

## ANNEXURE "A"

This and the following [insert] pages comprise Annexure "A" referred to in the Lease between the Central Darling Shire Council as Lessor and Baaka Cultural Centre Wilcannia Aboriginal Corporation ICN 8560 as Lessee.

**The Lessor and the Lessee hereby covenant and agree with each other as follows:**

### **1 INTERPRETATION DEFINITIONS AND ADMINISTRATION**

1.1 The Lessor warrants:

- (a) that the Premises is owned by the Lessor;
- (b) that the Lessor has power and authority under the LG Act to grant a lease of the Premises.

### **2 DEFINITIONS**

In this Lease unless the contrary intention appears:

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

**Commencing Date** means the date specified in Column 2 of Item 1 of Schedule 1;

**Environment** has the same meaning given to that term in the *Protection of the Environment Operations Act 1997*;

**Environmental Law** means any Law relating to the protection of the Environment;

**EPA Act** mean the Environmental Planning and Assessment Act 1979.

**Terminating Date** means the date on which the Term expires, as specified in Column 2 of Item 3 of Schedule 1;

**Hazardous Substance** means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

**Improvements** mean any structure or work of a permanent nature attached to the land;

**Law** includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

**this Lease** means this Lease Agreement including the Schedules, and all Annexures hereto;

**LG Act** means the Local Government Act 1993;

**Local Council** means the council established under the *Local Government Act 1993* for the Local Government Area in which the Premises are situated;

**Minister** means the Minister for the time being administering the *Local Government Act 1993*;

**Option** means the option to purchase the Land referred to at Clause 72;

**Party** means a party to this Lease;

**Planning Law** means any applicable consent or approval or the like required to carry out development (including the erection of a building) pursuant to the EPA Act.

**Premises** means the land and/or buildings described in Part 1 of Schedule 2;

**Rent** means the rent reserved under Clause 9 of this Lease;

**Tenant Fixtures** means any plant equipment fittings or improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Lessee;

**Term** means the period specified in Column 2 of Item 2 of Schedule 1;

**Termination** means a termination of this lease as a consequence of the expiration of the Term (or any extension thereof) or a termination under Clause 23;

**Tripartite Deed** means the Deed executed on 24 September 2020 between the Lessee, the Lessor and the Commonwealth and referred to at Clause 71.

### **3 CONSTRUCTION**

#### **3.1 Construction in accordance with this Clause**

This Lease shall be construed in accordance with this clause unless the context requires otherwise.

##### **3.1.1 Plurals**

Words importing the singular include the plural and vice versa.

##### **3.1.2 Genders**

Words importing any gender include the other genders.

##### **3.1.3 Persons**

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and
- (b) the legal personal representatives, successors and assigns of that person.

##### **3.1.4 Headings**

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Lease.

##### **3.1.5 Clauses and Sub-clauses**

- (a) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.

- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

#### 3.1.6 **Time**

A reference to time is a reference to local time in Sydney.

#### 3.1.7 **Money**

A reference to \$ or "dollars" is a reference to the lawful currency of Australia.

#### 3.1.8 **Defined Terms**

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

#### 3.1.9 **Writing**

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

#### 3.1.10 **Contra Preferentum**

No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Lease or any part of it.

#### 3.1.11 **Statutes**

A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

#### 3.1.12 **Lease**

A reference to this Lease shall include any extension or variation of this Lease.

#### 3.1.13 **Priority**

If an inconsistency occurs between the provisions of this Lease and the provisions of a lease granted in accordance with this Lease, the provisions of this Lease shall prevail.

### 3.2 **Warranties and Undertakings**

(a) The Lessee warrants that it:

- (i) has relied only on its own inquiries about this Lease; and
- (ii) has not relied on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf.

(b) The Lessee must comply on time with undertakings given by or on behalf of the Lessee.

### 3.3 **Further assurances**

Each Party must do everything necessary to give full effect to this Lease.

### 3.4 **Relationship of Lessor and Lessee**

Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Lessee and the Lessor or either of them will be deemed to create any relationship between them other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

**3.5 Time to be of the essence**

Where in any provision of this Lease a party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

**4 SEVERABILITY**

Any provision of this Lease, which is prohibited or unenforceable in any jurisdiction, shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

**5 ESSENTIAL TERMS OF LEASE**

The Lessor and the Lessee agree that the clauses specified in Column 2 of Item 15 of Schedule 1 are essential conditions of this Lease.

