

Murchison Radio-astronomy Observatory Agreement

Indigenous Land Use Agreement

State of Western Australia (**State**)

The Western Australian Minister for Lands (**Minister for Lands**)

Ike Simpson, Robin Boddington, Ron Simpson, Charlie Snowball, M.W. (name withheld for cultural reasons), David Jones, Colin Hamlett, Gavin Egan, Mack Mourambine, Timothy Simpson, Bill Pearce, Malcolm Ryan, Neville Mongoo, Gordon Fraser, Rochelle Baumgarten, William Baumgarten, Pam Mongoo (**WY Claimants**)

Yamatji Marlpa Aboriginal Corporation (**YMAC**)

Commonwealth Scientific and Industrial Research Organisation (**CSIRO**)

Commonwealth of Australia (**Commonwealth**)

Murchison Radio-astronomy Observatory Agreement Indigenous Land Use Agreement

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Details

Date

2009

Parties

Name The **State of Western Australia**, represented by the Office of Native Title, Department of the Attorney General of 2nd Floor, 197 St George's Terrace, Perth, WA 6000

Short form name **State**

Notice details Address: c/- Office of Native Title, Department of the Attorney General, 2nd Floor, 197 St George's Terrace, Perth, WA 6000.
Fax No: (08) 9222 9877

Name **Minister for Lands**, a body corporate continued under section 7(1) of the *Land Administration Act 1997 (WA)*, c/- 1 Midland Square, Midland, WA, 6936

Short form name **Minister for Lands**

Notice details Address: c/- 1 Midland Square, Midland, WA, 6936
Fax No: (08) 9347 5003

Name Ike Simpson, Robin Boddington, Ron Simpson, Charlie Snowball, M.W. (name withheld for cultural reasons), David Jones, Colin Hamlett, Gavin Egan, Mack Mourambine, Timothy Simpson, Bill Pearce, Malcolm Ryan, Neville Mongoo, Gordon Fraser, Rochelle Baumgarten, William Baumgarten and Pam Mongoo for and on behalf of the WY Claim Group

Short form name **WY Claimants**

Notice details Address: c/- YMAC, 5th Floor, 256 Adelaide Terrace, Perth, WA, 6000
Fax No: (08) 9225 4633

Name **Yamatji Marlpa Aboriginal Corporation**, a representative Aboriginal/Torres Strait Islander body recognised under section 203AD of the *Native Title Act 1993 (Cth)*, of 5th Floor, 256 Adelaide Terrace, Perth, WA, 6000

Short form name **YMAC**

Notice details Address: 5th Floor, 256 Adelaide Terrace, Perth, WA, 6000
Fax No: (08) 9225 4633

Name **Commonwealth Scientific and Industrial Research Organisation** (ABN 41 687 119 230), established by section 8 of the *Science and Industry Research Act 1949* (Cth), of Limestone Avenue, Campbell, ACT 2612

Short form name **CSIRO**

Notice details Attention: Group Executive,
Information and Communication Sciences.
Address: CSIRO ICT Centre Marsfield
Corner of Vimiera and Pembroke Roads
Marsfield NSW 2122
PO Box 76 Epping NSW 1710
Fax No: (02) 9372 4585

Name The **Commonwealth of Australia**, represented by the Department of Innovation, Industry, Science and Research, of GPO Box 9389 Canberra ACT 2601.

Short form name **Commonwealth**

Notice details Address: GPO Box 9389 Canberra ACT 2601.
Fax No: (02) 6213 7000

Background

- A The State, the Commonwealth and CSIRO are working together to develop a permanent observatory site, to be known as the Murchison Radio-astronomy Observatory (**MRO**), on land within Boolardy Station near Meekatharra in Western Australia.
- B The MRO will house the Project.
- C Australia is involved in an international competitive bid to be the site of the international Square Kilometre Array (**SKA**). If Australia is successful in its bid to host the SKA, the development of the SKA phase one is likely to occur from about 2012. Development of the MRO for ASKAP (and other pathfinder astronomy projects) will contribute to demonstrating the suitability of the area for the SKA.
- D The Wajarri Yamatji native title claim (**WY Claim**) has been made over an area of land that includes Boolardy Station and the land on which the Project is proposed to be developed and operated. The WY Claim is a registered native title claim for the purposes of the *Native Title Act 1993* (Cth) (**NTA**). The WY Claimants are the applicant and registered native title claimant for the WY Claim.
- E In order to provide secure land tenure for the Project, it is necessary to excise a portion of Boolardy Station and for the Minister for Lands to grant a Crown lease to CSIRO.
- F The proposed grant of a Crown lease from the Minister for Lands to CSIRO, for the purpose of the Project, may be a 'future act' for the purposes of the NTA. Any extension, renewal or re-grant of such a lease may also be a 'future act' for the purposes of the NTA. Other related actions to facilitate the Project may also be 'future acts'.
- G The parties have agreed to enter into this agreement, as an indigenous land use agreement under the NTA, in order to:
- (i) ensure that the grant, extension, renewal or re-grant of a Crown lease to CSIRO and related actions to facilitate the Project, are valid for the purposes of the NTA;
 - (ii) apply the non-extinguishment principle of the NTA, wherever it may otherwise not apply, to the grant, extension, etc of such Crown lease and related actions to facilitate the Project;
 - (iii) provide a benefits package to the WY Claim Group in consideration of their agreement to the grant, extension, etc of such Crown lease and related actions to facilitate the Project;
 - (iv) ensure that the benefits package provided to the WY Claim Group constitutes full and final compensation to the WY Claim Group;
 - (v) disapply the 'right to negotiate' procedure of the NTA, wherever it may otherwise apply, to the grant, extension, etc of such Crown lease and related actions to facilitate the Project; and
 - (vi) provide for the protection of Aboriginal heritage during development of the Project;
- H This agreement will be an 'area agreement' for the purposes of sections 24CA to 24CL of the NTA and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth). The area to which this agreement applies is the MRO.
- I The parties intend this agreement to be registered on the ILUA Register. Once registered on the ILUA Register, this agreement will bind any holders of native title within the MRO.

- J In accordance with the requirements of the NTA for registering this agreement as an area agreement:
- (i) there is not a Registered Native Title Body (or Bodies) Corporate in relation to the whole of the MRO (a requirement of section 24CC of the NTA); and
 - (ii) the WY Claimants are a party to this agreement, therefore all persons in the 'native title group' (as defined in section 24CD of the NTA) are parties to this agreement.
- K The Minister for Lands is responsible for the administration of the *Land Administration Act 1997* (WA) (**LA Act**) and as such is responsible for the grant of land titles under the LA Act.
- L The WY Claimants are a party to this agreement, as required by section 24CD of the NTA.
- M YMAC is the representative Aboriginal/Torres Strait Islander body, for the purposes of the NTA, for the whole of the MRO.
- N CSIRO is responsible for the development and operation of the Project.
- O The Commonwealth is also involved in the Project.

The parties agree as follows:

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Access Protocol means the protocol set out in Schedule 4.

ALO means the member of the WY Claim Group appointed as the Aboriginal Liaison Officer under clause 17.

Approved Auditor means a person who is:

- (a) registered as a company auditor under the Corporations Act or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;
- (b) not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the WY Corporate Entities or of a related body corporate within the meaning of that term in the Corporations Act; and
- (c) not the WY Corporate Entities' Qualified Accountant.

Approved Body Corporate means the corporation established in accordance with clause 8.

ASCC means the Australian SKA Coordination Committee, a body formed by the Commonwealth and the State whose functions are set out in the memorandum of understanding dated 10 October 2007, or any organisation which may from time to time replace ASCC or carry out its functions.

ASIC means the Australian Securities and Investments Commission.

ASKAP means the Australian Square Kilometre Array Pathfinder Telescope proposed to be developed and operated by CSIRO on the MRO and a site in NSW. The ASKAP is more fully described in Schedule 5.

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

Benefits means any monetary payments and other benefits to be provided under this agreement to, or in respect of, the WY Claim Group.

Boolarly Station means the pastoral lease known as 'Boolarly Station', a pastoral lease under Part 7 of the LA Act being, as at the Execution Date, the whole of the land comprised in Crown lease 146/1966 (Pastoral Lease 3114/406).

Business Day means:

- (a) for receiving a notice under clause 29, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is sent to; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

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

CATSI Corporation means an Aboriginal and Torres Strait Islander corporation as that term is defined in section 16-5 of the CATSI Act, namely a corporation registered 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.

CDEEWR means the Commonwealth Department of Education Employment and Workplace Relations, or any Commonwealth government department which may from time to time replace CDEEWR.

Commencement Date means the date on which this agreement is registered and entered on the ILUA Register.

Compensation means compensation for any loss, diminution, impairment or other effect on any native title rights and interests.

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

Crown Lease means the proposed lease of Crown land under the LA Act, by the Minister for Lands to CSIRO, over the MRO, for the purpose of developing, operating or undertaking the Project. The terms and conditions of the Crown Lease will be in the form, or substantially in the form, of the draft lease terms and conditions contained in Schedule 2.

Crown Lease Grant means the grant of the Crown Lease and any extension, re-grant or renewal of the Crown Lease.

Cultural Training Participant means any person who is not a member of the WY Claim Group or WY Contracting Entity and who is:

- (a) an employee of CSIRO associated with the Project or Project Works and who is engaged to work at the MRO or at CSIRO MRO support offices in Geraldton for at least five (5) days per annum;
- (b) associated with the Project Works or any of the Project's radio astronomy / science studies and who visits the MRO at the direction of, or with the agreement of, CSIRO and whose total time spent on the MRO is, or is likely to be, at least five (5) days per annum; or
- (c) a contractor who is engaged by CSIRO to supply goods or services to the MRO from time to time and whose contracts require the supply of goods or services over a period of more than 6 months to the MRO or contractors who CSIRO considers will have significant direct contact with members of the WY Claim Group.

Cultural Training Program means the cross cultural awareness programs developed by the WY Claimants in accordance with clause 16.1(a).

Curtin means Curtin University of Technology (ABN 99 143 842 569), of Kent Street, Bentley, in the State of Western Australia.

Details means the 'Details' section at the start of this agreement, preceding the 'Background'.

Development Activity has the meaning given in item 1.1 of the Heritage Protection Protocol.

Dispute has the meaning given in clause 26.1.

Eligible WY Person means a member of the WY Claim Group who is 18 years of age or over.

Environmental Approval means any authorisation, approval, licence, authority, consent or permit required to be obtained by CSIRO under any Environmental Law.

Environmental Law means any Act, regulation, by-law or proclamation of the Commonwealth or the State applicable to the development and operation of the Project, which provides for the protection of the environment or the regulation of pollution, waste, waste disposal, contamination, discharge or the use or disposal of water.

Execution Date means the date of the execution of this agreement by all of the parties.

Heritage Protection Protocol means the protocol set out in Schedule 3.

Heritage Provider means a suitably qualified person, business, consultant or entity (other than YMAC) that is authorised by the WY Claim Group to act as their agent for the purposes of undertaking or performing some, or all of, the rights and obligations of YMAC under the Heritage Protection Protocol.

ILUA Register means the 'Register of Indigenous Land Use Agreements' established under section 199A of the NTA.

