

2020

**Daisy Tjuparntarri Ward, Ben Junior Ralph Brown, Andrew Jones, Leese Giles,
Paul Carnegie and Clarabelle Ward Kenda,
being the Authorised Applicant of the Compensation Claim**

Warnpurru (Aboriginal Corporation)

Central Desert Native Title Services Ltd

State of Western Australia

Minister for Lands

**Chief Executive Officer of the Department of
Biodiversity, Conservation and Attractions**

Conservation and Parks Commission

GIBSON DESERT NATURE RESERVE

COMPENSATION AND LURRTJURRLULA PALAKITJALU SETTLEMENT AGREEMENT

1.	DEFINED TERMS AND INTERPRETATION	9
1.1	Definitions	9
1.2	Interpretation – General	13
1.3	Interpretation – liabilities and benefits	14
1.4	Interpretation – Gibson Desert People	15
1.5	Status of the Gibson Desert Applicant	16
1.6	Amounts expressed to be increased by Perth CPI	16
1.7	Road Corridors and native title	17
2.	INTENTION OF THIS AGREEMENT	18
3.	SETTLEMENT OF COMPENSATION LIABILITY	18
3.1	Full and final settlement of the liability of the State Parties	18
3.2	No further claim for compensation under the NT Act against the State Parties	19
4.	COMPENSATION DETERMINATION AND NATIVE TITLE DETERMINATION	19
5.	PROVISION AND RECEIPT OF BENEFITS	20
5.1	Provision of Benefits	20
5.2	Payment of Monetary Benefits	21
5.3	Recovery of any damages	22
5.4	Gibson Desert Parties’ obligations regarding Benefits	22
5.5	State Parties not responsible for management of Benefits	22
6.	PREFERRED OPTION	23
7.	RESTORATION OF NATIVE TITLE UNDER SECTION 47C	23
7.1	Application of this clause	23
7.2	Obligations of Gibson Desert Parties	23
7.3	Intention of State	23
8.	OPTION FOR SOLE VESTING AND CREATION OF NEW RESERVE	24
8.1	Application of this clause	24
8.2	Intention of State	24
8.3	Need for an ILUA	24
9.	RESTORATION OF NATIVE TITLE UNDER SECTION 47A AFTER NEW RESERVE CREATED	25
9.1	Application of this clause	25
9.2	Exercise of option by Gibson Desert Parties	25
9.3	Party may propose ILUA	25
10.	IF RESTORATION OF NATIVE TITLE IS NOT ACHIEVED	26
10.1	Application of this clause	26
10.2	Intention of Parties	26
11.	RESTORATION OF NATIVE TITLE UNDER SECTION 47C AFTER DETERMINATION OF NO NATIVE TITLE	27
11.1	Application of this clause	27

11.2	Obligations of Gibson Desert Parties.....	27
11.3	Intention of State	27
12.	NATIVE TITLE CLAIM	27
13.	WARNPURRU OPERATIONAL FUNDING	29
14.	NGURRARRITJAKU KUTJU FUND	29
15.	NON-MONETARY BENEFITS PROVIDED BEFORE EXECUTION DATE	31
16.	UPGRADE OF EXISTING INFRASTRUCTURE AT PATJARR	31
17.	JOINT VESTING OF RESERVE	31
18.	RE-NAMING OF RESERVE	32
19.	JOINT MANAGEMENT OF RESERVE	32
19.1	Management Plan and Joint Management Agreement for the Reserve	32
19.2	Approach to Joint Management.....	32
19.3	Interim Joint Management Body	33
19.4	Non-Monetary Benefits for Joint Management	33
19.5	Ending or Suspending Joint Management	33
20.	FUTURE ENGAGEMENT AND OPPORTUNITIES	35
20.1	Working together into the future	35
20.2	Procurement of goods and services generally.....	36
20.3	Future operations	36
20.4	Proposed activities and support by State	37
20.5	New Reserves	37
21.	IMPLEMENTATION AND RELATIONSHIP MEETINGS AND ASSISTANCE	38
22.	APPOINTMENT OF WARNPURRU AS AGENT	38
23.	IMPLEMENTATION BY WARNPURRU	39
24.	GIBSON DESERT APPLICANT	41
24.1	Changes to Gibson Desert Applicant.....	41
24.2	Representations and warranties by Gibson Desert Applicant	41
25.	WARNPURRU	42
26.	CDNTS	43
26.1	Role of CDNTS	43
26.2	Representations and warranties by CDNTS	43
27.	STATE PARTIES	44
27.1	Representations and Warranties by State Parties.....	44
27.2	Application of this Agreement to the State Parties	44
27.3	Acts by State – no fetter upon discretion.....	44
28.	RELIANCE ON WARRANTIES	44

29.	ACKNOWLEDGMENT REGARDING LEGAL ADVICE	44
30.	TERM OF THIS AGREEMENT	45
30.1	Commencement	45
30.2	Term	45
30.3	No other termination.....	45
30.4	Consequences of termination.....	45
31.	DEFAULT AND ENFORCEMENT	45
31.1	Events of Default	45
31.2	Default	46
32.	DISPUTE RESOLUTION	47
32.1	Application of this clause	47
32.2	Avoiding Disputes	47
32.3	Notice of dispute and negotiation	48
32.4	Mediation.....	48
32.5	Expedited arbitration	49
32.6	Interlocutory relief.....	50
32.7	Condition precedent to litigation	50
32.8	Obligations continue.....	50
32.9	Extension of time.....	50
32.10	Without Prejudice.....	50
32.11	Breach of this clause.....	51
33.	PUBLICATION	51
34.	ANNOUNCEMENTS	51
35.	CONFIDENTIALITY	51
35.1	Generally	51
35.2	Permitted disclosure	51
35.3	Disclosure requirements	52
35.4	Party may seek injunction.....	52
35.5	No waiver or transfer of intellectual property rights.....	52
36.	VARIATION OF AGREEMENT	53
37.	ASSIGNMENT	53
37.1	Assignment by Gibson Desert Parties	53
37.2	Replacement of Warnpurru.....	54
37.3	Assignment by the State Parties.....	56
37.4	Assignment by CDNTS	56
37.5	No encumbrance	57
38.	NOTICES	57
38.1	General	57
38.2	Recipients of notices from Gibson Desert Parties	58
38.3	Recipients of notices from State Parties	58
38.4	Address for notices	59

39.	GOODS AND SERVICES TAX	60
39.1	Definitions	60
39.2	GST payable	60
40.	GENERAL	61
40.1	Entire agreement.....	61
40.2	Counterparts.....	61
40.3	Governing law and jurisdiction	61
40.4	Costs and duties	61
40.5	Election and waiver	61
40.6	No merger	62
40.7	Further action and time	62
	SCHEDULE 1: RESERVE, AGREEMENT AREA AND ROAD CORRIDORS	63
	Part A – Map of Reserve and Agreement Area	63
	Part B – Road Corridors	67
	SCHEDULE 2: WARNPURRU RULE BOOK	77
	SCHEDULE 3: INDIGENOUS LAND USE AGREEMENT	131
	SCHEDULE 4: MINUTE OF PROPOSED CONSENT DETERMINATION OF COMPENSATION	173
	SCHEDULE 5: INFRASTRUCTURE UPGRADE ITEMS	233
	SCHEDULE 6: JOINT MANAGEMENT AGREEMENT	237
	SCHEDULE 7: SECTION 47C AGREEMENT	271
	SCHEDULE 8: MINUTE OF PROPOSED CONSENT DETERMINATION OF NATIVE TITLE	329
	SCHEDULE 9: MANAGEMENT ORDER	381
	SCHEDULE 10: RULES OF THE NGURRARRITJAKU KUTJU FUND	385

THIS DEED is made on the 29th day of OCTOBER 2020

Between

The applicant in the Compensation Claim in its own right and for and on behalf of the Gibson Desert People, c/- 76 Wittenoom Street, East Perth, Western Australia (**Gibson Desert Applicant**)

Warnpurru (Aboriginal Corporation) (ICN 8979), c/- 76 Wittenoom Street, East Perth, Western Australia (**Warnpurru**)

Central Desert Native Title Services Ltd of 76 Wittenoom Street, East Perth, Western Australia (**CDNTS**)

State of Western Australia, represented by the **Minister for Aboriginal Affairs** and the **Minister for Environment** of 12th Floor, Dumas House, 2 Havelock Street, West Perth, Western Australia (**State**)

Minister for Lands, a body corporate continued under section 7(1) of the *Land Administration Act 1997* (WA) of the Department of Planning, Lands and Heritage, 140 William Street, Perth, Western Australia (**Minister for Lands**)

Conservation and Parks Commission, a body corporate established under section 18 of *Conservation and Land Management Act 1984* (WA), 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia (**Commission**)

Chief Executive Officer of the Department of Biodiversity, Conservation and Attractions, acting through the **Conservation and Land Management Executive Body**, a body corporate established under section 36 of the *Conservation and Land Management Act 1984* (WA), c/o 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia (**CEO**)

RECITALS

- A. The Gibson Desert People have, and their predecessors had, a connection to the country of the Agreement Area, pursuant to their traditional laws and customs and the Tjukurrpa, which links the past with the present, and links all things and people to the environment. This connection gave and continues to give rise to rights and responsibilities under traditional law and custom, including in relation to the use and protection of country and the Tjukurrpa.
- B. The Gibson Desert People and their predecessors historically lived on and used the resources of the Agreement Area for sustenance, trade, and otherwise to their benefit, as they were entitled and obliged to do under the traditional laws and customs acknowledged and observed by them.
- C. The Gibson Desert People are those people who, under the traditional laws and customs acknowledged and observed by them and other members of the Western Desert, are the 'proper' people in relation to the Agreement Area and the associated Tjukurrpa.
- D. This Agreement exists because the effect of the Compensable Act was to wholly extinguish native title in relation to the Agreement Area in a way that gives the Gibson Desert People an entitlement to compensation on just terms under the NT Act. The Compensable Act had the effect of extinguishing the Gibson Desert People's non-exclusive native title rights and interests in relation to the Agreement Area. The *Racial Discrimination Act 1975* (Cth) conferred a right to compensation on the Gibson Desert People for the extinguishment of their native title. The effect of section 45 of the NT Act is that the compensation for the extinguishment of the Gibson Desert People's native title is payable under the NT Act as if the entitlement arose under that Act.

- E. The State and the Gibson Desert People have negotiated this Agreement:
- (a) to settle all current and future claims for compensation for the loss, diminution, impairment or other effect on the Gibson Desert People's native title rights and interests in relation to the Agreement Area by the Compensable Act; and
 - (b) in recognition of the impacts and effects of the Compensable Act upon the Gibson Desert People and their rights and interests, and to evidence the commitment of the State to working with Gibson Desert People towards a relationship of greater and mutual trust, confidence and respect in light of those impacts and effects; and
 - (c) to evidence the State and the Gibson Desert People's mutual agreement and shared objectives to work together to protect the conservation and cultural values of the Agreement Area in a way that will appropriately recognise the Gibson Desert People's rights and responsibilities in relation to the Agreement Area, including under traditional law and custom, and support their broader social, economic and cultural aspirations.
- F. This Agreement is called the 'Compensation and Lurrtjurrulu Palakitjalu Settlement Agreement' to reflect these three purposes. 'Lurrtjurrulu Palakitjalu' translated into English means 'we will do it together'.
- G. Under this Agreement, the State will provide Monetary Benefits and Non-Monetary Benefits over a period of 10 years, commencing on the Execution Date. The Parties intend that this Agreement will also govern their relationship during that period and provide a basis for their ongoing relationship beyond the term of the Agreement. The Parties intend that this Agreement will support orders that will result in the Compensation Claim being determined by consent, preferably at the same time as a Native Title Determination.
- H. This Agreement will be implemented on behalf of the Gibson Desert People by Warnpurru, which was established to represent and assist the Gibson Desert People to look after, manage and protect the Agreement Area, and to promote the social, cultural and economic interests of the Gibson Desert People.
- I. In summary, this Agreement provides for:
- (a) a new name for the Reserve being nominated by Warnpurru on behalf of the Gibson Desert People;
 - (b) the Reserve to be vested jointly in the Commission and Warnpurru, with Warnpurru having the option to later seek, with the State's support, Parliamentary approval for cancellation of the Reserve to be replaced by a new reserve for 'conservation and Aboriginal social, cultural and economic benefit' that would continue to be jointly managed but vested solely in Warnpurru;
 - (c) the CEO and Warnpurru to jointly manage the Reserve for 10 years with the State committing \$7.5 million over that period to support joint management;
 - (d) means by which the Gibson Desert People can seek a determination that native title exists in relation to the Agreement Area;
 - (e) State funding for:
 - (i) upgrading existing facilities in Patjarr to support joint management and related activities;

- (ii) the secure storage of culturally important items in Patjarr;
 - (iii) operational support for Warnpurru for 10 years; and
 - (iv) contributions to the Ngurrarritjaku Kutju Fund for 10 years. Ngurrarritjaku Kutju translated into English means 'only for traditional owners'; and
 - (f) commitments to work together to provide other social, economic and cultural benefits to the Gibson Desert People.
- J. The State has agreed to meet its liability to compensate the Gibson Desert People by providing the Benefits to the Gibson Desert People under the terms of this Agreement. A focus of the Agreement is the Parties' commitment to effective joint management of the conservation and cultural values of the Agreement Area for the term of the Agreement. However, important Non-Monetary Benefits include the State's commitment to enable the Gibson Desert People to seek a determination of native title on the basis that prior extinguishment of their native title is to be disregarded and the State's expression of its intention to consent to a Native Title Determination.
- K. This Agreement contemplates a separate indigenous land use agreement in circumstances where a New Reserve is created after native title has been determined to exist. An indigenous land use agreement is not considered necessary if a Native Title Determination is made while the Reserve exists because the effect of a determination would be that the Reserve, and acts done under, or in accordance with, the Reserve, are valid and subject to the non-extinguishment principle.
- L. This Agreement provides an opportunity for the Gibson Desert People to achieve sustainable economic, social and cultural outcomes. The Parties recognise that such outcomes are in the long term interest of both the State and the Gibson Desert People. The Parties acknowledge that the commitments contained in this Agreement will only reach their full potential if all Parties engage in the implementation of those commitments in a spirit of cooperation and shared purpose.
- M. In exchange for the Benefits contained in this Agreement, the Gibson Desert Parties agree that this Agreement provides for full and final compensation on just terms for the loss, diminution, impairment and other effects of the Compensable Act on native title rights and interests in relation to the Agreement Area in the manner and to the extent set out in this Agreement. On that basis, the Gibson Desert Parties agree to the Compensation Determination, and agree not to bring any further claims for compensation in respect of the Compensable Act.
- N. In accordance with the wishes of the Gibson Desert People, the Benefits under this Agreement will be provided to Warnpurru, which must operate consistently with the governance requirements in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

CHAPTER 1 – GENERAL PROVISIONS

1. DEFINED TERMS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

act has the meaning given in the NT Act.

