

# **(Native Title Claim Group) Minerals Exploration Indigenous Land Use Area Agreement Template**

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Current as at 27  
September 2004

The Honourable [insert name] Attorney-General

and

Minister for Mineral Resources Development

and

The [insert name] People by [insert name]

and

[insert name] Aboriginal Corporation

and

Aboriginal Legal Rights Movement Inc

and

South Australian Chamber of Mines and Energy Inc



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Schedule 1 – ILUA Area Native Title Claim and Notice Details

Schedule 2 - Exploration Contract Conditions

- Annexure A to Schedule 2 – Heritage Clearance Procedures
- Annexure B to Schedule 2 – Mapping Access Procedures
- Annexure C to Schedule 2 – Notice Details
- Annexure D to Schedule 2 – Deed of Assumption
- Annexure E to Schedule 2 – Exploration Contract Return

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Schedule 3 - Acceptance Document

- Annexure A to Schedule 3 – Exploration Contract Conditions

Schedule 4 - Mapping Survey Procedures

**Date**

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**Parties**

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1. **The Honourable [insert name], Attorney-General** for and on behalf of the Crown in right of the State of South Australia of Level 11 ING Building, 45 Pirie Street, Adelaide SA 5000 (*state*)
2. **Minister for Mineral Resources Development** a corporation sole constituted by Section 11 of the Mining Act No. 109 of 1971 and whose office is situated at 17<sup>th</sup> Floor, 25 Grenfell Street, Adelaide SA 5000 (*minister*)
3. **[insert names] as registered native title claimants for and on behalf of the [insert name] native title claim group** in native title determination application no. [insert number] in the Federal Court of Australia, of [insert address] (*native title parties*)
4. **[insert name] Aboriginal Corporation** ABN [insert no.], an Aboriginal association incorporated under the Aboriginal Councils and Associations Act No 186 of 1976 (Cth), of [insert address] (*association*)
5. **Aboriginal Legal Rights Movement Inc** ABN 32 942 723 464, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of Level 4, 345 King William Street, Adelaide SA 5000 (*ALRM*)
6. **South Australian Chamber of Mines and Energy Inc** ABN 62 620 804 910, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of 4 Greenhill Road, Wayville SA 5034 (*SACOME*)

**Recitals**

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- A The *registered native title claimants* are (as at the date of execution of this *framework ILUA* by all of the *parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and *waters* in the *ILUA area* and made the *native title claim* on behalf of the *native title claim group*.
- B The *native title claim group* has established the *association* and has authorised the *association* to manage the *native title claim* and all matters relating to the *native title claim* on behalf of the *native title parties*.
- C The *association* (in conjunction with the *registered native title claimants*) has consulted with the *native title claim group* and the *native title claim group* has consented to and authorised the *registered native title claimants* to enter into this *framework ILUA* on behalf of the *native title parties*.

- D The *association*:
- (a) enters into this *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters relating to it; and
  - (b) by signing this *framework ILUA* confirms that the *registered native title claimants* have been authorised by the *native title claim group* to enter into this *framework ILUA* on behalf of the *native title parties*.
- E *ALRM* is the *representative Aboriginal/Torres Strait Islander body* for the *ILUA area* pursuant to the *native title act*.
- F Before signing this *framework ILUA* *ALRM* has, as far as practicable, consulted with and had regard to the interests of the *native title claim group* and other persons (if any) who hold or may hold *native title* in relation to *land* or *waters* in the *ILUA area*.
- G The *state*:
- (a) is the Crown in right of the State of South Australia;
  - (b) through the *minister*, its departments and agencies administers the *mining act* including:
    - (i) the *granting* of all *mining tenements*; and
    - (ii) the management of Part 9B of the *mining act*, being the *alternative state right to negotiate procedure* ; and
  - (c) is the first respondent to all *native title determination applications* in South Australia.
- H *SACOME* represents the minerals, petroleum and energy industries in South Australia.
- I Each *party* recognises the interests of each other *party*, and of land owners and occupiers, in relation to the *ILUA area*.
- J In particular the *parties* recognise, in relation to the *native title parties*, that:
- (a) the relationship of Aboriginal people to *land* and *waters* is central to their well being and to their continuing connection to the religious, emotional, spiritual and non – human world; and
  - (b) the *native title parties* claim that *native title* exists in relation to *land* and *waters* in the *ILUA area* and that the *native title claim group* is the group that claims to hold the *native title* in relation to *land* and *waters* in the *ILUA area*.

K	The <i>parties</i> also recognise, in relation to the <i>state</i> , that the <i>state</i> asserts its ownership of <i>minerals</i> in the <i>ILUA area</i> and elsewhere in South Australia.
L	<p>The <i>native title parties</i>, the <i>association</i> and <i>ALRM</i> have negotiated with the <i>state</i> and with <i>SACOME</i> for this <i>framework ILUA</i>, which promotes the exercise of rights under this <i>framework ILUA</i> in a way that advances economic development through <i>authorised exploration activities</i> being carried out in a sustainable manner for the benefit of current and future generations and which amongst other things, provides for:</p> <p>(a) consent to the <i>grant</i> of the <i>authorised exploration tenements</i>;</p> <p>(b) consent to the carrying out of <i>authorised exploration activities</i> under the <i>authorised exploration tenements</i>; and</p> <p>(c) procedures protecting the rights and interests of the <i>native title parties</i> in the <i>ILUA area</i> in relation to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.</p>
M	Pursuant to this <i>framework ILUA</i> the <i>parties</i> consent to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.
N	The <i>non-extinguishment principle</i> applies to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.
O	The provisions of this <i>framework ILUA</i> apply instead of the <i>right to negotiate procedure</i> , which is not intended to apply to the <i>grant</i> of the <i>authorised exploration tenements</i> or the carrying out of <i>authorised exploration activities</i> under them.
P	This <i>framework ILUA</i> is an <i>area agreement</i> pursuant to sections 24CA to 24CL of the <i>native title act</i> and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth) and is intended to be registered on the <i>register</i> .

**It is agreed** as follows.

## 1. Preliminary

### 1.1 Definitions

In this *framework ILUA*, unless the context otherwise requires:

***Aboriginal heritage act*** means the Aboriginal Heritage Act No 12 of 1988 (SA);

***Aboriginal site, object or remains*** means any of:



- (a) an "Aboriginal site", an "Aboriginal object", or "Aboriginal remains" as defined in the *Aboriginal heritage act*; and
- (b) "Aboriginal remains", a "significant Aboriginal area" or a "significant Aboriginal object" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act No 79 of 1984 (Cth);

**acceptance document** means the deed forming part of this *framework ILUA* at schedule 3, as amended from time to time pursuant to this *framework ILUA*, by which an *explorer* agrees to enter into an *accepted exploration contract*;

**acceptance term** means the period, within the *framework term*, starting on the *commencement date* and ending on the date determined in accordance with clause 2.2(d), during which an *explorer* is entitled to enter into an *accepted exploration contract* in accordance with the provisions of clause 5.1;

**accepted exploration contract** means each contract:

- (a) on the terms of the *exploration contract conditions* and the relevant executed *acceptance document*; and
- (b) formed between the *state*, the *minister*, the *native title parties*, the *association* and an *explorer* upon that *explorer* complying with the provisions of clause 5.1;

**advanced exploration activities** means:

- (a) grid-based pattern drilling with 100 metres x 100 metres or 200 metres x 50 metres (or equivalent) centres or less;
- (b) diamond drilling of at least five drill holes per square kilometre;
- (c) costeaning or trenching;
- (d) bulk sampling of more than 100 tonnes from a single surface location;
- (e) making new tracks using *declared equipment*; and
- (f) any *exploration activities* using explosives,

and includes any associated *land clearing*;

**ALRM** means the *party* referred to in item 5 under the heading "Parties";

**association** means the *party* referred to in item 4 under the heading "Parties";

**authorised exploration activities** means *exploration activities* under an *authorised exploration tenement*;

**authorised exploration tenement** means:

- (a) any *exploration tenement granted*, whether before or after the *commencement date* or the date of commencement of the relevant *accepted exploration contract*, to an *explorer*.
  - (i) being an exploration tenement:
    - (A) details of which are specified in the *acceptance document* executed by that *explorer* in order to enter into that *accepted exploration contract*;

- (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*; and
- (C) in relation to which the provisions of clause 5.1 have been complied with; or
- (ii) being an exploration tenement:
  - (A) details of which are specified in a notice given by that *explorer* pursuant to clause 12.1 of that *accepted exploration contract*; and
  - (B) to the extent that *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*;
- (b) any *exploration tenement* to be *granted* to that *explorer* upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (a) in respect of the whole or any portion of the *land* and/or *waters* (within the *ILUA area*) the subject of that *exploration tenement*;
- (c) any *exploration tenement* of a different type to that referred to in paragraphs (a) and (b) to be *granted* to that *explorer* during the *acceptance term* in respect of the whole or any portion of the *land* and/or *waters* (within the *ILUA area*) the subject of any *exploration tenement* referred to in paragraph (a) or (b); and
- (d) any *exploration tenement* to be *granted* to that *explorer* during the *acceptance term* upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (c) in respect of the whole or any portion of the *land* and/or *waters* (within the *ILUA area*) the subject of that *exploration tenement*;

but excludes any *excluded tenement* and any *exploration tenement* in respect of which (and to the extent that) an *accepted exploration contract* terminates or is terminated in accordance with clause 2.3(a), 2.3(b) or 4.5 of that *accepted exploration contract*;

**authority** means any statutory, public, governmental, semi-governmental, or municipal authority, body or department;

**breached tenement** means the *authorised exploration tenement* in relation to which an *explorer* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) of the relevant *accepted exploration contract*;

**business day** means a day other than a Saturday, Sunday or public holiday in South Australia;

**commencement date** means the date on which details of this *framework ILUA* are entered on the *register* pursuant to section 199B of the *native title act*;

**communication** has, for the purposes of clause 12, the meaning given in clause 12.1;

**compensation entitlement** means any compensation, right or entitlement whether monetary or otherwise and whether under common law, equity, statute or otherwise in respect of *native title* with respect to:

- (a) the *grant* of any *authorised exploration tenement*; or
- (b) the carrying out of any *authorised exploration activities* under any *authorised exploration tenement*;

***cultural mapping survey*** means a survey for purposes of preserving, protecting, maintaining or enhancing the culture of the *native title parties* in relation to *Aboriginal sites, objects or remains*, carried out pursuant to clause 8 and the *mapping survey procedures*;

***determination*** has, for the purposes of clause 11, the meaning given in clause 11.6;

***dispose*** means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

***dispute*** has, for the purposes of clause 11, the meaning given in clause 11.1;

***dispute parties*** has, for the purposes of clause 11, the meaning given in clause 11.4;

***encumber*** means to grant or create or permit or suffer the grant or creation of any interest or power:

- (a) reserved in, or over any interest in, any asset including any retention of title; or
- (b) granted, created otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created;

***essential term*** means the terms of each of clauses 5.1, 5.2, 5.3, 6.1, 6.3, 6.4(b), 7.1, 7.4, 8.3(c) and 8.3(d) of each *accepted exploration contract*;

***excluded tenement*** means an *exploration tenement* to which an *accepted exploration contract* does not apply by reason of the provisions of clause 15.1 or 15.2 of that *accepted exploration contract*;

***expert*** means the person appointed either:

- (a) by agreement between the *dispute parties* within 5 *business days* of any *dispute* not being resolved in accordance with the provisions of clause 11.5; or
- (b) failing such agreement, at the request of any *dispute party* by the President for the time being of the Law Society of South Australia Inc. (or the President's nominee), being a person who has an understanding of, and experience in, both Aboriginal heritage and minerals exploration matters;

***exploration activities*** means, in relation to an *exploration tenement*, all *exploratory* operations and other activities permitted to be carried out pursuant to the conditions of that *exploration tenement* under the *mining act*;

**exploration contract conditions** means the terms forming part of this *framework ILUA* at schedule 2, as amended from time to time pursuant to this *framework ILUA*;

**exploration mapping survey** means a survey, carried out pursuant to clause 8 and the *mapping survey procedures*, for purposes of preserving and protecting *Aboriginal sites, objects or remains* in relation to those *exploration activities* in respect of which the *survey* is undertaken;

**exploration tenement** means a *mineral claim*, an *exploration licence*, a *retention lease* (but only if the *mining operations* to which the *retention lease* relates are limited to *exploratory operations*), and a *miscellaneous purposes licence* (but only if the purposes for which the licence is *granted* are limited to purposes ancillary to the conduct of *exploratory operations*);

**explorer** means any person who at any time before or after complying with clause 5.1 is the holder of an *exploration tenement* which, upon that person complying with clause 5.1, becomes an *authorised exploration tenement*;

**framework ILUA** means this deed, as amended from time to time, including the *exploration contract conditions* (and the annexures to it, being the *heritage clearance procedures*, mapping access procedures and deed of assumption), the *acceptance document* and the *mapping survey procedures* and all other schedules, annexures and appendices;

**framework term** means the period referred to in clause 2.1(a);

**grant**, in relation to an *exploration tenement*, includes:

- (a) any renewal, regrant, remaking or extension of the term of an *exploration tenement*; and
- (b) any registration of a *mineral claim*;

**gst** has, for the purposes of clause 13, the meaning given in that clause;

**gst legislation** has, for the purposes of clause 13, the meaning given in that clause;

**heritage clearance procedures** means the procedures annexed to the *exploration contract conditions* as annexure A, as amended from time to time pursuant to this *framework ILUA*;

**ILUA area** means the geographical area in relation to which this *framework ILUA* applies, as specified in item 1 of schedule 1;

**indigenous parties** means the *association* and the *native title parties*;

**land clearing** means:

- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
  - (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
  - (ii) the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or

- (iii) the clearing of noxious or introduced plant species; and
- (b) in the case of trees, cutting down, ringbarking or pushing over trees;

**law** means any Act of Parliament (whether state or federal) and all regulations, by-laws, statutory instruments and orders made thereunder and any lawful requirement of any *authority* and includes the conditions of any *authorised exploration tenement*;

**mapping survey** means either:

- (a) an exploration mapping survey; or
- (b) an exploration mapping survey and a cultural mapping survey;

**mapping survey procedures** means the procedures for carrying out a *mapping survey* forming part of this *framework ILUA* at schedule 4, as amended from time to time pursuant to this *framework ILUA*;

**mining act** means the Mining Act No 109 of 1971 (SA);

**minister** means the Minister of the Crown in right of the State of South Australia for the time being administering the *mining act*, being the *party* referred to in item 2 under the heading "Parties", or that Minister's duly authorised delegate;

**native title** has the meaning given in the *native title act*;

**native title act** means the Native Title Act No 110 of 1993 (Cth);

**native title claim** means the *native title determination application* of the *native title parties*, details of which are set out in item 2 of schedule 1;

**native title claim group** means the native title claim group (as defined in the *native title act*) in respect of the *native title claim*;

**native title parties** means the *native title claim group* and includes the *registered native title claimants*, being the *party* referred to in item 3 under the heading "Parties";

**nominated body** means:

- (a) the *association*;
- (b) if nominated by the *association* pursuant to clause 6.5(a) of any *accepted exploration contract*, a body corporate:
  - (i) whose membership or shareholding by its constitution includes the members of the *native title claim group*;
  - (ii) which is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
  - (iii) which is incorporated by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*;
- (c) if nominated by the *association* pursuant to clause 6.5(a) of any *accepted exploration contract*, a trust:
  - (i) whose beneficiaries by the trust deed include the members of the *native title claim group*;

- (ii) the trustee of which:
  - (A) if a natural person, is not an undischarged bankrupt; or
  - (B) if a body corporate, is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
- (iii) which is established by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*; or
- (d) if paragraphs (a), (b) and (c) do not apply, the *native title parties*;

***notified party*** has, for the purposes of clause 11, the meaning given in clause 11.3;

***notifying party*** has, for the purposes of clause 11, the meaning given in clause 11.3;

***parties*** means the parties to this *framework ILUA*;

***payment*** has, for the purposes of clause 13, the meaning given in that clause;

***provision*** has, for the purposes of clause 14.3, the meaning given in that clause;

***recipient*** has, for the purposes of clause 13, the meaning given in that clause;

***register*** means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the *native title act*;

***registered native title claimants*** means the registered native title claimants (as defined in the *native title act*) from time to time in respect of the *native title claim*;

***registrar*** has the meaning given in the *native title act*;

***review date*** has, for the purposes of clause 2.2, the meaning given in that clause;

***right to negotiate procedure*** means the procedures described in Part 9B of the *mining act* or Part 2, Division 3, Subdivision P of the *native title act*;

***SACOME*** means the *party* referred to in item 6 under the heading "Parties";

***state*** means the *party* referred to in item 1 under the heading "Parties";

***subsequent tenement*** has, for the purposes of clause 3, the meaning given in clause 3.8(b)(ii)(A);

***supplier*** has, for the purposes of clause 13, the meaning given in that clause;

***taxable supply*** has, for the purposes of clause 13, the meaning given in that clause; and

other terms in italics which are defined or used in the *Aboriginal heritage act*, *mining act* or the *native title act* bear their defined meanings when used in this *framework ILUA*.

## 1.2 Interpretation

In this *framework ILUA*, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to, this *framework ILUA*;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this *framework ILUA*) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this *framework ILUA* or that other agreement, deed or document;
- (h) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (i) a reference to a *party* to this *framework ILUA* or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (m) a reference to a document includes an agreement (referred to in paragraph (l)) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to dollars and \$ is to Australian currency;
- (o) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;

- (q) a reference to agree, approve or consent on the part of a *party* is a reference to agree, approve or consent (as the case may be) on the part of that *party* in writing; and
- (r) nothing in this *framework ILUA* is to be interpreted against a *party* solely on the ground that the *party* put forward this *framework ILUA* or any part of it.

### 1.3 Headings

Headings do not affect the interpretation of this *framework ILUA*.

### 1.4 Schedules and annexures

Schedules, annexures and appendices form part of this *framework ILUA*.

### 1.5 Date of Agreement

Any reference in this *framework ILUA* to the date of execution of this *framework ILUA* by all of the *parties* is a reference to the date inserted under the heading "Date" on page 1 of this *framework ILUA*.

## 2. Term

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### 2.1 Term

- (a) This *framework ILUA*, other than clauses 1, 2.1(b), 6.1, 6.2, 9.1[ ], 10.1(e), 10.2 (insofar as it relates to clause 10.1(e)), 11, 12, 13 and 14:
  - (i) commences on the *commencement date*; and
  - (ii) continues until the later of:
    - (A) the expiry of the *acceptance term*; and
    - (B) the date upon which all of the *accepted exploration contracts* have expired or been terminated for whatever reason.
- (b) Clauses 1, 6.1, 6.2, 9.1[ ], 10.1(e), 10.2 (insofar as it relates to clause 10.1(e)), 11, 12, 13 and 14 and this clause 2.1(b):
  - (i) commence on the date of execution of this *framework ILUA* by all of the *parties*; and
  - (ii) continue until:
    - (A) the date being 12 months after the date referred to in clause 2.1(b)(i), if this *framework ILUA* has not been registered on the *register* by that date; or
    - (B) if clause 2.1(b)(ii)(A) does not apply, the date upon which all of the *accepted exploration contracts* have expired or been terminated for whatever reason.

### 2.2 Review

- (a) Not more than 12 months, and not less than 6 months, before the date of expiry of the 5 year period calculated from the *commencement*



*date* and each successive 5 year period during the *framework term* (**review date**) any *party* may give the other *parties* notice that it requires a review of this *framework ILUA*.

- (b) If any *party* gives the other *parties* a notice under clause 2.2(a) the *parties* must:
- (i) meet as soon as possible, but in any event within 20 *business days* after the date of that notice; and
  - (ii) negotiate in good faith with a view to reaching agreement between the *parties* in relation to any amendments proposed to this *framework ILUA* by any *party*.
- (c) The *parties* may agree:
- (i) upon the amendments required to this *framework ILUA* by any *party* and record the relevant agreement in a written document signed by all of the *parties*; or
  - (ii) that no amendments are required to this *framework ILUA*,
- and, if the *parties* do so agree, this *framework ILUA* continues to apply (where appropriate, as amended in accordance with clause 2.2(c)(i)) to enable an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1.
- (d) If any *party* has given notice under clause 2.2(a) and no agreement has been made pursuant to clause 2.2(c) by the relevant *review date* or such later date agreed by the *parties*, then:
- (i) this *framework ILUA* no longer enables an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1; and
  - (ii) the *acceptance term* ends on that *review date* or such later date agreed by the *parties*.
- (e) The provisions of clause 2.2(d) do not in any way affect:
- (i) the continued application of this *framework ILUA* after the *review date* (or such later date as agreed between the *parties*) and during the remainder of the *framework term*, other than for purposes of enabling an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1; and
  - (ii) any *accepted exploration contracts* entered into prior to the relevant *review date* (or such later date as agreed between the *parties*).

### 2.3 No Termination

Subject to clauses 2.2 and 6.3(a), no *party* is entitled to terminate this *framework ILUA* for any reason, including by reason of any breach or repudiation of this *framework ILUA* by any other *party*.

### 3. Native Title Act Statements

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#### 3.1 Consent to Future Acts

Subject to clauses 3.3, 3.5(b), 3.6, 3.7, 3.8 and 3.9 the *parties*:

- (a) consent to the *grant* of each *authorised exploration tenement*:
  - (i) in the case referred to in paragraph (a) of the definition of *authorised exploration tenement*, at any time, whether before or after the *commencement date*, but:
    - (A) in relation to an *authorised exploration tenement*, as referred to in clause 5.1(b), before the end of the *framework term*; and
    - (B) in relation to any other *authorised exploration tenement*, before the end of the *acceptance term*;
  - (ii) in the case referred to in paragraph (b) of the definition of *authorised exploration tenement*, at any time after the *commencement date* but during the *framework term*; or
  - (iii) in the cases referred to in paragraphs (c) and (d) of the definition of *authorised exploration tenement*, at any time after the *commencement date* but during the *acceptance term*;
- (b) consent to the carrying out at any time after the *commencement date* but during the *framework term* of *authorised exploration activities* under each *authorised exploration tenement* (whether *granted* before or after the *commencement date*) in respect of which consent is given in accordance with clause 3.1(a); and
- (c) to the extent necessary, agree to the validating of any *future act* constituted by the *grant* of any *authorised exploration tenement*, referred to in paragraph (a) of the definition of *authorised exploration tenement*, at any time before the *commencement date*.

#### 3.2 No right to negotiate procedures

- (a) The *parties* acknowledge and agree that this *framework ILUA* sets out procedures for:
  - (i) the *grant* of the *authorised exploration tenements*; and
  - (ii) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.
- (b) The *parties* agree that the *right to negotiate procedure* is not intended to apply to either:
  - (i) the *grant* of the *authorised exploration tenements*; or
  - (ii) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.

#### 3.3 Consent Conditional on Compliance

The consent of the *parties* in clause 3.1 in relation to any *authorised exploration tenement* and any *authorised exploration activities* under it is conditional on an

*explorer* having complied with the provisions of clause 5.1 or, where appropriate, of clause 12.1 of the *accepted exploration contract*, in relation to the relevant *authorised exploration tenement*.

### 3.4 When Consent effective

To avoid doubt, the consent of the *parties* in clause 3.1 and their agreement in clause 3.2 are effective in relation to any *authorised exploration tenement* referred to in:

- (a) paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of formation of the *accepted exploration contract* in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*; and
- (b) paragraph (a)(ii) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of notice given under clause 12.1 of the *accepted exploration contract* in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*.

### 3.5 Amendments to Accepted Exploration Contracts

- (a) Subject to clause 3.5(b), the consent of the *parties* in clause 3.1 and their agreement in clause 3.2 apply to each *authorised exploration tenement* and any *authorised exploration activities* under it to which any *accepted exploration contract*, as amended from time to time, applies.
- (b) Clause 3.5(a) does not apply where the relevant *accepted exploration contract* is amended in a manner which is inconsistent in any way with this *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to this deed).

### 3.6 Effect of Removal from Register

The consent of the *parties* in clause 3.1 and their agreement in clause 3.2 cease to apply with effect from the removal of this *framework ILUA* from the *register*, but the provisions of this clause 3.6 do not affect any such consent or agreement in relation to:

- (a) any *authorised exploration tenement granted* prior to the removal of this *framework ILUA* from the *register*; or
- (b) any *authorised exploration activities* carried out or to be carried out under any such *authorised exploration tenement*.

### 3.7 Effect of Breach of Non-Payment Essential Term

The consent of the *parties* in clause 3.1, their agreement in clause 3.2 and an *accepted exploration contract* do not apply to an *exploration tenement* (nor to the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* of a kind referred to in paragraph (b), (c) or (d) of the definition of *authorised exploration tenement*, *granted* in respect of the whole or any portion of the *land* and/or *waters* (within the acceptance area as defined in that *accepted exploration contract*), in the following circumstances:

- (a) the *explorer* which is a party to that *accepted exploration contract* has allegedly breached an *essential term* in clause 6.1, 6.3 or 6.4(b) of that *accepted exploration contract*;
- (b) within 20 *business days* of the *association* or the representatives of the *native title parties* appointed pursuant to that *accepted exploration contract* becoming aware of that alleged breach, the *indigenous parties* have, pursuant to clause 15.1(b) of that *accepted exploration contract*, given notice of that alleged breach to the *explorer* (with a copy to the *minister*) setting out:
  - (i) details of that alleged breach; and
  - (ii) that the *explorer* is required to remedy that alleged breach within a period of 20 *business days* of the date of that notice;
- (c) the *explorer* has not remedied that alleged breach within the 20 *business days* period notified by the *indigenous parties* under clause 15.1(b)(ii) of that *accepted exploration contract* and that 20 *business days* period expires prior to the *grant* of that *exploration tenement*;
- (d) pursuant to clause 15.1(d) of that *accepted exploration contract* the *minister* is given a notice by that *explorer* or that *association* not less than 5 *business days* before the *grant* of that *exploration tenement* that it has been agreed, resolved or determined pursuant to clause 17 of that *accepted exploration contract* or otherwise that the *explorer* has breached that *essential term*; and
- (e) prior to the *grant* of that *exploration tenement*, the *explorer* has not remedied that breach.

