

**TJIWARL PALYAKUWA (AGREEMENT)****SCHEDULE 4**

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**Mining Business***Tjawalpayi*

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## 1. Overview

*This clause summarises what this Schedule is about and tells people where to find things in the Schedule.*

### 1.1 What this Schedule contains

This Schedule outlines:

- (a) the processes to be followed by the State and Tjiwarl AC when granting mining tenements and PGER Titles within the Agreement Area, which depend upon the type and location of the relevant mining tenement or PGER Title. These are summarised in the table at clause 1.2 below. Flow charts showing each of the processes are located at Annexure 1 to this Schedule;
- (b) the establishment of a Mining Business Working Group (see clause 4); and
- (c) reviews of this Schedule and its annexures (see clause 12).

### 1.2 Summary of the Processes for Grant

The following table provides a summary of the clauses which apply to the grant of particular mining tenements and PGER Titles within the Agreement Area:

Tenement / Title	Clause
<i>Mining Act</i>	
Exploration Licence <ul style="list-style-type: none"> <li>• Not in an Identified Area</li> <li>• In an Identified Area</li> </ul>	Clause 5 Clause 6
Prospecting Licence <ul style="list-style-type: none"> <li>• Not in an Identified Area</li> <li>• In an Identified Area</li> </ul>	Clause 5 Clause 6
Retention Lease <ul style="list-style-type: none"> <li>• Not in an Identified Area</li> <li>• In an Identified Area</li> </ul>	Clause 5 Clause 6
Mining Lease	Clause 6

<b>Tenement / Title</b>	<b>Clause</b>
General Purpose Lease	Clause 6
Miscellaneous Licence <ul style="list-style-type: none"> <li>• For purposes including other than "taking water" or "search for groundwater" purposes</li> <li>• For "taking water" or "search for groundwater" purposes only</li> </ul>	Clause 7 Clause 8
<i>PGER Act</i>	
Special Prospecting Authorities <ul style="list-style-type: none"> <li>• Not in an Identified Area</li> <li>• In an Identified Area</li> </ul>	Clause 9 Clause 10
Access Authorities <ul style="list-style-type: none"> <li>• Not in an Identified Area</li> <li>• In an Identified Area</li> </ul>	Clause 9 Clause 10
Drilling reservations	Clause 10
Leases	Clause 10
Licences	Clause 10
Permits	Clause 10

For the avoidance of doubt this table is provided for ease of reference only and is not to be used to interpret this Agreement.

## 2. Definitions and Interpretation

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*Throughout this Schedule there are terms that are capitalised and they are given a specific meaning that is set out clauses 2.1 and 2.2.*

*Clause 2.3 sets out the rules which help explain the way in which this Schedule should be read to avoid any confusion.*

### 2.1 General Definitions

In this Schedule, unless a specific definition in clause 2.2 applies:

- (a) Words and expressions defined in the Native Title Act including **act attracting the expedited procedure, arbitral body, future act, independent person and relevant Minister**, have the same meaning when used in this Schedule.
- (b) Words and expressions defined in the Mining Act, including exploration licence, general purpose lease, mining lease, mining registrar, mining tenement, miscellaneous licence, prospecting licence, retention licence and warden have the same meaning when used in this Schedule.
- (c) Words and expressions defined in the PGER Act, including **access authority, drilling reservation, lease, licence, permit or special prospecting authority** have the same meaning when used in this Schedule.

### 2.2 Specific Definitions

In this Schedule, unless the context requires otherwise:

**Acreage Release** means the invitation for applications for the grant of a permit or drilling reservation referred to in section 30(1) or section 43A(1) of the PGER Act.

**Agreement** means the Tjiwarl Palyakuwa (Agreement) and includes the Schedules to that agreement, including this Schedule.

**Agreement Area** has the meaning given in clause 2 of this Agreement.

**ACHA** means the *Aboriginal Cultural Heritage Act 2021* (WA) and any regulations.

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



**Certification Form** means the document that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Certification Form' attached at Annexure 4 to this Schedule.

**Conclusive Registration Date** has the meaning given in clause 1.2 of this Agreement.

**Deed for Grant** means the deed that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Deed for Grant' at Annexure 7 to this Schedule.

