

Between

[Insert name of tenement applicant]
(“Grantee Party”)

and

THE *[Insert name of claim group]* PEOPLE
and

SOUTH WEST ABORIGINAL LAND AND SEA COUNCIL

HERITAGE PROTECTION AGREEMENT

Prepared by:
South West Aboriginal Land & Sea Council
PO Box 585
Cannington WA WA 6987
Telephone: (08) 9486 2421
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Ref: EvT:

This Agreement is made on the day of 20 .

BETWEEN:

[Insert names of Registered Native Title Claimants] for and on behalf of themselves and the members of the *[Insert name of claim group]* People (jointly referred to as the “**Native Title Party**”) all of c/- the South West Aboriginal Land and Sea Council, 7 Harvey Street, Victoria Park, Western Australia and herein represented by the **Authorised Agent**.

AND

SOUTH WEST ABORIGINAL LAND AND SEA COUNCIL ABORIGINAL CORPORATION of 1490 Albany Highway, Cannington 6107 Western Australia (“**Corporation**”)

AND

[Insert name of Grantee Party] of, *[Insert address of Grantee Party]*, (“**Grantee Party**”).

RECITALS

- A. The Grantee Party has made application for the grant of Mining Tenement(s) and may, from time to time, make further application for Mining Tenement(s) in relation to specified pieces of land and waters within the Native Title Claim Area.
- B. The *[Insert name of claim group]* People is the Native Title Claim Group in relation to the land and waters covered by Native Title Determination Claimant Application WC [**/**- *[Name of claim group]*] (WAG ***/**) which also covers the area of the proposed Mining Tenement.
- C. The Parties have agreed to enter into this Agreement to facilitate:
 - (i) the preservation of Aboriginal heritage through the protection of Aboriginal Sites and Aboriginal Objects, and
 - (ii) the grant of Mining Tenement(s) without objection from the Corporation or any member of the Native Title Party.

IT IS HEREBY AGREED :

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Aboriginal Object(s)" means:

- (a) an object of Aboriginal origin, of sacred ritual or ceremonial importance or of anthropological, archaeological, ethnographical or other special national or local interest or of outstanding aesthetic value; or
- (b) the whole or part of the bodily remains of an Aboriginal person;

"Aboriginal Site(s)" are those sites or areas within the Native Title Claim Area which are of cultural, spiritual or traditional significance to the Native Title Party, or contain an Aboriginal Object that are an "Aboriginal site" as defined in the Heritage Act or a "significant Aboriginal area" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);

"Act" means the Native Title Act 1993 (Cth);

"Agreement" means this document, including the recitals, as amended from time to time by agreement in writing of the Parties;

"Anthropologist" means a duly qualified independent consultant anthropologist engaged by the Corporation on contract basis to conduct the Survey;

"Authorised Agent" means the Corporation or its successor in title or such other entity or body as the Native Title Party may, from time to time, appoint as its representative body to execute, implement and administer this Agreement on its behalf;

"Avoidance Area" means any Aboriginal Site within the Mining Tenement that had been identified by the Corporation and/or the Survey Team as an area to be avoided during Ground Disturbance Works or other prospecting and exploration activities by the Grantee Party;

"Claim" means Native Title Determination Claimant Application WC **/**(WAG ****/**) under the Act;

"Commencement Date" means the date on which all Parties to this Agreement have executed the Agreement;

"DIA" means the Department of Indigenous Affairs and any successor of it;

"Ground Disturbance Works" means any significant or substantial ground disturbing activity or any prospecting or exploration activity which is not a Low Impact Activity proposed to be done by the Grantee Party within the area the subject of the Mining Tenement;

“**GST**” means any tax imposed by or through the GST Legislation;

“**GST Legislation**” means *A New Tax (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup a tax imposed by any of such acts;

"**Heritage Act**" means the *Aboriginal Heritage Act 1972 (WA)*;

"**Heritage Survey**" means a survey carried out in accordance with the Heritage Act and the Guidelines for Aboriginal Heritage Assessment in Western Australia 1994 (as amended from time to time) and as required in clause 4 of this Agreement;

"**In-House Costs**" means reasonable fees on a cost recovery basis for the provision of services rendered under this Agreement by employees of the Corporation, and shall include all distinguishable administrative expenses and outgoing such as postages and photocopying all of which services and expenses must be included and detailed in the agreed estimate of fees envisaged in sub-clause 4.4b(ii);

"**law**" includes the common law and applicable written laws of the State and the Commonwealth of Australia;

“**Low Impact Activity**” means an activity which involves:

- (a) aerial surveying;
- (b) geological mapping;
- (c) traversing land on foot or light vehicles using existing tracks where possible;
- (d) water and soil sampling using hand held equipment (including panning, metal detecting and hand auguring);
- (e) rock chipping (hand specimen);
- (f) the establishment of small tent or caravan camps of temporary nature and ordinarily associated with exploration activities and not involving heavy vehicles or water bores;
- (g) field mapping;
- (h) non-ground disturbing geophysical surveys; or
- (i) such other activity as the parties may agree upon

but excluding:

- (j) intensive removal of vegetation or ground disturbance such as costeaning, excavating and bulk sampling;

- (k) construction of new roads and tracks;
- (l) large scale exploration camps;
- (m) line clearing involving extensive clearing of vegetation using earth moving equipment, bulldozers or front-end loaders;
- (n) geophysical surveying other than non-ground disturbing geophysical surveys;
- (o) drilling using hand held rig or rig mounted on any vehicle; or
- (p) any activity as otherwise agreed between the Parties from time to time;

