

Murchison
Radio-astronomy
Observatory
Agreement

Indigenous Land Use Agreement

Murchison Radio-astronomy Observatory Agreement Indigenous Land Use Agreement

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Details

Date

2009

Parties

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

Short form name **State**

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

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

6936

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

Short form name **CSIRO**

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

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

Short form name **Commonwealth**

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

Background

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

J

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Access Protocol means the protocol set out in Schedule 4.

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

Approved Auditor means a person who is:

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

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

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

ASIC means the Australian Securities and Investments Commission.

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

Australian Accounting Standards refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the ~~ASIC~~ ~~ASIC~~ 2001 (Cth).

Australian Auditing Standards refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the ~~ASIC~~ ~~ASIC~~ 2001 (Cth).

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

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

Business Day means:

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

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

CATSI Act means the ~~Cth Act~~ ~~2006~~ (Cth).

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

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

CDEEWR

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

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

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

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

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

ILUA Regulations means the ~~NTA~~ **ILUA Regulations 1999** (Cth).

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

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

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

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

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

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

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

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

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

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

Notice has the meaning given in clause 29.1.

NTA means the ~~NIA~~ 993 (Cth).

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

PrepSKA means the international project to conduct

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

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

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

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

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

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

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

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

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

WY Contracting Entity means:

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) words and expressions defined in the NTA have the same meaning where used in this agreement;
- (b) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this agreement and a reference to this agreement includes any recital, schedule or addendum;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (g) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a

2. Term of agreement and early termination

2.1 Commencement

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

2.2 Term of the agreement

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

2.3 No termination

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

2.4 Agreement to terminate

4.2 WY Claimants' Consent

The WY Claimants state as follows:

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

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

(a) The State is authorised by the parties to:

(i) prepare an application for this agreement to be registered on the ILUA Register.

(c) The parties acknowledge that each of them has entered into this agreement in good faith

8. Approved Body Corporate

8.1 Establishment and name

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

8.2 Constitution of the Approved Body Corporate

The WY Claimants must ensure that:

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

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

8.3 Membership

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

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

8.4 Objects

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

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

8.5 GST

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

8.6 Approved Body Corporate not a party to this agreement

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

9. WY Trustee Company

9.1 Establishment and name

- (a) The WY Claimants must, as soon as practicable after the Execution Date, incorporate the WY Trustee Company in accordance with this clause 9.
- (b) The WY Trustee Company must:
 - (i) be a public company limited by guarantee registered with ASIC in accordance with the provisions of the Corporations Act;
 - (ii) be a wholly owned subsidiary (as that term is defined in section 9 of the Corporations Act) of the Approved Body Corporate; and

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

9.2 Constitution of the WY Trustee Company

The WY Claimants must ensure that:

- (a) the WY Trustee Company is governed by a constitution. For the avoidance of doubt, the WY Claimants must ensure that the WY Trustee Company is not governed by the provisions of the Corporations Act that apply to a company as replaceable rules or by combination of a constitution and the replaceable rules;
- (b) a copy of the constitution of the WY Trustee Company accompanies any application made to ASIC for registration of the WY Trustee Company and that constitution is adopted on registration in accordance with sections 117(3) and 136(1)(a) of the Corporations Act;
- (c) the constitution of the WY Trustee Company is consistent with this agreement (in particular the provisions of this clause 9), the WY Trusts Deeds and the Corporations Act; and
- (d) subject to the Corporations Act, the constitution of the WY Trustee Company provides, without limitation:
 - (i) for the matters set out in clauses 9.3 (dealing with the Objects of the WY Trustee Company) and 9.4 (dealing with the board of directors);
 - (ii) that the constitution cannot be amended in a manner that is, or which results in the constitution being, inconsistent with this agreement (in particular the provisions of this clause 9), the WY Trust Deeds or the Corporations Act;
 - (iii)

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

9.4 Board of Directors

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

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

9.5 GST

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

9.6 WY Trustee Company not a party to this agreement

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

10. Funding to the WY Corporate Entities

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

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

11. Ratification

11.1 Provision of information to the Non-Native Title Parties

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

- (A) confirming that the WY Corporate Entities are registered for GST purposes (as required under clause 8.5 and 9.5); and
- (B)

- (D) must, under the Ratification Deed, comply with, and be bound by, all the terms of this agreement, and will be entitled to enforce the terms of this agreement against the parties, as if it were a party to this agreement;
- (ii) the WY Claimants:
- (A) agree that, subject to clauses 11.2(e), 11.2(d)(ii)(B) and 11.2(d)(ii)(C), the Non-Native Title Parties cease to owe any obligation to the WY Claimants under this agreement;
 - (B) remain entitled to any right and retain any obligation which accrued, arose or was due to be completed under this agreement before the Ratification Date;
 - (C) are not entitled to any right and shall not have any obligation under this agreement in respect of anything done or not done on or after the Ratification Date other than under clauses 4.2 (WY Claimants' Consent), 6.3 (Recognition of importance of the Project), 19 (Full Compensation), 20 (Indemnity and release) and 27 (Negotiations for SKA Project); and
 - (D) subject to clauses 11.2(d)(ii)(B) and 11.2(d)(ii)(C), will not, and are not entitled to, bring any claim or action against the Non-Native Title Parties in respect of anything done or not done by the Non-Native Title Parties under this agreement and this agreement may be pleaded as a bar to any such proceedings; and
- (iii)