Agreement means this deed and includes the schedules to this deed.

Agreement Area means the land and waters contained in the Reserve as at the Execution Date.

applicant has the meaning given in the NT Act.

approved determination of native title has the meaning given in the NT Act.

Assumption Documents means (as applicable):

(a) a deed in favour of all other Parties, and any other documents notified by the State Parties (acting reasonably), each in a form and substance acceptable to the State Parties (acting reasonably), under which a person to which the right, title, obligations and interests of any of the Gibson Desert Parties or CDNTS (**NT Assignor**) are to be assigned, transferred or novated, agrees to:

- (i) be bound by the obligations of the NT Assignor under this Agreement; and
- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,

as if it was a party to this Agreement; or

(b) a deed in favour of all other Parties, and any other documents notified by the Gibson Desert Parties (each acting reasonably), each in a form and substance acceptable to the Gibson Desert Parties (each acting reasonably), under which a person to which the right, title, obligations and interests of any State Party (**State Assignor**) are to be assigned, transferred or novated, agrees to:

- (i) be bound by the obligations of the State Assignor under this Agreement; and
- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,

as if it was a party to this Agreement.

authorise has the meaning given in the NT Act.

Benefits mean the Monetary Benefits and the Non-Monetary Benefits provided by a State Party under this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

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

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

claimant application has the meaning given in the NT Act.

common law holder has the meaning given in the NT Act.

Compensable Act means all of the following acts associated with the creation of the Reserve on 22 April 1977 to the extent that they gave rise to an entitlement to Compensation:

- (a) reservation of the land in accordance with section 29 of the *Land Act 1933* (WA) as Reserve 34606 for the purpose of Conservation of Flora and Fauna;
- (b) classification of Reserve 34606 as a Class 'A' reserve in accordance with section 31 of the *Land Act 1933* (WA); and
- (c) vesting of Reserve 34606 in the Western Australian Wildlife Authority in trust for the reserve purpose in accordance with section 33 of the *Land Act 1933* (WA).

Compensation means compensation for any loss, diminution, impairment or other effect on native title rights and interests under the NT Act, the LA Act or otherwise.

Compensation Claim means the application made by the Gibson Desert Applicant for and on behalf of the Gibson Desert People under sections 50(2) and 61(1) of the NT Act for a determination of compensation in relation to the Compensable Act in Federal Court proceeding WAD 222 of 2020 (including as amended from time to time).

Compensation Determination means a determination of compensation made by the Federal Court in accordance with Part 2, Division 5 of the NT Act in respect of the Compensation Claim that gives effect to the terms of this Agreement for the purposes of the NT Act.

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

Department has the meaning given in the CALM Act.

Determination of No Native Title means an approved determination of native title that native title does not exist in relation to the Agreement Area.

Event of Default has the meaning given in clause 31.1.

Execution Date means the date on which this Agreement is finally executed by all Parties.

Federal Court means the Federal Court of Australia.

Financial Year means the period commencing on 1 July in a year and ending on 30 June in the following year.

future act has the meaning given in the NT Act.

Gibson Desert Parties means:

- (a) the Gibson Desert Applicant; and

- (b) Warnpurru, both in its capacity as a party to this Agreement and, if applicable and subject to execution of the Assumption Documents, as the Gibson Desert PBC.

Gibson Desert PBC means a registered native title body corporate in respect of a Native Title Determination.

Gibson Desert People means the persons described in clause 1.4.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

ILUA has the same meaning as is given to the term 'indigenous land use agreement' in the NT Act.

ILUA Register has the same meaning as is given to the term 'Register of Indigenous Land Use Agreements' in the NT Act.

Insolvency Event means where a Party which is a body corporate:

- (a) commits an act of insolvency under and for the purposes of the Corporations Act or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the Corporations Act, including as applied by Parts 11.3 or 11.4 of the CATSI Act; or
- (c) is placed under special administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

Interim Joint Management Body has the meaning given in clause 19.3.

Joint Management Agreement means the agreement for the management by the Joint Management Body of an area of land that includes the Reserve, executed as soon as practicable after the relevant management plan is approved by the Minister for Environment under section 60 of the CALM Act.

Joint Management Body means the body established pursuant to an agreement under section 56A of the CALM Act giving effect to a requirement in any of the management plans prepared under section 54 of the CALM Act for any part of the Reserve to be jointly managed by the CEO and Warnpurru.

Joint Vesting means a joint vesting of land as provided for in section 8AA(2) of the CALM Act.

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

Law means any written law of the Commonwealth or the State of Western Australia, including all regulations and other instruments made under any statute.

Management Order has the meaning given to that term in section 3 of the LA Act.

Minister for Environment means the Minister to whom the administration of the CALM Act is committed.

Monetary Benefits means the monies payable under clause 13 and clause 14.

National Native Title Register has the meaning given in the NT Act.

Native Title Claim means a native title determination application in relation to the Agreement Area made on behalf of the Gibson Desert People seeking a Native Title Determination.

Native Title Determination means an approved determination of native title that native title exists in relation to the Agreement Area substantially in the form in Schedule 8 (Part A or Part B) and which recognises the Reserve or the New Reserve (as the case may be) as an other interest for the purposes of section 225(c) of the NT Act.

native title and **native title rights and interests** have the meaning given in the NT Act.

New Reserve means a new reserve created in accordance with clause 8.

Ngurrarritjaku Kutju Fund means the fund established under clause 14.

non-extinguishment principle has the meaning given in the NT Act.

Non-Monetary Benefits means all of the following as and when provided:

- (a) monies expended under clauses 15 and 16;
- (b) Joint Vesting of the Reserve under clause 17;
- (c) Re-naming of the Reserve under clause 18;
- (d) joint management of the Reserve under clause 19 (including monies to be expended under clause 19.4); and
- (e) each of the further commitments described in clauses 7, 8, 9, 11, 12 and 20.

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

Party means a Party to this Agreement and **Parties** means any 2 or more of them, as the case requires.

Patjarr means the Patjarr Community located on Lot 14 shown on Deposited Plan 91083 the subject of Reserve 29452 for the purpose of Use and Benefit of Aboriginal Inhabitants.

Perth CPI means the Perth All Groups Consumer Price Index as published in the Consumer Price Index, Australia (Australian Bureau of Statistics Catalogue 6401.0, Series ID A2325826V) each Quarter by the Australian Bureau of Statistics or if the Australian Bureau of Statistics stops publishing the Perth All Groups Consumer Price Index, then the index recommended by the Institute of Actuaries Australia (or if that organisation ceases to exist, the organisation that replaced it or substantially performs the same role and function) as the index that most appropriately replaces the Perth All Groups Consumer Price Index. The Perth CPI is a number rounded to four decimal points.

Registered means registered, pursuant to section 24BI of the NT Act, on the ILUA Register, and **Registration** has a corresponding meaning.

registered native title body corporate has the meaning given in the NT Act.

registered native title claimant has the meaning given in the NT Act.

Reserve means all that land and water comprising Reserve 34606 for the purpose of Conservation of Flora and Fauna, being Lot 13 as shown on Deposited Plan 91083 (Reserve 34606 – Gibson

Desert Nature Reserve) and having a total area of approximately 1,824,864 hectares. The Reserve excludes the Road Corridors.

Resolution Institute means the dispute resolution organisation of that name. If the Resolution Institute ceases to exist as an organisation, then the Resolution Institute will be taken to mean any other dispute resolution organisation with similar objects that is agreed by the Parties.

Road Corridors means the areas described in Schedule 1, Part B.

Section 47C means proposed new section 47C of the NT Act in the form, or substantially the form, set out in clause 2 of Schedule 3, Part 1 to the *Native Title Legislation Amendment Bill 2019* (Cth), or any equivalent legislative amendment which has substantially the same purpose and intended effect.

State Parties means the State, the Minister for Lands, the Commission and the CEO.

Term means the term of this Agreement as specified in clause 30.

Traditional Owner Commercial Entity means any entity which:

- (a) is one of the following:
 - (i) a member of the Gibson Desert People;
 - (ii) a corporation in which a member of the Gibson Desert People has a shareholding, membership, directorship or a share of profits or of enterprise product, or has made an investment of cash, asset or in-kind contribution; or
 - (iii) a joint venture or partnership in which Warnpurru or any member of the Gibson Desert People has a shareholding, membership, directorship or a share of profits or of enterprise product, or has made an investment of cash, asset or in-kind contribution; and
- (b) has been certified in writing by Warnpurru as being a Traditional Owner Commercial Entity for the purposes of this Agreement.

Warnpurru Rule Book means the Rule Book of Warnpurru as varied or amended from time to time, a copy of which as at the Execution Date is set out at Schedule 2.

1.2 Interpretation – General

In this Agreement, unless the context otherwise requires:

- (a) the headings and subheadings are inserted for guidance only and do not govern the meaning or construction of any provision of this Agreement;
- (b) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any recitals, schedules or annexures to this Agreement, the terms and conditions of the clauses of this Agreement will prevail to the extent of the inconsistency;
- (c) if any conflict arises between a written description contained in this Agreement and any map contained in a schedule to this Agreement, the written description will prevail to the extent of any inconsistency;
- (d) words expressed in the singular include the plural and vice versa;

- (e) words expressed in one gender include the other gender;
- (f) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate or trust;
- (g) references to chapters, clauses, Parties and schedules are references to chapters and clauses of, and parties and schedules to, this Agreement;
- (h) a reference to a document, agreement or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (i) subject to clause 24.1, a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (j) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (k) a reference to a governmental entity (corporate or unincorporate) or person established under any Law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;
- (l) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (m) 'including' means 'including but not limited to';
- (n) a reference to any written law will be deemed to include any amendment, re-enactment or consolidation of the written law;
- (o) a reference to dollars or \$ is to an amount in Australian currency;
- (p) references to time are to local time in Perth, Western Australia;
- (q) where time is to be reckoned from a day or event, that day or the day of that event is excluded; and
- (r) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.

1.3 Interpretation – liabilities and benefits

In this Agreement, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity which is in favour of the Gibson Desert Parties is for the benefit of them jointly and severally;
- (b) any agreement, representation, warranty or indemnity which is given by more than one of the Gibson Desert Parties binds them jointly and severally;
- (c) any agreement, representation, warranty or indemnity which is given by the Gibson Desert Applicant is given in the capacities described in clause 1.5 and a person comprising the

Gibson Desert Applicant is not personally liable for any breach of agreement, representation, warranty or indemnity by the Gibson Desert Parties;

- (d) any agreement, representation, warranty or indemnity in favour of the State Parties is for the benefit of them severally;
- (e) any agreement, representation, warranty or indemnity which is given by the State Parties binds them severally; and
- (f) where this Agreement imposes an obligation on the CEO or the Minister for Environment, the State must procure compliance with that obligation.

1.4 Interpretation – Gibson Desert People

- (a) In this Agreement, unless the contrary intention appears, a reference to the Gibson Desert People means those persons who:
 - (i) have rights under traditional laws and customs in part or all of the Agreement Area through:
 - (A) being conceived in the Agreement Area;
 - (B) being born in the Agreement Area;
 - (C) the birth of an ancestor on the Agreement Area;
 - (D) the acquisition of knowledge through long association with the Agreement Area;
 - (E) an ancestor's acquisition of knowledge through long association with the Agreement Area;
 - (F) the burial site of an ancestor in the Agreement Area; and/or
 - (G) having religious, sacred, ritual, practice and historical knowledge of the Agreement Area; and
 - (ii) are recognised under traditional laws and customs by other members of the Gibson Desert People as having rights in the Agreement Area.
- (b) The Parties agree that, as at the Execution Date, the Gibson Desert People includes the descendants of the following people:
 - (i) Malungka;
 - (ii) the siblings Wirun / Wallace Davies, Tjuturumul / Billy Campbell and Marnupa Banks;
 - (iii) Katurapulpar;
 - (iv) the siblings Wunkurpa, Ngawili / Nolene Campbell, Tjintutjilti, Mulyamaru / Barney Ward and Nangkawan / Robert Ward;
 - (v) Lenny Morrison;
 - (vi) Kaliya / Amy Anderson;

- (vii) the cousin-siblings Mirta-Mirta / Andy Campbell, Dinny Campbell and Nyipi Ward;
- (viii) the siblings Kautjuku / Polly Bond, Red Robertson, Walampari Mitchell and Tatitjarra / Arthur Robertson;
- (ix) Minmarna / Chinaman / John Carnegie;
- (x) the siblings Yaluwila / Violet Ward and Neva Butler;
- (xi) the siblings Tjiltjirkurnyu and Tjapiyatjara;
- (xii) the siblings Matjuwa Campbell and Nyingura Martin;
- (xiii) Kuku / Kirintji;
- (xiv) Dr George Ward / George Ward;
- (xv) the siblings Dolly Smith and Eileen Robinson;
- (xvi) Pulpurru Davies; and
- (xvii) Nyaruarr / Nama Cutline / Ben Brown.

1.5 Status of the Gibson Desert Applicant

In this Agreement, unless the contrary intention appears, a reference to the Gibson Desert Applicant means, as applicable:

- (a) the Gibson Desert Applicant as an entity recognised under the NT Act; and
- (b) the persons comprising the Gibson Desert Applicant jointly,
acting in any or all of the following capacities:
 - (c) in their own right;
 - (d) in their capacity as the applicant with respect to the Compensation Claim; and
 - (e) on behalf of the Gibson Desert People, to the maximum extent permitted by Law (including the NT Act and the LA Act) and the common law, whether in the nature of a common law agent, a trustee or a relationship expressly or impliedly created pursuant to the NT Act.

