

Schedule 9 – Ratification Deed

THIS DEED OF RATIFICATION is made on the day of 200

BETWEEN:

THE STATE OF WESTERN AUSTRALIA care of its Office of Native Title, Level 2, 197 St Georges Terrace, Perth, Western Australia (**State**)

and

THE MINISTER FOR LANDS, a body corporate continued under section 7(1) of the *Land Administration Act 1997* (WA), care of 1 Midland Square, Midland, WA, 6936

and

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 (**CSIRO**)

and

THE COMMONWEALTH OF AUSTRALIA, represented by the Department of Innovation, Industry, Science and Research, of GPO Box 9389 Canberra ACT 2601 (**Commonwealth**)

and

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 care of YMAC of 5th Floor, 256 Adelaide Terrace, Perth, WA, 6000 (**WY Claimants**)

and

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 (**YMAC**)

and

[APPROVED BODY CORPORATE] (ABN [*insert ABN*]) of [*insert address*] (**Approved Body Corporate**)

and

[WY TRUSTEE COMPANY] (ABN [*insert ABN*]) of [*insert address*] (**WY Trustee Company**)

Recitals

- A This Deed is made pursuant to the Murchison Radio-astronomy Observatory Indigenous Land Use Agreement (**MRO ILUA**) between the State, the Minister for Lands, CSIRO, the Commonwealth, YMAC and the WY Claimants executed on *[insert date]* and registered on the ILUA Register on *[insert date]*.
- B The WY Claimants referred to in recital A comprise the registered native title claimants of the WY Claim.
- C The MRO ILUA required the establishment of the Approved Body Corporate and the WY Trustee Company to receive certain rights and perform certain obligations foreshadowed under the MRO ILUA.
- D The Approved Body Corporate was registered by the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) on *[insert date]* in accordance with the requirements of clause 8.1(b)(i) of the MRO ILUA.
- E In accordance with clause 8.1(c) of the MRO ILUA, the name of the Approved Body Corporate chosen by the WY Claim Group was “[insert name]”.
- F *[Insert name]* is to be the Approved Body Corporate for the purposes of the MRO ILUA.
- G The WY Trustee Company was registered as a public company limited by guarantee by ASIC under the *Corporations Act 2001* (Cth) on *[insert date]* in accordance with the requirements of clause 9.1(b) of the MRO ILUA.
- H In accordance with clause 9.1(c) of the MRO ILUA, the name of the WY Trustee Company chosen by the WY Claim Group was “[insert name]”.
- I *[Insert name]* is to be the WY Trustee Company for the purposes of the MRO ILUA
- J Clause 11.2(a)(i) of the MRO ILUA provides that as soon as possible after the Approved Body Corporate and the WY Trustee Company are established, the WY Claimants shall procure the Approved Body Corporate and the WY Trustee Company to enter into a Ratification Deed.
- K This Deed is the Ratification Deed contemplated under clause 11.2 of the MRO ILUA.

The parties agree as follows:

1. Defined Terms and Interpretation

1.1 Defined Terms

In this document:

Deed means this Deed.

MRO ILUA means Murchison Radio-astronomy Observatory Indigenous Land Use Agreement between the State, the Minister for Lands, CSIRO, the Commonwealth, YMAC and the WY Claimants executed on *[insert date]* and registered on the ILUA Register on *[insert date]*.

Year of Income means each period of 12 months ending on 30 June in each year but the period from the date on which this Deed is made until 30 June next occurring shall be deemed to be a Year of Income.

1.2 Terms defined in the MRO ILUA

Unless the context otherwise requires, terms which are defined in the MRO ILUA have the same meaning when used in this Deed.

1.3 Interpretation

This Deed shall be interpreted in accordance with clause 1.2 of the MRO ILUA as if references in clause 1.2 to the MRO ILUA were references to this Deed.

