

**FUNDING AGREEMENT
CO-FUNDED GOVERNMENT – INDUSTRY
ENERGY ANALYSIS PROGRAM – GEOPHYSICS ACQUISITION
June 2024 – May 2025**

THE STATE OF WESTERN AUSTRALIA

AND

[insert successful applicant's name]

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**FUNDING AGREEMENT
CO-FUNDED GOVERNMENT – INDUSTRY
ENERGY ANALYSIS PROGRAM – GEOPHYSICS ACQUISITION**

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

AND

[Recipient full name] [ABN/ACN as appropriate] of [Recipient address]
(‘Recipient’)

BACKGROUND

- A. The Co-funded Government – Industry Energy Analysis Program – Geophysics Acquisition (**Program**) is a component of the Western Australian Government's Exploration Incentive Scheme initiative, which aims to encourage exploration in Western Australia for the long-term sustainability of the State's resources sector.
- B. The primary aim of the Program is to achieve a clearer resolution and understanding of petroleum and geothermal systems of Western Australia by making funding available for the acquisition of greenfields geophysical data.
- C. The eligibility criteria for funding under the Program is set out in the Department's *Co-funded Energy Analysis Program – Geophysics Acquisition Guidelines for the Submission of Applications*.
- D. All data produced from co-funded projects under the Program will become open file and publicly available at no cost to advance exploration activity, address geological knowledge gaps and deliver regional information to the wider exploration community.
- E. The Recipient applied for funding for its Project through the Program. A Funding Offer has been made by the State and accepted by the Recipient. The terms and conditions of the funding agreed by the Parties are set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

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

‘**Agreement**’ means this agreement, including the Schedules to this Agreement;

‘Authority’ includes any government departments, agencies and instrumentalities of the State of Western Australia, Ministers and any body that is established or continued for a public purpose by an Act of the Parliament of Western Australia (including body corporate Ministers), and includes any employee, officer or agent of an Authority;

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

‘Commencement Date’ means 1 June 2024;

‘Completion’, **‘Complete’** or **‘Completed’** means the completion of the Project in accordance with the Proposal and the requirements of this Agreement (including the Guidelines);

‘Completion Date’ means on or before 5pm on 31 May 2025;

‘Confidential Information’ means all material, information, data and records of the Recipient, in whatever form, that is:

- (a) marked confidential;
- (b) prepared by the Recipient as part of its participation in the Program; and
- (c) provided to the Department under this Agreement for the purposes of the Program (including draft and final Submission Items),

but does not include any material, information, data or records that:

- (d) is in the public domain, or becomes publicly available other than as a result of a breach of an obligation of confidence in this Agreement;
- (e) is obtained from a third party without breach by that third party of any obligation of confidence owed to the Recipient; or
- (f) is independently developed by the Department or was already in the Department's possession when provided by the Recipient;

‘Confidentiality Period’ means a period from the Commencement Date and ending three calendar months after the Completion Date;

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

‘Data’ means the Raw Data and the Processed Data;

‘Debarment Regime’ means the regime established under the *Procurement Act 2020* (WA) and *Procurement (Debarment of Suppliers) Regulations 2021* (WA) for the debarment of suppliers;

‘Direct Project Costs’:

- (a) means the costs incurred by the Recipient during the Funding Term in utilising Third Party Service Providers to undertake ground-based and airborne geophysical surveys, and associated Raw Data processing and analysis to produce Processed Data, as described in the Guidelines and specified in the Proposal;
- (b) may include a Mobilisation Amount; and
- (c) does not include any administration or overhead costs, amounts on account of GST charged by a Third Party Service Provider, shipping costs, project management costs,

standby costs, transportation of personnel, or company personnel salaries the Recipient may incur in undertaking the Project.

‘Final Report’ means the report prepared by the Recipient to the Department's satisfaction that meets the requirements of the Guidelines;

‘Funding Amount’ means the amount of funding for the Project determined in accordance with clause 5 for which the Recipient is eligible subject to compliance with this Agreement;

‘Funding Offer’ means an offer of funding for the Project by the Department under the terms of the Program, a copy of which is attached to this Agreement in Schedule 2;

‘Funding Term’ means the period from the Commencement Date until the Completion Date (inclusive of those dates);

‘Government Agency’ means any Commonwealth or State Minister, government department, body corporate (including body corporate Ministers), 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* (Cth);

