



# **BROWSE LNG PRECINCT REGIONAL BENEFITS AGREEMENT**

**June 2011**

# Browse LNG Precinct Regional Benefits Agreement

State of Western Australia  
Minister for Lands  
Conservation Commission of Western Australia  
Kimberley Land Council  
Woodside Energy Limited

# Browse LNG Precinct Regional Benefits Agreement

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<b>Date</b>	30 June 2011
<b>Parties</b>	<ol style="list-style-type: none"><li>1. <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>2. <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>3. <b>Conservation Commission of Western Australia</b> a body corporate established under section 18 of the <i>Conservation and Land Management Act 1984</i> (WA), of Corner Australia II Drive and Hackett Drive, Crawley, Western Australia, 6009 (<i>Conservation Commission</i>).</li><li>4. <b>Kimberley Land Council Aboriginal Corporation</b> (ABN 96 724 252 047 ICN 21), of 36 Pembroke Street, Broome, Western Australia, 6725 (<i>KLC</i>).</li><li>5. <b>Woodside Energy Limited</b> (ABN 63 005 482 986), of 240 St Georges Terrace, Perth, Western Australia, 6000 (<i>Foundation Proponent</i>).</li></ol>
<b>Background</b>	<ol style="list-style-type: none"><li>A The State intends establishing the LNG Precinct to be controlled and managed by the State in the vicinity of James Price Point.</li><li>B It is proposed that the Foundation Proponent and any Additional Proponent will process and export LNG from the LNG Precinct.</li><li>C 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 LNG Precinct and the land and waters in the vicinity of James Price Point.</li><li>D The KLC is an incorporated body under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) and the Representative Aboriginal and Torres Strait Islander Body pursuant to section 203AD of the NTA for the Kimberley. The KLC acts for the benefit of the Native Title Party and the Regional Beneficiaries on the terms set out in this Agreement.</li><li>E The State, the Native Title Party, the Foundation Proponent, the Port Authority and LandCorp have entered into a Project Agreement, executed contemporaneously to this Agreement, to establish the LNG Precinct to be located within the land and waters of the Native Title Claim and the doing of the Project Rights.</li></ol>



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F	Benefits have been provided under the Project Agreement to the Native Title Party in connection with the effect on native title rights of the LNG Precinct. In addition to those benefits, the Parties have recognised that the establishment of the LNG Precinct represents an opportunity to address Indigenous disadvantage for Aboriginal people across the Kimberley. The Native Title Party has consented under the Project Agreement to this Agreement and the Regional Benefits.
G	Accordingly, the Parties have committed to delivering a regional benefits package under this Agreement which benefits seek to improve the educational, health, social and economic well being of Aboriginal people across the Kimberley.

**It is agreed** as follows.

## 1. Definitions and Interpretation

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### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Aboriginal Affairs Planning Authority** means the body corporate established under section 8 of the *Aboriginal Affairs Planning Authority Act 1972* (WA), of Level 1, 197 St Georges Terrace, Perth, Western Australia, 6000.

**Aboriginal Lands Trust** means the body corporate established under section 20 of the *Aboriginal Affairs Planning Authority Act 1972* (WA), of Level 1, 197 St Georges Terrace, Perth, Western Australia, 6000.

**Additional Proponent** means a person or persons appointed by the State as an additional proponent 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 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.

**Additional Proponent Regional Benefits** means any benefits payable by an Additional Proponent under the Project Agreement to Regional Beneficiaries excluding benefits payable to the Native Title Party solely.

**Adjustment Date** has the meaning given in clause 31.1.

**Adjusted First Instalment Payment** has the meaning given in clause 5.2.

**Adjusted Last Instalment Payment** has the meaning given in clause 5.2.

**Agreement** means this agreement and includes all schedules and annexures.

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**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.

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

**Assignment** has the meaning given in clause 28.1.

**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).

**Australian Bureau of Statistics** means the Australian Bureau of Statistics (ABN 26 331 428 522) of ABS House, 45 Benjamin Way, Belconnen, ACT, 2617.

**Benefit Payment Date** means the date being 30 days following 1 July in any year.

**Board** has the meaning given in clause 19.6.

**Browse Joint Venture** means the unincorporated joint ventures for the Petroleum Title Areas which as at the date of the 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.

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

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**CALM Act Amendment** means the Act which amends the CALM Act to allow for joint management of private land and Crown Land.

**CALM Regulations** means the *Conservation and Land Management Regulations 2002* (WA).

**Capacity Partners** means third parties capable of entering into a joint venture, partnership or other similar arrangement with members of the Regional Body and having particular skills, experience, training, contacts or financial capacity that is beneficial to the relevant members of the Regional 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 Regional Body Ratification Date one or more of the following occurs:

- (a) the Regional Body fails to comply with sections 69-20, 304-5, 180-1, 322, 327 or 330 of the CATSI Act;

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- (b) the Board of the Regional 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 Registrar of Indigenous Corporations applies for an injunction under section 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 Corporation appointed under section 653-1 of the CATSI Act.

**CEO** means the Chief Executive Officer of the DEC.

**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 in relation to a Party, a demand, claim, right, cause of action or proceeding however arising (whether in contract, tort, equity or arising from negotiations that led to the execution of this Agreement or under any other principle of law or statute of Western Australia or any other jurisdiction) and whether present, unascertained, immediate, future or contingent.

**Commonwealth Funding Recipient** has the meaning given in clause 16.

**Compensation** has the meaning given in the Project Agreement.

**Conservation and Heritage Areas** means the areas created under clause 13.

**Conservation and Heritage Area ILUA** means an indigenous land use agreement in a form substantially similar to that set out in Schedule 2.

**Conservation and Heritage Reserves** has the meaning given in clause 13.7.

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

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

**CPF Report** means an annual report prepared by the Regional Body on the operation of the Cultural Preservation Fund under clause 9.5.

**Cultural Management Plan** means a cultural management plan prepared in accordance with clause 13.10.

**Cultural Preservation Fund** means the fund established under clause 9.

**Cultural Preservation Fund Trust** means the Trust established under clause 20.6.

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

**Dampier Peninsula Fund** means the fund referred to in clause 11 of this Agreement.

**Dampier Peninsula Fund Trust** means a trust, established under a trust deed consistent with the requirements of clause 11 and the remainder of this Agreement, that is able to hold payment under clauses 11.2 and 11.3 and establish the Dampier Peninsula Fund.

**Dampier Peninsula Native Title Parties** means registered native title holders or members of registered native title claim groups located on the Dampier Peninsula from time to time.

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

**Dampier Peninsula Report** means an annual report prepared by the Regional Body on the operation of the Dampier Peninsula Fund under clause 11.8.

**Dampier Peninsula Representative Body** means a body that is representative of all Traditional Owners of the Dampier Peninsula.

**DEC** means the Western Australian Department of Environment and Conservation.

**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 28, in a form substantially similar to that set out in Schedule 6.

**Default** means a Regional Body Default or a Trust Default.

**Default Notice** has the meaning given in clause 24.5

**Department of Indigenous Affairs** means the department responsible for the administration of the *Aboriginal Heritage Act 1972* (WA) and the *Aboriginal Affairs Planning Authority Act 1971* (WA).

**Dispute** has the meaning given in clause 29.1.

**Execution Date** means the date that this Agreement is signed by the State, the Minister for Lands, the Conservation Commission, the KLC and the Foundation Proponent.

**Executive Body** means a body corporate established under section 36 of the CALM Act.

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

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

**First Instalment Payment** means each of the first instalments of the periodic payments of State Benefits in accordance with clauses 9.1(a)(i), 10.1(a)(i) and 11.1(a)(i).

**First Instalment Payment Period** means the period between the Secured Foundation Proponent Date and 30 June next following the Secured Foundation Proponent Date.

**Foundation Proponent Commitments** means the Foundation Proponent Regional Education Fund Benefits under clause 8.2, the Foundation Proponent Kimberley Enhancement Scheme Benefits under clause 10.2 and the additional commitments contained in Schedule 5 of the Project Agreement which are payable under this Agreement.

**Foundation Proponent Kimberley Enhancement Scheme Benefits** has the meaning given in clause 10.2.

**Foundation Proponent Project** means the Foundation Proponent's project for the processing and Exporting of LNG within 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

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(d) all things necessary and incidental to paragraphs (a) to (c) above.

**Foundation Proponent Regional Education Fund Benefits** has the meaning given in clause 8.2.

**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 12.1

**Grant Land Claim Group** means the registered native title claimants or the prescribed body corporate or the determined common law holders (as the case may be) for the area in which a grant of freehold land will be made under clause 12.

**Grant Land ILUA** means an indigenous land use agreement in a form substantially similar to that set out in Schedule 2.

**Grant Land Trust** means a trust established under a Trust Deed for the purpose of holding land Granted pursuant to clause 12 for the benefit of Regional Beneficiaries.

**GST** has the meaning given in clause 23.1.

**GST Amount** has the meaning given in clause 23.3.

**Identified Amount** has the meaning given in clause 24.5.

**Index** means the Consumer Price Index (Perth All Groups) number published by the Australian Bureau of Statistics 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 31.3.

**Indigenous Business Australia** means Indigenous Business Australia (ABN 25 192 932 833) of Level 5, 5 Neptune Street, Woden, Australian Capital Territory, 2606.

**Indigenous Holding Entity** has the meaning given in clause 13.5

**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 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.

**Joint Management Body** means either the local or regional body referred to in clause 13.8.

**Joint Venture Participant** means a party to or owner of a joint venture with a Proponent for the purposes of a Proponent Project which in relation to the Foundation Proponent includes a Browse Joint Venturer.

**KES Committee** means the Committee referred to in clause 10.6

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

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**Kimberley Development Commission** means the Kimberley Development Commission of PO Box 620, Kununurra, Western Australia, 6743.

**Kimberley Enhancement Scheme** means the scheme established under clause 10.

**Kimberley Enhancement Scheme Trust** means the Trust established under clause 20.6.

**Kimberley Indigenous People** means the indigenous people of the Kimberley determined by the policy of the Board of the Regional Body from time to time to be eligible to be beneficiaries under this Agreement.

**Kimberley Native Title Parties** means registered native title holders or members of registered native title claim groups located in the Kimberley from time to time.

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

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

**Land Reform ILUA** means an indigenous land use agreement in a form substantially similar to that set out in Schedule 2.

**Last Instalment Payment** means each of the last instalments of the periodic payments of State Benefits in accordance with clauses 9.1(a)(ii), 10.1(a)(ii) and 11.1(a)(iii).

**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** has the meaning given in the Project Agreement.

**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.

**Management Group** means the group referred to in clause 19.7.

**Management Plan** means a management plan prepared in accordance with clause 13.11.

**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 NTA in relation to the Native Title Claim.

**Native Title Party** has the meaning given in the Project Agreement.

**Native Title Party Default** has the meaning given in the Project Agreement.

**Notice** has the meaning given in clause 30.



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**Notice of Dispute** has the meaning given in clause 29.1.

**Notice of Satisfaction** has the meaning given in clause 18.2(c).

**Notice of Replacement of Trustee** has the meaning given in clause 25.1.

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

**Other Benefits** means benefits other than the Regional Benefits provided for in this Agreement that may arise out of the development of the LNG Precinct, including:

- (a) income or revenue from Regional Beneficiary projects;
- (b) income, donations or assets provided to the Regional Body;
- (c) income, revenue or assets arising out of the Regional Body performing its obligations under this Agreement; and
- (d) contributions made by the Kimberley Native Title Parties.

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

**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.

**Port Authority** means the Broome Port Authority of 401 Port Drive, Broome, Western Australia, 6725.

**Port Land** has the meaning given in the Project Agreement.

**Precinct Agreements** means the:

- (a) the Project Agreement;
- (b) this Agreement; and
- (c) the State Agreement.

**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.

**Priority Land** has the meaning given in clause 14.3.

**Project Agreement** means the agreement entitled 'Browse LNG Precinct Project Agreement' entered into between the State, the Native Title Party, the Foundation Proponent, the Port Authority and LandCorp to deliver benefits to the Native Title Party and executed on or about the date of this Agreement.

**Project Agreement Default Notice** means a default notice issued by the State or a Proponent in relation to a Native Title Party Default.

**Project Agreement Suspension Notice** means a suspension notice issued by the State or a Proponent in relation to a Native Title Party Default.

# Browse LNG Precinct Regional Benefits Agreement

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

**Project Rights** means has the meaning given in the Project Agreement.

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

**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 the rights and obligations of the Party under this Agreement that it will become, in a form substantially similar to that set out in Schedule 3.

**RCTI** has the meaning given in clause 23.5.

**Rectification Period** has the meaning given in clause 24.5.

**REDF Report** means an annual report prepared by the Regional Body on the operation of the Regional Economic Development Fund under clause 6.5.

**REF Report** means an annual report prepared by the Regional Body on the operation of the Regional Education Fund under clause 8.6.

**Regional Beneficiaries** means the Native Title Party, the Dampier Peninsula Native Title Parties, the Kimberley Native Title Parties, and other Kimberley Indigenous People from time to time.

**Regional Benefits** means the benefits provided by the State and a Proponent for the benefit of the Regional Beneficiaries under this Agreement.

**Regional Body** means the body corporate established under clauses 18 and 19.

**Regional Body Default** has the meaning given in clause 24.1.

**Regional Body Entities** means a body corporate which is a wholly owned subsidiary of the Regional 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 for those matters referred to in clause 18. For the avoidance of doubt, a body corporate may be a Regional Body Entity whether it is established under the CATSI Act or the Corporations Act.

**Regional Body Ratification Date** means the date on which a Ratification Deed is executed by the Regional Body in accordance with clause 18.3.

**Regional Economic Development Fund** means the fund established under clause 6.

**Regional Economic Development Fund Trust** means the Trust established under clause 20.6.

**Regional Education Fund** means the fund established under clause 8.

**Regional Education Fund Trust** means the Trust established under clause 20.6

**Regional Indigenous Housing Fund** means the fund referred to in clause 7 of this Agreement.

**Regional Indigenous Housing Fund Trust** means the Trust established under clause 20.6.

**Regional Trust Accounts** means an account to hold Trust Assets established in accordance with clause 20.7.

**Regional Trustee** means the body corporate established under clauses 18 and 20.



# Browse LNG Precinct Regional Benefits Agreement

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**Regional Trustee Ratification Date** means the date on which a Ratification Deed is executed by the Regional Trustee in accordance with clause 18.3.

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

**Replacement Trustee** means the trustee referred to in clause 25.

**Reserves Creation ILUA** means an indigenous land use agreement substantially in the form as contained in Schedule 2.

**RIHF Report** means an annual report prepared by the Regional Body on the operation of the Regional Indigenous Housing Fund under clause 7.5.

**Section 56A Agreement** has the meaning given in clause 13.14.

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

- (a) Project FID; or
- (b) the date on which the lease of the industrial block in the Industrial Precinct required for the Foundation Proponent Project is granted by LandCorp.

**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.

**Services Agreement** means the agreement in the form set out in Schedule 5 to be entered into substantially in relation to the payment of the funds for the purposes of management of the Conservation and Heritage Areas as contemplated under clause 13.

**Small Business Development Corporation** means the Small Business Development Corporation (ABN 68 066 414 034) of 553 Hay Street, Perth, Western Australia, 6000.