ILUA Regulations means the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

Indemnified Amount has the meaning given in clause 20.1(a).

Independent Consultant means the person or entity who is engaged to establish the WY Corporate Entities pursuant to clause 7.1.

Independent Director means a person who:

- (a) is not:
 - (i) a member of the WY Claim Group;
 - (ii) married to or in a defacto relationship with a member of the WY Claim Group;
 - (iii) a child, parent or sibling of a member of the WY Claim Group or a person who is married to or in a defacto relationship with a member of the WY Claim Group; or
 - (iv) currently, and has not within the period of 3 years prior to their appointment as Independent Director been, an employee of the WY Corporate Entities;
- (b) has expertise (whether by qualification or experience) in one or more of the following areas:
 - (i) financial management;
 - (ii) legal practice;
 - (iii) accounting; or
 - (iv) business development; and
- (c) is a "responsible person" as that term has been determined by the Commissioner of Taxation in Taxation Ruling TR 95/27 at paragraph 21.

Investigation Licence means the licence granted by the Minister for Lands to CSIRO on 8 October 2007, under section 91 of the LA Act, to allow CSIRO to conduct investigatory work prior to development of the ASKAP.

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

LEADR means the dispute resolution organisation of that name. If LEADR ceases to exist as an organisation, then **LEADR** shall be taken to mean any other dispute resolution organisation with similar objects agreed by a majority of the parties to the relevant dispute or, if no majority agreement can be reached, decided by the party that first notified the relevant dispute.

Liaison Committee means the consultative committee established pursuant to clause 18.1(a).

Monetary Payment has the meaning given in clause 20.1(d).

MRO means the Murchison Radio-astronomy Observatory site, on which the Project will be developed, operated or undertaken. The MRO will be the whole of the land the subject of the Crown Lease and is the geographical area to which this agreement applies. The MRO is described in Schedule 1.

MRO Interpretative Centre means a proposed visitor and educational outreach centre in relation to the MRO and the Project which may be built in the future.

MRO Support Facility means the support facility building for the Project proposed to be located in Geraldton, WA.

Native Title Registrar is the Registrar appointed under section 95 of the NTA.

NNTT means the National Native Title Tribunal established by section 107 of the NTA.

Non-Extinguishment Principle means the 'non-extinguishment principle' as defined in section 238 of the NTA.

Non-Native Title Parties means the State, the Minister for Lands, CSIRO and the Commonwealth.

Notice has the meaning given in clause 29.1.

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

Pia School means the Pia Wadjarri Remote Community School located at the Pia Wadjarri Community.

PrepSKA means the international project to conduct various preparatory studies for the SKA. PrepSKA is more fully described in Schedule 5.

Project means radio-astronomy and ancillary works and activities, including radio science studies, to be developed, operated or undertaken within the MRO. At the date of this agreement it is intended that the Project will include the following:

- (a) ASKAP;
- (b) PrepSKA;
- (c) the Murchison Wide-field Array project;
- (d) the Cosmological Reionisation Experiment; and
- (e) the Precision Array to Probe the Epoch of Reionisation project.

The Project will also include any other radio-astronomy and ancillary works and activities to be developed, operated or undertaken within the MRO as determined by CSIRO in consultation with the ASCC from time to time. The Project is more fully described in Schedule 5. To avoid doubt, the Project does not include SKA.

Project Works means ASKAP civil construction works on the MRO (including foundations, concrete, trenching, cable laying, buildings, roads and other infrastructure) and the transport of ASKAP related non-scientific equipment to the MRO.

Qualified Accountant means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia.

Ratification Date means the date on which the Ratification Deed is executed by all parties to that deed pursuant to clause 11.2.

Ratification Deed means the deed contained in Schedule 9 entered into by the WY Corporate Entities and the parties as provided in clause 11.2.

Right to Negotiate Procedure means the procedure under Subdivision P of Division 3 of Part 2 of the NTA.

Scitech means Scitech Discovery Centre (ABN 55 009 292 700), of City West, Sutherland Street, West Perth in the State of Western Australia.

SKA means the 'Square Kilometre Array' project. The right to host the SKA is the subject of an international competitive bid in which Australia is involved. The SKA is to be developed from about 2012. The SKA is indicatively described in Schedule 6. To avoid doubt, SKA does not include PrepSKA.

SKA Proposal has the meaning given to it in clause 27(a).

WY Charitable Trust means the trust for the Wajarri Yamatji Charitable fund to be established under the WY Charitable Trust Deed.

WY Charitable Trust Deed means the deed set out in Schedule 11.

WY Claim means the native title determination application with NNTT file number WC04/10, Federal Court file number WAD 6033/98, and known as the Wajarri Yamatji native title claim.

WY Claim Group means all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the native title claimed under the WY Claim.

WY Contracting Entity means:

- (a) any person who is a member of the WY Claim Group;
- (b) any corporation in which members of the WY Claim Group have an Interest; or
- (c) any joint venture or partnership in which a member of the WY Claim Group, or any corporation referred to in clause (b), has an Interest,

that has been certified to be a WY Contracting Entity in accordance with clause 13.2(b). Interest for the purpose of this definition means cash, asset or in-kind contribution, shareholding, membership, directorship or a share of profits or of enterprise product.

WY Corporate Entities means, jointly or severally as the context requires, the Approved Body Corporate and the WY Trustee Company.

WY Directors has the meaning given to it in clause 9.4(a)(i).

WY General Trust means the discretionary trust to be established under the WY General Trust Deed.

WY General Trust Deed means the deed set out in Schedule 10.

WY Trusts means, jointly or severally as the context requires, the WY Charitable Trust and the WY General Trust.

WY Trust Deeds means, jointly or severally as the context requires, the WY Charitable Trust Deed and the WY General Trust Deed.

WY Trust Funds means the monies contributed by the State to the WY Trusts pursuant to clause 12.2(a).

WY Trustee Company means the company established in accordance with clause 9.

WY Working Group means the group of persons authorised from time-to-time by a community meeting of the WY Claim Group to conduct the day-to-day business of the WY Claim and matters arising in relation to it.

1.2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) words and expressions defined in the NTA have the same meaning where used in this agreement;
- (b) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this agreement and a reference to this agreement includes any recital, schedule or addendum;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (g) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (h) a reference to dollars or \$ is to Australian currency;
- (i) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (j) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty-four hours later;
- (m) references to time are to local time in Perth, Western Australia;
- (n) headings in this agreement are inserted for convenience and do not affect the interpretation of this agreement;
- (o) words of inclusion are not words of limitation; and
- (p) if any conflict arises between the terms and conditions contained in the clauses of this agreement and any schedule or addendum to this agreement, the terms and conditions of the clauses of this agreement prevail.

2. Term of agreement and early termination

2.1 Commencement

This agreement commences on the Execution Date except for clauses 14, 15, 21, 22 and 23 which commence on the Commencement Date.

2.2 Term of the agreement

Subject to earlier termination pursuant to this agreement or by operation of law, this agreement continues for the term of the Crown Lease Grant and until the parties to the Crown Lease have satisfied any and all rights and obligations which may arise pursuant to the Crown Lease at the end of the Crown Lease Grant.

2.3 No termination

Subject to clause 2.4 and 33.2(b) no party is entitled to terminate this agreement for any reason, including by reason of any breach or repudiation of this agreement by any party.

2.4 Agreement to terminate

If all parties agree in writing, the parties may terminate this agreement at any time, including at any time after the agreement is registered on the ILUA Register.

2.5 Consequences of termination

Unless otherwise agreed in writing by all parties, if this agreement is terminated in accordance with clause 2.4 or clause 33.2(b) or is removed from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA then:

- (a) other than this clause 2, clauses 19, 20 and 31 of this agreement and items 11(b) and 12 of the Heritage Protection Protocol (which are to remain operative), and to the extent provided in this clause 2, this agreement ceases to have any force or effect on and from the date of termination or removal from the ILUA Register (as the case may be);
- (b) any act done under or in accordance with this agreement shall remain, to the extent permitted by law, valid; and
- (c) all rights and obligations under this agreement which accrued before or on the date of termination of the agreement or removal from the ILUA Register (as the case may be) shall remain binding and enforceable by or against each party.

2.6 Termination after registration on ILUA Register

- (a) If the parties propose to terminate this agreement after the registration of this agreement on the ILUA Register in accordance with clause 2.4 or clause 33.2(b) then all parties must advise the Native Title Registrar in writing in accordance with section 199C(1)(c)(ii) of the NTA.
- (b) For the avoidance of doubt, if the parties terminate this agreement in accordance with clause 2.4 or clause 33.2(b) and the agreement is subsequently removed from the ILUA Register by the Native Title Registrar in accordance with section 199C(1)(c)(ii) of the NTA, the operative date for the purpose of clauses 2.5(a) and 2.5(c) is the date of termination.

3. Authority to enter into agreement

3.1 WY Claimants' warranties

The WY Claimants represent and warrant that:

- (a) they have the authority to enter into this agreement on behalf of the WY Claim Group; and
- (b) they have received full legal and financial advice about the effects of this agreement.

3.2 YMAC warranties

YMAC warrants that:

- (a) it is the only representative Aboriginal/Torres Strait Islander body, recognised under section 203AD of the NTA, in relation to any part of the MRO;
- (b) it is a representative Aboriginal/Torres Strait Islander body, recognised under section 203AD of the NTA, in relation to the whole of the MRO;
- (c) it has used all reasonable efforts to ensure that all persons who hold or may hold native title in relation to the MRO have been identified; and
- (d) it is of the opinion that all persons so identified have authorised the making of this agreement in accordance with section 251A of the NTA.

3.3 Non-Native Title Parties' reliance on such warranties

The WY Claimants and YMAC acknowledge and agree that the Non-Native Title Parties have relied on the warranties provided in clauses 3.1 and 3.2, respectively, to enter into this agreement.

4. Consents to Future Acts

4.1 Parties' consent

The parties state as follows:

- (a) the parties consent to the Crown Lease Grant, with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA;
- (b) the parties confirm the validity of the Investigation Licence, in the event that such grant was a future act that was done invalidly, with the intent that such statement satisfies the requirement of section 24EBA(1)(a) of the NTA;
- (c) for the avoidance of doubt and to the extent, if at all, that the following acts are not considered to be consented to in clause 4.1(a), the parties consent to the doing of all things ancillary to the Project, with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA; and
- (d) for the avoidance of doubt and to the extent, if at all, that the following acts are not considered to be consented to in clause 4.1(a), the parties consent to all acts, matters and things reasonably necessary for:
 - (i) the Crown Lease Grant to CSIRO by the Minister for Lands; and
 - (ii) CSIRO acquiring the Crown Lease Grant in accordance with the *Lands Acquisition Act 1989* (Cth),

with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA

4.2 WY Claimants' Consent

The WY Claimants state as follows:

- (a) The WY Claimants' consent under this clause 4 includes their agreement not to object to the acts referred to in clause 4.1.
- (b) The WY Claimants agree to do all things, including signing any documents, necessary to give effect to their consent to the acts referred to in clause 4.