1.6 Amounts expressed to be increased by Perth CPI

If an amount (**Base Amount**) referred to in this Agreement is expressed to be 'increased by Perth CPI on each 1 July during the Term', then for the purpose of interpreting this Agreement, that amount is taken to be adjusted on each 1 July during the Term in accordance with the following formula, but never so as to reduce the amount below the amount referred to in this Agreement:

$$A = B \times \text{Perth CPI Indexation Rate}$$

Where:

A means the adjusted Base Amount that applies with effect from that 1 July after the adjustment in accordance with this clause, rounded up or down to the nearest 10 cent amount.

B means the original Base Amount that applied on the Commencement Date prior to any adjustments being made in accordance with this clause.

Perth CPI Indexation Rate means $(\text{Perth CPI}_n / \text{Perth CPI}_b)$.

CPI_n means the Perth CPI published for the Quarter ending 31 December immediately preceding that 1 July.

CPI_b means the Perth CPI published for the Quarter ending 31 December 2019.

1.7 Road Corridors and native title

- (a) The Parties acknowledge and agree that for the purposes of this Agreement and for all purposes under the NT Act, the location of the Road Corridors that are excluded from the Reserve are shown on the map in Schedule 1, Part A and are described in Schedule 1, Part B.
- (b) For the avoidance of doubt, subject to clause 1.7(a), nothing in this Agreement, including in the Schedules or in any document filed by a Party in accordance with the Schedules, constitutes any admission or representation by any Party as to the status of the Road Corridors at law.

CHAPTER 2 – NATURE AND EFFECT OF AGREEMENT

2. INTENTION OF THIS AGREEMENT

The Parties acknowledge their intention that this Agreement is a common law contract which, to the maximum extent permitted by law, including section 62A of the NT Act, binds the Gibson Desert People individually and collectively.

3. SETTLEMENT OF COMPENSATION LIABILITY

3.1 Full and final settlement of the liability of the State Parties

The Parties acknowledge and agree that:

- (a) the payment and provision of the Benefits in accordance with this Agreement will constitute full and final satisfaction of:
 - (i) the State's Compensation liability; and
 - (ii) any Compensation entitlement of the Gibson Desert Applicant which is recoverable from the State; and
 - (iii) any Compensation entitlement of anyone else who holds, or but for the Compensable Act would have held, native title in the Agreement Area which is recoverable from the State,

in respect of:

- (iv) the Compensable Act;
 - (v) any act done by the State Parties in respect of the creation of any New Reserve in accordance with clause 8;
 - (vi) the doing of any act (including a future act) done by a State Party under or pursuant to the Reserve or the New Reserve, including the construction or establishment of any public work, whether the act is done before or after a Native Title Determination is made; and
 - (vii) any other non-native title rights and interests held by a State Party or a third party in relation to the Agreement Area that exist as at the date that a Native Title Determination is made,
- each a **Released Act**;
- (b) in consideration for the Benefits, the Gibson Desert Parties each release the State Parties from any further liability for Compensation in relation to the loss, diminution, impairment and other effects on native title rights and interests in relation to the Released Acts; and
 - (c) the Benefits constitute compensation payable in respect of the Released Acts, other than in respect of non-native title rights and interests held by third parties as described in clause 3.1(a)(vii), within the meaning of section 49(a) of the NT Act.

3.2 No further claim for compensation under the NT Act against the State Parties

- (a) The Gibson Desert Parties each agree that in consideration for the Benefits under this Agreement:
 - (i) they will not make any further claim for Compensation, nor will they authorise any other person to bring such a claim on their behalf, or on behalf of any member of the Gibson Desert People, against the State Parties for the effects of, or the exercise of any right or obligations created by, a Released Act on any native title rights and interests in the Agreement Area;
 - (ii) they will do everything which is lawfully and reasonably within their capability, other than bringing legal proceedings, to ensure that each person who is from time to time an adult member of the Gibson Desert People does not make any further claim for Compensation, whether on their own behalf or on behalf of any other member of the Gibson Desert People, against the State Parties for the effects of, or the exercise of any right or obligations created by, a Released Act on any native title rights and interests in the Agreement Area;
 - (iii) if a further claim for Compensation is brought in breach of this clause 3.2(a), then any of the State Parties may plead:
 - (A) the terms of this Agreement; and
 - (B) section 49 of the NT Act,in bar of, or response to, that claim.
- (b) For the avoidance of doubt, the State Parties agree that this clause 3.2 does not:
 - (i) apply to claims for Compensation, including in respect of acts that fall within clause 3.1(a)(vii), where Compensation is sought to be recovered from a person who is not a State Party;
 - (ii) apply to legal proceedings brought in relation to compliance with or enforcement of this Agreement, including claims for breach of contract; or
 - (iii) prevent CDNTS from exercising any of the functions under Part 11 of the NT Act in respect of the Agreement Area, including by providing facilitation and assistance to any of the Gibson Desert Applicant, members of the Gibson Desert People or Warnpurru concerning legal proceedings brought in relation to:
 - (A) compliance with or enforcement of this Agreement, including claims for breach of contract; or
 - (B) claims for Compensation, including in respect of acts that fall within clause 3.1(a)(vii), where Compensation is sought to be recovered from a person who is not a State Party.

4. COMPENSATION DETERMINATION AND NATIVE TITLE DETERMINATION

- (a) The State Parties acknowledge that, prior to the Execution Date, the Gibson Desert Applicant made the Compensation Claim.

- (b) As soon as is reasonably practicable after a Native Title Claim is filed in accordance with clause 7 or clause 9, the Gibson Desert Applicant and the State agree to prepare and file in the Federal Court:
 - (i) a minute of proposed consent orders which provides for a Compensation Determination in the form, or substantially the form, set out in Schedule 4, Part A; and
 - (ii) a minute of proposed consent orders which provides for a Native Title Determination in the form, or substantially the form, set out in Schedule 8, Part A.
- (c) As soon as is reasonably practicable after a revised native title determination application is filed in accordance with clause 11, the Gibson Desert Applicant and the State agree to prepare and file in the Federal Court a minute of proposed consent orders which provides for a Native Title Determination in the form, or substantially the form, set out in Schedule 8, Part B.
- (d) If the Federal Court does not agree to make orders in accordance with the minute of proposed consent orders described in clause 4(b)(i), then the Parties will as soon as is reasonably practicable:
 - (i) negotiate in good faith to make any necessary amendments to the minute of proposed consent orders, which if necessary may include an order to the effect that, having regard to this Agreement, no further compensation is payable in respect of the Compensable Act; and
 - (ii) prepare and file a further minute of proposed consent orders.
- (e) If the Federal Court does not agree to make orders in accordance with clause 4(c), then the parties will negotiate in good faith to make any necessary amendments to the minute of proposed consent orders and do any other thing reasonably necessary to enable the making of a Native Title Determination.

5. PROVISION AND RECEIPT OF BENEFITS

5.1 Provision of Benefits

- (a) The Parties acknowledge and agree that:
 - (i) the Monetary Benefits are Compensation payable to the Gibson Desert People in accordance with the NT Act and clause 3 of this Agreement, however the Gibson Desert People agree and irrevocably direct that the Monetary Benefits are to be paid to Warnpurru beneficially in accordance with this clause 5; and
 - (ii) the Non-Monetary Benefits are Compensation payable to the Gibson Desert People in accordance with the NT Act and clause 3 of this Agreement, however the Gibson Desert People agree and irrevocably direct that:
 - (A) the Non-Monetary Benefits to be provided pursuant to clauses 8, 17, 18 and 19 are to be provided to Warnpurru in the manner provided for in those clauses; and

- (B) the Non-Monetary Benefits to be provided pursuant to clauses 7, 9, 11, 12, 16 and 20 are to be provided in the manner stipulated in those clauses.
- (b) The Gibson Desert Parties each agree that the performance by the State Parties of their obligation to provide the Benefits in accordance with this Agreement:
 - (i) is done for the benefit of the Gibson Desert People collectively;
 - (ii) is a valid discharge of the liability of the State in relation to the Compensable Act; and
 - (iii) is a valid discharge of the obligations of the relevant State Party under this Agreement to provide the Benefits.
- (c) For the avoidance of doubt, the Parties acknowledge and agree that:
 - (i) the Benefits are to be provided to Warnpurru in accordance with this Agreement regardless of whether or not it is the Gibson Desert PBC; and
 - (ii) Warnpurru does not receive or hold the Benefits as trustee for the Gibson Desert People.

5.2 Payment of Monetary Benefits

- (a) Warnpurru must:
 - (i) within 10 Business Days of the Execution Date:
 - (A) establish an interest-bearing bank account with an Australian bank into which the Monetary Benefits payable pursuant to clause 13 are to be paid;
 - (B) establish a separate interest-bearing bank account with an Australian bank into which the Monetary Benefits payable pursuant to clause 14 are to be paid; and
 - (C) provide the State in writing with details of those bank accounts; and
 - (ii) subject to clause 5.2(b), maintain those bank accounts at all relevant times during the term of this Agreement.
- (b) At any time after the Execution Date, Warnpurru may provide written notice to the State Parties nominating an alternative interest bearing bank account into which the Monetary Benefits payable after the date of the notice are to be paid, provided that any account nominated in respect of Monetary Benefits payable under clause 14 is not the same account nominated in respect of Monetary Benefits payable under clause 13.
- (c) The State Parties agree to pay the Monetary Benefits into the account nominated in a notice provided under clause 5.2(a) or clause 5.2(b).
- (d) If at any time the State is due to make a payment under this Agreement Warnpurru has not nominated a bank account in accordance with this clause 5.2, the State must make the payment to an interest bearing bank account established by the State (with interest at a rate equivalent to the average earning on the Public Bank Account continued in existence

pursuant to section 11 of the *Financial Management Act 2006* (WA)) to be held by the State on trust for the benefit of the Gibson Desert People.

- (e) Any payment held in accordance with clause 5.2(d), together with any interest earned, will be transferred by electronic funds transfer to the relevant account nominated in a notice provided under clause 5.2(a) or clause 5.2(b), within 20 Business Days of the State receiving the nomination.

5.3 Recovery of any damages

Notwithstanding clause 5.1(a), the Parties acknowledge and agree that in the event any damages are payable to the Gibson Desert People for any failure by the State Parties to provide the Monetary Benefits or the Non-Monetary Benefits in accordance with this Agreement, the Gibson Desert People agree and direct that those damages are to be paid to Warnpurru, to be dealt with in accordance with clause 5.4(a) as if the damages are Monetary Benefits.

5.4 Gibson Desert Parties' obligations regarding Benefits

The Gibson Desert Parties agree that:

- (a) Warnpurru must administer, and may only distribute, the Monetary Benefits in accordance with the Warnpurru Rule Book, and the Gibson Desert People will not procure or encourage Warnpurru to administer or distribute the Monetary Benefits other than in accordance with the Warnpurru Rule Book; and
- (b) Warnpurru must hold and manage, and may only dispose of, the Non-Monetary Benefits in accordance with the Warnpurru Rule Book, and the Gibson Desert People will not procure or encourage Warnpurru to hold or manage the Non-Monetary Benefits other than in accordance with the Warnpurru Rule Book.

5.5 State Parties not responsible for management of Benefits

The Parties acknowledge and agree that:

- (a) notwithstanding anything else in this Agreement, the State Parties are not bound to enquire as to the manner in which:
 - (i) any payments; or
 - (ii) the care, control and management of land,made under this Agreement are applied, or as to the members or beneficiaries of the body in receipt of the payments or land; and
- (b) none of the State Parties will be responsible for any act, omission, neglect or breach of trust by any of the Gibson Desert Parties.

CHAPTER 3 –RESTORATION OF NATIVE TITLE

6. PREFERRED OPTION

The Parties acknowledge and agree that it is their preference that a Native Title Determination will be made in accordance with clause 7 following the enactment of Section 47C within 3 years of the Execution Date.

7. RESTORATION OF NATIVE TITLE UNDER SECTION 47C

7.1 Application of this clause

This clause 7 applies if Section 47C is enacted and prior to the enactment:

- (a) the Gibson Desert People have not made a Native Title Claim in relation to a New Reserve that has been created under clause 8 in accordance with section 47A of the NT Act as described in clause 9; and
- (b) the Federal Court has not made a Determination of No Native Title as described in clause 10.

7.2 Obligations of Gibson Desert Parties

As soon as is reasonably practicable after Section 47C comes into force:

- (a) if authorisation of an applicant to bring a Native Title Claim in accordance with Section 47C has not previously been obtained, Warnpurru will assist the Gibson Desert People to authorise an applicant (who may be the Gibson Desert Applicant) to bring a Native Title Claim in accordance with Section 47C and such assistance may include Warnpurru as agent making a request on behalf of the Gibson Desert People for CDNTS to exercise its facilitation and assistance functions in respect of the lodgement of the Native Title Claim; and
- (b) the Gibson Desert People will:
 - (i) give notice to the State requesting its agreement under Section 47C in relation to the Reserve or the New Reserve, as the case may be; and
 - (ii) procure that, once the agreement under Section 47C has been entered into, the applicant referred to in clause 7.2(a) will use its best endeavours to file the Native Title Claim.

7.3 Intention of State

It is the State's intention as at the Execution Date that, as soon as is reasonably practicable after the receipt of the notice provided to the State pursuant to clause 7.2, the State will:

- (a) comply with any requirements in the NT Act to notify a proposed agreement between the State and the Gibson Desert People in the form, or substantially the form, set out in:
 - (i) in the case of the Reserve, Schedule 7, Part A; or
 - (ii) in the case of the New Reserve, Schedule 7, Part B,

and to give interested parties an opportunity to comment on the proposed agreement; and

- (b) subject to those requirements, execute an agreement between the State and the Gibson Desert People in the form, or substantially the form, set out in Schedule 7, Part A or Schedule 7, Part B (as the case may be) and provide the executed copy to the Gibson Desert People.

