

Deed Number _____
(for Office Use Only)

DATED the _____ day of _____ 20____
(to be filled in by the Minister only)

THE STATE OF WESTERN AUSTRALIA

and

THE MINISTER FOR MINES AND PETROLEUM

and

(NATIVE TITLE PARTY)

and

(GRANTEE PARTY)

DEED FOR GRANT OF MINING TENEMENT

Tenure and Native Title Branch
DEPARTMENT OF MINES AND PETROLEUM
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DEED FOR GRANT OF MINING TENEMENT

Native Title Act 1993 (Cth) - Sections 28(1)(f) and 31(1)(b)

SCHEDULE

1. Date of deed (to be entered by Minister only)	
2. Mining tenement(s) Application number(s) Type of tenement Mineral field	
3. Grantee party (applicant for mining tenement) Name(s) Address	
4. Native title party (Registered native title claimant(s)) Name(s) Address Native title determination application number Date entered on the Register of Native Title Claims	
5. Ancillary agreement Native title party Other parties Date of ancillary agreement	YES / NO (delete the inapplicable)

Initialled: _____ for Government party _____ for native title party _____ for grantee party

THIS DEED is made on the date specified in the schedule

BETWEEN

THE STATE OF WESTERN AUSTRALIA and
**THE MINISTER FOR MINES AND PETROLEUM, AS THE MINISTER RESPONSIBLE FOR
THE ADMINISTRATION OF THE MINING ACT 1978** (together the “Government party”)

and

NATIVE TITLE PARTY described in the schedule (“native title party”), acting for and on behalf of themselves and all persons included in the native title claim group

and

GRANTEE PARTY described in the schedule (“grantee party”)

RECITALS

- A. The grantee party has made application for the tenement(s).
- B. If the grant of the tenement(s) affects native title it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the *Native Title Act* 1993 (Cth) (as amended) and the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(i) of the *Native Title Act*.
- C. The Government party has given notice of its intention to grant the tenement(s) in accordance with section 29 of the *Native Title Act*.
- D. The native title party [has/is taken to have] made to the Federal Court the native title claim in relation to the subject land.
- E. The native title claim has been entered in the Register of Native Title Claims and the native title party is the registered native title claimant.
- F. In accordance with Part 2 Division 3 Subdivision P of the *Native Title Act* negotiations in good faith in respect of the grant of the tenement(s) have been conducted between the Government party, the grantee party and the native title party.

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 for Government party for native title party for grantee party

- G. The native title party agrees to the grant of the tenement(s) and this deed is entered into for the purpose of ensuring the validity of the tenement(s) under the *Native Title Act*.

OPERATIVE PROVISIONS

INTERPRETATION

- 1.1 In this deed unless the contrary intention appears:

“**ancillary agreement**” means any existing or future agreement (including, without limitation, the agreement(s) (if any) noted in the schedule) made between the native title party and the grantee party or any other person in connection with the grant of the tenement(s) and/or the grantee party exercising its rights and discharging its obligations under the tenement(s);

“**native title**”, “**native title claim group**”, “**native title party**”, “**future act**”, “**Register of Native Title Claims**”, “**arbitral body**”, “**relevant Minister**” and “**registered native title claimant**” have the same meanings as they have in the *Native Title Act*;

“**native title claim**” means the native title determination application [taken to have been] made by the native title party to the Federal Court under Part 3 of the *Native Title Act* described in the schedule;

“**subject land**” means the land the subject of the tenement application;

“**tenement(s)**” means the mining tenement(s) to be granted pursuant to the application described in the schedule.

- 1.2 In this deed, unless the contrary intention appears:

- (a) the word “person” includes a firm, body corporate, statutory corporation, an unincorporated association or an authority and a reference to a gender includes each other gender;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including but not limited to persons taking by novation) and assigns;

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- (d) 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
- (e) a reference to anything 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.

AUTHORITY TO ENTER INTO DEED

- 2. The native title party represents and warrants that all necessary authorisations have been obtained to enter into this deed and this deed is valid and binding and enforceable in accordance with its terms against the native title party and all the persons included in the native title claim group.

AGREEMENT TO GRANT OF TENEMENT

- 3. The native title party:
 - (a) agrees to the grant of the tenement(s) and to the grantee party exercising its rights and discharging its obligations under the tenement(s); and
 - (b) acknowledges that this deed is an agreement for the purpose of section 28(1)(f) and section 31(1)(b) of the *Native Title Act*.

COMPENSATION TO BE SET OFF

- 4.1 Clauses 4.2 and 4.3 apply if a native title party:
 - (a) receives or is entitled to receive from the grantee party or any other person any compensation, benefit or consideration ("compensation entitlement") whether under any ancillary agreement or otherwise; and
 - (b) makes any claim for compensation, damages or other relief whatsoever against the Government party or any officer or agency of the Government party ("compensation claim")

in connection with the grant of the tenement(s) and/or the grantee party exercising its rights or discharging its obligations under the tenement(s) and their claimed effect on any native title rights of the native title party, whether the compensation claim arises under the *Native Title Act* or otherwise.

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- 4.2 The native title party agrees that the compensation entitlement is to be taken into account in determining and is to be set off against any compensation claim whether that claim is determined by agreement of the parties or by a court or body having jurisdiction or power to make a determination in relation to the compensation claim.
- 4.3 The native title party and the grantee party agree that if the native title party makes a compensation claim then at the request of the Government party they:
- (a) will provide full particulars including a statement of account of the compensation entitlement; and
 - (b) produce for inspection and copying any document (as that word is defined in the dictionary to the *Evidence Act* 1995 (Commonwealth)) relating to the compensation entitlement including without limitation any ancillary agreement.