4.3 Grant of the right includes its exercise

For the avoidance of doubt:

- (a) the consent to the doing of the acts in clauses 4.1(a), 4.1(c) and 4.1(d) includes consent to the exercise of any right or obligation created by those acts on the person on whom the right or obligation is conferred; and
- (b) the confirmation of the validity of the Investigation Licence in clause 4.1(b) includes confirmation of the validity of, and consent to, (as applicable) the exercise of any right or obligation created by that grant by the person on whom the right or obligation is conferred.

4.4 Non-Extinguishment Principle applies

- (a) The Non-Extinguishment Principle applies to the acts consented to in this clause 4.
- (b) For the avoidance of doubt, the acts referred to in this clause 4 and any activity required or permitted by those acts and that is done in accordance with those acts, shall prevail over any native title rights or interests and any exercise of those rights and interests, but do not extinguish them.

4.5 No Right to Negotiate

- (a) The Right to Negotiate Procedure does not apply to any of the acts referred to in this clause 4, with the intent that such statement satisfies the requirement of section 24EB(1)(c) of the NTA.
- (b) For the avoidance of doubt, no other procedural requirements in Part 2 Division 3 of the NTA apply to the future acts described in this clause 4.

4.6 Other statements relevant to the NTA

The parties:

- (a) state that this agreement is intended to be registered on the ILUA Register as an area agreement under sections 24CA to 24CL of the NTA and regulation 7 of the ILUA Regulations; and
- (b) acknowledge that, when this agreement is registered on the ILUA Register, the agreement will have the additional effects conferred by sections 24EA, 24EB and 24EBA of the NTA, including the effects on compensation provided by those sections.

4.7 Area to which this agreement applies

This agreement applies to the MRO.

5. Lodgement of the agreement with the Native Title Registrar for registration

- (a) The State is authorised by the parties to:
 - (i) prepare an application for this agreement to be registered on the ILUA Register. The application for registration shall be in the form, or substantially in the form, of Schedule 8 to this agreement; and
 - (ii) apply to the Native Title Registrar for this agreement to be registered on the ILUA Register.
- (b) The parties acknowledge their intention that this agreement should be registered on the ILUA Register within four (4) months of the Execution Date.
- (c) The parties agree each to use their best endeavours, and to do all things reasonably necessary, to assist with the registration of this agreement on the ILUA Register, and to maintain the registration of the agreement on the ILUA Register following registration.
- (d) Without limiting clauses 5(b) and 5(c), the parties must not object to the registration of this agreement on the ILUA Register. If any party becomes aware of an objection having been lodged in relation to the registration of this agreement on the ILUA Register, then that party must notify the other parties and the parties must do all things within their power and necessary and incidental to ensure that the objection is withdrawn.
- (e) If YMAC is satisfied that the requirements of section 203BE(5) of the NTA have been met then YMAC agrees that it will provide the written certification referred to in section 203BE(1)(b) of the NTA, for the purposes of the registration application as required by section 24CG(3)(a) of the NTA. The written certification will be in the form, or substantially in the form, of Schedule 7 to this agreement. YMAC warrants that as at the Execution Date it is not aware of any circumstances that would prevent it from providing written certification in accordance with this clause.

6. Parties' mutual recognition and support

6.1 No acknowledgement of native title

By entering into this agreement the Non-Native Title Parties shall not be taken to acknowledge the existence of native title in relation to the MRO.

6.2 Recognition of traditional associations with land and waters

The Non-Native Title Parties recognise that the relationship of Aboriginal people, including the WY Claim Group, to their traditional land and waters is central to their well-being and to their continuing connection to the religious, emotional, spiritual and non-human world.

6.3 Recognition of importance of the Project

- (a) The WY Claimants recognise that:
 - (i) the Project is of regional, state, national and international importance; and
 - (ii) the co-operation of the WY Claimants will be important in ensuring that the Project is developed in a timely manner.
- (b) The WY Claimants agree to do all things, including signing any documents, reasonably necessary to give effect to the recognition expressed in clause 6.3(a).

- (c) The parties acknowledge that each of them has entered into this agreement in good faith and that CSIRO and the Commonwealth could suffer loss or damage if action is taken to challenge or delay: registration of this agreement on the ILUA Register; the Crown Lease Grant; or the Project.

7. Independent Consultant

7.1 Appointment of Independent Consultant

- (a) The State will, in consultation and with the agreement of the WY Claimants and as soon as practicable after the Execution Date, engage a consultant (**Independent Consultant**) to establish and incorporate the WY Corporate Entities, for and on behalf of the WY Claimants, in accordance with clauses 7, 8 and 9.
- (b) The Non-Native Title Parties will jointly provide funding of up to \$200,000.00 in total for the engagement of the Independent Consultant and to meet the Independent Consultant's reasonable costs and disbursements incurred in performing the obligations of the Independent Consultant under clauses 7, 8 and 9.
- (c) The Non-Native Title Parties will ensure that the terms of appointment require the Independent Consultant to comply with any processes and requirements of clauses 7, 8 and 9.

7.2 Process for Establishment

- (a) The Independent Consultant shall be responsible for the establishment and incorporation of the WY Corporate Entities for and on behalf of, and in consultation with, the WY Claimants in accordance with clauses 7, 8 and 9.
- (b) The Independent Consultant must, at the commencement of the consultancy:
 - (i) request from YMAC or the WY Claimants a list of names and contact details for all known Eligible WY Persons; and
 - (ii) convene a meeting to be attended by as many Eligible WY Persons as possible in order to:
 - (A) establish the procedure for determining the constitutions of the WY Corporate Entities and the appointment of the first boards of directors of the WY Corporate Entities that accord with clauses 8 and 9; and
 - (B) determine whether future meetings to be convened for the purposes of establishing the WY Corporate Entities can be convened with representatives of the Eligible WY Persons.
- (c) If no procedure is established under clause 7.2(b)(ii)(A) the matters in clauses 7.2(b)(ii)(A) will be determined by the agreement of the simple majority of all Eligible WY Persons, or of their representatives, as the case may be.
- (d) Notice of all meetings must be sent to the Eligible WY Persons, or their representatives (as the case may be), not less than ten (10) Business Days prior to the meeting or such other period as approved by a simple majority of the Eligible WY Persons. Notice of any meeting is to be in the form that the Independent Consultant considers appropriate for that meeting.
- (e) All meetings will be conducted in Yalgoo unless otherwise approved by a simple majority of the Eligible WY Persons.

8. Approved Body Corporate

8.1 Establishment and name

- (a) The WY Claimants must, as soon as practicable after the Execution Date, incorporate the Approved Body Corporate in accordance with this clause 8.
- (b) The Approved Body Corporate must:
 - (i) be incorporated as a CATSI Corporation established under the CATSI Act; and
 - (ii) otherwise be incorporated on such terms and conditions as first approved by the Non-Native Title Parties, which approval must not be unreasonably withheld.
- (c) Subject to the CATSI Act, the Approved Body Corporate may have any name chosen by the WY Claim Group.

8.2 Constitution of the Approved Body Corporate

The WY Claimants must ensure that:

- (a) the Approved Body Corporate is established under a constitution that is based on the model rules provided by the CATSI Registrar under the CATSI Act;
- (b) the constitution of the Approved Body Corporate is a comprehensive written document containing all of the internal governance rules (as that phrase is defined in section 63-1 of the CATSI Act) of the Approved Body Corporate;
- (c) the constitution of the Approved Body Corporate is consistent with this agreement (in particular the provisions of this clause 8) and the provisions of the CATSI Act; and
- (d) subject to the CATSI Act, the constitution of the Approved Body Corporate provides, without limitation:
 - (i) for the matters set out in clauses 8.3 (dealing with Membership), and 8.4 (dealing with the Objects of the Approved Body Corporate);
 - (ii) that the constitution cannot be amended in a manner that is, or which results in the constitution being, inconsistent with this agreement (in particular the provisions of this clause 8) or the CATSI Act;
 - (iii) for a power for the Approved Body Corporate to enter into the Ratification Deed contemplated by this agreement and obtain the rights and comply with the obligations of the Approved Body Corporate and the WY Claimants in accordance with the Ratification Deed;
 - (iv) for a power for the Approved Body Corporate to be a member of the WY Trustee Company;
 - (v) for the Approved Body Corporate to keep proper records, books and accounts, including so as to enable:
 - (A) the preparation of financial statements in accordance with Australian Accounting Standards;
 - (B) the audit of those records, books and accounts in accordance with Australian Auditing Standards; and
 - (C) compliance with any recording keeping or reporting requirements imposed upon the Approved Body Corporate by the CATSI Act (or any other applicable law); and

- (vi) for the Approved Body Corporate to conduct an audit of its financial records, books and accounts in accordance with Australian Auditing Standards at least once each year by an Approved Auditor.

8.3 Membership

The WY Claimants must ensure that the constitution of the Approved Body Corporate provides that membership of the Approved Body Corporate:

- (a) is open to all Eligible WY Persons; and
- (b) consists only of members who are Eligible WY Persons.

8.4 Objects

Subject to the CATSI Act, the WY Claimants must ensure that the constitution of the Approved Body Corporate provides that the objects of the Approved Body Corporate include, but are not limited to, the following:

- (a) obtaining the rights and complying with the obligations of the Approved Body Corporate and the WY Claimants under this agreement in accordance with the Ratification Deed;
- (b) ensuring, to the extent that the Approved Body Corporate is or may be concerned with the use and distribution of Benefits arising from this agreement, that those Benefits are used and distributed equitably amongst the WY Claim Group having regards to the needs and priorities of those members both individually and collectively;
- (c) undertaking community development for the benefit of the WY Claim Group including, at its discretion, allocating and distributing available moneys for, or undertaking specific activities relating to, the general benefit, promotion and advancement of the WY Claim Group; and
- (d) encouraging the development of projects consistent with the general benefit, promotion and advancement of the WY Claim Group by members of the WY Claim Group by providing, at its discretion, and without limitation, loans, grants, goods or services.

8.5 GST

The WY Claimants must procure the Approved Body Corporate to register for GST purposes and be capable of issuing tax invoices prior to executing the Ratification Deed.

8.6 Approved Body Corporate not a party to this agreement

For the avoidance of doubt, nothing in this agreement is intended to make, or has the effect of making, the Approved Body Corporate a party to this agreement.

9. WY Trustee Company

9.1 Establishment and name

- (a) The WY Claimants must, as soon as practicable after the Execution Date, incorporate the WY Trustee Company in accordance with this clause 9.
- (b) The WY Trustee Company 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 Approved Body Corporate; and

- (iii) otherwise be established on such terms and conditions as first approved by the Non-Native Title Parties, which approval must not be unreasonably withheld.
- (c) Subject to the Corporations Act, the WY Trustee Company may have any name chosen by the WY Claim Group.

