



## DEED OF AGREEMENT TO MAKE A RECORD OF GARMA

BETWEEN: Yothu Yindi Foundation Aboriginal Corporation  
PO Box 42119, Casuarina NT Australia 0810

AND: \_\_\_\_\_

### RECITALS

- A. The Yothu Yindi Foundation Aboriginal Corporation ("YYF") organises and facilitates the Garma event ("Garma"), which will take place at Gulkula, Gunyaṅara, Yirrkala and other locations in northeast Arnhem Land in the Northern Territory of Australia during the month of August 2017.
- B. YYF represents those Yolngu people who have the rights to perform, create, and reproduce various literary, dramatic, artistic and musical works at Garma, which comprise the corpus of ritual knowledge, known as Indigenous Cultural and Intellectual Property (ICIP), held or owned by them in accordance with Aboriginal tradition. ICIP is more fully explained in the annexed document marked "A".
- C. YYF wishes to protect the moral and legal rights of those Yolngu people referred to in Recital B in respect of their intellectual property and ICIP.
- D. The Recorder wishes to attend Garma and make a record of Garma.
- E. YYF has agreed to permit the Recorder attend Garma, and further, to authorise the Recorder to make a record of Garma in accordance with the terms contained in this Deed.
- F. The execution of this Deed is a condition of entry into Garma.
- G. These Recitals shall form part of this Deed.

NOW THIS DEED WITNESSES as follows:

#### 1. Definitions:

'**Aboriginal Tradition**' has the meaning given to that term in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

'**Garma**' means the Garmaevent held at Gulkula, the Yirrkala Community Open Day, events held at Gulkula, Gunyaṅara, Yirrkala and other locations in North East Arnhem Land in the Northern Territory of Australia during the month of August 2017 and includes all of the events and images comprising this event.

'**Moral Rights**' has the same meaning given to the term in section 189 of the *Copyright Act 1968* (Cth) and includes the right of attribution to a performer or author of any performance or work, and prohibition on derogatory treatment of a performance or work.

'**Publish**' has the meaning given to the word in section 29 of the *Copyright Act 1968* (Cth) and includes any disclosure of the Record made of the event to a person who was not present at Garma or not authorised by the organisers or the relevant Traditional Aboriginal Owners to have the Record disclosed to them.

'**Record**' includes any photographic, film, video or audio recording, whether permanent or not and the creation of any literary, dramatic, artistic or musical work which embodies an image or sound which was made available to the recorder by virtue of this agreement and their subsequent presence at Garma.

'**Recorder**' means a person who is authorised by YYF to make a record of Garma.

'**Subject Matter**' includes all literary, dramatic, artistic and musical activities undertaken at Garma by any Traditional Aboriginal Owners including the activities comprising their corpus of ritual knowledge held or owned by them in accordance with Aboriginal Tradition, and includes the confidential information, words, stories, songs, dances, designs, images and paintings, disclosed or revealed, sung, spoken, performed, exposed or created at Garma.

'**Traditional Aboriginal Owners**' mean the Yolngu people who have the rights to perform, create, reproduce and control the reproduction of any aspects of the Subject Matter of Garma in accordance with Aboriginal Tradition, and encompasses the meaning given to that term in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

'**Yolngu People**' means those Aboriginal persons residing in North East Arnhem Land who are recognised as being of Yolngu descent by the members of those communities in North East Arnhem Land, in accordance with Aboriginal Tradition.

'**YYF**' means the Yothu Yindi Foundation Aboriginal Corporation (ICN: 1161) (ABN: 28 221 722 606).

#### 2. General Authority to make a Record of Garma

YYF, in its capacity as representative of the Traditional Aboriginal Owners, grants the Recorder permission to make a Record of Subject Matter at Garma, subject to the following conditions.