GOVERNMENT PARTY NOT LIABLE FOR ANCILLARY AGREEMENT

5. The native title party and the grantee party acknowledge that neither the Government party nor its officers, employees or agents have any obligations or liability whatsoever in connection with the rights and obligations of the native title party or the grantee party under an ancillary agreement.

CONDITIONS

- 6.1 Clauses 4.1, 4.2 and 4.3 of this deed constitute conditions to be complied with by the parties for the purposes of subsections 41(1) and 41(2) of the *Native Title Act*, and all persons included in the native title claim group are taken to be parties in respect of those clauses.
- 6.2 The terms of this deed, other than clause 3, and of any ancillary agreement are not conditions precedent nor conditions subsequent to the agreement of the native title party to the grant of the tenement(s) and to the grantee party exercising its rights and discharging its obligations under the tenement(s).
- 6.3 The provisions of this deed and of any ancillary agreement are not conditions of the tenement(s) when granted under the *Mining Act* 1978.

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DEED PREVAILS

7. The grantee party and the native title party acknowledge that the provisions of this deed prevail over the provisions of any ancillary agreement to the extent of any inconsistency.

NO ACKNOWLEDGMENT OF NATIVE TITLE

8. By entering into this deed the Government party does not acknowledge the existence of native title to the subject land.

GENERAL

- 9.1 Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this deed and the matters contemplated by it.
- 9.2 The native title party consents to the arbitral body making a determination that the tenement(s) may be granted subject only to the conditions in clauses 4.1, 4.2 and 4.3 above.
- 9.3 Each party will pay its own legal and other costs and expenses in connection with the preparation and completion of this deed, except for duty. The grantee party is to pay all duty (including fines or penalties) payable with respect to this deed.
- 9.4 The grantee party and the native title party authorise the Government party, and the Government party agrees, to give a copy of this deed to the arbitral body and to advise the relevant Minister in writing of the making of this deed.
- 9.5 This deed is governed by the law in force in the State of Western Australia.
- 9.6 This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Deed by signing any counterpart.

Initialled: _____
 for Government party for native title party for grantee party

EXECUTED as a deed

SIGNED for and on behalf of
THE MINISTER FOR MINES AND PETROLEUM and the STATE OF WESTERN AUSTRALIA

Name of authorised person (block letters)

Signature of authorised person

Office held

Date of signature

in the presence of:

Name of witness (block letters)

Signature of witness

Address of witness

Occupation of witness

Initialed: _____
 for Government party for native title party for grantee party

SIGNED BY

Name of grantee party

Signature of grantee party

in the presence of

Date of signature

Name of witness (block letters)

Signature of witness

Address of witness

Occupation of witness

OR IF THE GRANTEE IS A COMPANY

Note: Corporations law requires that a deed must be executed in accordance with the Articles of Association of the company, which is generally by affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Grantee companies should check their Articles of Association. Alternatively, under section 127(1) of the Corporations Act 2001 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.

Common seal
of grantee if a
company

The seal of the company was affixed hereto in accordance with the Articles of Association of the company in the presence of:

(Signature) _____
Director

(Name - block letters) _____
Director

Date of
affixing seal

(Signature) _____
Director/Secretary (delete inapplicable)

(Name - block letters) _____
Director/Secretary (delete inapplicable)

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WITHOUT SEAL

The deed was signed in accordance with section 127(1) of the Corporation Act 2001 in the presence of:

(Signature) _____
Director

(Name – block letters) _____
Director

(Signature) _____
Director/Secretary (delete inapplicable)

TO BE SOLE SIGNATORY ONLY WHERE COMPANY IS A PROPRIETARY COMPANY

(Name – block letters) _____
Director/Secretary (delete inapplicable)

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for Government party for native title party for grantee party

SIGNED BY

By executing this deed the signatories represent and warrant that they are authorised to execute this Deed on behalf of the native title party and all persons included in the native title claim group

Name of Native Title Party :

Native Title Claim Number :

Registered Native Title Claimant(s):

Signature claimant

in the presence of

Signature of witness

Name of witness (block letters)

Address of witness

Occupation of witness

OR IF THE NATIVE TITLE PARTY IS A REGISTERED NATIVE TITLE BODY CORPORATE

Note: *The law relating to corporations, bodies corporate and incorporated associations requires that a deed must be executed in accordance with their Articles or Rules of Association. This is generally by affixing the common seal of the corporation, body corporate or association to the deed in the presence of two authorised officers. Registered native title bodies corporate should check their Articles or Rules of Association.*

Common seal
of native title
party if a body
corporate

The seal of the body corporate was affixed hereto in accordance with the Articles or Rules of Association of the body corporate in the presence of:

(Signature) _____
Director/Chairperson/Secretary/Treasurer (delete the inapplicable)

(Name - block letters) _____
Director/Chairperson/Secretary/Treasurer (delete the inapplicable)

(Signature) _____
Director/Chairperson/Secretary/Treasurer (delete inapplicable)

(Name - block letters) _____
Director/Secretary (delete inapplicable)

Date of affixing seal

Initialed: _____
for Government party for native title party for grantee party

Initialed: _____
for Government party for native title party for grantee party