

TJIWARL EXPLORATION AGREEMENT

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Details of Agreement

THIS AGREEMENT is made on the date specified in item 1 of Schedule 1.

BETWEEN

TJIWARL (ABORIGINAL CORPORATION) RNTBC (ICN 8628) in its own right and for and on behalf of the Tjiwarl People (**Tjiwarl AC**)

and

The **EXPLORER** described in item 3 of Schedule 1.

Recitals

- A. The Explorer has made an application for the Licence in order to conduct activities for the purpose of exploring or prospecting for minerals within in the Tjiwarl Determination Area.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interests on trust for the Tjiwarl People. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book.
- C. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the Licence.
- D. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Licence. Relevantly, clause 5 provides that where Tjiwarl AC and the Explorer enter into this Agreement, Tjiwarl AC agree to:
 - (a) the grant of the Licence to the Explorer;
 - (b) the Explorer conducting Activities in the Licence Area; and
 - (c) where relevant, the Explorer accessing the Exclusive Possession Area for the purpose of conducting Activities in the Licence Area,subject to the terms and conditions contained in this Agreement.

- E. The Parties acknowledge that the AHA currently remains in force and, following the transition period, the ACHA will come into operation and the AHA will be repealed. Further, the Parties agree that this Agreement will need to be reviewed once the ACHA comes into operation.
- F. The Parties have agreed that they will conduct Surveys and monitoring (where applicable) using the processes and lines of communication established by this Agreement.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

Definitions

- 1.1 In this Agreement, unless the context requires otherwise the following words and phrases have the following meanings

Aboriginal Cultural Heritage has the meaning given to it in section 12 of the ACHA.

Aboriginal Cultural Material Committee means the ‘Committee’ as defined in the AHA (until such time as it is repealed).

Aboriginal Object means an object (including Aboriginal remains) of particular significance to the Tjiwarl People in accordance with their laws and customs.

Aboriginal Site means a place, area or object of significance to the Tjiwarl People and may include, but is not limited to, any place that is:

- (a) an “Aboriginal Site” as defined in the AHA (until such time as it is repealed);
- (b) an “Aboriginal place” as defined in the ACHA;
- (c) an “Aboriginal cultural landscape” as defined in the ACHA;
- (d) a “significant Aboriginal area” as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); or
- (e) an ‘area or site of particular significance’ within the meaning of section 237(b) of the Native Title Act.

ACHA means the Aboriginal Cultural Heritage Act 2021 (WA).

Activity means any activity done pursuant to the Licence within the Licence Area and includes both Non-Ground Disturbing Activity and Ground Disturbing Activity.

Agreement means this agreement and its schedules and includes any variation or replacement of it.

AHA means the *Aboriginal Heritage Act 1972 (WA)*.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

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

Cleared Area means an area over which a Survey has been carried out in accordance with this Agreement and which is confirmed in the Survey Report to be cleared for the Ground Disturbing Activity identified in the relevant Work Program.

Commencement Date means the date on which both Parties have executed this Agreement, being date specified in item 1 of Schedule 1.

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Agreement and during the term of this Agreement;
- (a) all information, reports, maps and other documents about or relating to the traditional laws and customs of Tjiwarl People, Aboriginal Sites or Aboriginal Objects, including the names of Aboriginal participants in Surveys and Survey Reports and other documents produced in relation to Surveys;
- (b) any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Explorer's commercially sensitive information and any information the Explorer nominates as being provided on a confidential basis.

Construct, in relation to roads or tracks, means undertaking activities with the purpose of creating new roads or tracks, including excavation or clearing, but does not include travelling over land without clearing vegetation, and Construction has the corresponding meaning;

Cultural Awareness Training Package means the cultural awareness package referred to in clause 11.1(b).

Deed of Release has the meaning given by Schedule 4, clause 2.2 of the Tjiwarl Palyakuwa (Agreement).

Dispute has the meaning given by clause 23.1.

Dispute Notice has the meaning given by clause 23.1.

DMIRS means the department of the public service of the State principally assisting the Minister for Mines and Petroleum in the administration of the Mining Act and/or the PGER Act.

DMIRS Programme of Work means a programme of work for ground disturbing equipment referred to in section 46(aa) or section 63(aa) of the Mining Act, a copy of which is provided by the Explorer to Tjiwarl AC pursuant to Schedule 2, clause 4.

Environmental Surveys means biodiversity surveys, flora and fauna surveys, environmental assessments and any other similar activities.

Exclusive Possession Area means the parts of the Tjiwarl Determination Area which are identified in the Tjiwarl Determination as areas where the Tjiwarl People hold the right of possession, occupation, use and enjoyment to the exclusion of all others;

Existing Roads means any roads and tracks in existence as at the Commencement Date which are:

- (a) recognised by the Federal Court of Australia in Schedule 1 or 4 of the Tjiwarl Determination (Other Interests); or
- (b) agreed between the Parties to be a road or track in existence,

and, for the avoidance of doubt, excludes any existing roads which were excluded from the Tjiwarl Determination Area, as set out in Schedule 1 of the Tjiwarl Determination (Determination Area: Part 2 – Excluded Areas).

Expenditure Report means the Report on Mining Tenement (Form 5 – Exploration Report) as required by section 51, 68 and 82 of the Mining Act and regulations 16, 22 and 32 of the Mining Regulations.

Exploration Expenditure means expenditure in connection with exploration on the Licence, but does not include the cost of assaying, valuation or other works or services conducted outside the Tjiwarl Determination Area.

Explorer means the party described in described in item 3 of Schedule 1 and includes its successors and assigns.

Explorer's Nominee means an employee or nominee of the Explorer who attends the fieldwork component of a Survey pursuant to Schedule 2, clause 7 and **Explorer's Nominee(s)** has the corresponding meaning.

First Review Date has the meaning set out in clause 29.2(a).

Ground Disturbing Activity means an Activity that disturbs the ground and includes, but is not limited to:

- (a) the recording of seismic soundings along seismic lines using seismic vehicles;
- (b) drilling (including drilling on existing tracks);
- (c) digging (with mechanised equipment);
- (d) digging trenches (with or without mechanised equipment);
- (e) blasting;
- (f) earthmoving;
- (g) vegetation clearance;
- (h) grading;
- (i) gravel extraction;
- (j) construction of new or widening of existing roads and tracks; and
- (k) the establishing of camps involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time,

but does not include the matters listed in paragraphs (a) to (d) of the definition of Non-Ground Disturbing Activity.

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

Heritage Acts means the AHA, the ACHA and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and includes subsidiary legislation made under these Acts.

Heritage Monitor means a member of the Tjiwarl People nominated by Tjiwarl AC to monitor Ground Disturbing Activities as specified in Schedule 2, clause 12(a).

Heritage Monitoring Team means:

- (a) up to two (2) Heritage Monitors; and
- (b) a Liaison Officer.