‘Guidelines’ means the Guidelines for Submission of Applications for the Co-funded Energy Analysis Program – Geophysics Acquisition prepared by the Department, a copy of which is attached to this Agreement at Schedule 3;

‘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;

‘Law’ includes:

- (a) Acts of the Commonwealth and the State of Western Australia, including the Relevant Legislation;
- (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;

‘Loss’ includes damages, loss, cost, expenses, claim, demand, action, proceeding, liability, outgoings or payment (including legal costs and expenses on a fully indemnity basis) however arising and whether present, future or contingent;

‘Mobilisation Amount’ means the amount of Mobilisation Costs eligible for funding, as determined in accordance with clause 5.2;

‘Mobilisation Cost’ has the meaning given in clause 5.2(a);

‘Other Titles’ means any title (howsoever described) granted under the Relevant Legislation other than the Title.

‘Party’ means the Recipient, or the Department, depending on the context, and **‘Parties’** means the Recipient and the Department;

‘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);

‘Processed Data’ means the data products or information resulting from data that have undergone manipulation, transformation or interpretation in connection with the Project;

‘Program’ means the Co-funded Government – Industry Energy Analysis Program - Geophysics Acquisition as described in paragraphs A to D of the Background section in this Agreement;

‘Project’ means the implementation of the Proposal, which the Department has offered to co-fund in the Funding Offer, in accordance with this Agreement;

‘Proposal’ means the Recipient's proposal for funding under the Program that:

- (a) meets the eligibility criteria in, and has been prepared and lodged by the Recipient in accordance with, the Guidelines; and
- (b) describes the specific types of ground-based and airborne geophysical surveys and Raw Data processing and analysis the Recipient proposes to be undertaken by a Third Party Service Provider,

a copy of which is contained in Schedule 1, as may be modified from time to time under clause 3.2;

‘Raw Data’ includes any data in any format, derived from the eligible ground-based and airborne geophysical surveys as described in the Proposal;

‘Related Bodies Corporate’ has the same meaning as in the *Corporations Act 2001* (Cth);

‘Relevant Legislation’ means the legislation that governs the Titles and includes, as applicable, the *Petroleum (Submerged Lands) Act 1982* (WA) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA) and any regulations made under that legislation, including the *Petroleum (Submerged Lands) (Resource Management and Administration) Regulations 2015* (WA) and the *Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015* (WA);

‘Submission Items’ means the:

- (a) Final Report;
- (b) Raw Data; and
- (c) Processed Data;

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

‘Tax Invoice’ means the invoice which complies with the requirements of the GST Act and is provided to the Department under clause 5.1(a) of this Agreement;

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

‘Term’ has the meaning given in clause 2 of this Agreement;

‘Third Party Service Provider’ means an independent person that is not the Recipient, or its Related Bodies Corporate, who is engaged by the Recipient to undertake the ground-based and airborne geophysical surveys and Raw Data processing and analysis that forms part of the Project;

‘Title’ means the applicable:

- (d) petroleum or geothermal licence, lease, permit, reservation or authority granted under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) and held by the Recipient;
or
 - (e) petroleum lease, licence, permit or authority granted under the *Petroleum (Submerged Lands) Act 1982* (WA) and held by the Recipient,
- to which the Project relates; and
- ‘Value’ has the same meaning as in the GST Act.

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 monetary amount means that amount in Australian currency;
- (c) a reference to time means the time observed by the general community from time to time in Western Australia;
- (d) a reference to a party to this Agreement or any other document or agreement includes its executors, administrators, successors and permitted assigns;
- (e) a reference to an item in the Background, clause, schedule, annexure or appendix is a reference to an item in the Background, clause of or schedule, annexure or appendix to this Agreement;
- (f) 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;
- (g) 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;
- (h) a statute includes any regulation, ordinance, by-law or other subordinate legislation under it;
- (i) a reference to a Law or a provision of a Law is a reference to that Law or provision as amended, consolidated, re-enacted or replaced;
- (j) the words "including" and "includes" is taken to be followed by the words "without limitation";
- (k) in the interpretation of this Agreement, headings are to be disregarded;
- (l) no rule of construction applies to the Department because that Party was responsible for the preparation of this Agreement;
- (m) if the Recipient consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the Recipient under this Agreement binds each person who comprises the Recipient jointly and severally;

- (ii) each person who comprises the Recipient agrees to do all things necessary to enable the obligations imposed on the Recipient under the Agreement to be undertaken; and
- (iii) the act of one person who comprises the Recipient binds the other persons who comprise the Recipient; and
- (n) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body.