“Mining Tenement” means exploration licence/prospecting licence(s) numbered [INSERT NUMBERS] (when granted) and includes any extension or renewal of them in respect of a specified area of land and waters within the Native Title Claim Area;

“Monitoring Team” means two Representatives or their nominees appointed by the Corporation;

"Native Title Claim Area" means the area covered by the Claim;

"Native Title Claim Group" has the same meaning as under the Act;

"NNTT" means the National Native Title Tribunal;

“notice” means any notice, demand, consent, authority or request required to be given or made to a person or party pursuant to this Agreement;

"NTRB" means the entity recognised from time to time under section 203AD of the NTA as the representative body in respect of the area of the Mining Tenements that is within the area of the Claim;

"Objection" means an objection under section 32 of the Act to the inclusion in a notice under section 29 of the Act of a statement that an act is an Act Attracting the Expedited Procedure;

"Parties" means the parties to this Agreement;

"Registered Native Title Claimant(s)" has the same meaning as under the Act;

“Representative” or **“Representatives”** shall mean such member or members of the Native Title Party that had been identified by the Corporation after consultation with the Registered Native Title Claimants, each of whom shall have traditional knowledge, rights and interests in accordance with the laws and customs of the Native Title Party who has authority to speak for a particular area within the Survey Area for which a Survey is required;

“Site Avoidance Survey” means a survey conducted under this Agreement and in accordance with the provisions of this Agreement by the Survey Team over a Survey Area which broadly defines the boundaries of Aboriginal Sites or areas that contain Aboriginal Sites;

“Site Identification Survey” means a survey conducted under this Agreement and in accordance with the provisions of this Agreement by the Survey Team over a Survey Area which envisages the establishing of exact locations, detailed documentation, description and spatial extent of Aboriginal Sites within the Survey Area;

“State” means the State of Western Australia;

“Survey” means a Heritage Survey which is either a Site Avoidance Survey or Site Identification Survey as the context permits;

"Survey Area" means the whole of the land and waters covered by the Mining Tenement or any portion thereof as may be specified from time to time by the Grantee Party in respect of which the Grantee Party requires a Heritage Survey to be conducted;

"Survey Report" means the report referred to in sub-clauses 4.5 and 4.6 of this Agreement;

"Survey Request" means a survey request referred to in clause 4 of this Agreement for the conducting of a Heritage Survey in respect of the Survey Area;

"Survey Team" means the team constituted in accordance with sub-clause 4.2 of this Agreement;

and

"[Insert name of claim group] People" means the members of the native title claim group for the [] Native Title Determination Claimant Application WC **/** (WAG) and includes the Registered Native Title Claimants.

1.2 Interpretation

In this Agreement, unless the context otherwise requires;

- (a) Headings are for convenience only and do not affect interpretation;
- (b) Parts, clauses, sub-clauses, schedules, exhibits and annexures are references to parts, clauses, sub-clauses, schedules, exhibits and annexures to or of this Agreement and a reference to this Agreement includes any schedule, exhibit and annexure;
- (c) Words and expressions importing the singular include the plural and vice versa;

- (d) Words defined in the *Native Title Act 1993* (Cth) have the same meaning in this Agreement unless the context requires otherwise;
- (e) Words and expressions importing a person includes an individual, a body politic, a corporation and a statutory or other authority or association, whether incorporated or unincorporated;
- (f) A reference to any person or Party to this Agreement include that person's or Party's executors, administrators, successors and permitted assigns;
- (g) Reference to any amounts, fees, rates or costs referred to in this Agreement or payable pursuant to this Agreement are amounts, fees, rates or costs without allowance for GST and are stated as GST-exclusive amounts, fees, rates and costs;
- (h) References to "day" or "days" means a day or days that is not a Saturday, Sunday or public holiday in the State; and
- (i) References to currency are references to Australian currency.

2. **CONSENT TO THE GRANT OF MINING TENEMENT**

2.1 In consideration of the covenants by the Grantee Party contained in this Agreement and subject to the terms and provisions of this Agreement, the Native Title Party agrees:

- (a) not to lodge an Objection against the grant of the Mining Tenement;
- (b) upon the execution of this Agreement, to immediately withdraw any Objection that was lodged prior to any agreement to enter into this Agreement; and
- (c) to enter into such further or supplementary agreements as may be necessary to give effect to this Agreement and to perfect the grant of the Mining Tenement.

3. **GRANTEE PARTY'S COVENANTS**

3.1 The Grantee Party agrees to comply with this Agreement, in order to, among other things ensure:

- (a) proper surveys are conducted on Mining Tenements to the extent they are within the Native Title Claim Area for the identification of Aboriginal Sites;
- (b) accurate recording of findings pursuant to such surveys are made; and
- (c) proper management and protection of Aboriginal Sites,

in accordance with, and subject to, this Agreement.