9.2 Constitution of the WY Trustee Company

The WY Claimants must ensure that:

- (a) the WY Trustee Company is governed by a constitution. For the avoidance of doubt, the WY Claimants must ensure that the WY Trustee Company is not governed by the provisions of the Corporations Act that apply to a company as replaceable rules or by combination of a constitution and the replaceable rules;
- (b) a copy of the constitution of the WY Trustee Company accompanies any application made to ASIC for registration of the WY Trustee Company and that constitution is adopted on registration in accordance with sections 117(3) and 136(1)(a) of the Corporations Act;
- (c) the constitution of the WY Trustee Company is consistent with this agreement (in particular the provisions of this clause 9), the WY Trusts Deeds and the Corporations Act; and
- (d) subject to the Corporations Act, the constitution of the WY Trustee Company provides, without limitation:
 - (i) for the matters set out in clauses 9.3 (dealing with the Objects of the WY Trustee Company) and 9.4 (dealing with the board of directors);
 - (ii) that the constitution cannot be amended in a manner that is, or which results in the constitution being, inconsistent with this agreement (in particular the provisions of this clause 9), the WY Trust Deeds or the Corporations Act;
 - (iii) for a power for the WY Trustee Company to act as trustee for the WY Trusts; and
 - (iv) for the WY Trustee Company to keep proper records, books and accounts so as to enable compliance with any recording keeping or reporting requirements imposed upon the WY Trustee Company by the Corporations Act (or any other applicable law) and have those records, books and accounts audited in accordance with the provisions of the Corporations Act (or any other applicable law).

9.3 Objects

Subject to the Corporations Act, the WY Claimants must ensure that the constitution of the WY Trustee Company provides that the objects of the WY Trustee Company include, but are not limited to, the following:

- (a) acting as trustee for the WY Trusts in accordance with the WY Trust Deeds;
- (b) receiving, holding, managing, administering and investing on trust for the WY Claim Group any monies payable to the WY Claim Group or WY Claimants under this agreement;
- (c) ensuring, to the extent that the WY Trustee Company is or may be concerned with the use and distribution of Benefits arising from this agreement, that those Benefits are used and distributed equitably amongst the beneficiaries of, or for the purposes stated in, this agreement and the WY Trust Deeds (as the case may be) having regard to the needs and priorities of those beneficiaries (both individually and collectively) and those purposes;

- (d) encouraging the development of projects consistent with the general benefit, promotion and advancement of the beneficiaries of, or for the purposes stated in, this agreement and the WY Trust Deeds by providing, at its discretion, and without limitation, loans, grants, goods or services to those beneficiaries or for those purposes.

9.4 Board of Directors

Subject to the Corporations Act, the WY Claimants must ensure that the constitution of the WY Trustee Company provides, without limitation, that:

- (a) the WY Trustee Company has a board of directors comprised of:
 - (i) up to five (5) persons who are members of the Approved Body Corporate ("**WY Directors**"); and
 - (ii) one (1) Independent Director;
- (b) a director of the WY Trustee Company is to be appointed as a director of the WY Trustee Company by a resolution passed in a general meeting of the Approved Body Corporate;
- (c) no resolution of the board of directors of the WY Trustee Company is effective unless:
 - (i) notice of a meeting of the board of directors to consider the resolution has been given not less than ten (10) Business Days prior to the meeting (or such other period as agreed and recorded in the minutes of the WY Trustee Company);
 - (ii) an absolute majority of the directors of the WY Trustee Company are present and voting at the meeting; and
 - (iii) the majority of the directors of the WY Trustee Company present and voting at the meeting, after taking into account any advice provided by the Independent Director in respect of the resolution (including any advice as to whether the resolution is likely to breach a law, the constitution of the WY Trustee Company or the provisions of the WY Trust Deed), vote in favour of the resolution; and
- (d) if, at any time, a person appointed to be an Independent Director retires and a replacement Independent Director has not yet been appointed the WY Trustee Company must not exercise any powers, duties, authorities, or discretions contained in the WY Trust Deeds or as trustee of the WY Trusts until a replacement Independent Director is appointed except in circumstances to protect the funds of the WY Trusts or in the case of urgency.

9.5 GST

The WY Claimants must procure the WY Trustee Company to register for GST purposes and be capable of issuing tax invoices prior to executing the Ratification Date.

9.6 WY Trustee Company not a party to this agreement

For the avoidance of doubt, nothing in this agreement is intended to make, or has the effect of making, the WY Trustee Company a party to this agreement.

10. Funding to the WY Corporate Entities

- (a) The Non-Native Title Parties will jointly provide \$400,000.00 per annum for five (5) years to the Approved Body Corporate for the administration and operation of the WY Corporate Entities, provided such payment will only be due and payable:
 - (i) within twenty (20) Business Days after the Ratification Date; and

- (ii) thereafter on the first, second, third and fourth anniversaries of the payment in clause 10(a)(i).
- (b) For the avoidance of doubt, the Approved Body Corporate must, in accordance with the Ratification Deed, provide a sufficient amount of monies from the funding referred to in clause 10(a) to the WY Trustee Company to enable the WY Trustee Company to operate, administer the WY Trusts and comply with its obligations as trustee of the WY Trusts.

11. Ratification

11.1 Provision of information to the Non-Native Title Parties

- (a) The WY Claimants must, as soon as possible and, in any event, no later than 20 Business Days after the constitutions of the WY Corporate Entities are finalised and prior to making any application for registration of the WY Corporate Entities pursuant to the CATSI Act or the Corporations Act, (as the case may be) provide the Non-Native Title Parties with a copy of the proposed constitutions of the WY Corporate Entities.
- (b) If the constitutions of the WY Corporate Entities are provided to the Non-Native Title Parties in accordance with clause 11.1(a) then:
 - (i) if the constitution of a particular WY Corporate Entity is not inconsistent with this agreement, the WY Trust Deeds or the provisions of the CATSI Act or the Corporations Act (as the case maybe) the Non-Native Title Parties must promptly notify the WY Claimants that they are satisfied with the document and that an application may be made to register the WY Corporate Entity pursuant to the CATSI Act or the Corporations Act (as the case may be); and
 - (ii) if the constitution of a particular WY Corporate Entity is inconsistent with this agreement, the WY Trust Deeds or the provisions of the CATSI Act or the Corporations Act (as the case maybe) the Non-Native Title Parties must promptly notify the WY Claimants, with reasonable details of why the constitution is so inconsistent and the WY Claimants must take reasonable action to address those reasons and provide the constitution to the Non-Native Title Parties again in accordance with clause 11.1(a).
- (c) The WY Claimants must, as soon as possible and, in any event, no later than 20 Business Days after the CATSI Registrar registers the Approved Body Corporate as a CATSI Corporation and ASIC registers the WY Trustee Company as a company pursuant to the Corporations Act, provide the Non-Native Title Parties with each of the following:
 - (i) a copy of the certificate of incorporation of the Approved Body Corporate issued by the CATSI Registrar pursuant to section 32-1(c) of the CATSI Act;
 - (ii) a copy of the constitution of the Approved Body Corporate as registered by the CATSI Registrar pursuant to section 32-1(b) of the CATSI Act;
 - (iii) a copy of the certificate of registration of the WY Trustee Company issued by ASIC pursuant to section 118(1)(c) of the Corporations Act;
 - (iv) a copy of the constitution of the WY Trustee Company as lodged with the application made to ASIC for the registration of the WY Trustee Company pursuant to section 117(3) of the Corporations Act;
 - (v) copies of notices from the Australian Taxation Office:

- (A) confirming that the WY Corporate Entities are registered for GST purposes (as required under clause 8.5 and 9.5); and
- (B) quoting Australian Business Numbers for the WY Corporate Entities; and
- (vi) written notice of address and facsimile numbers for service of documents on the WY Corporate Entities.
- (d) If a document is provided to the Non-Native Title Parties in accordance with clause 11.1(c) then:
 - (i) if the document is not inconsistent with this agreement the Non-Native Title Parties must promptly notify the WY Claimants that they are satisfied with the document; and
 - (ii) if the document is inconsistent with this agreement the Non-Native Title Parties must promptly notify the WY Claimants, with reasonable details of why the document is inconsistent with this agreement and the WY Claimants must take reasonable action to address those reasons and provide the document to the Non-Native Title Parties again in accordance with clause 11.1(c).

11.2 Ratification Deed

- (a) Subject to clause 11.2(b), as soon as practicable and, in any event, no later than 20 Business Days after the Non-Native Title Parties have notified the WY Claimants that they are satisfied with each of the documents referred to in clause 11.1(c):
 - (i) the WY Claimants must procure the WY Corporate Entities to promptly enter into and execute the Ratification Deed; and
 - (ii) the parties to this agreement must promptly enter into and execute the Ratification Deed.
- (b) The parties and the WY Corporate Entities must not enter into or execute the Ratification Deed until after the Commencement Date.
- (c) For the purpose of executing the Ratification Deed the WY Claimants irrevocably appoint YMAC as their attorney with the full right and power in their name and place to execute the Ratification Deed required to be executed by them under clause 11.2(a).
- (d) If the parties and the WY Corporate Entities execute the Ratification Deed in accordance with clause 11.2(a) then, on and from the Ratification Date, the parties agree that:
 - (i) the Approved Body Corporate:
 - (A) will, under the Ratification Deed, have the rights and owe the obligations of the Approved Body Corporate in accordance with the terms of this agreement as if it was a party to this agreement;
 - (B) subject to clauses 11.2(e) and 11.2(d)(i)(C), and where the context allows, will, under the Ratification Deed, have the same rights and owe the same obligations as the WY Claimants as if references in this agreement to the WY Claimants were references to the Approved Body Corporate and references in this agreement to the parties included the Approved Body Corporate instead of the WY Claimants;
 - (C) will not, under the Ratification Deed, obtain any rights or assume any obligations of the WY Claimants as if it were a party to this agreement which accrued, arose or were due to be completed before the Ratification Date; and

- (D) must, under the Ratification Deed, comply with, and be bound by, all the terms of this agreement, and will be entitled to enforce the terms of this agreement against the parties, as if it were a party to this agreement;
- (ii) the WY Claimants:
- (A) agree that, subject to clauses 11.2(e), 11.2(d)(ii)(B) and 11.2(d)(ii)(C), the Non-Native Title Parties cease to owe any obligation to the WY Claimants under this agreement;
 - (B) remain entitled to any right and retain any obligation which accrued, arose or was due to be completed under this agreement before the Ratification Date;
 - (C) are not entitled to any right and shall not have any obligation under this agreement in respect of anything done or not done on or after the Ratification Date other than under clauses 4.2 (WY Claimants' Consent), 6.3 (Recognition of importance of the Project), 19 (Full Compensation), 20 (Indemnity and release) and 27 (Negotiations for SKA Project); and
 - (D) subject to clauses 11.2(d)(ii)(B) and 11.2(d)(ii)(C), will not, and are not entitled to, bring any claim or action against the Non-Native Title Parties in respect of anything done or not done by the Non-Native Title Parties under this agreement and this agreement may be pleaded as a bar to any such proceedings; and
- (iii) the Non-Native Title Parties:
- (A) subject to clause 11.2(e), must, under the Ratification Deed, comply with this agreement as if references in the agreement to the WY Claimants were references to the Approved Body Corporate and references in this agreement to the parties included the Approved Body Corporate instead of the WY Claimants;
 - (B) will, under the Ratification Deed, have the same rights and owe the same obligations to the Approved Body Corporate as if the Approved Body Corporate were a party to this agreement;
 - (C) will, under the Ratification Deed, be entitled to enforce the terms of this agreement against the Approved Body Corporate as if the Approved Body Corporate were a party to this agreement; and
 - (D) subject to clause 11.2(d)(ii)(B) and 11.2(d)(ii)(C), cease to owe any obligation to the WY Claimants under this agreement but, for the avoidance of doubt, do not release the WY Claimants from any of the WY Claimant's obligations which accrued, arose or were due to be completed under this agreement before the Ratification Date.
- (e) The parties agree that:
- (i) references in clauses 4.2 (WY Claimants' Consent), 7 (Independent Consultant), 8 (Approved Body Corporate), 9 (WY Trustee Company), 11 (Ratification), 12 (WY Trusts), 13.2(g) (List of WY Contracting Entities), 19 (Full compensation), 20 (Indemnity and release), 22.3 (Development Activity to which this clause does not apply), 27 (Negotiations for SKA project), 31.1 (Costs), 32 (Deemed consultation and consent) and 33.2 (Severability), to the WY Claimants are not, by operation of this clause 11.2, to be read, under the Ratification Deed, as references to the Approved Body Corporate;

