose of Corporate Trustee

- (a) The Native Title Party will establish a body corporate in accordance with this clause and clause 20 to be the trustee of the Trusts (*Corporate Trustee*).
- (b) The Corporate Trustee must:
  - (i) be a public company limited by guarantee registered with ASIC in accordance with the provisions of the Corporations Act;
  - (ii) be a wholly owned subsidiary (as that term is defined in section 9 of the Corporations Act) of the Administrative Body; and
  - (iii) otherwise be established on such terms and conditions as first approved by the State, which approval must not be unreasonably withheld or delayed.
- (c) Subject to the Corporations Act, the Corporate Trustee may have any name chosen by the Native Title Party.

### 22.2 Objects of Corporate Trustee

The Parties agree that the initial objects of the Corporate Trustee will include:

- (a) acting as trustee for the Trusts in accordance with the Trust Deeds;
- (b) receiving, holding, managing, administering and investing on trust for the Native Title Party any Trust Assets; and
- (c) ensuring, to the extent that the Corporate Trustee is or may be concerned with the use and distribution of the Benefits, that the Benefits are used and distributed equitably amongst the members of the Native Title Claim Group of, or for the purposes stated in, this Agreement and the Trust Deeds (as the case may be) having regard to the needs and priorities of the members of the Native Title Claim Group (both individually and collectively).

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## **22.3 Constitution of Corporate Trustee**

- (a) The constitution of the Corporate Trustee must:
  - (i) be determined in accordance with paragraphs (b) to (e);
  - (ii) be consistent with this clause 22;
  - (iii) be fair, equitable, transparent and consistent with contemporary governance standards; and
  - (iv) provide for audit requirements consistent with clause 23 of this Agreement.
- (b) The Native Title Party will:
  - (i) establish a constitution for the Corporate Trustee consistent with paragraph (a); and
  - (ii) provide the State and the Foundation Proponent with a copy of the proposed constitution.
- (c) Upon the receipt of the proposed constitution under paragraph (b)(ii), the State and Foundation Proponent will within 30 days consider the proposed constitution and if the State and the Foundation Proponent consider that the proposed constitution:
  - (i) complies with paragraph (a), the State and the Foundation Proponent must notify the Native Title Party of that compliance; or
  - (ii) does not comply with the requirements of paragraph (a), the State and the Foundation Proponent must:
    - (A) notify the Native Title Party that the proposed constitution is not approved;
    - (B) provide reasonable details of the inconsistency; andthe Native Title Party must:
    - (C) take reasonable action to address those reasons; and
    - (D) propose a new constitution in accordance with this clause 22.3.
- (d) If both the State and the Foundation Proponent fail to notify in accordance with paragraph (c), then notice is deemed to have been given under paragraph (c)(i).
- (e) In considering consent or non-consent under paragraph (c), the State and the Foundation Proponent may take into account the factors set out in item 6 of Schedule 15 in forming their view. The omission of one relevant factor in item 6 of Schedule 15 from the constitution does not, by reason of that omission alone, provide a reason to reasonably withhold consent to the constitution.

## **22.4 Amendment of Corporate Trustee's constitution**

- (a) The terms of the Corporate Trustee's constitution must not be amended in a manner inconsistent with the provisions of this Agreement or the constitution itself.
- (b) The terms of the Corporate Trustee's constitution must not be amended other than in accordance with its constitution, any applicable Law and the following process:

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- (i) The Native Title Party will provide the State and the Foundation Proponent with a copy of the proposed amended constitution.
- (ii) Upon the receipt of a copy of the proposed amended constitution under paragraph (i), the State and the Foundation Proponent will within 30 days consider the proposed amended constitution and if the State or the Foundation Proponent considers that the proposed amended constitution:
  - (A) complies with paragraph (a), then the State or the Foundation Proponent must notify the Native Title Party;
  - (B) does not comply with the requirements of paragraph (a), the State or the Foundation Proponent may:
    - (1) notify the Native Title Party that the proposed amended constitution is not approved;
    - (2) provide reasonable details of its position; andthe Native Title Party must, if it still wishes to amend:
  - (C) take reasonable action to address those reasons; and
  - (D) propose a new amended constitution in accordance with this clause 22.4.
- (c) If the State or the Foundation Proponent fails to notify in accordance with paragraph (b) within 30 days of receipt of notice referred to in paragraph (b), then it is deemed to have given a notification under paragraph (b)(ii)(A).

## **22.5 Corporate Trustee to prepare Trust Deeds**

- (a) Within 3 months of the Corporate Trustee Ratification Date, the Corporate Trustee must prepare Trust Deeds for the following Trusts in accordance with the provisions of this Agreement:
  - (i) the Economic Development Fund Trust;
  - (ii) the Indigenous Housing Fund Trust;
  - (iii) the Land Trust; and
  - (iv) the Proponent Benefits Fund Trust.
- (b) Each Trust Deed must provide for:
  - (i) a power for the Corporate Trustee to act as trustee for the Trusts and to do all things necessary to facilitate the objects of the Trusts, provided that the Corporate Trustee must take into account the recommendations of the Administrative Body in carrying out its duties under this paragraph; and
  - (ii) for the Corporate Trustee to provide information reasonably required by the Administrative Body to enable the Administrative Body to discharge its reporting obligations under clauses 9.6, 10.6, 17.7 and 21.15.
- (c) The Corporate Trustee must provide to the State the proposed Trust Deeds within 30 days of them being finalised in accordance with paragraph (a) and prior to the Corporate Trustee executing the Trust Deeds.

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- (d) The Corporate Trustee must provide to the Foundation Proponent the Trust Deed proposed for the Proponent Benefits Fund Trust within 30 days of it being finalised in accordance with paragraph (a) and prior to the Corporate Trustee executing the Trust Deed.
- (e) In relation to each of the Trust Deeds other than the Trust Deed proposed for the Proponent Benefits Fund Trust, if the State considers Trust Deeds provided under paragraph (b):
  - (i) are not inconsistent with this Agreement, the State must notify the Corporate Trustee that the Trust Deeds are approved; or
  - (ii) are inconsistent with this Agreement, the State must promptly notify the Corporate Trustee, with reasonable details of the inconsistency, and the Corporate Trustee must take reasonable action to address those reasons and provide the Trust Deeds to the State again in accordance with paragraph (b).
- (f) If the State fails to notify in accordance with paragraph (e) within 30 days of receipt of the Trust Deeds under paragraph (b), then it is deemed to have given a notification under paragraph (e)(i).
- (g) In relation to the Trust Deed proposed for the Proponent Benefits Fund Trust, if the State or the Foundation Proponent, considers the Trust Deed provided under paragraphs (b) and (d):
  - (i) is not inconsistent with this Agreement, the State and the Foundation Proponent must notify the Corporate Trustee that the Trust Deed is approved; or
  - (ii) is inconsistent with this Agreement, the State and the Foundation Proponent must promptly notify the Corporate Trustee, with reasonable details of the inconsistency, and the Corporate Trustee must take reasonable action to address those reasons and provide the Trust Deed to the State and Foundation Proponent again in accordance with paragraphs (b) and (d).
- (h) If the State or the Foundation Proponent fails to notify in accordance with paragraph (g) within 30 days of receipt of the Trust Deeds under paragraph (b), then it is deemed to have given a notification under paragraph (g)(i).
- (i) Subject to paragraph (j), the Corporate Trustee may draft additional Trust Deeds as it considers necessary to deal with Other Benefits, subject to its constitution.
- (j) If the Corporate Trustee drafts any additional Trust Deed which relates to any Proponent's Benefits, the Corporate Trustee will provide that Trust Deed to the relevant Proponent for approval in accordance with this clause 22.5.
- (k) The Corporate Trustee will provide the State and the Foundation Proponent with a copy of a Trust Deed approved under paragraph (j) within 30 days of the Trust Deed being executed.

## **22.6 Establishment of Trusts**

- (a) Within 30 days of approval of the Trust Deeds under clause 22.5, the Corporate Trustee must execute Trust Deeds to establish each of the following Trusts:
  - (i) the Economic Development Fund Trust;
  - (ii) the Indigenous Housing Fund Trust;

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- (iii) the Land Trust; and
  - (iv) the Proponent Benefits Fund Trust.
- (b) The State, the Proponent (where relevant) and the Native Title Party must do all things reasonably necessary to establish the Trust Deeds to be executed under paragraph (a).

## 22.7 Establishment of Trust Accounts

- (a) Each Trust Deed must provide that, within 30 days of the establishment of the Trusts, the Corporate Trustee must establish Trust Accounts for:
  - (i) the Economic Development Fund;
  - (ii) the Indigenous Housing Fund; and
  - (iii) the Proponent Benefits Fund.
- (b) Each Trust Account must be:
  - (i) established and maintained in Australia with an authorised deposit-taking institution as defined in the *Banking Act 1959* (Cth);
  - (ii) of a kind approved by the board of the Corporate Trustee; and
  - (iii) named so as to identify it as a trust account and identify the relevant fund to which it applies.
- (c) Each Trust Account may comprise more than one account.
- (d) No funds may be deposited into a Trust Account other than funds held in accordance with the terms of the corresponding Trust Deed without prior written authorisation by a resolution of the board of the Corporate Trustee.
- (e) All amounts in a Trust Account, including any interest accrued on any amounts in a Trust Account will constitute Trust Assets and must be held in accordance with the terms of the corresponding Trust Deed.
- (f) No amounts may be withdrawn from any Trust Account otherwise than for authorised purposes in accordance with the terms of the corresponding Trust Deed.

## 22.8 Amendment of Trust Deeds

- (a) The terms of the Trust Deeds must not be amended in a manner inconsistent with the provisions of this Agreement or the Trust Deeds.
- (b) The terms of the Trust Deeds must not be amended other than in accordance with the Trust Deeds, any applicable Law and the following process:
  - (i) The Native Title Party will provide the State (and each Proponent in the case of an amendment to the Trust Deed for the Proponent Benefits Fund Trust) with a copy of the proposed amended Trust Deed.
  - (ii) Upon the receipt of a copy of the proposed amended Trust Deed under paragraph (i), the State (and each Proponent if applicable) will within 30 days consider the proposed amended Trust Deed and if the State (and each Proponent if applicable) considers that the proposed amended Trust Deed:

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- (A) complies with paragraph (a), then the State (and each Proponent if applicable) must notify the Native Title Party;
  - (B) does not comply with the requirements of paragraph (a), the State (and each Proponent if applicable) must:
    - (1) notify the Native Title Party that the proposed amended Trust Deed is not approved;
    - (2) provide reasonable details of its position; andthe Native Title Party must, if it still wishes to amend:
  - (C) take reasonable action to address those reasons; and
  - (D) propose a new amended Trust Deed in accordance with this clause 22.8.
- (c) If the State (and each Proponent if applicable) fails to notify in accordance with paragraph (b) within 30 days of receipt of notice referred to in paragraph (b), then it is deemed to have given a notification under paragraph (b)(ii)(A).

