

Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome

Yawuru Native Title Holders Aboriginal Corporation RNTBC

Nyamba Buru Yawuru Ltd

State of Western Australia

Minister for Lands

Conservation Commission of Western Australia

Conservation and Land Management Executive Body

Shire of Broome

Yawuru Prescribed Body Corporate Broome Indigenous Land Use Agreement

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This Deed is made on the 25th day of February 2010

Parties

- Name Yawuru Native Title Holders Aboriginal Corporation RNTBC ICN 7033
(**Yawuru RNTBC**)
- Name Nyamba Buru Yawuru Ltd ABN 87 137 306 917 (**Nyamba Buru Yawuru**)
- Name The State of Western Australia, through its Department of the Attorney
General (**State**)
- Name Minister for Lands, a body corporate continued under section 7(1) of the
Land Administration Act 1997 (WA) (**Minister for Lands**)
- Name Conservation Commission of Western Australia, a body corporate
established under section 18 of the *Conservation and Land Management Act
1984* (WA) (**Conservation Commission**)
- Name Conservation and Land Management Executive Body, a body corporate
established under Section 36 of the *CALM Act* (**Executive Body**)
- Name Shire of Broome, a local government under the *Local Government Act 1995*
(WA) (**Shire**)

Recitals

- A The State and the Yawuru Community have negotiated this indigenous land use agreement under the *Native Title Act 1993* (Cth) to give expression to the determination of native title by the Federal Court of Australia and to allow for the future development of Broome whilst also recognising and protecting Aboriginal heritage and the environment and providing compensation to the Yawuru Community for the loss and impairment of native title rights and interests.
- B Between 2 February 1994 and 1 December 1997, the Yawuru Community filed nine native title determination applications to land and waters in and around Broome. On 21 September 1999 eight of the applications were combined by an order of the Federal Court. Under that order the native title determination application in proceeding WAD 6006 of 1998 (Rubibi) was to be the lead application.
- C On 29 September 2004, a further native title determination application was lodged by the Yawuru Community. That application, WAD 223 of 2004 (Rubibi #17), was heard together with proceeding WAD 6006 of 1998.
- D Evidence was heard on country by Justice Merkel in 2003 and 2004, and on 28 April 2006 a determination was made in favour of the Yawuru Community as native title holders to a large part of the area covered by applications WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17). In some areas the Judge found that the Yawuru Community had the right to possession and occupation as against the whole world, in other areas the rights and interests were non-exclusive.
- E On 2 May 2008, the Full Court of the Federal Court of Australia, in the *State of Western Australia - v - Sebastian* [2008] FCAFC 65, upheld Justice Merkel's determination in favour of the Yawuru Community and recognised additional areas where native title rights and interests were found to exist.
- F On 15 August 2008, the State filed an Application for Special Leave to Appeal (proceeding No. P30 of 2008) in the High Court of Australia seeking leave to appeal an aspect of the decision of the Full Court of the Federal Court of Australia. The State discontinued its application on 29 July 2009.
- G The Determination over Broome and its environs is entered on the National Native Title Register maintained by the National Native Title Tribunal, recording the date of determination as 28 April 2006.
- H Following the Determination on 28 April 2006, the Yawuru Community and the State commenced negotiations to resolve the issues associated with the Determination and associated matters.
- I On 31 May 2007, the State and the Yawuru Community entered into the Broome Negotiation Protocol and Broome Heritage Agreement, which together governed the global negotiations.

- J On 6 April 2009, an In Principle Agreement between Yawuru RNTBC and the State was signed. The In Principle Agreement forms the basis of this Agreement and the Area Agreement, which the Parties have agreed to enter into in order to:
- (i) give expression to the native title rights and interests of the Yawuru Community;
 - (ii) provide for the protection of Aboriginal heritage in particular Yawuru Aboriginal heritage;
 - (iii) apply the non-extinguishment principle of the *NTA* wherever possible to land transfers and land reservations;
 - (iv) provide a package in consideration of and as full and final compensation for agreement to the future acts contemplated and surrender of native title and in respect of impairment and extinguishment of native title;
 - (v) facilitate the future development of land in Broome for residential, infrastructural and industrial purposes, by both the Yawuru Community and by the State;
 - (vi) establish conservation and marine parks in and around Broome jointly managed by Yawuru RNTBC, the Shire of Broome and the State (dependent upon geographical area) to provide for the protection of the environment and Aboriginal heritage;
 - (vii) provide that the 'right to negotiate' procedure of the *NTA* does not apply to the doing of the future acts contemplated by this Agreement; and
 - (viii) confirm the validity of the grant of 199 freehold titles in the area known as Neighbourhood 5A.
- K Yawuru RNTBC and the State intend that this Agreement and the Area Agreement will provide the following benefits to members of the Yawuru Community:
- (i) social and cultural maintenance and enrichment;
 - (ii) the right to practise and sustain native title rights and interests;
 - (iii) just terms compensation for loss, diminution and impairment of native title rights and interests;
 - (iv) development of economic and commercial capability and capacity; and
 - (v) promotion of economic independence.
- L This Agreement is a body corporate agreement for the purposes of sections 24BA to 24BI of the *NTA* and regulation 6 of the ILUA Regulations. The Determination Area is the area to which this Agreement applies and is set out in Schedule 2.
- M The Parties intend this Agreement to be registered on the ILUA Register. Once registered on the ILUA Register, this Agreement will bind all holders of native title within the Determination Area pursuant to section 24EA(1)(b) of the *NTA*.
- N Yawuru RNTBC is the registered prescribed body corporate for the Determination Area pursuant to Orders made by the Federal Court of Australia on 8 September 2008, in proceedings WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17).

- O Nyamba Buru Yawuru is a body corporate incorporated under the *Corporations Act*, whose purpose is to receive and manage assets and monies on behalf of Yawuru RNTBC provided under this Agreement.

- P The Minister for Lands is responsible for the administration of the *LA Act* and as such is responsible for the grant of land titles and creation of reserves under the *LA Act*.

- Q The Conservation Commission is a body corporate established under section 18 of the *CALM Act* whose function is, *inter alia*, to develop management plans and submit them to the Minister for Environment and to accept directions from the Minister for Environment in the performance of its functions.

- R The Shire of Broome is a local government established under section 2.5 of the *LG Act* whose functions include providing good government for residents of the Shire and making local laws to enable it to perform its functions under the *LG Act*.

Agreed terms

The Parties covenant and agree as follows:

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Adjacent Areas means the State Adjacent Areas and the Yawuru Adjacent Areas being together all of those areas described in Schedule 9A.

Agreement means this indigenous land use agreement entered into pursuant to Part 2, Division 3, Subdivision B of the *NTA*.

Area Agreement means the Yawuru Area Agreement Indigenous Land Use Agreement - Broome entered into pursuant to Part 2, Division 3, Subdivision C of the *NTA*.

Assistance Agreement means the agreement between Yawuru RNTBC, the Executive Body and the Shire, a copy of which is annexed to Schedule 9, entered into under Section 33(1)(f) of the *CALM Act*.