4. SURVEYS

4.1 When will a Survey Happen? – the Survey Request

- (a) Except:
- (i) in the case of a proposed Low Impact Activity; or
 - (ii) where the area to be affected by Ground Disturbance Works has been the subject of a Survey under this Agreement,
- the Grantee Party must, prior to commencing any Ground Disturbance Works on any part of the Native Title Claim Area covered by a Mining Tenement, issue a Survey Request to the Corporation.
- (b) If the Grantee Party propose to undertake Low Impact Activities on the Mining Tenement, the Grantee Party must:
- notify the Corporation at least 20 days prior to the date on which it intends to commence that activity; and
 - provide the Corporation with details of the proposed activities and the areas where the Grantee Party intends to conduct them.
- (c) The Corporation shall, where necessary and prior to the date on which the Grantee Party intends to commence Low Impact Activity, advise the Grantee Party of any Aboriginal Sites and/or Avoidance Areas located within the Tenement Area it requests be avoided during the performance of the Low Impact Activity.
- (d) If Ground Disturbance Works, other than where sub-clause (a) applies, are to be undertaken by the Grantee Party on a Mining Tenement, the Grantee Party must issue a Survey Request and must provide sufficient information to enable the Corporation to make a heritage impact assessment. The Survey Request must include, where known by the Grantee:
- (i) details of the Grantee Party's proposed exploration or prospecting activities to be conducted on the Survey Area;
 - (ii) large scale topographic and tenement maps of the Survey Area showing with reasonable accuracy the areas where the proposed exploration or prospecting activities are to be conducted;
 - (iii) aerial photographs of the Survey Area if available;
 - (iv) reports or information pertaining to Aboriginal Sites previously identified in the Survey Area (if any);

- (v) reports or information pertaining to previous surveys conducted over the Mining Tenement or any portion thereof (if any); and
 - (vi) a request for the provision of a Survey Report where appropriate.
- (e) Where known to the Corporation, it must disclose to the Grantee Party the results of any previous survey that relates to any area (or part thereof) that is the subject of a Survey Request.
- (f) Where the Grantee Party gives notice to the Corporation of its intention to conduct Ground Disturbance Works on the Mining Tenement, or any portion thereof (the “**Relevant Area**”), and:
- (i) a prior survey (whether under this Agreement or otherwise) has been conducted over the Relevant Area; and
 - (ii) the findings of the survey in (i) above have been documented and provided to the Corporation,

THEN the decision whether it is necessary or desirable to have a further survey conducted over the Relevant Area shall be by agreement between the Corporation and the Grantee Party,

PROVIDED THAT if the Corporation or the Grantee Party can not agree whether a survey ought to be conducted or not, the matter may be dealt with in accordance with the dispute resolution provisions of clause 10 of this Agreement.

- (g) If no previous survey (whether under this Agreement or otherwise) has been conducted in relation to the area to be affected by Ground Disturbance Works, then within 30 days (or such other period as the parties may agree on) of receipt of the Survey Request, the Corporation shall, after having considered all information at its disposal and having consulted with relevant Representatives, decide whether:
- (i) the proposed exploration or prospecting activities and the impact thereof are of such a nature that the Grantee Party may proceed with the proposed exploration or prospecting activities in any event;
 - (ii) a Site Avoidance Survey is required; or
 - (iii) a Site Identification Survey is required,
- and advise the Grantee Party accordingly.
- (h) Factors to be taken into consideration in determining whether a Survey (and if so, what kind) should be undertaken in relation to the Mining Tenement include:

- (i) whether there have been any previous assessments (survey) of the relevant part of the Mining Tenement, the results and methodology of those assessments and the standard and quality of assessment given the time period in which it was done;
 - (ii) the extent to which the land was disturbed by previous activity;
 - (iii) whether the Register maintained by the Department of Indigenous Affairs discloses the existence of any potential Aboriginal Site in the Survey Area;
 - (iv) the nature of the activities to be conducted on the land; and
 - (v) any other relevant factors or new information gathered or raised by any of the Parties.
- (i) The Corporation may call for such further or additional information as the Corporation deems necessary to enable it to make a decision under sub-clause 4.1(g).
 - (j) If the Corporation determines that a Site Avoidance Survey is required, the Grantee Party shall, in any event, have the option to nominate either a Site Avoidance Survey or Site Identification Survey to be conducted over the Survey Area. The Survey will be conducted in accordance with the Grantee Party's nomination.
 - (k) The Grantee Party shall as soon as is reasonably practicable, advise the Corporation of any substantial modification or intended modification to its proposed exploration or prospecting activities provided in accordance with clause 4.
 - (l) Nothing in this Agreement is or is intended to purport to authorise the Grantee Party or any other person to breach the Heritage Act or the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth).

4.2 **Survey Team**

- (a) If a Survey is required to be conducted pursuant to clause 4, the Corporation, in consultation with the Native Title Party, must within 15 days of such decision appoint a Survey Team.
- (b) Unless otherwise agreed between the Parties, the Survey Team will comprise of the following:
 - (i) an Anthropologist appointed by the Corporation, following agreement with the Native Title Party and the Grantee Party;

- (ii) in the case of either a Site Identification Survey or Site Avoidance Survey, a maximum of 6 Representatives. If the Anthropologist considers it appropriate that more than the prescribed maximum number of Representatives is required to ensure an effective and adequate survey, such additional number of Representatives shall be agreed upon by the Parties;
 - (iii) upon advice of the Anthropologist and/or the Representatives, a duly qualified archaeologist appointed by the Corporation (who may or may not accompany the Survey Team); and
 - (iv) at the discretion of the Corporation, any one officer in its employ.
- (c) The Grantee Party may appoint a representative(s) to act as an observer during visits to the Survey Area who must abide with directions issued by the Survey Team to allow the Survey Team to deliberate on matters in private.
 - (d) The Native Title Party agree to promptly replace any member of the Survey Team if necessary, including if it is established that the person is not acting in good faith in carrying out his or her duties in the course of the Survey.