### 3.8 Effect of Breach of Other Essential Terms

- (a) The consent of the *parties* in clause 3.1, their agreement in clause 3.2 and an *accepted exploration contract* also do not apply to an *exploration tenement* (nor to the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* referred to in clause 3.8(b), in the following circumstances:
  - (i) the *explorer* which is a *party* to that *accepted exploration contract* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) of that *accepted exploration contract* in relation to the *breached tenement*;
  - (ii) that alleged breach is committed wilfully, recklessly or negligently;
  - (iii) within 20 *business days* of the *association* or the representatives of the *native title parties* appointed pursuant to that *accepted exploration contract* becoming aware of that alleged breach, the *indigenous parties* have, pursuant to clause 15.2(a)(iii) of that *accepted exploration contract*, given notice of that breach to the *explorer* (with a copy to the *minister*) setting out:
    - (A) details of that alleged breach; and
    - (B) where that alleged breach is capable of being remedied, that the *explorer* is required to remedy the

alleged breach within a period of 20 *business days* of the date of that notice;

- (iv) where that alleged breach is capable of being remedied, the *explorer* has not remedied the alleged breach within the 20 *business days* period notified by the *indigenous parties* under clause 15.2(a)(iii)(B) of that *accepted exploration contract* or (if that alleged breach is not capable of being remedied within that 20 *business days* period) such longer period as is reasonable in the circumstances;
  - (v) pursuant to clause 15.2(a)(v) of that *accepted exploration contract*, the *minister* is given a notice by that *explorer* or that *association* that it has been agreed, resolved or determined pursuant to clause 17 of that *accepted exploration contract* or otherwise that the *explorer* has breached the relevant *essential term* in relation to the *breached tenement*; and
  - (vi) prior to the *grant* of the *exploration tenement* to which that *accepted exploration contract* will not apply if all of the circumstances in clause 15.2(a) of that *accepted exploration contract* are met, the *explorer* has, where that breach is capable of being remedied, not remedied the breach.
- (b) If all of the circumstances referred to in clause 3.8(a) are met, that *accepted exploration contract* does not apply to an *exploration tenement* (nor the carrying out of *exploration activities* under that *exploration tenement*), being an *exploration tenement* which is:
- (i) where:
    - (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) of that *accepted exploration contract* not less than 5 *business days* before the *grant* of that *exploration tenement*; and
    - (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement*:
      - (1) is not capable of being remedied; or
      - (2) is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) of that *accepted exploration contract* has expired before the *grant* of that *exploration tenement*,
- an *exploration tenement* of a kind referred to in:
- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement*, granted upon the renewal, regrant, remaking or extension of the term of the *breached tenement*; or
  - (D) paragraph (c) of the definition of *authorised exploration tenement*, granted after the *breached tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the acceptance area as defined by that *accepted*

*exploration contract*) the subject of the *breached tenement*;  
or

- (ii) where either:
- (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) of that *accepted exploration contract* less than 5 *business days* before, or after, the *grant* of an *exploration tenement* referred to in clause 3.8(b)(i)(C) or (D) (***subsequent tenement***); or
  - (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement* is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) of that *accepted exploration contract* has not expired before the *grant* of the *subsequent tenement*,

an *exploration tenement* of a kind referred to in:

- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement*, granted upon the renewal, regrant, remaking or extension of the term of the *subsequent tenement*; or
- (D) an *exploration tenement* of a kind referred to in paragraph (c) of the definition of *authorised exploration tenement*, granted after the *subsequent tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the acceptance area as defined by that *accepted exploration contract*) the subject of the *breached tenement*.

### 3.9 Remedy of Breach

- (a) Subject to the provisions of clause 3.9(b), for purposes of clauses 3.8(a)(iii),(iv) and (vi) a breach of a relevant *essential term* is deemed to be capable of being remedied by an *explorer* and that *explorer* is deemed to have remedied that breach if:
  - (i) that breach has arisen by reason of the *explorer* having failed to do, or failed to permit to be done, something; and
  - (ii) within the relevant period referred to in clause 3.8(a)(iv) or prior to the *grant* of the relevant *exploration tenement* referred to in clause 3.8(a)(vi) (as the case requires) the *explorer* has done, or has caused or permitted to be done, that thing.
- (b) The provisions of clause 3.9(a) do not apply to the breach of an *essential term* in clause 5.1, 5.2 or 5.3 of the relevant *accepted exploration contract* in relation to any *authorised exploration tenement*.

### 3.10 Right to Negotiate Procedure

- (a) Subject to clause 3.10(b) the *right to negotiate procedure* applies to an *excluded tenement*.

- (b) However, by entering into this *framework ILUA* neither the *state* nor *SACOME* acknowledges that the *right to negotiate procedure* applies to any *miscellaneous purposes licence* which is an *excluded tenement*.

## 4. Other statements

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### 4.1 Non-extinguishment principle

The *parties* acknowledge and agree that the *non-extinguishment principle* applies to:

- (a) the *grant* of the *authorised exploration tenements*; and
- (b) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.

### 4.2 Application and registration

The *parties* state that:

- (a) this *framework ILUA* applies to the *ILUA area*; and
- (b) this *framework ILUA* is intended to be registered on the *register* as an *area agreement* under sections 24CA to 24CL of the *native title act* and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).

### 4.3 Exploration only

The *parties* acknowledge and agree that:

- (a) pursuant to this *framework ILUA* they do not agree to the validation of, or consent to, the grant of any *production tenement* or the carrying out of any *mining operations* under any *production tenement*; and
- (b) the *explorer* will, if legally obliged to do so, be required:
  - (i) to enter into an *indigenous land use agreement*; or
  - (ii) in accordance with the *right to negotiate procedure*, to negotiate and enter into a separate agreement or obtain a determination from a court or tribunal of competent jurisdiction,

to provide for the authorisation of the grant of any *production tenement* or the carrying out of any *mining operations* under it.

### 4.4 Entry on Land

The *parties* acknowledge and agree that each *accepted exploration contract* constitutes an agreement between the *native title parties* and the *explorer* for the purposes of section 58 of the *mining act*.

### 4.5 Authorised Exploration Tenement Terms

The *parties* acknowledge and agree that compliance with the terms and conditions of this *framework ILUA* is not a condition of any *authorised exploration tenement* (or any other *exploration tenement*).

#### 4.6 No Acknowledgement of Native Title

By entering into this *framework ILUA* neither the *state* nor *SACOME* acknowledges the existence or otherwise of *native title* in relation to any *land* and/or *waters* within the whole or part of the *ILUA area*.

#### 4.7 Employment and Training

- (a) The *parties* acknowledge that:
  - (i) there are limited opportunities for an *explorer* and its contractors to employ persons during the carrying out of *authorised exploration activities*, including for the employment of members of the *native title claim group*; and
  - (ii) those employment opportunities that do exist during the carrying out of *authorised exploration activities* are primarily for people with specialist skills and training.
- (b) The *parties* also acknowledge that it is in their mutual interests that government funded training for Aboriginal people is offered in regional South Australia to provide those people with skills required for employment in the resources industry and which, where possible, are also transferable to other industries.
- (c) The *parties* also acknowledge that the training referred to in clause 4.7(b) may include:
  - (i) training in skills for exploration and mining field assistants; and
  - (ii) training in exploration methods.
- (d) The *parties* agree to consult with the relevant Aboriginal communities and to develop the necessary strategies and programs for the training referred to in clause 4.7(b).

### 5. Exploration Contract Conditions

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#### 5.1 Binding Explorer

- (a) Subject to clauses 5.1(b), (c), (d), (e) and (f), the *parties* agree that a person may enter into an *accepted exploration contract* in relation to any *exploration tenement* and the carrying out of *exploration activities* under it by doing the following at any time during the *acceptance term*:
  - (i) duly completing and signing an *acceptance document* and, where applicable, obtaining the consent of the *association* in accordance with clause 5.1(c);
  - (ii) if required under the *mining act*, registering the duly completed and signed *acceptance document* under and in accordance with the *mining act* or, if not so required, providing a copy of the duly completed and signed *acceptance document* to the *minister*, and



- (iii) notifying the *indigenous parties* of the *explorer's* due completion and signature of the *acceptance document* and simultaneously providing the *indigenous parties* with an original or duplicate original of the *acceptance document* and evidence that it has been duly stamped and, if applicable, registered under the *mining act*.
- (b) A person may only enter into an *accepted exploration contract* in relation to an *exploration tenement* of a kind referred to in paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* at the time clause 5.1(a) is complied with, if prior to that time the person has applied for the *grant* to it of that *exploration tenement*.
- (c) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement* if notice has previously been given to initiate negotiations under the *right to negotiate procedure* in respect of that *exploration tenement* or any *exploration activities* under it except where that person and the *native title claim group* have not previously entered into an agreement pursuant to the *right to negotiate procedure* in relation to that *exploration tenement* and either:
  - (i) that notice was given prior to the *commencement date*; or
  - (ii) that notice was given on or after the *commencement date* and the *association* consents to that person entering into that *accepted exploration contract* in relation to that *exploration tenement* and *exploration activities* under it by endorsing that consent on the *acceptance document*.
- (d) A person may not enter into an *accepted exploration contract* in relation to an *exploration tenement* if that *exploration tenement* was *granted* to that person after the *commencement date* and that person has previously carried out any *exploration activities* under that *exploration tenement*.
- (e) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement* if:
  - (i) that person or a related body corporate (within the meaning of the Corporations Act) of that person has previously entered into another *accepted exploration contract* with the *native title parties* in relation to that *exploration tenement*; and
  - (ii) the provisions of the *accepted exploration contract* referred to in clause 5.1(e)(i) have ceased to apply, pursuant to clause 15.1 or 15.2 of that *accepted exploration contract*, to that *exploration tenement*.
- (f) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement granted* or to be *granted* to that person in respect of the whole or any part of the *ILUA area* if:
  - (i) that person or a related body corporate (within the meaning of the Corporations Act) of that person has previously entered into another *accepted exploration contract* with the *native title parties*; and

- (ii) that person or related body corporate has committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 of that *accepted exploration contract* which (or the consequences of which) also constitute non-compliance by that person with any provision of the *Aboriginal heritage act*.
- (g) For the purpose of clause 5.1(c) the legal representative of, or any other person authorised in writing by, the *association* may provide consent on behalf of the *native title parties*.

## 5.2 Effect

The *parties* acknowledge and agree that upon a person complying with the provisions of clause 5.1 an agreement on the terms of the *exploration contract conditions* and the relevant *acceptance document* comes into force and effect as an *accepted exploration contract*:

- (a) in respect of:
  - (i) the *authorised exploration tenements* to which the *acceptance document* completed and signed by that person, as an *explorer*, applies; and
  - (ii) the carrying out of *authorised exploration activities* under those *authorised exploration tenements*; and
- (b) between:
  - (i) the *state*;
  - (ii) the *minister*;
  - (iii) the *native title parties*;
  - (iv) the *association* ; and
  - (v) the *explorer*.

## 5.3 Other Native Title Holders

The *parties* acknowledge and agree that pursuant to section 24EA(1)(b) of the *native title act*, all persons holding *native title* in relation to any of the *land* and/or *waters* in the *ILUA area* who are not members of the *native title claim group*:

- (a) are bound by this *framework ILUA*; and
- (b) by reason of being bound by this *framework ILUA* are also bound by an *accepted exploration contract* in relation to any of the *land* and/or *waters* (within the *ILUA area*) to which that *accepted exploration contract* applies,

in the same way as the *native title group* (as defined in section 24CD(2) or (3) of the *native title act*).

## 6. Registration

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### 6.1 Application

- (a) The *parties* (other than the *state*) authorise and direct the *state* to apply to the *registrar* for this *framework ILUA* to be registered and entered on the *register* as an *area agreement* pursuant to sections 24CA to 24CL of the *native title act* and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth).
- (b) Subject to clause 6.1(c) the *state* agrees to comply with the authorisation and direction in clause 6.1(a).
- (c) For the purposes of registering and entering this *framework ILUA* on the *register* as referred to in clause 6.1(a) either:
  - (i) *ALRM* will certify in accordance with the *native title act* the application to the *registrar* referred to in clause 6.1(a); or
  - (ii) if *ALRM* does not certify in accordance with the *native title act* the application to the *registrar* referred to in clause 6.1(a), the *indigenous parties* will prepare a statement which complies with the requirements of section 24CG(3)(b) of the *native title act* and provide that statement to the *state* for inclusion in that application.

### 6.2 Best endeavours

Each of the *parties* agrees to use its best endeavours to obtain the registration of this *framework ILUA* on the *register* as soon as possible after the date of execution of this *framework ILUA* by all of the *parties* and to maintain that registration at all times after the date of registration until the end of the *framework term*.

### 6.3 Removal from Register

- (a) All of the *parties* may request the *registrar* pursuant to section 199C(1)(c)(ii) of the *native title act* to remove the details of this *framework ILUA* from the *register* by advising the *registrar* in writing that they wish to terminate this *framework ILUA*.
- (b) The *parties* acknowledge that the *registrar* is required to remove the details of this *framework ILUA* from the *register* in the circumstances set out in sections 199C(1)(b), (c)(i) and c(iii) of the *native title act*.
- (c) The *parties* agree to promptly notify the *registrar* when the *framework term* ends.
- (d) Upon details of this *framework ILUA* being removed from the *register* the provisions of clauses 3.1 and 3.2 cease to apply to any *future act* done after that removal by way of:
  - (i) the *grant* of any *exploration tenement*; or
  - (ii) the carrying out of any *exploration activities* under any such *exploration tenement*.

- (e) The provisions of clauses 6.3(a), (c) and (d) survive the expiry or termination for whatever reason of this *framework ILUA*.

## 7. Notification of Grants

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The *minister* must notify the *association* of the *grant* of any *exploration tenement* within the *ILUA area* to any person, within 10 *business days* of that *grant*, except where:

- (a) that *grant* is by way of a renewal, regrant, remaking or extension of the term of that *exploration tenement*; or
- (b) the person to whom that *exploration tenement* is granted is an *explorer* which is a party to an *accepted exploration contract* and that *exploration tenement* is an *authorised exploration tenement* which relates to *land* and/or *waters* wholly within the acceptance area (as defined in that *accepted exploration contract*).

## 8. Mapping Survey

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### 8.1 Notice

- (a) The *association* may at any time during the period referred to in clause 8.1(c) notify the other *parties* to this *framework ILUA* that the *association* wishes:
  - (i) an *exploration mapping survey*; or
  - (ii) a *cultural mapping survey* and an *exploration mapping survey*,  
to be undertaken of the whole, part or parts of the *ILUA area*.
- (b) Any notice in respect of any *exploration mapping survey* must specify:
  - (i) the *exploration activities* to which the notice relates (including or excluding some or all *advanced exploration activities*); and
  - (ii) the area (being the whole, part or parts of the *ILUA area*) in respect of which it is given.
- (c) The period during which the *association* may give a notice under clause 8.1(a):
  - (i) commences on the *commencement date*; and
  - (ii) ends on the earliest of:
    - (A) the commencement date of a provision in the *Aboriginal heritage act* for the grant by an independent statutory authority of a document which, if held by an *explorer*, would allow that *explorer*, subject to any conditions in the document, to carry on the *exploration activities* on the *land* and/or *waters* to which the document relates;

- (B) if the *state* gives the other *parties* notice to that effect within 20 *business days* after expiry of the *acceptance term*, the expiry of the *acceptance term*, and
- (C) otherwise, the expiry of the *framework term*.

## 8.2 Survey procedure

Subject to clause 8.3, if the *association* gives a notice under clause 8.1, the *mapping survey* will be undertaken in accordance with the *mapping survey procedures*.

## 8.3 Survey conditional

A *mapping survey* of which notice has been given under clause 8.1 will only be undertaken if:

- (a) the *state* has not notified the *association* within 20 *business days* of the giving of a notice under clause 8.1, that the *state* is not satisfied on reasonable grounds that the undertaking of a *mapping survey* is in the best interests of the *state*; and
- (b) the *state* and the *association* agree upon the following:
  - (i) the area (within the *ILUA area*) in respect of which the relevant *mapping survey* is to be undertaken;
  - (ii) where clause 8.1(a)(ii) applies, that the relevant *mapping survey* comprises both an *exploration mapping survey* and a *cultural mapping survey*;
  - (iii) the *exploration activities* in respect of which the relevant *exploration mapping survey* is to be undertaken;
  - (iv) the budget for undertaking the relevant *mapping survey*; and
  - (v) any conditions relating to the undertaking of the relevant *mapping survey*.

## 8.4 Costs

The *state* agrees that it is responsible for all costs and expenses incurred in:

- (a) the carrying out of any *mapping survey* (up to the maximum of the amount of the budget for that *mapping survey* agreed in accordance with clause 8.3(b)(iv));
- (b) keeping a copy of the exploration mapping report (as defined in the *mapping survey procedures*) in relation to any *mapping survey*; and
- (c) the appointment of the mapping caretaker (as defined in the *mapping survey procedures*) and the performance by the mapping caretaker of its functions,

in accordance with the *mapping survey procedures* and with the mapping access procedures (as defined in the *exploration contract conditions*).

## 9. Consideration

---

### 9.1 State Contribution

In consideration of the *indigenous parties* entering into this *framework ILUA*, the *state* must:

[insert provisions]

### 9.2 Payment

All amounts payable and benefits required to be provided under an *accepted exploration contract* must be paid and provided:

- (a) in accordance with the terms of that *accepted exploration contract*;
- (b) by the person specified in that *accepted exploration contract*; and
- (c) to the person specified in that *accepted exploration contract*.

### 9.3 Acknowledgment

The *indigenous parties* acknowledge and agree that, subject to clause 9.4:

- (a) any amounts payable and any benefits provided under this *framework ILUA* and any *accepted exploration contract* to the *native title parties* or to any *nominated body* or any other agent on their behalf:
  - (i) are in full and final satisfaction of any *compensation entitlement* of the *native title parties*; and
  - (ii) for the purposes of section 24EB of the *native title act*, are compensation provided for by this *framework ILUA*; and
- (b) the *native title parties* do not have any *compensation entitlement* other than for the amounts payable and benefits provided under this *framework ILUA* and any *accepted exploration contract*.

### 9.4 Exception

The provisions of clause 9.3 do not apply to any *compensation entitlement* of the *native title parties* against any other *party* to this *framework ILUA* or any other person who is a party to any *accepted exploration contract* arising by reason of any breach of this *framework ILUA* or that *accepted exploration contract* by that *party* or that person.

### 9.5 Sharing

The *indigenous parties* agree that the amounts payable and the benefits provided under this *framework ILUA* and the relevant *accepted exploration contract* to the *native title parties* or to any *nominated body* or any other agent on their behalf are held on behalf of all members of the *native title claim group* and all persons (if any) who hold *native title* in relation to the whole or any portion of the *ILUA area* to which this *framework ILUA* or the relevant *accepted exploration contract* (as the case may be) relates.

## 9.6 Application Survival

The provisions of clauses 9.3, 9.4 and 9.5 survive the removal of the details of this *framework ILUA* from the *register* for whatever reason and remain in those circumstances binding on:

- (a) all persons bound by this *framework ILUA* and any *accepted exploration contract*; and
- (b) all persons entitled to any of the benefits under this *framework ILUA* and any *accepted exploration contract*.

## 10. Warranties and Authority

---

### 10.1 Preliminary

The *indigenous parties* record that:

- (a) the *registered native title claimants* are (as at the date of execution of this *framework ILUA* by all of the *parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and/or *waters* in the *ILUA area* and made the *native title claim* on behalf of the *native title claim group*;
- (b) the *native title claim group* has established the *association* and has authorised the *association* to manage the *native title claim* and all matters relating to the *native title claim* on behalf of the *native title parties*;
- (c) the *association* (in conjunction with the *registered native title claimants*) has consulted with the *native title claim group* and the *native title claim group* has consented to and *authorised* the *registered native title claimants* to enter into this *framework ILUA* on behalf of the *native title parties*;
- (d) the *association*:
  - (i) enters into this *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters relating to it; and
  - (ii) by signing this *framework ILUA* confirms that the *registered native title claimants* have been *authorised* by the *native title claim group* to enter into this *framework ILUA* on behalf of the *native title parties*; and
- (e) if clause 6.1(c)(ii) applies:
  - (i) all reasonable efforts have been made (including by consulting the *representative Aboriginal/Torres Strait Islander body* for the *ILUA area*) to ensure that all persons who hold or may hold *native title* in relation to *land* or *waters* in the *ILUA area* have been identified; and
  - (ii) all of the persons so identified have *authorised* the making of this *framework ILUA* in accordance with section 251A of the *native title act*.

## 10.2 Warranties

Regard being had to the provisions of clause 10.1, the *indigenous parties* represent and warrant to the other *parties* to this *framework ILUA* that the matters set out in clauses 10.1(a) to (e) are true and correct.

## 10.3 Registered native title body corporate

If an *approved determination of native title* is made in respect of the whole or any part of the *ILUA area* and a *registered native title body corporate* is determined to hold the rights and interests from time to time comprising the *native title* in trust for the *native title holders*:

- (a) the *indigenous parties* must use their best endeavours to ensure that the *registered native title body corporate* becomes a *party* to this *framework ILUA* in place of both the *native title parties* and the *association* in relation to the whole or relevant part of the *ILUA area* and assumes the rights and obligations of both the *native title parties* and the *association* under this *framework ILUA* in relation to the whole or that part of the *ILUA area*;
- (b) the *parties* (other than the *indigenous parties*) to this *framework ILUA* consent to the *registered native title body corporate* becoming a *party* to this *framework ILUA* and assuming the rights and obligations of both the *native title parties* and the *association*, in accordance with clause 10.3(a); and
- (c) each of the *parties* to this *framework ILUA* must sign such documents as are necessary to give effect to the provisions of this clause 10.3.

## 11. Dispute Resolution

---

### 11.1 Clause applies

All disputes or differences between any of the *parties* in connection with the interpretation, effect or any other matter in any way relating to this *framework ILUA* (*dispute*) will be dealt with in accordance with this clause 11 whether the *dispute* is first raised before, during or after the *framework term*.

### 11.2 Avoidance

The *parties* agree that:

- (a) they will make every effort to ensure that *disputes* do not arise;
- (b) if a *dispute* does arise, they must make every reasonable effort to resolve the *dispute* in accordance with clause 11 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 11.1 and 11.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

### 11.3 Notification

A *party* (*notifying party*) will, within 20 *business days* after the *dispute* arises, give a notice to the other *party* or *parties* with which it has the *dispute*



(*notified party*) and a copy of that notice to the other *parties* setting out details of the *dispute* and any other matter that may, in the reasonable opinion of the *notifying party*, be relevant to the resolution of the *dispute*.

#### 11.4 Meeting

Within 5 *business days* of the date of the notice the *notifying party* and *notified party* (***dispute parties***) will use their respective reasonable endeavours to meet and resolve the *dispute* within a further period of 10 *business days*.

#### 11.5 Mediation

If a *dispute* is not resolved in accordance with the provisions of clause 11.4:

- (a) any *dispute party* may request the President for the time being of the Law Society of South Australia, or his or her nominee, to appoint a mediator to mediate that *dispute*,
- (b) within 5 *business days* of a mediator being appointed, the mediator will convene an initial meeting of the *dispute parties* in an attempt to resolve that *dispute*; and
- (c) if that *dispute* is not resolved at that initial meeting, the mediator will convene such further meetings of the *dispute parties* during the subsequent 10 *business days* as the mediator reasonably considers necessary for the purpose of resolving that *dispute*.

#### 11.6 Expert

If a *dispute* is not resolved in accordance with the provisions of clause 11.5, any *dispute party* may refer the determination of that *dispute* (***determination***) to the *expert*.

#### 11.7 Capacity of Expert

The *expert* is an expert and not an arbitrator.

#### 11.8 Expert's Determination

The *expert's determination* is final and binding on the *dispute parties*.

#### 11.9 Determination costs

- (a) The *expert* may determine that any *dispute party* must pay the whole or a specified portion of the costs and expenses of the other *dispute party* in relation to the *expert's determination*.
- (b) Unless clause 11.9(a) applies, each *dispute party* will bear its own costs and expenses in relation to the *expert's determination*.

#### 11.10 Expert's Fees

- (a) The *expert* may determine that any *dispute party* must pay all, or that the *dispute parties* must pay in specified portions, the *expert's* fees and expenses and the cost of the *expert's determination*.

- (b) Unless clause 11.10(a) applies, the *dispute parties* will pay in equal shares the *expert's* fees and expenses and the cost of the *expert's* determination.

### 11.11 Survival

The provisions of this clause 11 survive the expiry or termination for whatever reason of this *framework ILUA*.

## 12. Communications

---

### 12.1 Writing required

Subject to this *framework ILUA*, any notice, direction, request, consent, approval, demand, report or other communication (***communication***) to be given under this *framework ILUA* will be in writing, be signed by the representative(s) of the *party* giving the *communication* as set out in item 3 of Schedule 1 and be addressed for the attention of the representative(s) of the recipient *party* or *parties* as set out in item 3 of schedule 1.

### 12.2 Manner of giving

A *communication* may be delivered by hand, sent by prepaid post or sent by facsimile transmission to the address of the *party* or *parties* to which it is being given and is deemed to have been received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, 3 *business days* after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a confirmation report.

### 12.3 Change of details

Details specified in item 3 of schedule 1 in respect of a *party* may be changed by the *party* by not less than 5 *business days* notice to the other *parties*.