**6 SECTIONS OF LEGISLATION NOT TO APPLY**

6.1 The covenants and powers implied in every lease by virtue of Sections 84, 84A, 132, 133, 133A and 133B of the *Conveyancing Act 1919* do not apply or are not implied in this Lease and are expressly negated except in so far as the same or some part or parts of it are included in the covenants hereinafter contained. The employment in this Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the *Conveyancing Act 1919* shall not imply any covenant under Section 86 of that Act.

6.2 Part 4 of the *Civil Liability Act 2002* does not apply to this Lease.

**7 TERM OF LEASE**

The Lessor grants to the Lessee a lease of the Premises for the Term specified in Column 2 of Item 2 of Schedule 1. The Term shall commence on the Commencing Date specified in Column 2 of Item 1 of Schedule 1.

**8 PERMITTED USE**

8.1 The Lessee will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Column 2 of Item 4 of Schedule 1.

8.2 Unless expressly permitted under a provision of this Lease, the Lessee will not reside on the Premises or permit any other person to reside on the Premises.

**9 DELETED**

**10 DELETED**

**11 DELETED**

**12 DELETED**

**13 DELETED**

## **14 LESSEE TO PAY FOR SERVICES**

The Lessee will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Lessee or consumed in or on the Premises, by the Lessee.

## **15 LESSEE TO PAY COST OF WORK**

Whenever the Lessee is required under this Lease to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Lease otherwise provides be at the sole risk, cost and expense of the Lessee.

## **16 COSTS PAYABLE**

### **16.1 Costs Payable to Lessor**

Except where a law limits costs being incurred by a Lessee being recovered from the Lessor, the Lessee will pay in full the Lessor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Lessor in consequence of or in connection with or incidental to:

- (a) the preparation, completion, stamping (if any) and registration of this Lease;
- (b) any variation of this Lease made otherwise than at the request of the Lessor;
- (c) any application for the consent of the Lessor and the Minister if applicable under this Lease;
- (d) any and every failure to comply, breach or default by the Lessee under this Lease;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Lessee and the inspection of it, in this case the costs to be mutually agreed;
- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Lessee of any provision of this Lease;
- (h) the Lessee requiring the Lessor to do any act, matter or thing under this Lease, unless otherwise provided for in this Lease, the Lessee will reimburse the Lessor for all reasonable costs and expenses incurred in complying with that requirement.

### **16.2 Costs payable by Lessor**

The Lessor will pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Lessee.

## **17 INTEREST ON OVERDUE MONEYS**

The Lessee will pay interest to the Lessor on any moneys due and payable under the Lease or on any judgment in favour of the Lessor in an action arising from the Lease until all outstanding moneys including interest are paid in full. The rate of interest

applicable is the rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest will accrue and be calculated daily.

## **18 MANNER OF PAYMENT OF RENT AND OTHER MONEYS**

The Rent and other moneys payable in accordance with this Lease must be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Lessee.

## **19 GOODS AND SERVICES TAX**

- (a) For the purposes of this Lease, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) All payments to be made or other consideration to be provided under this Lease are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by the Lessee to the Lessor is for a taxable supply under the Lease on which the Lessor must pay GST and the Lessor gives the Lessee a tax invoice, the Lessee must pay to the Lessor an amount equal to the GST payable (the "GST Amount") by the Lessor for that taxable supply upon receipt of that tax invoice.
- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Lessor as a result of default by the Lessor in complying with the GST Law.

## **19A LESSOR AS LAND OWNER AND CONSENT AUTHORITY**

- (a) The Lessee acknowledges that the Lessor may also be the consent authority under the EPA Act for any development to be carried out on the Premises.
- (b) The Lessee expressly acknowledges that the Premises is currently classified as community land pursuant to the LG Act.
- (c) The Lessor will comply with all relevant provisions of the EPA Act and the LG Act in respect to any application for development consent made by or on behalf of the Lessee for development to be carried out on the Premises.
- (d) Any development application made by or on behalf of the Lessee is to strictly comply with any applicable Plan of Management made under the LG Act applying to the Premises.