Index Rate means the rate calculated as follows:

$$\text{Index Rate} = \left(\frac{\text{CPI}(1) - \text{CPI}(2)}{\text{CPI}(2)} \right) \times 100$$

where:

- (a) CPI(1) is the consumer price index number (All Groups) Perth as published quarterly by the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) being the last such index number published before the date upon which the Index Rate is to be applied;
- (b) CPI(2) is the consumer price index number (All Groups) Perth as published quarterly in the Australian Bureau of Statistics (or any such index number published quarterly in substitution thereof) as published for:
 - (i) the quarter immediately prior to the Commencement Date; or
 - (ii) the quarter of the previous year that corresponds to CPI(1),

whichever is the later.

Where the Commonwealth Government ceases to publish the consumer price index number (All Groups) Perth, the Index Rate shall be determined by a person agreed upon by the Parties and, in the absence of such an agreement, by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make the determination acting as an expert.

Initial Payment means the payment made in accordance with Schedule 2, clause 8(a).

ILUA (body corporate agreement) means an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act.

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

Law Business Period means the period approximately between 1 December and 1 March of each year during which the Tjiwarl People are often unavailable due to significant cultural responsibilities.

Liaison Officer means a person nominated by Tjiwarl AC, to liaise between Tjiwarl AC and the Explorer to facilitate the work, pursuant to this Agreement, of any:

- (a) Survey Team; or
- (b) Heritage Monitoring Team;

and includes that person's delegate.

Licence means the mining tenement applied for by the Explorer and/or granted to the Explorer under the Mining Act and identified Schedule 1, item 2 and includes that Licence when its term has been renewed or extended.

Licence Area means that part of the land or waters the subject of the Licence that is within the Tjiwarl Determination Area.

Maintain means to undertake activities for the purpose of preserving the condition of a road or track, which does not include:

- (a) widening the road or track;
- (b) deviating from the road or track;
- (c) re-routing the road or track; or
- (d) changing the character or purpose of the road or track,

and Maintaining has the corresponding meaning.

Mining Act means the *Mining Act 1978* (WA).

Mining Regulations means the *Mining Regulations 1981* (WA).

Mining tenement has the meaning given in the Mining Act.

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

Native Title Compensation means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under any State or Commonwealth statute (including the Native Title Act, Mining Act or any other statute, or under common law or in equity, arising out of, or in connection with, any extinguishment, loss, diminution, impairment or other effect on native title rights and interests by:

- (a) the grant, renewal or extension of the Licence; or
- (b) the doing of any act (including a future act) or any Activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions,

within the Tjiwarl Determination Area.

Non-Ground Disturbing Activity means an Activity that is not Ground Disturbing Activity and includes, but is not limited to:

- (a) aerial surveying;
- (b) the use of hand tools for sampling surficial materials including rock, soil, water and stream sediment;
- (c) geophysical surveying;
- (d) the establishing of tent or caravan camps not involving heavy vehicles, water bores or more than ten vehicles (including caravans) at any one time; and
- (e) Environmental Surveys.

Objection means any objection:

- (a) under section 32(3) and (4) of the Native Title Act to the expedited procedure applying to the proposed grant of the Licence; and
- (b) to the grant of the Licence under the provisions of the Mining Act.

Parties means the Explorer and Tjiwarl AC.

Personnel includes agents, employees, contractors and sub-contractors of the Explorer.

Recipient has the meaning given in clause 19.

Registered Native Title Body Corporate has the meaning given to it in the Native Title Act.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001*(Cth) and, with respect to Tjiwarl AC, it has the meaning given to it in the CATSI Act.

Replacement RNTBC has the meaning given in clause 7.3.

Retention Status has the same meaning given to it under section 8(5) of the Mining Act.

State means the Crown in right of the State of Western Australia, including its departments, agencies and instrumentalities.

Supplier has the meaning given in clause 19.

Survey means an ethnographic and/or archaeological survey of the Work Areas identified in a Work Program that is carried out in accordance with this Agreement to determine which

parts of those Work Areas are Cleared Areas for the conduct of the Ground Disturbing Activity identified in that Work Program.

Survey Report means the Report referred to in Schedule 2, clause 9(a).

Survey Team means the people appointed to conduct a Survey referred to in Schedule 2, clause 7(a).

Termination Date means the date when the Explorer or its assignees cease to hold an interest in the Licence, or the Agreement is terminated pursuant to clause 7.2, 8.2(b) or 28.2.

Traditional Owners means those Tjiwarl People who have authority to speak for the relevant Work Area in accordance with the traditional laws and customs of the Tjiwarl People.

Tjiwarl AC means Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628) of Unit 6, 524 Abernethy Road, Kewdale, WA, 6105 and includes the Tjiwarl AC acting through its duly appointed agent from time to time.

Tjiwarl Determination means the orders of the Federal Court of Australia made in native title determination applications WAD 228 of 2011 (Tjiwarl) and WAD 302 of 2015 (Tjiwarl #2) by Mortimer J on 27 April 2017 as amended by order 2 of the Full Court of the Federal Court of Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

Tjiwarl Determination Area means the area of land and waters the subject of the Tjiwarl Determination.

Tjiwarl Palyakuwa (Agreement) means the Tjiwarl Palyakuwa (Agreement), the indigenous land use agreement (body corporate agreement) that was entered into on [*insert date*] and which was entered on the Register of Indigenous Land Use Agreements on [*insert date*].

Tjiwarl People means the persons described in Schedule 2 of the Tjiwarl Determination.

Tjiwarl Payments Account means a bank account nominated by Tjiwarl AC as the Tjiwarl Payments Account.

Tjiwarl Rule Book means the consolidated rule book of Tjiwarl AC registered on 9 November 2020 and amended from time to time.

Upgrade means undertaking activities for the purpose of improving the condition of a road or track, including widening a road or track, which go beyond Maintaining that road or track, and Upgrading has a corresponding meaning;

Work Area means the area identified in a Work Program as the area in which the Explorer proposes to carry out Activities pursuant to that Work Program.

Work Program means the Explorer's notice to Tjiwarl AC of its proposed Activities pursuant to Schedule 2, clauses 2 or 4.

Interpretation

1.2 In this Agreement, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Agreement;
- (b) headings are for reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (c) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (d) a reference to legislation or regulations is a reference to that legislation or regulation as amended, replaced or re-enacted for the time being in force and any by-laws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made thereunder and any conditions attaching thereto;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and

- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. No Extinguishment of Native Title

The Explorer acknowledges that the native title rights and interests of the Tjiwarl People are not extinguished or partially extinguished by the grant of the Licence or anything done pursuant to this Agreement.

3. Agreement to the grant of the Licence

Subject to this Agreement, Tjiwarl AC agrees:

- (a) to the grant of the Licence as listed in Schedule 1, item 1 to the Explorer;
- (b) that the Explorer and its Personnel may conduct Activities within the Licence Area;
- (c) not to lodge any Objection in relation to the Licence; and/or
- (d) to withdraw any existing Objection it has lodged in relation to the Licence.

4. Monetary Compensation

4.1 The Explorer shall compensate the Tjiwarl People in accordance with Schedule 5 in full and final satisfaction of any obligation by the Explorer to pay Native Title Compensation to Tjiwarl AC.

4.2 The Parties acknowledge that:

- (a) under section 125A of the Mining Act, the Explorer is liable to pay Native Title Compensation to the Tjiwarl People; and
- (b) pursuant to the Tjiwarl Palyakuwa (Agreement), Tjiwarl AC agrees to enter into a Deed of Release with the State to evidence that the State is released from any obligation to pay Native Title Compensation to the Tjiwarl People.