## 13. GST

---

The *parties* agree that, if a goods and services, value-added or a comparable tax (***gst***) applies under the "A New Tax System (Goods and Services Tax) Act 1999" or associated legislation (***gst legislation***) in relation to any taxable supply (within the *gst legislation*) (***taxable supply***) made by a *party* (***supplier***) to another *party* (***recipient***) under or pursuant to this *framework ILUA*:

- (a) the amount payable by the *recipient* to the *supplier* in respect of the *taxable supply* (***payment***) does not include *gst*;
- (b) the *supplier* may, in addition to the *payment*, recover from the *recipient* (and the *recipient* will pay to the *supplier*) an additional amount on account of the *gst*, such additional amount to be calculated in accordance with the *gst legislation*; and

- (c) the *supplier* will provide to the *recipient* a tax invoice (within the meaning of the *gst legislation*) in respect of the *taxable supply* as required by the *gst legislation*.

## 14. General

---

### 14.1 Entire agreement

This *framework ILUA* contains the entire agreement between the *parties* with respect to its subject matter and supersedes all prior agreements and understandings between the *parties* in connection with it.

### 14.2 Amendment

No amendment or variation of this *framework ILUA*:

- (a) is valid or binding on a *party* unless made in writing executed by all *parties*; or
- (b) in any way affects any *accepted exploration contract* entered into prior to that amendment or variation.

### 14.3 Severability

Each word, phrase, sentence, paragraph and clause (a *provision*) of this *framework ILUA* is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that *provision* which becomes inoperative and such severance will not affect the other *provisions* of this *framework ILUA*.

### 14.4 No announcements

No *party* may make, issue, permit or suffer to be made, or issued, any statement or announcement concerning any of the terms of this *framework ILUA* unless such statement or announcement is first approved as to the timing and content by each other *party* or is required by *law*.

### 14.5 Assignment and transfer

- (a) The rights and obligations of each *party* under this *framework ILUA* are personal.
- (b) Those rights and obligations cannot be *disposed of, encumbered* or otherwise dealt with and no *party* may attempt, or purport, to do so without the prior consent of the other *parties*.

### 14.6 No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a *party* operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- (c) A waiver is not valid or binding on the *party* granting that waiver unless made in writing.

#### 14.7 Further assurances

Each *party* agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this *framework ILUA* and the transactions contemplated by it.

#### 14.8 No merger

- (a) The rights and obligations of the *parties* will not merge on the completion of any transaction contemplated by this *framework ILUA*.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### 14.9 Costs and stamp duty

- (a) Unless and to the extent otherwise agreed, each *party* must bear its own costs arising out of the negotiation, preparation and execution of this *framework ILUA*.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this *framework ILUA* and any instrument executed under this *framework ILUA* must be borne by the *state*.

#### 14.10 Governing law and jurisdiction

- (a) This *framework ILUA* is governed by the laws of South Australia.
- (b) Each *party* submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning this *framework ILUA*.

#### 14.11 Counterparts

- (a) This *framework ILUA* may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

#### 14.12 Relationship

- (a) The relationship between the *parties* is that of independent contractors.
- (b) The *parties* are not partners, joint venturers or, subject to clause 14.12(c), principal and agent.
- (c) The *association* is an agent of the *native title parties*.
- (d) Any *registered native title body corporate* which becomes a *party* to this *framework ILUA* pursuant to clause 10.3 holds the rights and interests from time to time comprising the *native title* in the whole or relevant part of the *ILUA area* in trust for the *native title holders*.

**Executed** as a deed

**SIGNED** by )  
**HONOURABLE [Insert Name],** ).....  
Attorney-General, for and on behalf of the Crown in right )  
of the State of South Australia, in the presence of: )

.....  
Witness

.....  
Name of Witness

**THE COMMON SEAL** of the **MINISTER FOR** )  
**MINERAL RESOURCES DEVELOPMENT** )  
was hereunto fixed in the presence of: )

.....  
The Honourable [insert name]  
Minister for Mineral Resources Development

.....  
Witness

.....  
Name of Witness

**SIGNED** by [ ] )  
for and on behalf of the )  
[ ] Native Title Claim Group ).....  
in the presence of: )

.....  
Witness

.....  
Name of Witness

**Native Title Claim Group] Minerals Exploration Indigenous Land Use Area Agreement Template**

**SIGNED** by [                    ]                    )  
for and on behalf of the                    )  
[                    ] Native Title Claim Group                    ).....  
in the presence of:                    )

.....  
Witness

.....  
Name of Witness

**SIGNED** by [                    ]                    )  
for and on behalf of the                    )  
[                    ] Native Title Claim Group                    ).....  
in the presence of:                    )

.....  
Witness

.....  
Name of Witness

**THE COMMON SEAL** of the                    )  
**[insert name] ABORIGINAL CORPORATION**                    )  
was hereunto affixed in accordance with:                    )  
its constitution in the presence of:                    )

.....                    )  
.....                    )  
Name                    )                    )  
Name                    )                    )

**THE COMMON SEAL** of the                    )  
**ABORIGINAL LEGAL RIGHTS MOVEMENT INC**                    )  
was hereunto affixed in the presence of:                    )

**Native Title Claim Group] Minerals Exploration Indigenous Land Use Area Agreement Template**

.....  
Chairperson  
.....  
Name

.....  
Executive Member  
.....  
Name

**THE COMMON SEAL** of the )  
**SOUTH AUSTRALIAN** )  
**CHAMBER OF MINES AND ENERGY INC** )  
was hereunto affixed in the presence of: )

.....  
President  
.....  
Name

.....  
Chief Executive  
.....  
Name

## SCHEDULE 1

### Item 1 – ILUA Area

[Insert description of the outer boundaries of ILUA Area]

### Item 2 – Native Title Claim

[Insert claim details as per NNTT]

### Item 3 – Notice Details

#### State

Address: Attorney-General's Department  
Level 3, 45 Pirie Street  
Adelaide SA 5000

Attention: Principal Negotiator, ILUA

Facsimile No: (08) 8207 2235

#### Minister

Address: Department for Primary Industries and Resources  
Level 5, 101 Grenfell Street  
Adelaide SA 5000

Attention: Mining Registrar

Facsimile No: (08) 8463 3101



[Native Title Claim Group] Native Title Claim and Notice Details  
Schedule 1 to Framework ILUA  
Minerals Exploration Indigenous Land Use Area Agreement Template

**Native Title Parties**

Address: [Insert address]

Attention: [Insert contact name/title]

Facsimile No: [Insert facsimile]

**Association**

Address: [Insert address]

Attention: [Insert contact name/title]

Facsimile No: [Insert facsimile]

**ALRM**

Address: Aboriginal Legal Rights Movement Inc  
4<sup>th</sup> Floor, 345 King William Street  
Adelaide SA 5000

Attention: Executive Officer, Native Title Unit

Facsimile No: (08) 8211 7424

**SACOME**

Address: South Australian Chamber of Mines and Energy  
4 Greenhill Road  
Wayville SA 5034

Attention: Chief Executive

Facsimile No: (08) 8373 9699

[Native Title Claim Group] Area Indigenous Land Use Agreement

**Native Title Claim Group] Minerals Exploration Indigenous Land Use Area Agreement Template**

**SCHEDULE 2**  
**Exploration Contract Conditions**

Current as at  
27 September 2004

# Exploration Contract Conditions

---

The Honourable [insert name], Attorney-General

And

Minister for Mineral Resources and Development

And

The [insert name] People by [insert names]

And

[insert name]Aboriginal Corporation

and

The *party* specified in the *acceptance document*, executed  
by that *party* in relation to the *authorised exploration*  
*tenements*

[Native Title Claim Group] Exploration Contract Conditions  
Schedule 2 to Framework ILUA  
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This document sets out the exploration contract conditions which, upon the *explorer* complying with the provisions of clause 5.1 of the *framework ILUA* in relation to the *authorised exploration tenements*, apply pursuant to the *accepted exploration contract* then formed between the following *parties*:

## Parties

1. **The Honourable [insert name], Attorney-General** for and on behalf of the Crown in right of the State of South Australia of Level 11, ING Building, 45 Pirie Street, Adelaide SA 5000 (*state*)
2. **Minister for Mineral Resources and Development** a corporation sole constituted by Section 11 of the Mining Act, 1971 and whose office is situated at 17<sup>th</sup> Floor, 25 Grenfell Street, Adelaide SA 5000 (*minister*)
3. **[insert names] as registered native title claimants for and on behalf of the [insert name] native title claim group** in application no. [insert number] in the Federal Court of Australia, of [insert address], (*native title parties*)
4. **[insert name] Aboriginal Corporation ABN [insert no.]**, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of [insert address] (*association*)
5. **The party specified in the acceptance document** executed by that party in relation to the *authorised exploration tenements* (*explorer*)

## Recitals

- A The *registered native title claimants* are (as at the date of execution of the *framework ILUA* by all of the *framework parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and *waters* in the *acceptance area* and made the *native title claim* on behalf of the *native title claim group*.
- B Prior to the signing of the *framework ILUA* the *native title claim group* established the *association* and authorised the *association* to manage the *native title claim* and all matters relating to the *native title claim* on behalf of the *native title parties*.
- C Prior to signing the *framework ILUA* the *association* (in conjunction with

[Native Title Claim Group] Exploration Contract Conditions  
Schedule 2 to Framework ILUA  
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the *registered native title claimants*) consulted with the *native title claim group* and the *native title claim group* consented to and authorised the *registered native title claimants* to enter into the *accepted exploration contract* on behalf of the *native title parties*.

D

The *association*:

- (a) entered into the *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters in relation to it; and
- (b) by signing the *framework ILUA* confirmed that the *registered native title claimants* were authorised by the *native title claim group* to enter into the *accepted exploration contract* on behalf of the *native title parties*.

E

The *state*:

- (a) is the Crown in right of the State of South Australia;
- (b) through the *minister*, its departments and agencies administers the *mining act* including:
  - (i) the *granting* of all *mining tenements*; and
  - (ii) the management of Part 9B of the *mining act*, being the *alternative state right to negotiate procedure*; and
- (c) is the first respondent to all *native title determination applications* in South Australia.

F

Pursuant to the *framework ILUA* the *framework parties*:

- (a) consented to the *grant* of the *authorised exploration tenements*;
- (b) consented to the carrying out of *authorised exploration activities* under the *authorised exploration tenements*; and
- (c) agreed that the *right to negotiate procedure* does not apply to the *grant* of the *authorised exploration tenements* or the carrying out of *authorised exploration activities* under them.

G

The *parties* wish to set out in the *accepted exploration contract* the provisions that apply to the *grant* of the *authorised exploration tenements* and the carrying out of *authorised exploration activities* under them.

## 1. Preliminary

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### 1.1 Definitions

In this document (including the annexures and appendices to it), unless the context otherwise requires:

**Aboriginal heritage act** means the Aboriginal Heritage Act No 12 of 1988 (SA);

**Aboriginal site, object or remains** means any of:

- (a) an "Aboriginal site", an "Aboriginal object" or "Aboriginal remains" as defined in the *Aboriginal heritage act*; and
- (b) "Aboriginal remains", a "significant Aboriginal area" or a "significant Aboriginal object" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act No 79 of 1984 (Cth);

**acceptance area** means the geographical area (within the *ILUA area*) in relation to which the *accepted exploration contract* applies, being the area of *land* and/or *waters* the subject of those *authorised exploration tenements* details of which are specified in the *acceptance document* or in any notice given pursuant to clause 12.1;

**acceptance document** means the deed forming part of the *framework ILUA* at schedule 3, as amended from time to time pursuant to the *framework ILUA*, by which the *explorer* agrees to enter into the *accepted exploration contract*;

**acceptance term** means the period, within the term of the *framework ILUA*, starting on the date of commencement of the *framework ILUA* and ending on the date determined in accordance with clause 2.2(d) of the *framework ILUA* during which the *explorer* is entitled to enter into the *accepted exploration contract* in accordance with the provisions of clause 5.1 of the *framework ILUA*;

**acceptance fee** means the fee payable by the *explorer* in consideration of the matters referred to in clause 6.1, determined in accordance with clause 6.2;

**accepted exploration contract** means the contract:

- (a) on the terms of this document and the *acceptance document* signed by the *explorer* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term; and
- (b) formed between the *parties* upon the *explorer* complying with the provisions of clause 5.1 of the *framework ILUA*;

**association** means the *party* referred to in item 4 under the heading "Parties";

**authorised exploration activities** means *exploration activities* under an *authorised exploration tenement*;

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***authorised exploration tenement*** means:

- (a) any *exploration tenement granted*, whether before or after the *commencement date* or the date of commencement of the *framework ILUA*, to the *explorer*:
  - (i) being an exploration tenement:
    - (A) details of which are specified in the *acceptance document* executed by the *explorer* in order to enter into the *accepted exploration contract*;
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*; and
    - (C) in relation to which the provisions of clause 5.1 of the *framework ILUA* have been complied with; or
  - (ii) being an exploration tenement:
    - (A) details of which are specified in a notice given by that *explorer* pursuant to clause 12.1;
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*;
- (b) any *exploration tenement* to be *granted* to the *explorer* upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (a) in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of that *exploration tenement*;
- (c) any *exploration tenement* of a different type to that referred to in paragraphs (a) and (b) to be *granted* to the *explorer* during the *acceptance term* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of any *exploration tenement* referred to in paragraph (a) or (b); and
- (d) any *exploration tenement* to be *granted* to the *explorer* during the *acceptance term* upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (c) in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of that *exploration tenement*,

but excludes any *excluded tenement* and any *exploration* in respect of which (and to the extent that) an *accepted exploration contract* terminates or is terminated in accordance with clause 2.3(a), 2.3(b) or 4.5 of that *accepted exploration contract*;

***authority*** means any statutory, public, governmental, semi-governmental, or municipal authority, body or department;

***breached tenement*** means the *authorised exploration tenement* in relation to which the *explorer* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) of the *accepted exploration contract*;

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**business day** means a day other than a Saturday, Sunday or public holiday in South Australia;

**commencement date** means the date upon which all of the following have occurred:

- (a) the *explorer* has duly completed and signed the *acceptance document* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term and, where applicable, has obtained the consent of the *association* in accordance with clause 5.1(d) of the *framework ILUA*;
- (b) if required under the *mining act*, the *explorer* has registered the duly completed and signed *acceptance document* under the *mining act* or, if not so required, has provided a copy of the duly completed and signed *acceptance document* to the *minister*; and
- (c) the *explorer* has notified the *indigenous parties* that the *explorer* has duly completed and signed the *acceptance document* and simultaneously has provided the *indigenous parties* with an original or duplicate original of the *acceptance document* and, if applicable, evidence that it has been duly stamped and registered under the *mining act*;

**communication** has, for the purposes of clause 18, the meaning given in clause 18.1;

**compensation entitlement** means any compensation, right or entitlement whether monetary or otherwise and whether under common law, equity, statute or otherwise in respect of *native title* with respect to:

- (a) the grant of any *authorised exploration tenement*; or
- (b) the carrying out of any *authorised exploration activities* under any *authorised exploration tenement*;

**cultural confidence** means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

**cultural mapping survey** means a survey for purposes of preserving, protecting, maintaining or enhancing the culture of the *native title parties* in relation to *Aboriginal sites, objects or remains*, carried out pursuant to clause 8 of the *framework ILUA* and the *mapping survey procedures*;

**determination** has, for the purposes of clause 17, the meaning given in clause 17.7;

**dispose** means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

**dispute** has the meaning given in clause 17.1;

**dispute parties** has the meaning given in clause 17.4;

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**encumber** means to grant or create or permit or suffer the grant or creation of any interest or power:

- (a) reserved in, or over any interest in, any asset including any retention of title; or
- (b) granted, created or otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created;

**essential term** means the terms of each of clauses 5.1, 5.2, 5.3, 6.1, 6.3, 6.4(b), 7.1, 7.4, 8.3(c) and 8.3(d) of the *accepted exploration contract*;

**excluded tenement** means an *exploration tenement* to which the *accepted exploration contract* does not apply by reason of the provisions of clause 15.1 or 15.2 of the *accepted exploration contract*;

**expert** means the person appointed either:

- (a) by agreement between the *dispute parties* within 5 *business days* of any *dispute* not being resolved in accordance with the provisions of clause 17.6; or
- (b) failing such agreement, at the request of any *dispute party* by the President for the time being of the Law Society of South Australia Inc. (or the President's nominee), being a person who has an understanding of, and experience in, both Aboriginal heritage and minerals exploration matters;

**exploration activities** means, in relation to an *exploration tenement*, all *exploratory* operations and other activities permitted to be carried out pursuant to the conditions of that *exploration tenement* under the *mining act*;

**exploration contract return** means the form of return annexed to this document as annexure E or such other form of return as may be agreed from time to time between the *explorer* and the *association*;

**exploration land** means, at any time, land which is both the subject of any *authorised exploration tenement granted* at that time and within the *acceptance area*;

**exploration mapping survey** means a survey, carried out pursuant to clause 8 of the *framework ILUA* and the *mapping survey procedures*, for purposes of preserving and protecting *Aboriginal sites, objects or remains* in relation to those *exploration activities* in respect of which the survey is undertaken;

**exploration tenement** means a *mineral claim*, an *exploration licence*, a *retention lease* (but only if the *mining* operations to which the *retention lease* relates are limited to *exploratory* operations) and a *miscellaneous purposes licence* (but only if the purposes for which the licence is *granted* are limited to purposes ancillary to the conduct of *exploratory* operations);

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**explorer** means the *party* specified as the explorer in the *acceptance document* executed by that *party* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term;

**force majeure** means any act, event or cause, which is beyond the reasonable control of a *party*, including such an event being:

- (a) an Act of God, war, sabotage, riot, civil commotion, national emergency (whether in fact or *law*), fire, lightning, flood, earthquake, landslide, drought, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of that *party*), epidemic, disease, pestilence, quarantine or radioactive contamination;
- (b) action or inaction of any competent *authority* (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order or decision;
- (c) religious or other ceremonial activities (carried out pursuant to obligations under *Aboriginal tradition*) of members of the *native title claim group* or other persons (if any) who hold *native title* in relation to any of the *land* or *waters* within the *exploration land*; or
- (d) breakdown of plant, machinery or equipment (including ships, trains, trucks or vehicles) or shortage of labour, transportation, fuel, power, plant, machinery, equipment or material;

**framework ILUA** means the deed (including the schedules, annexures and appendices to it) between the *framework parties* which provides, amongst other things, that the *framework parties*:

- (a) consent to the *grant* of the *authorised exploration tenements*;
- (b) consent to the carrying out of *authorised exploration activities* under the *authorised exploration tenements*; and
- (c) state that the *right to negotiate procedure* does not apply to the *grant* of the *authorised exploration tenements* or the carrying out of *authorised exploration activities* under them;

**framework parties** means the *state*, the *minister*, the *native title parties*, the *association*, Aboriginal Legal Rights Movement Inc and South Australian Chamber of Mines and Energy Inc, being the parties to the *framework ILUA*;

**framework term** means the period for which the *framework ILUA* operates, as referred to in clause 2.1(a) of the *framework ILUA*;

**grant**, in relation to an *exploration tenement*, includes

- (a) any renewal, regrant, remaking or extension of the term of an *exploration tenement*; and
- (b) any registration of a *mineral claim*;

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**gst** has, for the purposes of clause 19, the meaning given in that clause;

**gst legislation** has, for the purposes of clause 19, the meaning given in that clause;

**heritage clearance procedures** means the procedures annexed to this document as annexure A, as amended from time to time pursuant to the *framework ILUA*;

**heritage transition date** means the period commencing on the date upon which a provision in the *Aboriginal heritage act* of a kind referred to in clause 5.1(a)(i) commences to operate;

**ILUA area** means the geographical area in relation to which the *framework ILUA* applies;

**indigenous parties** means the *association* and the *native title parties*;

**law** means any Act of Parliament (whether state or federal) and all regulations, by-laws, statutory instruments and orders made thereunder and any lawful requirement of any *authority* and includes the conditions of any *authorised exploration tenement*;

**mapping access procedures** means the procedures annexed to this document as annexure B;

**mapping survey** means either:

- (a) an *exploration mapping survey*; or
- (b) an *exploration mapping survey* and a *cultural mapping survey*;

**mapping survey procedures** means the procedures for carrying out a *mapping survey* forming part of the *framework ILUA* at schedule 4, as amended from time to time pursuant to the *framework ILUA*;

**mining act** means the Mining Act No 109 of 1971 (SA);

**minister** means the Minister of the Crown in right of the State of South Australia for the time being administering the *mining act*, being the *party* referred to in item 2 under the heading "Parties", or that Minister's duly authorised delegate;

**native title** has the meaning given in the *native title act*;

**native title act** means the Native Title Act No 110 of 1993 (Cth);

**native title claim** means the *native title determination application* referred to in item 3 under the heading "Parties";

**native title claim group** means the native title claim group (as defined in the *native title act*) in respect of the *native title claim*;

**native title parties** means the *native title claim group* and includes the *registered native title claimants*, being the *party* referred to in item 3 under the heading "Parties";



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***nominated body*** means:

- (a) the *association*;
- (b) if nominated by the *association* pursuant to clause 6.5(a), a body corporate:
  - (i) whose membership or shareholding by its constitution includes the members of the *native title claim group*;
  - (ii) which is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
  - (iii) which is incorporated by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*;
- (c) if nominated by the *association* pursuant to clause 6.5(a), a trust:
  - (i) whose beneficiaries by the trust deed include the members of the *native title claim group*;
  - (ii) the trustee of which:
    - (A) if a natural person, is not an undischarged bankrupt; or
    - (B) if a body corporate, is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
  - (iii) which is established by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*; or
- (d) if paragraphs (a), (b) and (c) do not apply, the *native title parties*;

***notified party*** has, for the purposes of clause 17, the meaning given in clause 17.3;

***notifying party*** has, for the purposes of clause 17, the meaning given in clause 17.3;

***objection period*** means the period:

- (a) commencing on the date upon which the *native title parties* have objected pursuant to clause 10.1(a) to the *grant* of any *exploration tenement*; and
- (b) expiring on the earlier of the date upon which:
  - (i) that objection is deemed to have been withdrawn pursuant to clause 10.4; and
  - (ii) the *accepted exploration contract* ceases to apply pursuant to clause 15, in respect of that *exploration tenement*;

***parties*** means the parties to the *accepted exploration contract*;

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***PIRSA report*** means a report prepared pursuant to clause 17.5;

***provision*** has, for the purposes of clause 20.3, the meaning given in that clause;

***recipient*** has, for the purposes of clause 19, the meaning given in that clause;

***register*** means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the *native title act*;

***registered native title claimants*** means the registered native title claimants (as defined in the *native title act*) from time to time in respect of the *native title claim*;

***representatives*** means the representative(s) of the *explorer* and the representative(s) of the *indigenous parties* from time to time appointed pursuant to clause 16.1;

***right to negotiate procedure*** means the procedures described in Part 9B of the *mining act* or Part 2, Division 3, Subdivision P of the *native title act*;

***state*** means the *party* referred to in item 1 under the heading "Parties";

***subsequent tenement*** has, for the purposes of clause 15, the meaning given in clause 15.2(b)(ii)(A);

***supplier*** has, for the purposes of clause 19, the meaning given in that clause;

***taxable supply*** has, for the purposes of clause 19, the meaning given in that clause; and

***term***, in relation to the *accepted exploration contract*, means the period referred to in clause 2.1; and

other terms in italics which are defined or used in the *Aboriginal heritage act*, the *native title act* or the *mining act* bear their defined meanings when used in this document.

## 1.2 Interpretation

In this document (including the annexures and appendices to it), unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to this document;

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- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this document and the *accepted exploration contract*) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this document, the *accepted exploration contract* or that other agreement, deed or document;
- (h) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (i) a reference to a *party* to the *accepted exploration contract* or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (m) a reference to a document includes an agreement (referred to in paragraph (l)) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to dollars and \$ is to Australian currency;
- (o) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (q) a reference to agree, approve or consent on the part of a *party* is a reference to agree, approve or consent (as the case may be) on the part of that *party* in writing; and
- (r) nothing in this document is to be interpreted against a *party* solely on the ground that the *party* put forward this document or any part of it.

### 1.3 Headings

Headings do not affect the interpretation of this document.

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## 1.4 Schedules and annexures

Schedules, annexures and appendices form part of this document.

## 1.5 Date of Framework ILUA

Any reference in this document to the date of execution of the *framework ILUA* by all of the *framework parties* is a reference to the date inserted under the heading “Date” on page 1 of the *framework ILUA*.

## 2. Term and Termination

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### 2.1 Term

- (a) The *accepted exploration contract*:
  - (i) commences on the *commencement date*; and
  - (ii) continues until the earlier of:
    - (A) the date upon which all of the *authorised exploration tenements* have terminated or expired or been surrendered or cancelled for whatever reason; and
    - (B) the date upon which, pursuant to clause 15, there is no longer any *authorised exploration tenement* to which the *accepted exploration contract* applies.
- (b) The *explorer* must notify the other *parties* of the end of the *term* promptly after it occurs.
- (c) The provisions of clause 2.1(b) survive the expiry or earlier termination for whatever reason of the *accepted exploration contract*.

### 2.2 Termination

- (a) Subject to clauses 2.3 and 4.5, no *party* is entitled to terminate the *accepted exploration contract* for any reason including by reason of any breach or repudiation of the *accepted exploration contract* by any other *party*.
- (b) Except as set out in clause 2.2(a), the rights and remedies of any *party*, whether under common law, equity, statute or otherwise, by reason of any breach of the *accepted exploration contract* by any other *party* are not limited in any way.
- (c) Subject to clause 2.2 of the *framework ILUA*, the *parties* (other than the *explorer*) must not (as *framework parties*) agree to terminate the *framework ILUA* for any reason.