8. OPTION FOR SOLE VESTING AND CREATION OF NEW RESERVE

8.1 Application of this clause

This clause 8 applies:

- (a) after the third anniversary of the Execution Date; and
- (b) if Warnpurru, having consulted with and gained the consent of the Gibson Desert People, gives notice to the State that it wishes to exercise the option to have the land that comprises the Reserve vested solely in Warnpurru.

8.2 Intention of State

It is the State's intention as at the Execution Date that, if Warnpurru gives notice under clause 8.1(b):

- (a) the State will prepare and table a Bill in Parliament to cancel the Reserve in accordance with section 45(3) of the LA Act within 1 year of the notice given pursuant to clause 8.1(b); and
- (b) if the Bill is passed then, subject to the registration of an ILUA under clause 8.3, the Minister for Lands will create a new reserve under section 41 of the LA Act in relation to the land the subject of the cancelled Reserve:
 - (i) which will have the purpose of 'conservation and Aboriginal social, cultural and economic benefit';
 - (ii) which will be classified as a class A reserve by order under section 42(1) of the LA Act;
 - (iii) care, control and management of which will be placed with Warnpurru solely by making a Management Order in the form, or substantially in the form, set out in Schedule 9;
 - (iv) which will continue to be managed by the CEO and Warnpurru jointly in accordance with the Joint Management Agreement under section 8A of the CALM Act; and
 - (v) which will include or be accompanied by an order of the Minister conferring the power to lease or licence consistent with section 46 of the LA Act.

8.3 Need for an ILUA

If:

- (a) Warnpurru gives notice under clause 8.1;

- (b) a Native Title Determination has been made under clause 7 or clause 11; and
- (c) the Bill described in clause 8.2 is passed,

then, as soon as practicable, the State Parties and the Gibson Desert PBC or the registered native title claimant must:

- (d) enter into an ILUA substantially in the form in Schedule 3 under which the Gibson Desert PBC consents to:
 - (i) the creation of a New Reserve; and
 - (ii) the doing of any future act under or pursuant to the New Reserve, including the construction or establishment of any public work; and
- (e) use their best endeavours to ensure that the ILUA is registered.

9. RESTORATION OF NATIVE TITLE UNDER SECTION 47A AFTER NEW RESERVE CREATED

9.1 Application of this clause

This clause 9 applies:

- (a) after the third anniversary of the Execution Date; and
- (b) if:
 - (i) Section 47C has not been enacted; and
 - (ii) a New Reserve has been created under clause 8.

9.2 Exercise of option by Gibson Desert Parties

- (a) At any time after this clause applies, the Gibson Desert People may make a Native Title Claim in relation to the New Reserve in accordance with section 47A of the NT Act without further notice to the State.
- (b) Warnpurru will assist the Gibson Desert People to authorise an applicant (who may be the Gibson Desert Applicant) to bring the Native Title Claim in accordance with section 47A of the NT Act and such assistance may include Warnpurru, acting as agent for the Gibson Desert People, making a request on behalf of the Gibson Desert People for CDNTS to exercise its facilitation and assistance functions in respect of the lodgement of a claimant application.
- (c) If a Native Title Determination is made in favour of the Gibson Desert People, the Gibson Desert Parties will use reasonable endeavours to procure the Gibson Desert People (including through their nominated representative) to nominate Warnpurru to be the Gibson Desert PBC in accordance with section 56 or 57 of the NT Act.

9.3 Party may propose ILUA

- (a) If:

- (i) the Gibson Desert People make a Native Title Claim in relation to the New Reserve in accordance with section 47A of the NT Act;
 - (ii) the Federal Court proposes to make a Native Title Determination in relation to the New Reserve in accordance with section 47A of the NT Act; and
 - (iii) either Party forms the view that an ILUA is required,
- then the Parties will negotiate in good faith to determine:
- (iv) whether an ILUA is required; and
 - (v) if the Parties agree that an ILUA is required, the terms of the ILUA.
- (b) If the Parties agree that an ILUA is required, then the Parties agree to enter into an ILUA as soon as practicable after the Native Title Determination is made and use their best endeavours to ensure that the ILUA is registered.

10. IF RESTORATION OF NATIVE TITLE IS NOT ACHIEVED AFTER FIVE YEARS

10.1 Application of this clause

This clause 10 applies:

- (a) after the fifth anniversary of the Execution Date; and
- (b) if either:
 - (i) Section 47C has not been enacted and Warnpurru has not given notice that it wishes to exercise the option of having the Reserve vested in Warnpurru solely as described in clause 8; or
 - (ii) Section 47C has been enacted and the Gibson Desert People have not given notice requesting the State give its agreement under Section 47C in relation to the Reserve as described in clause 7.

10.2 Intention of Parties

- (a) It is the intention of the Parties as at the Execution Date that the Parties will as soon as is reasonably practicable after this clause applies prepare and file in the Federal Court:
 - (i) a minute of proposed consent orders which provides for a Compensation Determination in the form, or substantially the form, set out in Schedule 4, Part B; and
 - (ii) a minute of proposed consent orders for an approved Determination of No Native Title in the form, or substantially the form, set out in Schedule 4, Part B.
- (b) If the Federal Court does not agree to make orders in accordance with the minute of proposed consent orders described in clause 10.2(a), then the Parties will as soon as is reasonably practicable:
 - (i) negotiate in good faith to make any necessary amendments to the minute of proposed consent orders, which if necessary may include an order to the effect that no Compensation is payable in respect of the Compensable Act other than

the Compensation which has been and is to be provided under this Agreement;
and

- (ii) prepare and file a further minute of proposed consent orders.

11. RESTORATION OF NATIVE TITLE UNDER SECTION 47C AFTER DETERMINATION OF NO NATIVE TITLE

11.1 Application of this clause

This clause 11 applies if:

- (a) the Parties applied for, and the Federal Court made an order for, a Determination of No Native Title as described in clause 10; and
- (b) Section 47C is enacted after the date that the Determination of No Native Title is made.

11.2 Obligations of Gibson Desert Parties

- (a) As soon as is reasonably practicable after this clause applies, the Gibson Desert People will give notice to the State requesting its agreement under Section 47C in relation to the Reserve in the form, or substantially the form, set out in Schedule 7, Part A.
- (b) The Gibson Desert Applicant agrees to apply to be joined as a party to the State's revised native title determination application referred to in clause 11.3 and to do all things necessary to support the making of a Native Title Determination.
- (c) If a Native Title Determination is made in favour of the Gibson Desert People, the Gibson Desert Parties will use reasonable endeavours to procure the Gibson Desert People (including through their nominated representative) to nominate Warnpurru to be the Gibson Desert PBC in accordance with section 56 or section 57 of the NT Act.

11.3 Intention of State

It is the State's intention as at the Execution Date that, as soon as is reasonably practicable after the receipt of the notice provided to the State pursuant to clause 11.2(a):

- (a) the State will apply to the Federal Court to vary the Determination of No Native Title and seek a Native Title Determination;
- (b) the State will comply with any requirements in the NT Act to notify a proposed agreement between the State and the Gibson Desert People in the form, or substantially in the form, set out in Schedule 7, Part A and to give interested parties an opportunity to comment on the proposed agreement; and
- (c) subject to those requirements, the State will execute an agreement between the State and the Gibson Desert People in the form, or substantially in the form, set out in Schedule 7, Part A and provide the executed copy to the Gibson Desert People.

12. NATIVE TITLE CLAIM

- (a) It is the State's intention as at the Execution Date that, if:
 - (i) the Gibson Desert People make a Native Title Claim under section 47C as described in clause 7; or

- (ii) the Gibson Desert People make a Native Title Claim under section 47A as described in clause 9; or
- (iii) the State makes a revised native title determination application following the making of a Determination of No Native Title as described in clause 11,

then the State will consent to a Native Title Determination.

(b) The Parties agree that:

- (i) the Native Title Determination will not affect:
 - (A) the validity of the creation of the Reserve or the New Reserve (as the case may be) or any other prior interest in relation to the area the subject of the Native Title Determination; nor
 - (B) any interest of the State in any capacity, or of any statutory authority (including a local government body), in any public works in relation to the area the subject of the Native Title Determination; and
- (ii) on and from the date of the Native Title Determination, the non-extinguishment principle applies to the creation of the Reserve or the New Reserve (as the case may be) and any other prior interest in relation to the area the subject of the Native Title Determination.

CHAPTER 4 – MONETARY BENEFITS

13. WARNPURRU OPERATIONAL FUNDING

- (a) The State agrees to pay in accordance with clause 5:
 - (i) \$151,092.00 within 20 Business Days of the Execution Date; and
 - (ii) \$100,000.00 (increased by Perth CPI on each 1 July during the Term) each Financial Year commencing 1 July 2021 and ending 30 June 2030, to be paid within 20 Business Days after each 1 July.
- (b) The State and the Gibson Desert Parties agree that the funds provided under clause 13(a) are provided to Warnpurru beneficially and are to be used by Warnpurru for, or in connection with, the operations and business of Warnpurru.

14. NGURRARRITJAKU KUTJU FUND

- (a) The State agrees to pay the following amounts in accordance with clause 5:
 - (i) \$100,000.00 within 20 Business Days of the Execution Date;
 - (ii) \$100,000.00 (increased by Perth CPI on each 1 July during the Term) in respect of the 2021-22 Financial Year;
 - (iii) \$75,000.00 (increased by Perth CPI on each 1 July during the Term) in respect of each of the 2022-23 and 2023-24 Financial Years; and
 - (iv) \$50,000.00 (increased by Perth CPI on each 1 July during the Term) in respect of each Financial Year commencing 1 July 2024 and ending 30 June 2030.
- (b) Each payment in clauses 14(a)(ii), 14(a)(iii) and 14(a)(iv) will be made within 20 Business Days following the commencement of each applicable Financial Year.
- (c) The State and the Gibson Desert Parties agree that the funds provided under clause 14(a) are provided to Warnpurru beneficially and are to be used by Warnpurru in accordance with Warnpurru's Rule Book and the purposes and objects, and rules, of the Ngurrarritjaku Kutju Fund, as set out in clause 14(d) and 14(e) below.
- (d) The Parties agree that the purposes and objects of the Ngurrarritjaku Kutju Fund are to:
 - (i) maintain, protect, preserve, promote and support land, law and culture as practised and observed by the Gibson Desert People in accordance with traditional law and custom over their land and waters, including the Reserve;
 - (ii) support and advance the cultural, social, political, economic and legal interests of the Gibson Desert People; and
 - (iii) relieve the poverty, sickness, misfortune, suffering, and social and/or financial disadvantage of the Gibson Desert People.
- (e) The rules of the Ngurrarritjaku Kutju Fund at all times must:

- (i) be developed in consultation with the Gibson Desert People;
 - (ii) ensure that moneys are directed towards purposes that the Gibson Desert People support and approve;
 - (iii) be consistent with the objects and purposes of Warnpurru, as set out in the Warnpurru Rule Book;
 - (iv) include a mechanism for resolving disputes;
 - (v) not provide for the payment to any individual or group of individuals by way of dividends, bonuses, or profits;
 - (vi) as much as is practical, and subject to traditional law and custom, operate in a fair, equitable, and transparent manner.
- (f) The Parties acknowledge and agree that the Ngurrarritjaku Kutju Fund rules at Schedule 10 comply with clauses 14(d) and 14(e).
- (g) Warnpurru must provide to the State Parties:
- (i) a draft of any amendments to the rules of the Ngurrarritjaku Kutju Fund proposed during the term of this Agreement, for the approval of the State Parties (which approval will not be unreasonably withheld);
 - (ii) a copy of each annual financial statement provided to the Office of Registrar of Indigenous Corporations under the CATSI Act within 30 days of providing the report to the Office of Registrar of Indigenous Corporations; and
 - (iii) documentation regarding whether the acquittal of money from Ngurrarritjaku Kutju Fund was compliant with the objects and purposes of the Ngurrarritjaku Kutju Fund.
- (h) If the State has concerns arising from documentation supplied pursuant to clause 14(g)(iii) regarding acquittal of money from the Ngurrarritjaku Kutju Fund, then Warnpurru agrees that representatives of the State will be permitted to attend a Warnpurru meeting to discuss their concerns with Warnpurru.

CHAPTER 5 – NON-MONETARY BENEFITS

15. NON-MONETARY BENEFITS PROVIDED BEFORE EXECUTION DATE

The Parties acknowledge and agree that in November 2005 the State allocated \$410,000.00 for joint management of the Reserve by the Commission and the Gibson Desert People.

16. UPGRADE OF EXISTING INFRASTRUCTURE AT PATJARR

- (a) The State agrees that it will expend \$1,134,840.00 on works to upgrade existing infrastructure at Patjarr before:
 - (i) the first anniversary of the Execution Date; or
 - (ii) any later date agreed by the Interim Joint Management Body.
- (b) In respect of infrastructure upgrade spending pursuant to 16(a) and 16(d), the Parties agree that expenditure will be directed to the matters in Schedule 5 and agree that:
 - (i) the CEO will consult with Warnpurru as to:
 - (A) the prioritisation of the matters in Schedule 5;
 - (B) the precise nature of the works and/or equipment to be delivered on the basis of operational suitability, needs or requirements;
 - (C) how the work involved in the upgrade of the infrastructure is to be carried out, including the engagement or involvement of Traditional Owner Commercial Entities in overseeing or carrying out the work; and
 - (D) the proposed timing of the provision of the works to upgrade the infrastructure.
- (c) The State agrees that as soon as practicable after the Execution Date, the State will purchase, deliver and install two secure sea containers at Patjarr for the storage of cultural items by the Gibson Desert Parties.
- (d) In the event the purchase, delivery and installation of the two secure sea containers pursuant to clause 16(c) involves an expenditure of less than \$30,000.00, the Parties agree that a sum equal to the difference between the actual cost and \$30,000.00 will be expended by the State on other works or goods associated with infrastructure upgrades or joint management activities, as directed by Warnpurru in consultation with authorised staff of the CEO.

