

**FUNDING AGREEMENT
CO-FUNDED GOVERNMENT – INDUSTRY DRILLING PROGRAM
June 2024 – May 2025**

**THE STATE OF WESTERN AUSTRALIA
ACTING THROUGH THE
DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY**

And

RECIPIENT NAME TO BE ADDED HERE

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BETWEEN

**THE STATE OF WESTERN AUSTRALIA acting through THE MINISTER FOR
MINES AND PETROLEUM care of the Department of Energy, Mines, Industry
Regulation and Safety of 100 Plain Street, East Perth WA 6004**

(‘Department’)

AND

[Recipient full name]

(‘Recipient’)

- A. The Co-funded Government – Industry Drilling Program part of the Exploration Incentive Scheme (EIS), is being funded by the State Government to stimulate geoscience exploration and contribute to the economic development of Greenfield regional areas of Western Australia. The main aim of the Co-funded Drilling program is to stimulate innovative exploration drilling in Greenfield and under-explored parts of regional areas in the State. The program is administered by the Department of Energy, Mines, Industry Regulation and Safety
- B. The Recipient has applied for funding through the Initiative.
- C. The Recipient agrees to the Funding Offer being made by the Department.
- D. The Department has agreed to provide the Funding Amount to the Recipient on the terms and conditions set out below.

‘Confidential Information’ means all material, information and records of a party, in whatever form that;

- (a) is by its nature confidential; or
- (b) the receiving party knows or ought to know is confidential, but does not include information that:
 - (i) becomes publicly available other than as a result of a breach of any obligation of confidence;
 - (ii) is obtained by a party from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
 - (iii) was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party;

'Confidentiality Period' means a period of 6 months that begins after the first invoice is received and accepted by the Department, during which submitted reports and drill core may not be publicly disclosed.

'Consequential Loss' means any consequential, indirect, exemplary or punitive damage (including but not limited to loss of actual or anticipated profits or revenues, loss by reason of shut down or non-operation, increased cost of borrowing, capital or financing or loss of use or productivity) whether caused by or in relation to breach of contract, warranty, tort, product liability or strict liability;

'Contact Persons' means the contact persons for each of the parties as specified in clause 21.1(f);

'Core Tray Amount' means the amount determined in accordance with clause 5.4;

'Department' means the Department of Energy, Mines, Industry Regulation and Safety in the State of Western Australia.;

'Direct Drilling Costs':

- (a) means the costs incurred by the Recipient for drilling the holes specified in Schedule 1 which may include costs payable pursuant to a drilling contract entered into or to be entered into between the Recipient and a drilling contractor for the purposes of the Project;
- (b) includes a Mobilisation Amount (if applicable); and
- (c) do not include administration and program management costs and costs associated with legal or ground access costs; geological, geochemical or geophysical work; laboratory analysis; or specific geoscientific analysis other than down hole directional surveys;

'Drilling Completion Date' means the actual date that the drilling is completed;

'Estimated Direct Drilling Costs' means the estimated Direct Drilling Costs for the Project as detailed in Schedule 1 (the Proposal) and in Schedule 2 (Letter of Offer);

'Estimated Application Amount' means the estimated amount of funding requested for the Application Amount as set out in Schedule 1.

'Final Report' means the report to be provided by the Recipient in accordance with clauses 4.1(b) and 4.2(d) and approved by the Department in accordance with clause 4.4;

'Funding Amount' means the actual amount of funding for the Project determined in accordance with clause 5.1;

‘Funding Offer’ means the amount of funding offered for the Project by the Department and referred to as Funding Grant in Schedule 2;

‘Government Agency’ means any Commonwealth or State government department, authority, instrumentality or agency;

‘GST’ has the same meaning as in the GST Act;

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

‘Guidelines’ means the guidelines for the Co-funded Government – Industry Drilling Program prepared by the Department for Proposals seeking a grant under the Initiative and a copy of which is attached at Schedule 3;

‘Initiative’ means the Co-funded Government – Industry Drilling Program described in Paragraph A of the Background to this Agreement;

‘Insolvency Event’ means an event that is deemed to occur if the Recipient:

- (a) informs the Department or another party in writing or creditors generally that it is insolvent;
- (b) commits an act of bankruptcy;
- (c) has a bankruptcy petition presented against it;
- (d) is made bankrupt;
- (e) has a receiver, manager, receiver and manager, trustee, administrator, controller (as that term is defined in section 9 of the *Corporations Act 2001 (Cth)*) appointed in respect to it or any of its assets;
- (f) has a liquidator or provisional liquidator appointed;
- (g) has an application made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (e) or (f);
 - (ii) winding up the Recipient; or
 - (iii) the Recipient entering into or resolving to enter into a scheme of arrangement or composition with or assignment for the benefit of all or any class of its creditors or proposing a re-organisation moratorium or other administration involving any of its creditors except for the purposes of reconstruction or amalgamation while solvent on terms approved by the Department;
- (h) stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so; or
- (i) has anything analogous or having a similar effect to an event listed in paragraph (a)-(h) occurring to it;

‘Intellectual Property’ means all types of intellectual property rights whether registered or not and includes all copyright (including moral and performer’s rights) and neighbouring rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including

service marks and other insignia of origin), registered designs and circuit layouts, trade secrets and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

‘Interim Report’ means the report to be provided by the Recipient in accordance with clauses 4.1(a) and 4.2(c) and approved by the Department in accordance with clause 4.3;

‘Law’ includes:

- (a) Acts of the Commonwealth and the State of Western Australia;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);
- (c) directions by any Government Agency exercising statutory powers in relation to the Project; and
- (d) approvals, licences, permits, registrations and consents from any person or Government body (federal, state or local) which by statute, regulation, bylaw, ordinance, order or proclamation has jurisdiction over the Project;

‘Mobilisation Amount’ means the amount determined in accordance with clause 5.3;

‘Person’ and **‘Persons’** includes individuals, firms, partnerships, bodies corporate, associations, governments, semi-governments, local authorities and agencies;

‘Personal Information’ means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion;

‘Privacy Act’ means the *Privacy Act 1988* (Cth) as amended;

‘Project’ means drilling of the number of drill holes identified in Schedule 1 and in Schedule 2;

‘Proposal’ means the proposal (which may include the proposal cover sheet) lodged by the Recipient, in accordance with the Guidelines, a copy of which is at Schedule 1;

‘Prospector Consultant Amount’ means the amount determined in accordance with clause 5.5;

‘Recipient’ means the party whose details are set out in Schedule 1 under the heading “Applicant”;

‘Relevant Legislation’ means the legislation that governs the Tenement and includes, as applicable, the *Mining Act 1978* (WA), *Petroleum (Submerged Lands) Act 1982* and the *Petroleum and Geothermal Energy Resources Act 1967* (WA) and any regulations made under that legislation;

‘Reports’ means the Interim Report and the Final Report provided under clause 4;

‘Supply’ has the same meaning as in the GST Act;

‘Tax Invoice’ means the tax invoice or tax invoices which comply with the requirements of the GST Act and are provided to the Department under clause 5.6;

‘Taxable Supply’ has the same meaning as in the GST Act;

‘Tenement’ means the area (or part thereof) outlined in the Recipient’s licence or lease granted under the *Mining Act 1978* (WA) that relates to the Project as set out in Schedule 1;

‘Term’ has the meaning given in clause 2;

‘**Title**’ means the area (or part thereof) outlined in the Recipient’s permit, licence, reservation or lease granted under the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*, or *Petroleum (Submerged Lands) Act 1982* that relates to the Project as set out in Schedule 1;

‘**Value**’ has the same meaning as in the GST Act;

‘**Western Australian Government**’ means the government of the State of Western Australia.

1.2 Interpretation

In this Agreement, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Agreement;
- (c) a reference to a party to this Agreement or any other document or agreement includes its executors, administrators, successors and permitted assigns;
- (d) a reference to an item in the Background, clause, schedule, annexure or appendix is a reference to an item in the Background, clause or schedule, annexure or appendix to this Agreement and references to this Agreement include its Schedules;
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, supplemented or varied from time to time;
- (g) in the interpretation of this Agreement, headings are to be disregarded.

2. TERM

The Term commences on the Commencement Date and, unless terminated earlier in accordance with clause 16, terminates on the day after the Department pays the Funding Amount to the Recipient.

3. PROJECT

3.1 Management of Project

- (a) The Recipient (or its nominee, if appropriate) will be responsible for:
 - (i) the management of the Project;
 - (ii) any funds required for the Completion of the Project in addition to the Funding Amount; and
 - (iii) any and all liabilities and obligations associated with the Project, including its obligations under this Agreement.
- (b) The Recipient acknowledges and agrees that the Department has no obligations in relation to the Project other than to pay the Funding Amount in accordance with clause 5 and that the funding or any other support given to the Recipient by the Department under this Agreement

will not affect any obligation the Recipient has in relation to the Tenement, or Title whether pursuant to the relevant Law or otherwise.