## 2.3 Termination by Explorer

- (a) If the *registrar* removes, or is obliged under the *native title act* to remove, the entry on the *register of native title claims* that relates to the *native title claim* (other than where the removal or obligation to remove that entry relates to the finalisation of the *native title claim* by an *approved determination of native title*) then the *explorer* may terminate the *accepted exploration contract*.
- (b) If:
- (i) the *registrar* amends, or is obliged under the *native title act* to amend, the entry on the *register of native title claims* that relates to the *native title claim*; and
  - (ii) that amendment extends to the exclusion of any *land* or *waters* from the area of *land* and/or *waters* covered by the *native title claim*,
- then the *explorer* may terminate the *accepted exploration contract* to the extent only that it applies in relation to the excluded *land* and/or *waters* (other than where that exclusion relates to the finalisation of the *native title claim* as regards that excluded *land* and/or *waters* by an *approved determination of native title*).
- (c) No *party* has any claim of whatever nature and however arising against any other *party* arising from or out of the termination of the *accepted exploration contract* pursuant to clause 2.3(a) or (b).
- (d) Any termination of the *accepted exploration contract* pursuant to clause 2.3(a) or (b) is without prejudice to the accrued rights and remedies of the *parties*.

## 2.4 Non-Application to Excluded Tenements

The *accepted exploration contract* does not apply to an *excluded tenement*.

## 3. Native Title Act Statements

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### 3.1 Consent to Future Acts

The *parties* record that under the *framework ILUA*, subject to clauses 3.3, 3.5(b), 3.6, 3.7, 3.8 and 3.9 of the *framework ILUA*, the *framework parties*:

- (a) consented to the grant of each *authorised exploration tenement*:
- (i) in the case referred to in paragraph (a) of the definition of *authorised exploration tenement*, at any time, whether before or after the commencement date of the *framework ILUA*, but:
    - (A) in relation to an *authorised exploration tenement*, as referred to in paragraph (a)(i) of the definition of the

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term, which (as at the *commencement date*) the *explorer* has applied for but has not been *granted*, before the end of the *framework term*; and

- (B) in relation to any other *authorised exploration tenement*, before the end of the *acceptance term*;
  - (ii) in the case referred to in paragraph (b) of the definition of *authorised exploration tenement*, at any time after the commencement date of the *framework ILUA* but during the *framework term*; and
  - (iii) in the cases referred to in paragraphs (c) and (d) of the definition of *authorised exploration tenement*, at any time after the commencement date of the *framework ILUA* but during the *acceptance term*; and
- (b) consented to the carrying out at any time after the commencement date of the *framework ILUA* but during the *framework term* of *authorised exploration activities* under each *authorised exploration tenement* (whether *granted* before or after the commencement date of the *framework ILUA*) in respect of which consent was given under the *framework ILUA*, as referred to in this clause 3.1; and
- (c) to the extent necessary, agreed to the validating of any *future act* constituted by the *grant* of any *authorised exploration tenement*, referred to in paragraph (a) of the definition of *authorised exploration tenement* at any time before the commencement date of the *framework ILUA*.

### 3.2 No right to negotiate procedures

- (a) The *parties* acknowledge and agree that the *framework ILUA* sets out procedures for:
  - (i) the grant of the *authorised exploration tenements*; and
  - (ii) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.
- (b) The *parties* record that under the *framework ILUA* the *framework parties* agreed that the *right to negotiate procedure* is not intended to apply to either:
  - (i) the grant of the *authorised exploration tenements*; or
  - (ii) the carrying out of authorised exploration activities under the authorised exploration tenements.

### 3.3 When consent effective

To avoid doubt, the *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* are effective in relation to any *authorised exploration tenement* referred to in:

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- (a) paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of the formation of the *accepted exploration contract*, only upon that *authorised exploration tenement* being *granted*; and
- (b) paragraph (a)(ii) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of notice given under clause 12.1 in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*.

### 3.4 Amendments to Accepted Exploration Contract

- (a) Subject to clause 3.4(b), the *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* apply to each *authorised exploration tenement* and any *authorised exploration activities* under it to which the *accepted exploration contract*, as amended from time to time, applies.
- (b) Clause 3.4(a) does not apply where the *accepted exploration contract* is amended in a manner which is inconsistent in any way with the *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to it).

### 3.5 Effect of Removal from Register

The *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* cease to apply to the *accepted exploration contract* with effect from the removal of the *framework ILUA* from the *register*, but the provisions of this clause 3.5 and of clause 3.6 of the *framework ILUA* do not affect any such consent or agreement in relation to:

- (a) any *authorised exploration tenement granted* prior to the removal of the *framework ILUA* from the *register*; or
- (b) any *authorised exploration activities* carried out or to be carried out under any such *authorised exploration tenement*.

### 3.6 Effect of Breach of Essential Term

- (a) The *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA*, their agreement in clause 3.2 of the *framework ILUA* and the *accepted exploration contract* do not apply in the circumstances set out in clause 15 (and, accordingly, subject to clause 3.6(b), the *right to negotiate procedure* will apply to an *excluded tenement*).
- (b) However, neither the *state* nor *SACOME* acknowledges that the *right to negotiate procedure* applies to any *miscellaneous purposes licence* which is an *excluded tenement*.

## 4. Other Statements

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### 4.1 Non extinguishment principle

The *parties* acknowledge and agree that the *non-extinguishment principle* applies to:

- (a) the *grant* of the *authorised exploration tenements*; and
- (b) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.

### 4.2 Application

The *parties* state that the *accepted exploration contract* applies to the *acceptance area*.

### 4.3 Exploration only

The *parties* acknowledge and agree that:

- (a) pursuant to the *framework ILUA* and the *accepted exploration contract* they do not agree to the validation of, or consent to, the grant to the *explorer* of any *production tenement* or the carrying out by the *explorer* of any *mining operations* under any *production tenement*; and
- (b) the *explorer* will, if legally obliged to do so, be required:
  - (i) to enter into an *indigenous land use agreement*; or
  - (ii) in accordance with the *right to negotiate procedure*, to negotiate and enter into a separate agreement or obtain a determination from a court or tribunal of competent jurisdiction,

to provide for the authorisation of the grant to the *explorer* of any *production tenement* or the carrying out of any *mining operations* under it.

### 4.4 Entry on Land

The *parties* acknowledge and agree that the *accepted exploration contract* constitutes an agreement between the *native title parties* and the *explorer* for the purposes of section 58 of the *mining act*.

### 4.5 Conjunctive Agreements

- (a) The *native title parties* and the *explorer* may at any time during the *term* enter into an *indigenous land use agreement* or, if applicable, an agreement under the *right to negotiate procedure* which relates both:
  - (i) to some or all of the *authorised exploration tenements*; and
  - (ii) to other *exploration authorities*, *production tenements* and/or *miscellaneous purposes licences* whether *granted* or to be *granted* and whether wholly or partially within the *acceptance area* or not.



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- (b) If the circumstances referred to in clause 4.5(a) occur, the *accepted exploration contract* terminates as regards the *authorised exploration tenements* referred to in that clause immediately upon the relevant agreement being entered into.

#### 4.6 Authorised Exploration Tenement Terms

The *parties* acknowledge and agree that compliance with the terms and conditions of the *accepted exploration contract* is not a condition of any *authorised exploration tenement* (or any other *exploration tenement*).

#### 4.7 Other Native Title Holders

The parties acknowledge and agree that pursuant to section 24EA(1)(b) of the *native title act*, all persons holding *native title* in relation to any of the *land* and/or *waters* in the *ILUA area* who are not members of the *native title claim group*:

- (a) are bound by the *framework ILUA*; and
- (b) by reason of being bound by the *framework ILUA* are also bound by the *accepted exploration contract* in relation to the *land* and/or *waters* (within the *ILUA area*) to which the *accepted exploration contract* applies, in the same way as the *native title group* (as defined in section 24CD(2) or (3) of the *native title act*).

#### 4.8 No Acknowledgement of Native Title

By entering into the *accepted exploration contract* neither the *explorer* nor the *state* acknowledges the existence or otherwise of *native title* in relation to any *land* and/or *waters* within the whole or any part of the *acceptance area*.

## 5. Aboriginal Heritage

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### 5.1 Requirement

The *explorer* may only carry out *authorised exploration activities* under an *authorised exploration tenement*:

- (a) if:
- (i) the *Aboriginal heritage act* at any time makes provision for the grant by an independent statutory authority of a document which, if held by the *explorer*, would allow the *explorer*, subject to any conditions in the document, to carry on the *authorised exploration activities* on that part of the *exploration land* to which the document relates; and
- (ii) the *explorer* is the holder of such a document under the *Aboriginal heritage act* in relation to the relevant *authorised*

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- exploration activities* to be carried out on that part of the *exploration land*;
- (b) if:
- (i) 5.1(a) does not apply;
  - (ii) a *mapping survey* has been undertaken in relation to:
    - (A) that part of the *exploration land* upon which the explorer proposes to carry out *authorised exploration activities*; and
    - (B) *authorised exploration activities* of the nature which the explorer proposes to carry out on that *exploration land* and;
  - (iii) a mapping authorisation (as defined in the *mapping access procedures*) is issued to the *explorer* (subject to the conditions, if any, of the mapping authorisation) in respect of the relevant *authorised exploration activities* to be carried out on that part of the *exploration land*;
- (c) if:
- (i) clause 5.1(a) does not apply;
  - (ii) the *authorised exploration activities* proposed to be carried out by the *explorer* are *authorised exploration activities* to which the provisions of clause 3 of the *heritage clearance procedures* apply;
  - (iii) clause 5.1(b)(ii) does not apply to those proposed *authorised exploration activities* and;
  - (iv) the *explorer* otherwise complies with the provisions of clause 3 of the *heritage clearance procedures* in relation to the carrying out of those *authorised exploration activities*; or
- (d) if:
- (i) clause 5.1(a) does not apply;
  - (ii) clause 5.1(c) does not apply to the proposed *authorised exploration activities*;
  - (iii) the *accepted exploration contract* is entered into prior to the *heritage transition date*;
  - (iv) before the *heritage transition date*, the *explorer* complies with the *heritage clearance procedures* in relation to the relevant *authorised exploration activities*; and
  - (v) at any time a clearance approval (as defined in the *heritage clearance procedures*) is given or is deemed to have been given to the *explorer* pursuant to the *heritage clearance procedures* (subject to the conditions, if any, of the clearance approval) in respect

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of the relevant *authorised exploration activities* to be carried out on that part of the *exploration land*.

## 5.2 Compliance with Aboriginal Heritage Requirements

The *explorer* must:

- (a) not carry out any *authorised exploration activities* under an *authorised exploration tenement* except within a part of the *exploration land* in respect of which:
  - (i) the *explorer* is the holder of a document of a kind referred to in clause 5.1(a);
  - (ii) the *explorer* has been issued a mapping authorisation (as defined in the *mapping access procedures*);
  - (iii) the *explorer* has complied with the provisions of clause 3 of the *heritage clearance procedures*; or
  - (iv) the *explorer* has complied with the provisions of the *heritage clearance procedures* and a clearance approval (as defined in the *heritage clearance procedures*) has been given or is deemed to have been given to the *explorer* pursuant to the *heritage clearance procedures*,in respect of those *authorised exploration activities*;
- (b) comply with the conditions of that document, mapping authorisation, clause or clearance approval; and
- (c) instruct its contractors, employees, agents and visitors accordingly in relation to its obligations under clauses 5.2(a) and (b).

## 5.3 Discoveries During Operations

If at any time during the carrying out of *authorised exploration activities* the *explorer* identifies any site, object or remains which the *explorer* suspects may be an *Aboriginal site, object or remains*, the *explorer* must, in addition to any other obligations under the *Aboriginal heritage act*:

- (a) promptly report the location of that site, object or those remains to the *association*;
- (b) not carry on any *authorised exploration activities* on the relevant site or the location of the relevant object or remains; and
- (c) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains,

unless and until:

- (d) the relevant site, object or remains is determined not to be an *Aboriginal site, object or remains*; or

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- (e) if the relevant site, object or remains is determined to be an *Aboriginal site, object or remains*, the *explorer* is authorised under the *Aboriginal heritage act* to do otherwise.

#### 5.4 Instruction in Aboriginal Culture

- (a) The *explorer* must use reasonable endeavours to ensure that the *explorer's* employees, contractors and subcontractors who may be involved in the carrying out of *authorised exploration activities* are aware, and have an understanding, of:
  - (i) the significance of *land* and *waters* to Aboriginal people;
  - (ii) their customary and traditional activities;
  - (iii) *native title*; and
  - (iv) the obligations of the *explorer*, its employees, contractors and subcontractors under the *Aboriginal heritage act*, the Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 (Cth), the *native title act* and the *accepted exploration contract* in relation to avoiding disturbance, damage and interference to any *Aboriginal site, object or remains*.
- (b) The *explorer* must ensure, in consultation with the *association*, that all such employees, contractors and subcontractors receive such training in the traditions, history and culture of the *native title parties* and such basic archaeological training as the *explorer* reasonably considers will facilitate such awareness and understanding and also the identification of any *Aboriginal site, object or remains* for the purposes of clause 5.3.
- (c) The provisions of clause 5.4(b) do not apply to *authorised exploration activities* to which the provisions of clause 3 of the *heritage clearance procedures* apply.

#### 5.5 Aboriginal Heritage

Nothing in the *accepted exploration contract* detracts from the *explorer's* obligations to comply with the *Aboriginal heritage act*.

### 6. Consideration

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#### 6.1 Acceptance fee

In consideration of the *native title parties* agreeing to enter into the *accepted exploration contract* the *explorer* must pay the *acceptance fee* to the *nominated body*.

***[Note: to be negotiated and agreed with claim group including as to when payment is to be made]***

## 6.2 Amount of Acceptance fee

The *acceptance fee* is [**Note: to be negotiated and agreed with the claim group**]

## 6.3 Individual Survey Payments

- (a) If clause 5.1(b) applies, then the *explorer* must pay the mapping access application fee to the *state* (care of the mapping caretaker (as defined in the *mapping survey procedures*)) as set out in the *mapping access procedures* in respect of each mapping access application (as defined in the *mapping access procedures*) made by the *explorer*.
- (b) If clause 5.1(d) applies, then in consideration of the carrying out of each heritage clearance survey under the *heritage clearance procedures*, the *explorer* must pay the amounts specified in the *heritage clearance procedures* to the *nominated body* as set out in those procedures.

## 6.4 Manner of payment

All amounts payable by the *explorer* to the *nominated body* pursuant to this clause 6 must be paid:

- (a) to the *nominated body* at its address for purposes of the *accepted exploration contract*; and
- (b) free of exchange and without any deduction, set off or withholding .

## 6.5 Nominated Body

- (a) The *association* must notify the *state*, the *minister* and the *explorer* of:
  - (i) the nomination of any body corporate or trust as the *nominated body* and of the address of that *nominated body* for purposes of the *accepted exploration contract*; and
  - (ii) any change of address of that *nominated body*.
- (b) The *nominated body* is the agent of the *native title parties* in relation to all amounts paid to the *nominated body* pursuant to this clause 6.
- (c) Any payment to the *nominated body* is a good and sufficient discharge of that payment as regards the *native title parties*.

## 6.6 Acknowledgment

The *indigenous parties* acknowledge and agree that, subject to clause 6.7:

- (a) any amounts payable and any benefits provided under the *accepted exploration contract* and the *framework ILUA* to the *native title parties* or to any *nominated body* or any other agent on their behalf:
  - (i) are in full and final satisfaction of any *compensation entitlement* of the *native title parties*; and

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- (ii) for the purposes of section 24EB of the *native title act*, are compensation provided for by the *framework ILUA*; and
- (b) the *native title parties* do not have any *compensation entitlement* other than for the amounts payable and benefits provided under the *accepted exploration contract* and the *framework ILUA*.

## 6.7 Exception

The provisions of clause 6.6 do not apply to any *compensation entitlement* of the *native title parties* against another *party* to the *accepted exploration contract* or any *framework party* arising by reason of any breach of the *accepted exploration contract* by that *party* or the *framework ILUA* by that *framework party*, respectively.

## 6.8 Sharing

The *indigenous parties* agree that the amounts payable and the benefits provided under the *accepted exploration contract* and the *framework ILUA* to the *native title parties* or to any *nominated body* or any other agent on their behalf are held on behalf of all members of the *native title claim group* and all persons (if any) who hold *native title* in relation to the whole or any portion of the *acceptance area*.

## 6.9 Application Survival

The provisions of clauses 6.6, 6.7 and 6.8 survive the removal of the details of the *framework ILUA* from the *register* for whatever reason and remain in those circumstances binding on:

- (a) all persons bound by the *framework ILUA* and the *accepted exploration contract*; and
- (b) all persons entitled to any of the benefits under the *framework ILUA* and the *accepted exploration contract*.

## 7. Covenants by Explorer

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### 7.1 Compliance with Laws

The *explorer* must comply with all applicable *laws* and good minerals exploration industry practice in:

- (a) carrying out the *authorised exploration activities*, including in carrying out any conservation, protection and rehabilitation of the environment; and
- (b) performing its obligations under the *accepted exploration contract*.

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## 7.2 Rehabilitation

- (a) The *indigenous parties* may notify the *explorer* of any proposals which they have in relation to the rehabilitation of *land* or *waters* within the *exploration land* to ensure, as far as is possible, that there will be no significant long term adverse effect, by reason of the carrying out of the *authorised exploration activities*, on that *land* and/or those *waters*, on the ability of the *native title parties* to pursue on that *land* and/or those *waters* customary and traditional activities notified to the *explorer*.
- (b) In complying with its obligations under clause 7.1(a) the *explorer* will give due consideration to any proposals notified to it by the *native title parties* pursuant to clause 7.2(a).

## 7.3 Exploration Contract Return

- (a) The *explorer* must furnish a duly completed and signed *exploration contract return* in respect of each *authorised exploration tenement*:
  - (i) to the Director of Mines;
  - (ii) in respect of *authorised exploration activities* carried out during each calendar year falling wholly or partially during the *term*; and
  - (iii) within 20 *business days* of each anniversary of the *grant*, or the expiry, of that *authorised exploration tenement*.
- (b) The *explorer* is not obliged to include any confidential information in any *exploration contract return*.
- (c) The *state* must ensure that the Director of Mines provides a copy of any *exploration contract return* to the *association* as soon as practicable after it has been furnished to the Director of Mines.
- (d) The *explorer* consents to the Director of Mines providing a copy of each *exploration contract return* to the *association*.
- (e) The *state* does not warrant the accuracy or completeness of any information contained in any *exploration contract return*.
- (f) Nothing in this clause 7.3 imposes a legal obligation on the *state* to do anything to ensure compliance by the *explorer* with the provisions of clause 7.3(a).

## 7.4 Limitations on Activities under Mineral Claim

If:

- (a) the *native title parties* have objected pursuant to clause 10.1(a) to the *grant* of any *authorised exploration tenement*;
- (b) that objection extends to the *grant* of a *mineral claim*; and
- (c) that *mineral claim* is *granted* to the *explorer*,

then the *explorer* must not carry out any *authorised exploration activities* under that *mineral claim* during the *objection period*.

## 8. Rights of Explorer

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### 8.1 Basis

The *indigenous parties* acknowledge and agree that the *explorer's* right to carry out *authorised exploration activities* on the *exploration land* is determined under the *mining act* and by the terms of each *authorised exploration tenement* under which the *authorised exploration activities* are carried out.

### 8.2 Qualification

In the exercise of those rights the *explorer* must perform its obligations under the *accepted exploration contract*.

### 8.3 Emergency

If any emergency situation occurs anywhere on the *exploration land*:

- (a) the *explorer* may take such measures as it considers necessary in the circumstances;
- (b) the provisions of clause 5 do not apply to prevent or impair the taking of those measures;
- (c) the *explorer* must as soon as reasonably practicable notify the *association* of the emergency situation; and
- (d) after the emergency, the *explorer* and the *association* must consult with each other in relation to any further measures to be taken.

## 9. Additional Covenants of Native Title Parties

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### 9.1 Non-Interference, Objections and Compliance

The *indigenous parties* must:

- (a) not interfere with:
  - (i) the exercise by the *explorer* of its rights under the *mining act* or under the terms of any *authorised exploration tenement*; or
  - (ii) the carrying out of *authorised exploration activities* under any *authorised exploration tenement*;
- (b) not make any objection to any *grant* to the *explorer* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying, except where entitled to do so pursuant to clause 10.1;



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- (c) not make any submission that any *authorised exploration tenement* be cancelled or suspended, except where entitled to do so pursuant to clause 10.2;
- (d) use their best endeavours to ensure that neither *ALRM* nor any member, agent or representative of, or other person associated with *ALRM*, the *native title claim group* or the *association*:
  - (i) makes any objection to the *grant* to the *explorer* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying; or
  - (ii) makes any submission that any *authorised exploration tenement* be cancelled or suspended,  
except where the *indigenous parties* are entitled to make an objection or submission pursuant to clause 10.1 or 10.2, respectively; and
- (e) comply with all applicable *laws* in performing their obligations under the *accepted exploration contract*.

## 9.2 Administration

The *association* is responsible for the administration of the *accepted exploration contract* on behalf of the *native title parties*.

## 10. Rights of Native Title Parties

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### 10.1 Right to Object to Grants

- (a) The *indigenous parties* may make an objection to the *grant* to the *explorer* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying, if:
  - (i) the *explorer* has allegedly breached:
    - (A) an *essential term* in clause 6.1, 6.3 or 6.4(b); or
    - (B) an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to any *breached tenement*;
  - (ii) that *exploration tenement* is an *exploration tenement* to which the provisions of clause 15.1 or 15.2 are capable of applying as an *excluded tenement*; and
  - (iii) either:
    - (A) notice has been given by the *indigenous parties* under clause 15.1 or 15.2 of such alleged breach by the *explorer*; or

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- (B) otherwise than pursuant to clause 17 it has been agreed between the *indigenous parties* and the *explorer* or finally determined that the *explorer* has committed such breach.
- (b) The *indigenous parties* may also make an objection to the *grant* to the *explorer* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying (other than an *exploration tenement* referred to in clause 10.1(a) or a mineral claim), if:
  - (i) that *exploration tenement* may be granted to the *explorer* at any time after the alleged breach of the *breached tenement* referred to in clause 10.1(a)(i)(B);
  - (ii) that alleged breach is of an *essential term* in clause 5.1, 5.2 or 5.3; and
  - (iii) the *indigenous parties* have made or are entitled to make an objection to the *grant* of an *exploration tenement* referred to in clause 10.1(a), pursuant to that clause.
- (c) The *indigenous parties* may make an objection pursuant to clause 10.1(a) or (b) whether or not the *explorer* has applied to the *minister* for the *grant* of the relevant *exploration tenement*.

## 10.2 Right to Request Cancellation or Suspension

The *indigenous parties* may make a submission that any *authorised exploration tenement* be cancelled or suspended if:

- (a) the *indigenous parties* have made or are entitled to make an objection to the *grant* of an *exploration tenement* referred to in clause 10.1(a), pursuant to that clause;
- (b) that *authorised exploration tenement* in respect of which the *indigenous parties* may make a submission is the *breached tenement* referred to in clause 10.1(a)(i)(B);
- (c) the alleged breach by the *explorer* of an *essential term* in relation to that *breached tenement* is of clause 5.1, 5.2 or 5.3 of the *accepted exploration contract*; and
- (d) that alleged breach or any consequences of it constitute grounds under the *mining act* and that *breached tenement* for the cancellation or suspension of that *breached tenement* by reason of that breach or those consequences constituting non-compliance by the *explorer* with any provision of the *Aboriginal heritage act*.

## 10.3 Recipient of Objection or Submission

- (a) Any objection pursuant to clause 10.1 must be made in writing to the *minister* setting out the reasons for that objection together with

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any supporting information, with a copy of that objection promptly provided to the *explorer*.

- (b) Any submission pursuant to clause 10.2 must be made in writing to the *minister* setting out the reasons for that submission together with any supporting information, with a copy of that submission promptly provided to the *explorer*.

#### 10.4 Withdrawal of Objection or Submission

The *indigenous parties* are deemed to have withdrawn an objection made in relation to any *exploration tenement* pursuant to clause 10.1 or a submission made pursuant to clause 10.2, respectively if the *exploration tenement* referred to in clause 10.1(a)(ii) is no longer capable of being an *excluded tenement*.

#### 10.5 Notice of Withdrawal

Each of the *indigenous parties* and the *explorer* must notify the *minister* of the deemed withdrawal pursuant to clause 10.4 of an objection or submission pursuant to clause 10.1 or 10.2, respectively within 10 *business days* of that deemed withdrawal.

#### 10.6 Explorer's Acknowledgment

As between the *explorer* and the *indigenous parties* the *explorer* acknowledges that members of the *native title claim group* have the following rights:

- (a) to pursue customary and traditional activities on the *exploration land*, including, where applicable, the rights conferred under section 47 of the Pastoral Land Management and Conservation Act 1989 (SA); and
- (b) to have access to the *exploration land* for the purposes of pursuing the rights referred to in clause 10.6(a).

except where and to the extent that their presence will or is likely to:

- (c) cause danger to health and safety of the *explorer* or any of its officers, employees, contractors, agents or invitees; or
- (d) interfere with the carrying out of *authorised exploration activities*.

#### 10.7 Use of Roads

The *indigenous parties* acknowledge and agree that the use pursuant to clause 10.6 by members of the *native title claim group* of any roads and tracks constructed for the purposes of carrying out *authorised exploration activities* is subject to:

- (a) reasonable control by the *explorer* for the purposes of safety; and
- (b) priority of use by the *explorer* for the purpose of carrying out *authorised exploration activities*,

without the *explorer* undertaking any liability for that use.