Authorisation means any approval, authorisation, consent, exemption, licence, notarisation, registration or waiver however described and any renewal of or variation to any of them.

Business Day means:

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

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

CALM Act means *Conservation and Land Management Act 1984*.

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

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

Coastal Park means that part of the Conservation Estate described in clause 11.1(a), (b) and (c).

Compensation means monetary payments, grants of interests in land and other benefits to be provided to Yawuru RNTBC and Nyamba Buru Yawuru under this Agreement in consideration of and in full and final compensation for Yawuru RNTBC's agreement to the transfer of land parcels and any extinguishment, diminution, impairment or other effect on any native title rights or interests hereunder.

Conservation Estate means the areas described in clause 11.1 together with the areas described in clause 10.1 of the Area Agreement.

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

CPI means the Consumer Price Index (All Groups) Perth or if that index is not available such other index as represents the rise in the cost of living in Perth as the State reasonably determines.

CPI Adjustment Date means the 1st of July in each of the years 2010, 2011, 2012, 2013 and 2014, or the 1st of July in each of the years 2011, 2012, 2013, 2014 and 2015 in the event the Registration Date occurs later than 1st July 2010.

Current CPI means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date.

DEC means the Western Australian Department of Environment and Conservation.

Determination means the determination of native title over Broome and its environs by the Federal Court of Australia described in Recitals D and E.

Execution Date means the date of the execution of this Agreement by the last of the Parties to execute it.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituted for or amending any of the foregoing.

ILUA Area means all of the areas together described in Schedules 5, 6, 7, 8 and 9, but excluding the Adjacent Areas.

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).

In Principle Agreement means the document entered into on 6 April 2009 between the State and Yawuru RNTBC.

Joint Management Agreement means the agreement, a copy of which is annexed to Schedule 9, between the State, the Minister for Lands, the Minister for the Environment, the Conservation Commission, the Marine Authority, the Executive Body, the Shire and Yawuru RNTBC under which the parties thereto provide for management of the Conservation Estate.

LA Act means the *Land Administration Act 1997*.

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.

LG Act means the *Local Government Act 1995*.

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, the Conservation Commission, the Executive Body and the Shire.

Notice has the meaning given in clause 22.1.

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

Party means a Party to this Agreement and **Parties** means two or more of them as the case requires.

Previous CPI means the CPI number for the quarter ending immediately before the later of the Execution Date and the last date that the cash benefits payable under this Agreement were reviewed.

Registration Date means the latter of the dates on which this Agreement and the Area Agreement are registered and entered on the ILUA Register.

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

State Adjacent Areas means all of those areas described in Schedule 9A Part 2.

Surrender Area means all of those areas together described in Schedule 5 and in Schedule 8 Part 1.

Transaction Document means each of this Agreement, each other document contemplated by or required in connection with this Agreement or the transactions which it contemplates and each document or agreement entered into for the purpose of amending or novating any of them.

Yawuru Adjacent Areas means all of those areas described in Schedule 9A Part 1.

Yawuru Community means the persons described in Schedule 1 of the Determination of Native Title made by Justice Merkel on 28 April 2006 in proceedings WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17).

Yawuru Land means that land in which an interest is to be transferred to Yawuru RNTBC or Nyamba Buru Yawuru pursuant to this Agreement save for that land referred to in clause 15.5(a).

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;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this Agreement and a reference to this Agreement includes any recital, schedule or annexure;
- (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, body corporate, partnership, joint venture or unincorporated association;
- (f) a reference to a person includes a reference to the person's executors, administrators, delegates, successors and assigns;
- (g) a reference to a person, statutory authority or 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 time in Western Australia;
- (n) if a payment is to be made or an act performed on a day which is not a Business Day, then the payment must be made or the act performed on the next following Business Day;
- (o) headings in this Agreement are inserted for convenience and do not affect the interpretation of this Agreement;
- (p) words of inclusion are not words of limitation;
- (q) unless provided otherwise, reference to legislation is to legislation of the State of Western Australia; and
- (r) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any schedule or annexure to this Agreement, the terms and conditions of the clauses of this Agreement prevail.

2. Commencement of Agreement

This Agreement commences on the Execution Date and binds each of the Parties, their successors and permitted assigns.

3. Authority to enter into Agreement and warranties

3.1 Yawuru RNTBC authority

The Parties acknowledge that pursuant to the Orders of the Federal Court in proceedings WAD 6006 of 1998 and WAD 223 of 2004 made on 8 September 2008, Yawuru RNTBC is the prescribed body corporate for the Yawuru Community, and that pursuant to Regulation 6 of the Native Title (Prescribed Body Corporate) Regulations 1999 it enters into this Agreement on behalf of the Yawuru Community.

3.2 Yawuru RNTBC warranties

Yawuru RNTBC represents and warrants that:

- (a) it is authorised to enter into this Agreement on behalf of the Yawuru Community;
- (b) it has received independent legal advice about the effects of this Agreement;
- (c) where rights are granted, monies paid or land transferred to Nyamba Buru Yawuru hereunder, it is at the request of and in accordance with the authorisation of Yawuru RNTBC; and
- (d) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order:
 - (i) to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement and the other Transaction Documents to which it is a party; and
 - (ii) to make this Agreement and other Transaction Documents to which it is a party admissible in evidence in the courts of the jurisdiction to which the Parties have submitted,

have been fulfilled or done.

3.3 Nyamba Buru Yawuru Warranties

Nyamba Buru Yawuru represents and warrants that all conditions and things required by applicable law to be fulfilled and done (including the obtaining of any necessary Authorisations) in order:

- (a) to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement and the other Transaction Documents to which it is a party; and
- (b) to make this Agreement and the other Transaction Documents to which it is a party admissible in evidence in the courts of the jurisdiction to which the Parties have submitted,

have been fulfilled or done.

3.4 State Warranties

The State represents and warrants that:

- (a) it is authorised to enter into this Agreement on behalf of the State of Western Australia; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order:
 - (i) to enable it lawfully to enter into, and exercise its rights and perform its obligations under this Agreement and the other Transaction Documents to which it is a party; and
 - (ii) to make this Agreement and the other Transaction Documents to which it is a party admissible in evidence in the courts of the jurisdiction to which the Parties have submitted,

have been fulfilled or done.

3.5 Other Parties' Warranties

Each of the Minister for Lands, the Conservation Commission, the Executive Body and the Shire severally represents and warrants that all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order:

- (a) to enable it lawfully to enter into, and exercise its rights and perform its obligations under, this Agreement and the other Transaction Documents to which it is a party; and
- (b) to make this Agreement and the other Transaction Documents to which it is a party admissible in evidence in the courts of the jurisdiction to which the Parties have submitted,

have been fulfilled or done.

3A. Adjacent Areas

The Parties acknowledge and agree:

- (a) the Adjacent Areas do not form part of the ILUA Area for the purposes of section 24BC of the NTA, but are included in the Agreement in the case of the Yawuru Adjacent Areas as part of the Compensation and in the case of the State Adjacent Areas as part of the consideration; and
- (b) notwithstanding anything contained in clause 4.1(a), 6.9, 10.1, 10.3, 10.4, 11.2(a) or 11.2(b), references in this Agreement to consent to future acts, surrender and

extinguishment of native title, suppression of native title and the application of the Non-Extinguishment Principle do not apply to the Adjacent Areas.