- (ii) references in clauses 3.1 (WY Claimants' warranties), 3.3 (Non-Native Title Parties' reliance on such warranties) and 6.3 (Recognition of importance of the Project) to the WY Claimants are, despite the operation of this clause 11.2, to be read, under the Ratification Deed, as references to both the WY Claimants and the Approved Body Corporate;
- (iii) references in clauses 2 (Term of agreement and early termination), 4 (Consents to Future Acts), 5 (Lodgment of the agreement), 11 (Ratification), 24 (Variation) and 33.1 (Entire Agreement) to the parties are not, by operation of this clause 11.2, to be read, under the Ratification Deed, as inclusive of the Approved Body Corporate instead of the WY Claimants; and
- (iv) references in clauses 6.3 (Recognition of importance of the Project), 25 (Default), 26 (Dispute Resolution), 31.2 (Duty), 31.3 (Recovery), 33.3 (Waiver), 33.4 (Further action), 33.5 (Governing law and jurisdiction) to the parties are, despite the operation of this clause 11.2, to be read, under the Ratification Deed, as being inclusive of both the WY Claimants and the Approved Body Corporate

12. WY Trusts

12.1 Establishment of WY Trusts

- (a) No later than 20 Business Days after Ratification Date:
 - (i) The State must, and the WY Claimants must procure the WY Trustee Company to, execute a WY Charitable Trust Deed and a WY General Trust Deed substantially in the forms set out in Schedule 10 and Schedule 11; and
 - (ii) the State and the WY Claimants must otherwise do all things necessary to establish the WY Trusts.
- (b) The WY Trustee Company shall be the sole trustee of the WY Trusts in accordance with the WY Trust Deeds.
- (c) The WY Trust Deeds must not be amended in a manner inconsistent with the provisions of this agreement or the WY Trust Deeds.

12.2 Trust Payments

- (a) The State, upon execution of the WY Trust Deeds will, in accordance with the WY Trust Deeds, settle on the WY Trustee Company the sum of \$8,000,000.00 to be divided between the WY Trusts in the following manner:
 - (i) \$4,000,000.00 by way of contribution into the WY Charitable Trust; and
 - (ii) \$4,000,000.00 by way of contribution into the WY General Trust,
 unless, prior to the Ratification Date, all parties agree to some other manner of division of that sum between the WY Trusts.
- (b) If, subsequent to the Commencement Date, the State and the WY Trustee Company have not executed the WY Trust Deeds, the WY Trust Funds must be held on trust:
 - (i) for and on behalf of the WY Claim Group; and
 - (ii) in an interest bearing trust account held by the State
 and the WY Claimants hereby direct that:

- (iii) the WY Trust Funds are to be paid into the WY Trusts upon execution of the WY Trust Deeds in accordance with clause 12.2(a); and
- (iv) any interest earned on the WY Trust Funds is to be divided evenly between the WY Trusts.

13. Enterprise and Training

13.1 List of Employment, Enterprise and Training Opportunities

- (a) CSIRO must, from time to time, ensure that up to date information is prepared and maintained in respect of:
 - (i) intended procurement and contracting opportunities relating to the Project Works;
 - (ii) employment positions relating to the Project (including provision of the description of employment positions, including tenure, status, selection criteria and required qualifications and experience as well as career progression opportunities);
 - (iii) the ASKAP industry opportunities register; and
 - (iv) any education or training opportunity that may be available pursuant to clauses 13.4, 14.2(b), 14.3 or in relation to the Project,

where it reasonably considers that the WY Claim Group or a WY Contracting Entity may be interested in such information.

- (b) CSIRO must ensure that the information compiled by it under clause 13.1(a) is provided to the Liaison Committee at each meeting of the Liaison Committee. After the Ratification Date, a copy of such information must also be provided to the Approved Body Corporate.
- (c) If there is any material change to the information provided by CSIRO under clause 13.1(b) CSIRO must provide the Liaison Committee and, after the Ratification Date, the Approved Body Corporate with that information.
- (d) The Liaison Committee and, after the Ratification Date and under the Ratification Deed, the Approved Body Corporate must ensure that the information provided by CSIRO under clause 13.1(b) is made available to any member of the WY Claim Group or any WY Contracting Entity where such information is requested by that person or entity.

13.2 List of WY Contracting Entities

- (a) Any person or body that considers itself to be a WY Contracting Entity may nominate themselves to the WY Claimants for certification as a WY Contracting Entity under clause 13.2(b). Any nomination should include the services offered by, work experience and qualifications of, resources and equipment available to, and the financial capacity of, that person or body.
- (b) If the WY Claimants consider that the person or body who has nominated itself under clause 13.2(a) is a WY Contracting Entity (as that expression is defined in this agreement) they must provide notice, in writing, to the person or body so nominated certifying them as a WY Contracting Entity for the purpose of this agreement.
- (c) The WY Claimants must ensure that up to date lists are prepared and maintained containing details of WY Contracting Entities who have been certified under clause 13.2(b). Such lists must include the services offered by, work experience and

qualifications of, resources and equipment available to and the financial capacity of any WY Contracting Entity.

- (d) The WY Claimants must ensure that the information compiled by it under clause 13.2(c) is provided to the Liaison Committee at each meeting of the Liaison Committee. A copy of such information must also be provided to CSIRO.
- (e) If there is any material change to the information provided by the WY Claimants under clause 13.2(d), the WY Claimants must provide the Liaison Committee and CSIRO with that information.
- (f) For the avoidance of doubt, the inclusion of a person or body on the list of WY Contracting Entities provided by the WY Claimants under clause 13.2(d) is determinative of that person's or body's status as a WY Contracting Entity for the purpose of this agreement.
- (g) Prior to the Ratification Date, for the purposes of clauses 13.2(b)-(e), a requirement that the WY Claimants consider, prepare, compile or provide any matter or thing shall be deemed to have been met where the WY Working Group has considered, prepared, compiled or provided (as the case may be) the relevant matter or thing.

13.3 CSIRO Contracts with the WY Contracting Entities

- (a) For procurement and contracting opportunities relating to the Project Works notified under clause 13.1(a)(i) and valued by CSIRO between \$0 and \$3,000, CSIRO will first seek an oral or written quote from a known WY Contracting Entity determined by CSIRO to have the requisite skills and experience to participate in the procurement proposal. If the quote is received within CSIRO's time and technical requirements and otherwise meets CSIRO's *value for money* assessment, CSIRO will seek to conclude a contract with the WY Contracting Entity.
- (b) For procurement and contracting opportunities relating to Project Works notified under clause 13.1(a)(i) and valued by CSIRO between \$3,001 and \$250,000:
 - (i) CSIRO will:
 - (A) include in any procurement proposal relating to the relevant Project Works, a request for the proposer to consider and respond with opportunities to bring benefit to the WY Claim Group, including consideration of provision of employment and development opportunities; and
 - (B) first seek written quotes from at least one (1) and up to three (3) known WY Contracting Entities determined by CSIRO to have the requisite skills and experience to participate in the procurement proposal. The WY Claim Group acknowledges that:
 - (I) CSIRO is obliged to seek at least three (3) oral and/or written quotes and may seek one or more quotes from parties other than WY Contracting Entities; and
 - (II) for the avoidance of doubt, the obligation of CSIRO under this clause 13.3(b)(i)(B) does not apply where there is no WY Contracting Entity determined by CSIRO to have the requisite skills and experience to participate in the procurement proposal.

- (ii) If a quote from a WY Contracting Entity is received within CSIRO's time and technical requirements, CSIRO's *value for money* assessment will include evaluation criteria, against which the quote will be assessed, with weights:
 - (A) of at least 5% to the extent to which the quote is superior on a commercial and technical basis as a result of being submitted by a WY Contracting Entity and the WY Contracting Entity's particular local knowledge, availability and proximity to the MRO due to their being a WY Contracting Entity; and
 - (B) of at least 5% to the extent, appropriateness and quality of the opportunities presented with respect to WY Claim Group employment and development.
- (iii) If a quote from a party other than a WY Contracting Entity is received within CSIRO's time and technical requirements, CSIRO's *value for money* assessment will include the evaluation criteria contained in clause 13.3(b)(ii)(A) and (B), against which the quote will be assessed. In assessing that quote, CSIRO will give a zero (0) score against the criteria contained in clause 13.3(b)(ii)(A).
- (c) CSIRO generally undertakes a public tender through the Commonwealth sponsored Austender website for all procurements with a value over \$250,000 and these tenders must comply with the Commonwealth Procurement Guidelines. Where a public tender is undertaken for the Project Works:
 - (i) CSIRO will include in any procurement proposal relating to the Project Works, a request for the proposer to consider and respond with opportunities to bring benefit to the WY Claim Group, including consideration of provision of employment and development opportunities and/or inclusion of one or more WY Contracting Entities as part of a consortium.
 - (ii) If a tender proposal is received from a WY Contracting Entity CSIRO's evaluation of that tender proposal will include evaluation criteria, against which the tender proposal will be assessed, with weights:
 - (A) of at least 5% to the extent to which the tender proposal is superior on a commercial and technical basis as a result of being submitted by a WY Contracting Entity and the WY Contracting Entity's particular local knowledge, availability and proximity to the MRO due to their being a WY Contracting Entity; and
 - (B) of at least 5% to the extent, appropriateness and quality of the opportunities presented with respect to WY Claim Group employment and development,
 - (iii) If a tender proposal is received from a party other than a WY Contracting Entity CSIRO's evaluation of that tender proposal will include the evaluation criteria contained in clause 13.3(c)(ii)(A) and (B), against which the tender proposal will be assessed. In assessing that tender proposal CSIRO will give a zero (0) score against the criteria contained in clause 13.3(c)(ii)(A).
 - (iv) All tenderers must comply with the National Code of Practice for the Construction Industry, where applicable, at the time of tendering or quoting.
- (d) In circumstances not involving a public tender and where a WY Contracting Entity:
 - (i) is the only supplier and there is no reasonable alternative or substitute; or

- (ii) have successfully completed Project Works and subsequent Project Works of a similar nature are required,

CSIRO may seek direct sourcing opportunities with the WY Contracting Entity.

- (e) Recognising that the manner in which procurement laws apply to CSIRO may change over time, CSIRO will be relieved of any obligation under this clause if the relevant action, if undertaken by CSIRO, would be illegal.