2. Ratification of the MRO ILUA

2.1 Assumption of Rights and Liabilities

- (a) On and from the date of this Deed the parties agree that:
 - (i) the Approved Body Corporate:
 - (A) will, under this Deed, have the rights and owe the obligations of the Approved Body Corporate in accordance with the terms of the MRO ILUA as if it was a party to the MRO ILUA;
 - (B) subject to clauses 2.2(b) and 2.1(a)(i)(C), and where the context allows, will, under this Deed, have the same rights and owe the same obligations as the WY Claimants under the MRO ILUA as if references in the MRO ILUA to the WY Claimants were references to the Approved Body Corporate and references in the MRO ILUA to the parties included the Approved Body Corporate instead of the WY Claimants;
 - (C) will not, under this Deed, obtain any rights or assume any obligations of the WY Claimants as if it were a party to the MRO ILUA which accrued, arose or were due to be completed before the date of this Deed; and
 - (D) must, under this Deed, comply with, and be bound by, all the terms of the MRO ILUA and is entitled to enforce the terms of the MRO ILUA against the parties to the MRO ILUA as if it were a party to the MRO ILUA; and
 - (ii) the Non-Native Title Parties:
 - (A) subject to clause 2.2(b), must, under this Deed, comply with the MRO ILUA as if references in the MRO ILUA to the WY Claimants were references to the Approved Body Corporate and references in the MRO ILUA to the parties included the Approved Body Corporate instead of the WY Claimants;
 - (B) will, under this 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 the MRO ILUA; and
 - (C) will, under this Deed, be entitled to enforce the terms of the MRO ILUA against the Approved Body Corporate as if the Approved Body Corporate were a party to the MRO ILUA.
- (b) For the avoidance of doubt, the parties agree and confirm that, in accordance with clause 11.2(d)(ii) of the MRO ILUA:
 - (i) subject to clauses 11.2(e), 11.2(d)(ii)(B) and 11.2(d)(ii)(C) of the MRO ILUA, the Non-Native Title Parties cease to owe any obligation to the WY Claimants under the MRO ILUA 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 the MRO ILUA before the date of this Deed;

- (ii) the WY Claimants remain entitled to any right and retain any obligation which accrued, arose or was due to be completed under the MRO ILUA before the date of this Deed;
- (iii) the WY Claimants are not entitled to any right and shall not have any obligation under the MRO ILUA in respect of anything done or not done on or after the date of this Deed 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
- (iv) subject to clauses 11.2(d)(ii)(B) and 11.2(d)(ii)(C) of the MRO ILUA, the WY Claimants will not, and are not to be 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 the MRO ILUA and the MRO ILUA may be pleaded as a bar to any such proceedings.

2.2 Incorporation of the MRO ILUA

- (a) For the purpose of this clause 2, the terms of the MRO ILUA (which are annexed to this Deed) are, with the exception of clause 30, incorporated by reference into this Deed as if restated in full.
- (b) 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) of the MRO ILUA, to the WY Claimants are not, by operation of clause 2, to be read under this 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) of the MRO ILUA to the WY Claimants are, despite the operation of clause 2, to be read under this 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) of the MRO ILUA to the parties are not, by operation of clause 2, to be read under this 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) of the MRO ILUA to the parties are, despite the operation of clause 2, to be read under this Deed as being inclusive of both the WY Claimants and the Approved Body Corporate.
- (c) For the avoidance of doubt, nothing in this Deed is intended to be, or has the effect of being, a variation or amendment to the MRO ILUA or is intended to make, or has the

effect of making, the Approved Body Corporate or the WY Trustee Company a party to the MRO ILUA.

3. Warranties

3.1 Approved Body Corporate Warranties

The Approved Body Corporate represents and warrants that:

- (a) it is a corporation duly incorporated under the CATSI Act;
- (b) it has full power and authority to enter into this Deed and to perform its obligations under this Deed and the MRO ILUA; and
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Deed, and the performance of the MRO ILUA, in accordance with their terms.

3.2 WY Trustee Company Warranties

The WY Trustee Company represents and warrants that:

- (a) it is a corporation duly incorporated under the Corporations Act;
- (b) it has full power and authority to enter into this Deed and to perform its obligations under this Deed and the MRO ILUA;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
- (d) it has full power and authority to act as trustee for the WY Trusts in accordance with the WY Trust Deeds.