## 11. Covenants by State

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### 11.1 Consideration by Minister

- (a) Where the *indigenous parties* have made an objection pursuant to clause 10.1 to the *grant* of an *exploration tenement* (other than a *mineral claim*) not less than 5 *business days* before the *grant* of that *exploration tenement* and that objection is not deemed withdrawn, in relation to that *exploration tenement* pursuant to clause 10.4, at the time when the *minister* is considering whether or not to *grant* that *exploration tenement*, the *state* must ensure that the *minister* takes into account:
- (i) that objection and any supporting information provided pursuant to clause 10.3(a);
  - (ii) any relevant notice of the alleged breach given pursuant to clause 15.1(b) or (d) or clause 15.2(a)(iii) or (v);
  - (iii) any relevant notice of *dispute* given pursuant to clause 17.3;
  - (iv) any relevant *PIRSA report*; and
  - (v) any relevant notice given pursuant to clause 17.12,
- in exercising the *minister's* discretion as to:
- (vi) whether to *grant* or refuse to *grant* the relevant *exploration tenement*; and
  - (vii) the conditions upon which the relevant *exploration tenement* is *granted*, if the *minister* decides to *grant* it.
- (b) Where the *indigenous parties* have made a submission pursuant to clause 10.2 that an *authorised exploration tenement* be cancelled or suspended and that submission is not deemed withdrawn, in relation to that *authorised exploration tenement* pursuant to clause 10.4, at the time the *minister* considers whether or not to cancel or suspend that *authorised exploration tenement*, the *state* must ensure that the *minister* takes into account such submission and any supporting information provided pursuant to clause 10.3(b) in exercising the *minister's* discretion as to whether or not to cancel or suspend that *authorised exploration tenement*.
- (c) The provisions of clauses 11.1(a) and (b) do not prevent the *minister* from taking into account other relevant matters in exercising any discretion of the *minister* under the *mining act*.

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## 11.2 Records

For the purposes only of clause 11.1, the *state* must ensure that records are kept and maintained during the *term*, and for a period of 6 years after the end of the *term*, of any objection, submission, notices and *PIRSA* report referred to in clause 11.1.

## 11.3 Notification of Grants

The *minister* must notify the *association* of the *grant* of any *exploration tenement* within the *acceptance area* to the *explorer*, within 10 *business days* of that *grant*.

## 11.4 Survival

The provisions of clauses 11.1 and 11.2 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

## 12. Additional Tenements

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### 12.1 Notice

Subject to clauses 12.2, 12.3, 12.4 12.5 and 12.6 the *explorer* may at any time during the *term* by notice given to the *association*, with a copy provided to the *minister*, specify any *exploration tenement* (other than an *excluded tenement*) *granted* or to be *granted* to the *explorer* (the *land* and/or *waters* the subject of which are wholly or partly within the *ILUA area*) as an *authorised exploration tenement*.

### 12.2 Application

The *explorer* may only give a notice pursuant to clause 12.1 in relation to an *exploration tenement* which has not been *granted* to the *explorer* as at the date of that notice, if prior to that date the *explorer* has applied for the *grant* to it of that *exploration tenement*.

### 12.3 No Previous Activities

The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement granted*:

- (a) before the commencement date of the *framework ILUA* if the *explorer* has previously carried out any *exploration activities* under that *exploration tenement* at any time after the *commencement date*; and
- (b) after the commencement date of the *framework ILUA* if the *explorer* has previously carried out any *exploration activities* under that *exploration tenement*.

### 12.4 No Notice to Initiate Negotiations

The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if notice has previously been given to initiate negotiations

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under the *right to negotiate procedure* in respect of that *exploration tenement* or any *exploration activities* under it except where that notice to initiate negotiations was given prior to the commencement date of the *framework ILUA* and the *explorer* and the *native title claim group* had not previously entered into an agreement pursuant to the *right to negotiate procedure* in relation to that *exploration tenement*.

## 12.5 Prior Breach

The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if:

- (a) the *explorer* or a related body corporate (within the meaning of the Corporations Act) of the *explorer* has previously entered into another *accepted exploration contract* with the *native title parties* in relation to that *exploration tenement*; and
- (b) the provisions of the *accepted exploration contract* referred to in clause 12.5(a) have ceased to apply, pursuant to clause 15.1 or 15.2 of that *accepted exploration contract*, to that *exploration tenement*.

## 12.6 Aboriginal Heritage Breaches

- (a) The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if the *explorer* has previously committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 which (or the consequences of which) also constitutes non-compliance by that person with the provisions of the *Aboriginal heritage act*.
- (b) The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if:
  - (i) the *explorer* or a related body corporate (within the meaning of the Corporations Act) of the *explorer* has previously entered into another *accepted exploration contract* with the *native title parties*; and
  - (ii) the *explorer* or that related body corporate has committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 of that *accepted exploration contract* which (or the consequences of which) also constitute non-compliance by that person with the provisions of the *Aboriginal heritage act*.

## 12.7 Effect

- (a) Where the *explorer* gives any notice pursuant to clause 12.1 in relation to an *exploration tenement* which has been *granted* to the *explorer*, the *accepted exploration contract* applies to the relevant *exploration tenement* as an *authorised exploration tenement*:
  - (i) upon the giving of that notice; and

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- (ii) to the extent that the *land* and/or *waters* the subject of that *exploration tenement* are within the *ILUA area*.
- (b) Where the *explorer* gives any notice pursuant to clause 12.1 in relation to an *exploration tenement* to be *granted* to the *explorer*, the *accepted exploration contract* applies to the relevant *exploration tenement* as an *authorised exploration tenement*:
  - (i) upon the *grant* of that *exploration tenement*; and
  - (ii) to the extent that the *land* and/or *waters* the subject of that *exploration tenement* are within the *ILUA area*.

## 13. Employment

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### 13.1 Acknowledgment

The *parties* acknowledge that:

- (a) there are limited opportunities for the *explorer* and its contractors to employ persons during the carrying out of the *authorised exploration activities*, including for the employment of members of the *native title claim group*; and
- (b) those employment opportunities that do exist during the carrying out of the *authorised exploration activities* are primarily for people with specialist skills and training.

### 13.2 Notification of vacancies

- (a) The *explorer* must notify the *association* of the particulars of any job vacancy in relation to the carrying out of the *authorised exploration activities* that arises in the *explorer's* work force:
  - (i) if the vacancy is one which is advertised in any printed media, not less than 15 *business days* before applications for that vacancy must be made to the *explorer*; or
  - (ii) otherwise, not less than 2 *business days* before *authorised exploration activities* are carried out in relation to which the vacancy exists.
- (b) For the purposes of clause 13.2(a)(ii) notice includes informing the *association* personally or by e-mail, telephone or other form of instantaneous communication.

### 13.3 Notification by Native Title Parties

The *association* may notify the *explorer* of the particulars of any person who is a member of the *native title claim group* who, in the reasonable opinion of the *association*, has skills or qualifications that may enable that person to be

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employed within the *explorer's* work force in relation to the *authorised exploration activities*.

#### 13.4 Employment preference

Where it is both lawful and practical to do so, the *explorer* must give preference to the employment of a member of the *native title claim group* in relation to the carrying out of the *authorised exploration activities* if:

- (a) the relevant member has, through training in skills required for employment in the resources industry provided pursuant to clause 4.7 of the *framework ILUA*, acquired the necessary skills and ability to carry out the relevant duties in a satisfactory manner;
- (b) both that member and another person (who is not a member of the *native title claim group*) apply for employment by the *explorer*; and
- (c) the skills, ability and experience, relevant to the particular position applied for, of that other person are no greater than those of that member.

#### 13.5 Training

To the extent that the *explorer* provides any on-job training to any employee employed by it in any capacity similar to that in which any member of the *native title claim group* is employed by the *explorer*, the *explorer* must, insofar as is practicable and on a basis consistent with that applied in respect of that other employee, provide on-job training to that member of the *native title claim group*.

#### 13.6 Contractors

The *explorer* must use its best endeavours to ensure that:

- (a) each of its contractors complies with the provisions of clause 13.2, 13.4 and 13.5 as if each contractor were the *explorer*; and
- (b) any particulars provided by the *association* to the *explorer* pursuant to clause 13.3 are, where appropriate, provided by the *explorer* to its relevant contractors.

### 14. Warranties and Authority

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#### 14.1 Preliminary

The *indigenous parties* record that:

- (a) the *registered native title claimants* were (as at the date of the execution of *framework ILUA* by all of the *framework parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and/or *waters* in the *acceptance area* and made the *native title claim* on behalf of the *native title claim group*;



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- (b) the *native title claim group* established the *association* and authorised the *association* to manage the *native title claim* and all matters relating to the *native title claim* on behalf of the *native title parties*;
- (c) prior to signing the *framework ILUA* the *association* (in conjunction with the *registered native title claimants*) consulted with the *native title claim group* and the *native title claim group* consented to and authorised the *registered native title claimants* to enter into the *accepted exploration contract* on behalf of the *native title parties*; and
- (d) the *association*:
  - (i) entered into the *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters relating to it; and
  - (ii) by signing the *framework ILUA* confirmed that the *registered native title claimants* were authorised by the *native title claim group* to enter into the *accepted exploration contract* on behalf of the *native title parties*.

#### 14.2 Warranties by Native Title Parties

Regard being had to the provisions of clause 14.1, the *indigenous parties* represent and warrant to the other *parties* to the *accepted exploration contract* that the matters set out in clauses 14.1 (a) to (d) are true and correct.

#### 14.3 Warranties by Explorer

The *explorer* represents and warrants to the *indigenous parties*:

- (a) where any *authorised exploration tenement*, details of which are specified in the *acceptance document* or in any notice given by the *explorer* under clause 12.1, was *granted* before the commencement date of the *framework ILUA*, that any *exploration activities* carried out by the *explorer* under that *authorised exploration tenement* prior to the *explorer's* execution of the *acceptance document* were carried out in compliance with all applicable *laws* and good minerals exploration industry practice;
- (b) where any *authorised exploration tenement*, details of which are specified in the *acceptance document*, was *granted* after the *commencement date* of the *framework ILUA*, that as at the date of the *acceptance document*, the *explorer* had not carried out any *exploration activities* under that *authorised exploration tenement*;
- (c) where any *authorised exploration tenement*, details of which are specified in a notice given by the *explorer* under clause 12.1, was *granted* after the commencement date of the *framework ILUA* that, as at the date of that notice, the *explorer* had not carried out any *exploration activities* under the *authorised exploration tenement* to which that notice relates; and

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- (d) that, as at the date of the *acceptance document* or the relevant notice under clause 12.1, as appropriate, the *explorer* had not given any notice to initiate negotiations under the *right to negotiate procedure* in respect of that *authorised exploration tenement* or any *authorised exploration activities* under it except where the *explorer* and the *native title claim group* have not previously entered into an agreement pursuant to the right to negotiate procedure in relation to that *authorised exploration tenement* and either:
- (i) that notice was given prior to the commencement of the *framework term*; or
  - (ii) that notice was given on or after the commencement of the *framework term* and the *association* consent to the *explorer* entering into the *accepted exploration contract* in relation to that *exploration tenement* and *exploration activities* under it by endorsing that consent on the *acceptance document*.

#### 14.4 No Acknowledgement

By entering into the *accepted exploration contract* in relation to an *exploration tenement* the *native title parties* do not acknowledge, where the *acceptance document* is executed by the *explorer* before the *heritage transition date* and any *authorised exploration tenement*, details of which are specified in the *acceptance document*, was *granted* before the commencement date of the *framework ILUA*, that any *exploration activities* previously carried out by the *explorer* under that *exploration tenement* wholly or partially within the *acceptance area* will not have *affected* any *native title* in relation to *land* and/or *waters* within the *acceptance area* for purposes of section 63F(1)(a) of the *mining act*.

#### 14.5 Registered native title body corporate

If an *approved determination of native title* is made in respect of the whole or any part of the *exploration land* and a *registered native title body corporate* is determined to hold the rights and interests from time to time comprising the *native title* in trust for the *native title holders*:

- (a) the *indigenous parties* must use their best endeavours to ensure that the *registered native title body corporate* becomes a *party* to the *accepted exploration contract* in place of both the *native title parties* and the *association* in relation to the whole or relevant part of the *exploration land* and assumes the rights and obligations of both the *native title parties* and the *association* under the *accepted exploration contract* in relation to the whole or that part of the *exploration land*;
- (b) the *parties* (other than the *indigenous parties*) to the *accepted exploration contract* consent to the *registered native title body corporate* becoming a *party* to the *accepted exploration contract* and assuming the rights and obligations of both the *native title parties* and the *association*, in accordance with clause 14.5(a); and

- (c) each of the *parties* to the *accepted exploration contract* must sign such documents as are necessary to give effect to the provisions of this clause 14.5.

## 15. Breach of Essential Terms

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### 15.1 Non-Payment Breach

The *accepted exploration contract* does not apply to an *exploration tenement* (nor to the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* of a kind referred to in paragraph (b), (c) or (d) of the definition of *authorised exploration tenement*, granted in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*), in the following circumstances:

- (a) the *explorer* has allegedly breached an *essential term* in clause 6.1, 6.3 or 6.4(b);
- (b) within 20 *business days* of the *association* or the *representatives* of the *native title parties* becoming aware of that alleged breach, the *indigenous parties* have given notice of that alleged breach to the *explorer* (with a copy to the *minister*) setting out:
  - (i) details of that alleged breach; and
  - (ii) that the *explorer* is required to remedy that alleged breach within a period of 20 *business days* of the date of that notice;
- (c) the *explorer* has not remedied that alleged breach within the 20 *business days* period notified by the *indigenous parties* under clause 15.1(b)(ii) and that 20 *business days* period expires prior to the *grant* of that *exploration tenement*;
- (d) the *minister* is given a notice by the *explorer* or the *association* not less than 5 *business days* before the *grant* of that *exploration tenement* that it has been agreed, resolved or determined pursuant to clause 17 or otherwise that the *explorer* has breached that *essential term*; ; and
- (e) prior to the *grant* of that *exploration tenement*, the *explorer* has not remedied that breach.

### 15.2 Other Breaches

- (a) The *accepted exploration contract* also does not apply to an *exploration tenement* (nor the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* referred to in clause 15.2(b), in the following circumstances:
  - (i) the *explorer* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to the *breached tenement*;

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- (ii) that alleged breach is committed wilfully, recklessly or negligently;
  - (iii) within 20 *business days* of the *association* or the *representatives* of the *native title parties* becoming aware of that alleged breach, the *indigenous parties* have given notice of that alleged breach to the *explorer* (with a copy to the *minister*) setting out:
    - (A) details of that alleged breach; and
    - (B) where that alleged breach is capable of being remedied, that the *explorer* is required to remedy that alleged breach within a period of 20 *business days* of the date of that notice;
  - (iv) where that alleged breach is capable of being remedied, the *explorer* has not remedied that alleged breach within the 20 *business days* period notified by the *indigenous parties* under clause 15.2(a)(iii)(B) or (if that alleged breach is not capable of being remedied within that 20 *business days* period) such longer period as is reasonable in the circumstances;
  - (v) the *minister* is given a notice by the *explorer* or the *association* that it has been agreed, resolved or determined pursuant to clause 17 or otherwise that the *explorer* has breached the relevant *essential term* in relation to the *breached tenement*; and
  - (vi) prior to the *grant* of the *exploration tenement* to which the *accepted exploration contract* will not apply if all of the circumstances in this clause 15.2(a) are met, the *explorer* has, where that breach is capable of being remedied, not remedied that breach.
- (b) If all of the circumstances referred to in clause 15.2(a) are met, the *accepted exploration contract* does not apply to an *exploration tenement* (nor the carrying out of *exploration activities* under that *exploration tenement*), being an *exploration tenement* which is:
- (i) where:
    - (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) not less than 5 *business days* before the *grant* of that *exploration tenement* ; and
    - (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement*:
      - (1) is not capable of being remedied; or
      - (2) is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) has expired before the *grant* of that *exploration tenement*,

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an *exploration tenement* of a kind referred to in:

- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement, granted* upon the renewal, regrant, remaking or extension of the term of the *breached tenement*; or
  - (D) paragraph (c) of the definition of *authorised exploration tenement, granted* after the *breached tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of the *breached tenement*; or
- (ii) where either:
- (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) less than 5 *business days* before, or after, the *grant* of an *exploration tenement* referred to in clause 15.2(b)(i)(C) or (D) (***subsequent tenement***); or
  - (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement* is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) has not expired before the *grant* of the *subsequent tenement*,

an *exploration tenement* of a kind referred to in:

- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement, granted* upon the renewal, regrant, remaking or extension of the term of the *subsequent tenement*; or
- (D) an *exploration tenement* of a kind referred to in paragraph (c) of the definition of *authorised exploration tenement, granted* after the *subsequent tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of the *breached tenement*.

### 15.3 Remediating of Breach

- (a) Subject to the provisions of clause 15.3(b), for purposes of clauses 15.2(a)(iii),(iv) and (vi) a breach is deemed to be capable of being remedied by the *explorer* and the *explorer* is deemed to have remedied that breach if:
  - (i) that breach has arisen by reason of the *explorer* having failed to do, or failed to cause or permit to be done, something; and
  - (ii) within the relevant period referred to in clause 15.2(a)(iv) or prior to the grant of the relevant *exploration tenement* referred

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to in clause 15.2(a)(vi) (as the case requires) the *explorer* has done, or has caused or permitted to be done, that thing.

- (b) The provisions of clause 15.3(a) do not apply to the breach of an *essential term* in clause 5.1, 5.2 or 5.3 in relation to any *authorised exploration tenement*.

#### 15.4 Examples of Breach Provisions

- (a) This clause 15.4(a) sets out an example of the application of clause 15.1 (where the breach of the relevant *essential term* is not remedied by the *explorer*):
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) a heritage clearance survey is undertaken pursuant to the *heritage clearance procedures* in relation to EL1;
  - (iv) a payment for that heritage clearance survey is due on 1 January 2005;
  - (v) the *explorer* does not make the payment by that date;
  - (vi) this failure to pay is a breach of clause 6.3 of the *accepted exploration contract*;
  - (vii) clause 6.3 is an *essential term* of the *accepted exploration contract*;
  - (viii) the *association* becomes aware on 3 January 2005 of the failure of the *explorer* to make the required payment for the heritage clearance survey;
  - (ix) the *indigenous parties* give the *explorer* notice of the breach on 6 January 2005. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2005);
  - (x) EL1, EL2 and EL3 expire on 1 January 2006, 1 January 2007 and 1 January 2008, respectively;
  - (xi) The *minister* is thus notified of the breach more than 5 *business days* before any renewal or regrant of EL1, EL2 or EL3;
  - (xii) The *explorer* has not remedied the breach by 1 January 2008;
  - (xiii) the *accepted exploration contract*:
    - (A) will continue to apply to EL1, EL2 and EL3; and
    - (B) will not apply to the renewal or regrant of EL1, EL2 or EL3.

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- (b) This clause 15.4(b) sets out an example of the application of clause 15.1 (where the breach of the relevant *essential term* is remedied by the *explorer*):
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) a heritage clearance survey is undertaken pursuant to the *heritage clearance procedures* in relation to EL1;
  - (iv) payment for that heritage clearance survey is due on 1 January 2008;
  - (v) the *explorer* does not make payment by that date;
  - (vi) this failure to pay is a breach of clause 6.3 of the *accepted exploration contract*;
  - (vii) clause 6.3 is an *essential term* of the *accepted exploration contract*;
  - (viii) the *association* becomes aware on 3 January 2008 of the failure of the *explorer* to make the required payment for the heritage clearance survey;
  - (ix) the *indigenous parties* give the *explorer* notice of the breach on 6 January 2008. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2008);
  - (x) the *explorer* makes the required payment on 8 January 2008;
  - (xi) the *accepted exploration contract* will continue to apply to EL1, EL2 and EL3 and any regrant or renewal of those ELs.
- (c) This clause sets out an example of the application of clauses 15.2 and 15.3:
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) the *explorer* holds a required environment protection licence under the *Environment Protection Act 1993* in relation to its *authorised exploration activities* on EL1;
  - (iv) the *explorer* fails to renew its environment protection licence by the due date;
  - (v) this failure is a contravention of the *Environment Protection Act 1993*;

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- (vi) this failure is also a breach of clause 7.1 of the *accepted exploration contract*;
- (vii) clause 7.1 is an *essential term* of the *accepted exploration contract*;
- (viii) the *association* becomes aware of the failure to hold an environment protection licence on 3 January 2008;
- (ix) the *indigenous parties* give the *explorer* notice of the breach on 6 January 2008. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2008);
- (x) EL1 expires on 10 March 2008 and is to be renewed or regranted on 11 March 2008;
- (xi) assume the following two scenarios:
  - (A) the *explorer* obtains an environment protection licence on 8 March 2008 and thereby remedies the breach of clause 7.1 of the *accepted exploration contract*; and
  - (B) the *explorer* does not obtain an environment protection licence by 11 March 2008; and
- (xii) the *accepted exploration contract* will apply to:
  - (A) EL1 until 10 March 2008 and also to EL2 and EL3 and to any regrant or renewal of EL1, EL2 or EL3 (in the scenario referred to in 14.4(c)(xi)(A)); and
  - (B) EL1 until 10 March 2008, EL2 and EL3 (and any renewal or regrant of those ELs), but not to any regrant or renewal of EL1 (in the scenario referred to in clause 14.4(c)(xi)(B)).

## 16. Representatives

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### 16.1 Right to Representative(s)

- (a) The *indigenous parties* and the *explorer* may from time to time during the *term* appoint, remove and replace *representative(s)* by notice given to the other.
- (b) The maximum number of *representatives* entitled to be appointed by each of the *indigenous parties* and the *explorer* is 4.

### 16.2 Continuity

Each of the *indigenous parties* and the *explorer* must ensure that:

- (a) its first *representative(s)* are appointed within 20 *business days* of the *commencement date*; and



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- (b) at all times thereafter *representative(s)* remain appointed by it or them.

### 16.3 Functions

The function of the *representatives* is to act as the primary point of contact between the *indigenous parties* and the *explorer* for all purposes in connection with the *accepted exploration contract* including:

- (a) ensuring compliance by the *explorer* and by the *indigenous parties* with their respective obligations under the *accepted exploration contract*;
- (b) establishing and developing a positive relationship and understanding between the *explorer* and the *indigenous parties* in relation to the *accepted exploration contract* and the carrying out of the *authorised exploration activities* pursuant to it;
- (c) for purposes of consultation with the *association* pursuant to clause 5.4(b);
- (d) for purposes of any consultation pursuant to clause 8.3(d);
- (e) for purposes of any matters relating to administration as referred to in clause 9.2;
- (f) for purposes of liaising with the *explorer* in relation to clause 13 (including in respect of matters relating to Aboriginal culture relevant to the employment of any member of the *native title claim group* employed by the *explorer*);
- (g) for purposes of resolving any potential *dispute* before clause 17 is invoked and of resolving any *dispute* pursuant to clause 17.4(a); and
- (h) to be the *representatives* of the *indigenous parties* and of the *explorer* for whose attention any notice is to be addressed, pursuant to the provisions of clause 18.

### 16.4 Cooperation

The *indigenous parties* and the *explorer* must:

- (a) use their best endeavours to ensure that their *representatives* are able to perform their functions pursuant to clause 16.3; and
- (b) co-operate with each other for that purpose.

### 16.5 Survival

The provisions of this clause 16 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

## 17. Dispute Resolution

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### 17.1 Clause applies

All *disputes* or differences between any of the *parties* in connection with the interpretation, effect or any other matter in any way relating to the *accepted exploration contract (dispute)* will be dealt with in accordance with this clause 17 whether the *dispute* is first raised before, during or after the *term*.

### 17.2 Avoidance

The *parties* agree that:

- (a) they will make every effort to ensure that *disputes* do not arise;
- (b) if a *dispute* does arise, they must make every reasonable effort to resolve the *dispute* in accordance with this clause 17 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 17.1 and 17.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

### 17.3 Notification

A party (***notifying party***) will, within 20 *business days* after the *dispute* arises, give a notice to the other *party* or *parties* with which it has the *dispute* (***notified party***) and a copy of that notice to the other *parties* setting out details of the *dispute* and any other matter that may, in the reasonable opinion of the *notifying party*, be relevant to the resolution of the *dispute*.

### 17.4 Initial Meeting

- (a) Within 5 *business days* of the date of the notice the *notifying party* and *notified party (dispute parties)* will use their respective reasonable endeavours to meet and resolve the *dispute* within a further period of 10 *business days*.
- (b) The *dispute parties* will use their reasonable endeavours to ensure that at least their respective *representatives* attend that meeting.

### 17.5 Breach of Essential Term

- (a) If a *dispute* relates to an alleged breach of an *essential term* by the *explorer* (other than an *essential term* in clause 6.1, 6.3 or 6.4(b)) and is not resolved by a meeting held in accordance with clause 17.4, either the *explorer* or the *indigenous parties* may within 10 *business days* of that meeting by notice to the *minister* and the other *party* refer that *dispute* to the *minister* for purposes of the preparation of a *PIRSA report*.
- (b) If a *dispute* is referred to the *minister* pursuant to clause 17.5(a) the *minister* must at its cost ensure that:

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- (i) Primary Industries and Resources South Australia, Minerals, Petroleum and Energy Division, or its successor, prepares a *PIRSA report* in relation to the facts surrounding the alleged breach of the relevant *essential term* by the *explorer*;
  - (ii) the *PIRSA report* is prepared and completed as soon as practicable in the circumstances; and
  - (iii) copies of the *PIRSA report* are provided to each *dispute party* promptly after it has been completed.
- (c) Each of the *dispute parties* must co-operate with the *minister* for purposes of the preparation of a *PIRSA report* in relation to that *dispute*.
- (d) A *PIRSA report* prepared in relation to a *dispute* must be taken into account for purposes of resolving that dispute pursuant to this clause 17.
- (e) Within 10 *business days* of copies of a *PIRSA report* prepared in relation to a *dispute* being provided to the *dispute parties*, the *dispute parties* will use their respective reasonable endeavours to meet and resolve the *dispute* within a further period of 10 *business days*.

## 17.6 Mediation

If a *dispute* is not resolved in accordance with the provisions of clause 17.4 or 17.5(e) (as the case requires):

- (a) any *dispute party* may request the President for the time being of the Law Society of South Australia, or his or her nominee, to appoint a mediator to mediate that *dispute*;
- (b) within 5 *business days* of a mediator being appointed, the mediator will convene an initial meeting of the *dispute parties* in an attempt to resolve that *dispute*; and
- (c) if that *dispute* is not resolved at that initial meeting, the mediator will convene such further meetings of the *dispute parties* during the subsequent 10 *business days* as the mediator reasonably considers necessary for the purpose of resolving that *dispute*.