13.4 National Indigenous Cadetship Program

- (a) CSIRO will, as soon as practicable after Execution Date and after consultation with the WY Claimants, approach CDEEWR and negotiate for CDEEWR to provide support through the National Indigenous Cadetship Program for up to 4 suitable members of the WY Claim Group to gain cadetships with CSIRO.
- (b) If CSIRO, after approaching CDEEWR in accordance with clause 13.4(a), receives the required full financial support from CDEEWR, CSIRO will offer to suitable members of the WY Claim Group, and fund the reasonable costs associated with agreed work placements during training for:
 - (i) up to two cadetships (at any one time) in radio astronomy or astronomy disciplines for a period of five (5) years from the Execution Date; and
 - (ii) up to two cadetships (at any one time) in other science disciplines of relevance to CSIRO for the term of this agreement.

14. School Education Opportunities

14.1 Educational Resources

- (a) CSIRO will, in consultation with the WY Claimants, develop by 2010 a specific community and school educational resource focused upon astronomy, the MRO and the Project, which will include references to the WY Claim Group's culture, history and involvement in the Project.
- (b) In developing the educational resource referred to in clause 14.1(a), CSIRO will not include any information regarding the WY Claim Group, their culture, history or involvement in the Project, without obtaining the prior consent of the WY Claimants.
- (c) CSIRO will negotiate in good faith with the WY Claimants as to any intellectual property rights in relation to the educational resource.

14.2 School visits

- (a) The State will provide funding to Scitech to enable Scitech to develop and deliver science literacy and education programs for a period of four (4) years from the Commencement Date to the Pia School and, wherever possible, any other school with a significant population of WY Claim Group members.
- (b) CSIRO will organise and fund visits to the MRO by the Pia School at least once per calendar year and will combine any such visit with astronomy and other science education activities.

14.3 Mentoring

- (a) CSIRO will, in consultation with the WY Claimants, develop by September 2009, a mentoring program between suitable CSIRO employees and Wajarri Yamatji students

(including students at an elementary, secondary or tertiary level) who are interested in accessing mentors from CSIRO.

- (b) The costs of the mentoring program referred to in clause 14.3(a) will be funded by CSIRO for a period of five (5) years for an amount up to the value of \$20,000 per annum. Costs of the mentoring program that will be funded by CSIRO may include, but are not limited to, travel and associated costs, costs associated with the use of CSIRO resources and staff and costs incurred by participating Wajarri Yamatji students.

14.4 Provision of Internet

CSIRO will, in consultation with the WY Claimants, by December 2009, fund and provide a VSAT satellite link from Pia Wajarri Community to support additional internet connectivity to the Pia Wajarri Community, including the Pia School.

15. Recognition of the contribution of the WY Claim Group to the Project

15.1 Naming Rights

- (a) CSIRO will request from the WY Claimants a list, in writing, of names for telescopes, buildings, infrastructure or places on the MRO (including, where necessary, an indication of the most appropriate location for the use of any particular name) and, subject to such names being acceptable to CSIRO (which acceptance shall not unreasonably be refused), CSIRO will ensure that such names are used, where appropriate, for telescopes, buildings infrastructure or places on the MRO.
- (b) CSIRO will, in consultation with the WY Claimants, fund and install an appropriate plaque on the MRO that acknowledges the role of the WY Claim Group in enabling the Project.

15.2 Displays of WY Claim Group culture and history

CSIRO will, in consultation with the WY Claimants, fund the design and installation of displays of public information at:

- (a) the MRO Support Facility;
- (b) CSIRO's Australia Telescope National Facility headquarters in Sydney;
- (c) CSIRO offices in Canberra; and
- (d) the MRO Interpretative Centre (should such a centre ever be built),

to provide visitors to those facilities with an outline of the WY Claim Group's culture, history in the region and the role of the WY Claim Group in enabling the Project

15.3 Displays of WY Claim Group Art

- (a) Subject to clause 15.3(b), CSIRO will provide opportunities for members of the WY Claim Group to display artworks that they have created at the MRO Support Facility, CSIRO's Australia Telescope National Facility headquarters in Sydney and CSIRO offices in Canberra.
- (b) CSIRO's obligations pursuant to clause 15.3(a) are subject to CSIRO and any WY Claim Group artist who intends to display their artwork reaching agreement as to the terms and conditions upon which any artwork is to be consigned to, and subsequently displayed by, CSIRO.

- (c) For the avoidance of doubt, CSIRO will not, as part of the terms and conditions of the agreement referred to in clause 15.3(b), agree to:
 - (i) being directly involved in any sale of the artwork displayed or receiving or accounting for any monies paid to purchase any artwork displayed;
 - (ii) taking any responsibility for any loss or damage, not caused by CSIRO, to any artworks provided by any WY Claim Group artist;
 - (iii) any obligation that requires CSIRO to take out any additional insurance policies over and above that already held by CSIRO; and
 - (iv) being in any way responsible for the transport or storage of artworks by WY Claim Group artists.

15.4 Acknowledgement in scientific publications

CSIRO will acknowledge, and through its management of the MRO will request of any person who obtains any data from the Project that they acknowledge, the role of the WY Claim Group by including the following words in any scientific publication or presentation which uses data obtained from the Project:

"This scientific work uses data obtained from the Murchison Radio-astronomy Observatory. We acknowledge the Wajarri Yamatji people as the traditional owners of the Observatory site."

16. Cross Cultural Awareness Training

16.1 Content and Establishment of Cultural Training Programs

- (a) The WY Claimants will, in consultation with the ALO, develop as soon as practicable after the Execution Date:
 - (i) a two (2) day cross cultural awareness training program; and
 - (ii) a half hour cross cultural awareness orientation program,to be delivered to Cultural Training Participants.
- (b) The Cultural Training Programs will aim to:
 - (i) familiarise Cultural Training Participants with WY Claim Group traditions and culture;
 - (ii) promote a knowledge and understanding of, and respect for, WY Claim Group traditions and culture;
 - (iii) assist, where necessary, with compliance with the *Aboriginal Heritage Act 1972* (WA); and
 - (iv) foster good relationships between Cultural Training Participants and the WY Claim Group.
- (c) The WY Claimants must notify CSIRO, in writing, when the Cultural Training Programs have been developed and are ready to be presented to Cultural Training Participants.

16.2 Delivery of Cultural Training Programs

- (a) The delivery of the Cultural Training Programs to Cultural Training Participants will be organised and coordinated by the ALO, or such other person as agreed by CSIRO and the WY Claimants.

- (b) For the avoidance of doubt, where CSIRO and the WY Claimants agree that another person shall perform the obligations of the ALO pursuant to clause 16.2(a) then, where the context allows, a reference in this clause 16 to the ALO shall be taken to be a reference to that other person.
- (c) The half hour cross cultural awareness orientation program referred to in clause 16.1(a)(ii) will, unless otherwise agreed by CSIRO, be delivered in Geraldton by the ALO, or where the ALO is unavailable, by another suitable member of the WY Claim Group.
- (d) The two (2) day cross cultural awareness training program referred to in clause 16.1(a)(i) will, unless otherwise agreed by CSIRO, be delivered in whole, or in part, on the MRO by members of the WY Claim Group agreed by the WY Claimants in consultation with the ALO.
- (e) Following the receipt of the notice referred to in clause 16.1(c), CSIRO will ensure that:
 - (i) all Cultural Training Participants who are engaged to work at the MRO or at CSIRO MRO support offices in Geraldton for a continuous period of three (3) months (or longer) complete the two day cross cultural awareness training program referred to in clause 16.1(a)(i); and
 - (ii) all other Cultural Training Participants complete the half hour cross cultural awareness orientation program referred to in clause 16.1(a)(ii).
- (f) Wherever reasonably possible, CSIRO will attempt to ensure that a Cultural Training Participant completes the required Cultural Training Program prior to commencing work at the MRO or at CSIRO MRO support offices in Geraldton.
- (g) Where a Cultural Training Participant is unable, for any reason, to complete the required Cultural Training Program prior to commencing work at the MRO or at CSIRO MRO support offices in Geraldton, CSIRO will ensure that the required Cultural Training Program is completed at the soonest opportunity thereafter. For the avoidance of doubt, an inability to complete the required Cultural Training Program prior to commencing work at the MRO or at CSIRO MRO support offices in Geraldton does not prevent that Cultural Training Participant from commencing work or accessing the MRO.

16.3 Funding of Cultural Training Programs

- (a) The Non-Native Title Parties will jointly, within twenty (20) Business Days after the Execution Date, provide funding of \$20,000.00 to the WY Claimants to develop the Cultural Training Programs in accordance with clause 16.1(a).
- (b) For the purpose of making the payment referred to in clause 16.3(a):
 - (i) until the Ratification Date has occurred, the payment must be held on trust:
 - (A) for and on behalf of the WY Claimants; and
 - (B) in an account held by the State;

and the WY Claimants hereby direct that:

 - (ii) the State shall pay out of those funds any costs or expenses incurred in developing the Cultural Training Programs in accordance with clause 12.1(a) for which an invoice has been provided to the State by the WY Claimants. The State shall make any such payment to the person or entity specified in the invoice provided by the WY Claimants; and
 - (iii) any remaining funds are to be paid to the Approved Body Corporate within twenty (20) Business Days after the Ratification Date.

- (c) CSIRO will fund the reasonable costs and expenses associated with Cultural Training Participants undertaking the Cultural Training Programs and the participation of members of the WY Claim Group in delivering those Cultural Training Programs.
- (d) For the avoidance of doubt, the funding referred to in clause 16.3(c) refers only to those reasonable costs and expenses that are related to, and actually incurred by, persons participating in, or delivering, the Cultural Training Programs and does not refer to any funding whereby persons participating in, or delivering, the Cultural Training Programs make a profit from that participation or delivery.

17. Aboriginal Liaison Officer

17.1 Appointment

As soon as practicable after the Execution Date, a suitably qualified and experienced member of the WY Claim Group will, in consultation with the WY Claimants, be appointed to be an Aboriginal Liaison Officer (**ALO**) in accordance with the provisions of this clause 17.

17.2 Terms and Conditions of Employment

- (a) The ALO will be an employee of Curtin and seconded to CSIRO for a period of four (4) years (to be calculated from the date on which the ALO is appointed in accordance with clause 17.1).
- (b) The Non-Native Title Parties will jointly provide funding for the four (4) year period referred to in clause 17.2(a) to enable Curtin and CSIRO to fulfill their obligations pursuant to this clause 17.
- (c) If, during the four (4) year period referred to in clause 17.2(a), a person appointed to be the ALO ceases to be the ALO for any reason, a replacement ALO must be appointed.
- (d) The ALO will be employed and seconded on such terms and conditions as agreed by Curtin and the Non-Native Title Parties including, but not limited to;
 - (i) giving effect to this clause 17;
 - (ii) fulfilling the functions of the ALO in accordance with this agreement; and
 - (iii) generally engaging with, and otherwise providing outreach to, the WY Claim Group and other aboriginal people in respect of the MRO and any radio-astronomy activities associated with the MRO, Curtin or CSIRO as considered appropriate by Curtin or CSIRO (as the case may be).