4. Consents to Future Acts

4.1 Parties' consent

The Parties state as follows:

- (a) the Parties consent to the acts described in clauses 6, 9, 10 and 11 with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA; and
- (b) 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 acts described in clauses 6, 9, 10 and 11 with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA.

4.2 Yawuru RNTBC Consent

Yawuru RNTBC states as follows:

- (a) its consent under this clause 4 includes its agreement not to object to the acts referred to in clause 4.1; and
- (b) it agrees to do all things, including signing any documents, necessary to give effect to its consent to the acts referred to in clause 4.1.

4.3 Grant of the right includes its exercise

For the avoidance of doubt, consent to the doing of the acts in clauses 4.1(a) and 4.1(b) includes consent to the exercise of any right or obligation created by those acts by the person on whom the right or obligation is conferred.

4.4 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.

4.5 Other statements relevant to the NTA

The Parties:

- (a) state that this Agreement is intended to be registered on the ILUA Register as a body corporate agreement under sections 24BA to 24BI of the NTA and regulation 6 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.

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

5.1 Application for registration

The State is authorised by the Parties:

- (a) to prepare an application for this Agreement to be registered on the ILUA Register, which application for registration shall be in the form, or substantially in the form, provided in Schedule 3 to this Agreement; and
- (b) to apply to the Native Title Registrar for this Agreement to be registered on the ILUA Register, which the State will use reasonable endeavours to do within 28 days of the receipt of all documentation required to effect registration.

5.2 Registration on ILUA Register

The Parties acknowledge their intention that this Agreement should be registered on the ILUA Register in accordance with the NTA as soon as reasonably practicable after the Execution Date.

5.3 Further assurances

The Parties shall use their reasonable endeavours and do all things reasonably necessary, to assist with the timely registration of this Agreement on the ILUA Register and to maintain the registration of the Agreement on the ILUA Register following registration.

5.4 No objection

Without limiting clauses 5.2 and 5.3, the Parties must not object to the registration of this Agreement on the ILUA Register.

5.5 Written certification

- (a) If Yawuru RNTBC is satisfied that the requirements of Regulation 8 of the *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth) have been met, then it will provide written certification as referred to in sub-regulations 9(2) and 9(5) of the *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth), for the purposes of the registration application as required by section 24BG(3)(a) of the NTA.
- (b) The written certification will be in the form, or substantially in the form, set out in Schedule 4 to this Agreement.
- (c) Yawuru RNTBC warrants that to the best of its knowledge as at the Execution Date it is not aware of any circumstance that would prevent it from providing written certification in accordance with this clause.

6. Transfer of unconditional freehold title by State to Nyamba Buru Yawuru

6.1 Grant of licence by State

The Minister for Lands:

- (a) shall when requested by Nyamba Buru Yawuru grant Nyamba Buru Yawuru a licence under section 91 of the *LA Act* (**Licence**) for a term to be decided by the parties thereto at

the time to enter onto Crown land parcels referred to in this clause 6 for the purpose of doing all things necessary for or incidental to preparing them for development; and

- (b) consents to Nyamba Buru Yawuru engaging a third party to undertake activities permitted under the Licence on behalf of Nyamba Buru Yawuru.

6.2 Transfer by State of Part 1 of Schedule 5 land

The Minister for Lands shall transfer to Nyamba Buru Yawuru title in fee simple under s74 of the *LA Act* to each parcel of land described in Part 1 of Schedule 5, in the manner set out in clause 7, within 60 days of receipt of a written request from Nyamba Buru Yawuru, which request may not be made prior to the Registration Date.

6.3 Creation of Crown land titles

The Minister for Lands shall create Crown land titles within 12 months of the Registration Date for the land described in Part 2, Part 3 and Part 5 of Schedule 5.

6.4 Transfer of Part 2, Part 3 and Part 5 of Schedule 5 land

The Minister for Lands shall transfer title in fee simple under s74 of the *LA Act* to each parcel of land described in Part 2, Part 3 and Part 5 of Schedule 5, in the manner set out in clause 7, within 60 days of receiving a written request from Nyamba Buru Yawuru, which request may not be made sooner than 12 months after the Registration Date.

6.5 Transfer of Part 4 of Schedule 5 land

- (a) The land described in Part 4 of Schedule 5 shall be transferred to Nyamba Buru Yawuru under section 74 of the *LA Act* unless:
 - (i) Nyamba Buru Yawuru demonstrates to the State that re-zoning will not be achievable and requests a transfer under section 75 of the *LA Act* of any of those parcels of land; and
 - (ii) the State agrees in writing.
- (b) Where a parcel of Part 4 of Schedule 5 land is to be transferred under section 75 of the *LA Act*, the condition to which the title will be made subject shall be for the use and benefit of Aboriginal persons.

6.6 Time for transfer

- (a) Subject to receipt by the Minister for Lands of a written request from Nyamba Buru Yawuru within 58 months of the Registration Date, the land in Part 1, Part 2, Part 4 and Part 5 of Schedule 5 must be transferred in fee simple to Nyamba Buru Yawuru within 60 months of the Registration Date. The Parties acknowledge and agree that due to issues concerning provision of services to the land in Part 5 of Schedule 5, they may agree to extend the deadline for transfer of that land or some of it beyond 60 months from the Registration Date.
- (b) Subject to receipt by the Minister for Lands of a written request from Nyamba Buru Yawuru within 22 months of the Registration Date, the land in Part 3 of Schedule 5 must be transferred to Nyamba Buru Yawuru within 24 months of the Registration Date.

6.7 Delay in transfer

Subject to:

- (a) the time restrictions provided in this clause 6 with respect to Nyamba Buru Yawuru requesting transfers; and
- (b) Nyamba Buru Yawuru complying in a timely manner with the requirements of clause 7.3(e),

if the State does not transfer to Nyamba Buru Yawuru title to any parcel of land described in Schedule 5 within 60 days of receiving a written request to do so, the State shall pay to Nyamba Buru Yawuru rent at the market value per square metre as determined at the time by the Valuer General of Western Australia at a rate pertaining to the intended land use relevant to the zoning applicable to the parcel of land at that time for each month (adjusted pro rata for any period less than a month) until such time as the relevant title has been transferred.

6.8 Calculation for payment of market rent

- (a) Payment of rent at market value shall be calculated on the last day of each calendar month and is payable within 30 days of receipt by the State of a tax invoice rendered by Nyamba Buru Yawuru (Due Date).
- (b) If payment of rent is not made by the State on or before the Due Date, then the State shall pay interest on the amount outstanding in accordance with clause 12.5.

6.9 Extinguishment of native title

The Parties intend that upon transfer in fee simple to Nyamba Buru Yawuru of each parcel of land referred to in Schedule 5 in accordance with this clause 6, the native title rights and interests in it are surrendered and extinguished as of the date of transfer.