## 17.7 Expert

If a *dispute* is not resolved in accordance with the provisions of clause 17.6, any *dispute party* may refer the determination of that *dispute* (**determination**) to the *expert*.

## 17.8 Capacity of Expert

The *expert* is an expert and not an arbitrator.

### 17.9 Expert's Determination

The *expert's determination* is final and binding on the *dispute parties*.

### 17.10 Determination costs

- (a) The *expert* may determine that any *dispute party* must pay the whole or a specified portion of the costs and expenses of the other *dispute party* in relation to the *expert's determination*.
- (b) Unless clause 17.10(a) applies, each *dispute party* will bear its own costs and expenses in relation to the *expert's determination*.

### 17.11 Expert's Fees

- (a) The *expert* may determine that any *dispute party* must pay all, or that the *dispute parties* must pay in specified portions, the *expert's* fees and expenses and the cost of the *expert's determination*.
- (b) Unless clause 17.11(a) applies, the *dispute parties* will pay in equal shares the *expert's* fees and expenses and the cost of the *expert's determination*.

### 17.12 Notification of Minister

- (a) Subject to clause 17.12(b), where a *dispute* relates to an alleged breach of an *essential term* by the *explorer*, the *dispute parties* must notify the *minister* within 10 *business days* of the resolution or determination of that *dispute* of the terms and conditions upon which that *dispute* has been resolved or determined.
- (b) Clause 17.12(a) does not apply if clause 10.4 requires notice to be given in relation to the resolution or determination of that *dispute*.

### 17.13 Survival

The provisions of this clause 17 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

## 18. Communications

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### 18.1 Writing required

Subject to the *accepted exploration contract*, any notice, direction, request, consent, approval, demand, report or other communication (**communication**) to be given under the *accepted exploration contract* will be in writing, be signed by the representative(s) of the *party* giving the *communication* as set out in annexure C and be addressed for the attention of the representative(s) of the *party* or *parties* as set out in annexure C.

## 18.2 Manner of giving

A *communication* may be delivered by hand, sent by prepaid post or sent by facsimile transmission to the address of the *party* or *parties* to which it is being given and is deemed to have been received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, 3 *business days* after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a confirmation report.

## 18.3 Change of details

Details specified in annexure C in respect of a *party* may, subject to clause 16.3(h), be changed by the *party* by not less than 5 *business days* notice to the other *parties*.

## 19. GST

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The *parties* agree that, if a goods and services, value-added or a comparable tax (*gst*) applies under the “A New Tax System (Goods and Services Tax) Act 1999” or associated legislation (*gst legislation*) in relation to any taxable supply (within the *gst legislation*) (*taxable supply*) made by a party (*supplier*) to another party (*recipient*) under or pursuant to the *accepted exploration contract* :

- (a) the amount payable by the *recipient* to the *supplier* in respect of the *taxable supply* (*payment*) does not include *gst*;
- (b) the *supplier* may, in addition to the *payment*, recover from the *recipient* (and the *recipient* will pay to the *supplier*) an additional amount on account of the *gst*, such additional amount to be calculated in accordance with the *gst legislation*; and
- (c) the *supplier* will provide to the *recipient* a tax invoice (within the meaning of the *gst legislation*) in respect of the *taxable supply* as required by the *gst legislation*.

## 20. General

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### 20.1 Entire agreement

The *accepted exploration contract* contains the entire agreement between the *parties* with respect to its subject matter and supersedes all prior agreements and understandings between the *parties* in connection with it.

### 20.2 Amendment

No amendment or variation of the *accepted exploration contract*:

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- (a) is valid or binding on a *party* unless made in writing executed by all *parties* to it; or
- (b) may be made if the amendment or variation is inconsistent in any way with the provisions of the *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to it).

### 20.3 Severability

Each word, phrase, sentence, paragraph and clause (a *provision*) of the *accepted exploration contract* is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that *provision* which becomes inoperative and such severance will not affect the other *provisions* of the *accepted exploration contract*.

### 20.4 No announcements

No *party* may make, issue, permit or suffer to be made, or issued, any statement or announcement concerning any of the matters the subject of the *accepted exploration contract* unless such statement or announcement is first approved as to the timing and content by each other *party* or is required by *law*.

### 20.5 Confidential Information

- (a) Without detracting from any obligations which either the *state* or the *explorer* has in relation to confidentiality under the *Aboriginal heritage act*, each of the *state* and the *explorer* must keep confidential each and every *cultural confidence* of which it becomes aware.
- (b) Each of the *indigenous parties* and the *state* must keep confidential all information pertaining to the *authorised exploration tenements* and the *authorised exploration activities* which is disclosed to any of them and which is either designated as confidential by the person who discloses it or is by its nature confidential.

### 20.6 Assignment and transfer

- (a) The *explorer* may assign and transfer any or all of its rights and/or obligations under the *accepted exploration contract* in relation to any or all of the *authorised exploration tenements* to a transferee of the relevant *authorised exploration tenements*, if:
  - (i) any required consent of the *minister* is obtained under the *mining act* to the transfer of the relevant *authorised exploration tenements*; and
  - (ii) the transferee executes in favour of the *parties* to the *accepted exploration contract* a deed of assumption in substantially the form attached to this document as annexure D, under which the transferee assumes the *explorer's* rights and obligations

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under the *accepted exploration contract* in relation to the relevant *authorised exploration tenements*.

- (b) Any assignment and transfer pursuant to clause 20.6(a) releases the *explorer* from its obligations under the *accepted exploration contract* in relation to the relevant *authorised exploration tenements* with effect from the date of that assignment and transfer, but without prejudice to the accrued rights and remedies of the *parties* for any antecedent breach of the *accepted exploration contract*.
- (c) Except as set out in clause 20.6(a):
  - (i) the rights and obligations of each *party* to the *accepted exploration contract* are personal; and
  - (ii) those rights and obligations cannot be *encumbered* or *disposed* of, or otherwise dealt with and no *party* may attempt, or purport, to do so without the prior consent of the other *parties*.

## 20.7 Force Majeure

- (a) If any *party* becomes wholly or partly unable because of *force majeure* to perform any of its obligations under the *accepted exploration contract*, then the *party* affected by the *force majeure* must give the other *parties* notice of the *force majeure* specifying:
  - (i) details of the *force majeure*;
  - (ii) insofar as it is known, the probable scope of the *force majeure*; and
  - (iii) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,and the relevant obligation shall be deemed to be suspended, but:
  - (iv) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of *force majeure*; and
  - (v) the *party* affected by the *force majeure* must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.
- (b) Nothing in clause 20.7(a)(v) requires a *party* to:
  - (i) settle any strike or other labour dispute otherwise than on terms acceptable to it; or
  - (ii) contest the validity or enforceability of any *law*, regulation or order, or determination of any *authority*, by way of legal proceedings.

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**20.8 No waiver**

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a *party* operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the *party* granting that waiver unless made in writing.

**20.9 Minister's Discretion**

Nothing in the *accepted exploration contract* fetters the discretion of any Minister of the Crown in right of the State of South Australia

**20.10 Further assurances**

Each *party* agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of the *accepted exploration contract* and the transactions contemplated by it.

**20.11 No merger**

- (a) The rights and obligations of the *parties* will not merge on the completion of any transaction contemplated by the *accepted exploration contract*.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

**20.12 Costs and stamp duty**

- (a) Unless and to the extent otherwise agreed, each *party* must bear its own costs arising out of the negotiation, preparation and entering into of the *accepted exploration contract*.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with the *accepted exploration contract* and any instrument executed under the *accepted exploration contract* must be borne by the *explorer*.

**20.13 Governing law and jurisdiction**

- (a) The *accepted exploration contract* is governed by the *laws* of South Australia.
- (b) Each *party* submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning the *accepted exploration contract*.



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**20.14 Relationship**

- (a) The relationship between the *parties* is that of independent contractors.
- (b) The *parties* are not partners, joint venturers or, subject to clause 20.14(c), principal and agent.
- (c) The *association* is an agent of the *native title parties*.
- (d) Any *registered native title body corporate* which becomes a *party* to the *accepted exploration contract* pursuant to clause 14.5 holds the rights and interests from time to time comprising the *native title* in the whole or relevant part of the *exploration land* in trust for the *native title holders*.

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## **ANNEXURE A**

### **Heritage Clearance Procedures**

## HERITAGE CLEARANCE PROCEDURES (ANNEXURE A TO EXPLORATION CONTRACT CONDITIONS)

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In these *heritage clearance procedures*:

**Aboriginal record** has the meaning given in the *Aboriginal heritage act*;

**Aboriginal site, object or remains** means any of:

- (a) an “Aboriginal site”, an “Aboriginal object”, or “Aboriginal remains” as defined in the *Aboriginal heritage act*; and
- (b) “Aboriginal remains”, a “significant Aboriginal area” or “significant Aboriginal object” as defined in the Aboriginal and Torres Strait Islander Protection Act No. 79 of 1984 (Cth);

**Aboriginal tradition** has the meaning given in the *Aboriginal heritage act*;

**advanced exploration activity** means:

- (a) grid-based pattern drilling with 100 metres x 100 metres or 200 metres x 50 metres (or equivalent) centres or less;
- (b) diamond drilling of at least five drill holes per square kilometre;
- (c) costeaning or trenching;
- (d) bulk sampling of more than 100 tonnes from a single surface location;
- (e) making new tracks using *declared equipment*; and
- (f) any *exploration activity* using explosives,

and includes any associated *land clearing*;

**clearance approval** means either:

- (a) approval by a *clearance team* pursuant to a *heritage clearance survey* under clause 4 and a report under clause 5.1;
- (b) approval pursuant to a *report* under clause 6.1; or
- (c) deemed approval pursuant to clause 8.3,

for *authorised exploration activities* to be undertaken on *cleared land*;

**clearance budget** means each budget for undertaking a *heritage clearance survey* established pursuant to clause 7;

**clearance survey area** means an area or areas (within the *exploration land*) within which the *explorer* proposes to carry out *authorised exploration activities* either:

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- (a) as identified on the maps and by the particulars provided by the *explorer* in accordance with clause 4.1; or
- (b) as agreed pursuant to clause 4.9;

**clearance team** means the persons referred to in clause 4.4(a) organised from time to time for purposes of carrying out any *heritage clearance survey* in accordance with clause 4;

**cleared land** means the whole or relevant portion(s) of any *clearance survey area* to which the *explorer* is entitled to have access for purposes of carrying out *authorised exploration activities*, with or without conditions, by reason of the relevant *clearance approval*;

**cultural confidence** means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

**custodian** in relation to an *Aboriginal site, object or remains* means an Aboriginal person who, in accordance with *Aboriginal tradition*, has social, economic or spiritual affiliations with, and responsibilities for, that *Aboriginal site, object or remains*;

**early exploration activity** means:

- (a) aerial surveys;
- (b) geological and surveying field work that does not involve *land clearing*;
- (c) sampling by hand methods;
- (d) ground based geophysical surveys that do not involve *land clearing*;
- (e) drilling and associated activities with drilling that do not involve *land clearing* or site excavation;
- (f) using and/or making tracks not using *declared equipment* and not involving *land clearing* or site excavation;
- (g) rehabilitation (not involving *land clearing* or site excavation) consequent upon undertaking any of the activities referred to in paragraphs (a) to (f); and
- (h) anything (not involving *land clearing* or site excavation) necessary or incidental to any of the activities referred to in paragraphs (a) to (g),

but does not include *authorised exploration activities* that are *advanced exploration activities*;

**explorer's representative** means a person or persons appointed by the *explorer* from time to time pursuant to clause 4.8(a);

**heritage clearance survey** means a survey carried out pursuant to these *heritage clearance procedures* by a *clearance team* in relation to a *clearance survey area* for the purposes of:

- (a) protecting any *Aboriginal site, object or remains* within the *clearance survey area* from being damaged, disturbed or interfered with; and

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- (b) enabling access by the *explorer* to *cleared land* to carry out *authorised exploration activities* on that land;

***land clearing*** means:

- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
- (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
  - (ii) the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or
  - (iii) the clearing of noxious or introduced plant species; and
- (b) in the case of trees, cutting down, ringbarking or pushing over trees;

***mapping caretaker*** means the person approved from time to time pursuant to clause 8.1 of the *mapping survey procedures*, being the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation of the *state*, or its successor or such other person nominated by the *state* by notice given pursuant to that clause to the other *parties* after consultation with them;

***report*** means each written report which is prepared and, if applicable, signed pursuant to clause 5 or 6;

***specialist*** means an anthropologist or archaeologist or both, as appropriate:

- (a) appointed pursuant to clause 4.4(a)(i) for purposes of carrying out any *heritage clearance survey*; or
- (b) consulted pursuant to clause 6 for purposes of that clause.

***WCI base*** means the *WCI index* prevailing at [insert date];

***WCI current*** means the *WCI index* prevailing at the time when any daily rates are required to be calculated under clause 7.3(b);

***WCI index*** means the wage cost index (ordinary time hourly rates of pay excluding bonuses for South Australia) published by the Australian Bureau of Statistics or its successors; and

other terms in italics which are defined or used in the *native title act* or the *mining act* or the *exploration contract conditions* (to which these *heritage clearance procedures* are annexed) bear their defined meanings when used in these *heritage clearance procedures*.

## 2. Purpose and Application

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- 2.1 These *heritage clearance procedures* set out the procedures which are required to be followed by the *explorer* in relation to the preservation and protection of any *Aboriginal site, object or remains* in respect of the carrying out by the *explorer* of *authorised exploration activities* on *exploration land*.

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- 2.2** Clauses 4 to 12 of these *heritage clearance procedures* only apply if the provisions of clause 5.1(d) of the *exploration contract conditions* apply.
- 2.3** Clause 3 of these *heritage clearance procedures* only applies where:
- (a) clause 5.1(a) of the *exploration contract conditions* does not apply;
  - (b) the *exploration activities* proposed to be carried out by the *explorer* are *early exploration activities*; and
  - (c) clause 5.1(b)(ii) of the *exploration contract conditions* does not apply to the *early exploration activities* proposed to be carried out by the *explorer*.
- 2.4** Clause 3 is intended to enable the *explorer* to carry out *early exploration activities* without the need to undertake a *heritage clearance survey*.

### **3. Early Exploration Process**

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#### **3.1 Notice**

If the *explorer* wishes to carry out *early exploration activities* in reliance on the provisions of this clause 3 the *explorer* must give not less than 30 *business days* notice to the *association* of its intention to carry out those *early exploration activities* and simultaneously provide the *association* with:

- (a) two copies of:
  - (i) a 1:50,000 scale map; or
  - (ii) another appropriate and generally available map,  
detailing on the map:
    - (iii) each area within the *exploration land* upon which those *early exploration activities* are to be carried out; and
    - (iv) the proposed access routes for personnel and equipment to and from each such area;
- (b) details of those *early exploration activities*;
- (c) details of the equipment and vehicles anticipated to be used in carrying out those *early exploration activities*;
- (d) the estimated period during which those *early exploration activities* are to be carried out; and
- (e) the number of personnel (and their roles) estimated to be involved in carrying out those *early exploration activities*.

#### **3.2 Response to notice**

Within 25 *business days* of receipt of the *explorer's* notice given under clause 3.1, the *association* may give the *explorer* notice of any matter relating to:

- (a) the protection and preservation of:
  - (i) any *Aboriginal site, object or remains*; and/or

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- (ii) any *native title* rights and interests of the *native title parties*, and/or
- (b) compliance by the *explorer* with its obligations under the *Aboriginal heritage act*,

which the *association* wishes to bring to the attention of the *explorer* in relation to the carrying out of the relevant *early exploration activities*.

### 3.3 Request for Meeting or Attendees

- (a) After receipt of the *association's* notice given pursuant to clause 3.2(a) the *explorer* may give the *association* a notice requesting:
  - (i) a meeting with representatives of the *native title claim group*; and/or
  - (ii) that a representative or representatives of the *native title claim group* attend prior to or during the undertaking of all or some of the notified *early exploration activities*,with a view to dealing with any matter notified by the *association* in its notice.
- (b) The *explorer* and the relevant representatives of the *native title claim group* must use their best endeavours to meet within 10 *business days* of the *explorer* giving notice pursuant to clause 3.3(a).
- (c) The *association* must ensure that any person(s) referred to in clause 3.3(a)(ii):
  - (i) have knowledge of the relevant *land* and/or *waters* on which the *early exploration activities* are to be carried out; and
  - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *land* and/or *waters*.
- (d) The provisions of clause 7.3(a), (b), (c), (e) and (f) will apply to payment of any representative who attends prior to or during the undertaking of all or some of the notified *early exploration activities* as if each reference in those clauses to:
  - (i) *clearance team* were a reference to that representative or those representatives; and
  - (ii) *specialist* were deleted.
- (e) The amount payable by the *explorer* to each representative pursuant to clause 3.3(d) must be paid within 10 *business days* of that representative attending prior to or during the undertaking of all or some of the notified *early exploration activities*.

### 3.4 Compliance with Aboriginal heritage act

The *explorer* must take account of any matter brought to its attention:

- (a) by the *association* by notice given pursuant to clause 3.2; and/or

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(b) by the representatives of the *native claim group* pursuant to clause 3.3, and must comply with its obligations under the *Aboriginal heritage act* in carrying out the relevant *early exploration activities*.

### 3.5 No acknowledgments

- (a) The *explorer* does not acknowledge that any or all *early exploration activities* carried out by it on the whole or any part of the *exploration land* pursuant to this clause 3 affect any *native title* in relation to the *land* and/or *waters* within the *exploration land* or the relevant part of it.
- (b) The *indigenous parties* do not acknowledge that any *early exploration activities* carried out by the *explorer* on the whole or any part of the *exploration land* pursuant to this clause 3 do not affect any *native title* in relation to the *land* and/or *waters* within the *exploration land* or the relevant part of it.

## 4. Heritage Clearance Survey Process

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### 4.1 Notification

If the *explorer* wishes a *heritage clearance survey* to be carried out in relation to *authorised exploration activities* proposed by it, the *explorer* must notify the *association* not less than 30 *business days* before the *explorer* proposes to commence to carry out the relevant *authorised exploration activities* and simultaneously provide them with the following:

- (a) the date by which the *explorer* wishes the *heritage clearance survey* to be commenced, being not less than 20 *business days* from the date of the notice;
- (b) 2 copies of:
- (i) a 1:50,000 scale map; and
  - (ii) a 1:10,000 scale map, if necessary for clearly indicating for the purposes of clause 4.1(b)(vi) any area within a *clearance survey area* where any *advanced exploration activity* is to be carried out; or
  - (iii) in either case, another appropriate and generally available map,  
detailing on the relevant map:
    - (iv) each *clearance survey area* or location in respect of which the *heritage clearance survey* is to be undertaken;
    - (v) the proposed access routes for personnel and equipment to and from each *clearance survey area*; and
    - (vi) if known at the time at which the notice is given, each area or location within a *clearance survey area* where any *advanced exploration activity* is to be carried out;



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- (c) details of the *authorised exploration activities* proposed to be carried out:
  - (i) in each *clearance survey area* or location (within a *clearance survey area*); and
  - (ii) if known at the time that the notice is given, in each area or location (within a *clearance survey area*) where any *advanced exploration activity* is to be carried out;
- (d) the estimated period during which the *authorised exploration activities* are to be carried out in each *clearance survey area*; and
- (e) the number of personnel (and their roles) estimated to be involved in carrying out the *authorised exploration activities* in each *clearance survey area*;

#### 4.2 Response

Within 10 *business days* of receipt of the *explorer's* notice that it wishes a *heritage clearance survey* to be carried out, the *association* must notify the *explorer*.

- (a) that any *clearance survey area* is deemed to have been surveyed in relation to the *authorised exploration activities* without undertaking any further *heritage clearance survey*, if the *explorer's* notice relates to a *clearance survey area* in respect of which *clearance approval* as *cleared land* has previously been given:
  - (i) in relation to *exploration activities* substantially similar to those specified in that notice; and
  - (ii) pursuant to this *accepted exploration contract* or any other accepted exploration contract (as defined in the *framework ILUA*) or pursuant to any agreement with the *native title parties* entered into pursuant to the *right to negotiate procedure*; or
- (b) that either:
  - (i) any *clearance survey area* is deemed to have been surveyed in relation to the *authorised exploration activities* without any further *heritage clearance survey*; or
  - (ii) a *heritage clearance survey* is required to be undertaken in relation to the *authorised exploration activities*,if the *explorer's* notice relates to a *clearance survey area* in respect of which access has previously been granted for purposes of carrying out *exploration activities* under any *exploration tenement* pursuant to a *heritage clearance survey* undertaken otherwise than under this *accepted exploration contract* or any other accepted exploration contract (as defined in the *framework ILUA*) or otherwise than under an agreement with the *native title parties* entered into pursuant to the *right to negotiate procedure*; or
- (c) if neither clause 4.2(a) nor 4.2(b) applies, that a *heritage clearance survey* is required to be undertaken in relation to the *authorised exploration activities*; and

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- (d) if either of clause 4.2(b)(ii) or (c) applies, of the following:
- (i) the date(s) (not later than the date specified in the *explorer's* notice) on which the *association* proposes that the *heritage clearance survey* commence;
  - (ii) the date(s) upon which the *association* proposes to consult with the *custodians* of *Aboriginal sites, objects or remains* in any relevant *clearance survey area* regarding the *explorer's* notice, if the *association* considers it necessary that the *explorer's representative* (or his nominee) attend any such consultations; and
  - (iii) any further details reasonably required by the *association* to facilitate informed assessment of the potential impact on any *Aboriginal site, object or remains* of the *authorised exploration activities* proposed to be undertaken by the *explorer* within any *clearance survey area*.

#### 4.3 Disagreement

- (a) If any date(s) proposed by the *association* under clause 4.2(d) are not acceptable to the *explorer* on reasonable grounds, the *association* and the *explorer* will use their best endeavours to agree upon a date or dates acceptable to them both.
- (b) If the *association* and the *explorer* are unable to agree pursuant to clause 4.3(a) within 10 *business days* of endeavouring to do so, the provisions of clauses 17.6 to 17.13 of the *exploration contract conditions* will apply to the resolution of the dispute.

#### 4.4 Clearance Team Members

- (a) Each *clearance team* must comprise:
  - (i) up to 2 qualified specialists of appropriate qualifications and gender necessary for undertaking the relevant *heritage clearance survey*, to be engaged by the *association* with the approval of the *explorer* whose approval must not be unreasonably withheld; and
  - (ii) the number of Aboriginal persons required to ensure the integrity of the relevant *heritage clearance survey* up to a maximum of 4 persons (other than in exceptional circumstances), consisting of such numbers of men and women as are considered by the *association* to be appropriate in accordance with *Aboriginal tradition*.
- (b) The *association* must ensure that the Aboriginal persons referred to in clause 4.4(a)(ii):
  - (i) have knowledge of the relevant *clearance survey area*; and
  - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *clearance survey area*.

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- (c) The *explorer* is only liable for the costs and expenses of the persons comprised in a *clearance team* as set out in clause 7.3 and if at any time more persons than permitted under the clause 4.4(a) are comprised in a *clearance team*, the *explorer* is not liable for any costs or expenses of those persons, unless otherwise agreed in writing between the *explorer* and the *association*.

#### 4.5 Clearance Team functions

The functions of each *clearance team* are to assess the relevant *clearance survey area* for the purpose of:

- (a) determining whether the *authorised exploration activities* notified by the *explorer* pursuant to clause 4.1 would damage, disturb or interfere with any *Aboriginal site, object or remains*; and
- (b) nominating the conditions, if any, which are necessary and which should accordingly apply in order to protect each *Aboriginal site, object or remains*.

#### 4.6 Discharge of functions

Each *clearance team* will discharge its functions by:

- (a) conducting an inspection and assessment of the relevant *clearance survey area* in order to determine whether *clearance approval* will be given or withheld in relation to it;
- (b) having commenced the *heritage clearance survey*, undertaking and completing the *heritage clearance survey* as expeditiously as possible in all the circumstances;
- (c) in conjunction with the *specialist(s)*, providing a *report* detailing which parts of that *clearance survey area* are given, and which parts are not given, *clearance approval*;
- (d) in conjunction with the *specialist(s)*, identifying in the *report* any conditions, necessary in order to preserve and protect any *Aboriginal site, object or remains*, upon which *clearance approval* is given; and
- (e) promptly providing the *report* to the *association*.

#### 4.7 Budget

Each *heritage clearance survey* must be undertaken in accordance with the *clearance budget* for that survey.

#### 4.8 Explorer Representative

- (a) The *explorer* may by notice to the *association* from time to time appoint, remove and replace a representative or representatives for purposes of any specific *heritage clearance survey* or *heritage clearance surveys* generally.
- (b) An *explorer's* representative must be available at each *clearance survey area* for consultation by the *clearance team* at reasonable times during a *clearance survey* in respect of which he or she has been appointed, but

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may not otherwise be present whilst the *clearance survey* is being undertaken, except when requested by the *clearance team*.

- (c) Each *explorer's* representative is authorised by the *explorer* to act on its behalf in all matters relative to any *heritage clearance survey* in respect of which that *explorer's* representative has been appointed.

#### 4.9 Alternative Area

- (a) During the undertaking of any *heritage clearance survey* the *clearance team* and the *explorer's* representative may agree upon any alternative area or location within or at which the *explorer* may carry out *authorised exploration activities*, if the *clearance team* does not intend to give *clearance approval* as *cleared land* to the whole or a part of an area or location notified under clause 4.1(b).
- (b) An alternative area or location agreed upon pursuant to clause 4.9(a) may be within or outside an area or location notified under clause 4.1(b).