## 22.9 Board of the Corporate Trustee

- (a) Subject to the Corporations Act, the Native Title Party will ensure that initially the Corporate Trustee has a board of directors that includes:
  - (i) up to five persons who are members of the Administrative Body (*Native Title Party Directors*);
  - (ii) one independent director that is nominated by the State; and
  - (iii) one independent director that is nominated by the Native Title Party.
- (b) A director of the Corporate Trustee is to be appointed by its members.
- (c) If, at any time, an independent director has not been appointed or a person appointed to be an independent director retires and a replacement independent director has not yet been appointed, the Corporate Trustee must not exercise any powers, duties, authorities, or discretions contained in the Trust Deeds or as trustee of the Trusts until an independent director or a replacement independent director is appointed.
- (d) The constitution of the Corporate Trustee must require that the board of directors of the Corporate Trustee includes at least two independent directors.
- (e) Without derogating from the right of the State to nominate an independent director or a replacement independent director, paragraph (c) will not apply if either:
  - (i) the State has not nominated its independent director or replacement independent director; or
  - (ii) that nominated independent director has not provided the Corporate Trustee with a signed consent to act,within 30 days of the State being notified of the vacancy occurring.

## 22.10 Substitution of Corporate Trustee

- (a) If, after the Corporate Trustee Ratification Date:



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- (i) the Native Title Party considers and the State and the Foundation Proponent consent, which consent will not be unreasonably withheld or delayed, that another specified body corporate shall be the Corporate Trustee for the purposes of this Agreement in place of the existing Corporate Trustee;
- (ii) the requirements in this clause 22 have been met in relation to that body corporate; and
- (iii) that body corporate has entered into a Ratification Deed in accordance with the procedure set out in clause 20.3,

then that body corporate will on and from the date agreed by the Native Title Party and the State, be the Corporate Trustee for the purposes of this Agreement.

- (b) The Native Title Party, the State and the Foundation Proponent must make a decision under paragraph (a):
  - (i) after first making reasonable efforts to consult with:
    - (A) the Board; and
    - (B) any Additional Proponent;
  - (ii) after taking any such consultations into account; and otherwise
  - (iii) within 30 days of the Native Title Party notifying the State that it wishes to substitute the Corporate Trustee.
- (c) If a new body corporate is substituted as the Corporate Trustee in accordance with paragraph (a) then, on and from the date of the substitution:
  - (i) the former Corporate Trustee must transfer any funds held on trust to the new Corporate Trustee; and
  - (ii) the former Corporate Trustee will retain any liability incurred before that date under this deed and will remain entitled to any benefit which accrued under this Agreement prior to that date, but will not be entitled to any of the benefits and will not have any liability under this Agreement in respect of anything done or not done on or after that date.

## **22.11 GST**

The Corporate Trustee must, as soon as practicable after its incorporation, register for GST purposes and be capable of issuing tax invoices.

## **22.12 Funding of the Corporate Trustee**

In addition to any other funding available for the operation of the Corporate Trustee and the Trusts, the State agrees that up to ten percent of the Benefits paid by the State into the Economic Development Fund and Indigenous Housing Fund may be used to fund the operation of the Corporate Trustee and the Trusts.

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## 23. Annual Audit

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### 23.1 Administrative Body audit

- (a) The Native Title Party must, on or before 15 October in each year, including 15 October in the year immediately following the Administrative Body Ratification Date, provide, or procure that the Administrative Body provides, the State and the Proponents with a copy of a report by a qualified and independent auditor as to whether:
  - (i) the financial accounts of the Administrative Body for the previous Financial Year are fair and accurate according to Australian Accounting Standards;
  - (ii) in the year immediately following the Administrative Body Ratification Date, the financial accounts of the Native Title Party as they relate to the establishment of the Corporate Entities under clause 20 are fair and accurate according to Australian Accounting Standards; and
  - (iii) payments have been made, details of those payments and whether those payments have been made in accordance with the purpose, objects and constitution of the Administrative Body.
- (b) The Native Title Party must, at the same time as it engages a qualified and independent auditor to conduct an audit in accordance with paragraph (a):
  - (i) notify the State and the Proponents of the name and contact details of the auditor; and
  - (ii) authorise the auditor:
    - (A) to receive and investigate information from the State which may reasonably be considered to be relevant to the audit; and
    - (B) to discuss any issues relating to the audit with the State, at the cost of the State.

### 23.2 Corporate Trustee audit

- (a) The Native Title Party must, on or before 15 October in each year, including 15 October in the year immediately following the Corporate Trustee Ratification Date, provide, or procure that the Corporate Trustee provides, the State and the Proponents with a copy of a report by a qualified and independent auditor as to whether:
  - (i) the financial accounts of the Corporate Trustee for the previous Financial Year are fair and accurate according to Australian Accounting Standards; and
  - (ii) payments have been made, details of those payments and whether those payments have been made in accordance with the:
    - (A) the purpose, objects and constitution of the Corporate Trustee; or
    - (B) rules of the relevant Trust or fund.
- (b) The Native Title Party must, at the same time as it engages a qualified and independent auditor to conduct an audit in accordance with paragraph (a):

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- (i) notify the State and the Proponents of the name and contact details of the auditor;  
and
- (ii) authorise the auditor:
  - (A) to receive and investigate information from the State which may reasonably be considered to be relevant to the audit; and
  - (B) to discuss any issues relating to the audit with the State,  
at the cost of the State.

## 23.3 Negative or significantly qualified audit reports

An audit report will, without limitation, be taken to be negative or significantly qualified for the purposes of clauses 25.1 and 25.2 if it reports that any Benefit, or income earned from the investment of the Benefits, is not invested materially in accordance with clauses 22, 24 and 25.

## 24. Suspension Events

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### 24.1 Native Title Party Default

A Native Title Party Default occurs if the Native Title Party or any member of the Native Title Claim Group acting on behalf of the Native Title Party:

- (a) commits a breach of clauses 3, 4, 5, 6 or 51.9(a) of this Agreement;
- (b) lodges a new application for a determination of native title in relation to the whole or part of the LNG Precinct;
- (c) subject to clauses 4.3(c), 4.4(b) and 4.4(c):
  - (i) challenges the rights of the State, a Proponent, LandCorp or the Port Authority to carry out activities pursuant to Project Rights; or
  - (ii) seeks a declaration under the EPBC Act in relation to the LNG Precinct or a Proponent Project that would absolutely preclude the Proponent Project being undertaken; or
- (d) seeks a declaration under the ATSIHP Act.

### 24.2 Rectification of Default

- (a) If the State or a Proponent considers a Native Title Party Default (**Default**) has occurred then the State or a Proponent may give written notice to the Native Title Party specifying:
  - (i) the Default;
  - (ii) where relevant, all or part of one or more of the Benefits to which the Default relates (**Identified Amount**);
  - (iii) particular and reasonable action to be taken by the Native Title Party, to remedy, remove, end, ensure or guard against the repeat of or otherwise address the reported Default; and

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- (iv) a date by which the Default must be rectified or otherwise addressed by the action set out in the notice (***Rectification Period***),  
  
(a ***Default Notice***).
- (b) If a Default is not rectified within the Rectification Period (including by taking the action specified in the Default Notice) then, without prejudice to any rights of the State or a Proponent to take any reasonable action required to remedy the Default, other rights the State or a Proponent may have at Law, the State or a Proponent may issue the Native Title Party with a written notice suspending:
  - (i) in the case of the State, the State's obligations comprised in the Identified Amount; or
  - (ii) in the case of a Proponent, the monetary Benefits which it would otherwise be obliged to pay under this Agreement (***Suspension Notice***).
- (c) If a Suspension Notice is issued then until the issuing party revokes the Suspension Notice by further notice in writing to the Native Title Party, neither the State nor a Proponent is obliged to comply with its obligations under Chapter 3 or Chapter 4 of this Agreement.
- (d) The State or the Proponent must revoke a Suspension Notice as soon as:
  - (i) all of the Defaults specified in the Suspension Notice have been remedied or are otherwise no longer operative to the satisfaction of the Party who issued the Suspension Notice; or
  - (ii) the Native Title Party has taken all action reasonably required by the State or a Proponent (as the case may be) in respect of the Default (which, without limitation, may include action to ensure that the Default does not happen again) to the satisfaction of the Party who issued the Suspension Notice.
- (e) On the revocation of a Suspension Notice, the State or a Proponent must pay the Native Title Party, in accordance with its obligations under Chapter 3 or Chapter 4 of this Agreement, the payment that would have been paid to the Administrative Body or Corporate Trustee by the State or a Proponent but for the suspension under this clause 24.2.
- (f) Any applicable set off provisions under this Agreement apply notwithstanding the suspension event regime set out in this clause.

## 25. Suspension of Benefits for Maladministration

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### 25.1 Administrative Body Default

Subject to clause 25.4, an Administrative Body Default occurs if the Administrative Body materially defaults in complying with any of its obligations under this Agreement and, includes any of the following:

- (a) the Administrative Body is insolvent, or an administrator or special administrator is appointed for the Administrative Body or a receiver or controller is appointed in respect of the Administrative Body's property, or a liquidator is appointed or the Administrative Body is otherwise ordered to be wound up;

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- (b) the Administrative Body commits an act of fraud or illegality;
- (c) if the Administrative Body is incorporated under the CATSI Act, a material CATSI Act Non-Compliance occurs;
- (d) if the Administrative Body is incorporated under the Corporations Act, the Administrative Body has failed to materially comply with Part 2M.2 (financial records) or 2M.3 (financial reporting) or Chapter 2M of the Corporations Act;
- (e) in accordance with clause 25.3, the Administrative Body has failed to implement the objectives of any Benefit;
- (f) the constitution of the Administrative Body is amended without the approval of the State or the Foundation Proponent as required under clause 21.4;
- (g) where an audit report referred to in clause 23 indicates that the Administrative Body has failed to comply with the requirements of clause 21.14;
- (h) the financial accounts of the Administrative Body are deficient in a material respect, so far as they relate to the expenditure or application of Benefits;
- (i) the State or a Proponent is not provided with a copy of an audit report in accordance with clause 23, or the audit report is negative or significantly qualified; or
- (j) the Administrative Body fails to comply with clause 51.9(d).

## 25.2 Corporate Trustee Default

Subject to clause 25.4, a Trust Default occurs if the Corporate Trustee materially defaults in complying with any of its obligations under this Agreement and, without limitation to the foregoing, includes any of the following:

- (a) the Corporate Trustee is insolvent, or an administrator or liquidator is appointed for the Corporate Trustee, or a receiver or manager is appointed in respect of Corporate Trustee property, or the Corporate Trustee is otherwise ordered to be wound up;
- (b) the Corporate Trustee commits an act of fraud or illegality;
- (c) the Corporate Trustee is in breach of its duties as trustee of a Trust;
- (d) in accordance with clause 25.3, the Corporate Trustee has failed to implement the objectives of any Benefit;
- (e) the Corporate Trustee has materially failed to comply with Part 2M.2 (financial records) or 2M.3 (financial reporting) or Chapter 2M of the *Corporations Act 2001* (Cth);
- (f) the Corporate Trustee is substituted as the trustee of the trust otherwise than under clause 22.10;
- (g) the constitution of the Corporate Trustee is amended without the approval of the State or the Foundation Proponent as required under clause 22.4;
- (h) any Trust Deed is amended without the approval of the State or each relevant Proponent as required under clause 22.7; or
- (i) the State or a Proponent is not provided with a copy of an audit report in accordance with clause 23, or the audit report is negative or significantly qualified.