- (c) If the Recipient determines that modifications are required to the Project, the Funding Amount will remain payable if:
 - (i) the objectives of the Proposal are not altered; and
 - (ii) the proposed modifications are approved in writing by the Department.

3.2 Completion of Project

- (a) The Recipient must manage the Project so that drilling is completed by 31 May 2025.
- (b) Despite clause 3.2(a), the Recipient shall use its best endeavours to complete the Project as soon as possible after the Commencement Date.
- (c) Within 2 weeks of the Drilling Completion Date the Recipient will notify the Department in writing of:
 - (i) the completion of the drilling; and
 - (ii) details as to the drilling work done.

4. REPORTING AND REVIEW

4.1 Provision of Reports

The Recipient will provide to the Department for its review and approval:

- (a) an Interim Report no later than 2 weeks after the Drilling Completion Date, and no later than 31 May 2025; and,
- (b) the Final Report no later than 3 months after the date of submission of the Interim Report.

4.2 Form of Reports

- (a) Each of the Reports must be in a form compatible with reporting requirements as specified under
 - (i) Section 115A of the *Mining Act 1978* (WA) detailed in *Guidelines for Mineral Exploration Reports on Mining Tenements* or;
 - (ii) the *Schedule of Onshore Petroleum Exploration and production Requirements – 1991* of the *Petroleum and Geothermal Energy Resources Act 1967* (WA) as detailed in *Guidelines to Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015* and *Petroleum (Submerged Lands) (Resource Management and Administration) Regulations 2015*.
- (b) The Reports required in accordance with this Agreement do not replace any requirements for statutory reporting under the *Mining Act 1978* (WA) or any other relevant legislation.
- (c) The Interim Report includes the following matters:
 - (i) drill hole location including azimuth and dip;
 - (ii) summary drill logs;

- (iii) any interim results of the Project; and
 - (iv) a statement in respect to any deviation or otherwise from the Estimated Direct Drilling Costs.
- (d) The Final Report includes the following matters:
 - (i) results of all proposed activities detailed in Schedule 1;
 - (ii) an interpretation of results, conclusions and recommendations for further work (with direct reference to the Project and the Proposal);
 - (iii) plans, cross-sections and diagrams detailing the results;
 - (iv) geochemical analyses of the core/samples obtained from the drilling (for **all** prospectors projects unless drill core is being submitted)
 - (v) drill core (split core from diamond holes, at least half core) in compliance with any Departmental Guidelines; and
 - (vi) any other information considered relevant by the Department and notified to the Recipient.

4.3 Approval of Interim Report

The Department, in its sole discretion, may approve the Interim Report where the Interim Report includes the data specified under clause 4.2(c).

4.4 Approval of Final Report

The Department, in its sole discretion, may approve the Final Report if the Final Report addresses, to the extent that they are relevant to the Project, the data specified under clause 4.2(d).

5. FUNDING

5.1 Determination of Funding Amount

The Funding Amount is the aggregate of:

- (a) the Application Amount, including a Mobilisation Amount (if applicable);
- (b) the Core Tray Amount (if applicable); and
- (c) the Prospector Consultant Amount (if applicable).

5.2 Determination of Application Amount

- (a) The Application Amount shall not exceed:
 - (i) \$40,000 for a Prospectors Only application; or
 - (ii) \$180,000 for a Universal drilling application; or
 - (iii) \$220,000 for a one or two deep hole(s) application.
- (b) Subject to clause 5.2(a), the Application Amount will be determined as follows:

- (i) where the actual Direct Drilling Costs are less than the Estimated Direct Drilling Costs, the Funding Amount shall be the amount which is the lesser of the Funding Offer and the amount which is 50% of the actual Direct Drilling Costs; or
- (ii) where the actual Direct Drilling Costs are more than the Estimated Direct Drilling Costs, the Funding Amount will be the amount which is the lesser of the Funding Offer and the amount which is 50% of the Estimated Direct Drilling Costs.