## 5. Clearance Team Report and Clearance

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### 5.1 Report

- (a) Within 10 *business days* of completion of any *heritage clearance survey*, the *association* must provide to:
  - (i) the *explorer* a written *report* in relation to that *heritage clearance survey*; and
  - (ii) the *state*, care of the *mapping caretaker*, a copy of that *report* for the purpose specified in clause 12(b).
- (b) The *report* must:
  - (i) identify those parts of the relevant *clearance survey area* which are:
    - (A) given *clearance approval* as *cleared land*; and
    - (B) not given *clearance approval*;
  - (ii) specify any conditions, necessary to preserve and protect any *Aboriginal site, object or remains*, attaching to the carrying out of any *authorised exploration activities* on any *cleared land*; and
  - (iii) be signed by the *specialist* or both *specialists* (if any).
- (c) The copyright in any *report* vests in the *indigenous parties*.

### 5.2 Non disclosure

- (a) Nothing in these *heritage clearance procedures* requires the *association*, *native title parties* or any member of any *clearance team* to disclose to the *explorer*, the *explorer's* representative or the *state*.

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- (i) the location of any *Aboriginal site, object or remains*, if they consider that location to be a matter of *cultural confidence*, but they must disclose sufficient information in accordance with clauses 5.1(b)(i) and (ii) and 6.1(b)(i) and (ii) to enable the *explorer*, its employees, contractors and subcontractors to carry out *authorised exploration activities*, within those parts of the relevant *clearance survey area* in respect of which *clearance approval* is given, without damaging, disturbing or interfering with the relevant *Aboriginal site, object or remains*; or
  - (ii) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *clearance survey area*.
- (b) The *indigenous parties* must not disclose to any person any information provided by the *explorer* to any of the *indigenous parties* in connection with any *heritage clearance survey* which is designated by the *explorer* as confidential information.

## 6. Deemed Survey

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### 6.1 Report

- (a) Where clause 4.2(a) or 4.2(b)(i) applies, the *association* must within 20 *business days* of notifying the *explorer* pursuant to that clause provide to:
- (i) the *explorer* a written *report* in relation to the relevant *clearance survey area*; and
  - (ii) the *state*, care of the *mapping caretaker*, a copy of that *report* for the purpose specified in clause 12(b).
- (b) The *report* must:
- (i) identify those parts of the relevant *clearance survey area* which are:
    - (A) given *clearance approval* as *cleared land*; and
    - (B) not given *clearance approval*;
  - (ii) specify any conditions, necessary to preserve and protect any *Aboriginal site, object or remains*, attaching to the carrying out of any *authorised exploration activities* on any *cleared land*; and
  - (iii) be signed by the *specialist* (if any).
- (c) The copyright in any *report* vests in the *indigenous parties*.

### 6.2 Consultation with Specialist

- (a) Subject to clause 6.2(b), the *association* may consult a *specialist* for the purposes of:
- (i) determining whether clause 4.2(a) or 4.2(b)(i) applies; and/or

- (ii) the preparation of a *report* pursuant to clause 6.1.
- (b) Prior to consulting a *specialist* pursuant to clause 6.2(a) the *association* must:
  - (i) notify the *explorer* of the *specialist's* costs; and
  - (ii) obtain the *explorer's* approval to incur such costs.

## 7. Budgets and Payments

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### 7.1 Agreed budgets

- (a) The *association* and the *explorer* must use their respective best endeavours to agree upon a budget for the undertaking of any *heritage clearance survey* within 10 *business days* of the *explorer* notifying the *association* that it wishes that *heritage clearance survey* to be undertaken.
- (b) A budget must reflect:
  - (i) all costs and expenses of undertaking the relevant *heritage clearance survey* for which the *explorer* is liable;
  - (ii) the period within which that *heritage clearance survey* will be undertaken and completed; and
  - (iii) the place of commencement and conclusion of that *heritage clearance survey* being [insert place] or such other place agreed in the *clearance budget* between the *association* and the *explorer*.

### 7.2 Determined budget

If the *association* and the *explorer* are unable to agree upon a budget within the period referred to in clause 7.1, the provisions of clauses 17.6 to 17.13 of the *accepted exploration contract* will apply to the determination of that budget.

### 7.3 Contents

Any budget agreed or determined pursuant to clauses 7.1 or 7.2 must:

- (a) be substantially in the form set out in Appendix A;
- (b) reflect daily rates (which must be pro-rated for any part day) for the *clearance team* (other than any *specialist*) for undertaking the *heritage clearance survey*, calculated and determined in accordance with the following formula:

$$A = B \times \frac{C \times D}{E}$$

Where:

- A = the daily rates payable for the *clearance team* (other than any *specialist*);
- B = \$300 per day;

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C = 4 or the number of *clearance team* members (other than any *specialist*), if that number is less than 4;

D = the *WCI current*; and

E = the *WCI base*;

- (c) reflect daily rates (which must be pro-rated for any part day) for the *clearance team* (other than any *specialist*) during the period of travelling (when in excess of 50 kilometres each way) from their normal places of residence to the place of commencement and conclusion of the *heritage clearance survey* and return, calculated and determined in accordance with the following formula (but subject to the maximum number of 2 days payable for travel) :

$$A = B \times \frac{C \times D}{E}$$

Where:

A = the daily travel rates payable for the *clearance team* (other than any *specialist*);

B = \$150 per day;

C = 4 or the number of *clearance team* members (other than any *specialist*), if that number is less than 4;

D = the *WCI current*; and

E = the *WCI base*;

- (d) reflect rates for each *specialist* for:
- (i) undertaking the *heritage clearance survey* from the place of commencement and conclusion of the *heritage clearance survey* ;
  - (ii) for travel from their normal places of residence to the place of commencement and conclusion of the *heritage clearance survey* and return; and
  - (iii) preparation of the *report* and associated research,  
as agreed between that *specialist* and the *explorer*;
- (e) reflect that any reasonable costs of road travel for attending at any *heritage clearance survey* of any *specialist* and/or up to 4 other *clearance team* members who are entitled to payment for travel pursuant to clauses 7.3(c) and/or 7.3(d)(ii), are at the rate per kilometre specified in Appendix A;
- (f) reflect that any reasonable costs of air travel for attending any *heritage clearance survey* of any *specialist* and/or other *clearance team* member who is entitled to payment for travel pursuant to clauses 7.3(c) and/or 7.3(d)(ii), are at economy class airfares;
- (g) reflect the reasonable costs of accommodation, food and vehicle hire of and for any *specialist* and up to 4 other *clearance team* members; and

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- (h) reflect that any additional reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the *clearance budget*.

#### 7.4 Amended budget

The *explorer* and the *association* may at any time agree to amend any *clearance budget* agreed upon or determined pursuant to clause 7.1 or 7.2.

#### 7.5 Excess costs

The *explorer* is not responsible for any costs or expenses of carrying out any *heritage clearance survey* to the extent that they exceed, or are not provided for, in the *clearance budget* for that *heritage clearance survey*, if applicable, as amended pursuant to clause 7.4.

#### 7.6 Payment

- (a) The *explorer* must pay the *nominated body* the costs and expenses of carrying out any *heritage clearance survey* (up to a maximum of the amount stated in the relevant *clearance budget*) as follows:
  - (i) 25% not less than 5 *business days* prior to the mobilisation of the *clearance team* to undertake that *heritage clearance survey*;
  - (ii) 50% upon completion of that *heritage clearance survey*; and
  - (iii) 25% or the balance thereof within 5 *business days* of receipt of the *report* and an invoice of all costs and expenditure incurred in carrying out that *heritage clearance survey*.
- (b) The *explorer* must pay the *nominated body* the *specialist's* costs notified and incurred pursuant to clause 6.2 within 10 *business days* of receipt of an invoice of those costs.

#### 7.7 Evidence

- (a) Any invoice provided to the *explorer* pursuant to clause 7.6(a)(iii) or 7.6(b) must be accompanied by evidence, reasonably satisfactory to the *explorer*, of the incurral of the relevant costs and expenses.
- (b) That evidence must include evidence that any costs and expenses claimed on a per kilometre basis are in respect of kilometres properly travelled and recorded in the log book kept pursuant to clause 11.3.

#### 7.8 Nominated Body

- (a) The *nominated body* is the agent of each of the *indigenous parties* and the *association* in relation to all amounts paid to the *nominated body* pursuant to this clause 7.
- (b) Any payment to the *nominated body* is a good and sufficient discharge of that payment as regards each of the *indigenous parties*.



## 7.9 WCI Index

- (a) If the WCI Index ceases to be published or the basis upon which the WCI Index is calculated is changed to such a material extent that it is no longer appropriate to be used, the *indigenous parties* and the *explorer* must meet to endeavour to agree upon another appropriate index or indices with the intention that neither will be disadvantaged or benefit by the substitution.
- (b) If the *indigenous parties* and the *explorer* are unable to agree under clause 7.9(a), then either may request the President for the time being of the Institute of Actuaries of Australia or that person's nominee to provide (on the basis that neither party will be disadvantaged or benefit thereby) alternative figures or indices which will be equivalent to the WCI Index and such figures or indices will then for the purposes of these *heritage clearance procedures* be deemed to be the WCI Index and be binding on the *indigenous parties* and the *explorer*.

## 8. Failure by Association

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### 8.1 Notice by Explorer

If within 5 *business days* of the date by which:

- (a) the *association* is required to notify the *explorer* pursuant to clause 4.2, the *association* fails to give the *explorer* that notice;
- (b) any *heritage clearance survey* is required to be commenced, that *heritage clearance survey* has not been commenced;
- (c) the *clearance budget* reflects any *heritage clearance survey* is to be completed, that *heritage clearance survey* has not been completed; or
- (d) the *association* is required to provide a *report* to the *explorer* pursuant to clause 5.1 or 6.1, the *explorer* has not received that report,

the *explorer* may give notice to the *association*:

- (e) requiring that:
  - (i) notice be given to the *explorer* pursuant to clause 4.2;
  - (ii) the relevant *heritage clearance survey* be commenced;
  - (iii) the relevant *heritage clearance survey* be completed; or
  - (iv) a *report* be provided to the *explorer* pursuant to clause 5.1 or 6.1,

within 10 *business days* of the *explorer* giving that notice to the *association*; and

- (f) stating that, if the *association* does not comply with that notice within that period, the *explorer* intends to proceed with the *authorised exploration activities* within each *clearance survey area*, as specified in that

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notice (being *authorised exploration activities* and *clearance survey areas* specified in the *explorer's* relevant notice pursuant to clause 4.1).

## 8.2 Explorer's Rights

If:

- (a) the *explorer* has given a notice pursuant to clause 8.1; and
- (b) the *association* fails to comply with that notice within the period of 10 *business days* specified in that clause,

the *explorer* may carry out the *authorised exploration activities* within each *clearance survey area*, as specified in that notice.

## 8.3 Consequences

If clause 8.2 applies, the *indigenous parties* are deemed to have:

- (a) given *clearance approval* as *cleared land* for each *clearance survey area*; and
- (b) authorised the carrying out by the *explorer* of the *authorised exploration activities*,

as specified in the *explorer's* notice pursuant to clause 8.1.

## 9. Status

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### 9.1 Relationship

Nothing in the *exploration contract conditions* or these *heritage clearance procedures* creates the relationship of:

- (a) employer and employee, partners or joint venturers between either of the *indigenous parties* and any member of the *clearance team* or any *specialist*; or
- (b) employer and employee, principal and agent, partners or joint venturers between any of those persons and the *explorer*.

### 9.2 Agent

Each member of a *clearance team* is an agent of the *indigenous parties* authorised by them to carry out the functions set out in these *heritage clearance procedures*.

## 10. Compliance with Laws

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The *indigenous parties* must ensure that all applicable *laws* are complied with in relation to:

- (a) the performance by them of their obligations under these *heritage clearance procedures*; and
- (b) the employment, retention or engagement of any person for the purposes of performing their obligations under these *heritage clearance procedures*, including under the Workers Rehabilitation &

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Compensation Act 1986 (SA), the Occupational Health Safety & Welfare Act 1986 (SA), the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

## 11. Vehicles

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### 11.1 Provision

The *explorer* must provide sufficient and appropriate all terrain 4 wheel drive vehicles for use by a *clearance team* for the purposes of undertaking any *heritage clearance survey*.

### 11.2 Insurance and Spare Parts

The *explorer* must ensure that all vehicles provided pursuant to clause 11.1 for purpose of undertaking any *heritage clearance survey* are:

- (a) registered and comprehensively insured; and
- (b) equipped with sufficient spare parts for the duration of the relevant *heritage clearance survey*.

### 11.3 Log Book

The *association* must cause a log book to be kept and will ensure that the following information is recorded in the log book in relation to each vehicle (other than a vehicle provided pursuant to clause 11.1) used in relation to any *heritage clearance survey*:

- (a) date;
- (b) place of departure;
- (c) destination;
- (d) reason for the journey;
- (e) name of driver; and
- (f) number of kilometres travelled.

### 11.4 Inspection

The *association* must make any log book maintained pursuant to clause 11.3 available to the *explorer* for examination upon request.

## 12. Provision of Reports

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- (a) The *indigenous parties* consent to the *state* providing, and the *state* must provide, copies of any *report* to an independent statutory authority established for the purpose of the protection and preservation of Aboriginal heritage pursuant to the *Aboriginal heritage act*.

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- (b) The *state* must use all copies of any *report* provided to it pursuant to clause 5.1(a)(ii) or 6.1(a)(ii) solely in the management and administration of the *Aboriginal heritage act*.

**APPENDIX A**

[Native Title Claim Group] Heritage Clearance Procedures  
 (Annexure A to Exploration Contract Conditions)  
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<b>CLEARANCE BUDGET</b>							
Native Title Claim Group:				Date:			
Explorer:							
Heritage clearance survey for authorised exploration activities: EL No's							
Period for undertaking and completing <i>heritage clearance survey</i> :							
Place for commencement and conclusion of <i>heritage clearance survey</i> :							
Item	Description	Remarks	Units	Quantity	Unit Rate \$	Survey Costs	NOTES
	<b><i>Personnel</i></b>						
	<i>Survey</i>						
	Specialist #1 <sup>i</sup>		Days				
	Specialist #2 <sup>i</sup>		Days				
	Other Clearance Team Members <sup>ii</sup>		Days		\$1,200 <sup>iii</sup>		
	<i>Travel</i>						
	Specialist #1 <sup>i</sup>		days				
	Specialist #2 <sup>i</sup>		days				
	Other Clearance Team Members <sup>iv</sup>		days		\$600 <sup>iii</sup>		
1	<b>TOTAL PERSONNEL</b>						
	<b><i>Vehicle &amp; Travel Costs</i></b>						
	Air Travel Costs <sup>i</sup>	Economy					
	Private Vehicle Costs – 2WD allowance		km		52c/km		
	Specialist #1 <sup>i</sup>						
	Specialist #2 <sup>i</sup>						
	Other Clearance <sup>iv</sup> Team Members						

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	Private Vehicle Costs- 4WD allowance Specialist #1 <sup>i</sup> Specialist #2 <sup>i</sup> Other Clearance <sup>iv</sup> Team Members		km		55c/km		
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Item	Description	Remarks	Units	Quantity	Unit Rate \$	Survey Costs	NOTES
2	<b>TOTAL VEHICLE &amp; TRAVEL</b>						
	<i>Accommodation &amp; Food</i>						
	<i>Food</i> Specialist #1 <sup>i</sup> Specialist #2 <sup>i</sup> Other Clearance Team Members <sup>v</sup>		days				
	<i>Accommodation</i> Specialist #1 <sup>i</sup> Specialist #2 <sup>i</sup> Other Clearance Team Members <sup>v</sup>						
	Accommodation		nights				
3	<b>TOTAL ACCOMMODATION &amp; FOOD</b>						
4	<b>SUB-TOTAL</b>						
5	<b>Administrative Expenses</b>						
6	<b>GST</b>						
7	<b>GRAND TOTAL</b>						

<sup>i</sup> Delete if not applicable

<sup>ii</sup> Up to a maximum of 4 clearance team members in accordance with clauses 4.4(c) and 7.3(b)

<sup>iii</sup> Escalating annually in accordance with WCI

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- iv Up to a maximum of 4 team members for the period of travelling (when in excess of 50 km each way) from their normal place of residence to the place of commencement and conclusion of the *heritage clearance survey* and return, up to a maximum of 2 days, in accordance with clauses 4.4(c) and 7.3(c)
- v Up to a maximum of 4 clearance team members in accordance with clause 7.3(g)



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**ANNEXURE B**

**Mapping Access Procedures**

## MAPPING ACCESS PROCEDURES

### (ANNEXURE B TO EXPLORATION CONTRACT CONDITIONS)

## 1. Definitions and Interpretation

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### 1.1 Definitions

In these *mapping access procedures*, unless the context otherwise requires:

***advanced exploration activity*** means:

- (a) grid-based pattern drilling with 100 metres x 100 metres or 200 metres x 50 metres (or equivalent) centres or less;
  - (b) diamond drilling of at least five drill holes per square kilometre;
  - (c) costeaning or trenching;
  - (d) bulk sampling of more than 100 tonnes from a single surface location;
  - (e) making new tracks using *declared equipment*; and
  - (f) any *exploration activity* using explosives,
- and includes any associated *land clearing*;

***early exploration activity*** means:

- (a) aerial surveys;
- (b) geological and surveying field work that does not involve *land clearing*;
- (c) sampling by hand methods;
- (d) ground based geophysical surveys that do not involve *land clearing*;
- (e) drilling and associated activities with drilling that do not involve *land clearing* or site excavation;
- (f) using and/or making tracks not using *declared equipment* and not involving *land clearing* or site excavation;
- (g) rehabilitation (not involving *land clearing* or site excavation) consequent upon undertaking any of the activities referred to in paragraphs (a) to (f); and
- (h) anything (not involving *land clearing* or site excavation) necessary or incidental to any of the activities referred to in paragraphs (a) to (g),

but does not include *authorised exploration activities* that are *advanced exploration activities*;

***exploration mapping report*** means one or more written reports which are prepared pursuant to clause 5.4(a) of the *mapping survey procedures*;

***land clearing*** means:

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- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
  - (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
  - (ii) the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or
  - (iii) the clearing of noxious or introduced plant species; and
- (b) in the case of trees, cutting down, ringbarking or pushing over trees;

***mapping access application*** means an application made pursuant to clause 3.1 by an *explorer* to the *mapping caretaker* for a *mapping authorisation*;

***mapping authorisation*** means an authorisation issued pursuant to clause 3.2 by the *mapping caretaker* to an *explorer* authorising the *explorer* to carry on *authorised exploration activities* subject to any conditions specified in the authorisation;

***mapping caretaker*** means the person from time to time appointed pursuant to clause 8.1 of the *mapping survey procedures*; and

other terms in italics defined or used in the *native title act* or the *mining act* or the *exploration contract conditions* (to which these *mapping access procedures* are annexed) bear their defined meanings when used in these *mapping access procedures*.

## 2. Purpose and Application

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- (a) These *mapping access procedures* set out the procedures which are required to be followed by the *explorer* in order to obtain a *mapping authorisation* from the *mapping caretaker*.
- (b) These *mapping access procedures* only apply if the provisions of clauses 5.1(b)(i), (ii) and (iii) of the *exploration contract conditions* apply.

## 3. Access Process

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### 3.1 Application

If the *explorer* wishes to carry out *authorised exploration activities* on *exploration land* in respect of which the *mapping caretaker* holds a copy of an *exploration mapping report*, the *explorer* may submit a *mapping access application* to the *mapping caretaker* and simultaneously provide the *mapping caretaker* with the following:

- (a) two copies of:
  - (i) a 1:50,000 scale map; and

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- (ii) a 1:10,000 scale map, if necessary for clearly indicating, for purposes of clause 3.1(a)(vi), any land upon which any *advanced exploration activity* is to be carried out; or
- (iii) in either case, another appropriate and generally available map,  
detailing on the relevant map:
  - (iv) the land (within the *exploration land*) upon which those *authorised exploration activities* are to be undertaken;
  - (v) the proposed access routes for personnel and equipment to and from that land; and
  - (vi) if known at the time the *mapping access application* is submitted, each area or location within that land where any *advanced exploration activity* is to be undertaken; and
- (b) details of the *authorised exploration activities* proposed to be carried out:
  - (i) on that land; and
  - (ii) if known at the time the *mapping access application* is submitted, in each area or location where any *advanced exploration activity* is to be undertaken.
- (c) the estimated period during which the *authorised exploration activities* are to be carried out on that land;
- (d) the number of personnel (and their roles) estimated to be involved in carrying out the *authorised exploration activities* on that land, and
- (e) payment of a *mapping access application fee*:
  - (i) not exceeding \$150, in the case where the *mapping access application* relates only to *early exploration activities*; or
  - (ii) in the amount of \$2,500 or such other reasonable amount required by the *state* from time to time, in the case where the *mapping access application* extends to *authorised exploration activities* other than *early exploration activities*.

### 3.2 Provision of Application to Association

Within 5 *business days* of receipt of a *mapping access application*, the *state* must ensure that the *mapping caretaker* provides a copy of the *mapping access application* to the *association*.

### 3.3 Response

- (a) Within 20 *business days* of receipt of a *mapping access application* the *state* must ensure that the *mapping caretaker*:
  - (i) assesses the *mapping access application* and the *authorised exploration activities* to which it relates by reference to the relevant *exploration mapping report* and the *exploration activities* to which it extends;

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- (ii) on the basis of that assessment, determines whether to issue or refuse to issue a *mapping authorisation* in relation to those *authorised exploration activities*;
  - (iii) on the basis of that assessment, if the *mapping caretaker* determines to issue a *mapping authorisation*, also determines whether the *mapping authorisation* should be subject to any conditions which are necessary in order to preserve and protect any *Aboriginal site, object or remains*; and
  - (iv) notifies the *explorer* of its decision either by issuing a *mapping authorisation* to the *explorer* or advising the *explorer* of the refusal to issue a *mapping authorisation*.
- (b) The *mapping caretaker* may consult the *association* in the course of performing its functions under clause 3.3(a).
- (c) Subject to clause 3.4 and to clause 9.2 of the *mapping survey procedures*, the *state* must ensure that any *mapping authorisation* issued by the *mapping caretaker*:
  - (i) describes the part or parts of the *exploration land* upon which:
    - (A) *authorised exploration activities* (the subject of the *mapping access application*) may be carried out; or
    - (B) those *authorised exploration activities* may not be carried out,with sufficient particularity to enable that part or those parts to be identified;
  - (ii) identifies the *authorised exploration activities* to which the *mapping authorisation* applies; and
  - (iii) sets out the conditions, if any, necessary to protect and preserve any *Aboriginal site, object or remains* on, or in the vicinity of, the *exploration land* upon which *authorised exploration activities* (the subject of the *mapping access application*) may be carried out.

### 3.4 Mapping Caretaker Confidentiality

Without detracting from any obligation of the *state* in relation to confidentiality under the *Aboriginal heritage act*, the *state* must ensure that the *mapping caretaker* keeps confidential and does not disclose to any person:

- (a) the location of any *Aboriginal site, object or remains*, if the *mapping caretaker* considers that location to be a matter of *cultural confidence*, but the *state* must ensure that the *mapping caretaker*, in granting any *mapping authorisation* pursuant to these *mapping access procedures*, discloses sufficient information in accordance with clause 3.3(c) to enable the *explorer*, its employees, contractors and subcontractors to carry out *specified exploration activities* within those parts of the relevant *mapping survey area* in respect of which a *mapping authorisation* is granted

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to the *explorer* without damaging, destroying or interfering with the relevant *Aboriginal site, object or remains*;

- (b) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *mapping survey area*; or
- (c) any information provided by the *explorer* to the *mapping caretaker* which is designated by the *explorer* as confidential information.

## ANNEXURE C

### Notice Details

#### State

Address: Attorney General's Department  
Level 3, 45 Pirie Street  
Adelaide SA 5000

Attention: Principal Negotiator, ILUA

Facsimile No: (08) 8207 2235

#### Minister

Address: Department for Primary Industries and Resources  
Level 5, 101 Grenfell Street  
Adelaide SA 5000

Attention: Mining Registrar

Facsimile No: (08) 8463 3101

#### Native Title Parties

Address: [Insert address]

Attention: [Insert contact name / title]

Facsimile No: [Insert facsimile]

#### Association

Address: [Insert address]

Attention: [Insert contact name / title]

Facsimile No: [Insert facsimile]

**[Native Title Claim Group] Notice Details  
(Annexure C to Exploration Contract Conditions)  
Minerals Exploration Indigenous Land Use Area Agreement Template**

**Explorer**

Address: [Insert address]

Attention: [Insert contact name / title]

Facsimile No: [Insert facsimile]



[Native Title Claim Group] Exploration Contract Conditions  
Schedule 2 to Framework ILUA:  
**Minerals Exploration Indigenous Land Use Area Agreement Template**

**ANNEXURE D**

**Deed of Assumption**

# Deed of Assumption

---

[insert name of existing explorer]

and

[insert name of proposed explorer]

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<b>Date</b>	
<b>Parties</b>	
1.	The party specified in item 1 of the annexure ( <i>existing explorer</i> ); and
2.	The party specified in item 2 of the annexure ( <i>proposed explorer</i> ).
<b>Recitals</b>	
A	The <i>existing explorer</i> is a party to the <i>accepted exploration contract</i> .
B	The <i>existing explorer</i> wishes to assign and transfer its rights and obligations under the <i>accepted exploration contract</i> in relation to the <i>assigned exploration tenements</i> .
C	The parties have agreed that the <i>proposed explorer</i> will take an assignment and transfer of the rights and obligations of the <i>existing explorer</i> in the <i>accepted exploration contract</i> in relation to the <i>assigned exploration tenements</i> .
D	The parties have also agreed that this deed will operate in favour, and for the benefit, of the <i>native title parties</i> , the <i>association</i> and the <i>state</i> (as defined in the <i>accepted exploration contract</i> ).