2. TERM AND SURVIVAL

- (a) Subject to clause 2(b), the Term commences on the Commencement Date and, unless terminated earlier in accordance with clause 16, terminates on the day the Department releases all Submission Items to open file in accordance with the Guidelines.
- (b) Clauses 9, 10, 11, 12, 13, 17 and 21 survive the expiry or termination of this Agreement.

3. PROJECT

3.1 Management of Project

- (a) The Recipient acknowledges and agrees that it undertakes the Project entirely at its own cost and risk.
- (b) The Recipient will be solely responsible for:
 - (i) the management of the Project;
 - (ii) any funds required for the Completion of the Project in addition to the Funding Amount;
 - (iii) any and all liabilities and obligations associated with the Project, including its obligations under this Agreement; and
 - (iv) if the Proposal includes any ground-based or airborne geophysical surveys over or in respect of any Other Titles, managing any arrangements or agreements that it has with the holders of the Other Titles and for resolving any disputes that may arise between the Recipient and the holders of the Other Titles in connection with the Project, the Funding Amount or this Agreement.

- (c) The Recipient acknowledges and agrees that:
 - (i) the Department has no obligations in relation to the Project other than to pay the Funding Amount in accordance with clause 5; and
 - (ii) 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 Titles or the Project, whether pursuant to applicable Laws or otherwise.

3.2 Modification of Proposal

- (a) If the Recipient determines that modifications are required to the Proposal, 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.
- (b) The approved modifications contemplated by clause 3.2(a) will form part of the Proposal under this Agreement effective from the date of approval.

3.3 Completion of Project

The Recipient must use its best endeavours to complete the Project in accordance with the Proposal as soon as reasonably practicable after the Commencement Date and must complete the Project by the end of the Funding Term.

4. REPORTING AND REVIEW

4.1 Provision of Submission Items

- (a) On Completion of the Project, and by no later than the Completion Date, the Recipient must submit all Submission Items to the Department in a form and manner that, in the Department's opinion, meets the requirements of the Guidelines and this Agreement.
- (b) If, in response to the Submission Items, the Department provides any feedback or comments in writing to the Recipient, the Recipient must address that feedback or comments.

4.2 Form of Final Report

- (a) Without limiting clause 4.1, the Final Report must be in a form compatible with the applicable reporting requirements as specified in the Relevant Legislation.
- (b) The submission of the Final Report does not replace or abrogate any applicable reporting requirements under the Relevant Legislation or at Law.

4.3 Form of Data

All Data must be provided in the applicable standard data and file formats for reporting results in respect of petroleum or geothermal titles (as applicable to the Title) as required by:

- (a) the Guidelines;
- (b) the Relevant Legislation; and
- (c) the Department, as detailed on the Department's website.

4.4 Approval of Final Report

- (a) The Department, in its sole discretion, may approve the Final Report if the Final Report addresses the requirements of clauses 4.1 and 4.2(a) of this Agreement.
- (b) If, in the Department's opinion, the Final Report is incomplete or does not meet the requirements of clauses 4.1 and 4.2(a) of this Agreement, or any other Submission Items remain outstanding or do not meet the requirements of this Agreement, the Department will notify the Recipient and the Recipient must address the requirements or provide the outstanding or revised Submission Items as notified by the Department to the Department's satisfaction as soon as reasonably practicable and by no later than the last day of the Confidentiality Period.
- (c) If the Recipient fails to comply with clause 4.4(b) of this Agreement and the Department has not extended the date for compliance under clause 6 of this Agreement:
 - (i) the Recipient relinquishes all entitlement to funding under this Agreement; and
 - (ii) the Department is under no obligation to provide any funding that the Recipient would otherwise have been entitled to under clause 5 of this Agreement.

5. FUNDING

5.1 Determination of Funding Amount

- (a) The Funding Amount is an amount that equals 50% of the Direct Project Costs up to a maximum amount of \$250,000 (ex GST).
- (b) Subject to clause 5.1(a), the Funding Amount will be determined as follows:
 - (i) where 50% of the Direct Project Costs are less than the Funding Offer, the Funding Amount will be 50% of the actual Direct Project Costs; or
 - (ii) where 50% of the Direct Project Costs are more than the Funding Offer, the Funding Amount will be the Funding Offer.