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## 25.3 Failure to implement Benefit objectives

- (a) Subject to paragraph (b), an Administrative Body Default or Trust Default (each a **Default** for the purpose of the remainder of this clause 25) in clauses 25.1 or 25.2 is deemed to occur if:
  - (i) the State (after consultation with the Native Title Party) forms the view, acting reasonably and on the basis of any report prepared under clauses 9.6, 10.6 or 23, together with such other information as may be available, that the Administrative Body or the Corporate Trustee is failing to act, in a material respect, in accordance with:
    - (A) the purposes or objects of the relevant Benefit as set out in this Agreement; or
    - (B) the purposes or objects of the relevant Trust as set out in this Agreement, or in the relevant Trust Deed; and
    - (C) the failure has continued for a period of time being not less than 12 consecutive months.
  - (ii) the Proponent (after consultation with the Native Title Party) forms the view, acting reasonably and on the basis of any report prepared under clauses 17.7 or 23, that the Administrative Body or the Corporate Trustee is failing to act, in a material respect, in accordance with:
    - (A) the purposes or objects of the relevant Benefit as set out in this Agreement; or
    - (B) the purposes or objects of the relevant Trust as set out in this Agreement, or in the relevant Trust Deed; and
    - (C) the failure has continued for a period of time being not less than 12 consecutive months.
- (b) The Parties agree that no Default will arise under paragraph (a) if the relevant body is able to demonstrate to the satisfaction of the State or the Proponent, acting reasonably, that:
  - (i) there has been a reasonable basis for the failure to implement the purposes or objects;
  - (ii) in the case of a Trust Default, that the Corporate Trustee was doing all that it could reasonably be required to do in the discharge of its duties as trustee; and
  - (iii) there is a plan going forward for the implementation of the purposes or objects of the relevant Benefit or Trust.

## 25.4 Insubstantial non-compliance

The Parties agree that no Default will arise under clause 25.1 or 25.2:

- (a) if, when the audit report under clause 23 is provided, the Administrative Body provides written information regarding the Default reported in the audit report; and

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- (b) unless, within 28 days of receipt of the information in paragraph (a) the State or a Proponent in its absolute discretion gives written notice to the Administrative Body that it considers the non-compliance to be substantial.

## 25.5 Rectification of Default

- (a) If at any time the State or, in relation to the Proponent Benefits Fund, a Proponent, considers a Default has occurred then the State or a Proponent may give written notice to the Administrative Body or the Corporate Trustee specifying:
  - (i) the Default;
  - (ii) where relevant, all or part of one or more of the Benefits to which the Default relates (*Identified Amount*);
  - (iii) particular and reasonable action to be taken by the Administrative Body or Corporate Trustee to remedy, remove, end, ensure or guard against the repeat of, or otherwise address the reported Default (as the case may be); and
  - (iv) a date (not less than 30 days after the date the notice is deemed to be received under this Agreement) by which the Default must be rectified (*Rectification Period*),  
(a *Default Notice*).
- (b) If a Default is not rectified within the Rectification Period (including by taking the action specified in the Default Notice) or if actions have not been commenced to rectify the Default to the satisfaction of the applicable Parties, then, the State or, in relation to the Proponent Benefits Fund, a Proponent, may issue the Administrative Body or Corporate Trustee with a written notice suspending:
  - (i) in the case of the State, the State's obligations comprised in the Identified Amount;
  - (ii) in the case of the Foundation Proponent, any monetary Benefits to be delivered to the Native Title Party under this Agreement, including the monetary Benefits which it would otherwise be obliged to pay under clause 17 of this Agreement; or
  - (iii) in the case of an Additional Proponent, any monetary Benefits to be delivered to the Native Title Party under this Agreement, including the monetary Benefits which it would otherwise be obliged to pay under clause 17 of this Agreement,  
(a *Suspension Notice*).
- (c) Subject to paragraph (f), if the State or a Proponent issue a Suspension Notice then until the State or a Proponent revoke the Suspension Notice by further notice in writing to the Administrative Body or Corporate Trustee:
  - (i) in the case of the Suspension Notice issued by the State, the State is not obliged to deliver those Benefits the subject of the Suspension Notice;
  - (ii) in the case of the Suspension Notice issued by the Foundation Proponent, the Foundation Proponent is not obliged to deliver those Benefits the subject of the Suspension Notice; or

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- (iii) in the case of the Suspension Notice issued by an Additional Proponent, the Additional Proponent is not obliged to deliver those Benefits the subject of the Suspension Notice,  
  
and those Benefits the subject of the Suspension Notice will, as soon as practicable after the date they fall due, be held on trust for the benefit of the Native Title Claim Group in an interest bearing account.
- (d) The State or a Proponent must revoke a Suspension Notice as soon as:
  - (i) all of the Defaults specified in the Suspension Notice have been remedied or are otherwise no longer operative; or
  - (ii) the Administrative Body or Corporate Trustee has substantially completed (to the reasonable satisfaction of the applicable Parties) any action reasonably required by the State or a Proponent in respect of the Default.
- (e) If a Default is due to a negative or significantly qualified audit report then, without limitation, that Default may be remedied by the Administrative Body or the Corporate Trustee and the State and a Proponent as relevant entering into an agreement as to the manner in which future instalments of the Benefits may be invested or otherwise dealt with to avoid a future negative or significantly qualified audit report.
- (f) On the revocation of a Suspension Notice, the State and a Proponent as relevant must deliver those Benefits the subject of the Suspension Notice (together with any interest earned under paragraph (c)), in accordance with its obligations under Chapter 3 or Chapter 4 of this Agreement and as relevant but for the suspension under paragraph (b).
- (g) Any applicable set off provisions under this Agreement apply notwithstanding the suspension event regime set out in this clause.

## 26. Replacement of Corporate Trustee

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### 26.1 Appointment of Replacement Trustee

- (a) If, at any time after the Corporate Trustee Ratification Date:
  - (i) a Default Notice is issued to either the Administrative Body or the Corporate Trustee; and
  - (ii) the State (having consulted with each Proponent) acting reasonably, considers that the Default the subject of the Default Notice is of a sufficiently serious nature,  
  
the State may issue a notice to the Administrative Body, the Corporate Trustee and each Proponent stating that it intends to exercise its power of appointment under the relevant Trust Deed to appoint a Replacement Trustee in place of the Corporate Trustee (*Notice of Replacement of Trustee*).
- (b) Upon appointment of the Replacement Trustee:
  - (i) the Trust Assets vest in the Replacement Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance;



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- (ii) the State, the Corporate Trustee and the Replacement Trustee must take such action as is necessary (including executing agreements and documents) to perfect the transfer of legal title from the Corporate Trustee to the Replacement Trustee in this clause 26;
  - (iii) the Corporate Trustee must retain any liability incurred before that date under this Agreement and will remain entitled to any benefit which accrued under this Agreement prior to that date, but will not be entitled to any of the benefits and will not have any liability under this Agreement in respect of anything done or not done on or after that date; and
  - (iv) the Replacement Trustee must, where reasonably practicable, consult with the Native Title Party prior to exercising any power under the Trusts (which requirement must be included in the terms of appointment of the Replacement Trustee).
- (c) Subject to clause 26.2, the appointment of the Replacement Trustee can be for a period of up to 6 months from the date of appointment of the Replacement Trustee and such appointment can be renewed by notice from the State for further periods of up to 6 months on each renewal.

## **26.2 Re-appointment of Corporate Trustee**

- (a) At any time during the term of appointment of the Replacement Trustee, the Native Title Party may issue a notice to the State and the relevant Proponents nominating either:
  - (i) the reappointment of the Corporate Trustee as trustee of the Trusts; or
  - (ii) the appointment of another specified body corporate as trustee of the Trusts and 'Corporate Trustee' for the purposes of this Agreement.
- (b) Upon receipt of notice under paragraph (a)(i) and provided that:
  - (i) no other Default falling within the criteria set out at clause 26.1(a) has occurred since the issue of the Notice of Replacement of Trustee; and
  - (ii) any Default related to the Notice of Replacement of Trustee has been remedied or is otherwise no longer operative; or
  - (iii) the Administrative Body or the Corporate Trustee has taken any action reasonably required by the State in respect of any Default related to the Notice of Replacement of Trustee,the State must re-appoint the Corporate Trustee as trustee of the Trusts.
- (c) Upon receipt of notice under clause (a)(ii) and provided that the body corporate specified in the notice satisfies the requirements and processes for substitution as the Corporate Trustee under clause 22.10:
  - (i) the body corporate specified in the notice will on and from the date the requirements and processes for substitution as the Corporate Trustee under clause 22.10 are satisfied, be the Corporate Trustee for the purposes of this Agreement; and
  - (ii) the State must appoint the body corporate as trustee of the Trusts.

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- (d) Upon the appointment of the Corporate Trustee under paragraphs (b) or (c), the Trust Assets vest in the Corporate Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.
- (e) The State, the Corporate Trustee and the Replacement Trustee must take such action as is necessary (including executing agreements and documents) to perfect the transfer of legal title from the Replacement Trustee to the Corporate Trustee in this clause 26.2.

## Chapter 6 – Operation of the Precinct

### 27. Management of the LNG Precinct

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#### 27.1 Precinct Management Committee

The Precinct Management Committee (*Committee*) is established with effect from the Commencement Date.

#### 27.2 Committee representatives

- (a) The Committee comprises representatives for each of the State (including the Port Authority and LandCorp), the Native Title Party, the Foundation Proponent and when applicable, any Additional Proponent.
- (b) Each Committee party will have equal representation on the Committee.

#### 27.3 Powers and Functions of the Committee

The powers and functions of the Committee are set out in Schedule 6.

#### 27.4 Rules of the Committee

The rules and principles governing the operation of the Committee are set out in Schedule 6.

#### 27.5 Governing Principle

- (a) The powers and functions of the Committee will not provide any right for a Party to prevent or stop the development or operation of the LNG Precinct, a Proponent Project or the Project Rights.
- (b) The powers and functions of the Committee will include processes for dealing with any dispute on the matters the subject of the Management Schedules.

#### 27.6 Parties' commitments

Each Party represented on the Committee will ensure that its representatives are representatives of that Party's senior management or otherwise have the authority to make decisions on behalf of that Party.

### 28. Control of Precinct

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#### 28.1 Ownership of the LNG Precinct

The State is the owner of the LNG Precinct.

#### 28.2 Role of the Port Authority

The Port will be vested in the Port Authority under section 25 of the Port Authorities Act.