5.3 Eligibility for, and determination of, Mobilisation Amount

- (a) The Application Amount will include a Mobilisation Amount if:
 - (i) the Recipient completes drilling by 31 May 2025;
 - (ii) the Recipient engaged a third party to mobilise, provide, operate and demobilise drilling rigs and associated equipment for the Project.
 - (iii) Mobilisation costs are itemised on the third party issued drilling invoices
- (b) The Mobilisation Amount is the lesser of:
 - (i) 50% of the actual costs charged by the third party specified in clause 5.3(a)(ii) ; and
 - (ii) the capped zone dependent value specified in the letter of offer set out in Schedule 2.
- (c) For the avoidance of doubt, if the Project is part of a larger drilling program conducted by the Recipient, the actual costs specified in paragraph 5.3(b)(i) are to be determined on a pro rata basis taking into consideration the number of holes drilled as part of the Project compared to the number of holes drilled by the Recipient as part of the larger drilling program.

5.4 Eligibility for, and determination of, Core Tray Amount

- (a) The Core Tray Amount will only be payable if:
 - (i) the Recipient has purchased new plastic core trays for use in the Project;
 - (ii) the Recipient lists the number of core trays on the core submission forms and the number of core trays is confirmed by counting by core library staff;
 - (iii) the Recipient submits at least a half core that is cut on the long axis to the Perth Core Library or the Kalgoorlie Core Library and the condition and amount of the core submitted by the Recipient is checked by the core library staff;
 - (iv) the half core submitted under clause 5.4(a)(iii) complies with this Agreement and the Guidelines as determined by the Department in its absolute discretion; and
 - (v) the Department has notified the Recipient of the number of trays received that comply with this clause and the final Core Tray Amount that will be paid to the Recipient.
- (b) The Core Tray Amount is the lesser of:
 - (i) the actual cost of all new core trays that comply with clause 5.4(a); and
 - (ii) \$15.00 for each new core tray that complies with clause 5.4(a), irrespective of the size of each core tray.

5.5 Eligibility for, and determination of, Prospector Consultant Amount

- (a) The Prospector Consultant Amount will only be payable if:
 - (i) the Recipient's application was a Prospectors Only application;
 - (ii) the Recipient engaged a geoscientific consultant or contract geologist to write the funding application for the Funding Amount on behalf of the Recipient; and
 - (iii) the Recipient completes drilling by 31 May 2025;
- (b) The Prospector Consultant Amount is the lesser of the actual cost charged by the geoscientific consultant or contract geologist and \$1,000.

5.6 Submission of Tax Invoice

- (a) The Recipient shall submit a Tax Invoice to the Department requesting payment of the Funding Amount:
 - (i) either before or on the date that the Recipient submits the Interim Report to the Department in accordance with clause 4.1(a); and
 - (ii) in all cases no later than 31 May 2025.
- (b) A Tax Invoice submitted by the Recipient to the Department under clause 5.6(a) must be accompanied by copies of:
 - (i) the driller's tax invoice;
 - (ii) if the Application Amount includes a Mobilisation Amount, documentation showing the actual costs charged by the third party specified in clause 5.3(a)(ii);
 - (iii) if the Funding Amount includes a Core Tray Amount, the invoice from the supplier of the core trays, indicating the cost per tray;
 - (iv) if the Funding Amount includes a Prospector Consultant Amount, a tax invoice from the geoscientific consultant or contract geologist which includes their contact details, business address, an Australian Business Number (ABN) and a description of the work undertaken.
- (c) At any time before the Department approves a Tax Invoice under clause 5.7, the Department may, by notice in writing, request such further information that it requires to verify the Tax Invoice. The Department is not required to approve the Tax Invoice until such information is received.
- (d) The Recipient must promptly provide any information requested by the Department under clause 5.6(c).

5.7 Prerequisites for Interim Payment Approval

The Department will approve the payment of 80% of the Funding Amount to the Recipient if the Department has received, reviewed and approved:

- (a) the Tax Invoice and other documentation submitted under clauses 5.6(a) and 5.6(b);
- (b) any information requested by the Department under clause 5.6(c); and
- (c) the Interim Report provided in accordance with clause 4.1(a).

5.8 Prerequisites for Final Payment Approval

The Department will approve the payment of the balance of the Funding Amount to the Recipient if the Department:

- (a) has received, reviewed and approved the Final Report under clause 4.1(b); and
- (b) is satisfied that the Recipient has fulfilled all of its obligations under this Agreement.

5.9 Notice of Interim Payment Approval

Within 20 days of the Department being satisfied that the prerequisites set out in clause 5.7 have been met by the Recipient, the Department will notify the Recipient in writing that:

- (a) the prerequisites in clause 5.7 have been satisfied; and
- (b) the Department has approved the payment of 80% of the Funding Amount to the Recipient.