5.2 Eligibility for, and determination of, Mobilisation Amount

- (a) The Funding Amount will include a Mobilisation Amount if:
 - (i) all ground-based and airborne geophysical surveys described in the Proposal are completed by the Completion Date;
 - (ii) the Recipient engaged a Third Party Service Provider to mobilise geophysical survey and associated equipment required for the Project; and

- (iii) the costs associated with such mobilisation are itemised on the Third Party Service Provider's invoices that meet the requirements of clauses 5.3(a)(iii) and 5.3(b) (**Mobilisation Cost**).
- (b) Subject to clause 5.2(a), the Mobilisation Amount will be determined as follows:
 - (i) where the Mobilisation Cost is less than or equal to 5% of the Direct Project Costs, the Mobilisation Amount will be the same amount as the Mobilisation Cost; or
 - (ii) where the Mobilisation Cost is more than 5% of the Direct Project Costs, the Mobilisation Amount will be the amount that is equal to 5% of the Direct Project Costs.
- (c) For the avoidance of doubt, the Mobilisation Amount forms part of, and is not in addition to, the Funding Amount.

5.3 Submission of Tax Invoice

- (a) The Recipient must submit a Tax Invoice to the Department by the Completion Date for the Department's approval that:
 - (i) requests payment of the Funding Amount and includes the account name, BSB, account number and email address of the Recipient;
 - (ii) itemises the eligible activities undertaken in respect of the Project and the names of each Third Party Service Provider that carried out the activities; and
 - (iii) is accompanied by a copy of all invoices the Recipient received from each Third Party Service Provider that carried out the eligible activities during the Funding Term, which invoices must include the Third Party Service Provider's contact details, business address, an Australian Business Number (ABN) and a description of the activities undertaken.
- (b) Only Third Party Service Provider invoices that are dated within the Funding Term may accompany the Recipient's Tax Invoice required under clause 5.3(a) of this Agreement. Any items of funding detailed on the Recipient's Tax Invoice will not be eligible to comprise the Funding Amount unless accompanied by a Third Party Service Provider invoice that meets the requirements of this clause.
- (c) At any time before the Department approves the Tax Invoice submitted under clause 5.3(a) of this Agreement, the Department may, by notice in writing, request such further information as it requires to verify the Tax Invoice.
- (d) The Recipient must promptly provide any information requested by the Department under clause 5.3(c) of this Agreement.

5.4 Prerequisites for Payment Approval

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

- (a) the Department has received, reviewed and approved the Final Report and other Submission Items under clauses 4.4(a) or 4.4(b), as applicable;
- (b) the Recipient has submitted a Tax Invoice that meets the requirements of clauses 5.3(a) and 5.3(b);
- (c) any additional information requested by the Department under clause 5.3(c) has been provided to the Department's satisfaction;
- (d) the Recipient has provided to the Department a copy of the written consent referred to in clause 8(b); and
- (e) the Department is satisfied that the Recipient has fulfilled all of its obligations under this Agreement.

5.5 Notice of Payment Approval

Once the Department is satisfied that the prerequisites set out in clause 5.4 have been met by the Recipient, the Department will notify the Recipient in writing that:

- (a) the prerequisites in clause 5.4 have been satisfied; and
- (b) the Department has approved the payment of the Funding Amount to the Recipient to the account details outlined in the Recipient's Tax Invoice.

5.6 Consent to public release of Submission Items

- (a) The Recipient expressly consents to the public release of the Submission Items, and for the Submission Items to be made publicly available, at the expiry of the Confidentiality Period.
- (b) The Recipient acknowledges and agrees that the Recipient's consent given under clause 5.6(a) will constitute all necessary written consents for the public release of the Submission Items for the purposes of the Relevant Legislation.

6. DATES FOR COMPLIANCE

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

7. GENERAL OBLIGATIONS OF RECIPIENT

Without limiting any other obligations in this Agreement, the Recipient must:

- (a) advise the Department in writing (which, for the purposes of this clause, may be by email):
 - (i) within one week of the commencement of any geophysical survey in the field, the date on which that survey commenced; and
 - (ii) within one week of completion of any geophysical survey in the field, the date on which that survey was completed;

- (b) undertake, and ensure all Third Party Service Providers undertake, the Project in accordance with this Agreement, the Guidelines, any methodology set out in the Proposal, and all applicable Laws and industry standards and codes; and
- (c) acknowledge the contribution of the Western Australian Government's Exploration Incentive Scheme to its activities whenever possible, including acknowledgements in marketing material, public statements and signage.