**State Agency** means the agency of the Minister nominated under clause 10.6.

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

**Supplier** has the meaning given in clause 23.

**Suspension Notice** has the meaning given in clause 24.5.

**Term** means the term of this Agreement, as set out in clause 2.

**Traditional Owners** means:

- (a) in an area subject to a native title determination application, the registered native title claimant for that area;
- (b) in an area subject to an approved determination of native title that native title does exist, the prescribed body corporate holding the native title rights and interests of the native title holders for that area or common law holders as the case may be; or

# Browse LNG Precinct Regional Benefits Agreement

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- (c) in an area not subject to a native title claim or determination, those Aboriginal people with traditional cultural connections, rights and obligations in the area.

**Trust** means a trust established pursuant to clause 20.6 of this Agreement.

**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 as created by the Regional Trustee for the purposes of clause 20.5.

**Trust Default** has the meaning given in clause 24.2.

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

## 1.2 Interpretation

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

- (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 shall prevail over any inconsistent provisions in any schedule or attachment to this Agreement;
- (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 NTA have the same meaning where used in this Agreement;

# Browse LNG Precinct Regional Benefits Agreement

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- (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 shall 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 and takes effect as a deed.

## 2. Term of Agreement

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This Agreement commences on the Execution Date and continues in force until the termination of the Project Agreement.

## 3. Warranties

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### 3.1 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; and
- (b) this Agreement is valid and binding, and enforceable in accordance with its terms against the Foundation Proponent.

### 3.2 State warranties

The State represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement; and
- (b) this Agreement is valid and binding, and enforceable in accordance with its terms against the State.

### 3.3 KLC Warranties

The KLC represents and warrants that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Agreement; and
- (b) this Agreement is valid and binding, and enforceable in accordance with its terms against the KLC.

### 3.4 Reliance on warranties

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

- (a) the warranties contained in this Agreement;

# Browse LNG Precinct Regional Benefits Agreement

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- (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;
- (c) any authorisation, consent or notice given by the State or the Foundation 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.

## 4. Rules of Funds

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- (a) The Regional Body will:
  - (i) in consultation with the State, formulate the rules of the Regional Economic Development Fund, Regional Indigenous Housing Fund, Regional Education Fund and Cultural Preservation Fund by reference to the purposes and objects of each fund or Regional Benefit; and
  - (ii) provide the State with a copy of the proposed rules formulated under paragraph (i); and
  - (iii) provide the Foundation Proponent with a copy of the proposed rules formulated under paragraph (i) for the Regional Education Fund.
- (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 4 and Schedule 4, the State must notify the Regional Body 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 Regional Body resolves to adopt them; or
  - (ii) inconsistent with this clause 4 or Schedule 4:
    - (A) the State must:
      - (1) notify the Regional Body that the proposed rules are not approved; and
      - (2) provide reasonable details of the inconsistency; and
    - (B) the Regional Body must:
      - (1) take reasonable action to address those reasons; and
      - (2) propose new rules in accordance with this clause 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) Upon the receipt of a copy of the proposed rules under paragraph (a)(iii), the Foundation Proponent will, within 30 days, consider those rules and if the Foundation Proponent considers that the proposed rules are:

# Browse LNG Precinct Regional Benefits Agreement

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- (i) consistent with this clause 4 and Schedule 4, the Foundation Proponent must notify the Regional Body that the rules are approved and the rules will come into effect and govern the relevant fund on such day after the notification that the Regional Body resolves to adopt them; or
- (ii) inconsistent with this clause 4 and Schedule 4:
  - (A) the Foundation Proponent must:
    - (1) notify the Regional Body that the proposed rules are not approved; and
    - (2) provide reasonable details of the inconsistency; and
  - (B) the Regional Body must:
    - (1) take reasonable action to address those reasons; and
    - (2) propose new rules in accordance with this clause 4.
- (e) If the Foundation Proponent fails to give notice in accordance with paragraph (d), then it is deemed to have given a notification under paragraph (d)(i).
- (f) The omission of one relevant factor in Schedule 4 from the rules of the relevant fund under consideration does not, by reason of that omission alone, provide the State or the Foundation Proponent a reason to reasonably withhold its approval.

## 5. Discharge of Payment Obligations

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### 5.1 Discharge of payment obligations

- (a) Any amount deposited by the State or a Proponent and cleared as available for withdrawal by the relevant Regional Trust Account under this Agreement will be deemed to:
  - (i) have been paid to and received by the Regional Beneficiaries; and
  - (ii) be a valid discharge of the obligations of the State or a Proponent (as the case may be) to make payment of that amount under this Agreement or the Project Agreement.
- (b) The State makes the payments for and on behalf of the Regional Beneficiaries 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 or 25,then paragraph (c) applies.
- (c) The State or any Proponent will not in any manner be responsible for any act, omission, neglect or breach by the KLC, the Regional Body, Regional Trustee or their representatives or otherwise including without limitation any misuse or wrongful application of payments unless:

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- (i) the act, omission, neglect or breach of trust is attributable to an independent director nominated by the State or a Replacement Trustee appointed by the State (as contemplated by clause 25.1); 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 (c).

## 5.2 Adjustments for financial year

- (a) Subject to CPI adjustment in accordance with clause 31, the State must adjust each First Instalment Payment according to the following formula:

$$\text{Adjusted First Instalment Payment} = \frac{\text{number of days in the First Instalment Payment Period}}{365} \times \text{amount of First Instalment Payment}$$

- (b) Subject to CPI adjustment in accordance with clause 31, the State must adjust each Last Instalment Payment according to the following formula:

$$\text{Adjusted Last Instalment Payment} = \text{Last Instalment Payment} - \text{Adjusted First Instalment Payment}$$

## 6. Regional Economic Development Fund

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### 6.1 State Commitment to Regional Economic Development Fund

- (a) Subject to paragraph (b), the State will pay \$20 million for the Regional Economic Development Fund within 60 days of the Secured Foundation Proponent Date.
- (b) Until the Regional Trustee establishes the Regional 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 Regional Beneficiaries 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 Regional Trust Account for the Regional Economic Development Fund Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Regional Economic Development Fund Trust.

### 6.2 Purpose of the Regional Economic Development Fund

The Parties agree that the initial purpose of the Regional Economic Development Fund is to assist the Regional Beneficiaries to benefit from the economic opportunities arising out of the establishment, management and ongoing operation of the LNG Precinct and to develop and increase the Regional

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Beneficiaries' capacity to generate wealth and self sufficiency and address disadvantage and poverty through:

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

## 6.3 Objects of the Regional Economic Development Fund

- (a) The Parties agree that the initial specific objects of the Regional Economic Development Fund include:
  - (i) facilitating engagement with the Foundation Proponent and any Additional Proponents to nominate specific training, employment (including supervisory and management positions) contracting and self-employment opportunities for Regional Beneficiaries within or directly related to the LNG Precinct;
  - (ii) facilitating engagement with the Foundation Proponent and any Additional Proponents to nominate enterprise and equity and other investment opportunities for Regional Beneficiaries within or directly related to the LNG Precinct; and
  - (iii) establishing Regional Body Entities to secure contracts, employ significant numbers of Regional Beneficiaries, provide training, traineeships and apprenticeships and return a profit to Regional Beneficiaries.
- (b) The Parties agree that the initial general objects of the Regional Economic Development Fund include:
  - (i) increasing the number of Regional Beneficiaries 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 Regional Beneficiaries and expanding those businesses in a sustainable manner;
  - (iii) identifying and facilitating joint ventures between Regional Beneficiaries and Capacity Partners that will have clear and measurable economic outcomes for Regional Beneficiaries;
  - (iv) identifying and utilising the assets and commercial advantage of the Regional Beneficiaries to generate employment and enterprise;
  - (v) increasing the number of Regional Beneficiaries participating in the Kimberley economy;

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- (vi) encouraging women and mature-age Regional Beneficiaries to consider sustainable economic opportunities and apply for funding from the Regional Economic Development Fund;
- (vii) providing funding and other assistance for:
  - (A) business start up;
  - (B) business expansion or growth;
  - (C) establishing joint ventures;
  - (D) investment and asset acquisition; and
  - (E) other activities as determined by the Regional Body consistent with the purpose of the Regional Economic Development Fund and this Agreement.

## 6.4 Rules of the Regional Economic Development Fund

The rules of the Regional Economic Development Fund must:

- (a) be determined in accordance with clause 4;
- (b) be consistent with this clause 6;
- (c) be fair, equitable, transparent, capable of implementation and consistent with contemporary governance standards; and
- (d) provide for:
  - (i) audit requirements consistent with clause 21 of this Agreement;
  - (ii) the manner in which applications for funding must be made;
  - (iii) rules or policy in relation to the eligibility criteria for Regional Beneficiaries to access the Regional Economic Development Fund; and
  - (iv) a specified distribution policy or policies.

## 6.5 Reporting and review of the Regional Economic Development Fund

- (a) The Regional Body must prepare annual reports on the operation of the Regional Economic Development Fund (**REDF Reports**).
- (b) The Regional Body must provide REDF Reports to the State and any other parties that make a financial contribution to the Regional Economic Development Fund and make each REDF Report available to Regional Beneficiaries.
- (c) Each REDF 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



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- (ii) a true and fair view of the financial position of the Regional Economic Development Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The Regional Body and the State will agree the scope and frequency of the review of the Regional Economic Development Fund.

## 7. Regional Indigenous Housing Fund

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### 7.1 State commitment to the Regional Indigenous Housing Fund

- (a) Subject to paragraph (b), for the period of 25 years from the Secured Foundation Proponent Date, the State must pay \$30 million for the Regional Indigenous Housing Fund in instalments as follows:
  - (i) the first instalment of \$10 million is to be made on the Benefit Payment Date in the year beginning five years after the Secured Foundation Proponent Date;
  - (ii) the second instalment of \$5 million is to be made on the Benefit Payment Date in the year beginning ten years after the Secured Foundation Proponent Date;
  - (iii) the third instalment of \$5 million is to be made on the Benefit Payment Date in the year beginning 15 years after the Secured Foundation Proponent Date;
  - (iv) the fourth instalment of \$5 million is to be made on the Benefit Payment Date in the year beginning 20 years following the Secured Foundation Proponent Date; and
  - (v) the fifth instalment of \$5 million is to be made on the Benefit Payment Date in the year beginning 25 years after the Secured Foundation Proponent Date.
- (b) Until the Regional Trustee establishes the Regional 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 Regional Beneficiaries in an interest bearing account.
- (c) Any payment under paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Regional Trust Account for the Regional Indigenous Housing Fund Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Regional Indigenous Housing Fund Trust.

### 7.2 Purpose of the Regional Indigenous Housing Fund

The Parties agree that the initial purpose of the Regional Indigenous Housing Fund includes:

- (a) assisting Regional Beneficiaries to enter into home ownership and participate in Indigenous housing development projects in the Kimberley;
- (b) increasing the number of Regional Beneficiaries residing in secure, safe, suitable and sustainable accommodation in the Kimberley; and
- (c) assisting Regional Beneficiaries to generate wealth and address disadvantage and poverty through investment and building asset ownership.

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## 7.3 Objects of the Regional Indigenous Housing Fund

- (a) The Parties agree that the initial specific objects of the Regional Indigenous Housing Fund include:
  - (i) establishing a safe and appropriate housing program and home ownership program to provide affordable entry into home ownership, particularly for Regional Beneficiaries with low incomes;
  - (ii) identifying and facilitating training and employment (including traineeship and apprenticeship) opportunities for Regional Beneficiaries in housing construction and maintenance and associated areas;
  - (iii) identifying and facilitating joint ventures between Regional Beneficiaries and Capacity Partners in housing construction and maintenance and associated areas; and
  - (iv) identifying and facilitating suitable housing development projects for Regional Beneficiaries including:
    - (A) establishing a corporate housing company;
    - (B) joint ventures with other Regional Beneficiaries;
    - (C) housing for the aged;
    - (D) supportive accommodation for apprentices and trainees;
    - (E) private or social housing development; and
    - (F) worker accommodation.
- (b) The Parties agree that the initial general objects of the Regional Indigenous Housing Fund include:
  - (i) increasing the number of Regional Beneficiaries in sustainable employment in housing construction and maintenance and associated areas;
  - (ii) increasing the number of businesses owned and operated by Regional Beneficiaries, 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 Regional Beneficiaries to consider home ownership to secure safe and sustainable accommodation for themselves and their family.

## 7.4 Rules of the Regional Indigenous Housing Fund

The rules of the Regional Indigenous Housing Fund must;

- (a) be determined in accordance with clause 4;
- (b) be consistent with this clause 7;
- (c) be fair, equitable, transparent, capable of implementation and consistent with contemporary governance standards; and
- (d) provide for:
  - (i) audit requirements consistent with clause 21 of this Agreement;

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- (ii) the manner in which applications for funding must be made;
- (iii) rules or policy in relation to the eligibility criteria for Regional Beneficiaries to access the Regional Indigenous Housing Fund; and
- (iv) a specified distribution policy or policies.

## 7.5 Reporting and review of the Regional Indigenous Housing Fund

- (a) The Regional Body must prepare annual reports on the operation of the Regional Indigenous Housing Fund (*RIHF Reports*).
- (b) The Regional Body must provide RIHF Reports to the State and any other parties that make a financial contribution to the Regional Indigenous Housing Fund and make each RIHF Report available to Regional Beneficiaries.
- (c) Each RIHF 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 Regional Indigenous Housing Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The State and the Regional Body will agree the scope and frequency of the review of the Regional Indigenous Housing Fund.

## 8. Regional Education Fund

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### 8.1 State Commitment to Regional Education Fund

- (a) Subject to paragraph (b), the State must pay \$20 million in annual instalments of \$1 million for the Regional Education Fund for the period of 20 years from the Secured Foundation Proponent Date as follows:
  - (i) the first instalment of \$1 million to be paid within 60 days of the Secured Foundation Proponent Date; and
  - (ii) for each subsequent year, instalments of \$1 million to be paid on or before the Benefit Payment Date in each year.
- (b) Until the Regional Trustee establishes the Regional Education 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 Regional Beneficiaries in an interest bearing account.

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- (c) Any payment under paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Regional Trust Account for the Regional Education Fund Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Regional Education Fund Trust.

## 8.2 Foundation Proponent Regional Education Fund Benefits

- (a) Under clause 16.1 of the Project Agreement, the Foundation Proponent and the Native Title Party have agreed that the manner in which certain Foundation Proponent obligations to the Native Title Party will be discharged is by the making of payments into the Regional Education Fund (*Foundation Proponent Regional Education Fund Benefits*).
- (b) Until the Regional Trustee establishes the Regional Education Fund Trust as contemplated by this Agreement, the payment under paragraph (a) will be held by the Foundation Proponent on trust for the benefit of the Regional Beneficiaries in an interest bearing account.
- (c) Any payment referred to in paragraph (a) together with any interest earned under paragraph (b) will be made by direct deposit into the Regional Trust Account for the Regional Education Fund Trust within 60 days of the Regional Trustee notifying the Foundation Proponent in writing of the establishment of the Regional Education Fund Trust.

## 8.3 Purpose of the Regional Education Fund

The Parties agree that the initial purpose of the Regional Education Fund is to increase the level of educational achievement among the Regional Beneficiaries and increase the number of Indigenous professionals, including skilled and qualified workers, living and working in the Kimberley through:

- (a) encouraging Regional Beneficiaries to take up educational opportunities;
- (b) providing assistance to Regional Beneficiaries in attaining high standard educational outcomes; and
- (c) providing practical support and assistance to Regional Beneficiaries in achieving professional and vocational goals.