## **20 SUBLEASING, ASSIGNMENT AND PARTING WITH POSSESSION**

- 20.1 The Lessee may not sublet, assign this Lease or part with possession of the Premises or any part of them without the consent of the Lessor except in accordance with section 47C of the LG Act.
- 20.2 If the Lessee is a corporation, it will be treated as assigning this Lease, for the purposes of sub-clause 20.1, if the person or persons who beneficially own or control a majority of its voting shares at the commencement of this Lease cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the

Lessee is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.

20.3 The Lessee is to pay the Lessor's reasonable legal and other costs relating to considering and giving consent, including any costs which the landlord incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed subtenant or assignee or the person to whom possession is to be transferred.

20.4 The Lessee may not mortgage or charge this Lease or any estate or interest in the leased Premises.

## **21 TERMINATION OF LEASE**

21.1 Subject to Clauses 22 and 23 this Lease terminates on the date specified in Column 2 of Item 3 of Schedule 1.

## **22 DELETED**

## **23 TERMINATION OF LEASE ON DEFAULT**

23.1 The Lessor may end the Lease in the manner set out below in the following circumstances:

- (a) if the Rent or any part of it or any other moneys owing to the Lessor under the Lease is or are in arrears for one month, whether formally demanded or not;
- (b) if the Lessee breaches an essential condition of this Lease or any rule or regulation made under this Lease;
- (c) if defects notified under a provision of this Lease are not remedied within the time specified in the notice;
- (d) if the Lessee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
- (e) if the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) if the Lessee is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
- (g) if the interest of the Lessee under this Lease is taken in execution;
- (h) if the Lessee or any person claiming through the Lessee conducts any business from the leased Premises after the Lessee has committed an act of bankruptcy.

23.2 In the circumstances set out in sub clause 23.1, the Lessor may end the Lease by:

- (a) notifying the Lessee that it is ending the Lease; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Lessee and all other persons from the Premises and repossessing them; or

(c) doing both.

23.3 If the Lessor ends this Lease under this clause, the Lessee will not be released from liability for any prior breach of this Lease and other remedies available to the Lessor to recover arrears of Rent or for breach of this Lease will not be prejudiced.

23.4 If the Lessor ends this Lease under this clause or under clause 22, it may remove the Lessee's property and store it at the Lessee's expense without being liable to the Lessee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Lessor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

23.5 If the Lessor ends this Lease under this clause, it may, besides any other rights and remedies that it might have, recover from the Lessee damages for the loss of the benefit of the rest of this Lease.

## **24 ACCEPTANCE OF RENT NOT WAIVER**

Demand for, or acceptance of Rent or any other moneys due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture.

## **25 HOLDING OVER BY LESSEE**

(a) On and from the Terminating Date of this Lease, the Lessee shall be entitled with the consent of the Lessor to remain in possession of the Premises on the following terms and conditions:

(i) the Lessee shall become a monthly tenant of the Lessor at a monthly rental equivalent to one twelfth of the annual Rent payable at the time of expiration of this Lease;

(ii) the Lessee shall comply with and be bound by the terms and conditions of this Lease insofar as the terms and conditions are applicable, provided that the Lessor may from time to time by notice in writing served on the Lessee direct that any particular condition not apply or be amended in the manner set out in the notice.

(b) The Lessor and the Lessee expressly agree that where any provision of this Lease confers any right, duty, power or obligation on a Party upon the expiration of this Lease and the Lessee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Lessee ceases to be entitled to possession pursuant to this clause.

(c) The tenancy created by operation of this clause may be determined by the Lessor serving on the Lessee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.

(d) The tenancy created by operation of this clause may be determined by the Lessee serving on the Lessor a notice stating that as from a date specified in the notice the tenancy is surrendered.

## **26 LESSEE TO YIELD UP**

- 26.1 The Lessee will forthwith upon the expiry or determination of this Lease or any extension of it peaceably vacate the Premises at the Lessee's expense.
- 26.2 The Lessee must:
- (a) unless otherwise provided for in this Lease, remove the Tenant Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Lessee (other than a notice displayed by the Lessor); and
  - (b) unless otherwise provided for in this Lease, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Lessee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Tenant Fixtures to the reasonable satisfaction of the Lessor; and
  - (c) ensure that when it vacates the Premises, the Premises comply with any Environmental Law to the extent that it did so at the time of granting of this Lease; and
  - (d) leave the Premises in a clean and tidy condition.
- 26.3 Sub-clause 26.2 does not apply unless the Lessor permits the Lessee to carry out any works on the Premises reasonably required in order to comply with the clause.