**Deed of Release** means the deed that is substantially in the form, subject to any necessary modifications as required for the relevant Mining Exploration Tenure, of the 'Deed of Release' at Annexure 5 to this Schedule.

**DMIRS** means the department of the public service of the State principally assisting the Minister for Mines and Petroleum in the administration of the Mining Act and/or the PGER Act which, at the Execution Date, is the Department of Mines, Industry Regulation and Safety.

**DWER** means the department of the public service of the State principally assisting the Minister for Water in the administration of the *Rights in Water and Irrigation Act 1914* (WA) which, at the Execution Date, is the Department of Water and Environmental Regulation.

**Execution Date** has the meaning given by clause 1.2 of this Agreement.

**Expedited Procedure Determination** means the determination of the arbitral body referred to in section 32(4) of the Native Title Act.

**Expedited Procedure Objection Application** means the application referred to in section 32(3) of the Native Title Act objecting to the inclusion of the statement that an act is an act attracting the expedited procedure.

**Future Act Determination Application** means the application referred to in section 35 of the Native Title Act for a determination in relation to a future act.

**Future Act Determination** means the determination made under section 36A or section 38 of the Native Title Act.

**Identified Area** means areas marked on the map attached at Annexure 2 to this Schedule as 'Identified Areas' and further areas which are subsequently agreed between the Tjiwarl AC and the State from time to time to be 'Identified Areas' pursuant to clause 12 and are depicted on a publicly available map and/or spatial database published by the State.

**Independent Person Determination** means the determination made by the independent person referred to in section 24MD(6B)(g) of the Native Title Act.

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

**Mining Act Compliance Date** means:

- (a) in respect of an exploration licence, retention licence, mining lease or general purpose lease; the date on which the mining registrar or warden makes a recommendation to the Minister for Mines and Petroleum or their delegate that the relevant mining tenement should be granted; or
- (b) in respect of a prospecting licence or miscellaneous licence the date on which DMIRS or the warden determine that the application could proceed to grant, save for satisfaction of the processes in this Agreement or the Native Title Act.

**Mining Exploration Tenure** has the meaning given by clause 5.1.

**Mining Infrastructure Licence** has the meaning given by clause 7.1.

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

**Mining Water Licence** has the meaning given by clause 8.1.

**Minister for Mines and Petroleum** means the Minister in the Government for the time being responsible for the administration of the Mining Act and the PGER Act.

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

**Negotiation Parties** means Tjiwarl AC and a Proponent.

**Negotiation Period** means in respect of:

- (a) Mining Exploration Tenure, a period of 80 Business Days commencing on the Mining Act Compliance Date;
- (b) Other Mining Tenure, a period of 100 Business Days commencing on the Mining Act Compliance Date;
- (c) Mining Infrastructure Licences, a period of 100 Business Days commencing on the Mining Act Compliance Date;
- (d) Mining Water Licences, a period of 100 Business Days commencing on the Mining Act Compliance Date;

- (e) PGER Exploration Tenure, a period of 80 Business days commencing on the PGER Compliance Date; and
- (f) Other PGER Tenure, a period of 100 Business Days commencing on the PGER Compliance Date.

**Other Mining Tenure** has the meaning given in clause 6.1.

**Other PGER Tenure** has the meaning given in clause 10.1.

**Pending Mining Exploration Tenure** has the meaning given in clause 11(a).

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

**PGER Act Compliance Date** means the date on which DMIRS determines that the application for the PGER Title is suitable for offer, save for satisfaction of the processes in this Agreement or the Native Title Act.

**PGER Exploration Tenure** has the meaning given in clause 9.1.

**PGER Lease** means a lease granted under the PGER Act.

**PGER Licence** means a licence granted under the PGER Act.

**PGER Permit** means a permit granted under the PGER Act.

**PGER Title** means a permit, drilling reservation, access authority, lease, licence, or special prospecting authority granted under the PGER Act.

**Proponent** means a person who has made an application for the grant of a mining tenement or a PGER Title to which this Schedule applies.