## 8.4 Objects of the Regional Education Fund

The Parties agree that the initial objects of the Regional Education Fund include:

- (a) increasing the number of local and regional Indigenous students that achieve a Western Australian Certificate of Education at the completion of year 12;
- (b) increasing Indigenous and mature-age enrolment in vocational education and university programs;
- (c) encouraging Indigenous and mature-age Regional Beneficiaries to achieve a recognised qualification from a university, approved higher education provider or TAFE provider and apply for funding from the Regional Education Fund; and
- (d) assisting Regional Beneficiaries to attain a trade or vocational qualification that is not available in the Kimberley.

# Browse LNG Precinct Regional Benefits Agreement

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## 8.5 Rules of the Regional Education Fund

The rules of the Regional Education Fund must:

- (a) be determined in accordance with clause 4;
- (b) be consistent with this clause 8;
- (c) be fair, equitable, transparent, capable of implementation and consistent with contemporary governance standards; and
- (d) provide for:
  - (i) audit requirements consistent with clause 21 of this Agreement;
  - (ii) the manner in which applications for funding must be made;
  - (iii) rules or policy in relation to the eligibility criteria for Regional Beneficiaries to access the Regional Education Fund; and
  - (iv) a specified distribution policy or policies.

## 8.6 Reporting and review of the Regional Education Fund

- (a) The Regional Body must prepare annual reports on the operation of the Regional Education Fund (**REF Reports**).
- (b) The Regional Body must provide REF Reports to the State, the Proponent and any other parties that make a financial contribution to the Regional Education Fund and make each REF Report available to Regional Beneficiaries.
- (c) Each REF 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 Regional Education Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The State, the Foundation Proponent and the Regional Body will agree the scope and frequency of the review of the Regional Education Fund.

## 9. Cultural Preservation Fund

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### 9.1 State Commitment to Cultural Preservation Fund

- (a) Subject to paragraph (b), the State must pay \$8 million in annual instalments of \$500,000 for the Cultural Preservation Fund for the period of 16 years from the Secured Foundation Proponent Date as follows:

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- (i) the first instalment of \$500,000 to be paid within 60 days of the Secured Foundation Proponent Date; and
  - (ii) for each subsequent year, instalments of \$500,000 to be paid on or before the Benefit Payment Date in each year.
- (b) Until the Regional Trustee establishes the Cultural Preservation 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 Regional Beneficiaries in an interest bearing account.
- (c) Any payment under paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Regional Trust Account for the Cultural Preservation Fund Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Cultural Preservation Fund Trust.

## 9.2 Purpose of the Cultural Preservation Fund

The Parties agree that the initial purpose of the Cultural Preservation Fund is to assist Regional Beneficiaries, in particular young people and people at risk, to enhance and protect their cultural heritage.

## 9.3 Objects of the Cultural Preservation Fund

The Parties agree that the initial objects of the Cultural Preservation Fund include:

- (a) assisting the protection of Kimberley cultural heritage through the provision of funding to individuals, groups, projects or activities which encourage and promote the preservation of Indigenous language, customary law and culture through:
  - (i) activities and events on 'country' for young people or people at risk;
  - (ii) limited sponsorship of community based Indigenous media, such as community radio;
  - (iii) the collection, recording, cataloguing, archiving, preservation, reproduction, exhibition or broadcast of the culture and history of the Regional Beneficiaries;
  - (iv) the passing on of language, tradition, customs and teachings by elders and senior Regional Beneficiaries; and
  - (v) the preservation and protection of ethnographic sites; and
  - (vi) encouraging Regional Beneficiaries who are sponsors of cultural activities for Indigenous young people and people at risk in the Kimberley to apply for funding from the Cultural Preservation Fund.

## 9.4 Rules of the Cultural Preservation Fund

The rules of the Cultural Preservation Fund must:

- (a) be determined in accordance with clause 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:

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- (i) audit requirements consistent with clause 21 of this Agreement;
- (ii) the manner in which applications for funding must be made;
- (iii) rules or policy in relation to the eligibility criteria for Regional Beneficiaries to access the Cultural Preservation Fund; and
- (iv) a specified distribution policy or policies.

## 9.5 Reporting and review of the Cultural Preservation Fund

- (a) The Regional Body must prepare annual reports on the operation of the Cultural Preservation Fund (*CPF Reports*).
- (b) The Regional Body must provide CPF Reports to the State and any other parties that make a financial contribution to the Cultural Preservation Fund and make each CPF Report available to Regional Beneficiaries.
- (c) Each CPF 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 Cultural Preservation Fund:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (d) The State and the Regional Body will agree the scope and frequency of the review of the Cultural Preservation Fund.

## 10. Kimberley Enhancement Scheme

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### 10.1 State Commitment to Kimberley Enhancement Scheme

- (a) Subject to paragraph (b), for the period of 30 years from the Secured Foundation Proponent Date, the State must pay \$108 million for the Kimberley Enhancement Scheme in annual instalments as follows:
  - (i) the first instalment of \$5 million to be paid within 60 days of the Secured Foundation Proponent Date;
  - (ii) from the subsequent year until the year beginning 16 years from the Secured Foundation Proponent Date, instalments of \$5 million to be paid on or before the Benefit Payment Date in each year; and
  - (iii) from the year beginning 17 years from the Secured Foundation Proponent Date until the year beginning 30 years from the Secured Foundation Proponent Date, annual

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instalments of \$2 million to be paid on or before the Benefit Payment Date in each year.

- (b) The payments under paragraph (a) will be held on trust for and on behalf of the Regional Beneficiaries in an interest bearing trust account held by the State:
  - (i) until the Regional Trustee establishes the Kimberley Enhancement Scheme Trust; or
  - (ii) if that payment is withheld in accordance with clause 10.10.
- (c) Any payment under paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit into the Regional Trust Account for the Kimberley Enhancement Scheme Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Kimberley Enhancement Scheme Trust.
- (d) Payments by the State under paragraph (a) may only be used for the purpose set out in clause 10.4(a). Nothing in this paragraph (d) prevents those funds from being used if it is also a purpose under clauses 10.4(b), 10.4(c) or 10.4(d).

## 10.2 Foundation Proponent Kimberley Enhancement Scheme Benefits

- (a) Under the Project Agreement, the Foundation Proponent and the Native Title Party have agreed that the manner in which certain Foundation Proponent obligations to the Native Title Party will be discharged is by the making of payments into the Kimberley Enhancement Scheme (*Foundation Proponent Kimberley Enhancement Scheme Benefits*).
- (b) If, subsequent to the Secured Foundation Proponent Date, the Regional Trustee has not established the Kimberley Enhancement Scheme Trust as contemplated by this Agreement, the Foundation Proponent will hold the payments referred to under paragraph (a):
  - (i) for and on behalf of the Regional Beneficiaries; and
  - (ii) in an interest bearing trust account held by the Foundation Proponent, until the Kimberley Enhancement Scheme Trust is established.
- (c) Any payment referred to under paragraph (a) together with any interest earned under paragraph (b) will be made by direct deposit into the Regional Trust Account for the Kimberley Enhancement Scheme Trust within 60 days of the Regional Trustee notifying the State in writing of the establishment of the Kimberley Enhancement Scheme Trust.

## 10.3 Duration of the Kimberley Enhancement Scheme

- (a) As soon as practicable following the Secured Foundation Proponent Date the State, in consultation with the Regional Body, will establish the Kimberley Enhancement Scheme.
- (b) The Kimberley Enhancement Scheme will operate for a period of 30 years after its establishment or such longer time as the Parties agree.

## 10.4 Purpose of the Kimberley Enhancement Scheme

The Parties agree that the purpose of the Kimberley Enhancement Scheme is to address the social impact of the LNG Precinct on the Regional Beneficiaries through:

- (a) supplementing existing social programs within the Kimberley;



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- (b) providing a mechanism by which the Regional Beneficiaries can engage with government and non-government sectors to undertake initiatives to support their priorities;
- (c) responding to social impacts associated with the LNG Precinct; and
- (d) providing for joint decision making where Regional Beneficiaries work cooperatively through processes of dialogue, negotiation and collaboration.

## 10.5 Objects of the Kimberley Enhancement Scheme

The Parties agree that the objects of the Kimberley Enhancement Scheme include:

- (a) a commitment to Kimberley Indigenous Peoples working together to address their mutual concerns arising out of a recognition that current issues cannot be solved by working in isolation;
- (b) enabling Regional Beneficiaries to be actively involved in decisions and actions about their own future and to build their capacity for self-governance;
- (c) acknowledging that the achievement of positive social change will require on-going progress and action by all Parties, rather than just short term and ‘one-off’ initiatives;
- (d) ensuring service providers engaged under the Kimberley Enhancement Scheme accept that they have accountability to the Regional Body;
- (e) establishing projects characterised by a commitment to a sense of shared responsibility, which may include joint funding and resource sharing arrangements; and
- (f) recognising that the self reliance and resilience of the Regional Beneficiaries, and their capacity to make informed decisions and actions, will best be strengthened in the context of addressing particular needs, rather than through generic training and workshops conducted in isolation.

## 10.6 Kimberley Enhancement Scheme Management Committee

- (a) The State will nominate a Minister to be responsible for the establishment of the Kimberley Enhancement Scheme Management Committee (*KES Committee*).
- (b) The Minister and the chairperson of the Regional Body will jointly appoint members of the KES Committee.
- (c) The KES Committee will be made up of no more than eight members and at all times must contain equivalent numbers of State members and Regional Body members.
- (d) The Regional Body members each of whom must be a natural person, must comprise at least:
  - (i) 2 representatives of the Native Title Claim Group;
  - (ii) 1 representative of the Dampier Peninsula Native Title Parties; and
  - (iii) 1 representative of the Kimberley Native Title Parties.
- (e) The Minister and the chairperson of the Regional Body must jointly appoint one member of the KES Committee as chairperson of the KES Committee.
- (f) The Minister may appoint up to two representatives of the non-government sector nominated by the KES Committee to be non-voting members.

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- (g) State members must be representatives from agencies responsible for service delivery in key areas, including education, training, health, housing and employment.
- (h) A KES Committee member's term will be three years from the date of his or her appointment. A KES Committee member is eligible for re-appointment at the discretion of the Minister and the chairperson of the Regional Body.

## **10.7 Functions of Kimberley Enhancement Scheme Management Committee**

The Parties agree that the functions of the KES Committee include:

- (a) coordinating effective actions to deal with social and economic issues or other social impacts of the LNG Precinct;
- (b) making recommendations to relevant State departments and bodies regarding the most effective implementation of related programs and initiatives undertaken by the State in the Kimberley;
- (c) assessing funding proposals and making recommendations to the Regional Body regarding projects to be undertaken under the Kimberley Enhancement Scheme;
- (d) liaising with government and non-government agencies for the purposes of the Kimberley Enhancement Scheme;
- (e) encouraging initiatives consistent with the Kimberley Enhancement Scheme that do not require approval of funding;
- (f) seeking and retaining funding from government and non-government agencies, including for the development of joint initiatives with government and non-government agencies and, as appropriate, involving other organisations in the development of these initiatives; and
- (g) obtaining reports from service providers engaged under the Kimberley Enhancement Scheme on a bi-annual basis on progress towards addressing issues and needs within the Kimberley that relate to the purpose and objects of the Kimberley Enhancement Scheme.

## **10.8 Rules of the Kimberley Enhancement Scheme Management Committee**

- (a) The KES Committee will formulate its rules and these rules must be submitted to the Regional Body, Foundation Proponent and the Minister for their approval (which approval must not be unreasonably withheld or delayed).
- (b) The KES Committee may from time to time amend its rules and these amendments must be submitted to the Regional Body and the Minister for their approval (which approval must not be unreasonably withheld or delayed).
- (c) The rules established under paragraph (a) must be consistent with this clause 10 and comprise but not be limited to the following:
  - (i) rules in relation to:
    - (A) absence from meetings;
    - (B) appointment of deputies;
    - (C) replacement of members (in circumstances other than an expiration of term);

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- (D) decision making processes; and
- (E) quorums;
- (ii) the KES Committee must meet at least six times per year;
- (iii) any decision made by the KES Committee, including in relation to funding, will be made with regard to the objects and purposes of the Kimberley Enhancement Scheme as provided for in clauses 10.4 and 10.5; and
- (iv) the KES Committee must meet with representatives of the Regional Body no less than twice a year to inform the Regional Beneficiaries about the operation of the Kimberley Enhancement Scheme and the work of the KES Committee.

## 10.9 Application for Funding

- (a) Any application for funding from the Kimberley Enhancement Scheme must be made to the KES Committee.
- (b) The KES Committee will make recommendations in relation to funding applications, and will forward each application to the Board of the Regional Body along with its recommendation.
- (c) The Board of the Regional Body must approve or reject a funding application by having regard to the recommendation of the KES Committee.
- (d) If a determination of an application for funding by the Board of the Regional Body in accordance with paragraph (c) does not adopt the recommendation of the KES Committee in relation to that application, the Board of the Regional Body must:
  - (i) provide a statement of reasons for its determination to the KES Committee; and
  - (ii) invite the KES Committee to reconsider its recommendation.
- (e) If, following the procedure in paragraph (d), the KES Committee does not revise its recommendation in relation to that application, the Board of the Regional Trustee must consider the following documents:
  - (i) the application;
  - (ii) the recommendation of the KES Committee; and
  - (iii) the statement of reasons provided by the Board of the Regional Body pursuant to paragraph (d)(i), and

provided that the Board of the Regional Trustee resolves to do so by a majority including all independent directors (if applicable), may direct the Regional Body to make a decision to apply funding in a manner that the Board of the Regional Trustee thinks appropriate.
- (f) Payments from the Kimberley Enhancement Scheme Trust may only be made if approved by the KES Committee or in accordance with directions of the Regional Trustee under paragraph (e).
- (g) Any decision made by the Board of the Regional Body, the KES Committee or the Regional Trustee in relation to funding shall be made with regard to the objects and purposes of the Kimberley Enhancement Scheme as provided for in clauses 10.4 and 10.5.

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## 10.10 Annual Reports and Strategic Plans

- (a) The State is not obliged to make any payment under clause 10.1 (other than in the initial year) until it has approved (such approval to be considered under (b) and not to be unreasonably withheld or delayed) by notice in writing to the KES Committee and the Regional Body:
  - (i) an annual report for the Financial Year preceding the Benefit Payment Date of each instalment; and
  - (ii) in each year, a strategic plan for a forecast period of five years.
- (b) The State will consider an annual report or a strategic plan satisfactory for approval if, together, they:
  - (i) identify relevant, specific, measurable and time bound goals;
  - (ii) identify and prioritise actions and expenditures aimed at achieving those goals;
  - (iii) identify objectives and demonstrate achievement against those objectives, together with reasons for the achievement or otherwise of those objectives;
  - (iv) identify any payment into or out of the Kimberley Enhancement Scheme Trust Account;
  - (v) identify the number of funding applications received and the number granted;
  - (vi) detail the amounts and purposes of each grant;
  - (vii) identify any application which is submitted by the Board of the Regional Body to either the KES Committee for reconsideration of its recommendation, or to the Minister for determination, including the outcome of any reconsideration or determination;
  - (viii) contain 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 location of the grant and the funded activity, including the number of grants per region; and
  - (ix) contain a true and fair view of the financial position of the Kimberley Enhancement Scheme:
    - (A) at the beginning and end of the reporting period; and
    - (B) estimated for the next three reporting periods.
- (c) Any annual report or strategic plan must be approved by the Board of the Regional Body prior to it being submitted to the State.
- (d) The KES Committee must ensure that upon receipt of approval from the State, the annual report and strategic plan are:
  - (i) provided to the Foundation Proponent and any other parties that make a financial contribution to the Kimberley Enhancement Scheme;

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- (ii) accessible to the public.
- (e) The reasonable costs of producing each annual report and strategic plan shall be met from the Kimberley Enhancement Scheme.