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## **28.3 Role of LandCorp**

LandCorp will have, by the Grant of Crown Leases under section 79 of the LAA, responsibility for the implementation of Project Rights necessary for the establishment and day to day management and operation of the LNG Precinct (other than the Port).

## **28.4 Third Party Contractors' Site**

- (a) The Parties acknowledge that the Native Title Party is intended to be the Site Manager of the Third Party Contractors' Site and to be given the opportunity to realise commercial opportunities arising in relation to the Third Party Contractors' Site.
- (b) The State, LandCorp, the Native Title Party and the Foundation Proponent will use their best endeavours to establish the Third Party Contractors' Site and realise the intention set out paragraph (a). For the avoidance of doubt, the Native Title Party will be required to enter into an agreement with LandCorp in relation to the Third Party Contractors' Site on commercial terms to be fixed by agreement between those Parties.
- (c) The Parties acknowledge and agree that it may be necessary or appropriate that a development agreement be entered into between the Native Title Party, the State, LandCorp and the Foundation Proponent to allow for the development of the Third Party Contractors' Site and its use for the establishment, operation, maintenance or decommissioning of the LNG Precinct or a Proponent Project.

## **29. Land Access**

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### **29.1 Native Title Party Access to LNG Precinct**

Subject only to the need to restrict access to certain areas for health, safety and security reasons, the State, LandCorp, the Port Authority, the Foundation Proponent and any Additional Proponent agree to grant the members of the Native Title Claim Group access to the LNG Precinct in the manner set out in the Land Access Management Schedule.

### **29.2 Land Access Management Schedule**

- (a) The Parties have worked together to develop detailed a Land Access Management Schedule which is set out in Schedule 10.
- (b) The Parties will implement the Land Access Management Schedule to the extent permitted by Law.

### **29.3 Native Title Party acknowledgement**

The Parties acknowledge that access by the Native Title Party to the LNG Precinct under clause 29.1 and pursuant to the Land Access Management Schedule is solely at the risk of the Native Title Party.

## **30. Management Schedules**

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### **30.1 Development of Management Schedules**

The following Management Schedules are attached:

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- (a) rules of the Precinct Management Committee (in accordance with clause 27);
- (b) cultural heritage (in accordance with clause 31);
- (c) Environment (in accordance with clause 32);
- (d) employment and training (in accordance with clause 33);
- (e) business development and contracting opportunities (in accordance with clause 34);
- (f) cultural awareness training (in accordance with clause 35);
- (g) Decommissioning (in accordance with clause 38); and
- (h) land access (in accordance with clause 29).

## **30.2 Management Schedules binding**

The Management Schedules form part of this Agreement and are binding on and enforceable by the Parties according to their terms.

## **30.3 Variation of Management Schedules**

Each Management Schedule may be varied only in accordance with item 18 of Schedule 6.

## **30.4 Scope of Management Schedules**

The Management Schedules will not provide any right for a Party to prevent or stop the development or operations of a Proponent Project or the LNG Precinct.

## **30.5 Good and prudent LNG practice**

For the avoidance of doubt, each Proponent will operate and maintain facilities associated with their Proponent Project to the standard of good and prudent LNG practice for operation and maintenance of such facilities.

## **31. Aboriginal Cultural Heritage**

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- (a) The Parties have worked together to develop the Cultural Heritage Management Schedule which is set out in Schedule 7.
- (b) The Parties will implement the Cultural Heritage Management Schedule to the extent permitted by Law.

## **32. Environment Management**

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### **32.1 Acknowledgement**

- (a) The State must work to minimise the impact of the LNG Precinct on the Environment and acknowledges that compliance with legal obligations is a minimum standard.
- (b) The Foundation Proponent must work to minimise the impact of the Foundation Proponent Project on the Environment and acknowledges that compliance with legal obligations is a minimum standard.

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- (c) Each Additional Proponent must work to minimise the impact of their Additional Proponent Project on the Environment and acknowledges that compliance with legal obligations is a minimum standard.

## **32.2 Environment Management Schedule**

- (a) The Parties have worked together to develop the Environment Management Schedule which is set out in Schedule 8.
- (b) The Parties will implement the Environment Management Schedule to the extent permitted by Law.
- (c) The Native Title Party wishes to review the Environment Management Schedule at the conclusion of the Strategic Assessment process. However, there is no obligation on any other Party to review the Environment Management Schedule at that time.

## **32.3 Environmental assurance regarding Serious Environmental Harm**

- (a) For the purpose of this clause 32.3:
  - (i) ***Environmental Laws*** means a Law relating to the Environment; and
  - (ii) ***Serious Environmental Harm*** has the meaning set out in the EP Act.
- (b) Each Proponent must comply with all Environmental Laws.
- (c) In the event of a breach by a Proponent of an Environmental Law, which breach causes Serious Environmental Harm and a direct impact on the health and safety of members of the Native Title Party and/or Indigenous people of the Dampier Peninsula, the Proponent must, where practicable to do so, make good that Serious Environmental Harm to the standard prescribed by Law. Where it is not practicable to make good, the Proponent must take other steps in consultation with the Native Title Party.
- (d) Nothing in this clause 32.3 will provide any right for the Native Title Party to prevent or stop the development or operations of the LNG Precinct or a Proponent Project.

# **33. Employment and Training**

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## **33.1 Acknowledgement**

The Parties acknowledge the potentially significant benefits offered by the establishment and operation of the LNG Precinct in providing employment and training opportunities to the Native Title Party and Kimberley Indigenous People. To realise these opportunities the Parties have agreed to implement management schedules consistent with the remainder of this clause.

## **33.2 State commitment**

- (a) Unless prohibited by Law or government policy, the State will provide employment and training opportunities to the Native Title Party and Kimberley Indigenous People in the manner set out in the State Employment and Business Development Management Schedule contained in Schedule 14.
- (b) As part of its commitment under paragraph (a), the State will procure LandCorp, the Port Authority and other government entities, as notified by the State to the Native Title Party,

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to prepare an Indigenous participation plan in relation to their LNG Precinct-related operations. The manner in which these plans will be developed is set out in the State Employment and Business Development Management Schedule.

## **33.3 Foundation Proponent obligations**

Unless prohibited by Law, the Foundation Proponent will provide, employment and training opportunities to members of the Native Title Claim Group and maximise Indigenous employment in the manner set out in item 4 of Schedule 5 and the Foundation Proponent Employment and Training Management Schedule contained in Schedule 12.

## **33.4 Additional Proponent obligations**

Subject to negotiating an alternative Additional Proponent Benefits package with the Native Title Party under clause 19.2, unless prohibited by Law, each Additional Proponent will develop and implement an employment and training management schedule with the Administrative Body consistent with clause 33.1.

## **33.5 Party commitment**

If the Law requires a Party to obtain an Approval, including a permission or an exemption, in order to provide the opportunities referred to in clauses 33.2 to 33.4 then the relevant Party will use its best endeavours to obtain such Approval.

# **34. Business Development and Contracting**

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## **34.1 Acknowledgement**

The Parties acknowledge the potentially significant benefits offered by the establishment and operation of the LNG Precinct in providing business development and contracting opportunities to the Native Title Party and Kimberley Indigenous People. To realise these opportunities the Parties have agreed to implement management schedules consistent with the remainder of this clause.

## **34.2 State commitment**

- (a) Unless prohibited by Law or government policy, the State will provide business development opportunities to the Native Title Party and Kimberley Indigenous People in the manner set out in the State Employment and Business Development Management Schedule contained in Schedule 14.
- (b) As part of its commitment under paragraph (a), the State will procure LandCorp, the Port Authority and other government entities, as notified by the State to the Native Title Party, to prepare an Indigenous participation plan in relation to their LNG Precinct-related operations. The manner in which these plans will be developed is set out in the State Employment and Business Development Management Schedule.

## **34.3 Foundation Proponent obligations**

Unless prohibited by Law, the Foundation Proponent will provide business development and contracting opportunities to the members of the Native Title Claim Group in the manner set out in

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Item 4 of Schedule 5 and the Foundation Proponent Business Development and Contracting Management Schedule contained in Schedule 13.

## **34.4 Additional Proponent obligations**

Subject to negotiating an alternative Additional Proponent Benefits package with the Native Title Party under clause 19.2, unless prohibited by Law, each Additional Proponent will develop and implement a business development and contracting management schedule to assist in providing business development and contracting opportunities to the members of the Native Title Claim Group.

## **34.5 Party commitment**

If the Law requires a Party to obtain an Approval, including a permission or an exemption, in order to provide the opportunities referred to in clauses 34.2 to 34.4 then the relevant Party will use its best endeavours to obtain such Approval.

## **35. Cultural Awareness Training**

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- (a) The Parties have worked together to develop the Cultural Awareness Training Schedule which is set out in Schedule 9.
- (b) The Parties will implement the Cultural Awareness Training Schedule unless prohibited by Law.

## **36. Additional Proponents**

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### **36.1 Entry into LNG Precinct**

The State will be entitled, for the purposes of this Agreement, to appoint any Additional Proponent to the LNG Precinct on the same conditions as the appointment of the Foundation Proponent, provided that:

- (a) the State, acting reasonably, is satisfied that the proposed Additional Proponent has the necessary technical and financial capability to be a proponent and participate in the LNG Precinct; and
- (b) an industrial block for the purposes of Granting an Industrial Lease (together with associated areas) is available to be allocated to the proposed Additional Proponent and is not at that stage allocated to anyone else.

### **36.2 Determination of Additional Proponent Benefits package**

- (a) If the State is satisfied that it is entitled to appoint an Additional Proponent in accordance with the requirements under clause 36.1, the State will procure that Additional Proponent to engage with the Native Title Party to determine a package of Benefits in accordance with clause 19.
- (b) The State will give notice to the Native Title Party in relation to its position under paragraph (a) at such time it considers appropriate to commence the process of determining



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a package of Benefits in accordance with clause 19, following which the process under clause 19 will commence.

## **36.3 Ratification of Precinct Agreements**

- (a) Within 60 days of completion of the process of determining a package of Benefits under clause 19, the Additional Proponent will elect to execute a Ratification Deed (including specification of the Benefits to be provided by the Additional Proponent) or cease to continue the process of being appointed to the LNG Precinct and notify the State and the Native Title Party of its decision.
- (b) The State will not:
  - (i) appoint an Additional Proponent to the LNG Precinct; nor
  - (ii) Grant to that Additional Proponent any Title in the LNG Precinct,until the proposed Additional Proponent has executed Ratification Deeds by which the potential Additional Proponent agrees to be bound by and to assume the rights and obligations of an Additional Proponent under this Agreement (including the obligation to deliver Benefits) and the Regional Benefits Agreement and has either:
  - (i) reached agreement with the Native Title Party; or
  - (ii) a determination has been made as to the value and nature of Benefits by the Additional Proponent,under clause 19.