5. Access within and to the Licence Area

Access within the Licence Area

- 5.1 Within the Licence Area, the Explorer and its Personnel:
- (a) may traverse the area in connection with its Activities but wherever reasonably practicable shall travel on Existing Roads;
 - (b) may Maintain any Existing Roads if permitted by the Licence, any other interest held by the Explorer or as otherwise permitted at law; and
 - (c) shall only Construct new roads or tracks or Upgrade any Existing Roads:
 - (i) if permitted by the Licence, any other interest held by the Explorer or otherwise permitted at law; and
 - (ii) in accordance with clause 4 in Schedule 2 and Schedule 4.

Access outside of the Licence Area

- 5.2 Within the Tjiwarl Determination Area but outside the Licence Area, the Explorer and its Personnel:
- (a) shall only travel on Existing Roads;
 - (b) may Maintain Existing Roads, subject to the Explorer giving Tjiwarl AC ten (10) Business Days' notice prior to Maintaining an Existing Road; and
 - (c) shall not, subject to clause 5.3(b), construct new roads or tracks or Upgrade any Existing Roads except by agreement between the Explorer and the Tjiwarl AC in accordance with Schedule 4.

Lawful Access

- 5.3 The parties acknowledge that:
- (a) any access within the Tjiwarl Determination Area the subject of this clause 5 must be otherwise lawful; and
 - (b) this clause 5 does not:
 - (i) restrict the Explorer's right to apply for; or
 - (ii) relieve the Explorer's obligation to apply for,

a miscellaneous licence or any other tenement under the Mining Act, or any other permit, licence, approval or other authority, under any other statute for a road or track within the Tjiwarl Determination Area.

6. Notification of changes to licences

- 6.1 If the Explorer makes any application for an extension of term or for Retention Status in relation to a Licence, the Explorer shall give Tjiwarl AC:
- (a) a copy of that application within fifteen (15) Business Days of lodging it with DMIRS; and
 - (b) notice of the result of that application within fifteen (15) Business Days of receiving notification of that result.
- 6.2 The Explorer shall give Tjiwarl AC notice of the surrender of any part of a Licence within fifteen (15) Business Days of that surrender taking effect.

7. Assignment

Assignment by the Explorer

- 7.1 The Explorer agrees that it will not assign, transfer, novate or otherwise dispose of (whether by farm-out, joint venture, sale or otherwise) any part of its interest in a Licence or its rights, interests or obligations under this Agreement unless:
- (a) the Explorer notifies Tjiwarl AC in writing of the name of the prospective assignee at least twenty (20) Business Days before the assignment;
 - (b) at the request of Tjiwarl AC, the Explorer consults with Tjiwarl AC about the prospective assignee;
 - (c) the Explorer procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:
 - (i) be bound by this Agreement and to assume all of the Explorer's obligations under the Agreement; and
 - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,as if it were a party to this Agreement; and

(d) evidence of that assumption is provided to Tjiwarl AC.

7.2 In the event that the Explorer purports to assign its interest in the Licence or its rights, interests or obligations under this Agreement without following the assignment process contemplated in clause 7.1, Tjiwarl AC may terminate the Agreement without further notice to the Explorer.

Assignment by Tjiwarl AC

7.3 Tjiwarl AC agrees that it may only assign, transfer, novate or otherwise dispose of its rights obligations or interests under this Agreement to a registered native title body corporate (**Replacement RNTBC**) that has replaced it as the prescribed body corporate for the Tjiwarl Determination by a determination of the Federal Court of Australia under sections 56 or 57 of the Native Title Act.

7.4 If Tjiwarl AC proposes to assign, transfer novate or otherwise dispose of its rights, interests or obligations under this Agreement to the Replacement RNTBC it must:

(a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;

(b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:

(i) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and

(ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,

as if it were a party to this Agreement; and

(c) give evidence of that assumption to the Explorer.

7.5 Tjiwarl AC will be released from its obligations under this Agreement to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 21.

8. Defaults and Termination

8.1 If the Explorer:

- (a) fails to make any payment due to Tjiwarl AC pursuant to this Agreement; and
- (b) is in breach of any term or condition of this Agreement,

then Tjiwarl AC may issue the Explorer with a notice of default notifying the Explorer of the details of the default and giving the Explorer twenty (20) Business Days to pay the amount owing or remedy the default, as the case may be.

8.2 Where the Explorer fails to:

- (a) make the payment due to Tjiwarl AC; or
- (b) remedy or commence to remedy any breach of the Agreement,

and the requirements of clause 8.1 have been met then Tjiwarl AC may terminate the Agreement without further notice to the Explorer.

9. Rights of the Tjiwarl People

The Explorer acknowledges that the Tjiwarl People have the right to exercise their native title rights in accordance with the Tjiwarl Determination except where their presence in a particular area of the Licence Area may:

- (a) reasonably cause danger to health and safety; or
- (b) materially reduce the efficiency of a particular Activity.

10. Cultural Protection and Respect

10.1 The Explorer shall prohibit all Personnel involved in the Activities from behaving in a manner that is deliberately disrespectful to the culture or traditions of the Tjiwarl People or in a manner that is offensive to the Tjiwarl People.

10.2 The Explorer shall inform its Personnel of the Explorer's obligations under this Agreement and under the Heritage Acts.

10.3 The Explorer shall require its Personnel to comply with the provisions of this Agreement.

11. Cultural Awareness Training

Cultural Awareness

11.1 The Explorer shall:

- (a) promote, amongst all Personnel involved in Activities, knowledge, understanding and respect of the traditions and culture of the Tjiwarl People; and
- (b) ensure that all Personnel are given appropriate cultural awareness training on aspects of the traditions, history and culture of the Tjiwarl People as per the Cultural Awareness Training Package, which may include any or all of the following:
 - (i) a live presentation;
 - (ii) a video presentation;
 - (iii) on country trips; and
 - (iv) printed material.

Cultural Awareness Training Package

11.2 The Parties shall meet and agree on the form of the particular Cultural Awareness Training Package relevant to those Activities to:

- (a) facilitate the cultural understanding mentioned in clause 11.1(a); and
- (b) to ensure that the Cultural Awareness Training Package referred to in clause 11.1(b) is tailored to suit the circumstances of the particular Activities of the Explorer.

11.3 Tjiwarl AC will provide to the Explorer a budget of its reasonable expenses in relation to the Cultural Awareness Training Package, which may include reasonable expenses for any continuing development and improvement of the Cultural Awareness Training Package and any other function under this clause. The Parties shall negotiate with a view to agreeing the budget and the Explorer shall reimburse Tjiwarl AC for the agreed expenses.

12. Environmental Protection and Rehabilitation

Activities conducted to minimise environmental impact

12.1 The Explorer shall ensure that all Activities are conducted so as to minimise:

- (a) any adverse environmental impact;

- (b) any harm or adverse effect upon any naturally occurring water courses, water holders or subterranean water systems;
- (c) disturbance of soil or vegetation;
- (d) erosion;
- (e) the introduction of non-native flora and fauna; and
- (f) the discharge of harmful substances onto the land, into the waters or into the atmosphere.