4.3 **Survey Procedure**

- (a) Unless otherwise agreed between the Parties and depending on the availability of the Anthropologist, the Survey must commence within 15 days from the date of payment of the approved estimate envisaged in sub-clause 4.4(b)(ii). The Survey Team will as appropriate:
 - (i) establish and agree on dates and times when the Survey will be conducted and undertake visit(s) to the Survey Area;
 - (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area(s) to be avoided during the conduct of Ground Disturbance Works;
 - (iii) record the location and external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area(s) to be avoided using a Differential GPS;
 - (iv) record relevant site information or Avoidance Area detail on an official DIA Site Recording Form and/or, if the Representatives agree, Parts 1 and 3 of the Final Survey Report;

- (v) mark identified Aboriginal Sites or Avoidance Areas (as the case may be) on the topographic and tenement maps referred to in sub-clause 4.1(d)(ii) with sufficient clarity and detail to enable the Grantee Party to rely on it to commence Ground Disturbance works;
 - (vi) outline and determine recommendations for the protection and management of any Aboriginal Site or Avoidance Area;
 - (vii) consult, if necessary, with other members of the Native Title Party; and
 - (viii) prepare a written Survey Report in the form described in clause 4.6.
- (b) Unless the Parties agree otherwise, the Survey Team members must initial the map referred to in sub-clause (a)(v) and, provided that sub-clause 4.4(c) had been complied with by the Grantee Party, hand a copy of it to the Grantee Party.
- (c) To the extent necessary, the Grantee Party will be responsible for obtaining any permits to ensure access to the land or waters covered by the Mining Tenement to enable the Survey to be conducted.

4.4 **Survey Costs and Associated Expenses**

- (a) In relation to each Survey to be conducted pursuant to this Agreement, the Grantee Party must, and unless otherwise agreed between the Parties, pay:
- (i) in relation to each Representative \$300.00 per day for the duration of any particular Survey;
 - (ii) for reasonable logistical support sufficient to conduct the Survey, including vehicles, accommodation, meals and beverages where applicable; and
 - (iii) reasonable fees and expenses of the Anthropologist and, where necessary, of an archaeologist and /or anthropologist of another gender.
- (b) Except where expressly provided for in this clause, all other costs, fees, disbursements, expenses and allowances associated with the Survey shall be agreed with the Grantee Party prior to the commencement of the Survey. In this regard.
- (i) the Corporation shall, within 10 days of the appointment of the Survey Team, or at such later date as the Parties agree, provide the Grantee Party with a written estimate of the

costs, fees, disbursements, expenses and allowances referred to in sub-clause (a); and

- (ii) within 3 days of receipt of the estimate of fees, the Grantee Party must notify the Corporation whether it approves the estimate of fees or not. Should the Grantee Party disapprove the estimate of fees the Parties will discuss the estimate of fees and will use their best endeavours to reach agreement on a mutually acceptable estimate, which, if agreed upon, the Grantee Party must give written notice of its approval and acceptance of that agreed estimate of fees. The Parties acknowledge that the agreed estimate of fees is an estimate only and that it may vary from the amount of fees to be reflected in a final account.
- (c) The Grantee Party must, prior to the commencement of any Survey, pay that part of the approved estimate of fees referred to in sub-clause (b)(ii) that relate to out of pocket disbursements (including any fees and disbursements payable to the Anthropologist), to the Corporation with the balance of the approved estimate of fees payable on or before the completion and hand-over of the map referred to in sub-clause 4.3(b).
- (d) As soon as reasonably practicable after the completion of a Survey, the Corporation shall submit a detailed invoice to the Grantee Party for the total of fees and costs incurred in relation to the particular Survey together with supporting vouchers and other documentary evidence of such costs, which invoice, after taking into consideration any payments made under sub-clause 4.4(c), must be paid in full before the Final Survey Report shall be released to any of the Parties.
- (e) Within 10 days of receipt of the final invoice, the Grantee Party may notify the Corporation of any item on the invoice that it disputes. If the Parties fail to resolve the dispute within 15 days from the date on which the Corporation was notified, either Party may give written notice to the other Party to have the dispute resolved in accordance with the provisions of clause 10. To the extent that any portion of the final invoice is not being disputed, that portion will become due and payable within 10 days after delivery of the final invoice.

4.5 **Draft Survey Report**

- (a) Within 30 days after the completion of a Survey, the Anthropologist, in consultation with the Survey Team, must provide a draft Survey Report comprising of:
 - (i) Part 1 which will contain an Introduction and Survey methodology;