## **10.11 Unexpended Funds**

To the extent (if at all) that any payment made in accordance with clause 10.1 is not expended during the Financial Year to which the payment relates, those funds which are not expended will be added to the funding budget for the following year.

## **10.12 Administration of the Kimberley Enhancement Scheme**

- (a) The Regional Body will administer the Kimberley Enhancement Scheme, including by:
  - (i) providing administrative support to the KES Committee;
  - (ii) employing staff or engaging consultants;
  - (iii) securing any services necessary for the administration of the Kimberley Enhancement Scheme; and
  - (iv) purchasing equipment and materials required for the administration of the Kimberley Enhancement Scheme.
- (b) Unless otherwise agreed by the Minister's State Agency, Regional Body and the chairperson of the KES Committee (such agreement not to be unreasonably withheld or delayed), no more than 10% of the total funding received per annum for the Kimberley Enhancement Scheme will be expended on administration costs.
- (c) For the purposes of paragraph (b), administration costs may include costs in relation to:
  - (i) salaries;
  - (ii) administration of the Kimberley Enhancement Scheme by the Regional Body;
  - (iii) allowances; and
  - (iv) meeting attendance fees.
- (d) Subject to paragraph (b), members of the KES Committee are eligible for attendance fees for attending the meetings of the KES Committee, except where their membership of the KES Committee is part of their functions as an employee of any person.
- (e) The State will pay for the costs of all State members of the KES Committee.

## **10.13 Regional Body not yet established**

- (a) If the Kimberley Enhancement Scheme is established prior to the Regional Body pursuant to clause 19, the Minister may apply the following transitional provisions in relation to the KES Committee until such time as the Regional Body is established:
  - (i) the Minister and the chairperson of the KLC will jointly appoint:
    - (A) members of the KES Committee who are representatives of the Native Title Claim Group; and
    - (B) the chairperson of the KES Committee;

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- (ii) clause 10.6(h) applies to the term of a KES Committee member. The term of a KES Committee member will continue following establishment of the Regional Body. At the expiration of the term, the KES Committee member will be eligible for re-appointment at the discretion of the Minister and the chairperson of the Regional Body;
- (iii) the funds will be held by the Minister's State Agency who will administer the funds as if it were the Regional Body;
- (iv) the KES Committee will make recommendations to the Minister's State Agency regarding projects to be undertaken under the Kimberley Enhancement Scheme and a copy of the recommendations is to be provided to the chairperson of the KLC;
- (v) the administration of the Kimberley Enhancement Scheme will be carried out by the Minister's State Agency;
- (vi) the Minister shall approve or reject a funding application by having regard to:
  - (A) the recommendation of the KES Committee; and
  - (B) the objects and purposes of the Kimberley Enhancement Scheme as provided for in clauses 10.4 and 10.5; and
- (vii) a decision in relation to funding made by the Minister under subparagraph (vi) of this clause is final.
- (b) Upon establishment of the Regional Body the transitional provisions in this clause 10.13 will no longer apply.

## 11. Dampier Peninsula Fund

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### 11.1 Regional Body to establish Dampier Peninsula Fund

Not later than Expansion FID, the Regional Body must establish the Dampier Peninsula Fund Trust in a consistent manner to the establishment of trusts under clauses 20.5, 20.6 and 20.7 and in accordance with the provisions of this clause 11.

### 11.2 Foundation Proponent Commitment

- (a) If the circumstances in paragraph 3.3(a) of Schedule 5 to the Project Agreement arise, the Foundation Proponent agrees to make payments into the Dampier Peninsula Fund in accordance with clause 16 of and paragraph 3.3(b) of Schedule 5 to the Project Agreement.
- (b) Until the Regional Body establishes the Dampier Peninsula Fund Trust as contemplated by this clause 11, the payment under paragraph (a) will be held by the Foundation Proponent on trust for the benefit of the Dampier Peninsula Native Title Parties 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 Dampier Peninsula Fund Trust within 60 days of the Regional Body notifying the Foundation Proponent in writing of the establishment of the Dampier Peninsula Fund Trust.

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## **11.3 Additional Proponent Commitment**

Each Additional Proponent must make payments into the Dampier Peninsula Fund if required in accordance with clause 17 and this clause 11.

## **11.4 Purpose of the Dampier Peninsula Fund**

The parties agree that the initial purpose of the Dampier Peninsula Fund is to improve the general welfare of the Dampier Peninsula Native Title Party communities.

## **11.5 Objects of the Dampier Peninsula Fund**

The parties agree that the initial objects of the Dampier Peninsula Fund include:

- (a) the relief of poverty;
- (b) housing, including short term relief housing;
- (c) medical assistance for health related issues;
- (d) dental care;
- (e) child care and care for the aged and disabled;
- (f) transportation; and
- (g) provision of community and social infrastructure.

## **11.6 Rules of the Dampier Peninsula Fund**

- (a) Subject to paragraph (b), the rules of the Dampier Peninsula Fund will be determined by the Regional Body and approved by the Foundation Proponent and the State before that fund is established, such approval not to be unreasonably withheld.
- (b) The rules of the Dampier Peninsula Fund must be consistent with this clause 11 and must provide for:
  - (i) audit requirements consistent with clause 21 of this Agreement;
  - (ii) the manner in which applications for funding must be made; and
  - (iii) a specified distribution policy or policies.

## **11.7 Eligibility to access the Dampier Peninsula Fund**

Access to the Dampier Peninsula Proponent Benefits Fund is limited to members of the Dampier Peninsula Native Title Parties.

## **11.8 Reporting and review of the Dampier Peninsula Fund**

- (a) The Regional Body must prepare annual reports on the operation of the Dampier Peninsula Fund (*Dampier Peninsula Report*).
- (b) The Regional Body must provide Dampier Peninsula Report to Proponents, the State Implementing Agency and any other parties that make a financial contribution to the Dampier Peninsula Fund and make each Dampier Peninsula Report available to members of the Dampier Peninsula Native Title Parties.
- (c) Each Dampier Peninsula Report must contain:

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- (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 Dampier Peninsula 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 Regional Body will agree the scope and frequency of the review of the Dampier Peninsula Fund.

## 12. Grant Land

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### 12.1 State commitment

On and from the Secured Foundation Proponent Date, the State agrees to grant to the Kimberley Native Title Parties other than the Native Title Party and the Dampier Peninsula Native Title Parties (or their nominee), an area totalling 600 hectares of freehold or other land (**Grant Land**) in accordance with the procedure set out in this clause 12.

### 12.2 Entity to hold Grant Land

- (a) The Grant Land must be registered in the name of the native title holder for the area of the Grant Land who must hold the Grant Land on trust for the benefit of its members.
- (b) If there is no relevant native title holder for the area of the Grant Land, then the Grant Land will be registered in the name of the Regional Body and it must hold the Grant Land on trust for the benefit of the Regional Beneficiaries.
- (c) If there is a subsequent determination that native title exists in relation to an area of the Grant Land registered in the name of the Regional Body, the Regional Body must transfer the Grant Land to the relevant native title holder.

### 12.3 Grant Land Claim Group to elect form of Tenure

- (a) Subject to clauses 12.4 to 12.7 and paragraph (c) below, the relevant Grant Land Claim Group 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 Grant Land Claim Group nominates another form of tenure and the State agrees to that nomination (which agreement must not be unreasonably withheld or delayed), 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 12.7(b).



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## 12.4 Criteria for Grant Land

- (a) The locations of Grant Land agreed between the State and the Regional Body (with the consent of each Grant Land Claim Group) under clause 12.3 must have regard to:
  - (i) the economic development, living, social, cultural, heritage, conservation and other aspirations of the Grant Land Claim Group;
  - (ii) any State planning, development, town site expansion and environmental requirements and policies provided by the State to the Regional Body;
  - (iii) legally binding commitments made by the State to third parties up to the time of the 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 area of the relevant Grant Land Claim Group that will receive it.
- (c) The State will not purchase or acquire land or any third party interest in land to satisfy its obligation under this clause 11.
- (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 have effect as legislation or delegated legislation, as provided by the State to each Grant Land Claim Group, from time to time, including:
  - (i) a requirement for a mining clearance under section 16(3) of the *Mining Act 1978* (WA);
  - (ii) a requirement for a clearance under the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and
  - (iii) planning and environmental policies created under the *Planning and Development Act 2005* (WA), the *Environmental Protection Act 1986* (WA) or any other Law.
- (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 must use its best endeavours to assist the Grant Land Claim Group 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 Grant Land must not be located within the Broome town site or the Kununurra town site.
- (h) Any Grant Land located in a town site must be consistent with development conditions and will be granted in en globo lots.
- (i) The use of the Grant Land by the Grant Land Claim Group 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;

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- (ii) the *Aboriginal Heritage Act 1972* (WA); and
- (iii) planning and environmental policies and instruments created under the *Planning and Development Act 2005* (WA), the *Environmental Protection Act 1986* (WA) or any other Law.

## 12.5 Procedure for determining the locations of Grant Land

- (a) Subject to clause 12.4 and following the Secured Foundation Proponent Date, the State and the Regional Body (with the consent of each Grant Land Claim Group) will agree the locations of the Grant Land in accordance with the following procedure:
  - (i) the State and the Regional Body (on behalf of each Grant Land Claim Group) must investigate potential locations for the Grant Land and meet within three months of the Regional Body Ratification Date to identify possible locations for the Grant Land subject to the criteria in clause 12.4;
  - (ii) within one year of the meeting in paragraph (i), the Regional Body (in consultation with each Grant Land Claim Group) must nominate in writing to the State the preferred locations of the Grant Land;
  - (iii) within 90 days of receipt of the Regional Body's nomination, the State must consider the nomination and advise the Regional Body (who must consult with each Grant Land Claim Group) 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 Regional Body (in consultation with each Grant Land Claim Group) 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 Regional Body (in consultation with each Grant Land Claim Group) must make a further nomination of its preferred locations of the Grant Land in accordance with this paragraph (a) process.
- (b) If the State (acting reasonably) three times gives written notice to the Regional Body 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 Regional Body of the referral;
  - (ii) engaging an independent consultant suitably qualified (in the State's reasonable opinion) to make a recommendation to the Minister for Lands in relation to the locations of the Grant Land in accordance with the following principles:
    - (A) the independent consultant must liaise with the Regional Body and the State and take submissions (if any) from each party as to the locations of the Grant Land;

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- (B) the independent consultant must make a recommendation based on the submissions received from the Regional Body and the State and such other factors as the independent consultant considers relevant;
  - (C) the independent consultant must provide a formal recommendation to the Regional Body and the State within 60 days of being engaged by the State; and
  - (D) the State will forward the formal recommendation, at the same time as referring the decision as to the locations of the Grant Land, to the Minister for Lands.
- (c) The Minister for Lands will decide the locations of the Grant Land, and notify the Regional Body of the decision, within 30 Business Days of the referral being made in paragraph (b), having regard to:
  - (i) the recommendation of the independent consultant engaged in accordance with paragraph (b)(ii);
  - (ii) the recommendations of the Regional Body as provided in paragraph (a); and
  - (iii) the criteria for the Grant Land as provided for in clause 12.4,but for the avoidance of doubt, nothing in this clause requires the Minister for Lands to accept the recommendation of the independent consultant or the Regional Body.
- (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 extended by mutual agreement between the State and the Regional Body (in consultation with each Grant Land Claim Group).
- (f) The procedure for determining the locations of the Grant Land set out in this clause 12.4(a) is not subject to the dispute resolution process set out in clause 29 and no Party may declare a Dispute in relation to the process contained in this clause 12.4(a).
- (g) For the avoidance of doubt, nothing in paragraphs (d) to (f) prevents the Regional Body (in consultation with the relevant Grand Land Claim Group) from seeking judicial review of the Minister's decision.

## 12.6 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 Regional Body;
  - (ii) duty payable under the *Duties Act 2008* (WA);
  - (iii) survey costs for the Grant Land as determined following the clause 12.5 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:

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- (i) establishment costs not referred to in paragraph (a), including general or legal expenses incurred by the Regional Body or the relevant Grant Land Claim Group 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.

## 12.7 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 relevant Grant Land Claim Group 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 relevant Grant Land Claim Group 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 relevant Grant Land Claim Group 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 12.5(a), each Grant Land Claim Group 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).
- (d) No further compensation other than that provided for in the Precinct Agreements will be payable by the State to a Grant Land Claim Group, or in relation to any other native title rights and interests, under the NTA, to allow for the creation of tenure for the Grant Land.

## 12.8 Satisfaction of State's commitment

Subject to the balance of this clause 12.8:

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- (a) the State will not be in breach of its commitment under clause 12.1 if any Grant Land Claim Group 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 12.7(c); but
- (b) the State will remain obliged to fulfil that commitment; and
- (c) nothing in this clause 12.8 releases the State from any of its obligations to execute documents and to take other steps pursuant to clause 32.

## 13. Conservation and Heritage Areas

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### 13.1 Conservation and Heritage Management Arrangements Not Limited by this Clause

Nothing in this clause 13:

- (a) limits the manner in which conservation and heritage areas may be managed on the Dampier Peninsula where funded other than through clause 13.2; or
- (b) fetters any Ministerial discretion.

### 13.2 State commitment to Conservation and Heritage Areas

- (a) Subject to the terms of the Services Agreement, the State must pay \$15 million to the Regional Body for the creation of Conservation and Heritage Areas for the period of 10 years from the Secured Foundation Proponent Date, in annual instalments of \$1.5 million as follows:
  - (i) the first instalment of \$1.5 million to be paid within 60 days of the Secured Foundation Proponent Date; and
  - (ii) for each subsequent year, instalments of \$1.5 million to be paid on or before the Benefit Payment Date in each year.
- (b) If, subsequent to the Secured Foundation Proponent Date, the Services Agreement has not been executed by the Regional Body and DEC, the payment under paragraph (a) will be held on trust:
  - (i) for and on behalf of the Regional Body; and
  - (ii) in an interest bearing trust account held by the State;until the Services Agreement is executed by the Regional Body and DEC.
- (c) Any payment under paragraph (a), together with any interest earned under paragraph (b), will be made by direct deposit to an account nominated by the Regional Body within 60 days of the Regional Trustee providing to the State an executed copy of the Services Agreement.
- (d) The moneys paid by the State to the Regional Body under paragraph (a) must only be used for the purposes of Conservation and Heritage Areas under this clause 13.

### 13.3 Purpose and Objectives of the Conservation and Heritage Areas

- (a) The Parties agree that the Conservation and Heritage Areas will be managed for the purpose of conservation and heritage and, to the extent permitted by law, managed jointly.