Rehabilitation

- 12.2 The Explorer shall, at the completion of its Activities at any Activity location, and in any event prior to relinquishing any relevant Licence, rehabilitate the area of the Activity as required under the conditions of the relevant Licence, this Agreement, the Mining Act and any other relevant law and in accordance with the directions of the relevant government department.
- 12.3 The Explorer will use its best endeavours to engage the Tjiwarl People in rehabilitation work pursuant to this clause 12.
- 12.4 Without limiting the generality of clause 12.2, prior to relinquishing the relevant Licence, the Explorer shall:
- (a) replace topsoil removed from disturbed areas and, where appropriate, reseed local native flora;
 - (b) remedy any erosion of disturbed areas caused by Activities;
 - (c) cap all drill holes and backfill trenches;
 - (d) leave the surface in a safe condition and in a reasonable contour having regard to the state of the surface area and its contour prior to the Activity;
 - (e) ensure that all topsoil which is removed and stockpiled from any Activity is re-spread evenly over the disturbed areas for the purpose of aiding re-vegetation; and
 - (f) rehabilitate areas as soon as practicable after the conclusion of the Activity.
- 12.5 After rehabilitating any part of the Licence Area pursuant to clauses 12.2 and 12.4, the Explorer shall advise Tjiwarl AC in writing of the steps it has taken to rehabilitate the Licence Area within fifteen (15) Business Days of the rehabilitation having been completed.

Inspections and Consultation

- 12.6 Where requested by Tjiwarl AC, the Explorer shall facilitate an inspection of its rehabilitation activities by the Tjiwarl People.
- 12.7 Tjiwarl AC will provide to the Explorer a budget of its reasonable expenses in relation to the inspection mentioned in clause 12.6 and any other function under this clause. The Parties shall negotiate with a view to agreeing on each budget and the Explorer shall reimburse Tjiwarl AC for the agreed expenses.
- 12.8 Without derogating from the clauses 12.1 to 12.7 above, the Explorer acknowledges that the Tjiwarl People have legitimate concerns in relation to minimising the impact on the environment and rehabilitation of the Licence Area and, if Tjiwarl AC so requests, the Parties shall meet to consult about the concerns.

13. Employment and Contracting

- 13.1 The Explorer will use its best endeavours to give employment and contracting preferences to members of the Tjiwarl People, Tjiwarl AC or companies nominated by Tjiwarl AC provided that they are capable of carrying out the particular work required in a satisfactory and cost effective manner.
- 13.2 In order to facilitate clause 13.1, the Explorer must provide Tjiwarl AC with a written notice of all employment or contracting opportunities that arise in connection with the Licence as soon as reasonably practicable after such opportunity arises.
- 13.3 Where a member of the Tjiwarl People, Tjiwarl AC or companies nominated by Tjiwarl AC applies for any employment opportunity or tenders for any contract opportunity and the Explorer does not employ or engage them then the Explorer shall advise Tjiwarl AC and, at the request of Tjiwarl AC, give reasons why their application or tender was not successful.

14. Warranties

- 14.1 Tjiwarl AC warrants that:
- (a) it is authorised to enter into this Agreement on behalf of the Tjiwarl People and the terms of this Agreement are binding on them;
 - (b) to the best of their knowledge and information, the Tjiwarl People nominated by Tjiwarl AC to the Survey Team pursuant to Schedule 2, clause 7(a) are those who have the

authority to speak for the relevant Work Area in accordance with the traditional laws and customs of the Tjiwarl People and are Knowledge Holders for the purpose of the ACHA; and

(c) a Survey completed in accordance with this Agreement shall bind all Tjiwarl People.

14.2 The Explorer warrants that it has full power and authority to enter into this Agreement and it is bound by the terms of this Agreement.

15. Aboriginal Cultural Heritage Protection

15.1 The Explorer shall not enter the Licence Area or conduct any Activities except in accordance with this Agreement.

15.2 The Parties agree to follow the processes set out in Schedule 2 of this Agreement in relation to the protection of Aboriginal Cultural Heritage in the Licence Area.

15.3 Nothing in this Agreement is intended to or purports to:

- (a) authorise the Explorer to breach the Heritage Acts;
- (b) exclude, limit or modify the operation of the ACHA; or
- (c) exclude, limit or modify any duty owed under the ACHA.

16. Feedback

The Explorer shall use its best endeavours to give Tjiwarl AC, by the end of February each year, a brief written summary of its exploration Activities in the Licence Area during the previous calendar year including the types of Activities undertaken, the progress of the exploration program and any steps the Explorer has taken to rehabilitate the Licence Area.

17. Indemnity and Insurance

17.1 The Explorer releases Tjiwarl AC, Survey Team members and Heritage Monitoring Team members from any liability for loss or damage to the Explorer's vehicles, equipment and employees except to the extent such loss or damage is caused by the negligence or wilful misconduct by Tjiwarl AC, Survey Team members or Heritage Monitoring Team members.

17.2 The Explorer indemnifies and holds harmless Tjiwarl AC in relation to any loss or damage to a third party caused by any Activity by the Explorer, save to the extent that Tjiwarl AC caused such loss or damage.

18. Implementation Costs

18.1 The Explorer shall pay to Tjiwarl AC an amount as listed below at clause 18.2 within ten (10) Business Days of the Commencement Date for the forthcoming year or part thereof towards Tjiwarl AC's costs of administering and implementing this Agreement, including the costs associated with:

- (a) liaising with the Explorer regarding the implementation of the terms and conditions of this Agreement;
- (b) providing appropriate accounting and other assistance as and when required;
- (c) assessing compliance by the Explorer; and
- (d) securing appropriate advice for the Tjiwarl People in relation to the Agreement and its implementation.

18.2 The Explorer shall pay to the Tjiwarl AC the following amount as it relates to their Licence:

- (a) for exploration licences / retention licences:
 - (i) with a Licence Area which is below or up to 20 blocks – \$1,000.00 per annum;
 - (ii) with a Licence Area which is between 21 and 80 blocks – \$3,000.00 per annum;
 - (iii) with a Licence Area which equals or exceeds 81 blocks – \$5,000.00 per annum;and
- (b) for prospecting licences – \$1,000.00 per annum.

18.3 Upon the anniversary of the Commencement Date, for the forthcoming year or part thereof, the Explorer shall pay to Tjiwarl AC, until the Termination Date, an amount determined by increasing the sum of the previous year's costs of implementation by the Index Rate.

19. GST

19.1 Any reference in this clause 19 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

- 19.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.
- 19.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).
- 19.4 The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- 19.5 If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

20. Duty

The Explorer shall pay all duty assessed on this Agreement, if any, including any duty payable by way of fine or penalty.