7. Memorials, restrictions on dealings and transfer of Yawuru Land

7.1 Memorials

- (a) The State shall lodge a memorial on all Yawuru Land to be transferred to Nyamba Buru Yawuru in fee simple to indicate that it is to be transferred to Nyamba Buru Yawuru pursuant to this Agreement.
- (b) The State shall lodge memorials:
 - (i) on the Registration Date on titles which have issued; and
 - (ii) in respect of unallocated Crown land, on the date a Crown land title or a certificate of title issues.

7.2 Restriction on dealings by State

- (a) Neither the State nor the Minister for Lands may, except as expressly provided in this Agreement:
 - (i) mortgage, charge or in any way encumber Yawuru Land;
 - (ii) dispose of or assign its interest in Yawuru Land; or
 - (iii) do or permit to be done anything which may prejudice, delay or interfere with the exercise by Yawuru RNTBC or Nyamba Buru Yawuru of their rights in Yawuru Land.
- (b) The State or the Minister for Lands, as the case may be, in respect of any part of the Yawuru Land which has not yet been transferred to Nyamba Buru Yawuru or Yawuru RNTBC in accordance with this Agreement shall:

- (i) deliver to Nyamba Buru Yawuru copies of all notices, correspondence and other documents received by the State or the Minister for Lands, as the case may be, relating to or affecting the Yawuru Land as soon as reasonably practicable after their receipt; and
- (ii) keep Nyamba Buru Yawuru and Yawuru RNTBC informed of all matters associated with the Yawuru Land which may reasonably affect its development.

7.3 Requirements for transfer

- (a) Within 60 days of the Registration Date, the State shall ensure the following parcels of Yawuru land are free from significant rubbish and contamination:
 - (i) Cable Beach East – Lot 3082 on DP 219733;
 - (ii) Roebuck Estate West – Lot 502 on DP 61563; and
 - (iii) Sewerage Adjoining as indicated on the map in Schedule 5 Part 4,

and the Parties acknowledge and agree that once the State has removed such rubbish and contamination, it has discharged its duty under this clause 7.3(a) and is not required to keep those parcels of Yawuru Land free from rubbish and contamination thereafter, save if the State becomes aware that a person has subsequently dumped rubbish or contaminated any of those parcels of Yawuru land prior to their transfer to Nyamba Buru Yawuru, the State shall use reasonable endeavours to ensure the person removes such rubbish or contamination.
- (b) The State shall attend to the removal of all encumbrances on the titles to Yawuru Land, where it is reasonable to do so, prior to their being transferred to Nyamba Buru Yawuru.
- (c) Subject to clause 7.3(b), Yawuru RNTBC and Nyamba Buru Yawuru acknowledge that the transfer of the fee simple of Yawuru Land is subject to any restrictive or positive covenant or easement registered on the deposited plan to the relevant parcel prior to the date of this Agreement, or which was registered on the deposited plan to the parcel after the date of this Agreement with the prior written consent of Yawuru RNTBC or Nyamba Buru Yawuru as appropriate and neither Yawuru RNTBC nor Nyamba Buru Yawuru has a claim against the Minister for Lands relating to any of those matters.
- (d) Yawuru RNTBC and Nyamba Buru Yawuru acknowledge and agree that with the exception of Lot 3128 the transfer of the fee simple of parcels of Yawuru Land is subject to any error or misdescription of those parcels where the deposited plans to those parcels are in existence at the Execution Date, but not otherwise.
- (e) Within 30 days of serving a written request on the Minister for Lands for transfer of a parcel of land, Nyamba Buru Yawuru must deliver to the Minister for Lands a transfer of land duly executed by Nyamba Buru Yawuru which is in a form suitable for registration.
- (f) Upon receipt of a transfer of land executed by Nyamba Buru Yawuru, the Minister for Lands shall promptly:
 - (i) execute the transfer of land;
 - (ii) lodge the transfer of land at Landgate; and
 - (iii) attend to all stopped document notices and other requisitions necessary for registration to be effected.

8. Broome Road Airport Site and Broome Road Heavy Industrial Land

8.1 Seed collection

- (a) Prior to the clearing of the Broome Road Heavy Industrial Land, being the land hatched blue on the map in Schedule 6 (**Broome Road Heavy Industrial Land**) and the Broome Road Airport Site being the land hatched blue on the map in Schedule 6 (**together Broome Road Areas**), the State shall give Nyamba Buru Yawuru 120 days' notice thereof (**Notice Period**).
- (b) During the Notice Period, Nyamba Buru Yawuru may collect and remove seeds of native vegetation from the Broome Road Areas (**Seeds**).
- (c) Nyamba Buru Yawuru must observe all relevant occupational health and safety standards when collecting and removing the Seeds.
- (d) Property in the Seeds passes to Nyamba Buru Yawuru, at the time of their removal.
- (e) Nyamba Buru Yawuru shall store the Seeds at its expense and may commercially exploit the Seeds at its discretion.
- (f) If exploitation of the Seeds by Nyamba Buru Yawuru requires an Authorisation by a Non-Native Title Party, then the Non-Native Title Party shall do all things reasonably necessary to grant the Authorisation.

8.2 Top Soil from Broome Road Areas

- (a) Where top soil removed from the Broome Road Areas is not required in respect of development of the Broome Road Areas (**Unneeded Top Soil**), Nyamba Buru Yawuru may require the Unneeded Top Soil to be delivered to it in accordance with this clause.
- (b) The State shall arrange that Unneeded Top Soil requested by Nyamba Buru Yawuru is transported at no cost to Nyamba Buru Yawuru to one or more sites designated by it on the Broome Road Heavy Industrial Land where it will be stored by Nyamba Buru Yawuru.
- (c) Property in Unneeded Top Soil passes to Nyamba Buru Yawuru upon delivery to the sites referred to in clause 8.2(b).

8.3 Facilitating re-vegetation

Seeds and Unneeded Top Soil may be sold at commercial rates by Nyamba Buru Yawuru for the purpose of facilitating re-vegetation of native species.

8.4 Yawuru business involvement and employment

- (a) The State shall comply with the Aboriginal Economic Development objective of the buy local policy or any replacement policy established under section 28 of the *State Supply Commission Act 1991* during the development phase of the Broome Road Areas such that bids will be encouraged from and priority will be given to:
 - (i) tenderers who are members of, or businesses or entities owned or controlled by, the Yawuru Community (Yawuru tenderers); and
 - (ii) tenderers who have in place employment strategies and programmes such that no less than 10% of the tenderers' or contractors' employees are members of the Yawuru Community.
- (b) The Parties agree there is no upper limit to the number of Yawuru tenderers who may be selected, and shall aim to have a minimum of 10% of contracts awarded to Yawuru tenderers.