## **27 NEW BUILDINGS AND ALTERATIONS AND ADDITIONS**

- (a) The Lessee or any duly authorised public authority acting for an on behalf of the Lessee shall comply with the applicable requirements of Part 2 Division 2 of the LG Act for any new building and/or alterations and additions to any such building to be erected on the Premises.
- (b) The Lessee or any duly authorised public authority acting for an on behalf of the Lessee shall comply with the Planning Law for any new building and/or alterations and additions to any such building to be erected on the Premises.

## **28 MAINTENANCE OF PREMISES AND ENCLOSED AREAS**

The Lessee will keep the Premises clean and tidy and in good order and condition.

## **29 LESSEE TO ERECT BARRICADES ETC.**

Where the Premises or any part of the Premises become to the knowledge of the Lessee (or which ought reasonably to be in the knowledge of the Lessee) unsafe, hazardous or dangerous the Lessee will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

## **30 LESSEE NOT TO REMOVE MATERIALS**

- (a) The Lessee will not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Lessor and the and subject to such conditions as the Lessor or the Minister may determine.

- (b) Sub clause 30(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Lease provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Lessee to comply with any condition imposed pursuant to sub clause 30(a) constitutes a failure by the Lessee to comply with a provision or covenant of this Lease.

### **31 ADVERTISING**

- (a) The Lessee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Lessor's written consent and, if required, obtaining development consent under the EPA Act, other than safety signs, in respect of which the Lessor's consent will not be required; and
- (b) The Lessor may at any time by notice in writing require the Lessee to discontinue to use any piece or mode of advertising to which the Lessor has granted consent under sub-clause 31(a) which in the opinion of the Lessor has ceased to be suitable or has become unsightly or objectionable and the Lessee on receipt of the notice must comply accordingly.

### **32 NOTIFICATION OF ACCIDENT**

The Lessee will give to the Lessor prompt notice in writing of any serious accident to any person or accident to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Lessee.

### **33 RODENTS AND VERMIN**

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Lessor but at the cost of the Lessee employ from time to time a duly certified pest exterminator approved by the Lessor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Lessee and any person acting on the Lessee's behalf will not use any substance or undertake any activity prohibited by any law.

### **34 LESSEE NOT TO BURN OFF**

If applicable, the Lessee will not carry out any burning off on the Premises except with the prior consent of the Lessor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the *Rural Fires Act 1997*. Any consent granted in accordance with this condition shall be subject to such reasonable conditions as the Lessor may impose.

### **35 LESSEE NOT TO COMMIT NUISANCE ETC**

The Lessee will not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) do or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or

- (c) use the Premises for any illegal activity.

### **36 HAZARDOUS SUBSTANCES**

The Lessee must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Lessor, which consent shall not be unreasonably withheld.

### **37 RELICS**

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Lessee will not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and will take reasonable precautions in drilling excavating or carrying out other operations or works on the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Lessee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Lessee will within 24 hours notify the Lessor and the Chief Executive of the Office of Environment and Heritage of the existence of such relic, place or item.
- (c) The Lessee will not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub clause 37(b) without the approval of the Chief Executive of the Office of Environment and Heritage and the Lessee will observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

### **38 ARTEFACTS**

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Lessor and the Lessee will as authorised by the Lessor watch or examine any excavations and the Lessee will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Lessor of such discovery and carry out the Lessor's orders as to the delivery up to or disposal of such articles or things at the Lessor's expense.

### **39 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND TENANT FIXTURES**

During the Term and any extension of it, ownership of Tenant Fixtures vests in the Lessee. Notwithstanding anything contained in this Lease, so long as any Rent or other moneys are due by the Lessee to the Lessor or if the Lessee has committed any breach of this Lease which has not been made good or remedied and whether the Lessee is still in possession or not, the Lessee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the leased property.

#### **40 GENERAL REQUIREMENT TO REPAIR**

Without prejudice to any specific obligations contained in this Lease the Lessee will to the satisfaction of the Lessor at all times keep the Premises in good repair and properly maintained in all respects.

#### **41 BREAKAGES**

The Lessee will immediately at the Lessee's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care, misuse or abuse on the part of the Lessee, the Lessee's agents, servants, invitees or licensees.