17. JOINT VESTING OF RESERVE

In accordance with section 8AA of the CALM Act:

- (a) Warnpurru consents to the Joint Vesting of the land that comprises the Reserve in the Commission and Warnpurru;

- (b) the Commission acknowledges that it has been consulted by the Minister for Environment about the Joint Vesting of the land that comprises the Reserve in the Commission and Warnpurru, and consents to the Joint Vesting; and
- (c) the Minister for Environment will, as soon as practicable after the Execution Date, do all things necessary and within his respective statutory powers to make a written determination that the land comprising the Reserve is to vest jointly in the Commission and Warnpurru.

18. RE-NAMING OF RESERVE

Subject to clause 27.3, the Minister for Lands will, as soon as practicable after the Execution Date, consider exercising its discretion to make an order under section 26 of the LA Act changing the name of the Reserve to 'Pila Nature Reserve'.

19. JOINT MANAGEMENT OF RESERVE

19.1 Management Plan and Joint Management Agreement for the Reserve

- (a) Subject to the Reserve being jointly vested in accordance with clause 17, the **responsible body** (as defined in section 53 of the CALM Act) for all of the land comprising the Reserve, being the Commission and Warnpurru, through the agency of the CEO, shall prepare a management plan or management plans, in accordance with Part V, Division 1 of the CALM Act, that:
 - (i) requires the CEO to manage the Reserve jointly with Warnpurru; and
 - (ii) in accordance with section 56A(3) of the CALM Act, has attached to it an agreement for the joint management of the Reserve.
- (b) The agreement referred to in clause 19.1(a) shall be substantially in the terms of the joint management agreement in Schedule 6 and be signed as soon as practicable after the management plan referred to in clause 19.1(a) is approved under Part V Division 1 of the CALM Act.
- (c) Until a management plan is prepared and approved under Part V, Division 1 of the CALM Act for the Reserve, the CEO shall manage the Reserve in accordance with the CALM Act and clause 19.2, and with advice from the interim joint management body described in clause 19.3.
- (d) Subject to clause 19.5 and clause 37.2, the Commission and Warnpurru (if they are the responsible body) or the Commission (if it is the responsible body) shall continue to ensure that the management plan referred to in clause 19.1(a) and any management plan substituting the management plan shall continue to require the CEO to manage the Reserve jointly with Warnpurru, and will continue to do so for 10 years after the Execution Date, unless otherwise agreed by the Commission and Warnpurru (acting with the consent of the Gibson Desert People).

19.2 Approach to Joint Management

The Parties acknowledge and agree that, subject to any management plan and management agreement applicable to the Reserve and the CALM Act:

- (a) joint management of the Reserve is to be conducted in a manner which works towards and advances the social, economic and cultural benefit of the Gibson Desert People, which includes the protection and conservation of the country of the Reserve; and
- (b) while activities connected to the Reserve are its priority, the Joint Management Body may acting reasonably allocate resources to the conduct of, or participation of Gibson Desert People in, projects, training or events outside of the Reserve which are connected with conservation and restoration of the natural environment, traditional ecological knowledge, land management, and management of places of cultural significance.

19.3 Interim Joint Management Body

Until the Joint Management Body is established pursuant to a management plan referred to in clause 19.1 that is approved in accordance with Part V, Division 1 of the CALM Act for the Reserve, the CEO and Warnpurru will appoint an 'interim joint management body' using the same process as set out under clause 3 of the joint management agreement in Schedule 6 for the appointment of the Joint Management Body, to act as an interim advisory body (**Interim Joint Management Body**) for the purpose of providing advice and making recommendations to the CEO in respect of that land in the manner set out in the Joint Management Agreement.

19.4 Non-Monetary Benefits for Joint Management

- (a) The State agrees to expend:
 - (i) \$900,000.00 between the Execution Date and 30 June 2021;
 - (ii) \$900,000.00 (increased by Perth CPI on each 1 July during the Term) between 1 July 2021 and 30 June 2022; and
 - (iii) \$712,500.00 (increased by Perth CPI on each 1 July during the Term) each Financial Year commencing 1 July 2022 and ending on 30 June 2030,
 on joint management of the Reserve in accordance with the directions of the Joint Management Body.
- (b) If any money to be expended on joint management in accordance with clause 19.4(a) has not been expended for that purpose within a relevant Financial Year, then the unexpended money will be added to the monies available for use in the following Financial Year.
- (c) At the conclusion of the Term, any money to be expended on joint management in accordance with clause 19.4(a) that has not been committed to that purpose will be made available for joint management of the Reserve or, in the event that joint management has come to an end, paid to Warnpurru for use in land management activities involving the Reserve.

19.5 Ending or Suspending Joint Management

- (a) The management plan referred to in clause 19.1(a) and any management plan substituting the management plan may be amended or made so as not to require joint management where the CEO and Warnpurru agree that joint management of the Reserve is no longer practicable.
- (b) The management plan referred to in clause 19.1(a) and any management plan substituting the management plan shall not be revoked without ensuring a new plan requiring joint

management is substituted for it, except where the CEO and Warnpurru agree that joint management of the Reserve is no longer practicable.

- (c) Where the CEO and Warnpurru have agreed that joint management of the Reserve is no longer practicable, or, following a dispute it is determined that joint management is no longer practicable, the Parties responsible for preparing an amended or substituted management plan for the Reserve under the CALM Act shall cooperate and take all necessary steps to prepare an amended or substituted management plan as soon as possible under the CALM Act providing that joint management is no longer required.
- (d) If the CEO and Warnpurru cannot agree that joint management is no longer practicable, the matter becomes a dispute for the purposes of clause 32.
- (e) Without limiting what is 'no longer practicable', where under the Joint Management Agreement or any joint management agreement attached to any management plan substituting the management plan referred to in clause 19.1:
 - (i) there have been two (2) or more Events of Default (as defined in the relevant joint management agreement) within any 12 month period; or
 - (ii) there have been two (2) or more Party Disputes (as defined in the relevant joint management agreement) within any 12 month period; or
 - (iii) there have been three (3) or more Disputes (as defined in the relevant joint management agreement) that have been referred to mediation or to the Minister for Environment (for the purposes of the relevant joint management agreement) within any 12 month period,

the CEO and Warnpurru shall consider whether joint management is 'no longer practicable' for the purposes of clause 19.5(a) and 19.5(b).

- (f) Where, in respect of the Reserve or any part of it, the CEO and Warnpurru have agreed that joint management is no longer practicable, or following a dispute it is agreed (including following mediation under clause 32) or determined that joint management is no longer practicable (including by an arbitrator under clause 32) the CEO shall, until the CEO and Warnpurru agree or it is determined (including under clause 32) that joint management has again become practicable under clause 19.5(h) and a new joint management body is functional:
 - (i) by 31 December each year following joint management no longer being practicable, submit to Warnpurru a report on the implementation of the management plan in respect of the Reserve for the previous 12 months, or, if there is no plan, on the general management of the Reserve (**Report**);
 - (ii) invite written submissions from Warnpurru in respect of the Report and Indicative Plan of Works, to be provided within sixty (60) days of the request;
 - (iii) take into account Warnpurru's written submissions, if any, in implementing the management plan or in managing the Reserve, or any part of the, Reserve for the following 12 months after 31 December; and
 - (iv) invite comments from Warnpurru, to be provided within 60 days, in respect of any proposed management actions in respect of the Reserve, or any part of the Reserve, which are neither required operations nor covered by the indicative plan of works, except where management action is urgent and a 'necessary

operation' or 'compatible operation' as defined in section 33A(1) or (2) of the CALM Act.

- (g) If under clause 19.5(a) or clause 19.5(b) or in resolution of a dispute for the purposes of clause 19.5(d), the management plan referred to in clause 19.1, or any management plan substituting the management plan, is amended or made so as to no longer require joint management and subsequently the CEO and Warnpurru agree that joint management has again become practicable:
 - (i) the management plan for the Reserve shall be amended or a new management plan prepared, requiring joint management with Warnpurru (**Amended or New Management Plan**);
 - (ii) in accordance with section 56A(3) of the CALM Act, the Amended or New Management Plan shall have attached to it an agreement for the joint management of the relevant reserve; and
 - (iii) this Agreement continues to apply to the amended or new management plan.
- (h) In relation to clauses 19.5(f) and 19.5(g), joint management may become practicable again in the following circumstances:
 - (i) twelve (12) months have elapsed since the time at which joint management became no longer practicable;
 - (ii) if joint management was made no longer practicable by the occurrence of Events of Default, Party Disputes or Disputes as provided for in clause 19.5(e), those Events of Default, Party Disputes or Disputes (as the case may be) are resolved; or
 - (iii) where Warnpurru and the CEO agree that joint management has again become practicable.

20. FUTURE ENGAGEMENT AND OPPORTUNITIES

20.1 Working together into the future

- (a) The Parties acknowledge their intention that the State Parties and the Gibson Desert Parties continue to develop and maintain a sustainable, mutually beneficial relationship based upon principles of respect, fairness and trust.
- (b) Subject to clause 20.4, the Parties acknowledge that, as at the Execution Date, it is their intention that the State will:
 - (i) procure officers of the State to participate in a trial of the 'Walking with Warnpurru' pilot program at the State's cost;
 - (ii) support the Gibson Desert Parties to work towards self-sufficiency and the achievement of their social, cultural and economic goals;
 - (iii) support Warnpurru in its engagement with the State and third parties in relation to the Reserve and related access issues, including concerning access roads and airstrips; and

- (iv) support the Joint Management Body and Warnpurru in their use of facilities at Patjarr, including in relation to use of existing infrastructure and maintenance of power and water facilities.
- (c) The State and the Gibson Desert Parties agree that the issues described in clause 20.1(b) will be discussed at the implementation meetings described in clause 21.

20.2 Procurement of goods and services generally

- (a) In this clause 20.2, a **Contracting Opportunity** comprises any contract proposed to be entered into by a State Party for the provision of goods or services within the Reserve or Patjarr in connection with management of the Reserve, including infrastructure development in the Reserve or Patjarr, where:
 - (i) those goods or services are not undertaken or provided directly by employees of the CEO; and
 - (ii) the contract is the subject of a competitive process.
- (b) The Parties agree that:
 - (i) when procuring goods and services in relation to the upgrade of existing infrastructure at Patjarr as specified in clause 16 and otherwise in relation to the Reserve, the State will act in accordance with Law, including State Government procurement laws, regulations, policies and guidelines that apply from time to time and which includes, as at 1 July 2020, the State Supply Commission's Open and Effective Competition Policy (which was amended in 2012 to include an exemption designed to increase opportunities for Aboriginal businesses to secure State Government contracts) and the Buy Local Policy;
 - (ii) the State will, as soon as practicable after the Execution Date and to the extent that it is lawful, reasonable and appropriate, consult with Warnpurru to identify any and all Contracting Opportunities in relation to the Reserve and, as part of that consultation, use its best endeavours to provide information to enable Warnpurru or Traditional Owner Commercial Entities to build capacity and undertake any preparations required to enable them to secure such Contracting Opportunities; and
 - (iii) the Gibson Desert Parties will use their best endeavours to procure all Traditional Owner Commercial Entities to register with the 'Aboriginal Business Directory WA' or 'Supply Nation' to facilitate the State's procurement of goods and services in accordance with this clause.

20.3 Future operations

- (a) The State Parties acknowledge and agree that Warnpurru has communicated to the State Parties that Warnpurru and the Gibson Desert People want to benefit from new or existing tourism, commercial, land management services or other operations on land that forms part of the Reserve, including opportunities that relate to:
 - (i) land management services, including ranger services, programs and training directed towards protection and management of the country of the Reserve;
 - (ii) carbon, including fire management programs;

- (iii) flora and/or fauna, including biodiversity, seed collection, traditional ecological knowledge surveys, and animal and weed management programs;
- (iv) tourism, and cultural awareness and immersion experiences; and
- (v) the cultural values of the Reserve, and cultural education and training, including traditional knowledge transfer,

(future operations).

- (b) Subject to clause 20.4, the State acknowledges that where the Joint Management Body gives its approval of, or support for, a future operation from Warnpurru and/or any Traditional Owner Commercial Entity, the State will support Warnpurru and the Gibson Desert People in their endeavours to undertake the future operation.
- (c) The Parties acknowledge and agree that Warnpurru or any relevant Traditional Owner Commercial Entity, as the case may be, retains all rights, interests and profits in respect of any future operations undertaken in the Reserve (to the extent that such rights and interests are recognised by law).

20.4 Proposed activities and support by State

The Gibson Desert Parties acknowledge that any proposed activity under clause 20.1, any proposed future operation under clause 20.3, and any assistance, support or involvement in those proposed activities or proposed future operations by the State Parties, will be subject to the following terms and conditions:

- (a) the State Parties will provide assistance and support to the extent that it is reasonable, appropriate and consistent with Law;
- (b) the State Parties will provide assistance and support to the extent that it is able to do so within their existing resources and they are not required to dedicate resources or allocate, engage or expend further resources;
- (c) any advice provided by the State Parties is given in good faith but no warranties are given as to its accuracy or completeness;
- (d) any proposed activity or proposed future operation is subject to the State Parties exercising any relevant statutory discretion, including the imposition of any conditions on that proposed activity or proposed operation;
- (e) any proposed activity or proposed operation is lawful and is subject to all statutory approvals that relate to the proposed activity or proposed operation being obtained; and
- (f) the conduct of any proposed activity or proposed operation may reasonably require entry into a further agreement before the proposed activity or proposed operation can proceed.

20.5 New Reserves

References in this clause 20 to the Reserve shall be taken to include any New Reserve.