**Proponent Statutory Declaration** means a statutory declaration required to be executed by, or on behalf of, a Proponent in accordance with this Schedule. The form of the statutory declaration, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, to be executed in compliance with:

- (a) clause 5.4(c), is contained in Annexure 9 at Item A;
- (b) the condition on title imposed in clauses 5.9(a), 6.11(a), 7.10(a), 8.6(d), 9.9(a) or 10.11(a), is contained in Annexure 9 at Item B.

**Section 24MD Notice** means the notice given by the State in accordance with section 24MD(6B)(c) of the Native Title Act.

**Section 24MD Objection** means the objection to the doing of an act referred to in section 24MD(6B)(d) of the Native Title Act.

**Section 29 Notice** means the notice given by the State in accordance with section 29 of the Native Title Act.

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

**Tenement Application Form** means the form of application for a mining tenement prescribed by the Mining Regulations, which, at the Execution Date, is Form 21 of the Mining Regulations.

**Tjiwarl AC** means Tjiwarl (Aboriginal Corporation) RNTBC (ICN: 8628) of unit 6, 524 Abernethy Road, Kewdale, Western Australia in its capacity as a registered native title body corporate holding native title on trust for the Tjiwarl People.

**Tjiwarl Determination** means the determination of native title made by the Federal Court of Australia on 27 April 2017 in WAD 228 of 2011 and WAD 302 of 2015, as amended by the Full Court of the Federal Court on 1 February 2018 in WAD 217 of 2017 and WAD 218 of 2017 and as further amended by the High Court of Australia on 17 April 2019 in P 38 of 2018.

**Tjiwarl Engagement Protocol** means the protocol that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Tjiwarl Engagement Protocol' at Annexure 8 to this Schedule.

**Tjiwarl Exploration Agreement** means the agreement that is substantially in the form, subject to any necessary modifications as required for the relevant Mining Exploration Tenure, of the 'Tjiwarl Exploration Agreement' at Annexure 6 to this Schedule.

**Tjiwarl Heritage Agreement** means the agreement that is substantially in the form, subject to any necessary modifications as required for the relevant mining tenement or PGER Title, of the 'Tjiwarl Heritage Agreement' at Annexure 10 to this Schedule.

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

### 2.3 Interpretation – General

- (a) References to clauses are references to clauses in this Schedule unless otherwise indicated.
- (b) For the avoidance of doubt, unless the contrary intention appears, the principles of interpretation contained in clause 1.3 of the Agreement apply to this Schedule.

### 2.4 State acting through DMIRS

In this Schedule, unless otherwise indicated, the State is the State acting through DMIRS.

## 3. Principles and Objectives

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*This clause sets out what the Parties intend to achieve in this Schedule.*

The Parties acknowledge and recognise that:

- (a) the processes contained in this Schedule for the grant of mining tenements and PGER Act Titles on Tjiwarl Country are a fundamental part of the Agreement and the Parties commit to working together to implement the Schedule in a certain and efficient manner;
- (b) This Schedule prioritises agreement making between Tjiwarl AC and Proponents in a way that:
  - (i) provides Tjiwarl AC with timely notice of applications for mining tenements and PGER Act Titles;
  - (ii) encourages early engagement between Tjiwarl AC and Proponents; and
  - (iii) provides an efficient process for the valid grant of mining tenements and PGER Act Titles where agreement can be reached, without the need for future act notifications to be made under the Native Title Act; and
- (c) the processes contained in this Schedule are intended to reduce the circumstances in which Tjiwarl AC may have reason to object under the Mining Act to the grant of Mining Tenure. As a result, objections made by Tjiwarl AC under the Mining Act to the grant of mining tenements will be minimised. However, nothing in this Schedule affects rights that Tjiwarl AC have at law, including under the Mining Act.

#### 4. Mining Business Working Group

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*This clause establishes the Mining Business Working Group.*

The Parties agree to establish a Mining Business Working Group to work collaboratively to oversee and inform the implementation of the processes contained in this Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area, in accordance with the Mining Business Working Group Terms of Reference set out in Annexure 3 to this Schedule.