3.3 Non- Native Title Parties' reliance in such warranties

The Approved Body Corporate and the WY Trustee Company 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 Deed.

4. Provision of documents and records

4.1 Approved Body Corporate

For a period of six (6) Years of Income from the date of this Deed, the Approved Body Corporate must, as soon as practicable after the close of each Year of Income and, in any event, no later than twenty (20) Business Days after the receipt or provision (as the case may be) of the documents referred to in clause 4.1(a)-(c), provide the State and the Liaison Committee with:

- (a) any information or documentation required by CATSI Act to be prepared or provided to the CATSI Registrar under the CATSI Act during that Year of Income;
- (b) the audited financial accounts of the Approved Body Corporate prepared by a Qualified Accountant in accordance with Australian Accounting Standards for that Year of Income including a balance sheet, a statement of income and expenditure and a list of assets; and
- (c) a copy of a report prepared by an Approved Auditor in accordance with Australian Auditing Standards as to whether the financial accounts of the Approved Body Corporate for that Year of Income are fair and accurate according to Australian Accounting Standards.

4.2 WY Trustee Company

- (a) Subject to clause 4.2(b), the WY Trustee Company must, for each Year of Income, provide the Approved Body Corporate, the State and the Liaison Committee with any information or documentation:
 - (i) required by the Corporations Act to be prepared or otherwise provided to ASIC during that Year of Income in relation to the WY Trustee Company, including, without limitation financial reports, directors' reports and auditors' reports. Any such information or documentation is to be provided as soon as soon as practicable after the close of each Year of Income and, in any event, no later than twenty (20) Business Days after the preparation or provision (as the case may be) of that information or documentation; and
 - (ii) required by the WY Trust Deeds to be provided to the Approved Body Corporate, the State or the Liaison Committee. Any such information or documentation is to be provided as, and when, and in the manner set out in the WY Trust Deeds.
- (b) The obligation of the WY Trustee Company to provide the documents listed in clause 4.2(a) to the State and the Liaison Committee is for a period of six (6) Years of Income from the date of this Deed only.

5. Provision of funding to the WY Trustee Company

The Approved Body Corporate must, out of the funding provided by the Non-Native Title Parties pursuant to clause 10(a) of the MRO ILUA, provide a sufficient amount of monies to the WY Trustee Company to enable the WY Trustee Company to operate and administer the WY Trusts and comply with its obligations as trustee of the WY Trusts.

6. Goods and services tax

6.1 Interpretation

Any reference in this clause 1 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.

6.2 Consideration is GST exclusive

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

6.3 GST payable

- (a) Subject to clauses 6.3(b) and 6.3(c), if one party (supplier) makes a taxable supply under this Deed 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 Deed 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 Deed 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 6.3(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 Deed for which the first party can obtain an input tax credit or decreasing adjustment.

7. General

7.1 Address of the Approved Body Corporate

For the purpose of the MRO ILUA the address of the Approved Body Corporate to which all Notices must be sent is:

[insert Approved Body Corporate name]

Address: *[insert address]*

Fax Number: *[insert fax number]*

Telephone: *[insert telephone number]*

Attention: *[insert name]*

7.2 Costs

Each party will pay its own legal and other costs and expenses in connection with the preparation and completion of this Deed, except as otherwise agreed.

7.3 Duties

- (a) Subject to clause 6, the State must pay all duties or other taxes of a similar nature on and in relation to:

- (i) this Deed;
- (ii) any instrument, document or transaction contemplated by this Deed; and
- (iii) any instrument or document required under any relevant law in connection with any transaction contemplated by this Deed,

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

- (b) If the State fails to perform its obligations under this clause 7.3 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.

7.4 Variation

No modification, amendment or other variation of this Deed shall be valid or of any force unless agreed in writing and executed by all parties to this Deed.

7.5 Further action

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

7.6 Governing law and jurisdiction

- (a) This Deed 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.

7.7 Counterparts

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

EXECUTED as a Deed.