9. Leases

9.1 Port Land Lease

- (a) Yawuru RNTBC consents to the suppression of native title rights and interests over the 70 hectare parcel of Crown land described in Part 1 of Schedule 7 (**Port Land**), and the Minister for Lands shall within 2 years of the Registration Date grant a lease of 54 hectares thereof under section 79 of the *LA Act* for a term of 99 years to Nyamba Buru Yawuru at an annual rental of \$1.00 (**Port Land Lease**).
- (b) The Minister for Lands shall grant to Nyamba Buru Yawuru 4 hectares of the Port Land in fee simple under Section 75 of the *LA Act* within 2 years of the Registration Date.
- (c) Upon grant of the Port Land Lease, Nyamba Buru Yawuru shall concurrently grant a sublease of a 50 hectare portion thereof to Broome Regional Port Authority (BRPA) to be agreed by the parties at the time for a term of 99 years less one day at a rental agreed between Nyamba Buru Yawuru and the BRPA, and the Minister for Lands shall consent to such sublease and any subleases by BRPA.
- (d) The 12 hectare balance of the Port Land (Port Land balance) remains unallocated Crown land, and once the excisions from the Port Land referred to in this clause 9 have been effected, the native title rights and interests in the Port Land balance will again have full effect.

9.2 Thangoo perpetual lease areas

Within 12 months of the Registration Date, the Minister for Lands shall grant to Yawuru RNTBC, an approved body corporate under section 83(1) of the *LA Act*, a perpetual lease under section 83 of the *LA Act* (**Perpetual Lease**) of one 5 hectare parcel and one 8 hectare parcel of land described in Part 2 of Schedule 7 (**Thangoo Land**) for the purpose of Aboriginal use and enjoyment.

9.3 Access

- (a) The State shall ensure the Yawuru Community has legal access to the Thangoo Land from the time the Perpetual Lease is granted by the creation if necessary of easements in favour of Yawuru RNTBC:
 - (i) over existing Thangoo pastoral lease roads agreed by the State and Yawuru RNTBC; or
 - (ii) where existing Thangoo pastoral lease roads do not exist or are not agreed, over land adjoining the Thangoo Land.
- (b) The Parties acknowledge that the land comprising the easements is not part of the Perpetual Lease.
- (c) Yawuru RNTBC acknowledges and agrees the State will not construct roads.

9.4 Residential occupation

The Parties acknowledge and agree:

- (a) the terms of the Perpetual Lease will not prohibit or restrict residential development or occupation on the Thangoo Land;
- (b) residential development on the Thangoo Land must comply with all relevant laws, by-laws, zoning and regulatory requirements; and
- (c) the State has no obligation to assist in or pay for the development or provision of infrastructure for residential development on the Thangoo Land.

9.5 Non-extinguishment of native title

- (a) The Parties consent to the doing of any future acts in relation to any of the land or interests in land to be granted under this clause 9 (excluding the Port Land balance) including any improvements, construction or establishment of any works including public works.
- (b) The Parties agree that the Non-Extinguishment Principle applies to all acts done under this clause 9.

9.6 Areas of cultural significance

- (a) The Parties acknowledge there are areas of cultural significance to the Yawuru Community within the Thangoo pastoral lease.
- (b) Within 2 years of the Registration Date, Yawuru RNTBC and the State shall negotiate with the lessees of the Thangoo pastoral lease (lessees), and subject to the agreement of the lessees, the Minister for Lands shall excise the areas of cultural significance, or any of them agreed by the lessees, from the Thangoo pastoral lease, and those areas shall thereupon be incorporated into the Freehold Areas of the Conservation Estate and for all purposes thereafter be dealt with as part of the Freehold Areas.

10. Land Arrangements In Favour of State

10.1 Surrender of native title

As of the Registration Date, Yawuru RNTBC surrenders in favour of the State native title in the land described in Part 1 of Schedule 8 with the intention by the Parties that the native title rights and interests therein be extinguished.

10.2 Airport site

The State acknowledges that it is the State's intention to use the land described in Part 1 of Schedule 8 as an airport site.

10.3 Non-extinguishment of native title

As of the date the Minister for Lands creates reserves in respect of the land described in column 1 of Part 2 of Schedule 8 (**Column 1 land**) for the purposes described in column 2 of Part 2 of Schedule 8, the care, control and management of which shall be placed with the Shire, Yawuru RNTBC consents to the suppression of native title in accordance with the Non-Extinguishment Principle in the Column 1 land.

10.4 Reserve 15019

- (a) Yawuru RNTBC acknowledges and agrees that native title is suppressed over part of Reserve 15019 as shown in the map which appears at Part 3 of Schedule 8.
- (b) The State agrees that Yawuru RNTBC and the Yawuru Community will have access to that area pursuant to a protocol entered into with the police.

11. Conservation Estate

11.1 Creation of Conservation Estate

As soon as reasonably practicable after the Registration Date, the Parties shall create the Conservation Estate comprising the following areas:

- (a) freehold areas, as described in Part 1 of Schedule 9 (**Freehold Areas**);

- (b) Roebuck Bay intertidal areas and Cable Beach intertidal areas, as described in Part 2 of Schedule 9 (**Intertidal Areas**); and
- (c) townsite areas, as described in Part 3 (a) and (b) of Schedule 9 (**Townsite Areas**).

11.2 Future acts and Non-Extinguishment Principle

- (a) The Parties consent to the doing of any future acts in relation to the management of the Conservation Estate, as contemplated by the Joint Management Agreement and consistent with the terms of the lease, including creation of any improvements or the construction or establishment of any public work.
- (b) The Parties agree that the Non-Extinguishment Principle applies to all acts done under this clause 11.

11.3 Freehold Areas tenure and management

- (a) The Parties agree that from the Registration Date until the earlier of:
 - (i) the *CALM Act* being amended to allow for joint management of private land (**CALM Act amendment**); or
 - (ii) the 4th anniversary of the Registration Date,
 the Freehold Areas will be reserved under Section 41 of the *LA Act* (**Freehold Areas Reserve**) for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment and an order will be made placing the care, control and management of the Freehold Areas Reserve with Yawuru RNTBC and the Conservation Commission jointly in accordance with a cultural management plan and a management plan prepared under Part V of the *CALM Act* and the Joint Management Agreement.
- (b) If the *CALM Act* amendment is legislated within four years of the Registration Date:
 - (i) the Freehold Areas Reserve shall be cancelled;
 - (ii) the State shall transfer to Yawuru RNTBC the Freehold Areas in fee simple under Section 75 of the *LA Act* on the condition that Yawuru RNTBC use and manage the Freehold Areas for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment and for the purpose of practising, sustaining and maintaining native title rights and interests;
 - (iii) Yawuru RNTBC shall promptly grant a lease to the State for a term of 99 years at a rental of \$1.00 of the Freehold Areas (Lease) save those sections of the Freehold Areas identified by Yawuru RNTBC as law grounds, which sections shall be surrounded by restricted access areas and managed in accordance with an appropriate cultural management plan prepared by Yawuru RNTBC; and
 - (iv) the Joint Management Agreement remains on foot and is deemed to be an agreement between Yawuru RNTBC and the Executive Body for the purposes of the relevant provision of the *CALM Act*.
- (c) Yawuru RNTBC may terminate the Lease if the State ceases to provide an agreed minimum level of funding for the duration of the Lease, which annual amount shall not exceed the annual amount committed by the State for management of the Conservation Estate under this Agreement in respect of the 5 year period from the Registration Date.
- (d) Funding requirements for ongoing joint management operations shall be reviewed upon preparation of each new management plan.
- (e) If the *CALM Act* amendment is not legislated within 4 years of the Registration Date and Yawuru RNTBC and the State have not agreed otherwise, then:

- (i) the Freehold Areas Reserve shall be cancelled;
 - (ii) the State shall transfer to Yawuru RNTBC the Freehold Areas in fee simple under Section 75 of the *LA Act*; and
 - (iii) Yawuru RNTBC shall enter into an agreement with the Executive Body for the provision of services under Section 33(1)(f) of the *CALM Act* for a period of one year and any extension agreed, and Yawuru RNTBC shall unilaterally develop and implement a management plan for the Freehold Areas.
- (f) The Minister for Lands shall ensure access is available to the Freehold Areas by the creation as soon as reasonably practicable of reserves over existing pastoral access roads.
- (g) The Minister for Lands shall rescind the grazing licences described in Part 4 of Schedule 9 as soon as reasonably practicable after receiving a written request from the party or parties responsible for management of the Freehold Areas, but in any event no later than 6 months after the receipt of a request therefor.