#### 5. Process for the grant of Mining Exploration Tenure

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*This clause sets out the process the State and Tjiwarl AC will follow to grant exploration type tenements that are not located in Identified Areas. A diagram of the process described in this clause is contained in Annexure 1.*

##### 5.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) exploration licences, prospecting licences and retention leases where the area of land applied for does not include an Identified Area; and
- (b) exploration licences, prospecting licences and retention leases where the area of land applied for includes an Identified Area but where the nomination in clause 6.2(b) has been made by Tjiwarl AC.

**(Mining Exploration Tenure).**

##### 5.2 Notification of application for a Mining Exploration Tenure

- (a) Within 10 Business Days of receiving an application for a Mining Exploration Tenure referred to in clause 5.1(a) the State must give Tjiwarl AC:
  - (i) a copy of the Tenement Application Form for the Mining Exploration Tenure;
  - (ii) a map showing the boundaries of the Mining Exploration Tenure as applied for; and

- (iii) a statement that clause 5 applies to the Mining Exploration Tenure.
- (b) Within 10 Business Days of receiving an application for a Mining Exploration Tenure referred to in clause 5.1(a), or within 10 Business Days of receiving the nomination referred to in clause 6.2(b), the State must give the Proponent:
  - (i) the contact details of Tjiwarl AC;
  - (ii) a copy of the Tjiwarl Exploration Agreement;
  - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
  - (iv) a statement that clause 5 applies to the Mining Exploration Tenure; and
  - (v) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Exploration Tenure that identifies the activities to be undertaken on the Mining Exploration Tenure.
- (c) Within 5 Business Days of the Mining Act Compliance Date for the Mining Exploration Tenure the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

### **5.3 Engagement with the Proponent about Mining Exploration Tenure**

- (a) Upon receiving the notification under clause 5.2(c), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Exploration Agreement with respect to the grant of Mining Exploration Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 5.3(b) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance or participation being sought from the State; and

- (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,

to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

#### **5.4 Execution of Tjiwarl Exploration Agreement during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Proponent executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution, Tjiwarl AC must, within 15 Business Days of receiving the Tjiwarl Exploration Agreement from the Proponent:
  - (i) execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the Proponent; and
  - (ii) provide the State with:
    - (A) a Certification Form; and
    - (B) an executed Deed of Release.
- (b) Tjiwarl AC agrees that, if it fails to provide the State with the Certification Form and executed Deed of Release in accordance clause 5.4(a)(ii) within 20 Business Days of it executing the Tjiwarl Exploration Agreement, the Proponent may provide the State with a copy of the Tjiwarl Exploration Agreement executed by both Negotiation Parties.
- (c) Tjiwarl AC agrees that, if it fails to execute and return a Tjiwarl Exploration Agreement within 20 Business Days of receiving an executed Tjiwarl Exploration Agreement from a Proponent in accordance with 5.4(a), the Proponent for the Mining Exploration Tenure may provide the State and Tjiwarl AC with a Proponent Statutory Declaration as evidence that:
  - (i) the Proponent has executed the Tjiwarl Exploration Agreement and provided a copy to Tjiwarl AC for execution; and
  - (ii) 20 Business Days have passed since provision of the executed Tjiwarl Exploration Agreement to Tjiwarl AC and the Proponent has not received an executed Tjiwarl Exploration Agreement from Tjiwarl AC.
- (d) The Minister for Mines and Petroleum may, upon receipt of the documents referred to in clause 5.4(a)(ii) or (b) (as the case may be), grant the Mining Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum



agrees, in granting the Mining Exploration Tenement, to impose the following endorsement on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of the Tjiwarl Palyakuwa Indigenous Land Use Agreement (Tjiwarl Palyakuwa (Agreement)), the [tenement holder, e.g. licensee] has executed and entered into the Tjiwarl Exploration Agreement (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

- (e) The Minister for Mines and Petroleum may, upon receipt of the documents referred to in clause 5.4(c), grant the Mining Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Exploration Tenement, to impose the condition contained in clause 5.9(a) on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure).