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- (b) For the avoidance of doubt, this purpose entails the conservation and enhancement of the Aboriginal culture and heritage values and natural and environmental values of the Dampier Peninsula.
- (c) Without affecting the operation of the CALM Act, the Parties agree that the objectives for the Conservation and Heritage Areas will be to achieve:
  - (i) if the Conservation and Heritage Area is conditional freehold title, the purpose provided for in the conditions on title;
  - (ii) if the Conservation and Heritage Area is a reserve, the purpose for which the care, control and management of the land is placed with the Conservation Commission and the Indigenous Holding Entity; or
  - (iii) if the Conservation and Heritage Area is freehold land subject to a joint management arrangement pursuant to the CALM Act Amendment, the purpose for which a joint management agreement is entered into.
- (d) The purposes provided for in clause (c) above include:
  - (i) the exercise of native title rights and interests;
  - (ii) conservation and protection of Aboriginal sites, places and landscapes of cultural significance;
  - (iii) conservation and protection of areas of environmental sensitivity, including as informed by cultural knowledge of the relevant native title party;
  - (iv) to contribute to the community development and economic development through joint management projects;
  - (v) encouraging the rehabilitation of degraded land;
  - (vi) increasing biodiversity, particularly in relation to Pindan country;
  - (vii) preserving, promoting and protecting:
    - (A) the Indigenous cultural and heritage values of the Conservation and Heritage Areas;
    - (B) the natural and environmental values of the Conservation and Heritage Areas, including indigenous flora and fauna; and
    - (C) the ethnographic values of the Conservation and Heritage Areas;
  - (viii) having regard to paragraph (vii), regulating of public access to the Conservation and Heritage Areas;
  - (ix) where appropriate, providing recreational facilities and facilitating recreational activities on the Conservation and Heritage Areas;
  - (x) encouraging the use of the Conservation and Heritage Areas by the Traditional Owners of that area in accordance with their culture and practices, including culturally appropriate use of resources;
  - (xi) promoting the appropriate use of resources for community and traditional purposes;

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- (xii) providing services for Traditional Owners in the administration, management and operation of the Conservation and Heritage Areas;
- (xiii) providing commercial and economic opportunities and projects for Traditional Owners, other Regional Beneficiaries and the Regional Body;
- (xiv) implementing, monitoring and evaluating of the effectiveness of the Management Plan; and
- (xv) with regard to this clause 13.3, constructing, maintaining and replacing buildings and infrastructure on the Conservation and Heritage Areas.

## 13.4 Location and Criteria for Conservation and Heritage Areas

As soon as practicable following the Secured Foundation Proponent Date, the State will work with the Traditional Owners, through the KLC and the Regional Body (or a Dampier Peninsula Representative Body if such a body exists) to reach agreement and develop a joint recommendation to the Minister as to the preferred location of the Conservation and Heritage Areas having regard to:

- (a) cultural and conservation priorities of Traditional Owners;
- (b) the Dampier Peninsula Planning Strategy once it is endorsed by the WAPC;
- (c) geographical considerations;
- (d) any proposal for national heritage listing for the Kimberley; and
- (e) land and water requirements for the establishment of the LNG Precinct.

## 13.5 Creation of Conservation and Heritage Tenure

- (a) As soon as practicable following the decision in relation to the location of the Conservation and Heritage Areas under clause 13.4, the State must consult with the Regional Body and relevant Traditional Owners so that those Traditional Owners can:
  - (i) choose and provide their consent to the form of tenure for the Conservation and Heritage Areas, which may be:
    - (A) fee simple under section 75 of the LAA, which must be managed in accordance with clause 13.7; or
    - (B) a jointly vested reserve, as provided for in clause 13.6, and associated joint management arrangements as described in clauses 13.8 to 13.13;
  - (ii) nominate the body corporate which will hold the title for, and participate in the management of, Conservation and Heritage Areas and which may be, subject to clause (b):
    - (A) a body corporate nominated by and representative of the Traditional Owners;  
or
    - (B) the Regional Body.  
*(Indigenous Holding Entity)*



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- (b) The body corporate nominated in accordance with paragraph (a)(ii)(A) above must be agreed to by the State, which agreement will not be unreasonably withheld or delayed if the body corporate is representative of the relevant Traditional Owners.

## 13.6 Creation of Conservation and Heritage Reserves

- (a) If the Traditional Owners provide their consent to a jointly vested reserve under clause 13.5(a)(i)(A), as soon as practicable following that decision, the State must:
  - (i) subject to a Reserves Creation ILUA being executed and registered in accordance with subparagraph (ii), reserve the agreed Conservation and Heritage Areas under section 41 of the LAA (*Conservation and Heritage Reserves*), with an order under section 46 of the LAA:
    - (A) placing care, control and management of those reserves jointly with the Conservation Commission and the Indigenous Holding Entity;
    - (B) conferring the power to grant a lease, sublease or licence over the area of the Conservation and Heritage Reserves; and
  - (ii) unless a determination has been made that native title does not exist in the area of the agreed Conservation and Heritage Reserves, execute and seek to have registered on the Register of Indigenous Land Use Agreements, a Reserves Creation ILUA with the relevant native title holders or registered native title claimants as the case may be, which provides for:
    - (A) the matters in subparagraph (i) above; and
    - (B) non-extinguishment of native title.
- (b) The Parties confirm that, for the avoidance of doubt, following execution of the Reserves Creation ILUA, the validity of the future acts pursuant to the Reserves Creation ILUA extends to the exercise of relevant powers and functions and any activity done in exercise of any right or obligation arising from the creation, operation and management of the Conservation and Heritage Reserves. These include:
  - (i) entering into a management agreement;
  - (ii) the making of necessary orders, regulations, by-laws, management plans and classifications consistent with the management of the Conservation and Heritage Reserves;
  - (iii) the exercise of powers and performance of functions by DEC, its contractors and licensed operations under the CALM Act or the CALM Regulations on the land and waters of the Conservation and Heritage Reserves;
  - (iv) the grant, extension and renewal of leases, permits, licences and other authorities in accordance with the CALM Act; and
  - (v) where appropriate and consistent with the Management Plan, the right of members of the general public to access the Conservation and Heritage Reserves.



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- (c) Management of the Conservation and Heritage Reserves will be undertaken jointly by the CEO and the Indigenous Holding Entity through a Joint Management Body in accordance with:
  - (i) section 33(3) of the CALM Act; and
  - (ii) the Cultural Management Plan and the relevant Management Plan.

## **13.7 Joint Management of Conservation and Heritage Freehold Title**

- (a) This clause applies if the Traditional Owners:
  - (i) have nominated the form of tenure in clause 13.5(a)(i)(A) and the State has agreed to that nomination under clause 13.5(b); or
  - (ii) request that any Conservation and Heritage Reserves being transferred as freehold title to the Indigenous Holding Entity to be jointly managed.
- (b) The State will do all things necessary to facilitate the transfer of the Conservation and Heritage Areas or the Conservation and Heritage Reserves, as the case may be, in fee simple to the Indigenous Holding Entity under section 75 of the LAA including any cancellation required under section 51 of the LAA of any Conservation and Heritage Reserve. The conditions on that title will be limited to use and management of the land for purposes in clause 13.3(d).
- (c) If the transfer of the Conservation and Heritage Areas to the Indigenous Holding Entity is done for the purposes of paragraph (a)(i), then:
  - (i) unless a determination has been made that native title does not exist in the area of the Conservation and Heritage Area, the State, the Indigenous Holding Entity and the relevant native title party (if different to the nominated body corporate) must execute and have registered on the Register of Indigenous Land Use Agreements a Conservation and Heritage Area ILUA which provides for non-extinguishment of native title;
  - (ii) the Indigenous Holding Entity must develop a management plan for the Conservation and Heritage Area in accordance with the purposes and objectives in clause 13.3; and
  - (iii) to the extent permitted by Law, the Indigenous Holding Entity may enter into an agreement for the provision of such services as may be reasonably necessary for the management of the Conservation and Heritage Area in accordance with the management plan developed under paragraph (ii).
- (d) If the CALM Act Amendment is passed and commences, then:
  - (i) for the purposes of paragraph (a)(i), within 30 days of the commencement of the CALM Act Amendment; or
  - (ii) for the purposes of paragraph (a)(ii), within 30 days of the transfer in fee simple to the Indigenous Holding Entity of the Conservation and Heritage Areas under paragraph (b),  
  
the Indigenous Holding Entity must enter into a joint management agreement with the State to manage the land:
    - (iii) for the purposes and objectives contained in clause 13.3;

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- (iv) in accordance with the CALM Act, the CALM Regulations, the Cultural Management Plan and the relevant Management Plan; and
- (v) jointly with the CEO pursuant to the CALM Act and in accordance with the terms of the joint management agreement, the terms of which must be consistent with the purposes set out in clause 13.3 and the provisions of the CALM Act and CALM Regulations.

## 13.8 Joint Management Body

- (a) The management of the Conservation and Heritage Areas referred to in clauses 13.6 and 13.7 will be administered by the CEO jointly with the Indigenous Holding Entity through a Joint Management Body. The Joint Management Body will be agreed to by the CEO and the Traditional Owners as either:
  - (i) a local Joint Management Body that manages all Conservation and Heritage Areas under this Agreement within the traditional lands and waters of those Traditional Owners; or
  - (ii) a regional Joint Management Body.
- (b) The Joint Management Bodies (whether local or regional) will be comprised of at least seven members, each of whom must be a natural person, and must at all times contain:
  - (i) in relation to local Joint Management Bodies, four representatives of the Traditional Owners, nominated through the Indigenous Holding Entity;
  - (ii) in relation to the regional Joint Management Body, at least one representative from each Traditional Owner group which has chosen to manage their country through the regional Joint Management Body, provided that at all times there are no less than four Traditional Owner representatives;
  - (iii) three representatives appointed by the Executive Body, at least one of whom is involved in the day to day management of the Conservation and Heritage Areas; and
  - (iv) such other members as may be required under the CALM Act.

### ***(Joint Management Body)***

- (c) Each Joint Management Body will elect a chairperson and a Secretary.
- (d) A Joint Management Body member's term will be 3 years from the date of his or her appointment.
- (e) The DEC will provide executive and administrative support to the Joint Management Body in performing its role, including for the convening and conduct of meetings.
- (f) Any decision by the Joint Management Body will be made consistent with the Management Plans developed in accordance with clause 13.11(a).
- (g) The DEC is responsible for the implementation of any decision of the Joint Management Body, and must report to the Joint Management Body on performances of these functions as agreed.

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- (h) In managing each Conservation and Heritage Area, the Joint Management Body will consider the need for works required to establish and operate the area, including:
  - (i) land restoration;
  - (ii) provision of fencing;
  - (iii) creation and maintenance of vehicular tracks and roads, walking and cycling trails and pathways, including access roads, boat ramps and parking areas;
  - (iv) fire management, including the provision of firebreaks, fire control and carrying out prescribed burning;
  - (v) signage;
  - (vi) weed and feral animal control;
  - (vii) waste management; and
  - (viii) access management for the protection of culturally significant sites, or for safety, cultural or conservation purposes.

## 13.9 Objects of the Joint Management Bodies

The Parties agree that the objects of each Joint Management Body will initially include:

- (a) preparing Management Plans and related policies for the management of the Conservation and Heritage Areas;
- (b) ensuring that the Management Plans developed by the Joint Management Body are consistent with the Cultural Management Plan and relevant legislative frameworks;
- (c) determining the priorities for any matters required to be done in accordance with or in furtherance of the Management Plans;
- (d) consulting with stakeholders and the broader community on the aspirations, purpose, use, management and operation of the Conservation and Heritage Areas. Relevant stakeholders include, but are not limited to:
  - (i) the Traditional Owners;
  - (ii) the Regional Beneficiaries; and
  - (iii) the Shire of Broome.
- (e) providing leadership and management direction and establishing the priorities for the development and operation of the Conservation and Heritage Areas;
- (f) providing advice to the CEO and the Conservation Commission on all aspects of the use, management and development of the Conservation and Heritage Areas;
- (g) approving the annual budget for the implementation and on-going operation of the Conservation and Heritage Areas, which may include funds for development of the Cultural Management Plan;
- (h) monitoring the management of the Conservation and Heritage Areas; and

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- (i) monitoring the levels of Indigenous training and employment, contracting, and businesses and other economic opportunities taken up by Indigenous people in the operation and servicing of the Conservation and Heritage Areas.

## **13.10 Cultural Management Plan**

- (a) The Indigenous Holding Entity will develop a Cultural Management Plan relevant to the Conservation and Heritage Areas.
- (b) The Cultural Management Plan must:
  - (i) document the aspirations of the Traditional Owners;
  - (ii) consider natural and cultural resource management, including collaborative 'on-country' management while working together;
  - (iii) consider tourism, visitation and access management; and
  - (iv) establish the vision and cultural values under which the Conservation and Heritage Areas should be managed.
- (c) The Cultural Management Plan will inform the development of the Management Plan for the Conservation and Heritage Areas.

## **13.11 Management Plan**

- (a) The State will do all things necessary to assist each Joint Management Body to develop Management Plans in respect of the Conservation and Heritage Areas.
- (b) A Management Plan must be prepared by each of the Joint Management Bodies:
  - (i) in accordance with the CALM Act and the CALM Regulations;
  - (ii) for the purposes and objects contained in clause 13.3; and
  - (iii) with regard to the policies, visions and requirements set out in the Cultural Management Plan referred to in clause 13.10.
- (c) If a Joint Management Body is responsible for management of more than one Conservation and Heritage Area, it may prepare a single Management Plan for all of those areas provided that the Management Plan incorporates the Cultural Management Plans in an appropriate manner agreed to by the relevant Traditional Owners.
- (d) Without derogating from the operation of the CALM Act, to the extent the terms of a Management Plan are inconsistent with a Cultural Heritage Management Plan, the terms of the Management Plan prevail.
- (e) Once a Management Plan is prepared under paragraph (a), each Joint Management Body must ensure that a Management Plan remains current for the balance of the funding period specified in this clause 13.

## **13.12 Reporting on Conservation and Heritage Areas**

- (a) The DEC must provide annual reports to the Reserves Joint Management Body on the implementation and operation of the Management Plans. The annual reports must:

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- (i) contain sufficient detail to enable the members of the Joint Management Body to determine outcomes and performance;
  - (ii) include plain English explanations of each matter reported on; and
  - (iii) include a report on performance on implementation of the decisions of the Joint Management Body.
- (b) If required by the Minister for Environment, a Joint Management Body will report on the management and operations of the Conservation and Heritage Areas.

## 13.13 Rules of the Joint Management Bodies

- (a) The State and the relevant Traditional Owners, with assistance of the Regional Body, will agree the rules of each Joint Management Body.
- (b) The rules of the Joint Management Bodies must be consistent with the objects and purposes of the Conservation and Heritage Areas contained in clauses 13.3 and the objects of the Joint Management Body contained in clause 13.9.

## 13.14 Management Agreement

- (a) This clause has effect only if the CALM Act Amendment becomes law in the form which includes sections 8A and 56A as contained in the *Conservation Legislation Amendment Bill 2011* (No. 174) introduced into the Legislative Assembly of the Parliament of Western Australia on 6 April 2011.
- (b) For so long as the land the subject of the Conservation and Heritage Reserves remains Crown land after the CALM Act is amended, for the purposes of section 56A of the CALM Act as amended, clauses 13.8, 13.9 and 13.13 will constitute a section 56A agreement between the CEO and the Indigenous Holding Entity for the joint management of the land the subject of the Conservation and Heritage Reserves (***Section 56A Agreement***).
- (c) The Section 56A Agreement must be attached by the parties to any Management Plan developed in accordance with clause 13.11.
- (d) Upon the transfer of Conservation and Heritage Areas or Conservation and Heritage Reserves in fee simple as contemplated by clause 13.7(b), clauses 13.8, 13.9 and 13.13 will constitute an agreement under section 8A of the CALM Act as amended between the CEO and the Indigenous Holding Entity for the joint management of the land the subject of the Conservation and Heritage Area and the parties agree to obtain the necessary approvals under that section.