5.10 Notice of Final Payment Approval

Within 20 days of the Department being satisfied that the prerequisites set out in clause 5.8 have been met by the Recipient, the Department will notify the Recipient in writing that:

- (a) the prerequisites in clause 5.8 have been satisfied; and
- (b) the Department has approved the payment of the balance of the Funding Amount to the Recipient.

6. DATES FOR COMPLIANCE

The Department may, at its absolute discretion, extend the dates for compliance stipulated in this Agreement by notice in writing to the Recipient.

7. OBLIGATIONS OF RECIPIENT

The Recipient must:

- (a) advise the Department in writing (which for the purposes of this clause may be by email) within one week of the commencement of the Project that drilling has commenced;
- (b) undertake the Project in accordance with this Agreement, the Guidelines, any methodology set out in the Proposal and all applicable Laws;
- (c) acknowledge the contribution of the WA Exploration Incentive Scheme to its activities whenever possible, including acknowledgements in marketing material, public statements and signage; and
- (d) agree to provide public access to drill core material submitted to the Department as part of the Project, after the expiry of the Confidentiality Period.

8. WARRANTIES

- (a) The Recipient warrants and represents to the Department as at the date of this Agreement and during the Term that:
 - (i) if the Recipient is a body corporate, it is duly incorporated and validly existing under the laws of the place of its incorporation;
 - (ii) it has power to enter into and perform its obligations under this Agreement and to carry out the Project;
 - (iii) entry into this Agreement, the performance of its obligations under this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorised;
 - (iv) the Agreement is a valid and binding obligation enforceable according to its terms; and
 - (v) neither the execution nor the performance of this Agreement has or will breach any provision of:
 - (A) a law or treaty or a judgment, decree, ruling, order or decree of a government or government agency binding on it; or
 - (B) any other document which is binding on it or its assets.
- (b) The Recipient must take all steps and provide all information and documents with regard to the warranties and representations as the Department may reasonably require and give the Department and its legal representatives such assistance and facilities as they may reasonably require to enable them to fully investigate the accuracy of the warranties and representations referred to in this clause.

9. INTELLECTUAL PROPERTY

9.1 Grant of Licence

- (a) The Intellectual Property in the Reports created by the Recipient under this Agreement vests in the Recipient.
- (b) The Recipient grants to the Department a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, reproduce, communicate, adapt and exploit the Copyright in the Reports for any purpose associated with the activities of the Department, anywhere in the world after the Department has received and approved the Final Report and the confidentiality period has expired.

9.2 Recipient Warranty and Indemnity

- (a) The Recipient warrants that:
 - (i) any use by the Department of the Reports does not and will not infringe the rights, including Intellectual Property rights, of any third party; and

- (ii) the Recipient will, at no further cost to the Department, procure in favour of the Department all licences and consents to use, copy, reproduce, communicate, adapt and exploit any Intellectual Property of a third party which is comprised in or is necessary for the use of the Reports.
- (b) The Recipient indemnifies the Department for any breach of these warranties.

10. RECORDS

- (a) The Recipient will keep full and accurate records of the conduct of the Project and the expenditure to which the Funding Amount will apply and make such records available to the Department throughout the course of the Project and upon the Completion of the Project whenever reasonably requested by the Department.
- (b) The Recipient will use its best endeavours to ensure that any of its contractors comply with clause 10(a).
- (c) The Recipient must retain the records maintained under this clause for a period of not less than 7 years after the Project Completion Date.
- (d) For the avoidance of doubt, the requirements under this clause are not intended to replace any record keeping requirements that apply to the Tenement, or Title under the relevant legislation, including but not limited to the *Mining Act 1978 (WA)* or the *Petroleum and Geothermal Energy Resources Act 1967 (WA)* or *Petroleum (Submerged Lands) Act 1982*.
- (e) To the extent that the requirements under this clause conflict with the requirements under the relevant legislation, the relevant legislation applies.