21. Confidentiality

- 21.1 A Party shall not:
- (a) subject to 21.2, disclose the other Party's Confidential Information to a third party; or
 - (b) use the other Party's Confidential Information unless that use is reasonably necessary for a Party to exercise its rights or comply with its obligations under this Agreement or any law.
- 21.2 A Party may disclose the other Party's Confidential Information to a third party:
- (a) with the prior written consent of the other Party;
 - (b) to the extent required by law or any rule of a stock exchange;
 - (c) to obtain legal advice or for use in legal proceedings;

- (d) to the extent that Confidential Information is already in the public domain, otherwise than by breach of this clause; or
- (e) where such third party is:
 - (i) a bona fide actual or potential assignee of all or part of the Explorer's interest in the Licence;
 - (ii) a recognised financial institution that requires the disclosure in connection with any loans sought by a Party;
 - (iii) one of the Explorer's Personnel;
 - (iv) Tjiwarl AC's officer, employee, agent, consultant, contractor or advisor; or
 - (v) a Party's Related Body Corporate,provided that the third party provides a written undertaking to Tjiwarl AC and the Explorer to be bound by this clause 21.

21.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.

21.4 Without limiting the operation of this Agreement, the Agreement applies to all Confidential Information whether or not any Confidential Information was disclosed to or accessed by the Explorer before the date of this Agreement.

21.5 The obligations of the Parties under this clause 21 survive the termination of this Agreement.

22. Unexpected Delays

- 22.1 If a delay in performing an obligation under this Agreement occurs, which is caused by:
- (a) any COVID-19 public health restrictions;
 - (b) the Law Business Period;
 - (c) weather and road conditions;
 - (d) bona fide cultural responsibilities (including funerals) of the relevant Traditional Owners;
 - (e) illness of the relevant Traditional Owners;
 - (f) force majeure; or

(g) the other Party's failure to comply in a timely way or at all with its obligations under this Agreement,

then the time period of that delay shall be excluded from the calculation of any period of time mentioned in this Agreement.

22.2 A Party asserting the existence of a delay to which clause 22.1 above applies shall advise the other Party of that delay and take reasonable steps to mitigate that delay.

22.3 Where delay caused by the matters listed in clause 22.1 above occurs, the Explorer shall pay the reasonable, unrecoverable costs of Tjiwarl AC incurred as a result of that delay.

23. Dispute Resolution

Notification and Negotiation of a Dispute

23.1 If a dispute arises between the Parties in connection with this Agreement or a Survey Report (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).

23.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute.

23.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

23.4 If the Dispute is referred to mediation:

(a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or

(b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.

23.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.

- 23.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- 23.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- 23.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

- 23.9 Subject to clause 23.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 23.

Court Proceedings

- 23.10 Subject to clause 23.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 23.8.
- 23.11 Nothing in this clause 23 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

24. Notice

Notice

- 24.1 Each notice or other communication given by one Party to another pursuant to this Agreement:
- (a) shall be in writing;
 - (b) must be delivered to the address for the Party specified in clause 24.3 or to such other address as a Party may nominate in writing;
 - (c) subject to clause 24.2 and Schedule 2, will be taken to be duly given or made:

- (i) if delivered by hand, upon delivery;
- (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
- (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.

24.2 If the result of clause 24.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

24.3 For the purpose of this clause 24, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

- (a) for Tjiwarl AC:

In-House Legal Counsel
Tjiwarl (Aboriginal Corporation) RNTBC
Unit 6/524 Abernethy Road
Kewdale WA 6105
Telephone: 08 9200 3730
By Email: compliance@tjiwarl.org.au

- (b) for the Explorer: as set out in Schedule 1, item 4

25. Entire Agreement

This Agreement represents the entire understanding of the Parties in connection with its subject matter.

26. Counterparts

- 26.1 This Agreement may be executed in two counterparts.
- 26.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

27. Governing Law

This Agreement is governed by the laws in force in the State of Western Australia and the Commonwealth of Australia.

28. Term and Termination

- 28.1 This Agreement shall commence on the Commencement Date and shall come to an end on the Termination Date.
- 28.2 The Parties may terminate this Agreement by mutual agreement in writing.

29. Review of Agreement

Briefings and Discussion

- 29.1 The Explorer shall liaise with Tjiwarl AC on an annual basis or any other agreed period to ascertain whether Tjiwarl AC requires a briefing in relation to any Work Program conducted or proposed, or to discuss any issues related to this Agreement and, if so, the Parties will meet for that purpose.

Review of the Agreement

- 29.2 Subject to clause 29.3, at the request of any Party, the Parties will meet:
- (a) as soon as reasonably practicable following the ACHA coming into operation (**First Review Date**); and
 - (b) no more than every two (2) years from the First Review Date,
- to review the operation of the non-essential terms of this Agreement and to use their best endeavours to agree to such changes that may be required to ensure that this Agreement operates fairly to each of the Parties.

29.3 The Parties agree that:

- (a) clauses 2, 3, 4, 5, 14, 25, 27 and 28 of this Agreement are essential terms of this Agreement which will not form part of the review contemplated by clause 29.2; and
- (b) if any party requests a review of the clauses relating to the protection of Aboriginal cultural heritage (clause 15 and Schedule 2), then that party must invite the State to participate in any such review undertaken by the Parties by notifying the following representative of the State in writing:

Department of Mines, Industry Regulation and Safety
100 Plain Street
East Perth WA 6000

Costs of Review

29.4 Subject to clause 29.5, the Parties will bear their own costs, including legal costs, associated with the review of this Agreement.

29.5 If, as a result of a review of this Agreement under clause 29, the Explorer requires Tjiwarl AC to consider proposed amendments to the Agreement, the Explorer shall pay the reasonable costs of Tjiwarl AC incurred to consider such amendments, including the reasonable costs of legal advice and representation.

EXECUTED by the parties as an agreement

SIGNED by **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** in accordance with section 99.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

EXPLORER¹

SIGNED by [INSERT FULL NAME OF
EXPLORER] in the presence of:

Signature of [*insert Explorer name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

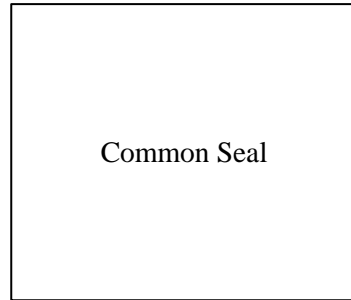
¹ Delete this footnote, the heading and the execution clauses for the Explorer that are not applicable.

OR IF THE EXPLORER IS A COMPANY

Note: This deed must be executed by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001 (Cth) a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

WITH A COMMON SEAL

The **COMMON SEAL** of [INSERT
COMPANY NAME] ACN [insert ACN]
was affixed to this deed in the presence of



Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

WITHOUT A COMMON SEAL

SIGNED for [INSERT COMPANY NAME] ACN
[insert ACN] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director

Signature of Director / Secretary*

*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

SIGNED for **[INSERT COMPANY NAME]** ACN
[insert ACM] in accordance with section 127(1) of the
Corporations Act 2001 (Cth) in the presence of:

Signature of Director
(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
1. Date of Agreement (to be entered by Tjiwarl AC only)	
2. Licence(s)	Licence 1: Application No: Tenement Type: Licence 2: Application No: Tenement Type: <i>[insert / delete as required]</i>
3. Explorer Details	Explorer 1: Name*: *include ACN if a company Address: Explorer 2: Name*: *include ACN if a company Address: <i>[insert / delete as required]</i>
4. Explorer's Address	Contact Name: Company: Address: Telephone: Email:

Schedule 2 – Heritage Protection

1. Interpretation

- (a) Unless the contrary intention appears, a reference in this Schedule to a clause is to a clause of this Schedule.
- (b) Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1.2 of the main body of this Agreement.