#### **42 LESSOR'S RIGHT TO ENTER INSPECT AND REPAIR**

The Lessor, the Lessor's agents, the Minister and the Minister's delegates may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) and accompanied by the Lessee or an employee or agent of the Lessee enter upon the Premises and view the state of repair of the Premises and may serve upon the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under this Lease to undertake) requiring the Lessee within two months to repair the same.

#### **43 INDEMNITIES AND INSURANCE**

##### **Definition**

For the purposes of clauses 44, 45, 46, 47, 48, 49, 57 and 58 –

Lessor means the Lessor, its agents, servants, employees and contractors.

Claim/s means actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

#### **44 INDEMNITIES**

##### **44.1 Indemnity for use of Premises**

- (a) The Lessee indemnifies and keeps indemnified the Lessor from and against all Claims whatsoever to which the Lessor shall or may be or become liable for or in respect of the Lessee's occupation operation and use of the Premises or for or in respect of all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises, except to the extent that any such Claims:
- (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Lessor; or
  - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Lessor is adequately indemnified by that other occupier in respect of the relevant Claim or demand, and the Lessor will use its reasonable endeavours to ensure that an indemnity in or to the effect of this form is contained in any agreement with any other occupier of the Premises.

#### **44.2 Indemnity Continues After Expiration of Lease**

The obligations of the Lessee under this clause continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

#### **44.3 Exclusion of Consequential Loss**

Despite any other provision of this Lease, both Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Lease including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

### **45 RELEASE OF LESSOR FROM LIABILITY**

- (a) The Lessee shall occupy, use and keep the Premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage or injury occurring therein (but excluding such Claims to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Lessor) and the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee or any agent or servant of the Lessee or of any member of the public whilst in or upon the Premises (but excluding such Claims to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Lessor).
- (b) The obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for which the Lessee is responsible. Such obligation is to be governed by the Statute of Limitations.

### **46 NO LIABILITY FOR FAILURE OF SERVICES**

The Lessor will not be under any liability for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises or this Lease provided that such failure is not due to the negligent or wilful act or omission of the Lessor its servants or agents.

### **47 LESSEE NOT TO IMPOSE LIABILITY ON LESSOR**

Subject to any other provision of this Lease, the Lessee will not without the written consent of the Lessor or Minister by any act, matter or deed or by failure or omission cause or permit to be imposed on the Lessor or Minister any liability of the Lessee under or by virtue of this Lease even though the Lessee is entitled to do so under any law present or future or otherwise.

### **48 INSURANCE - PUBLIC RISK**

The Lessee will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12 of Schedule 1 (or such other amount as the Lessor may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The Lessor

acknowledges that the Lessee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

#### **49 PROVISIONS FOR POLICIES**

- (a) All insurance policies required to be effected by the Lessee pursuant to this Lease are specified in Schedule 3 - Special Conditions and shall be in place prior to occupying the Premises.
- (b) The Lessee will produce to the Lessor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Lessee pursuant to this Lease.
- (c) The Lessee will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy of insurance. If the Lessee does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Lessee.
- (d) The Lessee will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

#### **50 HAZARDOUS MATERIALS**

The Lessor warrants that it has not received any notices pursuant to the *Contaminated Land Management Act 1997* (NSW).

#### **51 QUIET ENJOYMENT**

The Lessor warrants that subject to:

- (a) the Lessor's rights under this Lease;
- (b) the Lessee complying with its obligations under this Lease;

the Lessee may hold and occupy the Premises without undue interference by the Lessor.

#### **52 APPROVAL BY THE LESSOR**

- (a) This clause does not apply to a consent or approval under clause 20.
- (b) In any case where pursuant to this Lease the doing or executing of any act, matter or thing by the Lessee is dependent upon the approval or consent of the Lessor such approval or consent will not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Lessor and may be given subject to such conditions as the Lessor may determine

unless otherwise provided in this Lease provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.

- (c) Any failure by the Lessee to comply with a condition imposed by the Lessor pursuant to sub-clause 52(b) constitutes a failure by the Lessee to comply with a condition of this Lease.

### **53 OPINION OF THE LESSOR**

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient. If the Lessor deems it necessary, such opinion will be formed after consultation with any New South Wales Government Department or other public authority or the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor is deemed to be exercising merely administrative functions.