11. INFORMATION

11.1 Confidential information

- (a) Subject to clause 11.1(b) and 11.1(f), each party (**‘receiving party’**) agrees to keep confidential, and not to use or disclose other than as permitted by this Agreement, any Confidential Information of the other party (**‘disclosing party’**), including Confidential Information provided to or obtained by the receiving party prior to entry into this Agreement.
- (b) The obligations of confidence in clause 11.1(a) do not apply to Confidential Information:
 - (i) that is disclosed to the employees, advisers, agents, consultants or contractors of the receiving party, provided such people have a need to know the Confidential Information, but only where such employees, agents or advisers have been required to keep the Confidential Information confidential;
 - (ii) that is required to be disclosed by applicable law, or a court or by the rules of any relevant stock exchange or regulator, as long as the receiving party:
 - (A) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and

- (B) before disclosing any information does, if it is reasonably able to do so, give a reasonable amount of notice to the disclosing party and takes all reasonable steps (whether required by the disclosing party or not) to maintain such Confidential Information in confidence;
- (iii) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence;
- (iv) that is already known by, or rightfully received, or independently developed, by the receiving party free of any obligation of confidence; or
- (v) that must be disclosed by the Department to Parliament or a Government Agency.
- (c) Subject to clause 11.1(b), each party may use and disclose Confidential Information of the other to a third party on a ‘*need to know*’ basis with the prior written consent of the other party.
- (d) If a party discloses Confidential Information under clauses 11.1(b) and 11.1(c), that party must ensure that such information is kept confidential by the person to whom it is disclosed and is only used for the exercise of rights or the performance of obligations under this Agreement.
- (e) Each party must:
 - (i) (i) take all steps and do all things that are reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the other party’s Confidential Information; and
 - (ii) (ii) immediately notify the other party if it becomes aware of any unauthorised use or disclosure of the other party’s Confidential Information.
- (f) Despite any other provision of this Agreement, the Department may publicly disclose the results of the Project, including the contents of the Proposal or the Final Report, at any time after the expiry of the Confidentiality Period.

11.2 Privacy and Disclosure of Personal Information

- (a) Where the Recipient has access to Personal Information in order to fulfil its obligations under this Agreement, it must:
 - (i) where the Recipient is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
 - (ii) not use Personal Information other than for the purposes of the Agreement, unless required or authorised by law;
 - (iii) not disclose Personal Information without the written agreement of the Department, unless required or authorised by law;
 - (iv) ensure that only authorised personnel have access to Personal Information;
 - (v) immediately notify the Department if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;

- (vi) make its employees, agents and subcontractors aware of the Recipient's obligations under this clause 11.2 including, when requested by the Department, requiring those employees, agents and subcontractors to promptly sign a privacy deed relating to Personal Information; and
- (vii) comply with such other privacy and security measures as the Department reasonably advises the Recipient in writing from time to time.
- (b) The Recipient must immediately notify the Department upon becoming aware of any breach of clause 11.2(a).

11.3 Publicity

- (a) Other than announcements the Recipient is required to make to any relevant stock exchange, no public announcement or communication relating to the negotiations of the parties or the subject matter or terms of this Agreement may be made or authorised by or on behalf of the Recipient without the prior written approval of the Department.
- (b) The Recipient acknowledges that the Department may make such public announcement or communication as it may in its sole discretion decide provided that such public announcement or communication does not disclose specific details of the Final Report until after the expiry of the Confidentiality Period.

12. INSURANCE

Insurance remains the sole responsibility of the recipient.

13. INDEMNITY

- (a) The Recipient will indemnify and hold harmless the Department (and keep the Department indemnified) against all damages, losses and expenses (including legal costs) arising in any way:
 - (i) for personal injury, illness or death of any person to the extent the injury, illness or death is caused or contributed to by any act or omission or breach of this Agreement by the Recipient, or the Recipient's contractors or subcontractors in the course of executing the Project;
 - (ii) relating to loss or damage to any property of a third party to the extent that the loss or damage is caused or contributed to by any act or omission or breach of this Agreement by the Recipient, or the Recipient's contractor or subcontractors in the course of executing the Project;

- (iii) out of a breach by the Recipient, the Recipient's contractor or subcontractors of an obligation arising under this Agreement or of a Law in the course of executing the Project.
- (b) The Recipient's liability to indemnify the Department under this clause:
 - (i) will be reduced proportionately to the extent that any negligent act or omission by the Department contributed to the relevant losses; and
 - (ii) does not extend to any loss of profits, loss of revenue, loss of anticipated profit or damages for lost opportunity including but not limited to cost of capital, cost of substitute facilities or services or loss of data.
- (c) The right of the Department to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law.