- (ii) references in clauses 3.1 (WY Claimants' warranties), 3.3 (Non-Native Title Parties' reliance on such warranties) and 6.3 (Recognition of importance of the Project) to the WY Claimants are, despite the operation of this clause 11.2, to be read, under the Ratification Deed, as references to both the WY Claimants and the Approved Body Corporate;
- (iii) references in clauses 2 (Term of agreement and early termination), 4 (Consents to Future Acts), 5 (Lodgment of the agreement), 11 (Ratification), 24 (Variation) and 33.1 (Entire Agreement) to the parties are not, by operation of this clause 11.2, to be read, under the Ratification Deed, as in

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

- (d) The WY Claimants must ensure that the information compiled by it under clause 13.2(c) is provided to the Liaison Committee at each meeting of the Liaison Committee. A copy of such information must also be provided to CSIRO.
- (e) If there is any material change to the information provided by the WY Claimants under clause 13.2(d), the WY Claimants must provide the Liaison Committee and CSIRO with that information.
- (f) For the avoidance of doubt, the inclusion of a person or body on the list of WY Contracting Entities provided by the WY Claimants under clause 13.2(d) is determinative of that person's or body's status as a WY Contracting Entity for the purpose of this agreement.
- (g) Prior to the Ratification Date, for the purposes of clauses 13.2(b)-(e), sioded TJ0 -1bm 29 rso1.7t per

- (ii) If a quote from a WY Contracting Entity is received within CSIRO's time and technical requirements, CSIRO's ~~to be~~ assessment will include evaluation criteria, against which the quote will be assessed, with weights:
 - (A) of at least 5% to the extent to which the quote is superior on a commercial and technical basis as a result of being submitted by a WY Contracting Entity and the WY Contracting Entity's particular local knowledge, availability and proximity to the MRO due to their being a WY Contracting Entity; and
 - (B) of at least 5% to the extent, appropriateness and quality of the opportunities presented with respect to WY Claim Group employment and development.
- (iii) If a quote from a party other than a WY Contracting Entity is received within CSIRO's time and technical requirements, CSIRO's ~~to be~~ assessment will include the evaluation criteria contained in clause 13.3(b)(ii)(A) and (B), against which the quote will be assessed. In assessing that quote, CSIRO will give a zero (0) score against the criteria contained in clause 13.3(b)(ii)(A).
- (c) CSIRO generally undertakes a public tender through the Commonwealth sponsored

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

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

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

13.4 National Indigenous Cadetship Program

- (a) CSIRO will, as soon as practicable after Execution Date and after consultation with the WY Claimants, approach CDEEWR and negotiate for CDEEWR to provide support through the National Indigenous Cadetship Program for up to 4 suitable members of the WY Claim Group to gain cadetships with CSIRO.
- (b) If CSIRO, after approaching CDEEWR in acco

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

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

14.4 Provision of Internet

CSIRO will, in consultation with the WY Clai

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

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

16.3 Funding of Cultural Training Programs

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

and the WY Claimants hereby direct that:

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

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

19. Full compensation

19.1 Full and final Compensation

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

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

19.2 No Compensation claim

The WY Claimants:

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

19.3 Effect of termination

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

20. Indemnity and release

20.1 Indemnity and release

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

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

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

22.3 Development Activity to which this clause does not apply

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

23. Access

23.1 Access for members of WY Claim Group

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

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

23.2 Access Protocol

The parties will comply with the Access Protocol.

24. Variation

24.1 Variation of this agreement

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

24.2 Variation of agreement once registered on ILUA Register

- (a) If this agreement is registered on the ILUA Register the parties each agree that they will not, without the consent in writing of each of the other parties, make any application to revoke or vary the registration of this agreement on the ILUA Register.
- (b) If details of this agreement are entered on the ILUA Register, then any variation of this agreement which amends the details on the ILUA Register only takes effect upon the entry

26.3 Parties to resolve Dispute

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

26.4 Mediation

- (a) If the parties to the Dispute cannot agree on a mediator within five (5) Business Days after a request under clause 26.3, the chairman

30.2 Consideration is GST exclusive

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

30.3 GST payable

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

31. Costs and duties

31.1 Costs

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

31.2 Duties, taxes and government charges

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

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

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

31.3 Recovery

If the State fails to perform its obligations under this clause any other party may pay the duties or other taxes of a similar nature and tpay

32. Deemed consultation and consent

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

33. General

33.1 Entire agreement

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

33.2 Severability

- (a) Subject to clause 33.2(b), if any provision of this agreement is void, voidable by any party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it can not be so read down, the provision (or where possible the offending words), shall be severed from this agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this agreement which will continue in full force and effect.
- (b) If, for any reason, clauses 2 or 4 of this agreement are void, voidable by any party, unenforceable or illegal according to the law in force in the State of Western Australia then the Non-Native Title Parties may, by notice to the WY Claimants, terminate this agreement.
- (c) If this agreement is terminated in accordance with clause 33.2(b) then the consequences contained in clause 2.5 apply.

33.3 Waiver

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

- (a) no other conduct of a party, (including a failure to exercise, a delay in exercising or a