## **5.5 Request for documents at the end of the Negotiation Period**

- (a) If, at the end of the Negotiation Period, the State has not received the documents referred to in clause 5.4(a)(ii), (b) or (c), the State must give a notice to the Negotiation Parties:
- (i) informing them of the end of the Negotiation Period;
  - (ii) requesting, within 10 Business Days, copies of the documents referred to in clause 5.4(a)(ii), (b) or (c) (as applicable); and
  - (iii) if neither Negotiation Party has executed the Tjiwarl Exploration Deed, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties, including, in particular, the reasons why the Tjiwarl Exploration Agreement has not been entered into.
- (b) If the documents referred to in clause 5.4(a)(ii), (b) or (c) are provided to the State following the request in clause 5.5(a)(ii)(a), the Minister for Mines and Petroleum may grant the Mining Exploration Tenure to the Proponent in accordance with clause 5.4(d) or 5.4(e) (as applicable).

## **5.6 Tjiwarl Exploration Agreement not executed during Negotiation Period**

- (a) If the documents referred to in clause 5.4(a)(ii), (b) or (c) are not provided to the State within 10 Business Days of the notice given in clause 5.5(a), on the basis of any information received in response to the request made at clause 5.5(a)(iii), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Exploration Tenure not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Mining Exploration Tenure under section 111A of the Mining Act, the State may give a Section 29 Notice in respect the Mining Exploration Tenure and will, pursuant to section 29(7) of the Native Title Act, include in that Section 29 Notice a statement that the State considers that the grant of the Mining Exploration Tenure is an act attracting the expedited procedure.

## **5.7 State Participation in an Expedited Procedure Objection Application**

If, following the Section 29 Notice referred to in clause 5.6(b), Tjiwarl AC makes an Expedited Procedure Objection Application, the State will:

- (a) if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required; and
- (b) include in any information provided to the arbitral body for the purpose of the Expedited Procedure Determination, the intention of the Minister for Mines and Petroleum to impose the condition referred to in clause 5.9(a) on the Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure).

## **5.8 Tjiwarl Exploration Agreement executed after Expedited Procedure Objection Application**

- (a) If, after Tjiwarl AC lodges an Expedited Procedure Objection Application, but prior to the arbitral body making an Expedited Procedure Determination, the Proponent executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution, Tjiwarl AC must, within 10 Business Days of receipt of the Tjiwarl Exploration Agreement from the Proponent:

- (i) execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the Proponent;
  - (ii) withdraw the Expedited Procedure Objection Application; and
  - (iii) provide the State with:
    - (A) a Certification Form; and
    - (B) an executed Deed of Release.
- (b) Following the withdrawal of the Expedited Procedure Objection Application, the Minister for Mines and Petroleum, in granting the Mining Exploration Tenure, agrees to impose the endorsement referred to in clause 5.4(d) on the Mining Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant Mining Exploration Tenure).

#### **5.9 Expedited Procedure Objection Application not made or where the Expedited Procedure applies**

- (a) If, following the Section 29 Notice referred to in clause 5.6(b):
- (i) Tjiwarl AC does not make an Expedited Procedure Objection Application; or
  - (ii) the arbitral body makes an Expedited Procedure Determination that the grant of the Mining Exploration Tenure is an act attracting the expedited procedure,
- subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum, in granting the Mining Exploration Tenure, agrees to impose the following condition on the Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*

- b. Where:*
- i. the [tenement holder] executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. within 40 Business Days of receiving the executed Tjiwarl Exploration Agreement, Tjiwarl AC does not execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the [tenement holder]; and*
  - iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

- (b) If, following the grant of the Mining Exploration Tenure in accordance clause 5.9(a), the Proponent executes and enters into the Tjiwarl Exploration Agreement, Tjiwarl AC must within 10 Business Days of receiving the executed Tjiwarl Exploration Agreement from the Proponent:
- (i) execute the Tjiwarl Exploration Agreement and provide the Proponent with a copy of the completed Tjiwarl Exploration Agreement; and
  - (ii) provide the State with:
    - (A) a Certification Form; and
    - (B) an executed Deed of Release.