## 14. Indigenous Land Reform on Dampier Peninsula

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### 14.1 State Commitment

- (a) The State will reform Indigenous land on the Dampier Peninsula for the benefit of the Dampier Peninsula Native Title Parties to:
  - (i) enable more effective forms of tenure to support home ownership and economic development; and

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- (ii) fulfil, where possible, the land use aspirations of the Dampier Peninsula Native Title Parties.
- (b) The process for the reform described in paragraph (a) will commence on the Secured Foundation Proponent Date.

## 14.2 Purpose of Indigenous land reform

The purpose of the Indigenous land reform process described in this clause 14 is to identify those areas of land currently held by the Aboriginal Lands Trust or the Aboriginal Affairs Planning Authority for the benefit of Aboriginal people and determine ways in which that tenure can be reformed to improve outcomes for Indigenous people on the Dampier Peninsula.

## 14.3 Process for identification of land parcels to be reformed

- (a) As soon as possible following the Secured Foundation Proponent Date:
  - (i) the KLC will (if it can obtain the consent of the relevant native title party) identify:
    - (A) the priority land areas to be reformed (*Priority Land*); and
    - (B) potential registered native title bodies corporate or other appropriate entities to which land may be transferred; and
  - (ii) the State and the KLC will form a project team to implement the land reform process.
- (b) The State and the KLC must meet within three months of the Secured Foundation Proponent Date and discuss the approach to commence the process for Indigenous land reform.
- (c) Within 12 months of the Secured Foundation Proponent Date, the State and the KLC will jointly issue an implementation plan, including a timetable for tenure reform. The subject matter of the implementation plan must include:
  - (i) identification of:
    - (A) the current tenure;
    - (B) potential land use, housing and economic opportunities; and
    - (C) potential tenure reform options;
  - (ii) a process by which agreement with the relevant Dampier Peninsula Native Title Parties, the Aboriginal Lands Trust, the Aboriginal Affairs Planning Authority, the Department of Indigenous Affairs or other relevant stakeholders in relation to the new tenure can be reached;
  - (iii) a process for obtaining relevant statutory clearances required to effect the land reform;
  - (iv) the timing of and manner in which final land identification will take place, which may include surveys or title creations; and
  - (v) a process for the grant of new tenure.
- (d) The timeframes for the process outlined under this clause 14.3 may be renegotiated by mutual agreement between the State and the KLC.

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## 14.4 Criteria for land parcels to be reformed

- (a) The location of the Priority Land identified by the KLC must have regard to:
  - (i) the economic development, living, social, cultural, heritage, conservation and other aspirations of the relevant traditional owners;
  - (ii) State planning, development, town site expansion and environmental requirements and policies as outlined by the State to the KLC;
  - (iii) legally binding commitments made by the State to third parties up to the time of the grant;
  - (iv) geographical considerations; and
  - (v) any proposal for national heritage listing for the Kimberley.
- (b) The State will not purchase or acquire land or any third party interest in land to satisfy its obligations under this clause 14.
- (c) The State will not pay to unburden Crown land or remove third party encumbrances over land in order to reform tenure.
- (d) Tenure reform will not create concurrent or competing tenure over Priority Land unless such tenure is consistent with Laws and government policy.
- (e) The Priority 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 must use its best endeavours to assist the Dampier Peninsula Native Title Parties 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.
- (f) The Priority Land must not be located within the Broome town site.
- (g) Any Priority Land located in a town site must be consistent with development conditions and will be granted in en globo lots.
- (h) Land will only be selected for tenure reform if the tenure change is consistent with Laws, and government policy which have effect as legislation or delegated legislation, as provided by the State to the KLC from time to time, including:
  - (i) a requirement for a mining clearance under section 16(3) of the *Mining Act 1978* (WA);
  - (ii) a requirement for a clearance under the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and
  - (iii) planning and environmental policies created under the *Planning and Development Act 2005* (WA), the *Environmental Protection Act 1986* (WA) or any other Law.
- (i) The grant of reformed tenure, any proposals for reformed tenure and the use to which the Priority Land, once reformed, may be put by the Dampier Peninsula Native Title Parties must be consistent with and in accordance with relevant planning instruments and any other Laws that apply in relation to the Priority Land including:

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- (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 created under the *Planning and Development Act 2005* (WA), the *Environmental Protection Act 1986* (WA) or any other Law.
- (j) If the Dampier Peninsula Planning Strategy has not been endorsed by the WAPC when the Parties are determining the locations of the Priority Land, the State must advise the KLC as to the areas that will meet the criteria in this clause 14.4 pending that endorsement.

## **14.5 Creation of freehold tenure as part of Indigenous land reform**

- (a) Subject to paragraph (c), in the event that the land reform process described in this clause 14 identifies that tenure be reformed to unconditional freehold land or conditional freehold land under the LAA, the area of land converted to freehold tenure under this clause 14 may form part of the Grant Land area granted under clause 12.
- (b) The State must ensure that the Dampier Peninsula Native Title Parties receive Grants of an aggregate area totalling no less than 600 Ha from the land reform process.
- (c) The Grant Land area described in clause 12.1 and the Priority Land described in this clause 14.5 will not limit or in any way constrain the area of Priority Land which may be reformed to unconditional or conditional freehold land under this clause 14.

## **14.6 Costs arising in relation to land reform**

- (a) In relation to costs arising in relation to the land reform, clause 12.6 of this Agreement shall apply in the same way to the land reform process described in this clause 14 so far as it is capable of doing so and accordingly, references in clause 12.6 to 'Grant Land' are deemed for the purposes of this clause to be references to 'Priority Land' or 'tenure reform' as the context requires.
- (b) The State will pay the reasonable costs of the KLC's necessary participation in relation to the activities contemplated by this clause 14.

## **14.7 Effect on Native Title**

- (a) If native title exists over the locations of the Priority Land, the creation of tenure for the Priority 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 relevant Dampier Peninsula Native Title Party enter into, and have registered on the Register of Indigenous Land Use Agreements, a Land Reform ILUA which applies the non-extinguishment principle.
- (b) If native title exists over the locations of the Priority Land, the creation of tenure for the Priority 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 relevant Dampier Peninsula Native Title Party do not enter into, and have registered on the Register of Indigenous Land Use Agreements, a Land Reform ILUA which applies the non-extinguishment principle; or



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- (ii) the relevant Dampier Peninsula Native Title Party elects a form of tenure for the Priority Land which allows the Priority 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 Priority Land is not compatible with the existence of native title, then the creation of tenure for the Priority Land will require a surrender of native title rights and interests.

- (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 paragraph (b).
- (d) Subject to paragraph (e), within 2 years of the date the locations of the Priority Land are determined in accordance with clause 14.4(a), each relevant Dampier Peninsula Native Title Party must enter into, and seek to have registered on the Register of Indigenous Land Use Agreements, a Land Reform 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 Priority Land as required under paragraph (b).
- (e) No further compensation other than that provided for in the Precinct Agreements will be payable by the State to the native title holders or registered claimants, or in relation to any other native title rights and interests under the NTA, to allow for the reform of tenure under this clause 14.

## 14.8 Satisfaction of State's commitment

Subject to the balance of this clause 14.8:

- (a) the State will not be in breach of its commitment under clause 14.1 if any Dampier Peninsula 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 Land Reform ILUA within the timeframe required under clause 14.7(d); but
- (b) the State will remain obliged to fulfil that commitment; and
- (c) nothing in this clause 14.8 releases the State from any of its obligations to execute documents and to take other steps pursuant to clause 32.

## 15. Resolution of Native Title Claims

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- (a) The State will work together with the KLC to develop a timeframe for the comprehensive resolution of native title applications by the Dampier Peninsula Native Title Parties and the Kimberley Native Title Parties.
- (b) Resolution of native title determination applications shall be by consent where possible.

## 16. Commonwealth Commitments

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- (a) The State must use its best endeavours to assist the KLC:

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- (i) to pursue cooperatively the establishment or identification of a transparent and appropriate body or mechanism for the delivery of Commonwealth funds to the Kimberley region for the purpose of addressing regional indigenous issues, which, for the avoidance of doubt, may be the Regional Body (*Commonwealth Funding Recipient*); and
- (ii) to obtain additional funding from the Australian Government to:
  - (A) if the Commonwealth Funding Recipient is the Regional Body, enhance the ability of the Commonwealth Funding Recipient to carry out its activities under the Regional Benefits Agreement; and
  - (B) permit the Commonwealth Funding Recipient to undertake other activities designed to address social and cultural impacts of the LNG Precinct and to foster economic opportunities for Indigenous people in the Kimberley.
- (b) The Foundation Proponent agrees to support and participate in any joint approach made by the State and the KLC to the Commonwealth in relation to the matters set out in paragraph (a).

## 17. Additional Proponents

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### 17.1 Additional Proponent Regional Benefits

- (a) The terms on which an Additional Proponent enters the Precinct will be determined in accordance with the terms of the Project Agreement.
- (b) Subject to the remainder of this clause 17, as part of the terms on which an Additional Proponent enters the Precinct, an Additional Proponent must provide Additional Proponent Regional Benefits.

### 17.2 Ratification

If Additional Proponent Regional Benefits are payable:

- (a) the State will procure that the Additional Proponent sign a Ratification Deed agreeing to be bound by this Agreement and agreeing the manner in which such payments will be made; and
- (b) all Parties to this Agreement agree to sign the Ratification Deed described in paragraph (a).

## 18. Establishment of Corporate Entities and Ratification

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### 18.1 KLC to establish Corporate Entities

- (a) The KLC must as soon as practicable after the Execution Date establish:
  - (i) the Regional Body, in accordance with clause 19; and
  - (ii) the Regional Trustee, in accordance with clause 20,  
(together the *Corporate Entities*).
- (b) In connection with its obligation under paragraph (a), the KLC in consultation with the Native Title Party must establish the procedure for:

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- (i) determining the constitutions of the Corporate Entities;
- (ii) determining the appointment of the first Board of the Regional Body; and
- (iii) determining the appointment of the first board of directors of the Regional Trustee.

## 18.2 Provision of information to the State

- (a) The KLC must finalise the constitutions of the Corporate Entities under clauses 19.3 and 20.3 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 KLC 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 and 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:
    - (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 clauses 19.10 and 20.11); 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 KLC 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 KLC, with reasonable details of the inconsistency and the KLC 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 18.2(b), then it is deemed to have given a notification under paragraph (c)(i).

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## 18.3 Ratification of this Agreement

As soon as practicable after the State has provided the KLC with a Notice of Satisfaction in accordance with clause 18.2(c)(i), or deemed satisfaction has occurred under 18.2(d):

- (a) The Regional Body and the Parties must execute the Ratification Deed as set out in Schedule 3.
- (b) On and from the Regional Body Ratification Date:
  - (i) the Regional Body shall have the rights of and owe the obligations of the Regional Body in accordance with the terms of this Agreement; and
  - (ii) the Parties shall have the same rights against, and owe the same obligations to, the Regional Body as if the Regional Body were a party to this Agreement.
- (c) The Regional Trustee and the Parties must execute the Ratification Deed as set out in Schedule 3.
- (d) On and from the date of the Regional Trustee Ratification Date:
  - (i) the Regional Trustee shall have the rights of and owe the obligations of the Regional Trustee in accordance with the terms of this Agreement; and
  - (ii) the Parties shall have the same rights against, and owe the same obligations to, the Regional Trustee as if the Regional Trustee were a party to this Agreement.

## 19. Regional Body

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### 19.1 Establishment and purpose of Regional Body

- (a) A body corporate will be established in accordance with this clause and clause 18 to support the implementation of this Agreement (***Regional Body***).
- (b) The Regional Body will have responsibility for:
  - (i) the operation and management of the Regional Economic Development Fund, Regional Indigenous Housing Fund, Regional Education Fund, Cultural Preservation Fund, Kimberley Enhancement Scheme for the benefit of Regional Beneficiaries;
  - (ii) if the Regional Body holds the Grant Land on trust under clause 12.2, holding and managing the Grant Land for the benefit of the relevant Grant Land Claim Group; and
  - (iii) if required by clause 13.5, jointly managing the Conservation and Heritage Areas with DEC.
- (c) The Regional 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 Regional Body may have any name chosen by its members.

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## 19.2 Objects of Regional Body

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

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

## 19.3 Constitution of Regional Body

- (a) The constitution of the Regional Body must:
  - (i) be determined in accordance with paragraphs (b) to (d);
  - (ii) be consistent with this clause 19;

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- (iii) be fair, equitable, transparent and consistent with contemporary governance standards; and
  - (iv) provide for audit requirements consistent with clause 21 of this Agreement.
- (b) The KLC will:
  - (i) establish a constitution for the Regional 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 a copy 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 KLC of that compliance;
  - (ii) does not comply with the requirements of paragraph (a), the State and the Foundation Proponent must:
    - (A) notify the KLC that the proposed constitution is not approved;
    - (B) provide reasonable details of the inconsistency; andthe KLC must:
    - (C) take reasonable action to address those reasons; and
    - (D) propose a new constitution in accordance with this clause 19.3.
- (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) The omission of one relevant factor in Schedule 4 from the proposed constitution under consideration does not, by reason of that omission alone, provide the State or the Foundation Proponent a reason to reasonably withhold its approval.

## **19.4 Amendment of Regional Body's constitution**

- (a) The terms of the Regional 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 Regional Body's constitution must not be amended other than in accordance with its constitution, any applicable Law and the following process:
  - (i) The Regional Body will provide the State and the Foundation Proponent with a copy of the proposed amended constitution.
  - (ii) Upon 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 Regional Body;

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- (B) does not comply with the requirements of paragraph (a), the State or the Foundation Proponent may:
    - (1) notify the Regional Body that the proposed amended constitution is not approved;
    - (2) provide reasonable details of its position; andthe Regional Body 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 19.4.
- (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).

## 19.5 Membership

Membership of the Regional Body is open to all Regional Beneficiaries who are aged 18 years or over.

## 19.6 Board of the Regional Body

- (a) The committee of directors of the Regional 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 Regional Body thinks fit.
- (b) The functions of the Board must include, but are not limited to:
  - (i) managing the Regional Body for the benefit of the Regional Beneficiaries;
  - (ii) determining priorities for the Regional Body and producing a strategic plan, which must be reviewed and updated by the Board every 5 years; and
  - (iii) appointing a Management Group in accordance with clause 19.7.
- (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.

## 19.7 Management Group

- (a) The Board must appoint a Management Group of the Regional Body comprising a chief executive officer, one or more members of the Board and such other persons as the Board considers appropriate.

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- (b) The function of the Management Group is to:
  - (i) exercise the powers delegated to it under clause 19.6(c);
  - (ii) arrange for the Regional Body to employ or contract relevant staff and consultants; and
  - (iii) oversee and take responsibility for the administration and staff of the Regional Body.