### **54 LESSEE TO COMPLY WITH ALL COMMONWEALTH AND NSW STATE LAWS**

- (a) The Lessee will comply with the requirements of all statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Lessee is bound at law to comply with the same and nothing in this Lease affects this obligation.
- (b) The Lessee will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

### **55 LESSEE TO COMPLY WITH ENVIRONMENTAL LAWS**

In relation to its use of the Premises, the Lessee must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Laws;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Lessor as soon as reasonably practicable details of notices received by or proceedings commenced against the Lessee pursuant to an Environmental Law:
  - (i) relating to a breach or alleged breach by the Lessee of an Environmental Law; or
  - (ii) requiring the Lessee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

### **56 LESSEE'S FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS**

Where the Lessee breaches any law in relation to its use of the Premises it is taken to breach a condition of this Lease, provided that:

- (a) the Lessee has been found guilty of the breach, and

- (b) the Lessor determines that the breach warrants the Termination of this Lease.

**57 INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION**

The Lessee indemnifies and keeps indemnified the Lessor from and against any Claims arising from the non-compliance by the Lessee with any New South Wales or Commonwealth legislation that may apply to the Lessee's use and occupation of the site and access thereto and the Lessee's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

**58 INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW OR PLANNING LAW**

Without prejudice to any other indemnity granted by this Lease, the Lessee indemnifies and keeps the Lessor indemnified against all Claims arising from a breach by the Lessee of any Environmental Law or Planning Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

**59 PROCEDURE - DISPUTE RESOLUTION**

- (a) In the event that the Lessor and the Lessee are in dispute regarding any matter relating to or arising under this Lease or in respect of any approvals or consents to be granted by the Lessor (except those approvals or consents where the Lessor has an obligation to act reasonably) to the Lessee hereunder, then either the Lessor or the Lessee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Lease.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause

does not in any way limit a mediator's power to apportion fees under clause 59(d).

- (g) Notwithstanding the existence of a dispute being dealt with under this clause the Parties must, unless acting in accordance with an express provision of this Lease, continue to perform their obligations under this Lease.

## **60 NOTICES**

### **60.1 Service of Notice on Lessee**

Any notice served by the Lessor on the Lessee must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor; or
- (b) sent by email to the Lessee's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor;
- (c) forwarded by prepaid security mail addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1;

and every such notice must also be served on the Lessee's solicitors, as they may be nominated from time to time, or such other address as the Lessee's solicitors notify in writing to the Lessor, by any methods identified in clauses 60.1(a) and (b).

### **60.2 Service of Notice on Lessor**

Any notice served by the Lessee on the Lessor must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee; or
- (b) sent by email to the Lessor's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee;
- (c) forwarded by prepaid security mail addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1;

and every such notice must also be served on the Lessor's solicitors, as they may be nominated from time to time, or such other address as the Lessor's solicitors notify in writing to the Lessee, by any methods identified in clauses 60.1(a) and (b).

### **60.3 Notices**

- (a) Any notice served by the Lessor or the Lessee under this Lease will be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Lessor or by the Lessee to the other.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the expiration of 2 Business Days after the date of posting.

## **61 NO MORATORIUM**

Any present or future legislation which operates to vary obligations between the Lessee and the Lessor, except to the extent that such legislation is expressly accepted to apply to this Lease or that its exclusion is prohibited, is excluded from this Lease.

**62 NO WAIVER**

No waiver by a Party of any breach of any covenant obligation or provision in this Lease either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied. None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

**63 NO MERGER**

Nothing in this lease merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Lease or under any other agreement.

**64 COUNTERPARTS**

- (a) A Party may execute this lease by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

**65 CONTACT PERSON**

The Lessor and the Lessee each must nominate a person to contact about matters arising under this Lease. The person so nominated is the person referred to in Column 2 of Items 13 and 14 of Schedule 1 or such other person as the Lessor nominates in writing to the Lessee and the Lessee nominates in writing to the Lessor from time to time.

**66 APPLICABLE LAW**

This Lease shall be construed and interpreted in accordance with the law of New South Wales.

**67 NO HOLDING OUT**

The Lessee will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Lessor nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor.

**68 WHOLE AGREEMENT**

- (a) The provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Lease.

- (c) The existence of any such implication or collateral or other agreement is hereby negated.

**69 DELETED**

**70 TERMINATION OF PRIOR LEASE**

in order to give effect to the classification of the Premises as community land pursuant to the LG Act, this Lease terminates and brings to an end the lease relating to the Premises entered into between the Parties which commenced on 1 July 2017.