**It is agreed** as follows.

## 1. Preliminary

### 1.1 Definitions

In this deed, unless the context otherwise requires:

***accepted exploration contract*** means the contract specified in item 3 of the annexure;

***assigned exploration tenements*** means the *authorised exploration tenements* (as defined in the *accepted exploration contract*) specified in item 4 of the annexure;

***business day*** means a day other than a Saturday, Sunday or public holiday in South Australia;

***effective date*** means the date specified in item 5 of the annexure; and

other terms in italics which are defined in the *accepted exploration contract* bear their defined meanings when used in this deed.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause or annexure is a reference to a clause of, or an annexure to, this deed;
- (f) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any *communication* using electronic mail;
- (g) a reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (k) references to agree, approve or consent on the part of a party to this deed is a reference to agreement, approval or consent (as the case may be) on the part of that party in writing; and
- (l) nothing in this deed is to be interpreted against a party to this deed solely on the ground that the party put forward this deed or any part of it.

## 1.3 Headings

Headings in this deed do not affect interpretation.

## 1.4 Annexure

The annexure forms part of this deed.

## 2. Assignment

---

### 2.1 Assignment and Transfer

From the *effective date*, the *existing explorer* assigns and transfers to the *proposed explorer* all of its rights and obligations under the *accepted exploration contract* in relation to the *assigned exploration tenements*.

### 2.2 Proposed Explorer

The *proposed explorer* covenants in favour of the *existing explorer*, the *native title parties*, the *association*, the *minister* and the *state* that, from the *effective date*, the *proposed explorer* will perform and observe the *existing explorer's* obligations under the *accepted exploration contract* in relation to the *assigned exploration tenements*, as if the *proposed explorer* were the *existing explorer* under the *accepted exploration contract*.

### 2.3 Existing Explorer

- (a) If the *assigned exploration tenements* are not all of the *authorised exploration tenements* (as defined in the *accepted exploration contract*), the *existing explorer* remains bound by the terms of the *accepted exploration contract* in relation to those *authorised exploration tenements* which are not *assigned exploration tenements*.
- (b) From the *effective date*, the *existing explorer* is released from its obligations under the *accepted exploration contract* to the extent that those obligations are transferred and assigned to the *proposed explorer* under this deed.

### 2.4 Indemnity by proposed explorer

The *proposed explorer* indemnifies the *existing explorer* from:

- (a) all claims, actions and proceedings (whether in contract, tort or otherwise and whether actual, present, future or contingent), brought or made by any person against the *existing explorer*, arising on or after the *effective date* under or in connection with the *accepted exploration contract*, including any act or omission (whether negligent or otherwise) of the *proposed explorer*, its officers, employees, agents and contractors; and
- (b) all costs, expenses, losses, damages and liability (including legal costs on a full indemnity basis) suffered or incurred by the *existing explorer* in relation to any such claim, action or proceedings,

to the extent that such claim, action, proceedings, costs, expenses, losses, damages or liability relate to the rights and/or obligations of the *existing explorer* assigned and transferred by the *existing explorer* to the *proposed explorer* pursuant to this deed.

### 2.5 Indemnity by existing explorer

The *existing explorer* indemnifies the *proposed explorer* from:

- (a) all claims, actions and proceedings (whether in contract, tort or otherwise and whether actual, present, future or contingent), brought or made by any person against the *proposed explorer*, arising before the *effective date* under or in connection with the *accepted exploration contract*, including any act or omission (whether negligent or otherwise) of the *existing explorer*, its officers, employees, agents and contractors; and
- (b) all costs, expenses, losses, damages and liability (including legal costs on a full indemnity basis) suffered or incurred by the *proposed explorer* in relation to any such claim, action or proceedings.

## 2.6 Notice of Assignment

The *proposed explorer* must notify the *state*, the *native title parties* and the *association* of the formation of this deed within 10 *business days* of formation and simultaneously provide a duplicate original of this deed to each of them.

## 3. Communications

---

### 3.1 Writing required

Any notice, direction, request, consent, approval, demand or other communication (***communication***) to be given under this deed will be in writing, be signed by the representative of the party giving the notice as set out in item 6 of the annexure and be addressed to the representative of the recipient party as set out in item 6 of the annexure.

### 3.2 Manner of giving

A *communication* may be delivered by hand, sent by prepaid post or sent by facsimile transmission to the address of the party to which it is being given and is deemed to have been received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, 3 *business days* after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a confirmation report.

### 3.3 Change of details

Details specified in item 6 of the annexure in respect of a party may be changed by the party by not less than 5 *business days* notice to the other parties.

## 4. General

---

### 4.1 Entire agreement

This deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

### 4.2 Amendment

No amendment or variation of this deed is valid or binding on a party unless made in writing executed by both parties to it.

### 4.3 Severability

Each word, phrase, sentence, paragraph and clause (a *provision*) of this deed is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of this deed.

### 4.4 Assignment and transfer

- (a) The rights and obligations of each party under this deed are personal.
- (b) Those rights and obligations cannot be disposed of, encumbered or otherwise dealt with and no party may attempt, or purport, to do so without the prior consent of the other party.

### 4.5 No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

### 4.6 Costs and stamp duty

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the *proposed explorer*.

### 4.7 Governing law and jurisdiction

- (a) This deed is governed by the laws of South Australia.



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(Annexure D to Exploration Contract Conditions)  
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- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

**4.8 Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

**4.9 Relationship**

- (a) The relationship between the parties is that of independent contractors.
- (b) The parties are not partners, joint venturers or principal and agent.

**4.10 Execution**

The parties execute this deed unconditionally as a deed poll.

Executed by:

**THE COMMON SEAL** of )  
[existing explorer] )  
the fixing of which was witnessed by: )

.....  
Signature of director

.....  
Signature of director/secretary

.....  
Name of director

.....  
Name of director/secretary

or

**SIGNED** by )  
[Insert name of individual] )

.....

.....  
Witness

[Native Title Claim Group] Deed of Assumption  
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**THE COMMON SEAL** of )  
**[Proposed explorer]** )  
the fixing of which was witnessed by: )

.....  
Signature of director

.....  
Signature of director/secretary

.....  
Name of director

.....  
Name of director/secretary

**ANNEXURE**

**Item 1 – Existing Explorer**

**Item 2 – Proposed Explorer**

**Item 3 – Accepted Exploration Contract**

**Item 4 – Assigned Exploration Tenements**

**Item 5 – Effective Date**

**Item 6 – Notice Details**

**Existing Explorer**

Address:

Attention:

Facsimile No:

**Proposed Explorer**

Address:

Attention:

Facsimile No:

**Minister**

Address: Department for Primary Industries  
Level 5, 101 Grenfell Street  
ADELAIDE SA 5000

Attention: Mining Registrar

Facsimile No: (08) 8463 3101

**Native Title Parties**

Address:

Attention:

Facsimile No:

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**Association**

Address:

Attention:

Facsimile No:

**ANNEXURE E**

**Exploration Contract Return**

**EXPLORATION CONTRACT RETURN**

**(ANNEXURE E TO EXPLORATION CONTRACT CONDITIONS)**

**MINING RETURN**

for the 12 months ended December 20

**MINERALS EXPLORATION APPENDIX**

1.	<u>Authorised Exploration Tenement(s)</u>	<u>Commencement Date</u>	<u>Expiry Date</u>
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....

2. Were any *authorised exploration activities* carried out during this period? YES/NO  
[If Yes, go to 3; If no, go to signature clause]

3. Within which area(s) were *authorised exploration activities* undertaken during this period?  
.....  
.....  
.....  
.....  
.....

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4. Was any *advanced exploration activity* undertaken during this period? YES/NO  
[If yes, go to 5; If no, go to 7]

5. Which of the following *advanced exploration activities* was undertaken during this period?

(a) grid-based pattern drilling with 100 metres x 100 metres or 200 metres x 50 metres (or equivalent) centres or less YES/NO

(b) diamond drilling of at least 5 drill holes per km<sup>2</sup> YES/NO

(c) costeaming or trenching YES/NO

(d) bulk sampling of more than 100 tonnes from a single surface location YES/NO

(e) making new tracks using *declared equipment* YES/NO

(f) any *exploration activity* using explosives YES/NO

(g) any associated *land clearing* YES/NO

6. At what location was each relevant *advanced exploration activity* undertaken during this period?

.....  
.....  
.....  
.....  
.....

7. Was significant underground water discovered during this period in the course of drilling operations? YES/NO  
[If yes, go to 8; If no, go to signature clause]

8. What is the exact location of that underground water?

.....  
.....  
.....

[Native Title Claim Group] Exploration Contract Return  
(Annexure E to Exploration Contract Conditions)  
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.....  
.....

I,  
.....  
do solemnly and sincerely declare that the above is true and correct.

Signature of owner/operator ..... Date .....



**SCHEDULE 3**  
**Acceptance Document**

# ACCEPTANCE DOCUMENT

---

The *explorer* agrees, upon duly completing and signing this document and otherwise complying with the provisions of clause 5.1 of the *framework ILUA*, to be bound by the *accepted exploration contract* then formed (on the terms of this *acceptance document* and the *exploration contract conditions* annexed to it as Annexure A) between the *explorer*, the *native title parties*, the *association*, the *minister* and the *state*

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<b>5.</b>	<b>Terms</b>	<b>3</b>

This **ACCEPTANCE DOCUMENT** is made as a deed poll by:

**Parties**

.....  
.....

**(insert name and, if applicable, ABN of explorer) (*explorer*)**

of:

.....  
.....  
.....

**(insert address of explorer)**

in relation to the *accepted exploration contract* to be formed (on the terms of this *acceptance document* and the *exploration contract conditions* attached to it as Attachment A) in respect of:

- (a) the following *exploration tenements* specified for the purposes of paragraph (a)(i) of the definition of *authorised exploration tenement* in the *accepted exploration contract*:

.....  
.....  
.....  
.....

**(insert details of relevant *exploration tenements*, whether *granted* or to be *granted* in the name of the *explorer* and attach as Attachment B a map of the area of each of those *exploration tenements*); and**

- (b) **the *exploration tenements* referred to in paragraphs (b), (c) and (d) of that definition.**

Upon the *explorer* duly completing and signing this document and otherwise complying with the provisions of clause 5.1 of the *framework ILUA*, the *accepted exploration contract* will be formed between the *explorer*, the *native title parties*, the *association*, the *minister* and the *state*.

## Recitals

- A The *framework ILUA* provides for the *explorer* to enter into the *accepted exploration contract* by duly completing and signing this *acceptance document* and otherwise complying with the provisions of clause 5.1 of the *framework ILUA*.
- B The *explorer* wishes to enter into the *accepted exploration contract* by duly completing and signing this *acceptance document* and otherwise complying with the provisions of clause 5.1 of the *framework ILUA*.
- C Upon the *explorer* entering into the *accepted exploration contract* by duly completing and signing this *acceptance document* and otherwise complying with the provisions of clause 5.1 of the *framework ILUA*, the *accepted exploration contract* comes into force and effect between the *explorer*, the *native title parties*, the *association*, the *minister* and the *state* in respect of:
- (a) the *authorised exploration tenements*; and
  - (b) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.

The ***explorer covenants*** as follows.

### 1. Covenant to be Bound

---

The *explorer* enters into the *accepted exploration contract*:

- (a) by duly completing and signing this acceptance document; and
- (b) where clause 3 applies, obtaining the consent of the *association* to the *explorer* entering into the *accepted exploration contract*.

### 2. When Effective

---

The *accepted exploration contract* comes into force and effect between the *explorer*, the *native title parties*, the *association*, the *minister* and the *state* on the date upon which all of the following have occurred:

- (a) the *explorer* has duly completed and signed this *acceptance document* and, where applicable, has obtained the consent of the *association* on this *acceptance document*;
- (b) if required under the *mining act*, the *explorer* has registered this duly completed and signed *acceptance document* under the *mining act* or, if not so required, has provided a copy of this duly completed and signed *acceptance document* to the *minister*; and

- (c) the *explorer* has notified the *indigenous parties* that the *explorer* has duly completed and signed this *acceptance document* and simultaneously provided the *indigenous parties* with an original or duplicate original of this *acceptance document* and, if applicable, evidence that it has been duly stamped and registered under the *mining act*.

### 3. Consent of the native title parties

---

If, before the *explorer* signs this *acceptance document*:

- (a) the *explorer* has given notice to initiate negotiations under the *right to negotiate procedure* in respect of any of the *exploration tenements*; and
- (b) the *explorer* and the *native title claim group* have not entered into an agreement pursuant to the *right to negotiate procedure* in relation to any of the *exploration tenements*,

the *explorer* must obtain the consent of the *association* on this *acceptance document* prior to the *explorer* entering into the *accepted exploration contract*.

### 4. Benefit

---

This *acceptance document* is made by the *explorer* in favour, and for the benefit of, the *native title parties*, the *association*, the *minister* and the *state*.

### 5. Terms

---

Terms defined in the *framework ILUA* bear their defined meanings when used in this *acceptance document*.

#### [Execution clause for *explorer* to follow]

#### Executed by the explorer as a deed poll

\* I, the undersigned, duly authorised by the *native title parties* consent on their behalf to the *explorer* entering into the *accepted exploration contract*:

**SIGNED** by

[Insert name of individual) .....

.....

Witness

\* Delete if not applicable

## **ANNEXURE A**

### **Exploration Contract Conditions**

## **ANNEXURE B**

### **Exploration Tenement Maps**



[Native Title Claim Group] Area Indigenous Land Use Agreement

**Minerals Exploration Indigenous Land Use Area Agreement Template**

**SCHEDULE 4**

**Mapping Survey Procedures**

**MAPPING SURVEY PROCEDURES**  
**(SCHEDULE 4 TO FRAMEWORK ILUA)**

## **1. Definitions and Interpretation**

---

### **1.1 Definitions**

In these *mapping survey procedures*, unless the context otherwise requires:

***Aboriginal record*** has the meaning given in the *Aboriginal heritage act*;

***Aboriginal tradition*** has the meaning given in the *Aboriginal heritage act*;

***accessible land*** means the whole or relevant portion(s) of the *mapping survey area* to which, subject to:

- (a) obtaining a *mapping authorisation*; and
- (b) the conditions, if any, set out in that *mapping authorisation*,

any *explorer* is entitled to have access for purposes of carrying out *specified exploration activities*, by reason of an *exploration mapping survey* and *exploration mapping report*;

***cultural confidence*** means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

***cultural mapping report*** means a written report which is prepared pursuant to clause 5.4(b) and which specifies the matters referred to in that clause;

***exploration mapping report*** means a written report which is prepared pursuant to clause 5.4(a) and which specifies the matters referred to in that clause;

***mapping access procedures*** means the procedures annexed to the *exploration contract conditions* as annexure B, as such annexure is amended from time to time pursuant to the *framework ILUA*;

***mapping authorisation*** means an authorisation issued pursuant to clause 3.2 of the *mapping access procedures* by the *mapping caretaker* to an *explorer* authorising the *explorer* to carry out *authorised exploration activities* subject to any conditions specified in the authorisation;

***mapping caretaker*** means the person appointed from time to time pursuant to clause 8.1;

***mapping notice*** means a notice requesting the carrying out of a *mapping survey* given by the *association* pursuant to clause 8.1 of the *framework ILUA*;

***mapping report*** means an *exploration mapping report* or a *cultural mapping report*;

***mapping survey approval*** means approval by a *mapping survey team* pursuant to an *exploration mapping survey* and *exploration mapping report* for *specified exploration activities* to be undertaken on *accessible land*;

***mapping survey area*** means the whole, part or parts of the *ILUA area* in respect of which a *mapping survey* is undertaken as agreed to between the *state* and the *association* pursuant to clause 8.3(b)(i) of the *framework ILUA*;

***mapping survey budget*** means a budget for undertaking a *mapping survey* established pursuant to clause 4;

***mapping survey team*** means a team organised for purposes of carrying out a *mapping survey* in accordance with clause 5;

***specialist*** means an anthropologist or archaeologist or both, as appropriate, appointed pursuant to clause 5.2(a)(i) for the purposes of carrying out a *mapping survey*;

***specified exploration activities*** means the *exploration activities* in respect of which a *mapping survey* is undertaken as agreed to between the *state* and the *association* pursuant to clause 8.3(b)(iii) of the *framework ILUA*; and

other terms in italics defined or used in the *native title act* or the *mining act* bear their defined meanings when used in these *mapping survey procedures*.

## 2. Purpose and Application

---

- (a) These *mapping survey procedures* set out the procedures which are to be followed in relation to carrying out:
  - (i) an *exploration mapping survey*; or
  - (ii) an *exploration mapping survey* and a *cultural mapping survey*.
- (b) These *mapping procedures* also set out the procedures which apply to the appointment and the functions of the *mapping caretaker*.

## 3. Survey Conditional

---

The undertaking of a *mapping survey* is conditional on the *state* and the *association* agreeing on the matters referred to in clause 8.3 of the *framework ILUA*.

## 4. Budgets

---

### 4.1 Agreed budget

The *association* and the *state* must use their respective best endeavours to agree upon the budget for undertaking a *mapping survey* within 20 *business days* of the date of the *mapping notice* in respect of that *mapping survey*.

#### 4.2 Amended budget

The *state* and the *association* may at any time agree to amend any *mapping survey budget*.

#### 4.3 Excess costs

The *state* is not responsible for any costs or expenses in relation to carrying out any *mapping survey* to the extent that they exceed, or are not provided for, in the *mapping survey budget* for that *mapping survey*, if applicable, as amended pursuant to clause 4.2.

### 5. Mapping Survey Process

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#### 5.1 Survey Dates

Within 20 *business days* of the *state* and the *association* agreeing pursuant to clause 8.3 of the *framework ILUA* that a *mapping survey* is to be undertaken, the *association* must notify the *state* of the date(s) on which the *association* proposes that the *mapping survey* be undertaken.

#### 5.2 Mapping survey team

- (a) Each *mapping survey team* will comprise of such Aboriginal persons and specialists as are agreed by the *state* and the *association*.
- (b) The *association* must ensure that the Aboriginal persons referred to in clause 5.2(a):
  - (i) have knowledge of the relevant *mapping survey area*; and
  - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *mapping survey area*.
- (c) If at any time more persons than permitted under clause 5.2(a) are comprised in a *mapping survey team*, the *state* is not liable for any costs or expenses of those persons, unless otherwise agreed between the *state* and the *association*.

#### 5.3 Mapping survey team functions

The functions of each *mapping survey team* are to assess the relevant *mapping survey area*:

- (a) in the case of an *exploration mapping survey*:
  - (i) for the purpose of determining whether the *specified exploration activities* would damage, disturb or interfere with any *Aboriginal site, object or remains*; and
  - (ii) nominating the conditions, if any, which are necessary and which should accordingly apply in order to protect each *Aboriginal site, object or remains*; and

- (b) in the case of a *cultural mapping survey*, for the purposes of preserving, protecting, maintaining or enhancing the culture of the *native title parties* in relation to each *Aboriginal site, object or remains*.

#### 5.4 Discharge of functions

- (a) Each *mapping survey team* will discharge its functions in undertaking any *exploration mapping survey* by:
  - (i) conducting an inspection and assessment of the relevant *mapping survey area* in order to determine whether *mapping survey approval* will be given or withheld in relation to it;
  - (ii) in conjunction with the *specialists*, providing an *exploration mapping report* detailing which parts of that *mapping survey area* are given, and which parts are not given, *mapping survey approval*;
  - (iii) in conjunction with the *specialists*, identifying in that *exploration mapping report* any conditions, necessary in order to preserve and protect any *Aboriginal site, object or remains*, upon which *mapping survey approval* is given; and
  - (iv) promptly providing that *exploration mapping report* to the *association*.
- (b) Each *mapping survey team* will discharge its functions in undertaking any *cultural mapping survey* by:
  - (i) conducting an inspection and assessment of the relevant *mapping survey area* for the purposes referred to in clause 5.3(b);
  - (ii) in conjunction with the *specialists*, providing a *cultural mapping report* detailing each *Aboriginal site, object or remains* identified in the course of that *cultural mapping survey* and their significance to the culture of the *native title parties*; and
  - (iii) promptly providing that *cultural mapping report* to the *association*.

#### 5.5 Budget

Each *mapping survey* must be undertaken in accordance with the *mapping survey budget* for that survey.

## 6. Mapping Survey Team Reports

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### 6.1 Mapping Survey Reports

- (a) Each *mapping survey report* must be in writing and be signed by the *specialists*.
- (b) The *association* is entitled to retain any *mapping survey report*.

- (c) The copyright in any *mapping survey report* vests in the *indigenous parties*.

## 6.2 Exploration Mapping Reports

- (a) As soon as practicable after the completion of any *exploration mapping survey*, the *association* must provide to the *state*, care of the *mapping caretaker*, a copy of the *exploration mapping report* in relation to that *exploration mapping survey*.
- (b) An *exploration mapping report* must identify those parts of the relevant *mapping survey area* which are:
- (i) given *mapping survey approval* as *accessible land*; and
  - (ii) not given *mapping survey approval* as *accessible land*.
- (c) An *exploration mapping report* must also specify any conditions, necessary to preserve and protect each *Aboriginal site, object or remains*, attaching to the carrying out of any *specified exploration activities* on any *accessible land*.

## 7. Payment

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### 7.1 Liability

The *state* is liable for the costs and expenses of carrying out any *mapping survey* up to a maximum of the amount stated in the *mapping survey budget*.

### 7.2 Payment

The *state* must pay the costs and expenses of any *mapping survey* as stated in the *mapping survey budget*.

## 8. Mapping Caretaker

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### 8.1 Appointment

The *mapping caretaker* will be the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation of the *state*, or its successor or such other person nominated by the *state* by notice given to the other *parties* after consultation with them.

### 8.2 Functions

The functions of the *mapping caretaker* are to:

- (a) hold a copy of each *exploration mapping report*;
- (b) provide information to any *explorer* regarding the existence of any *exploration mapping report*, a copy of which is held by the *mapping caretaker*, and the area to which it relates.
- (c) assess *mapping access applications* and the *authorised exploration activities* to which they relate by reference to the information contained in the

*exploration mapping report* and the *specified exploration activities* to which it extends; and

- (d) after assessing any *mapping access application*, to issue or refuse to issue a *mapping authorisation* in relation to that *mapping access application*.

### 8.3 Funding

The *state* is responsible for the cost and expenses of the appointment of the *mapping caretaker* and the performance by it of its functions.

### 8.4 Consent to Provisions of Copies

The *indigenous parties* consent to the *mapping caretaker* providing, and the *state* must ensure that the *mapping caretaker* provides, copies of any *exploration mapping report* to an independent statutory authority established for the purpose of the protection and preservation of Aboriginal heritage pursuant to the *Aboriginal heritage act*.

## 9. Confidentiality

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### 9.1 Reports

- (a) Nothing in these *mapping survey procedures* requires the *indigenous parties* or any member of any *mapping survey team* to disclose all or any part of any *cultural mapping report* to any other person.
- (b) Nothing in these *mapping survey procedures* requires the *indigenous parties* or any member of any *mapping survey team* to disclose in any *exploration mapping report*:
- (i) the location of any *Aboriginal site, object or remains*, if they consider that location to be a matter of *cultural confidence*, but they must disclose sufficient information in accordance with clause 6.2(b) to ensure that the *mapping access procedures* are able to be implemented on a basis that enables an *explorer*, its employees, contractors and subcontractors to carry out *specified exploration activities* within those parts of the relevant *mapping survey area* in respect of which *mapping survey approval* is given, without damaging, destroying or interfering with the relevant *Aboriginal site, object or remains*; or
  - (ii) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *mapping survey area*.

### 9.2 Mapping Caretaker

Without detracting from any obligation of the *state* in relation to confidentiality under the *Aboriginal heritage act*, the *state* must ensure that the *mapping caretaker* keeps confidential and does not disclose to any person:

- (a) the location of any *Aboriginal site, object or remains*, if the *mapping caretaker* considers that location to be a matter of *cultural confidence*, but the *state* must ensure that the *mapping caretaker*, in granting any *mapping authorisation* pursuant to the *mapping access procedures*, discloses sufficient information in accordance with clause 3.3(c) of the *mapping access procedures* to enable the *explorer*, its employees, contractors and subcontractors to carry out *specified exploration activities* within those parts of the relevant *mapping survey area* in respect of which a *mapping authorisation* is granted to the *explorer* without damaging, disturbing or interfering with the relevant *Aboriginal site, object or remains*;
- (b) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *mapping survey area*; or
- (c) any information provided by the *explorer* to the *mapping caretaker* which is designated by the *explorer* as confidential information.

## 10. Status

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### 10.1 Relationship

Nothing in the *framework ILUA* or these *mapping survey procedures* creates the relationship of:

- (a) employer and employee, principal and agent, partners or joint venturers between any of those persons and the *state*; and
- (b) employer and employee, partners or joint venturers between either of the *indigenous parties* and any member of the *mapping survey team*.

### 10.2 Agent

Each member of a *mapping survey team* is an agent of the *indigenous parties* authorised by them to carry out the functions set out in these *mapping survey procedures*.

## 11. Compliance with laws

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The *indigenous parties* must ensure that all applicable *laws* are complied with in relation to:

- (a) the performance by them of their obligations under these *mapping survey procedures*; and
- (b) the employment, retention or engagement of any person for the purposes of performing their obligations under these *mapping survey procedures*, including under the Workers Rehabilitation & Compensation Act 1986 (SA), the Occupational Health Safety & Welfare Act 1986 (SA), the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).



## 12. Vehicles

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### 12.1 Provision

The *state* must provide sufficient and appropriate all terrain 4 wheel drive vehicles for use by a *mapping survey team* for the purposes of undertaking any *mapping survey*.

### 12.2 Insurance and Spare Parts

The *state* must ensure that all vehicles provided pursuant to clause 12.1 for purposes of undertaking any *mapping survey* are:

- (a) registered and comprehensively insured; and
- (b) equipped with sufficient spare parts for the duration of the relevant *mapping survey*.

### 12.3 Log Book

The *association* must cause a log book to be kept and must ensure that the following information is recorded in the log book in relation to each vehicle used in relation to any *mapping survey*:

- (a) date;
- (b) place of departure;
- (c) destination;
- (d) reason for the journey;
- (e) name of driver; and
- (f) number of kilometres travelled.

### 12.4 Inspection

The *association* must make any log book maintained pursuant to clause 12.3 available to the *state* for inspection upon request.