11.4 Intertidal Areas tenure and management

- (a) The Minister for Lands shall reserve the Intertidal Areas under Section 41 of the *LA Act* and classify them as Class A reserves for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment under Section 42 of the *LA Act*.
- (b) The Minister for Lands shall place the Roebuck Bay intertidal areas for care, control and management jointly with Yawuru RNTBC and the Conservation Commission prior to the *CALM Act* amendment.
- (c) Subsequent to the *CALM Act* amendment, the Minister for Lands shall place the Roebuck Bay intertidal areas for care, control and management with Yawuru RNTBC, and the Roebuck Bay intertidal areas shall be jointly managed by Yawuru RNTBC and the Executive Body.
- (d) Unless the Parties otherwise agree, in the event the *CALM Act* is not amended within 4 years, the management order will be revoked with respect to the Roebuck Bay intertidal areas and placed with Yawuru RNTBC alone and Yawuru RNTBC shall enter into an agreement for services under Section 33(1)(f) of the *CALM Act* for a period of one year.
- (e) The Minister for Lands shall place the Cable Beach intertidal areas for care, control and management jointly with Yawuru RNTBC, the Conservation Commission and the Shire.
- (f) Joint management of the Intertidal Areas shall be pursuant to a cultural management plan and a management plan prepared under Part V of the *CALM Act* and in accordance with the Joint Management Agreement.

11.5 Townsite Areas tenure and management

- (a) The Minister for Lands shall reserve those Townsite Areas identified in Part 3(a) of Schedule 9 under Section 41 of the *LA Act* for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment and classify those reserves as Class A reserves under Section 42 of the *LA Act*.
- (b) The Minister for Lands shall cancel those Townsite Area reserves identified in Part 3(b) of Schedule 9, create a reserve of the land comprised therein under Section 41 of the *LA Act*, and classify that reserve as a Class A reserve under Section 42 of the *LA Act*.
- (c) The Minister for Lands shall reserve that Townsite Area identified in Part 3(c) of Schedule 9 and create a reserve of the land comprised therein under Section 41 of the *LA Act* for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment.

- (d) The Minister for Lands shall place the care, control and management of the Townsite Areas jointly with Yawuru RNTBC and the Shire with assistance to be provided by the Executive Body pursuant to the Assistance Agreement.
- (e) Joint management of the Townsite Areas shall be pursuant to a cultural management plan and a management plan prepared under Section 49 of the *LA Act* and in accordance with the Joint Management Agreement.

11.6 Aboriginal Land Trust land fencing

- (a) Subject to the provision by Nyamba Buru Yawuru of a quotation acceptable to the State, the State shall within 30 days of receiving a written request made after the Registration Date provide Nyamba Buru Yawuru the funds to pay the cost of materials and equipment hire to fence the perimeter of the land described in Part 5 of Schedule 9 (**ALT Land**).
- (b) Nyamba Buru Yawuru shall provide labour to carry out the fencing of the ALT Land, which shall be completed within 12 months of the provision of funds by the State.

11.7 Funding

- (a) Funding of the Conservation Estate is as follows:
 - (i) Yawuru RNTBC shall direct the State to pay moneys as set out in Table 2 of Schedule 10, which must be applied for joint management operations; and
 - (ii) for each of the 5 consecutive financial years ending 2014/15, the State shall provide funding matching that provided by Yawuru RNTBC under clause 11.7(a)(i) which must be applied for joint management operations.
- (b) The State, Yawuru RNTBC and the Shire may make sole or joint applications in consultation with the park council for funding for Conservation Estate management and operations to State or Commonwealth bodies or third parties at any time from the Execution Date to the expiry or earlier termination of the Lease.

11.8 Rangers

- (a) The State shall provide a program under which members of the Yawuru Community can train to become rangers and upon successful completion gain accreditation to be employed as officers under the *CALM Act*, the *LG Act* and the *Fish Resources Management Act 1994* to patrol the Conservation Estate and other areas.
- (b) The State shall create permanent full time DEC field officer positions in Broome for Yawuru trainee rangers who gain accreditation, and the Parties agree if there are more accredited Yawuru rangers than there are permanent full time DEC field officer positions available in Broome, then rangers not placed shall be offered alternative full time DEC field officer positions elsewhere in Western Australia.
- (c) The State shall create permanent full time senior ranger and management positions with the aim that such positions will be filled by members of the Yawuru Community where suitably qualified.
- (d) The Parties acknowledge and agree that it is their objective that within five years of the Registration Date, all rangers in the Conservation Estate will be members of the Yawuru Community.

11.9 Reservation of Economic Rights

- (a) The Parties acknowledge that Yawuru RNTBC reserves all rights and interests in respect of any economic activities it undertakes in the Conservation Estate.
- (b) The Parties acknowledge and agree that to the extent not altered by legislation all rights and interests, including economic rights and interests, associated with any carbon trading

activities or any other environmental incentive schemes realised or undertaken in the Conservation Estate are reserved to Yawuru RNTBC.

- (c) The Parties agree Yawuru RNTBC has the first right under the Joint Management Agreement to take up business and commercial opportunities in the Conservation Estate.
- (d) Under the Joint Management Agreement and the Lease, Yawuru RNTBC and members of the Yawuru Community have the right to access, use and occupy the Coastal Park for purposes consistent with Yawuru culture and tradition to preserve and sustain Yawuru native title rights and interests consistent with their right to do so under the Determination.

12. Monetary Payments

12.1 Cash payments

The State shall pay to Nyamba Buru Yawuru the cash payments set out in Table 1 of Schedule 10 in accordance with the timetable provided therein solely for the respective purposes specified in the left hand column of Table 1 and within 30 days of the date on which a tax invoice is received by the State from Nyamba Buru Yawuru (**Due Date**), which tax invoice may not be sent prior to the respective CPI Adjustment Dates. If the Registration Date occurs later than 1st July 2010, then each of the financial years referred to in the tables in Schedule 10 is postponed by 1 year with the final payments covering financial year 2014/2015.

12.2 Payments to DEC

Yawuru RNTBC directs the State to pay to DEC the cash payments set out in Table 2 of Schedule 10 in accordance with the timetable provided therein.