- (ii) Part 2 which will contain information of all Aboriginal Sites identified in the Survey Area and which may contain relevant culturally significant information relating to the Aboriginal Sites identified by the Survey;
- (iii) Part 3 which will contain:
 - (A) culturally appropriate descriptions of all Aboriginal Sites (or Avoidance Areas in the case of a Site Avoidance Survey) in the Survey Area sufficient for the identification thereof;
 - (B) recommendations for the protection and management of Aboriginal Sites or Avoidance Areas as the case may be;
 - (C) a map delineating the accurate location and/or extent of the Aboriginal Sites or Avoidance Areas, including GPS co-ordinates;
 - (D) the identity of the participating Representatives; and
 - (E) any recommendations as to ways in which the proposed works may be altered or whether a monitoring team should be appointed to monitor the proposed works in order to protect Aboriginal Sites, which if such recommendations are accepted by the Grantee Party will allow the Ground Disturbance Works or Low Impact Activity to proceed without impacting Aboriginal Sites.
- (b) The Parties to this Agreement must be provided with a copy of Parts 1 and 3 of the Survey Report and, unless otherwise agreed, will, for a period of 10 days after receipt of the Survey Report, have the opportunity to comment on the draft and to liaise with the Anthropologist regarding any concerns, and if necessary the Anthropologist will make amendments to the draft Survey Report.
- (c) The Registered Native Title Claimants must be provided with a copy of Part 2 of the Survey Report and will have the opportunity to comment on the draft and liaise with the Anthropologist regarding any concerns, and if necessary the Anthropologist will make amendments to the draft Survey Report.

4.6 Final Survey Report

- (a) Provided that the Grantee Party has paid all amounts due in relation to the Survey and as reflected in the final account, the Anthropologist must issue copies of the Final Survey Report within 25 days of issuing the draft Survey Report as follows:

- (i) the Native Title Party (at the address specified in clause 13.1) will receive the entire Survey Report;
- (ii) subject to the prior written consent of the Representative, the DIA, Perth, will receive Parts 1 and 3 of the Survey Report;
- (iii) the Grantee Party will receive Parts 1 and 3 of the Survey Report;
- (iv) Part 2 will remain restricted unless the Native Title Party agrees to its distribution, or a part or a summary of Part 2, to the Grantee Party or unless the Grantee Party seeks Ministerial consent under section 18 of the Heritage Act in accordance with clause 9 of this Agreement in which case a copy of Part 2 of the Survey Report will, if requested by the Grantee Party, be provided to the Aboriginal Cultural Material Committee;
- (v) the Survey Report may contain recommendations from the Anthropologist which indicates areas which are suggested areas for archaeological surveys in accordance with sub-clause 4.2(b)(iii) or areas or Aboriginal Site in respect of which a Monitoring Team ought to be appointed if Ground Disturbance Works are to be conducted in close proximity of such identified area or site. These areas will be delineated on the map provided with the Survey Report.

5. MONITORING OF GROUND DISTURBANCE WORKS AT SPECIFIED ABORIGINAL SITES

- 5.1 Where the Grantee Party wishes to enter upon a particular Avoidance Area for purposes of conducting either Low Impact Activities or Ground Disturbance works the Grantee Party must advise the Corporation in writing of its intentions to conduct such activities or works together with a detailed description of the intended exploration or prospecting activities and the Grantee Party may not commence with the intended activities or works in the particular Avoidance Area until the provisions of this clause 5 had been complied with.
- 5.2 On receipt of the written notice referred to in clause 5.1 above, and provided that a Site Identification Survey had not previously been conducted, the Corporation must, without undue delay, cause a Site Identification Survey to be conducted in relation to the particular Avoidance Area specified in the Grantee Party's written notice.
- 5.3 Regardless whether a Site Identification Survey had previously been conducted in relation to the whole or any part of the Mining Tenement or whether a Site Identification Survey had been conducted as a result of the provisions of clause 5.2, if the Anthropologist, having consulted with the Representatives, made recommendations in the Survey Report that proposed

Ground Disturbance Works, intended to be carried out in close proximity of specifically identified Aboriginal Sites, be monitored by a Monitoring Team, the Parties must meet to discuss the recommendation of the Anthropologist and make best endeavours to reach agreement to either:

- (a) modify the proposed Ground Disturbance Works so that such proposed modified activities will not infringe on, or be conducted in close proximity of the specifically identified Aboriginal Site; or
- (b) appoint a Monitoring Team to monitor Ground Disturbance Works being carried out in close proximity of a specifically identified Aboriginal Site.

5.4 If the Parties fail to reach agreement on either of the issues in sub-clause 5.3(a) or (b), either Party may give notice in accordance with Clause 10 of this Agreement to have the dispute resolved in accordance with the dispute resolution procedure under clause 10. The Parties agree that the outcome of the dispute resolution procedure under clause 10 shall be final and binding on all Parties. The Parties acknowledge that the Grantee Party may in any event, if it so chooses, and notwithstanding the provisions of clause 5.3 and this clause 5.4, seek Ministerial consent under section 18 of the Heritage Act as envisaged under clause 9 of this Agreement provided the Grantee Party complies with the provisions of clause 9.2.

5.5 Where a Monitoring Team is appointed pursuant to this clause 5, the Parties acknowledge that the Monitoring Team will only be appointed for the duration of the Ground Disturbance Works that are to be conducted in close proximity of an Aboriginal Site(s) that had specifically been mentioned in the recommendation of the Anthropologist and once these Ground Disturbance Works have been completed, the Monitoring Team will automatically dissolve.

5.6 Where a Monitoring Team has been appointed under sub-clause 5.3 or 5.4, the parties must:

- (a) prior to the commencement of the monitoring operations, agree on the fees payable to the members of the Monitoring Team which fees shall, in any event, not exceed \$300.00 per day. Depending on the expected duration of the monitoring exercise, the Parties may agree on a daily or hourly tariff; and
- (b) provide the Monitoring Team with the necessary logistical support, including accommodation, meals and beverages where applicable, as well as maps and equipment to enable the Monitoring Team to effectively monitor the activities of the Grantee Party under this Agreement.