17.3 CSIRO to act where no ALO

If, following the appointment of an ALO:

- (a) the person so appointed:
 - (i) ceases to be the ALO for any reason; or
 - (ii) becomes permanently incapacitated by reason of accident or illness and thereby unable to perform the inherent requirements of the ALO; and
- (b) a replacement ALO has not yet been appointed,

then where the context allows, a reference to any obligation of the ALO in this agreement shall be taken to be a reference to an obligation of CSIRO, until such time as a replacement ALO is appointed, whereby such obligations shall be deemed to be the obligations of the ALO.

18. Liaison Committee

18.1 Establishment of Liaison Committee

- (a) There shall by force of this clause be established a consultative committee between CSIRO and members of the WY Claim Group (**Liaison Committee**).
- (b) The Liaison Committee will continue in existence from the date of its establishment until the date of termination of this ILUA, unless the parties agree in writing to the earlier winding up of the Liaison Committee. For the avoidance of doubt, the Non-Native Parties' obligations as to the funding of the Liaison Committee during its existence are limited to those described in clause 18.8.

18.2 Functions of the Liaison Committee

The functions of the Liaison Committee are to:

- (a) carry out the functions and obligations of the Liaison Committee under this agreement and to maintain liaison and collaboration between the parties about matters under or relating to this agreement;
- (b) receive information on and provide information to the parties, discuss and, where required by this agreement or otherwise considered appropriate by the Liaison Committee, make recommendations to the parties regarding the following:
 - (i) matters under or relating to this agreement;
 - (ii) intended procurement and contracting opportunities for members of the WY Claim Group in relation to the Project Works;
 - (iii) any person or entity that has nominated themselves as a WY Contracting Entity;
 - (iv) employment opportunities for members of the WY Claim Group relating to the Project;
 - (v) education or training opportunities for members of the WY Claim Group that may be available pursuant this agreement or in relation to the Project;
 - (vi) access by members of the WY Claim Group to the MRO pursuant to the Access Protocol;
 - (vii) the implementation or operation of any programmes or projects as part of the Benefits under this agreement;
 - (viii) environmental management of the MRO and the Project;
 - (ix) aboriginal heritage protection; and
 - (x) the delivery, content and organisation of the Cultural Training Programs; and
- (c) receive information from CSIRO regarding:
 - (i) the implementation of the Project; and
 - (ii) Australia's proposal to host the SKA.

18.3 Membership of the Liaison Committee

- (a) The Liaison Committee will be comprised of the following members:
 - (i) the ALO;

- (ii) three (3) persons (in addition to the ALO) nominated by the WY Claim Group, one (1) of whom, after the Ratification Date, must be a director of the Approved Body Corporate; and
 - (iii) two (2) persons nominated by CSIRO.
- (b) The nominees of the WY Claim Group may invite a representative from YMAC to attend some, or all, meetings of the Liaison Committee and, for the purpose of those meetings, the YMAC nominee shall be a member of the Liaison Committee.
- (c) For the purpose of this clause 18, the ALO is a nominee of CSIRO and a reference to the nominees of CSIRO shall be taken to include a reference to the ALO.

18.4 Procedures of the Liaison Committee

- (a) The Liaison Committee shall determine, by consensus, its own procedures for the calling and conduct of its meetings.
- (b) Three (3) members of the Liaison Committee shall form a quorum at any meeting of the Liaison Committee, provided at least two (2) of those members are nominees of the WY Claim Group and at least one (1) is a nominee of CSIRO.

18.5 Secretary

- (a) A person nominated by the Liaison Committee from time to time will act as secretary to the Liaison Committee.
- (b) The secretary is not required to be a member of the Liaison Committee.
- (c) The functions of the secretary to the Liaison Committee are:
 - (i) convening meetings of the Liaison Committee in a timely manner and making arrangements for the attendance of members at the meetings;
 - (ii) drafting minutes of each meeting of the Liaison Committee and circulating such draft minutes to all members of the Liaison Committee within ten (10) Business Days after each meeting of the Liaison Committee; and
 - (iii) maintaining the minutes and other records of the Liaison Committee.

18.6 Recommendations of the Liaison Committee

- (a) Wherever possible a recommendation of the Liaison Committee is to be reached by consensus of the members present at the relevant meeting of the Liaison Committee.
- (b) Any recommendation made by the Liaison Committee shall be non binding upon the parties.

18.7 Frequency of meetings of the Liaison Committee

- (a) A quorum of the Liaison Committee shall meet a minimum of two (2) times per calendar year on the dates and times, and at the locations, determined by the Liaison Committee.
- (b) A meeting of the Liaison Committee may be conducted by telephone where the members consider it would be expedient or appropriate to do so or where the urgency of the matter to be considered would prevent the members from meeting in person.

18.8 Funding of the Liaison Committee

- (a) The Non-Native Title Parties will jointly, for a period of four (4) years commencing on the Execution Date, fund the reasonable costs associated with the operation and administration of the Liaison Committee.

- (b) The funding referred to in clause 18.8(a) will include funding for the reasonable costs associated with the participation of the nominees of the WY Claim Group at up to, but no more than, four (4) meetings of the Liaison Committee per year.

19. Full compensation

19.1 Full and final Compensation

On and from the Execution Date the WY Claimants acknowledge and agree that the Benefits constitute full and final Compensation in relation to:

- (a) the acts consented to, or the validity of which is confirmed, as the case may be, in clause 4; and
- (b) the exercise of any right or obligation created by the acts consented to, or confirmed, as the case may be, in clause 4.

19.2 No Compensation claim

The WY Claimants:

- (a) release the Non-Native Title Parties from any liability for Compensation, other than compensation agreed under this agreement, in relation to the acts consented to or the validity of which is confirmed in clause 4, or the exercise of any right or obligation created by such acts; and
- (b) agree that:
 - (i) they will not make any claim for Compensation under the NTA, the LA Act or otherwise, nor will they authorise any other person to bring such a claim on their behalf, against the Non-Native Title Parties for the effects of, or the exercise of any right or obligation created by, the acts consented to or the validity of which is confirmed in clause 4 on any native title rights and interests of the WY Claim Group; and
 - (ii) if the WY Claimants make a claim for Compensation in breach of paragraph 19.2(b)(i), the Non-Native Title Parties may each plead the terms of this agreement in bar of that claim.

19.3 Effect of termination

Termination of this agreement or its removal from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA does not affect the operation of this clause 19.

20. Indemnity and release

20.1 Indemnity and release

If there is an approved determination of native title under which native title is determined to exist or to have existed in the MRO and the native title holders are, or include, persons other than the WY Claim Group, then:

- (a) subject to clause 20.1(c) the WY Claimants severally indemnify the Non-Native Title Parties in respect of:
 - (i) any determinations of Compensation payable by the Non-Native Title Parties:
 - (A) made by a court of competent jurisdiction; or

- (B) otherwise agreed with the consent of the WY Claimants; and
 - (ii) any legal costs or expenses,
- arising from any claim for Compensation by the native title holders in respect of those acts described in clause 4 (**Indemnified Amount**); and
- (b) in consideration of this agreement, the WY Claimants and YMAC release and discharge the Non-Native Title Parties in respect of any loss or damage suffered or incurred by any one or more of the WY Claimants or YMAC arising from any claim for Compensation by the native title holders in respect of any of those acts described in clause 4.
 - (c) The rights of the Non-Native Title Parties in respect of the Indemnified Amount are limited to taking the action specified in clause 20.1(d).
 - (d) A Non-Native Title Party may recover the Indemnified Amount from the person or persons to whom a monetary payment under clause 12.2(a) of this agreement (**Monetary Payment**) was paid, including any trustee in relation to that Monetary Payment, as a debt owing by that payee or trustee to that Non-Native Title Party. Where the Indemnified Amount exceeds the Monetary Payment the rights of the Non-Native Title Parties are limited to recovering the Monetary Payment.

20.2 Effect of termination

Termination of this agreement or its removal from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA does not affect the operation of this clause 20.

21. Environmental protection

- (a) CSIRO will develop, operate and undertake the Project in accordance with all Environmental Laws.
- (b) CSIRO will develop, operate and undertake the Project in accordance with all Environmental Approvals.
- (c) CSIRO will comply with all environmental obligations in the Crown Lease.
- (d) CSIRO will provide the Liaison Committee with a copy of any application for an Environmental Approval in connection with the Project.
- (e) CSIRO will provide the Liaison Committee with a copy of any notification given by CSIRO to the State pursuant to clause 7 of the Crown Lease (Lessee's Environmental Obligations), provided that the provision of such notification to the Liaison Committee is not in breach of any Environmental Law or Environmental Approval or would otherwise be illegal or contrary to CSIRO's rights and obligations under the Crown Lease or otherwise. Where CSIRO is unable to provide the Liaison Committee with a copy of the notification given to the State, CSIRO will inform the Liaison Committee of the fact that a notification has been provided to the State, the nature of the notification and the reasons as to why it cannot be provided to the Liaison Committee.
- (f) Subject to the terms and conditions of the Crown Lease, CSIRO will progressively rehabilitate areas that it has used and that become no longer required for the Project.
- (g) CSIRO shall, and shall procure that its employees, contractors and agents also shall, limit, so far as is reasonably practicable, the use of tracks, fences and fires.

- (h) The Liaison Committee will be allowed to inspect the MRO, and associated environmental management activities, at least twice per calendar year.
- (i) Nothing in this agreement limits or prevents the WY Claim Group from reporting breaches of Environmental Laws or Environmental Approvals arising from the Project, or Project Works, or on the MRO, to the relevant statutory authorities.

22. Aboriginal heritage protection

22.1 CSIRO to comply with Heritage Protection Protocol

Subject to clause 22.2 and 22.3, prior to carrying out any Development Activity within the MRO for the development of the ASKAP or any other aspect of the Project for which CSIRO is responsible, CSIRO will comply with the Heritage Protection Protocol.

22.2 Change in Heritage Provider

- (a) The parties acknowledge that the WY Claim Group may, in the future, wish to appoint a Heritage Provider to undertake or perform some or all of the rights and obligations of YMAC under the Heritage Protection Protocol.
- (b) If the WY Claim Group wish to authorise a Heritage Provider to act as their agent for the purposes of undertaking or performing some, or all of, the rights and obligations of YMAC under the Heritage Protection Protocol the WY Claimants must give written notice to CSIRO containing:
 - (i) a statement that the WY Claim Group wish to authorise a nominated Heritage Provider as their agent;
 - (ii) details of the rights and obligations of YMAC under the Heritage Protection Protocol that the WY Claim Group wish to be performed by the Heritage Provider; and
 - (iii) the name and all necessary business details of the Heritage Provider, including a contact person and number and a resume of its experience in conducting aboriginal heritage surveys.
- (c) If the WY Claimants provide notice to CSIRO pursuant to clause 22.2(b) that they wish to appoint a Heritage Provider, CSIRO, the Heritage Provider and, to the extent necessary, YMAC must promptly execute an aboriginal heritage protection agreement in the same terms as the Heritage Protection Protocol (with any necessary modifications required to replace, where appropriate, references to "YMAC" with references to the "Heritage Provider" and any other amendments which are consequential to that modification).
- (d) Upon execution of the aboriginal heritage protection agreement referred to in clause 22.2(c) CSIRO:
 - (i) subject to items 11(b) and 12 of the Heritage Protection Protocol, is no longer required to comply with the provisions of the Heritage Protection Protocol; and
 - (ii) will comply with the provisions of aboriginal heritage protection agreement executed in accordance with clause 22.2(c) prior to carrying out any Development Activity within the MRO for the development of the ASKAP or any other aspect of the Project for which CSIRO is responsible and to which this clause 22 applies.