12.3 CPI adjustment

- (a) Except as provided in clauses 12.3(b) and 12.3(c), on each CPI Adjustment Date the State shall adjust each of the monetary payments payable by the State under clauses 12.1 and 12.2 to amounts equal to the relevant monetary payment multiplied by the Current CPI and divided by the Previous CPI.
- (b) If on a CPI Adjustment Date the Current CPI is equal to or less than the Previous CPI, then there will be no adjustment to the relevant monetary payment for the year in which that CPI Adjustment Date falls.
- (c) CPI adjustment does not apply to the \$1,000,000 payable to Nyamba Buru Yawuru on the Execution Date or to the \$29,000,000 payable to Nyamba Buru Yawuru on the Registration Date.

12.4 Method of Payment

The State shall pay:

- (a) to Nyamba Buru Yawuru any amounts payable under this Agreement in clear funds by way of electronic funds transfer to an account nominated by Nyamba Buru Yawuru or otherwise as directed in writing by Nyamba Buru Yawuru; and
- (b) to DEC in respect of amounts payable under clause 12.2 as the State and DEC determine.

12.5 Interest on late payment

- (a) If the State fails to pay to Nyamba Buru Yawuru any monetary payment referred to in clause 12.1 or any rent payable under clause 6.7 within 30 days of the date on which a tax invoice is rendered (Due Date), then the State shall pay interest thereon in accordance with clause 12.5(b) from the Due Date to the date of payment.

- (b) The interest rate applicable in respect of clause 12.5 is the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* at the relevant time.

12.6 No set off

No Party has a right of set off against any other Party in respect of amounts owing to it under this Agreement.

13. General Provisions

13.1 Yawuru hunting and fishing rights

The Joint Management Agreement, the Cultural Management Plan and the Management Plan entered into in respect of the Conservation Estate developed in accordance with the Joint Management Agreement shall address among other things Yawuru native title hunting and fishing rights in the Conservation Estate as recognised in the Native Title Determination made in proceedings WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17) on 28 April 2006.

13.2 Planning processes

Where planning processes are undertaken by State agencies or local government in respect of any portion of the Determination Area, the State and the Shire (as applicable) shall support Yawuru RNTBC participation and consultation.

13.3 Local government issues

- (a) The State agrees to take part in discussions with the Shire and to be supportive of Nyamba Buru Yawuru being made exempt by the Shire from the payment of rates until Nyamba Buru Yawuru has created an ongoing income stream from the development of any of the land transferred to it under this Agreement.
- (b) Where at any time prior to or after transfer of the freehold to Nyamba Buru Yawuru of any parcel of Yawuru Land, Nyamba Buru Yawuru reasonably considers that the parcel should be rezoned in order that Nyamba Buru Yawuru may maximise its development potential and commercial viability, then the State and the Minister for Lands shall be supportive of an application for rezoning, and shall execute any appropriate documents required by Nyamba Buru Yawuru in order to enable the lodgement of an application with the Shire, but the Parties acknowledge and agree that nothing in this clause 13.3(b) in any way fetters the exercise of any discretionary power of the State or the Minister for Lands under any law or planning scheme.
- (c) The Shire acknowledges and agrees that where it has been agreed by the Parties that land will be transferred hereunder, the Parties to the transfers shall not be required to refer those transfers to or consult with the Shire.

14. Reporting

14.1 Yawuru RNTBC

Yawuru RNTBC shall provide to the State a copy of the Yawuru RNTBC directors' report, financial report and auditor's report, prepared in accordance with Division 7.3 of the *CATSI Act* within the time required under section 348-1 of the *CATSI Act* for submission of such reports to the Registrar (as defined in the *CATSI Act*), for the financial years for which the State makes monetary payments under this Agreement.

14.2 Nyamba Buru Yawuru

Nyamba Buru Yawuru shall provide to the State:

- (a) a copy of the Nyamba Buru Yawuru directors' report, financial report and auditor's report prepared in accordance with Part 27.3 of the *Corporations Act*, within 4 months of the end of the financial year for the following financial years for which the State makes monetary payments under this Agreement; and
- (b) for information purposes only, a copy of its indicative annual operating budget.

14.3 State

The State shall provide to Yawuru RNTBC a financial expenditure report in respect of the funds paid to DEC under clause 12.2 in accordance with the Joint Management Agreement.

15. Full compensation

15.1 Full and final Compensation

On and from the Execution Date, Yawuru RNTBC acknowledges and agrees that the Compensation constitutes full and final compensation in relation to:

- (a) extinguishment of native title rights and interests in the Determination Area up to the Execution Date;
- (b) impairment of native title rights and interests in the Determination Area up to the Execution Date; and
- (c) the exercise of any right or obligation created by the acts consented to, or confirmed, as the case may be, in this Agreement.

15.2 No Compensation claim

Yawuru RNTBC:

- (a) releases the Non-Native Title Parties from any liability for compensation, other than Compensation provided for and delivered under this Agreement, in relation to the acts consented to or the validity of which is confirmed in this Agreement, or the exercise of any right or obligation created by such acts and for the extinguishment and impairment of native title rights and interests in the Determination Area up to the Execution Date; and
- (b) agrees that:
 - (i) it will not make any claim for compensation under the NTA, the *LA Act* or otherwise, nor will it authorise any other person to bring such a claim on its 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 this Agreement on any native title rights and interests of the Yawuru Community or for the extinguishment and impairment of native title rights and interests in the Determination Area up to the Execution Date; and
 - (ii) if Yawuru RNTBC or any member of the Yawuru Community makes a claim for compensation in breach of paragraph 15.2(b)(i), the Non-Native Title Parties may each plead the terms of this Agreement in bar of that claim.

15.3 Non-extinguishment

The State acknowledges and agrees that suppression of native title rights and interests pursuant to the Non-Extinguishment Principle as applied in this Agreement does not constitute abandonment or relinquishment of native title rights and interests.

15.4 Other impairment or extinguishment of native title

The State agrees that if within 7 years of the Execution Date the State or Yawuru RNTBC learns of the impairment or extinguishment of native title rights or interests that have occurred between the 28 April 2006 and the Execution Date, which impairment or extinguishment has not been compensated in this Agreement or otherwise, then the State shall compensate Yawuru RNTBC for that impairment or extinguishment.

15.5 Earlier agreements

- (a) This Agreement has no effect on earlier agreements entered into by the State under which the State has outstanding compensation liabilities or obligations to the Yawuru Community, including but not limited to the State fulfilling its obligations to transfer the following land to the Party indicated below:
 - (i) to Nyamba Buru Yawuru transfer in fee simple of:
 - (A) Broome Lot 301 (3134/97) 2.4 ha Fairway Drive;
 - (B) Skuthorpe Lot 462, 35.891 ha; and
 - (C) balance of Broome Lot 3144 (3129/753) 7.6 ha (Clemenston St Reserve),
 - (ii) to Yawuru RNTBC transfer conditional freehold under Section 75 of the *LA Act* in:
 - (A) Reserve 1517 227 ha (Yardoogarra Water Reserve); and
 - (B) balance of Reserve 2551.
- (b) Notwithstanding clause 15.5(a), Yawuru RNTBC acknowledges and agrees that clause 4 of the Broome Land Agreement is satisfied by delivery of Compensation hereunder.
- (c) The Parties acknowledge and agree that entry into this Agreement does not impose any obligations on the State in respect of earlier agreements with respect to GST or other costs and duties over and above obligations contained in such earlier agreements.