14. CONFLICT OF INTEREST

- (a) The Recipient warrants that, to the best of its knowledge and after making diligent enquiries, at the date of this Agreement no conflict exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.
- (b) The Recipient must ensure that no conflict arises with the Department during the Term of the Agreement.
- (c) If a conflict arises during the Term, the Recipient must:
 - (i) immediately notify the Department in writing of that conflict and of the steps the Recipient proposes to take to resolve or otherwise deal with the conflict;
 - (ii) make full disclosure to the Department of all relevant information relating to the conflict; and
 - (iii) take such steps as the Department may reasonably require to resolve or otherwise deal with that conflict.
- (d) If the Recipient fails to notify the Department under this clause or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate this Agreement in accordance with Clause 16 as though this failure was a breach that cannot be rectified.

15. CHANGE OF CIRCUMSTANCES

The Recipient will immediately notify the Department upon becoming aware of any change in its circumstances which may:

- (a) impact adversely on its capacity to Complete the Project; or
- (b) otherwise affect its eligibility to receive the Funding Amount.

16. TERMINATION

The Department may immediately terminate this Agreement upon giving written notice of termination to the Recipient if:

- (a) the Recipient fails to fulfil or breaches any condition or obligation of this Agreement and fails to rectify such breach within 2 weeks of receipt of written notice from the Department setting out details of the breach and requiring the Recipient to rectify such breach;
- (b) the Recipient breaches any condition or obligation of this Agreement which cannot be rectified;
- (c) the Department is satisfied that any statement made in the Proposal, the Reports or any supporting information provided by the Recipient is incorrect, incomplete, false or misleading in a way which would have materially and adversely affected the original decision to enter into this Agreement or any decision to approve payment of the Funding Amount;
- (d) the Department is satisfied that, as a result of a notice given under clause 15, the Recipient no longer meets the eligibility requirements for the Initiative as set out in the Guidelines;
- (e) the Recipient, by written notice to the Department, withdraws from the Project; or
- (f) the Recipient suffers an Insolvency Event.

17. DISPUTE RESOLUTION

- (a) The parties must use reasonable endeavours to resolve any dispute which may arise out of this Agreement or its implementation. Any meeting held under this clause will be held at the offices of the Department unless otherwise agreed.
- (b) If a dispute does arise, a party may, by notice in writing to the other party, call a meeting of the representatives of both parties to attempt to resolve the dispute.
- (c) If the representatives of the parties do not resolve the dispute within 4 weeks after the notice given under clause 17(b), the Chief Executive Officer of the Recipient and the Director General of the Department (or their respective nominees) must meet within a further 4 weeks to resolve the dispute.
- (d) If a dispute is not resolved under clause 17(c), either party who has complied with this clause may terminate the dispute resolution process.
- (e) Notwithstanding the existence of a dispute, each party must continue to perform their obligations under this Agreement.
- (f) A party may commence court proceedings relating to any dispute arising under this Agreement at any time where that party seeks urgent interlocutory relief.

18. ASSIGNMENT

- (a) The Recipient shall not assign nor purport to assign this Agreement or any right under this Agreement without the prior written consent of the Department.

- (b) The Department may assign this Agreement and any right under this Agreement by notice to the Recipient.

19. COSTS AND STAMP DUTY

- (a) Each party shall bear its own costs in relation to the preparation and administration of this Agreement.
- (b) The Recipient is responsible for paying any stamp duty payable on this Agreement and on any transaction undertaken or instrument or other document executed to give effect to any provision of this Agreement.

20. GST

- (a) The parties acknowledge that all amounts stated in this Agreement excludes GST except where otherwise stated.

21. GENERAL

21.1 Notices

- (a) A notice required or authorised to be given or served upon a party under this Agreement must be in writing in the English language and may be given or served by email, registered post or handed to that party at its address or email appearing in clause 21.1(f) or such other address or email as the party may have notified in writing to the other party.
- (b) In the absence of proof to the contrary a notice is deemed to have been given or served on the party to whom it was sent:
 - (i) in the case of hand delivery, upon delivery during Business Hours of the recipient;
 - (ii) in the case of registered post, 2 Business Days after the date of dispatch; and
 - (iii) in the case of email transmission:
 - (A) at the time of transmission if that transmission is during Business Hours; or
 - (B) at 9am on the next Business Day following the day of transmission, if the transmission is outside Business Hours.
- (c) A notice given or served under this Agreement is sufficient if:
 - (i) in the case of the Department, it is signed by the Director General of the Department (or his or her nominee);
 - (ii) in the case of a corporation, it is signed by a director or secretary of that corporation; and
 - (iii) in the case of an individual, it is signed by that individual.
- (d) The provisions of this clause are in addition to any other mode of service permitted by law.