CHAPTER 6 – IMPLEMENTATION

21. IMPLEMENTATION AND RELATIONSHIP MEETINGS AND ASSISTANCE

- (a) The State agrees to procure that officers of the State will:
 - (i) meet with Warnpurru (or nominees of Warnpurru) at a location to be agreed not more than 3 times from the Execution Date until the first anniversary of the Execution Date; and
 - (ii) attend meetings with representatives of the Gibson Desert People at a location to be agreed not more than once every 6 months from the Execution Date until the third anniversary of the Execution Date; and
 - (iii) if requested by Warnpurru, attend meetings with representatives of the Gibson Desert People at a location to be agreed not more than once every 2 years from the third anniversary of the Execution Date for the remainder of the term of this Agreement,
to:
 - (iv) discuss the implementation, management and future conduct of this Agreement, including in relation to clauses 7, 8, 9, 10, 11 and 12; and
 - (v) maintain a means of ongoing and regular communication between Warnpurru, the State and the Gibson Desert People, in particular in relation to clause 20 and having regard to the intention expressed in clause 20.1(a).
- (b) The Parties agree that, whenever possible, the implementation and relationship meetings held pursuant to clause 21(a) are to be held immediately after, and at the same location as, the meetings of the Joint Management Body.
- (c) The State agrees that:
 - (i) Warnpurru may have advisors, including legal advisors, attend implementation and relationship meetings to provide Warnpurru representatives with such assistance as they may require to ensure the effective conduct of the meeting;
 - (ii) officers of the State will provide administrative and secretarial support for the implementation and relationship meetings, including preparing and circulating agendas and minutes, as needed; and
 - (iii) in the event that Warnpurru's costs for attending the implementation and relationship meetings are not covered by the funding available for attending a meeting of the Joint Management Body, the State will consider any reasonable requests made by Warnpurru for assistance with respect to those costs.

22. APPOINTMENT OF WARNPURRU AS AGENT

- (a) The Gibson Desert Applicant hereby appoints Warnpurru as its agent for the purposes of this Agreement, and warrants that Warnpurru has been appointed as agent on behalf of

all of the Gibson Desert People from time to time in respect of the Agreement, other than with respect to:

- (i) the execution of any documents for the purpose of Division 3 of Part 2 of the NT Act which the Gibson Desert Applicant is required to execute under this Agreement;
 - (ii) anything required to be done under the NT Act by a registered native title claimant, a registered native title body corporate or determined holders of native title rights and interests; and
 - (iii) the replacement of Warnpurru as described in clause 37.2.
- (b) The Gibson Desert Applicant warrants, for the benefit of the State Parties, that (except for the matters specified in clause 22(a)(i), clause 22(a)(ii) or clause 22(a)(iii)):
- (i) the Gibson Desert Applicant and the Gibson Desert People will act through Warnpurru, as their agent, for the purpose of implementing this Agreement;
 - (ii) the Gibson Desert Applicant and the Gibson Desert People consent to the State Parties dealing with Warnpurru as their agent, including sending notices to, and receiving notices from, Warnpurru as agent for the Gibson Desert Applicant and the Gibson Desert People;
 - (iii) any exercise of the rights of the Gibson Desert Applicant and the Gibson Desert People, or enforcement of their obligations, by Warnpurru is deemed to be validly undertaken by Warnpurru as its agent; and
 - (iv) for the purposes of this Agreement, the State Parties are entitled to rely on any notice received from Warnpurru, and any exercise of rights or enforcement of obligations by Warnpurru, as described in this clause 22.

23. IMPLEMENTATION BY WARNPURRU

- (a) Warnpurru agrees that the terms of the Warnpurru Rule Book must not be amended in a manner:
- (i) inconsistent with the other provisions of the Warnpurru Rule Book and any Law; or
 - (ii) which would deprive any members of the Gibson Desert People of eligibility to become a member of Warnpurru, provided they are at least 18 years of age.
- (b) Warnpurru agrees to:
- (i) procure the preparation of an annual Auditor's Report; and
 - (ii) provide a copy of each Auditor's Report to the State within 20 Business Days of the relevant Auditors Report being finalised.
- (c) For the purposes of this clause 23, the term "**Auditor's Report**" means a report in relation to Warnpurru's financial position over a 12 month period that is prepared in accordance with the requirements of the CATSI Act.

- (d) Warnpurru agrees that it will apply the Monetary Benefits paid to the bank accounts referred to in clause 5.2 in accordance with the Warnpurru Rule Book.
- (e) Warnpurru agrees that it will make available upon request to all Gibson Desert People:
 - (i) the Warnpurru Rule Book;
 - (ii) the Auditor's Report or any other auditor's reports prepared in accordance with the Warnpurru Rule Book;
 - (iii) this Agreement; and
 - (iv) plain English information as to the content of this Agreement and as to how the Benefits are being managed.
- (f) Warnpurru agrees that, if a Native Title Determination is made and the common law holders nominate Warnpurru to be the Gibson Desert PBC in accordance with section 56 or section 57 of the NT Act, then Warnpurru will:
 - (i) accept that nomination and will act as the Gibson Desert PBC in accordance with section 56 or section 57 of the NT Act; and
 - (ii) execute the Assumption Documents.

CHAPTER 7 – PARTIES, WARRANTIES AND REPRESENTATIONS

24. GIBSON DESERT APPLICANT

24.1 Changes to Gibson Desert Applicant

- (a) If the persons comprising the Gibson Desert Applicant for the purposes of the Compensation Claim are replaced in accordance with section 66B of the NT Act, with that replacement:
- (i) removing individual members of the Gibson Desert Applicant who were unwilling or unable to act as a member of the applicant for the Compensation Claim; and
 - (ii) not resulting in the addition of any individuals who were not members of the Gibson Desert Applicant as at the Execution Date,

then a reference to the Gibson Desert Applicant in this Agreement is a reference to the persons comprising the applicant for the Compensation Claim as replaced in accordance with section 66B of the NT Act.

- (b) If:
- (i) the persons comprising the Gibson Desert Applicant for the purposes of the Compensation Claim are replaced in accordance with section 66B of the NT Act;
 - (ii) the replacement Gibson Desert Applicant includes, as members of the applicant for the Compensation Claim, persons who were not individual members of the Gibson Desert Applicant as at the Execution Date; and
 - (iii) the replacement Gibson Desert Applicant has been authorised by the Gibson Desert People to act in the capacities described in clause 1.5,

then on and from the date Warnpurru gives notice to that effect to the State, a reference to the Gibson Desert Applicant in this Agreement is a reference to the persons comprising the applicant for the Compensation Claim as replaced in accordance with section 66B of the NT Act.

- (c) If all of the people comprising the Gibson Desert Applicant die or cease to have legal capacity, or if the Compensation Claim is determined, withdrawn or dismissed, then a reference to the Gibson Desert Applicant is a reference to the Gibson Desert People collectively.

24.2 Representations and warranties by Gibson Desert Applicant

The Gibson Desert Applicant represents and warrants for the benefit of the State Parties that:

- (a) it agrees that CDNTS has made all reasonable efforts to ensure that all persons who, but for the Compensable Act, would have held or may have held native title in relation to the Agreement Area have been identified as at the date of the authorisation meeting held on 9 September 2020;

- (b) the Compensation Claim was and remains authorised in accordance with section 251B of the NT Act;
- (c) the Gibson Desert Applicant is authorised to:
 - (i) enter into this Agreement as a matter arising under the NT Act in relation to the Compensation Claim pursuant to section 62A of the NT Act;
 - (ii) to enter into this Agreement in the capacities described in clause 1.5; and
 - (iii) to perform the obligations of the Gibson Desert Applicant under this Agreement;
- (d) the Gibson Desert People have authorised the making of this Agreement in accordance with the same process by which they authorised the Compensation Claim;
- (e) the Gibson Desert People have agreed that the terms of this Agreement will be enforced solely through Warnpurru, in accordance with this Agreement, unless and to the extent that they expressly authorise another entity to do so;
- (f) the consents and obligations of the Gibson Desert Applicant and the Gibson Desert People (to the extent that they are bound by this Agreement) under this Agreement have not been given on the basis of:
 - (i) any gift, entertainment, commission, fee, rebate or other benefit of significant value to or from any director, officer, employee or agent of the State Parties (other than the Benefits); or
 - (ii) entering into any business arrangement with any director, officer employee or agent of the State Parties;
- (g) this Agreement is valid and binding, and enforceable in accordance with its terms, against the Gibson Desert Applicant and all members from time to time of the Gibson Desert People;
- (h) all conditions and things required by Law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Gibson Desert Applicant lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
- (i) the Gibson Desert Applicant knows of no impediment to it performing its obligations under this Agreement.

25. WARNPURRU

Warnpurru represents and warrants, for the benefit of the State Parties that:

- (a) it has been properly established under the CATSI Act;
- (b) a complete and current version of the Warnpurru Rule Book (as at the Execution Date) is set out in Schedule 2;
- (c) it has been established with, and will continue to have, objects that are for the benefit of, and address the interests of, all of the Gibson Desert People as specified in the Warnpurru Rule Book (as at the Execution Date);

- (d) it is authorised to enter into this Agreement;
- (e) all conditions and things required by Law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
- (f) it knows of no impediment to it performing its obligations under this Agreement.

26. CDNTS

26.1 Role of CDNTS

- (a) The Parties acknowledge and agree that:
 - (i) CDNTS has played the following two separate and distinct roles in respect of this Agreement:
 - (A) as a party to the Agreement, in its capacity as an organisation which performs the functions of a representative Aboriginal/Torres Strait Islander body pursuant to the NT Act for the Central Desert region; and
 - (B) as the organisation which has provided and procured legal advice and representation for the Gibson Desert Parties; and
 - (ii) the representations and warranties provided by CDNTS in this Agreement are given by CDNTS only in its capacity as a party to the Agreement referred to in clause 26.1(a)(i)(A), and not in its capacity as the source of legal advice and representation for the Gibson Desert Parties referred to in clause 26.1(a)(i)(B).
- (b) Notwithstanding any other provision of this Agreement:
 - (i) except for CDNTS' obligations and warranties under clause 26.2, CDNTS has no obligation or liability as a party to this Agreement; and
 - (ii) CDNTS is not responsible and has no liability for anything done or not done by one or more of the Gibson Desert Parties under this Agreement including in respect of any representation, warranty or indemnity given by one or more of the Gibson Desert Parties.

26.2 Representations and warranties by CDNTS

CDNTS represents and warrants, for the benefit of the State Parties that:

- (a) it has made all reasonable efforts to ensure that all persons who, but for the Compensable Act, would have held or may have held native title in relation to the Agreement Area have been identified as at the date of the authorisation meeting held on 9 September 2020;
- (b) it is of the opinion that all of the persons so identified have, within the meaning of section 251B of the NT Act, authorised the Gibson Desert Applicant to make the Compensation Claim, and have authorised the Gibson Desert Applicant to enter into this Agreement; and
- (c) it knows of no impediment to it performing its obligations under this Agreement.

27. STATE PARTIES

27.1 Representations and Warranties by State Parties

The State Parties each represent and warrant, for the benefit of all other Parties, that:

- (a) they each have full power and authority to enter into this Agreement;
- (b) all conditions and things required by Law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable them lawfully to enter into, exercise their rights and perform their obligations under this Agreement have been fulfilled or done; and
- (c) they know of no impediment to them performing their obligations under this Agreement.

27.2 Application of this Agreement to the State Parties

- (a) By entering into this Agreement, the State binds itself but not the other State Parties.
- (b) By entering into this Agreement, the Minister for Lands binds itself but not the other State Parties.
- (c) By entering into this Agreement, the Commission binds itself but not the other State Parties.
- (d) By entering into this Agreement, the CEO binds itself but not the other State Parties.

27.3 Acts by State – no fetter upon discretion

Each Party acknowledges and agrees that nothing in this Agreement can fetter or control the exercise by any person (including a Minister of the State) of a statutory power or discretion otherwise than in accordance with the statute.

28. RELIANCE ON WARRANTIES

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 24, 25, 26 and 27 (as the case may be) to enter into this Agreement.

29. ACKNOWLEDGMENT REGARDING LEGAL ADVICE

Each Party acknowledges that it has:

- (a) had the benefit of detailed and understandable legal advice in respect of all matters in this Agreement and the effect of the rights, obligations and liabilities of each of the Parties to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this Agreement before entering into it.

CHAPTER 8 – MISCELLANEOUS PROVISIONS

30. TERM OF THIS AGREEMENT

30.1 Commencement

This Agreement commences on the Execution Date.

30.2 Term

- (a) Subject to clause 30.2(b), this Agreement continues until the tenth anniversary of the Execution Date.
- (b) This Agreement will terminate if the State Parties and the Gibson Desert Parties agree in writing to end this Agreement.

30.3 No other termination

Subject to clause 30.2, no Party is entitled to terminate this Agreement for any reason, including by reason of breach or repudiation of this Agreement by any Party.

30.4 Consequences of termination

If this Agreement expires under clause 30.2(a) or is terminated in accordance with clause 30.2(b):

- (a) subject to clauses 30.4(b), 30.4(c) and 30.4(d), this Agreement ceases to have any force or effect on and from the date of termination;
- (b) any act done under or in accordance with this Agreement will remain, to the extent permitted by Law, valid;
- (c) all rights and obligations under this Agreement which accrued before or on the date of the termination of this Agreement will remain binding and enforceable, including any agreement entered into as contemplated by this Agreement; and
- (d) any term of this Agreement which, by its nature, is intended to survive termination of this Agreement survives that termination, including clauses 1, 3.2, 5.5, 22, 24, 25, 26, 27, 30.4 and 35.

31. DEFAULT AND ENFORCEMENT

31.1 Events of Default

An Event of Default occurs for the purposes of this clause 31 where:

- (a) a Party commits a material breach of any of the following terms of this Agreement: 3, 13, 14, 16, 17, 19, 20, 21, 34, 35 and 37; or
- (b) an Insolvency Event occurs.