15.6 Early termination of Agreement

Unless the Parties enter into a substitute agreement concurrently with termination of this Agreement, if this Agreement is terminated prior to all of the Parties fulfilling their respective obligations hereunder, then Yawuru RNTBC reserves its right to require payment or delivery of any unpaid or undelivered Compensation.

16. Aboriginal heritage

16.1 Heritage reports

The Parties acknowledge and agree the heritage reports described in Schedule 11 have been provided by Yawuru RNTBC to the State and that they are consistent with applicable Western Australian legislation.

16.2 Memorandum of understanding

- (a) The Parties agree to enter into a memorandum of understanding within 12 months of the Registration Date (**Memorandum of Understanding**) under which, in respect of heritage issues arising from time to time in any area within the outer boundaries of the Determination Area, the Parties, inter alia, shall agree:
 - (i) for the purpose of protecting and preserving heritage, the Yawuru Community has the primary and principal interest and rights;
 - (ii) Yawuru RNTBC must be consulted about heritage issues in the first instance; and
 - (iii) to consult each other and deal in good faith in accordance with the provisions of the *Aboriginal Heritage Act 1972*.
- (b) The State will disseminate the Memorandum of Understanding to all relevant Western Australian agencies for observance by them when dealing with heritage issues that relate to all areas within the outer boundaries of the Determination Area.

16.3 Aboriginal Heritage Act 1972 notice

Subject to the State complying with conditions contained in the relevant heritage report concerning the Broome Road Areas as defined in clause 8.1, Yawuru RNTBC and Nyamba Buru Yawuru agree to support a notice by the State or the Western Australian Land Authority, as the case may be, to the Committee under Section 18 of the *Aboriginal Heritage Act 1972* in respect of the use of the Broome Road Areas.

17. Variation

17.1 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.

17.2 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 first had and received, 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.

18. Default

18.1 Notice of default

If any Party believes that another Party has defaulted in fulfilling an obligation arising from this Agreement, then the first Party shall within 10 Business Days of becoming aware of the default notify the defaulting Party, specifying the nature of the default and what action the notifying Party requires.

18.2 Failure to remedy

If the alleged defaulting Party:

- (a) within 10 Business Days of receipt of the notice referred to in clause 18.1 by written notice denies that it has committed a default; or
- (b) does not remedy the alleged default within 10 Business Days, or such longer time as specified in the notice of default,

then either Party may invoke the dispute resolution provisions of clause 19.

18.3 Compliance with dispute resolution

For the avoidance of doubt, a Party must comply with the dispute resolution provisions of clause 19.2 to 19.4 in respect of an alleged default to which clause 18.2 applies before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).

19. Dispute resolution

19.1 No arbitration or court proceedings

If a dispute arises under this Agreement including a dispute in respect of clause 18 (**Dispute**), a Party must comply with clauses 19.2 to 19.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).

19.2 Notification

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

19.3 Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 19.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours 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 19.4.

19.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 19.3, the chairman of LEADR 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 advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 19:
 - (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 19. 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 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 19.5) referring the matter to arbitration or commencing legal proceedings.

19.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 19.1 to 19.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 1985*.
- (b) The arbitration shall be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties shall 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 19.5(c), then the Parties shall 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.

19.6 Breach of this clause

If a Party to a Dispute breaches clauses 19.1 to 19.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

20. Termination

20.1 No termination

No Party may unilaterally terminate this Agreement for any reason, including by reason of any breach or repudiation of this Agreement by any Party.

20.2 Agreement to terminate

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

20.3 Consequences of termination

Unless otherwise agreed in writing by all Parties, if this Agreement is terminated in accordance with clause 20.2 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 20 and clauses 15 and 24 of this Agreement (which are to remain operative), and to the extent provided in this clause 20, 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 this Agreement or removal from the ILUA Register (as the case may be) shall remain binding and enforceable by or against each Party.

20.4 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 20.2, 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 20.2 and this 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 20.3(a) and 20.3(c) is the date of termination.

21. Confidentiality

For the avoidance of doubt, from the Execution Date nothing in this Agreement is confidential.

22. Notices and other communications

22.1 Service of notices

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

- (a) in writing 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 Schedule 1 as varied from time to time by any Notice given by the recipient to the sender.

22.2 Effective on receipt

A Notice given in accordance with clause 22.1 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 tenth Business Day after the date of posting (or on the twentieth 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 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.

23. Goods and services tax

23.1 Interpretation

Any reference in this clause 23 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

23.2 Amounts exclusive of GST

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Agreement are exclusive of GST.

23.3 GST payable

- (a) If GST is or becomes payable by a supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (d) If a Supplier makes a taxable supply under this Agreement to a Recipient the consideration for which is a supply by the Recipient which is not taxable, the additional amount is not payable by the Recipient to the Supplier unless the Recipient is entitled to an input tax credit for the taxable supply.

23.4 Taxable supplies made to Yawuru RNTBC or Nyamba Buru Yawuru

Where clause 23.3 requires Yawuru RNTBC or Nyamba Buru Yawuru to pay an additional amount to a Supplier equal to the GST imposed on a supply, the State shall, on behalf of Yawuru RNTBC or Nyamba Buru Yawuru, as the case may be, pay to the Supplier an amount equal to the GST imposed on the Supply by the date Yawuru RNTBC or Nyamba Buru Yawuru, as the case may be, would be required to pay the GST.

23.5 Indemnity

The State agrees to indemnify and keep indemnified Yawuru RNTBC and Nyamba Buru Yawuru from and against any losses and damages, including penalties or interest, which may arise in respect of a breach of clause 23.4 by the State.

24. Costs and duties

24.1 Duties, taxes and government charges

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.

24.2 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.

25. General

25.1 Entire Agreement

As at the Execution 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.

25.2 Severability

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 cannot 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 continues in full force and effect.

25.3 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.

25.4 Further action

Each Party must use its reasonable endeavours to do all things necessary or desirable to give full effect to this Agreement.

25.5 Assignment

- (a) Except as otherwise provided in this Agreement, a Party may not:
 - (i) sell, transfer, assign, novate, license or otherwise dispose of; or
 - (ii) mortgage, charge or otherwise encumber,any right hereunder to any person, or permit any person to assume any obligation hereunder, without the prior written consent of the other Parties, which may withhold their consent in their absolute discretion.
- (b) Where a Party is a company under the *Corporations Act* any of the following is deemed to be an assignment:
 - (i) there is a change in the majority of the directors;
 - (ii) anything occurs the effect of which is to transfer directly or indirectly the management or control of the company to another person; or

- (iii) there is any change in control of the company within the meaning of the *Corporations Act*.

25.6 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.

25.7 Counterparts

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