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;
 - (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 Agency binding on it; or
 - (B) any other document which is binding on it or its assets; and
 - (vi) the Recipient holds or will hold all approvals, licences, permits, registrations, agreements and consents required by Law or a Government Authority to undertake the Project, including in respect of land access, native title, heritage and environment, prior to commencing the Project.
- (b) If the Proposal includes any ground-based or airborne geophysical surveys over or in respect of any Other Titles, the Recipient warrants and represents to the Department as at the date of this Agreement and during the Term that the Recipient has obtained the unconditional and irrevocable written consent of the holders of the Other Titles:
 - (i) for the relevant Third Party Service Provider to undertake the surveys and associated Raw Data processing and analysis as described in the Proposal; and
 - (ii) for the public release of the Submission Items (to the extent these contain Data collected in respect of the relevant Other Titles) at the expiry of the Confidentiality Period in accordance with clause 5.6,

and acknowledgement from the holders of the Other Titles that they will not receive any of the Funding Amount under this Agreement or otherwise.

- (c) 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 Submission Items under this Agreement vests in the Recipient.
- (b) The Recipient grants to the Department a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, reproduce, publicise, communicate, adapt and exploit the copyright in the Submission Items for any purpose associated with the activities of the Department or other Authority, anywhere in the world, after the Confidentiality Period has expired.

9.2 Recipient Warranty and Indemnity

- (a) The Recipient warrants that:
 - (i) any use by the Department of the Submission Items, including making the Submission Items publicly available, does not and will not infringe the rights, including Intellectual Property rights, of any third party (including any Other Title holder); and
 - (ii) the Recipient will, at no 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 (including any Other Title holder) which is comprised in or is necessary for the use of the Submission Items.
- (b) The Recipient indemnifies (and keeps indemnified) the Department for any and all Losses the Department or any other Authority may suffer or incur in connection with any breach of these warranties by the Recipient or the Recipient's employees, agents or contractors, or failure of the Recipient to procure the licences and consents referred to in clause 9.2(a)(ii) of this Agreement.

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 its Third Party Service Providers comply with clause 10(a) of this Agreement.
- (c) The Recipient must retain the records maintained under this clause for a period of not less than 7 years after the 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 Title under the Relevant Legislation.
- (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) of this Agreement, the Department agrees to keep confidential, and not to use or disclose other than as permitted by this Agreement, any Confidential Information during the Confidentiality Period.
- (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 Department or another Authority, provided such persons have a need to know the Confidential Information and are required to keep the Confidential Information confidential;
 - (ii) that is required or requested to be disclosed under an applicable Law or to Parliament or a parliamentary body, Governmental Agency, or a court; or
 - (iii) that the Recipient permits in writing the Department to disclose.
- (c) The Recipient expressly acknowledges that:
 - (i) the confidentiality obligation under clause 11.1(a) applies only for the Confidentiality Period; and
 - (ii) the Department may publicly disclose any or all of the Submission Items at any time after the expiry of the Confidentiality Period.
- (d) For the avoidance of doubt, the Department's confidentiality obligation under clause 11.1(a) ceases at the expiry of the Confidentiality Period, regardless of the date that the Submission Items are submitted to the Department or the Submission Items are approved and the Funding Amount paid by the Department.

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 contractors aware of the Recipient's obligations under this clause 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) of this Agreement.

11.3 Publicity

- (a) Other than announcements the Recipient is required to make to any relevant stock exchange or at Law, 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 Submission Items until after the expiry of the Confidentiality Period.

12. INSURANCE

Insurance remains the sole responsibility of the Recipient.

13. INDEMNITY

- (a) In addition to, and without limiting the indemnity in clause 9.2(b) of this Agreement, the Recipient will indemnify the Department (and keep the Department indemnified) against any and all Losses the Department or any other Authority may suffer or incur 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 employees, agents or contractors, 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 employees, agents or contractors, in the course of executing the Project;
 - (iii) out of a breach by the Recipient, or the Recipient's employees, agents or contractors, of an obligation arising under this Agreement or of a Law in the course of executing the Project;
 - (iv) in connection with the Proposal including any ground-based or airborne geophysical surveys over or in respect of Other Titles.
- (b) The Recipient's liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent act or omission by the Department contributed to the relevant Loss.
- (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, as 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 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, including if the Recipient is no longer the holder of a Title for any reason, including where a Title is transferred, expires, is cancelled or surrendered, or a Third Party Service Provider is or becomes a suspended or debarred supplier under the Debarment Regime.