## Chapter 7 – End of Proponent Projects

### 37. Proponent Project Closure and Decommissioning

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#### 37.1 Proponent to notify other parties of closure decision

- (a) A Proponent must give notice to all other Parties as soon as practicable following a decision by the board of that Proponent (or as a result of another binding decision making process) to close a Proponent Project (***Proponent Closure Decision***) and, in any event, at least 12 months prior to scheduled cessation of LNG production (***Proponent Closure Notice***).
- (b) A Proponent must finalise their Proponent Decommissioning Plan, as required under the Decommissioning Management Schedule, within 6 months of the date of the Proponent Closure Notice.

### 38. Decommissioning Management Schedule

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- (a) The Parties have worked together to develop the Decommissioning Management Schedule which is set out in Schedule 11.
- (b) The Parties must work together to implement the Decommissioning Management Schedule to the extent permitted by Law.

### 39. Proponent Accommodation Facility Transfer Procedure

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#### 39.1 Proponent to provide details

A Proponent must provide to the Native Title Party and the State:

- (a) an inventory of the Proponent's Accommodation Facilities as remaining at the LNG Precinct at the time of a transfer under this clause 39;
- (b) the written down book value of those Accommodation Facilities;
- (c) details of any chattels that the Proponent may be willing to transfer to the Native Title Party; and
- (d) a copy of the lease or other tenure to that part of the Workers Accommodation Site which supports the Accommodation Facilities,

as part of a Proponent Closure Notice or on the day that is the end of 29 years following First LNG Cargo (***Asset Transfer Information***).

#### 39.2 Native Title Party to make decision

- (a) Within 6 months following receipt of the Asset Transfer Information under clause 39.1, the Native Title Party must notify the Proponent and the State of whether it will request transfer of the Proponent's Accommodation Facilities (then remaining at the LNG Precinct) under clause 18.

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- (b) If the Native Title Party does not request transfer of the Proponent's Accommodation Facilities under paragraph (a), then the Proponent will carry out decommissioning of its Accommodation Facilities and that part of the Workers Accommodation Site Granted to the Proponent in compliance with the Decommissioning Management Schedule and the Proponent Decommissioning Plan and the remainder of this clause 39 will not apply.
- (c) If the Native Title Party requests transfer of the Proponent's Accommodation Facilities under paragraph (a), then any transfer must comply with the remainder of this clause 39.

## **39.3 Accommodation Facilities to be maintained**

- (a) The Foundation Proponent must maintain its Accommodation Facilities in good order and fit for human habitation for the duration of the Foundation Proponent Project until the transfer of ownership (if requested under clause 39.2).
- (b) An Additional Proponent must maintain its Accommodation Facilities in good order and fit for human habitation for the duration of the Additional Proponent Project until the transfer of ownership (if requested under clause 39.2).
- (c) A Proponent will not be liable for the state or condition of repair of its Accommodation Facilities on and from the date of transfer under clause 39.9, or such other date as agreed.

## **39.4 State to determine servicing requirements**

- (a) After the date of issue of the Asset Transfer Information, the State will consult with the Native Title Party and the Proponent and, acting reasonably, determine the standard of services to be provided to the Accommodation Facilities to be transferred (including any which are a usual pre-condition to the creation of freehold title) such as road upgrades, service connections and headworks charges.
- (b) Within 30 days of receipt of the Asset Transfer Information, the State will notify the Proponent and the Native Title Party of the standard of services as determined under paragraph (a) to be provided if the Native Title Party exercises its right to request transfer of the Proponent's Accommodation Facilities under clause 18 and this clause 39.
- (c) Within 60 days of provision of notification under paragraph (b), the Proponent and the Native Title Party will discuss the standard of services determined by the State under paragraph (a) and the Native Title Party will notify the State whether the Native Title Party wishes to exercise its right to request transfer of the Proponent's Accommodation Facilities under clause 18 and this clause 39.
- (d) For the avoidance of doubt, if the level of services existing at the Workers Accommodation Site at the end of the Proponent Project differs from the standard of services determined by the State to be provided to the Accommodation Facilities, there is no obligation on the Proponent to upgrade those services.

## **39.5 State not required to Remediate**

The Parties agree that if the Native Title Party requests transfer of a Proponent's Accommodation Facilities under clause 39.2, the obligations of the State set out in the State Agreement in relation to Remediation and Rehabilitation Works (as that term is defined in the State Agreement) no longer

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apply in relation to that part of the Workers Accommodation Site Granted to the Proponent and requested to be transferred by the Native Title Party.

## **39.6 Inspection**

- (a) After the provision of the Asset Transfer Information under clause 39.1, the Proponent must, at its own cost, appoint an independent third party expert to undertake an inspection of the Accommodation Facilities to be transferred to determine the condition of those Accommodation Facilities and the compliance by the Proponent with its obligation to maintain the Accommodation Facilities under clause 39.3.
- (b) If the third party appointed under paragraph (a) determines the Proponent has not complied with its obligation to maintain the Accommodation Facilities under clause 39.3, the Proponent must take such steps to comply with its obligation under clause 39.3 prior to any transfer under clause 39.9.

## **39.7 Costs arising in relation to transfer of facilities**

- (a) Without limiting the balance of this clause 39, each Proponent agrees to pay for the following costs arising out of a request to take a transfer of the Proponent's Accommodation Facilities:
  - (i) the direct cost of effecting the transfer of ownership of the Accommodation Facilities to the Administrative Body;
  - (ii) duty payable under the *Duties Act 2008* (WA);
  - (iii) any survey costs required for the Workers Accommodation Site required to transfer ownership of the Accommodation Facilities (including costs of surveying easement areas); and
  - (iv) any registration fees at the Western Australian Land Information Authority (Landgate).
- (b) The Native Title Party agrees to pay the following costs arising out of the grant of ownership of the Proponent's Accommodation Facilities;
  - (i) all costs associated with the Native Title Party investigating and determining whether to request transfer of Accommodation Facilities from a Proponent;
  - (ii) general or legal expenses incurred by the Native Title Party;
  - (iii) all holding costs including local government rates and other taxes that are normally borne by the land owner;
  - (iv) the provision of services to the Accommodation Facilities as notified by the State under clause 39.4; and
  - (v) any costs to maintain provision of the services to the Accommodation Facilities as notified by the State under clause 39.4.
- (c) For the avoidance of doubt, the State is not liable to pay any costs in relation to a Proponent's commitment to transfer ownership of its Accommodation Facilities under clause 18 and this clause 39.

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## **39.8 Environmental site assessment**

- (a) Within 30 days of the provision of the Asset Transfer Information under clause 39.1, the Proponent must cause to be conducted (at its cost) an environmental site assessment of that part of the Workers Accommodation Site Granted to the Proponent (being the location of the Accommodation Facilities).
- (b) The aspects of the environmental site assessment relating to known or suspected contamination will be reviewed by a contaminated sites auditor accredited under the CS Act.
- (c) Within 2 months of the provision of the Asset Transfer Information under clause 39.1, the Proponent must provide the environmental site assessment report and a certificate of contamination audit (under the CS Act) to the Native Title Party and the State.
- (d) The environmental site assessment report will be used to inform the Native Title Party's decision whether to request transfer of the Accommodation Facilities and the Native Title Party may ask questions on the environmental site assessment report. The Proponent must use its best endeavours to respond to any questions received in relation to the environmental site assessment report as soon as possible.
- (e) If the Native Title Party elects to take a transfer of Accommodation Facilities, as described in clause 39.9, the Proponent will not be required to comply with the Decommissioning Management Schedule in Schedule 11 in relation to that part of the Workers Accommodation Site Granted to the Proponent and transferred to the Native Title Party under clause 39.9.

## **39.9 Transfer**

- (a) Subject to 39.10, if the Native Title Party requests transfer of the ownership of the Proponent's Accommodation Facilities, within 6 months of receiving the notice from the Native Title Party under clause 39.2, the State and the Proponent will promptly do all things necessary to effect the transfer to the Administrative Body.
- (b) The Native Title Party must pay the written down book value of the assets being transferred to the Proponent upon transfer.

## **39.10 Approvals**

- (a) The transfer under this clause 39 will not take effect until the Proponent and the Native Title Party have obtained any Approvals necessary or incidental to the transfer of the Proponent Accommodation Facilities.
- (b) Both the Proponent and the Native Title Party will use their best endeavours to obtain the Approvals referred to in paragraph (a).

## **39.11 Indemnities**

- (a) The Foundation Proponent indemnifies the State against any Claim or Loss that may be incurred or sustained by the State arising out of any act, matter or thing done, permitted or omitted to be done by the Foundation Proponent or its Personnel in relation to its commitment to transfer ownership of the Foundation Proponent Accommodation Facilities under clause 18 and this clause 39.

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- (b) Each Additional Proponent indemnifies the State against any Claim or Loss that may be incurred or sustained by the State arising out of any act, matter or thing done, permitted or omitted to be done by the Additional Proponent or its Personnel in relation to its commitment to transfer ownership of the Additional Proponent Accommodation Facilities under clause 18 and this clause 39.

## **39.12 Proponent to continue to have access to Accommodation Facilities**

- (a) If a Proponent's Accommodation Facilities are to be transferred pursuant to this clause 39 prior to the end of their Proponent Project, the Proponent will determine, in its sole discretion, whether all or any part of the Proponent's Accommodation Facilities and that part of the Workers Accommodation Site are required for the continued operation of their Proponent Project.
- (b) Within 30 days of receipt of a notice from the Native Title Party under clause 39.2, the Proponent will notify the Native Title Party of its determination under paragraph (a).
- (c) If the Proponent has given notice under paragraph (b) that the Proponent's Accommodation Facilities and that part of the Workers Accommodation Site are required for the continued operation of their Proponent Project, any transfer of ownership of the Accommodation Facilities is conditional upon and subject to the Native Title Party, prior to any transfer of ownership:
  - (i) leasing that part of the Proponent's Accommodation Facilities as notified under paragraph (b) to the Proponent for the remainder of the Proponent Project on reasonable commercial terms, including commercial rental rates calculated in the manner set out at paragraph (d) below;
  - (ii) taking an assignment of the Proponent's lease or other tenure to that part of the Workers Accommodation Site which supports the Accommodation Facilities, and contemporaneously granting the Proponent a sublease to that lease, on terms acceptable to the Proponent acting reasonably; and
  - (iii) taking an assignment, transfer or otherwise obtaining any Approvals necessary for the Proponent to continue to use the Accommodation Facilities in any manner it requires for the conduct of their Proponent Project, the cost of which Approvals will be borne by the Proponent.
- (d) The rental rate payable by the Proponent under the sublease referred to in sub-paragraph (c)(i) will be the rent payable for accommodation of a similar nature and classification in Broome and will be determined by an independent expert appointed by agreement between the Proponent and the Native Title Party. In determining the rental rate payable, the independent expert must take into account the remote location of the Accommodation Facilities and the fact that the Proponent will be conducting all operations and maintenance in relation to the Accommodation Facilities.
- (e) The Parties acknowledge and agree that the Proponent will conduct the operations and maintenance for the Accommodation Facilities for the life of their Proponent Project.

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- (f) As soon as practicable following a decision by the Proponent that the Proponent's Accommodation Facilities are no longer required for the purposes of conducting their Proponent Project, the Proponent will notify the Native Title Party.