#### 3. Confidentiality of Information

- a. In consideration of being granted entry to Garma, the Recorder undertakes to:
  - i. accept and view the Subject Matter in confidence and acknowledge that the information in the Subject Matter is secret;
  - ii. acknowledge that all rights and interests (including, without limitation, intellectual property rights and ICIP) in connection with the Subject Matter belong to YYF, in its capacity as representative of the Traditional Aboriginal Owners;
  - iii. refrain from copying, using, disclosing or Publishing the Subject Matter (or any other information and material submitted in connection with the Subject Matter) other than in accordance with this Deed, or with the prior written consent of YYF;
  - iv. observe the Moral Rights of the Traditional Aboriginal Owners in respect of the Subject Matter; and
  - v. immediately at YYF's request, or if the Recorder and YYF do not enter into another Deed regarding the Subject Matter, return any Record of the Subject matter to YYF.
- b. These confidentiality obligations continue in perpetuity or until the Recorder and YYF enter into another Deed regarding the Subject Matter.
- c. If this Deed remains unsigned and the Recorder personally views the Subject Matter, then the Recorder will be deemed to have accepted this Clause 3.

#### 4. Assignment of Copyright



FOUNDATION

- a. In consideration of being granted entry to Garma, where the Recorder makes a Record of any Subject Matter, the Recorder assigns absolutely to YYF:
i. the entire copyright throughout the world and all other rights of a like nature now subsisting or conferred in respect of the Record by the law in force in any part of the world including all renewals and extensions;
ii. by way of assignment of future copyright the copyright and all other rights of a like nature from time to time belonging to the Recorder which may be conferred or may subsist in any alterations or additions to the Record and any and all renewals and extensions; and
iii. any and all common law rights and statutory or common law remedies in relation to the Record available to YYF at the date of this assignment.
b. The Recorder must do all acts and execute all documents necessary to fully assign the entire copyright in the Record to YYF.
c. YYF will observe the Moral Rights of the Recorder in the event that YYF uses the Record for promotional or fundraising purposes.
d. If this Deed remains unsigned and the Recorder makes a Record of Garma, then the Recorder will be deemed to have accepted this Clause 4.

5. License for Personal Use

- a. Notwithstanding clauses 3 and 4 of this Deed, YYF grants the Recorder a non-exclusive license to use the Record for personal, non-commercial, use only ("License").
b. For avoidance of doubt, the Recorder agrees not to Publish any Record of the Subject Matter on the Internet, including on websites or social media applications such as:
i. Facebook;
ii. Pinterest;
iii. Instagram;
iv. Flickr;
v. Twitter;
vi. LinkedIn;
vii. MySpace;
viii. YouTube; or
ix. any other website or social media application.
c. The Recorder must not assign all or any of its rights given to it under this Deed without the prior written consent of YYF.
d. YYF reserves the right to terminate this License at any time and exercise its rights in accordance with clauses 3 and 4 of this Deed.

6. Further undertakings

- a. The Recorder will at all times during Garma follow the directions of YYF, including its agents, employees and assigns, in respect of making a Record of Garma.
b. The Recorder will not seek to obtain any authorisation, agreement, permission or release from any Traditional Aboriginal Owner in relation to any matter whatsoever other than through or with the written consent of YYF.

7. Deeming provision

In the event that this Deed remains unsigned, the Recorder agrees that YYF's electronic acceptance of the Recorder's online or manual registration for Garma, and the Recorder's subsequent attendance at Garma, constitutes acceptance of the terms and conditions of this Deed.

8. Applicable

Law

This Deed must be read and construed according to the laws of the Commonwealth and the Northern Territory and the parties submit to the non-exclusive jurisdiction of the Courts in the Northern Territory

9. Amendments

This Deed may not be varied except in writing signed by both the parties.

10. Severability

If any provision of this Deed is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

SIGNING AND DATE OF DEED

Executed as a deed on day of 2017

EXECUTED by Yothu Yindi Foundation Aboriginal Corporation in accordance with section 99.5 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth).

Sole/Director

EXECUTED by [insert name]

Recorder