5.7 If at any time during the course of the Ground Disturbance Works the Monitoring Team consider the operations and works to be encroaching on a specific Aboriginal Site the Monitoring Team shall inform the person in charge of the works of its findings, whereupon the Grantee Party, or its

contractors as the case may be, shall immediately cease all activities in that area and consult with the Native Title Party to work out a solution.

- 5.8 If agreement cannot be reached on any of the issues in this clause 5, the dispute must be dealt with in accordance with the dispute resolution provisions in clause 10 of this Agreement.

6. **BREACH**

- 6.1 Except in accordance with the law, the Grantee Party will take all reasonable measures to ensure that, employees, agents, contractors or visitors do not enter any Avoidance Areas or interfere with or damage any Aboriginal Site(s).

- 6.2 Where there has been an alleged breach of clause 6.1 the Grantee Party and the Native Title Party will convene a meeting to discuss and agree on what action should be taken in respect of the alleged breach and how the breach should be remedied.

- 6.3 If the Parties fail to reach agreement on the action to be taken in respect of the breach and how the breach ought to be remedied, the dispute should be dealt with in accordance with the dispute resolution procedures set out in clause 10 of this Agreement.

- 6.4 At the option of the Native Title Party, the Grantee Party may either remedy the breach in accordance with the directions agreed upon under clauses 6.2 or 6.3 or reimburse the Native Title Party for the reasonable costs incurred in remedying the breach.

- 6.5 If at any time, in the course of carrying out the Ground Disturbance Works or Low Impact Activity, the Grantee Party identifies an area or object which it reasonably suspects to be an Aboriginal Site, which has not been previously identified by the Survey Team, it shall promptly report the whereabouts of such area or object to the Corporation and the Native Title Party, take reasonable measures to avoid damaging or interfering with the Aboriginal Site contrary to the law and comply with any State and Commonwealth laws and terms as is required by this Agreement.

7. **ENVIRONMENTAL PROTECTION**

- 7.1 The Grantee Party agrees to rehabilitate the area covered by the Mining Tenement in accordance with its statutory rehabilitation obligations.

- 7.2 Where the Grantee Party is required by law to lodge with a governmental body any environmental reports or plans in relation to its rehabilitation works referred to in clause 7.1, the Grantee Party shall also, upon written request, provide the Corporation or Native Title Party, as the case may be, with a copy of such plan or report.

8. IDENTIFICATION AND RELOCATION OF ANCESTRAL REMAINS OR OBJECTS

8.1 Where, as a result of any Ground Disturbance Works or Low Impact Activity, the Grantee Party uncovers skeletal remains or identifies an area or object which it reasonably suspects of being an Aboriginal Site or Aboriginal Object, the Grantee Party will cease all such operations and activities in the immediate vicinity of such remains, areas or objects, and:

- (a) immediately notify the Corporation and Native Title Party of the findings and meet on site where the Parties will discuss in good faith a culturally appropriate method of managing the discovery and to deal with it in accordance with the provisions of the Heritage Act or other applicable statutory law; and
- (b) notify the offices of the DIA and Western Australian Aboriginal Affairs Department in accordance with the Heritage Act.

9. MINISTERIAL CONSENT UNDER SECTION 18

9.1 The Native Title Party acknowledges that the Grantee Party may seek Ministerial consent under section 18 of the Heritage Act to use land and waters the subject of the Mining Tenement.

9.2 If the Grantee Party wishes to proceed with any Ground Disturbance Works or Low Impact Activity in accordance with a Mining Tenement despite receiving notification from either the Corporation, the Survey Team or Monitoring Team that the Ground Disturbance Works or Low Impact Activity encroach on an Aboriginal Site(s) or Avoidance Area the following procedures shall apply:

- (a) Unless otherwise agreed between the Parties, the Parties must, for a period of not less than 20 days consult about means of avoiding, minimising and/or mitigating the effect of the Grantee Party's activities on any Aboriginal Site(s) or Avoidance Areas.
- (b) If either Party is dissatisfied with the results of the consultations under sub-clause (a) that Party may, within the next 5 days following the period mentioned in sub-clause (a) fund an agreed independent mediator to conduct meetings with the Parties for a further period of not less than 20 days from the date on which the independent mediator has been appointed, to attempt to facilitate an agreement as envisaged in sub-clause (a).
- (c) Where there is no mediation under sub-clause (b), the Grantee Party shall, at least 20 days prior to lodging an application for Ministerial consent give written notice to the Corporation and the Native Title Party of its intention to do so, which notice shall include a copy of the application together with all accompanying documentation planned to be lodged with it.

- (d) Where there is mediation under sub-clause (b), the Grantee Party must not lodge an application for Ministerial consent until after the 20 day period in sub-clause (b) and must, before making the application, provide the Corporation with a copy of the application together with all accompanying documentation planned to be lodged with it.