## **39.13 Workers Accommodation to continue operation at discretion of the State**

- (a) This clause 39.13 does not apply in relation to a Proponent's Accommodation Facilities until the end of the relevant Proponent Project.
- (b) Notwithstanding a transfer of ownership of Accommodation Facilities pursuant to this clause 39, the State will determine, in its sole discretion, whether the Accommodation Facilities and that part of the Workers Accommodation Site are required for the continued operation of the LNG Precinct, including for the purposes of an Additional Proponent Project.
- (c) Within 30 days of receipt of a Proponent Closure Notice, the State will notify the Proponent and the Native Title Party of its determination under paragraph (b).
- (d) If the State has given notice under paragraph (c) that the Accommodation Facilities and that part of the Workers Accommodation Site are required for the continued operation of the LNG Precinct, any transfer of ownership of the Accommodation Facilities is conditional upon the Native Title Party agreeing to make the Accommodation Facilities available for an Additional Proponent or any other party carrying out activities in the LNG Precinct.
- (e) As soon as practicable following a decision by the State that the Accommodation Facilities are no longer required for the purposes of operating the LNG Precinct, the State will notify the Native Title Party.

## Chapter 8 – Miscellaneous Provisions

### 40. Tax

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#### 40.1 GST exclusive

Unless otherwise indicated all amounts and other consideration for any Taxable Supply made under this Agreement is exclusive of any GST.

#### 40.2 Payment of GST

Subject to clause 40.3, a party must pay GST on a Taxable Supply made to it under this Agreement, in addition to any consideration that is payable for that Taxable Supply. It must do so at the same time and in the same way as it is required to pay the consideration for the Taxable Supply.

#### 40.3 Tax Invoice

A party making a Taxable Supply to another party under this Agreement must issue a Tax Invoice to the other party, setting out the amount of the GST payable by that other party.

#### 40.4 Input Tax Credits

If a party is required under this Agreement to indemnify another party, or to make a reimbursement or contribution to another party, and that other party can obtain an Input Tax Credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount the party is required to pay is:

- (a) reduced by the amount of that Input Tax Credit; but
- (b) increased by any GST payable by that other party in respect of the indemnity, reimbursement or contribution.

#### 40.5 Recipient Created Tax Invoice

If the Parties agree that the Recipient will issue the Supplier with a Recipient Created Tax Invoice (*RCTI*), then the Parties hereby agree that:

- (a) the Recipient will issue a RCTI in respect of GST payable on that supply and the Supplier will not issue a tax invoice in respect of that supply;
- (b) the Parties warrant that they are (or will at the relevant time be) registered for the purposes of GST and a party will notify the other parties in writing if it ceases to be registered for the purposes of GST during the term of this Agreement; and
- (c) the Recipient indemnifies the Supplier for GST and any related penalty that may arise from an understatement of the GST payable on the supply for which the Recipient issues a RCTI under this Agreement.

#### 40.6 Adjustment Event

If a Party becomes aware of an Adjustment Event, that Party agrees to notify 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



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that any GST or additional GST on that supply or any refund of any GST (or part thereof) is paid within fourteen (14) days of the Supplier satisfying itself that the Adjustment Event has occurred.

## 40.7 Definitions

For the purposes of this clause 40 '*Adjustment Event*', '*Adjustment Note*' '*GST*', '*Input Tax Credit*', '*Recipient*', '*Supplier*', '*Taxable Supply*' and '*Tax Invoice*' have the meaning given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 40.8 Taxes

- (a) Each Party is responsible for reporting and discharging its own tax obligations under this Agreement.
- (b) Each Party must protect, defend and indemnify each other Party from any and all Loss, cost or liability arising from the indemnifying Party's failure to report and discharge such taxes or satisfy such obligations.

## 40.9 Withholding tax

- (a) If a Party is required by the Law (including without limitation Laws which impose a withholding tax) to make withholdings or deductions from payments otherwise due to any Party to the Agreement then:
  - (i) that Party will withhold such amounts or make such payments as are required by the applicable Law;
  - (ii) that Party will provide the relevant other Party with written advice of the requirement, amount and timing of such withholding or payment. The Party will also provide the relevant other Party with any copies of any available governmental instructions or directions under which sums are withheld and provide evidence of sums withheld reasonably required by the relevant other Party;
  - (iii) the relevant other Party will have no Claim against and releases the Party from and in respect of any sum of money lawfully withheld pursuant to this clause;
  - (iv) the relevant other Party will provide such information and documents as the Party reasonably requires for the purposes of this clause; and
  - (v) for the purposes of making withholdings and deductions the other relevant Party irrevocably authorises the Party to deduct such amounts as it is required to hold.
- (b) Each Party will as soon as practicable advise the other of any Law that may require a withholding or deduction referred to in paragraph (a).

## 41. Term and Termination

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### 41.1 Term of Agreement

This Agreement commences on the date that it is executed by the last Party to execute the Agreement and operates for the duration of the Project Rights or for the carrying out of any acts pursuant to the Project Rights (including Decommissioning).

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## **41.2 No Termination for Breach**

- (a) The Parties agree that a breach of this Agreement by any Party does not give rise to a right on the part of the other Party to terminate this Agreement, but that the other Party may exercise any other remedy available to it in respect of any breach, including under clause 24.
- (b) A breach of this Agreement by any Party does not nullify any consent of the Native Title Party to the Precinct Notices, the establishment of the LNG Precinct or the Project Rights.

## **41.3 Withdrawal of Foundation Proponent**

- (a) If at any time before the Project FID the Foundation Proponent wishes to withdraw from developing the Foundation Proponent Project at James Price Point, the Foundation Proponent will give 6 months notice to the Parties that it wishes to terminate its commitments under this Agreement and upon expiration of the notice, the Foundation Proponent will no longer be a Party to this Agreement and, subject to paragraphs (b) and (c) and clause 41.5, will not have any obligations or liability under this Agreement, in Law, or under the Principal Acts, to any other Party under this Agreement.
- (b) If:
  - (i) at any time before the Project FID the Foundation Proponent withdraws from developing the Foundation Proponent Project at James Price Point under paragraph (a); and
  - (ii) before the date of that withdrawal the State has effected a Taking under the Precinct Notices for the Foundation Proponent Project;then
  - (iii) the Foundation Proponent will pay to the Native Title Party, by payment to the trustee of the Proponent Benefits Fund Trust, a sum of \$5,000,000, within 60 days of the Notice under paragraph (a).
- (c) If:
  - (i) at any time before the Project FID the Foundation Proponent withdraws from developing the Foundation Project at James Price Point under paragraph (a); and
  - (ii) before the date of that withdrawal the State has not effected a Taking under the Precinct Notices for the Foundation Proponent Project;then
  - (iii) the Foundation Proponent has no obligation to make any payment under paragraph (b)(iii).
- (d) If at any time after Project FID but before First LNG Cargo the Foundation Proponent wishes to withdraw from developing the Foundation Proponent Project at James Price Point, the Foundation Proponent may give 6 months' written notice that it wishes to terminate its commitments under this Agreement and upon expiration of the notice, the Foundation Proponent will no longer be a party to this Agreement and, subject to paragraphs (e) and (f) and clause 41.5, will not have any obligations or liability under this Agreement, in Law or under the Principal Acts, to any other party under this Agreement.

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- (e) If:
  - (i) at any time after Project FID but before First LNG Cargo the Foundation Proponent withdraws from developing the Foundation Proponent Project at James Price Point under paragraph (d); and
  - (ii) before the date of that withdrawal the State has effected a Taking under the Precinct Notices for the Foundation Proponent Project;then
  - (iii) the Foundation Proponent will pay to the Native Title Party, by payment to the trustee of the Proponent Benefits Fund Trust, a sum of \$5,000,000 within 60 days.
- (f) If:
  - (i) at any time after Project FID but before First LNG Cargo the Foundation Proponent withdraws from developing the Foundation Project at James Price Point under paragraph (d); and
  - (ii) before the date of that withdrawal the State has not effected a Taking under the Precinct Notices for the Foundation Proponent Project;then
  - (iii) the Foundation Proponent has no obligation to make any payment under paragraph (e)(iii).

## **41.4 Withdrawal following a Proponent Closure Decision**

Following a Proponent Closure Decision, if the last of a Proponent's obligations under this Agreement have been fulfilled, the Proponent must give notice to that effect and upon receipt of the notice by each other Party, the Proponent will be deemed to have withdrawn from the LNG Precinct and the provisions of 41.5 and 41.6 apply.

## **41.5 Accrued obligations not affected**

- (a) Withdrawal of:
  - (i) the Foundation Proponent from the LNG Precinct or the Foundation Proponent Project pursuant to clause 41.3(a) or 41.3(d); or
  - (ii) a Proponent from the LNG Precinct pursuant to clause 41.4,does not affect any obligations or liabilities that have accrued and fallen due under this Agreement before the date of withdrawal.
- (b) For the avoidance of doubt, withdrawal pursuant to clause 41.3(a) or 41.3(d) does not affect obligations and liabilities arising under clauses 37 to 39 of this Agreement and notice given under clause 41.3(d) will be considered a "Proponent Closure Notice" for the purpose of clauses 37 to 39.

## **41.6 Agreement continues between other parties**

If:

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- (a) the Foundation Proponent withdraws from the LNG Precinct or the Foundation Proponent Project pursuant to clause 41.3(a) or 41.3(d); or
  - (b) a Proponent withdraws from the LNG Precinct pursuant to clause 41.4,
- this Agreement continues as between the State, the Port Authority, LandCorp, the Native Title Party and any other Proponent.

## **41.7 Consequences of termination**

Termination of this Agreement for any reason does not affect any obligations or liabilities that have accrued under this Agreement before the date of termination.

## **42. Dispute Resolution**

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### **42.1 Notice**

If there is a dispute between any or all of the Parties in relation to the LNG Precinct, the Project Rights or any other matter arising out of or in connection with this Agreement (a *Dispute*), any party may serve a written notice of dispute on the other parties to the Dispute (a *Notice of Dispute*). The Notice of Dispute must set out the details of the matter in dispute.

### **42.2 Dispute resolution process**

- (a) Following the issue of a Notice of Dispute, the parties to the Dispute will meet and seek to resolve the Dispute in good faith.
- (b) If the parties have not resolved the Dispute within 14 days of a Notice of Dispute being served (or such longer period as may be agreed between the parties), any party to the Dispute may refer the Dispute for mediation in accordance with clause 42.3.

### **42.3 Mediation**

- (a) Unless the parties otherwise agree, mediation of a Dispute will be administered by the Institute of Arbitrators and Mediators Australia.
- (b) The mediator will be an independent person agreed between the parties from a panel suggested by the President of the Institute of Arbitrators and Mediators Australia or, failing agreement within 14 days of the period in clause 42.2(b), any party may request a mediator be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (c) Any mediation meetings and proceedings under this clause:
  - (i) must be held in Broome or Perth, Western Australia at the election of the Native Title Party if the Native Title Party is a party to the Dispute; and
  - (ii) must be held in Perth if the Native Title Party is not a party to the Dispute, unless the parties to the Dispute otherwise agree.