16. TERMINATION

- (a) The Department may immediately terminate this Agreement upon giving written notice of termination to the Recipient if:
 - (i) the Recipient fails to fulfil or breaches any condition or obligation of this Agreement and fails to rectify such breach within 14 days of receipt of written notice from the Department setting out details of the breach and requiring the Recipient to rectify such breach;
 - (ii) the Recipient breaches any condition or obligation of this Agreement which, in the Department's opinion, cannot be rectified;
 - (iii) the Department is satisfied that any statement made in the Proposal, the Submission Items or any supporting information provided by the Recipient is incorrect, incomplete, false or misleading in a way which would, in the Department's opinion, have materially and adversely affected the original decision to enter into this Agreement or any decision to approve payment of the Funding Amount;
 - (iv) 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 Program as set out in the Guidelines;
 - (v) the Recipient is or becomes a suspended or debarred supplier or an affiliate of a suspended or debarred supplier under the Debarment Regime; and
 - (vi) the Recipient, by written notice to the Department, withdraws from the Program;or

- (vii) the Recipient suffers an Insolvency Event (except to the extent that this right is stayed by operation of sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth)).
- (b) If the Department terminates this Agreement in accordance with clause 16(a), the Department is not obliged to pay the Funding Amount to the Recipient unless the Recipient has provided the Department the Submission Items, which have been approved by the Department under clauses 4.4(a) or 4.4(b), as applicable, prior to the date of termination.

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 28 days after the notice is given under clause 17(b) of this Agreement, the Chief Executive Officer of the Recipient and the Director General of the Department (or their respective nominees) must meet within a further 28 days to resolve the dispute.
- (d) If a dispute is not resolved under clause 17(c) of this Agreement, either party who has complied with this clause may commence court proceedings.
- (e) Notwithstanding the existence of a dispute, the Recipient must continue to perform its 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

The Parties acknowledge that all amounts stated in this Agreement exclude 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) A notice is taken to have been given or served on the Party to whom it was sent:
 - (i) in the case of hand delivery, upon delivery;
 - (ii) in the case of registered post, 2 Business Days after the date of dispatch; and
 - (iii) in the case of email transmission, at the time of transmission, except that if transmission occurs after 5.00pm or on a day that is not a Business Day, at 9am on the next Business Day following the day of transmission.
- (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 the Recipient if it is a corporation, it is signed by a director or secretary of the Recipient; and
 - (iii) in the case of the Recipient if it is 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 ‘**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.
- (f) For the purposes of this clause, the address for service of each party is as follows:
 - (i) **the Department**
Director General
Department of Mines, Industry Regulation and Safety
100 Plain Street

EAST PERTH WA 6004
Telephone: (08) 9222 3410
Email: EIS@dmirs.wa.gov.au

(ii) the **Recipient**

Name:
Company name:
Business address:
Business address:
Telephone:
Email:

- (g) The Recipient must within seven (7) days of any change of the details specified in clause 21.1(f)(ii) advise the Department 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

- (a) 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.
- (b) This Agreement shall prevail to the extent of any inconsistency between this Agreement and the Guidelines.

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.

21.13 No fetter

Nothing in this Agreement can, or is to be taken to, fetter, restrict, affect, derogate from or control the exercise or fetter or control the timing of the exercise by any person (including a Minister of

the State of Western Australia) of a statutory right, power, duty, function or discretion otherwise than in accordance with the statute.

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 Mines, Industry Regulation and Safety.

Signature
Mr. Richard Sellers, Director General, DMIRS

Signature of Witness
Dr. Charlotte Hall, EIS Coordinator

Date:

Date:

EXECUTION BY A COMPANY

SIGNED for and on behalf of:

_____ Recipients name	_____ Recipients ACN
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_____ Printed full name of Director	_____ Signature Date: _____
_____ Printed full name of Witness Position: _____	_____ Witness signature Date: _____

_____ Full Name of Director/Secretary	_____ Signature Date: _____
_____ Printed full name of Witness Position: _____	_____ Witness signature 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 and witnessed.

EXECUTION BY AN INDIVIDUAL

SIGNED for and on behalf of:

_____ Printed full name of Individual	_____ 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 and witnessed.