10. DISPUTES

10.1 If a dispute arises between the Parties in connection with this Agreement which the Parties are unable to resolve themselves:

- (a) any Party may give notice in writing to the other Party identifying the nature of the dispute and requiring the dispute to be referred to a single independent mediator;
- (b) the mediator must be agreed upon between the Parties or, failing agreement within 5 days after the request for mediation was made, nominated by the Chairperson of LEADR (tel 1800 651 650);
- (c) the Parties must use their best endeavours to resolve the dispute with the assistance of the mediator;
- (d) the costs of the mediator will be shared equally by the Parties unless agreed otherwise at the mediation or provided for in this Agreement;
- (e) if the Parties are unable to resolve the dispute within 20 days from the date of service of the notice of dispute (or such later date as agreed by the Parties at the mediation), and the Parties agree then the dispute may be referred to a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1985 (WA)* (as amended) (“**Arbitration Act**”) for determination and otherwise clause 10.3 applies to the subject matter of the dispute;
- (f) if the Parties agree to refer the dispute to arbitration then the Parties must, within 5 days, agree on the appointment of a single arbitrator, or failing agreement, a person nominated by the President or Acting President of the Law Society of Western Australia, who is a practicing barrister of the Perth Bar with no less than 10 years standing;
- (g) the Parties are entitled to be legally represented at the mediation and arbitration; and
- (h) the Parties agree that the determination of the appointed arbitrator will be final and binding on all Parties and that the liability for payment of costs of and incidental to a determination by an appointed arbitrator shall be at the discretion of that arbitrator.

10.2 Except to the extent that this clause 10 is inconsistent with the provisions of the *Commercial Arbitration Act 1985 (WA) (as amended)*, the provisions of the said act shall otherwise apply.

10.3 If, in respect of any dispute arising from this Agreement, the Parties cannot agree to have that dispute resolved in accordance with the provisions of the Arbitration Act, the Parties may avail themselves of general law remedies.

11. **CONFIDENTIALITY**

11.1 In this Agreement, "Confidential Information" means the draft Survey Report and the final Survey Report or any cultural information obtained in the course of the Survey or discussions or negotiations in relation to the Survey or this Agreement and all information which is disclosed by a party to any other party pursuant to this Agreement, but excluding information which:

- (a) was in the public domain when it was given to the party receiving it;
- (b) becomes, after being given to the party receiving it, part of the public domain, except through disclosure contrary to this Agreement;
- (c) was in the receiving party's possession when it was given to the receiving party and was not otherwise acquired from the disclosing party directly or indirectly; or
- (d) was lawfully received from another person having the unrestricted legal right to disclose information without requiring the maintenance of confidentiality.

11.2 Except:

with the consent of the other Party;

as required by law or any applicable securities regulation or rule;

where provided for by this Agreement;

in the case of the Grantee Party, to the extent relevant to any processes or applications under any native title laws (other than native title determination applications made by the Native Title Party) or Government approvals;

in connection with any dispute or litigation concerning this Agreement or its subject matter;

to an actual or bona fide potential assignee, joint venturer, financier or related body corporate; or

to an employee of or contractor to the Grantee Party for the purpose of managing or planning any existing, planned or potential activity on the land the subject of the Mining Tenements,

the Parties shall keep confidential and in particular shall not advertise, publish or release information to the public concerning any Confidential Information.

11.3 The Parties will ensure that their agents, successors, assigns, employees, contractors, and sub-contractors also comply with this clause 11.

11.4 The obligations of the Parties under this clause 11 shall survive termination of the Agreement.

12. ASSIGNMENT

12.1 By the Grantee Party

The Grantee Party may at any time sell, assign or dispose of its interests, rights and obligations under this Agreement or of the Mining Tenement, or any part thereof provided that in any such case the Grantee Party must procure the purchaser, assignee or any other disponent as the case may be, to enter into a Deed of Covenant whereby the purchaser, assignee or disponent covenants and agrees with the Grantee Party, the Corporation and the Native Title Party to assume, observe, comply and perform all the obligations of the Grantee Party under this Agreement to the extent of the interest being sold, assigned or disposed of.

12.2 By the Native Title Party

The Native Title Party may not assign their right, title and interest under this Agreement except in accordance with this clause 12.2. The Native Title Party may only assign all or part of their right, title and interest under this Agreement where:

- (a) as a result of an amendment to the Claim, the structure and/or composition of the Native Title Claim Group and/or Registered Native Title Claimants have changed or is substituted by a new native title claim group or Registered Native Title Claimants, and the Native Title Party is required to assign the rights, title and interest, acquired under this Agreement, to the new native title claim group and Registered Native Title Claimants;
- (b) a determination has been made under the Act that Native Title in favour of the Registered Native Title Claimants and the Native Title Party exists over all or part of the Native Title Claim Area of which the Native Title Party wish to assign their right, title and interest; and
- (c) such assignment is to a Prescribed Body Corporate (as defined in the Act), subject however to such Prescribed Body Corporate entering into a deed covenanting to be bound by all the provisions of this Agreement and to assume the obligations of the Native Title Party.

12.3 By the Corporation

- (a) The Corporation may not assign any of its right, title and interest under this Agreement except in accordance with this clause 12.3.
- (b) If the Corporation ceases to be the NTRB and there is a new NTRB which:
 - (i) is the Authorised Agent; and
 - (ii) enters into a deed covenanting to be bound by all the provisions of this Agreement and to assume the obligations of the Corporation,the Corporation must assign its right, title and interest under this Agreement to the new NTRB.
- (c) If the Corporation ceases to be the NTRB or the Authorised Agent and sub-clause (b) does not apply, the Corporation must assign its right, title and interest under this Agreement to the Native Title Party who will assume the obligations of the Corporation.