### **42.4 Court proceedings and other relief**

A Party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause or until 30 days have elapsed since commencement of the mediation referred to in clause 42.3, whichever occurs first, unless the Party seeks injunctive or other interlocutory relief.

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## **42.5 Continuation of rights and obligations**

Despite the existence of a Dispute or difference each Party must continue to perform this Agreement.

## **43. Confidentiality**

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### **43.1 Non disclosure**

Except as permitted in clauses 43.4 and 43.5, a Party (**Recipient**) who receives Confidential Information from another Party (**Discloser**) must keep that information confidential and not disclose the information to a third party.

### **43.2 Confidential information**

For the purposes of this clause 43, 'Confidential Information' means the agreement in relation to certain challenges referred to in clause 6.5 and contained in item 6 of Schedule 5, but does not include information that is publicly available, provided it is not publicly available as a result of a breach of confidence.

### **43.3 Terms not confidential**

Subject to clause 43.2, the Parties acknowledge and agree that the terms and conditions of this Agreement will not be regarded as confidential.

### **43.4 Disclosure with consent**

A Recipient may disclose Confidential Information with the prior written consent of the Discloser.

### **43.5 Permitted disclosures**

Confidential Information may be disclosed by a Recipient without the consent of the Discloser:

- (a) to the Recipient's Personnel, but only to the extent that the Personnel need to know the information to exercise the Recipient's rights and obligations under this Agreement;
- (b) to a Related Body Corporate;
- (c) to a Government Agency having lawful jurisdiction over that party which Government Agency has also issued a request to compel that party to disclose the Confidential Information;
- (d) if disclosure is required by Law to be communicated to a person who is authorised by Law to receive it;
- (e) if disclosure is required by rules of a stock exchange;
- (f) to financial and lending institutions for the purpose of obtaining finance;
- (g) to bona fide potential assignees of the whole or part of this Agreement;
- (h) if disclosure is necessarily made to a court, or mediator or to an arbitrator or to legal counsel in the course of proceedings;
- (i) if disclosure is required to any parliamentary body or Government Agency, including, without limitation, disclosure in response to parliamentary questions, ministerial inquiries

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and inquiries conducted by or on behalf of the Auditor-General of the State of Western Australia;

- (j) if disclosure is information concerning any conduct or operation of a Government Agency which the Minister responsible for that Government Agency thinks reasonable and appropriate to provide to the Parliament; or
- (k) in the case of disclosure by the Foundation Proponent, is to the Browse Joint Venture or any actual or bona fide potential Browse Joint Venturer, or financier, legal advisor, assignee, customer of or participant in relation to all or any part of the Foundation Proponent Project.

## **43.6 Disclosure to members of the Native Title Claim Group**

The Native Title Party may disclose Confidential Information to members of the Native Title Claim Group from time to time. Prior to any Confidential Information being disclosed under this clause 43.6, the Native Title Party will use its reasonable endeavours to ensure the Recipient understands the obligations relating to that Confidential Information under the terms of this Agreement, including, in particular, the requirements of this clause 43.

## **43.7 Confidentiality obligations continue**

- (a) The obligations of confidentiality under this clause 43 will continue for 5 years following the termination or expiry of this Agreement.
- (b) This Agreement does not discharge, amend or otherwise affect any existing or future confidentiality obligations between the Parties.

## **44. Amendment**

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- (a) Subject to paragraph (b), this Agreement may only be amended by another written agreement executed by all the Parties.
- (b) The Management Schedules may be amended in accordance with item 18 of Schedule 6.

## **45. Review**

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### **45.1 Regular review of Agreement**

- (a) Subject to paragraph (b), the Parties must conduct, or cause to be conducted, a review of this Agreement 5 years after the Execution Date and, unless the Parties agree otherwise, no less than once every 5 years thereafter (*5 Year Review*).
- (b) If a Party considers that a matter under clause 45.2(e) arises, that Party may request that the other Parties review this Agreement and the Parties must consider the issue notified.

### **45.2 Manner of 5 Year Review**

When conducting a 5 Year Review, the Parties must:

- (a) consider the operation of this Agreement; and

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- (b) consider the operation of the Management Schedules, including whether the Management Schedules are being complied with;
- (c) identify implementation issues, the circumstances creating such issues and consider improvements to implementation;
- (d) consider whether the Management Schedules continue to be appropriate and consider any need for changes to the Management Schedules; and
- (e) consider any issue of enforceability of clauses or change in law.

## **45.3 Outcomes of review**

The outcomes of a review under clause 45.1 must be reasonably considered by the Parties.

However, no Party is bound to accept or comply with any outcome or recommendations of a review under clause 45.1.

## **45.4 Formal Review after 50 Years**

The Parties must conduct, or cause to be conducted, a formal review of this Agreement as soon as reasonably practicable after the date that is 50 years from the Commencement Date (***50 Year Review***).

## **45.5 Manner of 50 Year Review**

- (a) When conducting the 50 Year Review, the Parties must consult with each other in relation to the Agreement. As part of this consultation, each Party will take into account each other Party's views on fairness, appropriateness and any relevant benchmarks that may apply in relation to the Agreement.
- (b) The length of this consultation process will be agreed between the Parties but must be no more than 3 months in duration.
- (c) The outcomes of the consultation process must be considered by the Parties who may decide to make amendments to the Agreement pursuant to clause 44. If issues remain outstanding following completion of the consultation process, the Parties must negotiate in good faith in an attempt to resolve such issues.

## **45.6 Agreement to continue**

Unless and until amended pursuant to clause 44, the Agreement will continue in full force and effect.

## **45.7 Costs**

Each Party must bear its own costs in relation to any review under this clause.

## **46. Duty**

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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, or which delivers a State Benefit, required by this Agreement; and
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- (iii) any instrument or document required under any relevant Law in connection with any transaction to which the State is a party, or which delivers a State Benefit, 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;
  - (ii) which delivers a Foundation Proponent or Additional Proponent Benefits contemplated by this Agreement; or
  - (iii) which does not arise out of an obligation of the State contemplated by this Agreement,

in which case the duty will be payable by the person on whom the obligation to pay that duty falls at Law.

## 47. Governing Law

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This Agreement is governed by the laws of Western Australia. Each Party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

## 48. Severance

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If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in Western Australia, it must be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), must be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which continues in full force and effect.

## 49. Entire Agreement

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This Agreement contains the entire agreement between the Parties with respect to its subject matter. This Agreement sets out the only conduct relied on by the Parties.

## 50. Inconsistency with Regional Benefits Agreement

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If there is any inconsistency between this Agreement and the Regional Benefits Agreement, the terms of this Agreement prevail.

## 51. Assignment

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### 51.1 Definition of assignment

In this clause “*assignment*” means an assignment, novation, transfer, declaration of trust or any other disposal whatsoever.



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## 51.2 Assignment by the State

- (a) The State may assign all or part of its interest in the LNG Precinct, the Project Rights and this Agreement to a State department, State public authority or State instrumentality (the *assignee*), provided that the assignee:
  - (i) has the functions and powers which permit and enable the assignee to exercise the rights and obligations of the State under this Agreement to the extent of the interest assigned; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations of the State under this Agreement to the extent of the interest assigned.
- (b) For the avoidance of doubt, the State may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (c) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (a), and the State will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.
- (d) Other than as specified above, the State may only assign their rights and obligations under this Agreement with the written consent of the other Parties, which consent may be withheld at the absolute discretion of those other Parties.

## 51.3 Assignment by the Port Authority and LandCorp

- (a) The Port Authority may assign all or part of its interest in the LNG Precinct, the Project Rights and this Agreement to a State department, State public authority or State instrumentality (the *assignee*), provided that the assignee:
  - (i) has the functions and powers which permit and enable the assignee to exercise the rights and obligations of the Port Authority under this Agreement to the extent of the interest assigned; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations of the Port Authority under this Agreement to the extent of the interest assigned.
- (b) For the avoidance of doubt, the Port Authority may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (c) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (a), and the Port Authority will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.
- (d) LandCorp may assign all or part of its interest in the LNG Precinct, the Project Rights and this Agreement to a State department, State public authority or State instrumentality (the *assignee*), provided that the assignee:

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- (i) has the functions and powers which permit and enable the assignee to exercise the rights and obligations of LandCorp under this Agreement to the extent of the interest assigned; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations of LandCorp under this Agreement to the extent of the interest assigned.
- (e) For the avoidance of doubt, LandCorp may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (f) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (d), and LandCorp will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.
- (g) Other than as specified above, the Port Authority and LandCorp may only assign their rights and obligations under this Agreement with the written consent of the other Parties, which consent may be withheld at the absolute discretion of those other Parties.

## 51.4 Assignment by the Foundation Proponent

- (a) The Foundation Proponent may assign all or part of its interest in the LNG Precinct, the Project Rights and this Agreement to a Related Body Corporate, Browse Joint Venturer or a Related Body Corporate of a Browse Joint Venturer (the *assignee*), provided that the assignee:
  - (i) has the financial and technical capacity to perform the obligations of the Foundation Proponent under this Agreement; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned.
- (b) For the avoidance of doubt, the Foundation Proponent may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (c) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (a), and the Foundation Proponent will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.
- (d) The Foundation Proponent may assign all or part of its interest in this Agreement to any venturer, financier, assignee, investor or participant in relation to the Foundation Proponent Project (the *assignee*) provided that the proposed assignee:
  - (i) has the financial and technical capacity to perform the obligations of the Foundation Proponent under this Agreement; and

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- (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned.
- (e) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (d), and the Foundation Proponent will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.

## 51.5 Assignment by an Additional Proponent

- (a) An Additional Proponent may assign all or part of its interest in the LNG Precinct, the Project Rights and this Agreement to a Related Body Corporate, Joint Venture Participant or a Related Body Corporate of a Joint Venture Participant (the **assignee**), provided that the assignee:
  - (i) has the financial and technical capacity to perform the obligations of the Additional Proponent under this Agreement; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned.
- (b) For the avoidance of doubt, the Additional Proponent may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (c) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (a), and the Additional Proponent will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.
- (d) The Additional Proponent may assign all or part of its interest in this Agreement to any venturer, financier, assignee, investor or participant in relation to the Additional Proponent Project (the **assignee**) provided that the proposed assignee:
  - (i) has the financial and technical capacity to perform the obligations of the Additional Proponent under this Agreement; and
  - (ii) executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned.
- (e) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (d), and the Additional Proponent will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.

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## 51.6 Assignment by the Native Title Party

- (a) The Native Title Party may assign its rights and obligations under this Agreement:
  - (i) to a body (the *assignee*) as provided under paragraph (b); and
  - (ii) provided the assignee executes a Deed of Assignment and Assumption by which it agrees to be bound by the terms of this Agreement and to assume the rights and obligations under this Agreement to the extent of the interest assigned.
- (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) For the avoidance of doubt, the Native Title Party may not assign an interest in the LNG Precinct or the Project Rights without also assigning the corresponding interests under this Agreement.
- (d) The Parties to this Agreement are deemed to have consented to any such assignment under paragraph (a), and the Native Title Party will provide each other Party with a copy of the Deed of Assignment and Assumption executed by it and the assignee, and the other Parties must execute and return the Deed of Assignment and Assumption within 14 days of receipt of it.