**71 TRIPARTITE DEED**

If there is any inconsistency between this Lease and the Tripartite Deed, the Tripartite Deed has precedence. Any reference in the Tripartite Deed to "the Lease" is a reference to this Lease.

**72 OPTION TO PURCHASE**

- (a) The Lessor upon the signing of this Lease grants to the Lessee an option to purchase the Land on the standard terms contained in the Contract for Sale of Land (NSW version).
- (b) The purchase price shall be the value of the freehold interest in the Land as if the Land were vacant land with vacant possession immediately available as last determined by the Valuer General for rating purposes.
- (c) The option shall be exercised by the Lessee sending to the Lessor or its Solicitor to be received on or before a day more than two years after the commencement and less than six (6) weeks before the expiration of the Term:
  - (i) written notice stating that it exercises the option;
  - (ii) written evidence of the Lessee having demonstrated their bona fides having completed significant construction of the Building on the Premises within twenty four (24) months;
  - (iii) a copy of the Contract duly executed and dated with the date of dispatch; and
  - (iv) a cheque for ten percent (10%) of the amount of the purchase price in favour of the stakeholder referred to in the Contract for Sale.
- (d) The Lessor shall be entitled to disregard and treat as null and void any purported exercise of the option other than in strict accordance with the provisions hereof.
- (e) This Lease shall be at an end absolutely upon completion of the Contract for Sale, but without prejudice to the rights of either party in respect of any antecedent, breach, matter or thing.

**SCHEDULE 1**

Item	Clause	Column 1	Column 2
1	2	<b>Commencing Date</b>	<b>[INSERT start date]</b>
2	7	<b>Term</b>	<b>Ten (10) years</b>
3	21	<b>Terminating Date</b>	<b>[INSERT end date]</b>
4	8	<b>Permitted Use</b>	Cultural Centre
5	9	<b>Initial Rent (to be paid by Lessee)</b>	\$ 1.00 per annum excluding GST
6	9	<b>Market Rent</b> <b>Rent Rebate (if any)</b>	N/A N/A
7	9	<b>Due Date</b>	At Commencing Date
8	9	<b>Market Rent Review Date</b>	N/A
9	18	<b>Address for Payment of Rent</b>	Central Darling Shire Council 21 Reid Street Wilcannia NSW 2836
10	60	<b>Lessee's address for Service of Notices</b>	Baaka Cultural Centre Wilcannia Aboriginal Corporation ICN: 8560 Attention: Kate Hosking <b>Phone:</b> <b>Email:</b> Address: 44 Reid Street, Wilcannia NSW 2836 PO Box 124, Wilcannia NSW 2836
11	60	<b>Lessor's address for Service of Notices</b>	Central Darling Shire Council <b>Attention: contact name</b> <b>Phone:</b> <b>Email:</b> Address: PO Box 165 Wilcannia NSW 2836
12	48	<b>Public Risk Insurance amount</b>	\$20 Million

13	65	<b>Lessor's Contact Person</b>	[insert Contact name]: Phone: Email: Address: PO Box 165 Wilcannia NSW 2836
14	65	<b>Lessee's Contact Person</b>	[insert Contact name] Phone Email: Address: 44 Reid Street, Wilcannia NSW 2836
15	5	<b>Essential Conditions</b>	1.1, 7, 8, 20, 21, 27, 28, 40,44, 45, 47, 48, 49, 54, 56
16	69	<b>Special Conditions</b>	Nil.

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## **SCHEDULE 2**

### **Description of the Premises (leased area)**

Whole Lot in Deposited Plan	1/13/759091
Area	1011 m2 (approx.)
Commencement Date	<i>[insert]</i>
Expiry Date	<i>[insert]</i>
Initial Rent	\$ 1.00 per annum
Plan	Deposited Plan 759091
Description of any structures	Any building lawfully erected by the Lessee or by any public authority on behalf of the Lessee
Third Party Exclusive Area	N/A
Enclosed Area <i>(where land is, or is intended to be fenced)</i>	N/A

Dated this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR]

**EXECUTED BY Baaka Cultural Centre  
Wilcannia Aboriginal Corporation ICN  
8560**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Office Held

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name of witness

**EXECUTED BY Central Darling Shire  
Council ABN 65 061 502 439**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Office Held

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print Name of witness