## **19.8 Operation and Management of Regional Benefits**

- (a) Having regard to the remainder of this Agreement and the rules of the relevant fund, to the extent that the Regional Body is concerned with the management, operation or application of the Regional Benefits, the Regional Body must have regard to:
  - (i) subject to paragraph (b), the following levels of applicant priority:
    - (A) members of the Native Title Claim Group; followed by
    - (B) members of the Dampier Peninsula Native Title Parties and Kimberley Native Title Parties; followed by
    - (C) Indigenous people residing in the Kimberley from time to time;
  - (ii) the comparative needs of the relevant Regional Beneficiaries; and
  - (iii) the corresponding benefit to be gained by the relevant Regional Beneficiaries and their community in receiving any distribution.
- (b) In considering the levels of priority described in subparagraph (a)(i), the Regional Body is not required to exhaust a higher level of applicant priority before considering any other level of priority in relation to the management, operation or application of any Regional Benefit.
- (c) Paragraphs (a) and (b) do not apply to Regional Benefits provided by the Foundation Proponent under the Project Agreement.

## **19.9 Administration of Other Benefits by Regional Body**

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

## **19.10 GST**

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

## **19.11 Right to deal with assets**

Except as expressly provided, nothing in this Agreement prevents the Regional 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).

## **19.12 Establishment of Regional Body Entities**

The Regional Body may establish Regional 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).



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## **19.13 Substitution of Regional Body**

- (a) If, after the Regional Body Ratification Date:
  - (i) the Board considers and the State and the Foundation Proponent consent, which consent will not be unreasonably withheld or delayed, that another specified body corporate should be the Regional Body for the purposes of this Agreement in place of the existing Regional Body;
  - (ii) the requirements in this clause 19 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 18.3,then that body corporate will on and from the date agreed by the Board and the State, be the Regional Body for the purposes of this Agreement.
- (b) The Board and the State and the Foundation Proponent must make a decision under paragraph (a):
  - (i) after first making reasonable efforts to consult with the members of the Regional Body;
  - (ii) after taking any such consultations into account; and otherwise
  - (iii) within 30 days of the Board notifying the State that it wishes to substitute the Regional Body.
- (c) If a new body corporate is substituted as the Regional Body in accordance with paragraph (a) then, on and from the date of the substitution, the former Regional Body must retain any liability incurred before that date under this Agreement and 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.

## **19.14 Funding of Regional Body**

- (a) The State must pay \$20 million dollars for a period of ten years in annual instalments of \$2 million to the Regional Body to fund the operation of the Regional Body as follows:
  - (i) the first instalment to be paid within 60 days of the Regional Body Ratification Date; and
  - (ii) for each subsequent year, instalments of \$2 million to be paid on or before the Benefits Payment date in each year.
- (b) For the avoidance of doubt, the Regional Body may use other sources of funds to assist with the operation of the Regional Body.

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## 20. Regional Trustee

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### 20.1 Establishment and purpose of Regional Trustee

- (a) A body corporate will be established in accordance with this clause and clause 18 to be the trustee of the Trusts (*Regional Trustee*).
- (b) The Regional 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 Regional Body; and
  - (iii) otherwise be established on such terms and conditions as first approved by the State, which approval must not be unreasonably withheld.
- (c) Subject to the Corporations Act, the Regional Trustee may have any name chosen by its members.

### 20.2 Objects of Regional Trustee

The Parties agree that the initial objects of the Regional 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 Regional Beneficiaries any Trust Assets; and
- (c) ensuring, to the extent that the Regional Trustee is or may be concerned with the use and distribution of the Regional Benefits, that the Regional Benefits are used and distributed equitably amongst the Regional Beneficiaries 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 those beneficiaries (both individually and collectively).

### 20.3 Constitution of Regional Trustee

- (a) The constitution of the Regional Trustee must:
  - (i) be determined in accordance with paragraphs (b) to (d);
  - (ii) be consistent with this clause 20;
  - (iii) be fair, equitable, transparent and consistent with contemporary governance standards; and
  - (iv) provide for audit requirements consistent with clause 21 of this Agreement.
- (b) The KLC will:
  - (i) establish a constitution for the Regional Trustee consistent with paragraph (a); and
  - (ii) provide the State and the Foundation Proponent with a copy of the proposed constitution.

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- (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 KLC of that compliance; or
  - (ii) does not comply with the requirements of paragraph (a), the State and the Foundation Proponent must:
    - (A) notify the KLC that the proposed constitution is not approved;
    - (B) provide reasonable details of the inconsistency; andthe KLC must:
    - (C) take reasonable action to address those reasons; and
    - (D) propose a new constitution in accordance with this clause 20.3.
- (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) The omission of one relevant factor in Schedule 4 from the proposed constitution under consideration does not, by reason of that omission alone, provide the State or the Foundation Proponent a reason to reasonably withhold its approval.

## **20.4 Amendment of Regional Trustee's constitution**

- (a) The terms of the Regional 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 Regional Trustee's constitution must not be amended other than in accordance with its constitution, any applicable Law and the following process:
  - (i) The Regional Body 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 Regional Body;
    - (B) does not comply with the requirements of paragraph (a), the State or the Foundation Proponent may:
      - (1) notify the Regional Body that the proposed amended constitution is not approved;
      - (2) provide reasonable details of its position; andthe Regional Body must, if it still wishes to amend;
    - (C) take reasonable action to address those reasons; and

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- (D) propose a new amended constitution in accordance with this clause 20.4.
- (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).

## **20.5 Regional Trustee to prepare Trust Deeds**

- (a) Within 3 months of the Regional Trustee Ratification Date, the Regional Trustee must prepare Trust Deeds for the following Trusts in accordance with the provisions of this Agreement:
  - (i) the Regional Economic Development Fund Trust;
  - (ii) the Regional Indigenous Housing Fund Trust;
  - (iii) the Regional Education Fund Trust;
  - (iv) the Cultural Preservation Fund Trust;
  - (v) the Kimberley Enhancement Scheme Trust; and
  - (vi) the Grant Land Trust for the purpose of holding the Grant Land for the benefit of the Grant Land Claim Group.
- (b) The Regional 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 Regional Trustee executing the Trust Deeds.
- (c) The Regional Trustee must provide to the Foundation Proponent the Trust Deeds proposed for the Regional Education Fund Trust and the Kimberley Enhancement Scheme Trust within 30 days of them being finalised in accordance with paragraph (a) and prior to the Regional Trustee executing the Trust Deeds.
- (d) In relation to each of the Trust Deeds other than the Trust Deeds proposed for the Regional Education Fund Trust and the Kimberley Enhancement Scheme Trust, if the State considers Trust Deeds provided under paragraph (b):
  - (i) are not inconsistent with this Agreement, the State must notify the Regional Trustee that the Trust Deeds are approved; or
  - (ii) are inconsistent with this Agreement, the State must promptly notify the Regional Trustee, with reasonable details of the inconsistency, and the Regional Trustee must take reasonable action to address those reasons and provide the Trust Deeds to the State in accordance with paragraph (b).
- (e) If the State fails to notify in accordance with paragraph (d) within 30 days of receipt of the Trust Deeds under paragraph (b), then it is deemed to have given notification under paragraph (d)(i).
- (f) In relation to each of the Trust Deeds proposed for the Regional Education Fund Trust and the Kimberley Enhancement Scheme Trust, if the State and the Foundation Proponent consider that the Trust Deeds provided under paragraphs (b) and (c):
  - (i) are not inconsistent with this Agreement, the State, together with the Foundation Proponent, must notify the Regional Trustee that the Trust Deeds are approved; or

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- (ii) are inconsistent with this Agreement, the State, together with the Foundation Proponent, must promptly notify the Regional Trustee, with reasonable details of the inconsistency, and the Regional Trustee must take reasonable action to address those reasons and provide the Trust Deeds to the State and the Foundation Proponent again in accordance with paragraph (b) and (c).
- (g) If the State or the Foundation Proponent, fails to notify in accordance with paragraph (f) within 30 days of receipt of the Trust Deeds under paragraph (b), then they are deemed to have given a notification under paragraph (f)(i).
- (h) Subject to paragraph (i), the Regional Trustee may draft additional Trust Deeds as it considers necessary to deal with Other Benefits, subject to its constitution.
- (i) If the Regional Trustee drafts any additional Trust Deed which relates to any Proponent's Regional Benefits, the Regional Trustee will provide that Trust Deed to the relevant Proponent for approval in accordance with this clause 20.5.
- (j) The Regional Trustee will provide the State with a copy of a Trust Deed approved under paragraph (i) within 30 days of the Trust Deed being executed.

## **20.6 Establishment of Trusts**

- (a) Within 30 Business Days of approval of the Trust Deeds under clause 20.5 the Regional Trustee must execute Trust Deeds to establish each of the following Trusts:
  - (i) the Regional Economic Development Fund Trust;
  - (ii) the Regional Indigenous Housing Fund Trust;
  - (iii) the Regional Education Fund Trust;
  - (iv) the Cultural Preservation Fund Trust;
  - (v) the Kimberley Enhancement Scheme Trust; and
  - (vi) the Grant Land Trust for the purpose of holding the Grant Land for the benefit of the Grant Land Claim Group.
- (b) The State, the Proponent (where relevant) and the KLC must do all things reasonably necessary to establish the Trust Deeds to be executed under paragraph (a).

## **20.7 Establishment of Regional Trust Accounts**

- (a) Each Trust Deed must provide that, within 30 Business Days of the establishment of the Trusts, the Regional Trustee must establish Regional Trust Accounts for:
  - (i) the Regional Economic Development Fund Trust;
  - (ii) the Regional Indigenous Housing Fund Trust;
  - (iii) the Regional Education Fund Trust;
  - (iv) the Cultural Preservation Fund Trust; and
  - (v) the Kimberley Enhancement Scheme Trust.
- (b) Each Regional Trust Account must be:

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- (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 Regional Trustee; and
  - (iii) named so as to identify it as a trust account and identify the relevant fund to which it applies.
- (c) Each Regional Trust Account may comprise more than one account.
- (d) No funds may be deposited into a Regional 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 Regional Trustee.
- (e) All amounts in a Regional Trust Account, including any interest accrued on any amounts in a Regional Trust Account shall 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 Regional Trust Account otherwise than for authorised purposes in accordance with the terms of the corresponding Trust Deed.

## 20.8 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 Regional Trustee will provide the State (and each Proponent in the case of an amendment to the Trust Deed for the Regional Education Fund Trust, Kimberley Enhancement Scheme Trust and the Dampier Peninsula 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:
    - (A) complies with paragraph (a), then the State (and each Proponent if applicable) must notify the Regional Trustee;
    - (B) does not comply with the requirements of paragraph (a), the State (and each Proponent if applicable) must:
      - (1) notify the Regional Trustee that the proposed amended Trust Deed is not approved;
      - (2) provide reasonable details of its position; andthe Regional Trustee must, if it still wishes to amend:
    - (C) take reasonable actions to address those reasons; and
    - (D) propose a new amended Trust Deed in accordance with this clause 20.8.

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- (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).

## **20.9 Distribution of Regional Benefits**

- (a) Having regard to the remainder of this Agreement and the terms of the relevant Trust Deed, to the extent that the Regional Trustee is concerned with the use, distribution or application of the Regional Benefits, the Regional Trustee must have regard to:
  - (i) subject to paragraph (b), the following levels of applicant priority:
    - (A) members of the Native Title Claim Group; followed by
    - (B) members of the Dampier Peninsula Native Title Parties and Kimberley Native Title Parties; followed by
    - (C) Indigenous people residing in the Kimberley from time to time;
  - (ii) the comparative needs of the relevant Regional Beneficiaries; and
  - (iii) the corresponding benefit to be gained by the relevant Regional Beneficiaries and their community in receiving any distribution.
- (b) In considering the levels of priority described in subparagraph (a)(i), the Regional Trustee is not required to exhaust all distributions of any Regional Benefit to a higher level of applicant priority before considering or making any distribution to any subsequent level.
- (c) Paragraphs (a) and (b) do not apply to Regional Benefits provided by the Foundation Proponent under the Project Agreement.
- (d) Each Trust Deed prepared in accordance with clause 20.5 must contain a clause giving effect to paragraph (a).

## **20.10 Substitution of Regional Trustee**

- (a) If, after the Regional Trustee Ratification Date:
  - (i) the Regional Body considers and the State and the Foundation Proponent consent, which consent will not be unreasonably withheld or delayed, that another specified body corporate should be the Regional Trustee for the purposes of this Agreement in place of the existing Regional Trustee;
  - (ii) the requirements in this clause 20 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 18.3,then that body corporate will on and from the date agreed by the Regional Body and the State, be the Regional Trustee for the purposes of this Agreement.
- (b) The Regional Body, the State and the Foundation Proponent must make a decision under paragraph (a):
  - (i) after first making reasonable efforts to consult with members of the Regional Body;

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- (ii) after taking any such consultations into account; and otherwise
  - (iii) within 30 days of the Regional Body notifying the State that it wishes to substitute the Regional Trustee.
- (c) If a new body corporate is substituted as the Regional Trustee in accordance with paragraph (a) then, on and from the date of the substitution:
  - (i) the former Regional Trustee must transfer any funds held on trust to the new Regional Trustee; and
  - (ii) the former Regional Trustee must 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.

## 20.11 GST

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

## 21. Annual Audit

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### 21.1 Regional Body audit

- (a) The Regional Body must, on or before 15 October in each year, including 15 October in the year immediately following the Regional Body Ratification Date, provide the State, and in the case of the Kimberley Enhancement Scheme and Regional Education Fund, each Proponent, with a copy of a report by a qualified and independent auditor as to whether:
  - (i) the financial accounts of the Regional Body for the previous Financial Year are fair and accurate according to Australian Accounting Standards;
  - (ii) in the year immediately following the Regional Body Ratification Date, the financial accounts of the KLC as they relate to the establishment of the Corporate Entities under clause 18 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 Regional Body.
- (b) The Regional Body must, at the same time as it engages a qualified and independent auditor to conduct an audit in accordance with this paragraph (b):
  - (i) notify the State 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,



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at the cost of the State.

## 21.2 Regional Trustee audit

- (a) The Regional Body must, on or before 15 October in each year, including 15 October in the year immediately following the Regional Trustee Ratification Date, provide the State, and in the case of the Kimberley Enhancement Scheme and Regional Education Fund, the Proponent, with a copy of a report by a qualified and independent auditor as to whether:
    - (i) the financial accounts of the Regional 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) purpose, objects and constitution of the Regional Trustee; or
      - (B) rules of the relevant Trust or fund.
  - (b) The Regional Trustee 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 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.

## 21.3 Negative or significantly qualified audit reports

An audit report shall, without limitation, be taken to be negative or significantly qualified for the purposes of clauses 24.1 and 24.2 if it reports that any Regional Benefit, or income earned from the investment of any Regional Benefit, is not invested materially in accordance with clauses 20.5, 20.8, or 24.

## 22. Tax

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### 22.1 Withholding tax

- (a) If a Party is required by 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

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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).

## 23. GST

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### 23.1 Definitions

Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST Law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

### 23.2 Amounts exclusive of GST

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

### 23.3 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the ***GST Amount***). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### 23.4 Liability net of GST

Any reference under this Agreement to a cost, expense or other liability incurred by a Party to this Agreement will exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.

### 23.5 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;

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- (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.

## **23.6 Adjustment events**

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the Parties.