## 51.7 Assignment restricted

Other than as specified in this clause 51, a Party must not assign its rights and obligations under this Agreement without the written consent of the other Parties, which consent will not be unreasonably withheld.

## 51.8 Grant of securities

- (a) A Proponent may assign all of its rights (but not part only) under this Agreement to any Lender or person acting on behalf of any Lender for the purpose of securing financial accommodation provided by the Lender to the Proponent exclusively in connection with the Proponent's Project, upon request from such Lender notified in writing to the Parties.
- (b) A Proponent may otherwise assign all of its rights (but not part only) under this Agreement to any Lender or person acting on behalf of any Lender for the purpose of securing financial accommodation provided by the Lender to the Proponent upon request from such Lender notified in writing to the Parties, provided that the State provides its consent, which consent is not to be unreasonably withheld.
- (c) Any creation of a security interest by a Proponent under paragraphs (a) or (b) must expressly provide that any transfer or assignment of that security interest by the Lender or a

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person acting on behalf of the Lender will be subject to clauses 51.4 or 51.5 (as appropriate).

## **51.9 Further assurances**

- (a) To the extent required, each Party who has deemed to have given their consent under this clause 51, will do anything (including executing agreements and documents (including a Deed of Assignment and Assumption)) necessary to give full effect to those consents.
- (b) The Native Title Party must confer a limited power of attorney upon the Administrative Body within 14 days of the constitution being approved under clause 21.3 providing the Administrative Body with the power to execute agreements and documents (including a Deed of Assignment and Assumption) necessary to give full effect to the consents in this clause 51.
- (c) The Native Title Party must provide a copy of the power of attorney referred to in paragraph (b) to the State and any Proponent within 14 days of conferring that power of attorney.
- (d) The Administrative Body must execute all agreements and documents, including a Deed of Assignment and Assumption (as defined in the Regional Benefits Agreement) necessary to give full effect to an assignment by the Foundation Proponent of an interest in the Regional Benefits Agreement, under the power of attorney conferred upon the Administrative Body under the Regional Benefits Agreement.

## **52. Delegated Performance**

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If a Party subcontracts or delegates the performance of an obligation under this Agreement, that subcontracting or delegation does not relieve that Party from that obligation.

## **53. Waiver and Election**

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### **53.1 Waiver by a party**

A provision of this Agreement may only be waived (wholly or in part) by a party benefiting from the provision by providing written notice of such waiver to the other parties.

### **53.2 Limited waiver**

Unless expressly stated otherwise in the notice of waiver, the waiver only applies to the particular provision and occasion in question.

### **53.3 Election**

Where this Agreement provides for an election by a party, such election will only be effective if the party making the election provides written notice of the election to the other parties.

# Browse LNG Precinct Project Agreement

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## 54. Counterparts

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This Agreement may consist of a number of counterparts. All counterparts together will be taken together to constitute one instrument.

## 55. Notices

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Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
  - (i) to the State:

Director General  
Department of Premier and Cabinet  
197 St Georges Terrace  
Perth WA 6000  
Fax Number: (08) 9222 9509
  - (ii) to the Minister for Lands:

Minister for Lands  
Level 10 Dumas House  
2 Havelock Street  
West Perth WA 6005  
Fax Number: (08) 9222 9509
  - (iii) to the Native Title Party:

C/- Principal Legal Officer  
Kimberley Land Council  
PO Box 2145  
Broome WA 6725  
Fax Number: (08) 9193 6279
  - (iv) to the Foundation Proponent:

Senior Legal Counsel  
Browse LNG Development  
240 St Georges Terrace  
Perth WA 6000  
Fax Number: (08) 9214 2833
  - (v) to the Port Authority:

Chief Executive Officer  
401 Port Drive  
Broome WA 6725  
Fax Number: (08) 9192 1778
  - (vi) to LandCorp:

Chief Executive Officer  
40 The Esplanade  
Perth WA 6000  
Fax Number: (08) 9481 0861
- (c) will be taken to be duly given or made:

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- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, 7 days after the date of posting (if posted to an address in the same country) or 10 days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

## 56. CPI Adjustment

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### 56.1 Annual review

- (a) The adjustment for CPI will be made:
  - (i) From 1 January 2010 in relation to the Benefits set out in the First CPI List as that term is defined in Schedule 5.
  - (ii) From 1 January 2011 in relation to the Benefits set out in the Second CPI List as that term is defined in Schedule 5.
  - (iii) From the Commencement Date in relation to Benefits payable by the State under clause 9.1 and 10.1.
  - (iv) Any amount, Benefit or entitlement of any Party in this Agreement will not be subject to CPI Adjustment unless expressly referred to above in this paragraph (a).

*(CPI Adjustment).*

- (b) Subject to paragraph (a), the Benefits to be provided by the State and the Foundation Proponent as referred to in this clause 56.1 are to be adjusted annually for CPI Adjustment as set out below so that following each CPI Adjustment the Benefit that is to be provided is equal to 'A' in the formula below:

$$A = \frac{B \times C}{D}$$

where

- A = the Benefit to be provided, referred to in paragraph (a) and calculated after CPI Adjustment.
- B = the Benefit referred to in paragraph (a), set out in the Schedules or clauses 9.1 and 10.1 (as the case may be) and which are shown in the Schedules or clauses 9.1 and 10.1 (as the case may be) as amounts prior to CPI Adjustment.
- C = the Index published for the December Quarter of the year ended immediately prior to the CPI Adjustment in this paragraph (b), or the index published for the year

# Browse LNG Precinct Project Agreement

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immediately prior to the CPI Adjustment in relation to the CPI Adjustment for State Benefits under (a)(iii).

D = the Index published for:

- (1) the December Quarter 2009 for the Benefits set out above in paragraph (a)(i). As at the Commencement Date, the Index for the December Quarter 2009 was 169.5;
- (2) the December Quarter 2010 for the Benefits set out above in paragraph (a)(ii). As at the Commencement Date, the Index for the December Quarter 2010 was 174.0; and
- (3) the year ending the year before the CPI Adjustment for the Benefits set out above in paragraph (a)(iii).

For the avoidance of doubt in relation to Benefits to be provided by the Foundation Proponent, the dates of commencement of provision of any amount, Benefit or entitlement are as set out in Schedule 5. This clause 56.1 operates only to set out any CPI Adjustment that may apply, if applicable.

- (c) A worked example of the application of this clause is set out in the Worked CPI Example in Schedule 5.

## 56.2 Index

If at any Adjustment Date the Index is discontinued, and there is no replacement index, then the Party required to deliver the Benefit must nominate the alternative which best approximates the Index and that alternative is to be used in applying clause 56.1 in relation to Benefits to be delivered by them.

## 57. Further Assurances

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- (a) Subject to paragraph (c), each Party must at its own expense do anything (including executing agreements and documents) necessary to give full effect to this Agreement and the transactions contemplated by it.
- (b) Nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State or any Government Agency to exercise any of its functions and powers under any Law.
- (c) Nothing in this clause 57 or implied in this Agreement fetters the powers, functions or duties of any Government Agency.
- (d) If the State requests the Native Title Party to execute an agreement under section 31 of the Native Title Act under this clause 57, it will pay the Native Title Party's reasonable costs of and incidental to doing so.



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## 58. Failure to pay money

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### 58.1 Interest

Subject to clause 58.2, if the State or a Proponent defaults in any payment due to the Native Title Party under this Agreement:

- (a) the defaulting Party will pay interest to the Native Title Party from the due date for payment to the date of actual payment calculated at the Interest Rate. Interest will accrue daily and will be compounded every month; and
- (b) the amount owing will be a debt recoverable against the defaulting Party and payable on demand.

### 58.2 No breach caused by Recipient Party

If a Party's obligation to pay money, including a Benefit, under this Agreement is dependent on another Party (*Recipient Party*) doing any act or thing, and that Recipient Party fails to do that act or thing, then the first Party will be deemed not to have breached that obligation.

## 59. Relationship of the Parties

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Nothing in this Agreement gives a Party authority to bind any other Party in any way.

## 60. Survival

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This clause and clauses 1 (“Definitions and Interpretation”), 42 (“Dispute Resolution”), 43 (“Confidential Schedules”), 47 (“Governing Law”) and 57 (“Further Assurances”) survive the expiry of this Agreement.

# Browse LNG Precinct Project Agreement

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**Executed and delivered as a Deed** in Perth, Western Australia:

Signed, Sealed and Delivered for and on behalf of the State of Western Australia by the Premier, **The Honourable Colin James Barnett** MLA, in the presence of:

Witness Signature

Print Name

Signature

Hon Colin James Barnett  
MLA, Premier

The **Common Seal** of the **Minister for Lands**, a body corporate constituted under section 7 of the *Land Administration Act 1997 (WA)*, was hereunto affixed in the presence of:

Witness Signature

Print Name

Signature

Hon Brendon Grylls  
MLA, Minister for Lands

# Browse LNG Precinct Project Agreement

Signed, Sealed and Delivered by Rita Augustine, Anthony Watson and Ignatius Paddy in their capacity as the applicant under section 61 of the Native Title Act for and on behalf of themselves and all the members of the Native Title Claim Group, in the presence of:

Witness Signature

Print Name

Witness Signature

Print Name

Witness Signature

Print Name

Signature

Rita Augustine

Signature

Anthony Watson

Signature

Ignatius Paddy

Executed as a deed pursuant to section 134(2) of the *Port Authorities Act 1999* (WA) by affixing the common seal of the **Broome Port Authority** in the presence of:

Signature of Chief Executive Officer/Director

Print Name

Signature of Director

Print Name



# Browse LNG Precinct Project Agreement

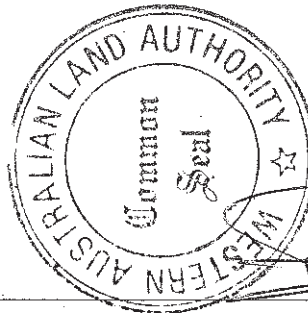
Executed as a deed pursuant to section 45(2)  
of the *Western Australian Land Authority  
Act 1992* (WA) by affixing the common seal  
of LandCorp in the presence of:



Signature of Chief Executive Officer/Director

ROSS DUNCAN HOLT

Print Name

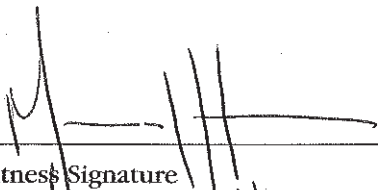


Signature of Director

DAVID STEVEN ROWE

Print Name

Executed as a deed for and on behalf of  
Woodside Energy Ltd (ACN 005 482 986) in  
the presence of:



Witness Signature

MICHAEL HESSON

Print Name



Signature

Peter Coleman