2. Notification of Intention to Undertake Non-Ground Disturbing Activity

- (a) At least twenty (20) Business Days before conducting any Non-Ground Disturbing Activity, the Explorer shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map showing the proposed Work Area;
 - (B) the nature of the proposed Non-Ground Disturbing Activity, including the techniques, types of equipment and vehicles to be used;
 - (C) an estimation of when and for how long the proposed Non-Ground Disturbing Activity is to take place; and
 - (D) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the proposed Non-Ground Disturbing Activity; and
 - (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 2(a), the Explorer shall use its best endeavours to provide all Work Programs relating to Non-Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.
- (c) Should Tjiwarl AC reasonably consider that the Activity outlined in the Work Program provided pursuant to clause 2(a) is:
 - (i) not Non-Ground Disturbing Activity; or
 - (ii) likely to damage, disturb or interfere with an Aboriginal Site or Aboriginal Object,

then Tjiwarl AC shall notify the Explorer of its concerns within fifteen (15) Business Days of receipt of the completed Work Program and the Parties shall meet to endeavour to resolve the matter.

3. Where Non-Ground Disturbing Activity May Be Undertaken

If:

- (a) the Explorer has notified Tjiwarl AC of the proposed Non-Ground Disturbing Activity in a Work Program provided in accordance with clause 2(a); and
- (b) any concerns about that proposed Non-Ground Disturbing Activity that Tjiwarl AC has notified the Explorer pursuant to clause 2(c) have been resolved,

then the Explorer may undertake that Non-Ground Disturbing Activity, as identified in the relevant Work Program.

4. Notification of Intention to Undertake Ground Disturbing Activity

- (a) Before conducting Ground Disturbing Activity (unless otherwise agreed by Tjiwarl AC), the Explorer shall:
 - (i) provide to Tjiwarl AC a Work Program containing at least the following information:
 - (A) 1:250,000 topographic map (two (2) copies) and 1:50,000 topographic map or similar scale aerial photograph (two (2) copies) showing the Work Area;
 - (B) the location of the proposed Work Area, proposed Ground Disturbing Activity and any access routes as follows:
 - 1. in digital format, preferably in shapefile format (.shp), including a note of the relevant projection and datum; and
 - 2. if relevant, as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51;
 - (C) the nature of the proposed Ground Disturbing Activity, including the techniques, types of equipment, infrastructure and vehicles to be used;
 - (D) an estimation of when and for how long the proposed Ground Disturbing Activity is to take place;
 - (E) any water, biological or other materials or resources proposed to be obtained from the Licence Area;

- (F) an estimation of the number of Personnel who will access the Claim Area in connection with the conduct of the Ground Disturbing Activity; and
 - (G) any requirement that may be applied to restrict access to the area by Tjiwarl People and, if so, the nature and extent of that restriction; and
- (ii) pay to Tjiwarl AC the Initial Payment.
- (b) Subject to clause 4(a), in order to facilitate the orderly, expeditious and efficient conduct of Surveys, the Explorer shall use its best endeavours to provide all Work Programs relating to Ground Disturbing Activity proposed for any calendar year to Tjiwarl AC by the end of February of that year.
- (c) In addition to the Work Program(s) referred to in clauses 4(a) and 4(b), the Explorer shall provide Tjiwarl AC with a copy of its DMIRS Programme of Work within five (5) Business Days of submission to DMIRS.

5. Consultation about whether a Survey is required

- (a) After the Explorer delivers a Work Program for Ground Disturbing Activity to Tjiwarl AC under clause 4, the Parties shall consult with each other to determine whether a Survey is required.
- (b) The Parties shall use best endeavours to undertake and resolve these consultations within twenty (20) Business Days of Tjiwarl AC receiving the Work Program for Ground Disturbing Activity and payment of the Initial Payment from the Explorer pursuant to clause 4(a).
- (c) The Parties shall take the following factors into account in consultations pursuant to clause 5(a):
- (i) the views of the Tjiwarl People;
 - (ii) whether any survey has been conducted in relation to the proposed Work Area within the previous five years and the results, methodology, date, participants and quality of any such survey, including the nature of the Ground Disturbing Activity for which areas were cleared or not cleared by that survey;
 - (iii) the extent to which the proposed Work Area has been disturbed by previous Activity;
 - (iv) whether the register of places and objects maintained pursuant to section 38 of the AHA discloses the existence of any potential Aboriginal Sites or Aboriginal Objects in the proposed Work Area;

- (v) the nature of the proposed Ground Disturbing Activity; and
 - (vi) any other relevant factor raised by either of the Parties.
- (d) The Explorer shall provide Tjiwarl AC with a copy of any report containing the results of any survey on which the Explorer wants to rely in consultations pursuant to clause 5(a).
- (e) If, after the Parties have consulted pursuant to clause 5(a):
- (i) the Parties agree that a survey has been conducted over the Work Area within the previous five years and, having regard to the factors in clause 5(c), the Parties agree that the previous survey was insufficient to determine which parts of the Work Area are Cleared Areas for the conduct of the Ground Disturbing Activity identified in the relevant Work Program; or
 - (ii) the Parties agree that no survey has been conducted over the Work Area within the previous five years and Tjiwarl AC, having considered the factors set out in clause 5(c), reasonably determines that a Survey is required; or
 - (iii) the Explorer requests,
- Tjiwarl AC shall arrange for a Survey over the proposed Work Area.
- (f) To avoid doubt, if a survey has been conducted over the Work Area within the previous five years and the Parties cannot reach agreement on whether that survey was sufficient in accordance with clause 5(e)(i), either Party may refer the matter to the dispute resolution process in clause 23 of the Agreement.

6. Conduct of Survey

- (a) Tjiwarl AC shall use its best endeavours to arrange for the Survey to commence no later than twenty (20) Business Days after the Explorer has accepted the estimate of costs pursuant to clause 8(b) subject to:
- (i) any delays by the Explorer pursuant to clause 8(b)(ii);
 - (ii) the exclusions in clause 22.1 of the Agreement; or
 - (iii) the Parties agreeing otherwise.
- (b) In relation to any Survey:
- (i) Tjiwarl AC shall:
 - (A) appoint a Survey Team to conduct the Survey on behalf of Tjiwarl AC; and

- (B) use its best endeavours to ensure that the Survey Team diligently completes the fieldwork component of the Survey as soon as practicable; and
- (ii) subject to clause 7(d), the Explorer will confirm the name(s) of the Explorer's Nominee(s) to accompany the Survey Team.
- (c) If the Survey Team considers it likely that there are Aboriginal Objects in a Work Area, the Survey Team may recommend that a Heritage Monitoring Team monitor the conduct of all or some types of Ground Disturbing Activity in all or part of that Work Area.