- (e) In this clause:
- (i) ‘**notice**’ includes a demand, request, consent, approval, offer and any other instrument or communication made, required or authorised to be given under or pursuant to a provision of this Agreement; and
 - (ii) ‘**Business Hours**’ means from 9am to 5pm on a Business Day.
- (f) For the purposes of this clause the address for service of each party is as follows:
- (i) the **Department**
 - Director General
 - Department of Energy, Mines, Industry Regulation and Safety
 - 100 Plain Street
 - EAST PERTH WA 6004
 - Telephone: (08) 9222 3410
 - Email: EIS@DEMIRS.wa.gov.au
 - (ii) the **Recipient**
 - Director name:
 - Company name:
 - Address:
 - Address:
 - Telephone:
 - Email:
- (g) The Recipient must within seven days of any change of the details specified in clause 21.1(f)(ii) advise the State by providing written notice of the change.

21.2 Relationship between the parties

No party:

- (a) is in any way the agent or partner of the other party for any purpose whatsoever nor has any right to hold itself out as such; and
- (b) may make any promise, warranty or representation nor execute any contract or otherwise deal in the name of or on behalf of the other party.

21.3 Amendments or variations in writing

No amendment or variation to this Agreement has any force unless it is in writing and signed by all of the parties to this Agreement.

21.4 Counterparts

This Agreement is validly executed if executed in one or more counterparts.

21.5 No Merger

The covenants, conditions, provisions and warranties contained in this Agreement do not merge or terminate upon completion of the transactions contemplated in this Agreement but to the extent that they have not been fulfilled and satisfied or are capable of having effect, they remain in full force and effect.

21.6 Entire Agreement

This Agreement constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this Agreement, which is not set out in this Agreement, does not form part of the agreement between the parties.

21.7 Inconsistency

Where there is a variation or inconsistency between the provisions of the Schedules to this Agreement and the provisions of clauses 1 to 21 of this Agreement the provisions of clauses 1 to 21 shall prevail.

21.8 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement and refrain from doing anything that might hinder the performance of this Agreement.

21.9 No waiver

- (a) The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.
- (b) The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.
- (c) Any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

21.10 Governing law and jurisdiction

This Agreement is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

21.11 Severability

Where any provision of this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement and the parties must attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' commercial objectives.

21.12 Equal Opportunity, Anti-Discrimination and Privacy Laws

The Recipient shall comply with the provisions of all Western Australian and Commonwealth privacy, anti-discrimination and equal opportunity legislation.

22. Agreement signature page

SIGNED for and on behalf of **THE STATE OF WESTERN AUSTRALIA** acting through **THE MINISTER FOR MINES AND PETROLEUM** by an authorised officer with the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS)

Signature
Mr. Richard Sellers, Director General, DEMIRS

Signature of Witness
Dr. Charlotte Hall, EIS Coordinator

Date of signature:

Date of signature:

EXECUTION BY A COMPANY

SIGNED for and on behalf of:

Recipients name

Recipients ACN

Printed full name of Director

Signature

Date: _____

Printed full name of Witness

Witness signature

Position: _____

Date: _____

Printed full name of Director/Secretary

Signature

Date: _____

Printed full name of Witness

Witness signature

Position: _____

Date: _____

Note: The execution clause will need to be amended depending on the nature of the Recipient. For example, a sole director company will be signed by the sole director and witnessed; a multi-director company will be signed by 2 directors or a director and a secretary or as provided for in its constitution and witnessed; and a joint venture will be signed by its operator on behalf of the joint venture participants.

EXECUTION BY AN INDIVIDUAL

SIGNED for and on behalf of:

_____	_____
<i>Printed full name of Individual</i>	<i>Signature</i>
	<i>Date:</i> _____
_____	_____
<i>Printed full name of Witness</i>	<i>Witness signature</i>
<i>Position:</i> _____	<i>Date:</i> _____

Note: The execution clause will need to be amended depending on the nature of the Recipient. For example, a sole director company will be signed by the sole director and witnessed; a multi-director company will be signed by 2 directors or a director and a secretary or as provided for in its constitution and witnessed; and a joint venture will be signed by its operator on behalf of the joint venture participants