31.2 Default

- (a) If a Party (**Defaulting Party**) commits an Event of Default, any of the other Parties (**Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must:
 - (i) if the Event of Default relates to a payment, remedy the Event of Default within 10 Business Days after receiving the Default Notice; or
 - (ii) if the Event of Default does not relate to a payment but is capable of being remedied, remedy the Event of Default within 20 Business Days after receiving the Default Notice.
- (b) If an Event of Default under clause 31.2(a)(ii) could not reasonably be remedied within 20 Business Days, the Defaulting Party must:
 - (i) commence taking steps, in good faith, to remedy the Event of Default within the period of 20 Business Days;
 - (ii) continue taking steps, in good faith, to remedy the Event of Default after the period of 20 Business Days; and
 - (iii) remedy the Event of Default as soon as reasonably practicable but in any event within 12 months after receiving the Default Notice.
- (c) If an Event of Default occurs under clause 31.1(b), the Gibson Desert Parties will continue to be bound by the provisions of this Agreement and the Gibson Desert People will provide notice to all of the State Parties as soon as possible after each of:
 - (i) the Insolvency Event occurring;
 - (ii) the appointment of any receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer (as the case may be); and
 - (iii) the relevant Event of Default ceasing to exist.
- (d) If an Event of Default committed by a State Party is not remedied pursuant to clause 31.2(a)(i), clause 31.2(a)(ii) or clause 31.2(b)(iii) (as applicable), then the Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend:
 - (i) the performance of its obligations to do, or not to do, the things specified in clauses 14(f) to 14(h) and 23(b)(ii); and
 - (ii) the Defaulting Party's rights under this Agreement,until:
 - (iii) clause 31.2(a)(i), clause 31.2(a)(ii) or clause 31.2(b)(iii) (as applicable) is complied with; or
 - (iv) the Event of Default no longer exists; or

- (v) the Non-defaulting Party gives notice in writing that the Event of Default has been waived or remedied to the reasonable satisfaction of the Non-defaulting Party.
- (e) If an Event of Default committed by a Gibson Desert Party is not remedied pursuant to clause 31.2(a)(i), clause 31.2(a)(ii) or clause 31.2(b)(iii) (as applicable), then the State Parties may, by notice in writing to the Defaulting Party and the Gibson Desert People:
 - (i) elect not to pay the Monetary Benefits which become payable after the date referred to in clause 31.2(a)(i), clause 31.2(a)(ii) or clause 31.2(b)(iii) (as applicable) and instead hold those Monetary Benefits on trust for the Gibson Desert People; and
 - (ii) suspend the performance of its other obligations (including the provision of Non-Monetary Benefits) and the Defaulting Party's rights under this Agreement, until:
 - (iii) clause 31.2(a)(i), clause 31.2(a)(ii) or clause 31.2(b)(iii) (as applicable) is complied with; or
 - (iv) the Event of Default no longer exists; or
 - (v) the State Parties give notice in writing that the Event of Default has been waived or remedied to the reasonable satisfaction of the State Parties.
- (f) Within 20 Business Days following the occurrence of an event specified in clause 31.2(e)(iii), clause 31.2(e)(iv) or clause 31.2(e)(v), the State Parties must pay the amounts held on trust plus interest (at a rate equivalent to the average earning on the Public Bank Account continued in existence pursuant to section 11 of the *Financial Management Act 2006* (WA)), less any reasonable administration costs incurred by the State Party, in accordance with this Agreement.
- (g) If requested by the Gibson Desert Party within 20 Business Days of the payment under clause 31.2(f), the State Parties must as soon as practicable provide the Gibson Desert Party with details of the interest earned and the administration costs incurred.
- (h) Any remedy exercised under this clause 31.2 and the giving of a notice under clause 31.2(c), clause 31.2(d) or clause 31.2(e) is without prejudice to any other rights a Party may have under this Agreement or otherwise at law (including the right to seek interlocutory relief, damages and specific performance).

32. DISPUTE RESOLUTION

32.1 Application of this clause

The Parties agree that this clause 32 does not apply to clauses 3, 7, 8, 9, 10, 11, 12, 17, 18, 20 or 35 of this Agreement, unless otherwise agreed in writing by the Party alleging a breach of, or dispute arising in relation to, that clause.

32.2 Avoiding Disputes

The Parties agree that they will each make every effort to ensure that disputes do not arise and that if a dispute does arise the Parties will make every reasonable effort to resolve the dispute informally

and before recourse to this clause 32. In this clause 32, a reference to a 'Party' means a party to a dispute for the purposes of this clause 32.

32.3 Notice of dispute and negotiation

- (a) Where a dispute arises under this Agreement, the Parties must use all reasonable endeavours to resolve the dispute through negotiation under this clause 32.3. No Party may commence any court proceedings relating to the dispute, other than proceedings seeking interlocutory relief, unless that Party has complied with this clause 32.3.
- (b) A Party claiming a dispute has arisen under this Agreement (**Complainant**) must give written notice (**Dispute Notice**) to the other Party or Parties (**Respondent**) with whom the Complainant is in dispute. The Dispute Notice must:
 - (i) identify the dispute and provide reasonable details of the dispute, including any documentary evidence of the dispute; and
 - (ii) designate a senior representative or representatives of the Complainant who has the authority to negotiate and settle the dispute, or to decide not to settle the dispute.
- (c) Within 5 Business Days after receiving the Dispute Notice the Respondent must respond in writing:
 - (i) providing reasonable details of the Respondent's response to the dispute, including any documentary evidence in support of its response to the dispute; and
 - (ii) designate a senior representative or representatives of the Respondent who has the authority to negotiate and settle the dispute, or to decide not to settle the dispute.
- (d) During the 20 Business Days after a Dispute Notice is given (or such longer period as the Complainant and the Respondent may agree in writing), each of the Parties must use its reasonable endeavours to resolve the Dispute, which may include the convening of one or meetings of the Parties, including by teleconference or videoconference.

32.4 Mediation

- (a) If at the expiration of 20 Business Days after the date of receipt of the Dispute Notice by the Respondent under clause 32.3(b), the dispute is not resolved to the satisfaction of the Parties, then the Parties must seek to agree on the appointment of an independent mediator with relevant experience. If at the expiration of a further 5 Business Days the Parties cannot agree on a mediator, then either Party may request the Chairperson for the time being of the Resolution Institute to appoint a mediator and the Parties must accept that appointment.
- (b) The Parties will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- (c) If at the expiration of 30 Business Days, or such further time as may be agreed in writing by the Parties, after the appointment of a mediator the dispute is not resolved to the

satisfaction of the Parties, then any Party may by written notice to the other Parties terminate the mediation process.

- (d) Either Party may, if the mediation is terminated:
 - (i) refer the dispute to arbitration in accordance with clause 32.5 within 20 Business Days of the termination of the mediation; or
 - (ii) subject to clause 32.7, refer the dispute to litigation.

32.5 Expedited arbitration

- (a) Subject to clause 32.4(d), a Party may give notice (**Arbitration Notice**) to the other Party specifying:
 - (i) the matter in dispute; and
 - (ii) that the dispute is referred to arbitration,and the dispute is thereby referred to arbitration by force of this clause 32.5(a).
- (b) Unless the Parties agree on the appointment of an arbitrator within 10 Business Days after the date of receipt of the Arbitration Notice, any Party may:
 - (i) request the President of the Law Society of Western Australia to nominate an arbitrator to hear and determine the dispute; and
 - (ii) if the person nominated under clause 32.5(b)(i) consents to the appointment, appoint that person as the arbitrator.
- (c) In an arbitration of a dispute under this Agreement, the proceedings are to be conducted:
 - (i) in accordance with the provisions of the *Commercial Arbitration Act 2012* (WA) as modified by this Agreement;
 - (ii) by a single arbitrator appointed under clause 32.5(b); and
 - (iii) within the Perth metropolitan area, or at another location as agreed by the Parties in writing.
- (d) The arbitrator in conducting arbitration under this Agreement:
 - (i) is not bound by the rules of evidence; and
 - (ii) may award such interest on any award as he or she considers appropriate.
- (e) Each Party to an arbitration must bear its own costs and must bear the costs of the arbitrator equally, save that:
 - (i) an arbitrator, if satisfied that a Party to an arbitration has by any unreasonable act or omission caused another Party to incur costs in connection with the institution or conduct of the arbitration, may order the first-mentioned Party to pay some or all of those costs; and
 - (ii) an arbitrator may take into account any offer of compromise to settle the dispute which was capable of acceptance by a Party but which was not accepted, and

which was more favourable than the outcome achieved through arbitration, in which case the arbitrator may make such orders as to costs as he or she thinks fit in accordance with section 33B of the *Commercial Arbitration Act 2012* (WA).

- (f) The arbitrator must use all reasonable endeavours to make a determination in relation to the dispute by no later than 70 Business Days after the date on which the arbitrator accepts his or her appointment.
- (g) A Party may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

32.6 Interlocutory relief

Nothing in this clause 32 precludes a Party from seeking interlocutory relief relative to the subject matter of a dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

32.7 Condition precedent to litigation

In the case of a dispute to which this clause 32 applies, a Party must not proceed to litigation (except as specified in clause 32.6) in respect of a dispute unless:

- (a) the dispute has first been referred to negotiation under clause 32.3;
- (b) the dispute has then been referred to a mediator under clause 32.4;
- (c) the dispute has not been resolved within the period specified in clause 32.4(c); and
- (d) no Party has referred the matter to arbitration within 20 Business Days of the termination of the mediation in accordance with clause 32.5.

32.8 Obligations continue

Subject to clause 32.9, if a dispute is referred for resolution under any part of this clause 32, the Parties must, during the period of such negotiation, mediation, arbitration or litigation and pending the making of a decision or the receipt of a judgment or determination, continue to perform their respective obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision, judgment or determination made in respect of the matter in dispute.

32.9 Extension of time

Any time periods specified in this Agreement for fulfilling obligations or exercising rights under this Agreement will be extended by the time between the date on which the relevant Dispute Notice is received (or deemed to be received) and the determination or resolution of the dispute.

32.10 Without Prejudice

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 32 is to attempt to settle the dispute between the Parties. Unless and to the extent otherwise agreed between the Parties to the dispute, the Parties must not use any information or documents obtained through a dispute resolution process under this clause 32 for any other purpose (including using information or documents obtained through negotiation under clause 32.3 or mediation under clause 32.4, for the purpose of arbitration in

accordance with clause 32.5) except in connection with a claim for costs associated with an arbitration or litigation.

32.11 Breach of this clause

If a Party breaches any of clauses 32.3 to 32.5 of this Agreement, the other Party does not have to comply with those clauses in relation to the dispute before starting proceedings in a court of competent jurisdiction.

33. PUBLICATION

The Parties agree that any Party may publish:

- (a) this Agreement as at the Execution Date;
- (b) any subsequent variations to this Agreement; and
- (c) subject to clause 35, any information in relation to this Agreement.

34. ANNOUNCEMENTS

The Parties must not make or authorise a written press release or written public announcement relating to this Agreement (**Announcement**) unless:

- (a) it is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing parties as to the form and content of the Announcement; or
- (b) it has the prior written approval of the State Parties and Warnpurru.

35. CONFIDENTIALITY

35.1 Generally

Each Party agrees that all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement which is identified by the Disclosing Party as confidential at the time of disclosure, but not including:

- (a) information the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (b) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees),

is confidential, must be kept confidential and will not be disclosed except as permitted by this clause 35 (**Confidential Information**).

35.2 Permitted disclosure

Subject to clause 35.3, a Receiving Party may disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;

- (b) to the extent required by Law or applicable securities regulation or rule;
- (c) to the extent that the information is reasonably necessary for any processes or applications under any Law or related to any approvals under or in accordance with this Agreement;
- (d) subject to clause 32.10, in connection with any dispute or litigation concerning this Agreement or its subject matter;
- (e) to the Receiving Party's members, agents, officers, employees, advisers and consultants insofar as such disclosure is reasonably necessary for the purposes of this Agreement;
- (f) to the Receiving Party's auditors, financiers, and related bodies corporate insofar as such disclosure is reasonably necessary for the purposes of this Agreement;
- (g) to a proposed assignee of a Party's interest under this Agreement; and
- (h) if a State Party is required to disclose the Confidential Information to any parliamentary body, Minister or governmental entity, including, without limitation, disclosure in response to parliamentary questions, ministerial inquiries and inquiries conducted by or on behalf of the Auditor-General of the State of Western Australia.

35.3 Disclosure requirements

Before making any disclosure to a person under clause 35.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) in the case of a disclosure under clause 35.2(b), 35.2(c) or 35.2(d), notify the Disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 35.2(g), procure that the person or entity executes a deed with the Disclosing Party, in such form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as clause 35 of this Agreement.

35.4 Party may seek injunction

Each Party acknowledges that:

- (a) it is aware that any breach of this clause 35 may result in the Disclosing Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this clause 35 or any obligation of confidentiality under this Agreement, any adversely affected Disclosing Party is entitled to seek injunctive relief or an order for specific performance of the terms of this clause 35.

35.5 No waiver or transfer of intellectual property rights

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a Party.

36. VARIATION OF AGREEMENT

- (a) Subject to clause 36(c), this Agreement can be varied or replaced by the State and Warnpurru (provided it has consulted with, and gained the consent of, the Gibson Desert People) executing a further agreement (**Variation Agreement**).
- (b) Without limiting clause 36(a), this Agreement can be varied or replaced:
 - (i) in the manner provided in clause 36(a) even if the Variation Agreement removes or alters a benefit that would otherwise be conferred upon a Party under this Agreement, including whether or not the benefit has already accrued but not been paid or provided to the Party under the terms of this Agreement; or
 - (ii) as otherwise permitted by law.
- (c) A Variation Agreement cannot:
 - (i) impose an additional obligation or burden on a Party unless the Party has first consented in writing to the proposed Variation Agreement;
 - (ii) remove or alter, in any material way, a Benefit, unless the Gibson Desert People authorise the proposed Variation Agreement in accordance with, or in a manner consistent with, section 251A of the NT Act; or
 - (iii) be varied to provide for the making of a Compensation Determination in accordance with clause 4 unless the Gibson Desert People authorise the proposed Variation Agreement in accordance with, or in a manner consistent with, section 251A of the NT Act.

37. ASSIGNMENT

37.1 Assignment by Gibson Desert Parties

- (a) A Gibson Desert Party may not assign, transfer or novate its right, title, obligations and interest under this Agreement except:
 - (i) with the prior written consent of the State Parties, which consent will not be unreasonably withheld or delayed; or
 - (ii) in accordance with any Law.
- (b) If:
 - (i) a Gibson Desert Party assigns, transfers or novates its right, title, obligations and interest under this Agreement pursuant to clause 37.1(a); and
 - (ii) the assignment, transfer or novation does not occur as a result of the enactment of a Law which provides for the transfer or novation of all of its obligations under this Agreement to the assignee,

then the Gibson Desert Party agrees to procure the execution of the Assumption Documents by the assignee and provide the executed Assumption Documents to the State Parties on or before the date on which the right, title, obligations or interest of the Gibson Desert Party is assigned, transferred or novated to the assignee.