7. The Survey Team

- (a) The Survey Team shall consist of:
 - (i) subject to clauses 7(b) and 7(c), a suitably qualified anthropologist appointed by Tjiwarl AC and, if Tjiwarl AC considers it necessary and the Explorer agrees, an anthropologist of the other gender;
 - (ii) such Traditional Owners as Tjiwarl AC considers necessary;
 - (iii) if nominated by Tjiwarl AC, a Liaison Officer; and
 - (iv) if Tjiwarl AC considers it necessary, an archaeologist.
- (b) If the Explorer has, on reasonable grounds, concerns about any anthropologist to be appointed to the Survey Team, it may request Tjiwarl AC to consider appointing a different anthropologist to the Survey Team.
- (c) If the Parties do not agree as to which anthropologist is to be appointed to the Survey Team, either Party may request the President of the National Native Title Tribunal to appoint an anthropologist to the Survey Team.
- (d) The Explorer shall ensure that the Explorer's Nominees accompanying the Survey Team:
 - (i) have the authority to make amendments to the Work Program if necessary;
 - (ii) are capable of identifying all relevant aspects of the Work Program;
 - (iii) respect the privacy of the Traditional Owners when sensitive cultural matters are being discussed; and
 - (iv) if Tjiwarl AC requests, be of a particular gender.

8. Survey Payments and Costs

- (a) When submitting a Work Program in accordance with clause 2(a) or 4(a) (as the case may be) the Explorer shall pay the amount of two thousand (2000) dollars for the costs associated with preliminary work in relation to progressing the Work Program (**Initial Payment**), such that:
 - (i) in the event that a Survey:
 - (A) does not proceed and/or the Explorer does not make the payment in accordance with clause 8(b)(ii), Tjiwarl AC will issue an invoice for any costs incurred by Tjiwarl AC associated with the preliminary work undertaken in progressing the Work Program; and
 - (B) any invoice provided in accordance with clause 8(a)(i)(A) will be credited/offset against the two thousand (2000) dollar Initial Payment; or
 - (ii) in the event that a Survey does proceed, any invoice provided in accordance with sub-clause 7.2(a) or 7.2(b) will be credited/offset against the two thousand (2000) dollar Initial Payment.
- (b) The Explorer shall pay for the costs of the Survey in accordance with the following process:
 - (i) prior to the commencement of a Survey, Tjiwarl AC shall submit an estimate of the costs of the Survey to the Explorer for its approval within ten (10) Business Days of all the requirements of clause 4 being met;
 - (ii) following agreement between the Parties on the estimate of costs provided pursuant to clause 8(b)(i), the Explorer shall pay, on receipt of an invoice, fifty per cent (50%) of the agreed estimate of costs, prior to the commencement of the Survey.
 - (iii) the Explorer will be invoiced for all outstanding payments due under the agreed estimate of costs within fifteen (15) Business Days after the completion of the Survey.
- (c) The Explorer shall pay the following costs and expenses, in connection with any Survey, at the following rates:
 - (i) Traditional Owners' fees at eight hundred dollars (800) dollars (excluding GST and superannuation contributions) per day per person to a maximum of eight (8) Traditional Owners (unless otherwise agreed by the Parties);

- (ii) unless meals are provided by the Explorer, food costs at fifty (50) dollars per day per person but for no more than eight (8) Traditional Owners (unless otherwise agreed by the Parties);
 - (iii) unless vehicles are provided by the Explorer:
 - (A) the cost of repair and maintenance to the vehicle in relation to any damage sustained during the Survey;
 - (B) the cost of tyre repair or replacement (where any tyres are damaged); and
 - (C) the direct cost of vehicle fuel used;
 - (iv) the anthropologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (v) if an archaeologist is appointed to the Survey Team pursuant to clause 7(a)(iv), the archaeologist's professional costs (including for time spent travelling, attending the Survey and preparing the Survey Report) at cost;
 - (vi) the cost of the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' necessary air travel from locations within Australia;
 - (vii) the anthropologist's and (if relevant) the archaeologist's and Traditional Owners' reasonable accommodation costs;
 - (viii) the Liaison Officer's fee at eight hundred (800) dollars per day (excluding GST and superannuation contributions); and
 - (ix) for administration costs, a sum equivalent to 15% of the payments to be made pursuant to clauses 8(c)(i) – 8(c)(viii) (inclusive) before the addition of any GST.
- (d) The payments in clauses 8(c)(i) and 8(c)(viii) shall be Index Rate Adjusted each twelve (12) months from the Commencement Date.
- (e) The payments in clause 8(c)(i) shall be adjusted every two years from 1 January 2023 to the greater of that payment once Index Rate Adjusted and the prevailing industry standard payment to Aboriginal participants at that time.
- (f) The Parties will meet to review the provisions of clause 8(c) as soon as practicable after the expiry of two (2) years after the Commencement Date and every two (2) years thereafter while this Agreement remains in force.

9. Survey Report

- (a) Within five (5) Business Days of receipt of payment of the invoiced costs of the Survey, Tjiwarl AC shall provide the Explorer with a report which details the outcome of the Survey and contains the information referred to in items 1 to 5 (inclusive) of Schedule 3 (the **Survey Report**).
- (b) The Explorer shall provide any comments on the Survey Report to Tjiwarl AC within ten (10) Business Days of receipt of the Survey Report.
- (c) Where the Explorer has provided comments on the Survey Report pursuant to clause 9(b), Tjiwarl AC shall request the anthropologist and, where relevant, the archaeologist, to take into consideration any comments made by the Explorer and either amend the Survey Report or, where no change is made, prepare a reasonable explanation. Tjiwarl AC shall provide any such amended Survey Report or reasonable explanation to the Explorer as soon as possible.

10. Intellectual Property

All intellectual property rights in:

- (a) the Survey Report; or
 - (b) the nature of information about the traditions, laws and customs of the Tjiwarl People,
- remain with or vest in Tjiwarl AC or the Traditional Owners, as the case may be.

11. Where Ground Disturbing Activity may be undertaken

- (a) If:
 - (i) the Explorer has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4(c);
 - (ii) a Survey was required pursuant to clause 5(e); and
 - (iii) that Survey has been conducted,then the Explorer may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, within Cleared Areas.
- (b) If:
 - (i) the Explorer has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4(c); and

- (ii) the Parties agree, after consultations pursuant to clause 5(a), that a Survey is not required,

then the Explorer may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, except in areas identified by any previous survey relied on by the Parties to not be cleared for such Activities.

12. Heritage Monitoring

- (a) If recommended pursuant to clause 6(c), and subject to clause 12(b), the Heritage Monitoring Team may accompany the Explorer when it conducts Ground Disturbing Activity of a type and in an area the subject of the recommendation in order to advise, direct and assist the Explorer in avoiding interfering with:
 - (i) any Aboriginal Objects; or
 - (ii) Aboriginal Sites,contrary to the traditional law and customs of the Tjiwarl People.
- (b) Unless otherwise agreed by the Parties, the Heritage Monitoring Team shall not monitor the same Ground Disturbing Activity in the same place for more than one day.
- (c) The Explorer shall:
 - (i) facilitate the attendance of the Heritage Monitoring Team at the relevant Ground Disturbing Activities in accordance with this clause; and
 - (ii) provide any relevant safety equipment and clothing (except boots) to the Heritage Monitoring Team for the duration of their attendance at the relevant Ground Disturbing Activities in accordance with this clause.
- (d) Unless otherwise agreed by the Parties, the Explorer shall pay invoiced costs and expenses in connection with monitoring done in accordance with this clause on the cost structure (as applicable) specified in clause 8(c), including Heritage Monitors' fees, which shall be at the same rate as the Traditional Owners' fees.