## **24. Default and Suspension of Benefits**

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### **24.1 Regional Body Default**

Subject to clause 24.4, a Regional Body Default occurs if the Regional Body materially defaults in complying with any of its obligations under this Agreement and includes any of the following:

- (a) the Regional Body is insolvent, or an administrator or special administrator is appointed for the Regional Body or a receiver or controller is appointed in respect of the Regional Body's property, or a liquidator is appointed or the Regional Body is otherwise ordered to be wound up;
- (b) the Regional Body commits an act of fraud or illegality;
- (c) if the Regional Body is incorporated under the CATSI Act, a material CATSI Act Non-Compliance occurs;
- (d) if the Regional Body is incorporated under the Corporations Act, the Regional Body has materially failed to comply with Part 2M.2 (financial recording) or 2M.3 (financial reporting) or Chapter 2M of the Corporations Act;
- (e) in accordance with clause 24.3, the Regional Body has failed to implement the objectives of any Regional Benefit;
- (f) the constitution of the Regional Body is amended without the approval of the State and the Foundation Proponent as required under clause 19.4;
- (g) where an audit report referred to in clause 21 indicates that the Regional Body has materially failed to comply with any of the following:
  - (i) clause 10.11 (Unexpended Funds); or
  - (ii) clause 19.14 (Funding of Regional Body);
- (h) the financial accounts of the Regional Body are deficient in a material respect, so far as they relate to the expenditure or application of Regional Benefits or funds paid for administration; or
- (i) the State or each Proponent is not provided with a copy of an audit report in accordance with clause 21, or the audit report is negative or significantly qualified.

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## 24.2 Default by the Regional Trustee

For the purpose of this Agreement a Trust Default occurs if the Regional 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 Regional Trustee is insolvent, or an administrator or liquidator is appointed for the Regional Trustee, or a receiver or manager is appointed in respect of Regional Trustee property, or the Regional Trustee is otherwise ordered to be wound up;
- (b) the Regional Trustee commits an act of fraud or illegality;
- (c) the Regional Trustee is in breach of its duties as trustee of a Trust;
- (d) the Regional Trustee has materially failed to comply with Part 2M.2 (financial recording) or 2M.3 (financial reporting) or Chapter 2M of the *Corporations Act 2001* (Cth);
- (e) the Regional Trustee is substituted as the trustee of the trust otherwise than under clause 20.8;
- (f) in accordance with clause 24.3, the Regional Trustee has failed to implement the objectives of any Regional Benefit or Trust;
- (g) the constitution of the Regional Trustee is amended without the approval of the State and the Foundation Proponent as required under clause 20.4;
- (h) any Trust Deed is amended without the approval of the State or each relevant Proponent as required under clause 20.8; or
- (i) the State or each Proponent is not provided with a copy of an audit report in accordance with clause 21, or the audit report is negative or significantly qualified.

## 24.3 Failure to implement Regional Benefit objectives

- (a) Subject to paragraph (b), a Default in clauses 24.1 or 24.2 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 6.5, 7.5, 8.6, 9.5 or 10.10, together with such other information as may be available, that the Regional Body or the Regional Trustee is failing to act, in a material respect, in accordance with:
    - (A) the purposes or objects of the relevant Regional 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; or
  - (ii) the Proponent (after consultation with the Native Title Party) forms the view, acting reasonably and on the basis of any report prepared under clause 21, together with such other information as may be available, that the Regional Body or the Regional Trustee is failing to act, in a material respect, in accordance with:

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- (A) the purposes or objects of the relevant Regional 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 shall 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 have been sound reasons for the failure to implement the purposes or objects;
  - (ii) in the case of a Trust Default, that the Regional 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 Regional Benefit or Trust.

## 24.4 Insubstantial non-compliance

The Parties agree that no Default shall arise under clause 24.1 or 24.2:

- (a) if when the audit report under clause 21 is provided, the Regional Body provides written information regarding the Default reported in the audit report; and
- (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 Regional Body that it considers the non-compliance to be substantial.

## 24.5 Rectification of Default

- (a) If at any time the State or, in relation to the Kimberley Enhancement Scheme or the Regional Education Fund, the Proponent, considers that a Regional Body Default or Regional Trustee Default has occurred then the State or a Proponent may give written notice to the Regional Body or the Regional Trustee specifying:
  - (i) the Default;
  - (ii) where relevant, all or part of one or more of the Regional Benefits to which the Default relates (*Identified Amount*);
  - (iii) particular and reasonable action to be taken by the Regional Body or Regional 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) nominating a date by which the Default must be rectified (*Rectification Period*), (*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 in relation to the Regional Education Fund or

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the Kimberley Enhancement Scheme, a Proponent, may issue the Regional Body or Regional 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, the monetary Regional Benefits which it would otherwise be obliged to pay under clause 16 and Schedule 5 of the Project Agreement; or
  - (iii) in the case of an Additional Proponent, the monetary Regional Benefits which it would otherwise be obliged to pay under clause 19 and, if applicable, Schedule 4 of the Project Agreement (*Suspension Notice*).
- (c) Subject to paragraph (f), if the State or a Proponent issue a Suspension Notice then until the State or the Proponent revoke the Suspension Notice by further notice in writing to the Regional Body or Regional Trustee:
  - (i) in respect of a Suspension Notice issued by the State, the State is not obliged to deliver those Regional Benefits the subject of the Suspension Notice;
  - (ii) in respect of a Suspension Notice issued by the Foundation Proponent, the Foundation Proponent is not obliged to deliver those Regional Benefits the subject of the Suspension Notice; or
  - (iii) in respect of a Suspension Notice issued by an Additional Proponent, the Additional Proponent is not obliged to deliver those Regional Benefits the subject of the Suspension Notice,and those Regional 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 Regional Beneficiaries 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 to the satisfaction of the State or the State and the Proponent jointly; or
  - (ii) the Regional Body or Regional 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 Regional Body or the Regional Trustee and the State or the State and the Proponent jointly entering into an agreement as to the manner in which future instalments of the Regional 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 Regional Benefits the subject of the Suspension Notice (together with any interest earned under paragraph (c)), in accordance with its obligations under this Agreement and as relevant but for the suspension under paragraph (b).

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## 25. Replacement of Regional Trustee

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### 25.1 Appointment of Replacement Trustee

- (a) If, at any time after the Regional Trustee Ratification Date:
  - (i) a Default Notice is issued to either the Regional Body or the Regional 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 Regional Body, the Regional 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 Regional 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;
  - (ii) the State, the Regional 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 Regional Trustee to the Replacement Trustee in this clause 25.1;
  - (iii) the Regional 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 Regional Body 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 25.2, 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.

### 25.2 Re-appointment of Regional Trustee

- (a) At any time during the term of appointment of the Replacement Trustee, the Regional Body may issue a notice to the State and the relevant Proponents nominating either:
  - (i) the reappointment of the Regional Trustee as trustee of the Trusts; or
  - (ii) the appointment of another specified body corporate as trustee of the Trusts and 'Regional 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 in clause 25.1(a) has occurred since the issue of the Notice of Replacement of Trustee; and

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- (ii) any Default related to the Notice of Replacement of Trustee has been remedied or is otherwise no longer operative; or
  - (iii) the Regional Body or the Regional 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 Regional Trustee as trustee of the Trusts.
- (c) Upon receipt of notice under paragraph (a)(ii) and provided that the body corporate specified in the notice satisfies the requirements and processes for substitution as the Regional Trustee under clause 20.10:
  - (i) the body corporate specified in the notice will on and from the date the requirements and processes for substitution as the Regional Trustee under clause 20.10 are satisfied, be the Regional Trustee for the purposes of this Agreement; and
  - (ii) the State must appoint the body corporate as trustee of the Trusts.
- (d) Upon the appointment of the Regional Trustee under paragraphs (b) or (c), the Trust Assets vest in the Regional Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.
- (e) The State, the Regional 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 Regional Trustee in this clause 25.2.

## 26. Cross Default

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- (a) If either the State or a Proponent issue a Project Agreement Suspension Notice, then clause 24.5 of this Agreement applies (with the necessary changes) as if a Suspension Notice had been issued to the Regional Body or the Regional Trustee by the State or Proponent (as the case may be) under this Agreement in relation to the Project Agreement Default.
- (b) If a Project Agreement Default Notice is rectified in accordance with the terms of the Project Agreement, the State or the Proponent (as the case may be) must promptly notify the Regional Body of that event.
- (c) If a Project Agreement Suspension Notice is revoked in accordance with the terms of the Project Agreement, any Suspension Notice issued by virtue of paragraph (a) is also revoked.

## 27. No Termination for Breach

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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.



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## 28. Assignment

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### 28.1 Definition of assignment

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

### 28.2 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 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.

### 28.3 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 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

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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
  - (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.

## 28.4 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 or 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 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

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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 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.

## **28.5 Assignment by the KLC**

- (a) The KLC may assign all its rights pursuant to this Agreement if required by Law to do so, due to, without being limited, a change in the representative body status of the KLC or other statutory event provided that the assignee executes a Deed of Assignment and Assumption.
- (b) For the avoidance of doubt, the KLC may not assign an interest in the LNG Precinct or the Project Rights without also assigning corresponding interests under this Agreement.
- (c) The Parties to this Agreement other than the KLC and the State are deemed to have consented to any such assignment under paragraph (a), and the KLC 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.

## **28.6 Assignment restricted**

Other than as specified in this clause 28, a Party must not assign its rights and obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld.

## **28.7 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 person acting on behalf of the Lender will be subject to clauses 28.3 or 28.4 (as appropriate).

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## 28.8 Further Assurances

- (a) To the extent required, each Party who has deemed to have given their consent under this clause 28 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 Regional Body must confer a limited power of attorney upon the Administrative Body (as that entity is defined in the Project Agreement) within 14 days of the Regional Body Ratification Date providing the Administrative Body with the power only to execute agreements and documents (including a Deed of Assignment and Assumption) necessary to give full effect to the consents in this clause 28.
- (c) The Regional Body 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.

## 29. Dispute Resolution

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### 29.1 Notice

Subject to clause 12.5, if there is a dispute between any or all of the Parties in relation to any 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.

### 29.2 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 29.3.

### 29.3 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 29.2(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 KLC or Regional Body if either the KLC or Regional Body is a party to the Dispute; and
  - (ii) must be held in Perth if the KLC or Regional Body is not a party to the Dispute, unless the parties to the Dispute otherwise agree.

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## 29.4 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 29.3, whichever occurs first, unless the Party seeks injunctive or other interlocutory relief.

## 29.5 Continuation of rights and obligations

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

## 30. 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 St  
West Perth WA 6005  
Fax Number: (08) 9226 4050
  - (iii) to the Conservation Commission of Western Australia

Chairman, Conservation Commission  
Corner Australia II Drive & Hackett Drive, Crawley WA 6009  
  
Fax Number: (08) 9389 8603
  - (iv) to the KLC:

Principal Legal Officer  
PO Box 2145  
Broome WA 6725  
  
Fax Number: (08) 9193 6279
  - (v) to the Foundation Proponent:

Senior Legal Counsel  
Browse LNG Development  
240 St Georges Terrace  
Perth WA 6000  
  
Fax Number: (08) 9214 2833
- (c) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;

# Browse LNG Precinct Regional Benefits Agreement

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- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business 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.

## 31. CPI Indexing

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### 31.1 Annual review

The Regional Benefits which are purely monetary, payable by the State pursuant to this Agreement, are to be adjusted annually from January 2011 (*Adjustment Date*) so that following each Adjustment Date the monetary Regional Benefit that is payable is equal to 'A' in the formula below:

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

where

- A = the monetary Regional Benefit payable following the Adjustment Date.
- B = the monetary Regional Benefit payable immediately prior to the applicable Adjustment Date;
- C = the Index published for the year ended immediately prior to the applicable Adjustment Date. For the first adjustment, this shall be the Index for the December Quarter 2010;
- D = the Index published for the year ending the year before the Adjustment Date. For the first adjustment, this shall be the Index for the December Quarter 2009.

### 31.2 New Reference Base Period

If, since 'D' in the formula above has been published, the Australian Bureau of Statistics has declared a new Reference Base Period for calculation of the Index, but the value of 'D' can reasonably be calculated by information supplied by the Australian Bureau of Statistics then for the purposes of applying the formula for the Adjustment Date in question, 'D' is the number calculated in that manner.

### 31.3 Index

If at any Adjustment Date the Index:

- (a) is discontinued; or
- (b) in any Party's reasonable opinion, has an uncertain or substantially altered basis of calculation,

# Browse LNG Precinct Regional Benefits Agreement

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then that Party may nominate an alternative which best approximates the Index and that alternative is to be used in applying clause 31.1 in relation to the monetary Benefits to be delivered by them or to them as the case may be.

## **31.4 No Double Indexing**

Notwithstanding that any Regional Benefit is subject to indexation under this Agreement and the Project Agreement, any such sum is subject to indexing only once.

## **32. Further Assurances**

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- (a) Each Party must 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 32 or implied in this Agreement fetters the powers, functions or duties of any Government Agency.

## **33. Withdrawal of Proponent**

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- (a) Subject to paragraph (b), following withdrawal of a Proponent under the Project Agreement, if the last of a Proponent's obligations under this Agreement have been fulfilled, then the State, the KLC or the Proponent may give notice to that effect and upon receipt of the notice by each other party, the Proponent will be deemed to have withdrawn from this Agreement.
- (b) Withdrawal of a Proponent from the LNG Precinct pursuant to paragraph (a):
  - (i) does not affect any obligation or liabilities that have accrued and fallen due under this Agreement before the date of withdrawal; and
  - (ii) this Agreement as between the State, the Conservation Commission of Western Australia, the Aboriginal Lands Trust, the Aboriginal Affairs Planning Authority, the KLC and any other Proponent.

## **34. Nature of State's Commitment**

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The Regional Benefits provided by the State under this Agreement do not derogate from the State's ordinary obligations to the Kimberley.

## **35. Waiver and Election**

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### **35.1 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.

# Browse LNG Precinct Regional Benefits Agreement

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## **35.2 Limited waiver**

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

## **35.3 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.

## **36. 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.

## **37. Amendment**

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This Agreement may only be amended by another written agreement executed by all the Parties.

## **38. Counterparts**

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This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## **39. Survival**

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This clause and clauses 1, 5, 29, 37 and 40 survive the expiry of this Agreement.

## **40. 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.

## **41. 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.



# Browse LNG Precinct Regional Benefits Agreement

**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

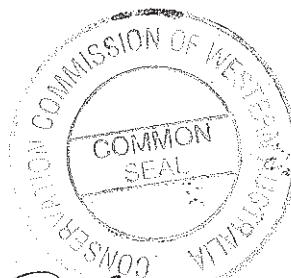
**Executed as a deed by the Conservation Commission of Western Australia** by an authorised member in accordance with section 26AB of the *Conservation and Land Management Act 1984* (WA) in the presence of:

Witness

Print Name

Authorised Member

Print Name




*Pat Barlett*

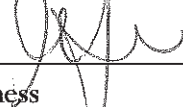

PAT BARLETT.

# Browse LNG Precinct Regional Benefits Agreement

Executed as a deed by the **Kimberley Land Council** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*:

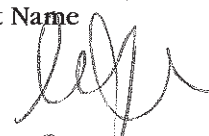

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Print Name

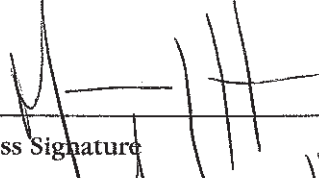

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Print Name



  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Print Name

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

  
\_\_\_\_\_  
Witness Signature  
  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name