37.2 Replacement of Warnpurru

(a) If:

- (i) Warnpurru is the subject of a current Insolvency Event;
- (ii) the Gibson Desert People propose that Warnpurru's right, title, obligations or interest under or in respect of this Agreement are to be assigned, transferred and novated (**Proposed Assignment**) to another entity (**Replacement Corporation**); and
- (iii) the proposed Replacement Corporation satisfies the requirements set out in clause 37.2(e),

then the Gibson Desert People must:

- (iv) give written notice to the State in accordance with clause 38, which notice must set out:
 - (A) material establishing that the proposed Replacement Corporation satisfies the requirements set out in clause 37.2(e) and how the consent of the Gibson Desert People to the appointment of a Replacement Corporation was obtained;
 - (B) the identity of the proposed Replacement Corporation; and
 - (C) the date from which the Proposed Assignment is to take effect, which date must be no less than 20 Business Days after the date of the written notice; and
- (v) promptly procure the execution of the Assumption Documents by the Replacement Corporation and provide the executed Assumption Documents to the State Parties on or before the date from which the Proposed Assignment is to take effect.

(b) If:

- (i) the Gibson Desert People propose to replace Warnpurru for a reason other than that Warnpurru is the subject of a current Insolvency Event; and/or
- (ii) the proposed Replacement Corporation does not satisfy the requirements set out in clause 37.2(e),

then the Gibson Desert People must give written notice to the State, which notice must set out:

- (iii) material establishing that and how the consent of the Gibson Desert People to the appointment of a Replacement Corporation was obtained;
- (iv) the reason for the Proposed Assignment;
- (v) the identity of the proposed Replacement Corporation; and
- (vi) the date from which the Proposed Assignment is to take effect which date must be no less than 40 Business Days after the date of the written notice.

- (c) Within 20 Business Days of receiving a notice under clause 37.2(b), the State must give written notice to the Gibson Desert People as to whether the State consents, or does not consent, to the Proposed Assignment.
- (d) If the State gives its consent under clause 37.2(c), which consent must not be unreasonably withheld, then the Gibson Desert People must promptly procure the execution of the Assumption Documents by the Replacement Corporation and provide the executed Assumption Documents to the State Parties on or before the date from which the Proposed Assignment is to take effect.
- (e) The requirements specified for the purposes of clause 37.2(a)(iii) and clause 37.2(b)(ii) are that the Replacement Corporation must be a corporation that:
 - (i) is incorporated under the Corporations Act or the CATSI Act;
 - (ii) is not the subject of a current Insolvency Event;
 - (iii) at the relevant time:
 - (A) is, or is a subsidiary of, the Gibson Desert PBC (if any); or
 - (B) has a constitution providing that all Gibson Desert People, and no other persons, are eligible to be members; and
 - (iv) has a constitution the terms of which:
 - (A) are materially the same as the Warnpurru Rule Book as at the Execution Date; or
 - (B) are approved in writing by the State, which approval will not be unreasonably withheld or delayed provided the State (acting reasonably) is satisfied that the constitution contains such provisions as are necessary for the corporation to fulfil its obligations under this Agreement and does not contain provisions which are inconsistent with this Agreement.
- (f) The Parties agree that, if the requirements of this clause 37.2(a) have been satisfied, then on and from the date the Proposed Assignment is to take effect referred to in clauses 37.2(a)(iv)(C) or 37.2(b)(vi) (as the case may be):
 - (i) the State Parties are released from any obligation under this Agreement to provide Benefits to Warnpurru; and
 - (ii) all references in this Agreement to Warnpurru are to be taken to be references to the Replacement Corporation.
- (g) Warnpurru agrees that the Replacement Corporation's execution of the Assumption Documents under clause 37.2(a)(v) or clause 37.2(d) (as the case may be) is to be taken to constitute Warnpurru's consent to:
 - (i) the revocation of any Joint Vesting of the land that comprises the Reserve in the Commission and Warnpurru; or
 - (ii) the revocation of any Management Order placing care, control and management of any New Reserve solely with Warnpurru pursuant to clause 8.2(b),

as the case may be.

- (h) The Minister for Lands agrees that promptly after receipt of the executed Assumption Documents under clause 37.2(a)(v) or clause 37.2(d), the Minister for Lands will:
 - (i) seek the Replacement Corporation's consent to the Joint Vesting of the land that comprises the Reserve in the Commission and the Replacement Corporation; or
 - (ii) place care, control and management of any New Reserve in the Replacement Corporation solely by making a Management Order in the form, or substantially the form, set out in Schedule 9,

as the case may be.

- (i) The Parties acknowledge that this clause 37.2 does not prevent Warnpurru from transferring or dealing with any of its property (other than its interest in or under this Agreement), including property which it has received under this Agreement, where permitted and in accordance with the Warnpurru Rule Book.

37.3 Assignment by the State Parties

- (a) A State Party may not assign, transfer or novate its right, title, obligations and interest under this Agreement except:
 - (i) with the prior written consent of the Gibson Desert People, which consent will not be unreasonably withheld or delayed; or
 - (ii) in accordance with any Law.
- (b) If:
 - (i) a State Party assigns, transfers or novates its right, title, obligations and interest under this Agreement pursuant to clause 37.3(a); and
 - (ii) the assignment, transfer or novation does not occur as a result of the enactment of a Law which provides for the transfer or novation of all of its obligations under this Agreement to the assignee,

then the State Party agrees to procure the execution of the Assumption Documents by the assignee and provide the executed Assumption Documents to the Gibson Desert People on or before the date on which the right, title, obligations or interest of the State Party is assigned, transferred or novated to the assignee.

37.4 Assignment by CDNTS

- (a) CDNTS may not assign, transfer or novate its right, title, obligations and interest under this Agreement except:
 - (i) with the prior written consent of the Gibson Desert Parties and the State Parties, which consent will not be unreasonably withheld or delayed; or
 - (ii) in accordance with any Law; or

- (iii) to any other body which has been appointed pursuant to Part 11 of the NT Act to perform the functions of a native title representative body for the Agreement Area.
- (b) If:
 - (i) CDNTS assigns, transfers or novates its right, title, obligations and interest under this Agreement pursuant to clause 37.4(a); and
 - (ii) the assignment, transfer or novation does not occur as a result of the enactment of a Law which provides for the assignment, transfer or novation of all of its right, title, obligations and interest under this Agreement to the assignee,

then CDNTS agrees to procure the execution of the Assumption Documents by the assignee and provide the executed Assumption Documents to the State Parties and Gibson Desert Parties on or before the date on which the right, title, obligations or interest of CDNTS is assigned, transferred or novated to the assignee.

37.5 No encumbrance

No Party may grant an encumbrance, mortgage or charge in respect of all or any part of its interests in or under this Agreement.

38. NOTICES

38.1 General

Any notices to be given under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) subject to clause 38.2 and clause 38.3, must be delivered to the intended recipient:
 - (i) by prepaid post;
 - (ii) by hand;
 - (iii) by fax; or
 - (iv) as an attachment to an email,

to the address, fax number or email address specified in clause 38.4 (or the address, fax number or email address last notified in writing by the intended recipient to the sender); and
- (c) will be deemed to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, five Business Days after the date of posting;
 - (iii) in the case of fax, on receipt by the sender of a transmission report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of the recipient and indicating that the transmission has been made without error; and

- (iv) in the case of email, at the time of receipt determined in accordance with the *Electronic Transactions Act 2011* (WA),

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

38.2 Recipients of notices from Gibson Desert Parties

- (a) When a Gibson Desert Party or CDNTS gives a notice to a department or office of the State, the Party must send a copy of that notice to the Commission.
- (b) Each Gibson Desert Party and CDNTS which is sending a notice will use reasonable endeavours to notify the department or office of the State, or State Party, which is responsible for the matter or activity that is the subject of the notice. In the event that a notice is sent to the incorrect department or office of the State, or State Party, the Commission will provide all reasonable assistance to ensure that the sending Party is promptly informed of the correct recipient of the notice and will itself provide a copy of the notice to the correct recipient of the notice.
- (c) Where a matter relates to this Agreement generally or it is not clear to the Gibson Desert Party or CDNTS to which of the State Parties the notice should be given, the sending Party must give notice to the Commission. Any notice given under this clause 38.2(c) must make it clear that it is the sole notice (not a copy of another notice), so that it is made certain the Commission must act on the notice, including by providing a copy of the notice to the relevant State Party.
- (d) The Parties agree that:
 - (i) the copies of notices given to the Commission under clause 38.2(a) are for the information of the Commission and to assist the Commission in monitoring the implementation of this Agreement;
 - (ii) the giving of such copies does not of itself satisfy the obligations regarding notices under this Agreement; and
 - (iii) a failure to give a copy of a notice does not invalidate any notice otherwise given in accordance with this Agreement, nor affect the calculation of time periods regarding notices.

38.3 Recipients of notices from State Parties

- (a) When a State Party gives a notice to a Gibson Desert Party or CDNTS, the State Party must send a copy of that notice to Warnpurru. To avoid doubt, if because of another provision of this Agreement the notice must be sent to Warnpurru as agent, then there is no need to send multiple copies to Warnpurru but the notice must identify which Party is the recipient.
- (b) Where a matter relates to this Agreement generally or it is not clear to the State Party to which of the Gibson Desert Parties or CDNTS the notice should be given, the State Party may give notice to Warnpurru. Any notice given under this clause 38.3(b) must make it clear that it is the sole notice (not a copy of another notice or sent to Warnpurru as agent), so that it is made certain Warnpurru must act on the notice.

- (c) The Parties agree that:
- (i) the copies of notices given to Warnpurru under clause 38.3(a) are for the information of Warnpurru and to assist Warnpurru in monitoring the operation of this Agreement;
 - (ii) the giving of such copies does not of itself satisfy the obligations regarding notices under this Agreement; and
 - (iii) a failure to give a copy of a notice does not invalidate any notice otherwise given in accordance with this Agreement, nor affect the calculation of time periods regarding notices.
- (d) Each State Party will use reasonable endeavours to notify the Gibson Desert Party or CDNTS which is responsible for the matter or activity that is the subject of the notice. In the event that a notice is sent to the incorrect Party, Warnpurru will provide all reasonable assistance to ensure that the State Party is promptly informed of the correct recipient of the notice.

38.4 Address for notices

As at the Execution Date, the address of each Party is as follows:

Gibson Desert Applicant Gibson Desert People	See clause 22.
Warnpurru	Contact Person Warnpurru (Aboriginal Corporation) c/- 76 Wittenoom Street East Perth WA 6004 Fax: (08) 9425 2001 Email: contact@warnpurru.org.au
CDNTS	Chief Executive Officer Central Desert Native Title Services Ltd 76 Wittenoom Street East Perth WA 6004 Fax: (08) 9425 2001 Email: reception@centraldesert.org.au
State	c/- Department of Premier and Cabinet Dumas House 2 Havelock Street West Perth WA 6005 Fax: (08) 6552 5001 Email: AboriginalEngagement@dpc.wa.gov.au
Minister for Lands	c/- Department of Planning, Lands and Heritage Gordon Stephenson House Level 2, 140 William Street Perth WA 6000 Fax: (08) 6552 4417
Commission	Director, Conservation and Parks Commission Department of Biodiversity, Conservation & Attractions 17 Dick Perry Avenue

	Kensington WA 6151 Fax: (08) 9334 0498
CEO	Goldfields Regional Manager Department of Biodiversity, Conservation & Attractions 17 Dick Perry Avenue Kensington WA 6151 Fax: (08) 9021 7831 Email: nigel.wessels@dbca.wa.gov.au

39. GOODS AND SERVICES TAX

39.1 Definitions

Words capitalised in this clause 39 and not otherwise defined in this Agreement have the meaning given in the GST Act.

39.2 GST payable

- (a) Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of any GST.
- (b) If GST is payable by a Party (**Supplier**) on a supply made under or in connection with this Agreement, then:
 - (i) the Party providing the consideration for that supply (**Recipient**) must pay as additional consideration an amount equal to the amount of the GST payable on that supply (**GST Amount**);
 - (ii) subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided; and
 - (iii) if the consideration has already been paid or provided, the GST Amount is payable within 10 Business Days after the receipt of the Tax Invoice.
- (c) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this Agreement, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (d) A Party may issue a Recipient-created Tax Invoice in respect of payment made by it under this Agreement where permitted under the GST Act.
- (e) If Non-Monetary Benefits are provided under this Agreement in respect of a Taxable Supply, the Parties will seek to agree upon the GST-exclusive market value of the Non-Monetary Benefits and where appropriate, the Parties must apply clause 39.2(a), clause 39.2(b), clause 39.2(c) and clause 39.2(d) in respect of any Non-Monetary Benefits that are a Taxable Supply.

40. GENERAL

40.1 Entire agreement

This Agreement constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

40.2 Counterparts

- (a) This Agreement may be executed in counterparts. All executed counterparts, taken together, constitute one document.
- (b) Each Party must execute a number of counterparts that will enable each Party to have at least one original version of each counterpart.

40.3 Governing law and jurisdiction

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

40.4 Costs and duties

- (a) The State will bear any duties, fees or taxes associated with:
 - (i) this Agreement; and
 - (ii) Registration of any ILUA pursuant to clause 8.3 or clause 9.3.
- (b) Except as otherwise agreed under an agreement or arrangement between the State and CDNTS, in its capacity as the legal representative for the Gibson Desert Parties and not in its own capacity, made before the Execution Date, each Party will bear its own costs including legal costs associated with the negotiation, drafting and execution of this Agreement.

40.5 Election and waiver

The Parties agree that a right or power under this Agreement will 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.

40.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement.

40.7 Further action and time

Each Party must use its best endeavours to do all things necessary or desirable to give full effect to this Agreement and the matters contemplated by it. The Parties agree that time is of the essence in relation to the rights and obligations set out in this Agreement.

SCHEDULE 1: RESERVE, AGREEMENT AREA AND ROAD CORRIDORS

Part A – Map of Reserve and Agreement Area