22.3 Development Activity to which this clause does not apply

- (a) This clause 22 does not apply to any Development Activity within the MRO where:
- (i) the proposed Development Activity; or
 - (ii) the area on which the Development Activity is proposed to be conducted,
- has been the subject of a separate heritage agreement or a previous heritage survey entered into, or conducted, (as the case may be) by CSIRO or the State's Department of Industry and Resources with, or on behalf of, the WY Claim Group or the WY Claimants prior to the Commencement Date.
- (b) For the avoidance of doubt, the reference to a separate heritage agreement in clause 22.3(a) includes, but is not limited to:
- (i) the heritage agreement entered into between the State's Department of Industry and Resources and YMAC (as authorised representative of the WY Claimants) in May 2007 (under cover letter from YMAC dated 23 May 2007) for the purpose of conducting a heritage survey over an area of the MRO described in Schedules 2 and 3 of that heritage agreement. The heritage survey the subject of that heritage agreement was conducted between 21 May 2007 and 26 May 2007; and
 - (ii) the heritage agreement entered into between CSIRO and Danconsult (as agent for the WY Claim Group and the WY Claimants) on 19 January 2009 for the purpose of conducting a heritage survey over an area of the MRO described in Schedule 1 of that heritage agreement. The heritage survey the subject of that heritage agreement was conducted between 18 January 2009 and 20 January 2009.

23. Access

23.1 Access for members of WY Claim Group

The parties acknowledge that the members of the WY Claim Group shall continue to have access to the MRO, except where CSIRO restricts such access for any of the following purposes:

- (a) bona fide safety or security reasons or concerns;
- (b) the uninterrupted development, operation or undertaking of the Project, or any part of it, by CSIRO, including for the purpose of preserving radio-quiet within the MRO; or
- (c) as required by or under any law.

23.2 Access Protocol

The parties will comply with the Access Protocol.

24. Variation

24.1 Variation of this agreement

This agreement may not be varied unless the variation is effected in writing executed by all of the parties to this agreement.

24.2 Variation of agreement once registered on ILUA Register

- (a) If this agreement is registered on the ILUA Register the parties each agree that they will not, without the consent in writing of each of the other parties, make any application to revoke or vary the registration of this agreement on the ILUA Register.
- (b) If details of this agreement are entered on the ILUA Register, then any variation of this agreement which amends the details on the ILUA Register only takes effect upon the entry of those amended details on the ILUA Register.
- (c) If details of this agreement are entered on the ILUA Register, and the parties have agreed, in accordance with this agreement, to vary this agreement, then the parties each agree to do all things necessary to vary the details of this agreement as entered on the ILUA Register including, if necessary, having this agreement removed from the ILUA Register and replaced with a varied agreement.

25. Default

- (a) If any party believes that another party has defaulted in fulfilling an obligation arising from this agreement, then the first party shall immediately notify the defaulting party, specifying the nature of the default and what action the notifying party requires.
- (b) If the alleged defaulting party:
 - (i) by written notice denies that it has committed a default; or
 - (ii) has not rectified the alleged default within five (5) Business Days, or such longer time as specified in the notice of default,

and the alleged default is a not matter referred to in clause 26.1(b), then either party may invoke the dispute resolution provisions of clause 26.

- (c) For the avoidance of doubt, a party must comply with the dispute resolution provisions of clause 26.2 to 26.4 in respect of an alleged default to which clause 25(b) applies before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

26. Dispute resolution

26.1 No arbitration or court proceedings

- (a) If a dispute arises under this agreement (including, for the avoidance of doubt, a dispute arising in respect of default to which clause 25(b) applies) and is a not matter referred to in clause 26.1(b) (**Dispute**), a party must comply with clause 26.2 to 26.4 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) This clause 26 does not apply to any dispute which arises under:
 - (i) clause 27 of this agreement (Negotiations for SKA project);
 - (ii) item 12 of the Heritage Protection Protocol; or
 - (iii) the Access Protocol, unless the item 8(d) of the Access Protocol applies.

26.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

26.3 Parties to resolve Dispute

During the ten (10) Business Days after a notice is given under clause 26.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, any party to the Dispute may request that the Dispute be referred to a mediator and, if a party so requests, the Dispute must be referred to mediation in accordance with clause 26.4.

26.4 Mediation

- (a) If the parties to the Dispute cannot agree on a mediator within five (5) Business Days after a request under clause 26.3, the chairman of LEADR or the chairman's nominee will appoint a mediator at the request of either party.
- (b) The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.
- (c) Any information or documents disclosed by a party under this clause 26:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each party to a Dispute must pay its own costs of complying with this clause 26. The parties to the Dispute must equally pay the costs of any mediator.
- (e) The parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the parties fail to achieve a resolution of the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the parties, any party may take such action as it considers appropriate, including (subject to clause 26.5) referring the matter to arbitration or commencing legal proceedings.

26.5 Arbitration

- (a) If the parties to a Dispute have complied with clauses 26.1 to 26.4 then, if all those parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 1984* (WA).
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the parties.
- (c) The parties will appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the parties fail to agree on a person to be the arbitrator under clause 26.5(c) then the parties must request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.

26.6 Breach of this clause

If a party to a Dispute breaches clauses 26.1 to 26.4, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

27. Negotiations for SKA project

- (a) If the Non-Native Title Parties or any of them propose to do an act to secure an estate or interest in any of the land and waters the subject of the WY Claim for the purpose of SKA (**SKA Proposal**), then the Non-Native Title Parties concerned shall, as soon as possible,

notify the WY Claimants of the SKA Proposal and the parties concerned agree to negotiate in good faith, including as to consideration, for a period of up to six (6) months, or such further period as the parties may agree within the six (6) months, with a view to reaching an agreement concerning the SKA Proposal.

- (b) If at the end of the six (6) months period or further agreed period referred to in clause 27(a) no agreement has been made in relation to the SKA Proposal, the Non-Native Title Parties shall be free to undertake the SKA Proposal if they so decide, and any rights that the WY Claimants may have at law in regard to the SKA Proposal or any processes in relation to it shall not in any way be affected.
- (c) Clauses 25 (Default) and 26 (Dispute Resolution) do not apply to this clause 27.

28. Confidentiality

For the avoidance of doubt, from Execution Date, nothing in this agreement shall be considered confidential.

29. Notices and other communications

29.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

29.2 Effective on receipt

A Notice given in accordance with clause 29.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day in the place that it is received, the Notice is taken to be received at 9.00 am on the next Business Day.

30. Goods and services tax

30.1 Interpretation

Any reference in this clause 30 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the contrary intention appears, a reference to that term as defined or used in that Act.

30.2 Consideration is GST exclusive

Unless otherwise indicated, all consideration for any supply made under this agreement is exclusive of any GST imposed on the supply.

30.3 GST payable

- (a) Subject to clauses 30.3(b) and 30.3(c), if one party (supplier) makes a taxable supply under this agreement to another party (recipient), the recipient (on receipt of a tax invoice from the supplier) must pay, without setoff, an additional amount to the supplier equal to the GST imposed on the supply.
- (b) If one party (supplier) makes a taxable supply under this agreement to another party (recipient) the consideration for which is a taxable supply by the recipient to the supplier in return, the supplier and the recipient must agree the same GST inclusive market value for their supplies and must each provide a tax invoice to the other for those supplies respectively.
- (c) If one party (supplier) makes a taxable supply under this agreement to another party (recipient) the consideration for which is a supply by the recipient which is not taxable, no additional amount is payable by the recipient to the supplier under clause 30.3(a) unless the recipient is entitled to an input tax credit for the taxable supply.
- (d) No party may claim or retain from the other party any amount in relation to a supply made under this agreement for which the first party can obtain an input tax credit or decreasing adjustment.

31. Costs and duties

31.1 Costs

The State agrees to pay the WY Claimants' and YMAC's costs of preparing and executing this agreement in accordance with the funding agreement made between the State and YMAC on 25 April 2009.

31.2 Duties, taxes and government charges

Subject to clause 30, the State must pay all duties or taxes of a similar nature on and in relation to:

- (a) this agreement;
- (b) any instrument, document or transaction contemplated by this agreement; and
- (c) any instrument or document required under any relevant law in connection with any transaction contemplated by this agreement,

even if another party is primarily liable for payment of the duty.

31.3 Recovery

If the State fails to perform its obligations under this clause any other party may pay the duties or other taxes of a similar nature and recover the amount paid from the State as a debt due on demand.

31.4 Effect of termination

Termination of this agreement or its removal from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA does not affect the operation of this clause 31.

32. Deemed consultation and consent

- (a) Prior to the Ratification Date, for the purpose of clauses 13.4, 14, 15, 16 and 17:
 - (i) a requirement that a Non-Native Title Party consult or negotiate with or request anything from the WY Claimants shall be deemed to have been met where the WY Working Group has been consulted or negotiated with or presented with a request (as the case may be) in respect of the relevant matter; and
 - (ii) a requirement that a Non-Native Title Party obtain the consent or agreement of the WY Claimants shall be deemed to have been met where the WY Working Group provides written notice that the WY Working Group has passed a resolution (duly recorded in the minutes of the WY Working Group) consenting or agreeing to the relevant matter.
- (b) After the Ratification Date, for the purpose of clauses 13.4, 14, 15, 16 and 17:
 - (i) a requirement that a Non-Native Title Party must consult or negotiate with or request anything from the WY Claimants shall be deemed to have been met where the board of directors of the Approved Body Corporate has been consulted or negotiated with or presented with a request (as the case may be) in respect of the relevant matter; and
 - (ii) a requirement that a Non-Native Title Party obtain the consent or agreement of the WY Claimants shall be deemed to have been met where the Approved Body Corporate provides notice, in writing, to the Non-Native Title Party that, in accordance with the constitution of the Approved Body Corporate, the board of directors of the Approved Body Corporate has consented or agreed to the relevant matter.

33. General

33.1 Entire agreement

As at the Commencement Date this agreement constitutes the entire agreement between the parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

33.2 Severability

- (a) Subject to clause 33.2(b), if any provision of this agreement is void, voidable by any party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it can not be so read down, the provision (or where possible the offending words), shall 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 will continue in full force and effect.
- (b) If, for any reason, clauses 2 or 4 of this agreement are void, voidable by any party, unenforceable or illegal according to the law in force in the State of Western Australia then the Non-Native Title Parties may, by notice to the WY Claimants, terminate this agreement.
- (c) If this agreement is terminated in accordance with clause 33.2(b) then the consequences contained in clause 2.5 apply.

33.3 Waiver

A right or power under this agreement shall only be deemed to be waived by notice in writing, signed by the party waiving the right or power, and:

- (a) no other conduct of a party, (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one party to another party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasions by a party does not operate as a waiver of that right or power if it arises again in the future or prejudices that party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

33.4 Further action

Each party must use its best efforts to do all things necessary or desirable to give full effect to this agreement.

33.5 Governing law and jurisdiction

- (a) This agreement is governed by the law applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

33.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts, taken together, will constitute the one instrument. A party may execute this agreement by signing any counterpart.