13. NOTICES

13.1 A notice, required to be given or made to a person or party pursuant to this Agreement must be in writing.

- (a) Any notice to the Registered Native Title Claimants and the Native Title Party **must** be served on them by sending a notice to:

c/- South West Aboriginal Land and Sea Council
7 Harvey Street
Victoria Park WA 6979

or such other address notified by the South West Aboriginal Land and Sea Council from time to time in accordance with this clause;

- (b) Any notice to the Grantee Party **must** be served on it by sending a notice to:

c/-

or such other address notified by the Grantee Party from time to time in accordance with this clause.

13.2 If any Party shall desire to give to or serve on the other Party any notice, then such notice shall be sufficiently given if delivered by hand or forwarded by registered post, facsimile transmission to such party at the address stated herein or last known to the Party desiring to give such notice or in the case of any party being a company to its registered office.

- 13.3 Every notice shall be deemed to have been received and given at the time when in the ordinary course of post or transmission it should have been delivered or received at the address to which it was sent PROVIDED THAT if the day on which such notice or other communication as aforesaid is by this clause deemed to have been received falls on a Saturday, Sunday or day which is a public holiday in the intended place of service or receipt, then the notice or other communication aforesaid shall be deemed to have been received on the day next following which is not a Saturday, Sunday or public holiday as aforesaid irrespective of whether or not such notice or other communication has been accepted by the addressee thereof.

14. **TERM**

This Agreement will commence on the Commencement Date and will terminate by written agreement between the Parties or upon the expiry of the Mining Tenements, whichever happens first.

15. **WAIVER**

No waiver of any breach of this Agreement will be held or construed to be a waiver of any other subsequent or antecedent breach of this Agreement.

16. **COSTS AND STAMP DUTY**

- 16.1 The Grantee Party agrees to pay the stamp duty assessed or payable on this Agreement.

- 16.2 In relation to each Survey to be conducted pursuant to this Agreement, the Parties acknowledge that:

- (a) the Corporation must perform various functions to give effect to the terms of this Agreement and the Grantee Party acknowledges that the Corporation shall be entitled to levy, on a cost recovery basis, its In-House Costs **which costs shall not exceed \$550.00 unless otherwise agreed between the Parties and** must be reflected in the agreed estimate of fees envisaged in sub-clause 4.4(b)(ii);
- (b) in addition to the In-House Costs, the Corporation will be entitled to levy an administrative fee calculated at 10% of the agreed estimate of fees (other than in house costs) envisaged under sub-clause 4.4b(ii) which administrative fee shall be capped at \$650.00

17. **FURTHER ASSURANCES**

The Parties covenant and agree that each will do all acts and things and execute all deeds and documents and other writings as are from time to time reasonably required for the purposes of or to give full effect to the operation of this Agreement.

18. **GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with the laws of Western Australia and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdictions of the courts of Western Australia.

19. **VARIATION**

This Agreement may not be modified, amended, added to or otherwise varied except by a document in writing signed by each of the Parties or signed on behalf of each Party by a duly authorised representative under hand.

20. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, correspondence, arrangements and any other understandings or documents.

21. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

22. **NOTICE OF COMMENCEMENT OF EXPLORATION PROGRAMMES**

The Grantee Party will give the Corporation notice of its intention to commence each annual programme of Low Impact Activity and Ground Disturbance Works.

23. **COPYRIGHT**

The Parties acknowledge that all intellectual property rights in and to the material and information created and provided by the Native Title Party under this Agreement shall vest in the Native Title Party and all intellectual property in and to any Survey Report created under this Agreement shall vest jointly in its authors, being the Survey Team and the Native Title Party.

To the extent necessary, the holders of intellectual property in material envisaged under this clause authorise the Grantee Party to use the material to perform its rights and obligations under this Agreement.

EXECUTED as an Agreement that is not a deed.

GRANTEE PARTY:

If a Company

THE COMMON SEAL of the)
Grantee Party PTY LTD ACN)
[****]was hereunto affixed in the)
presence of::)

.....
Signature of Secretary/other Director

.....
Signature of Director

.....
Name of Secretary/other Director in
full (block letters)

.....
Name of Director in full

If an Individual

SIGNED by [***]in the presence)
of:)
)

.....
Signature of witness

.....
Signature of

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation of witness

**REGISTERED NATIVE TITLE CLAIMANTS:
HEREIN REPRESENTED BY :**

South West Aboriginal Land And Sea Council Aboriginal Corporation

THE COMMON SEAL of SOUTH)
WEST ABORIGINAL LAND AND)
SEA COUNCIL ABORIGINAL)
CORPORATION ABN [****]was)
hereunto affixed in the presence of::

.....
Signature of Authorised Person

.....
Signature of Authorised Person

.....
Name of Authorised Person in full
(block letters)

.....
Name of Authorised Person in full
(block letters)

**SOUTH WEST ABORIGINAL LAND AND SEA COUNCIL ABORIGINAL
CORPORATION:**

THE COMMON SEAL of SOUTH)
WEST ABORIGINAL LAND AND)
SEA COUNCIL ABORIGINAL)
CORPORATION ABN [****]was)
hereunto affixed in the presence of::

.....
Signature of Authorised Person

.....
Signature of Authorised Person

.....
Name of Authorised Person in full
(block letters)

.....
Name of Authorised Person in full
(block letters)