13. No employment or agency relationship

This Agreement does not create a relationship of employment or agency between the Explorer and:

- (a) Tjiwarl AC;

- (b) members of the Survey Team; or
- (c) members of the Heritage Monitoring Team.

14. If the Explorer finds an Aboriginal Site or Object

The Explorer shall immediately report to Tjiwarl AC or to the Heritage Monitoring Team (if present) the location of any previously unidentified potential Aboriginal Site or Aboriginal Object of which it becomes aware during the course of conducting Activities.

15. Consent to section 16 or 18 AHA applications

The Explorer will not make an application under section 16 or 18 of the AHA in relation to any Aboriginal Site or Aboriginal Object without the prior written consent of Tjiwarl AC.

Schedule 3 – Contents of Survey Reports

1. Copyright / Confidentiality

A statement to the effect that the Report may only be copied in accordance with the Agreement and subject to any other restrictions agreed to by the Parties from time to time.

2. Assessment Personnel

- (a) Author's name in full, occupation and business/company name.
- (b) Confirmation that the anthropologist considers the Traditional Owners to be appropriate to speak for Aboriginal heritage in relation to the relevant Work Area.

3. Survey Date(s)

The date/s the fieldwork component of the Survey was conducted.

4. Survey Information

- (a) Details of the area surveyed, including the general location, the relevant Licence numbers and reference to the Work Area identified in the Work Program.
- (b) Location of Cleared Areas as x and y co-ordinates of vertices, including a note of the relevant projection and datum, preferably in GDA2020 MGA zone 51.
- (c) Attach a copy or otherwise identify the relevant Work Program.

5. Heritage Monitors

Whether the Survey Team recommends that Heritage Monitors monitor Ground Disturbing Activity in the Work Area and, if so:

- (a) indicate the types of Ground Disturbing Activities to be monitored, by reference to the Ground Disturbing Activities identified in the Work Program; and
- (b) identify in which parts of the Work Area that Ground Disturbing Activity is to be monitored, by reference to where it is located in relation to the Work Area and significant topographical features and, if practicable, as x and y co-ordinates or vertices, preferably in GDA2020 MGA zone 51, including a note of the relevant projection and datum.

Schedule 4 – Process to Construct New Roads or Tracks

1. Interpretation

Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1 of the main body of this Agreement.

2. Application

The following procedure applies, in accordance with clause 5.2(c) of this Agreement, whenever the Parties negotiate about how the Explorer may Construct a new track or road (**Proposed Road**) outside the Licence Area but inside the Tjiwarl Determination Area.

3. Process for negotiation about a Proposed Road

- (a) The Explorer shall provide Tjiwarl AC:
 - (i) a plan depicting the location and dimensions of the Proposed Road; and
 - (ii) the reasons for the location of the Proposed Road.
- (b) The Parties shall consult, in a timely manner, about whether it is necessary to negotiate to obtain Tjiwarl AC's agreement with respect to the Proposed Road.
- (c) If the Parties agree that it is not necessary to negotiate to obtain Tjiwarl AC's agreement in respect of the Proposed Road then the Explorer may, in accordance with Schedule 2, clause 4, Construct the Proposed Road. In that instance, the Construction will be deemed an Activity for the purposes of the Agreement.
- (d) If the Parties agree that it is necessary to obtain Tjiwarl AC's agreement in respect of the Proposed Road, then the Parties shall negotiate with each other in good faith, in a timely manner, in order for the Parties to reach agreement.

Schedule 5 – Monetary Compensation

1. Interpretation

- (a) Unless the contrary intention appears, a reference in this Schedule to a clause is to a clause or clause of this Schedule.
- (b) Unless the contrary intention appears, any word or phrase used in this Schedule has the same meaning as given to it in clause 1 of the main body of this Agreement.

2. Compensation Payments

The Explorer shall make the payments required under clause 4 of this Agreement to Tjiwarl AC by depositing in the Tjiwarl Payments Account the following amounts in relation to each Licence:

- (a) an initial upfront Payment of \$150.00 per square kilometre payable within twenty (20) Business Days of the date of grant of the Licence or the Commencement Date, whichever is the later; and
- (b) an annual amount equivalent to the greater of:
 - (i) 7% of the annual Exploration Expenditure on that Licence, as calculated from Expenditure Reports; or
 - (ii) 30% of the annual rental payable to the State in respect of that Licence, for so long as that Licence remains in force.

3. Calculation of Payments

- (a) The payments referred to in clause 2(b) are calculated and payable as follows:
 - (i) payments shall be calculated from the:
 - (A) date of grant of each Licence, where a Licence has not been granted as at the Commencement Date; or
 - (B) Commencement Date, where a Licence is already granted as at the Commencement Date;
 - (ii) the first payment shall be due and payable following the filing of the first Expenditure Report with DMIRS;
 - (iii) the second and subsequent payments shall be due and payable following the filing of the second and subsequent (as the case may be) Expenditure Reports with DMIRS;

- (iv) the final Payment shall be due and payable following the filing of the final Expenditure Report with DMIRS; and
 - (v) each payment made under clause 3(a)(ii), 3(a)(iii) or 3(a)(iv) (as the case may be) shall be in consideration of the preceding year or part thereof.
- (b) For the purposes of calculating the payments mentioned in this Schedule, if the payment periods for each Licence do not coincide then the Parties shall meet to endeavour to reach a payment formula which may bring those payments into line with each other.

4. Manner of Payment

- (a) At the same time as filing the Expenditure Reports referred to in clause 3(a)(ii), 3(a)(iii) or 3(a)(iv) (as the case may be), the Explorer must provide a copy of each Expenditure Report to Tjiwarl AC.
- (b) If the Explorer does not provide Tjiwarl AC with a copy of an Expenditure Report pursuant to clause 4(a):
 - (i) Tjiwarl AC may apply to DMIRS to gain access to the Expenditure Report(s); and
 - (ii) the Explorer shall not oppose such an application.
- (c) When providing a copy of the Expenditure Report to Tjiwarl AC as required by clause 4(a), the Explorer will also provide a calculation of the amounts payable under 2(b)(i) or 2(b)(ii) (as the case may be), together with a summary of how that calculation was derived.
- (d) If Tjiwarl AC agrees with the calculation provided by the Explorer under clause 4(c) then Tjiwarl AC shall provide a tax invoice to the Explorer in that amount as soon as is reasonably practical.
- (e) If Tjiwarl AC disagrees with the calculation provided by the Explorer under clause 4(c) then the Parties shall meet to discuss the calculation. If, following that discussion, the Parties:
 - (i) agree an amount payable, then Tjiwarl AC shall provide a tax invoice to the Explorer in that agreed amount as soon as is reasonably practical; or
 - (ii) fail to reach agreement, then clause 23 of the main body of this Agreement shall apply.
- (f) Within ten (10) Business Days of receiving the tax invoice referred to in clause 4(d) or 4(e)(i) (as the case may be), the Explorer shall make the payment as invoiced.