### **5.10 Where the Expedited Procedure does not apply**

If, following the Section 29 Notice referred to in clause 5.6(b), the arbitral body makes an Expedited Procedure Determination that the grant of the Mining Exploration Tenure is not an act attracting the expedited procedure, clauses 6.8 to 6.11 apply:

- (a) as if a reference to "*Other Mining Tenure*" was a reference to "*Mining Exploration Tenure*";
- (b) as if a reference to the "*Section 29 Notice referred to in clause 6.7(b)*" was a reference to the "*Section 29 Notice referred to in clause 5.6(b)*"; and
- (c) subject to any other necessary modification of terminology as required for the Mining Exploration Tenure.

## 6. Process for the grant of Other Mining Tenure

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*This clause sets out the process the State and Tjiwarl AC will follow to grant exploration type tenements that are located in Identified Areas, mining leases and general purpose leases. A diagram of the process described in this clause is contained in Annexure 1.*

### 6.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) mining leases;
- (b) general purpose leases; and
- (c) exploration licences, prospecting licences and retention leases where the area of land applied for includes an Identified Area and where, for the avoidance of doubt, a nomination of the kind described in clause 6.2(b) has not been made.

**(Other Mining Tenure).**

### 6.2 Nomination for a mining tenement to be a Mining Exploration Tenure

- (a) Where an exploration licence, prospecting licence or retention lease is a future act applied for in the Agreement Area on or after the Conclusive Registration Date and the area of land applied for includes an Identified Area, the State must, within 10 Business Days of receiving the application, give Tjiwarl AC:
  - (i) a copy of the Tenement Application Form for the mining tenement;
  - (ii) a map showing the boundaries of the mining tenement as applied for; and

- (iii) a request for Tjiwarl AC to nominate whether clause 5, instead of clause 6, will apply to the mining tenement.
- (b) If, within 10 Business Days of the provision of the information in clause 6.2(a), Tjiwarl AC nominate that clause 5 should apply to the mining tenement, the mining tenement is, on and from the date of the nomination, a Mining Exploration Tenure to which clause 5 applies.
- (c) For the avoidance of doubt if, after 10 Business Days of the provision of the information in clause 6.2(a), a nomination under clause 6.2(b) has not been received by the State, the mining tenement is an Other Mining Tenure to which this clause 6 applies.

### **6.3 Notification of application for Other Mining Tenure**

- (a) Within 10 Business Days of receiving an application for an Other Mining Tenure referred to in 6.1(a) or 6.1(b) the State must give Tjiwarl AC:
  - (i) a copy of the Tenement Application Form for the Other Mining Tenure;
  - (ii) a map showing the boundaries of the Other Mining Tenure as applied for; and
  - (iii) a statement that clause 6 applies to the Other Mining Tenure.
- (b) Within 10 Business Days of receiving an application for an Other Mining Tenure referred to in clause 6.1(a) or 6.1(b), or within 30 Business Days of receiving an application for an Other Mining Tenure referred to in clause 6.1(c), the State must give the Proponent:
  - (i) the contact details of Tjiwarl AC;
  - (ii) a copy of the Tjiwarl Engagement Protocol;
  - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
  - (iv) a statement that clause 6 applies to the Other Mining Tenure; and
  - (v) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Other Mining Tenure that identifies the activities to be undertaken on the Other Mining Tenure.
- (c) Within 5 Business Days of the Mining Act Compliance Date for the Other Mining Tenure the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

#### **6.4 Engagement with the Proponent about Other Mining Tenure**

- (a) Upon receiving the notification under clause 6.3(c), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Other Mining Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 6.4(b) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

#### **6.5 Agreement as to grant of the Other Mining Tenure during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Other Mining Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 6.5(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other Mining Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 6.5(a), grant the Other Mining Tenure to the Proponent. Subject to clause 5.7

of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other Mining Tenement, to impose the following endorsement on the Other Mining Tenure (subject to any necessary modifications of terminology as required for the relevant Other Mining Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa Agreement) and maintains such agreement for the term of this [type of tenement].*

## **6.6 Request for documents at the end of the Negotiation Period**

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 6.5(a), the State must give a notice to the Negotiation Parties:
  - (i) informing them of the end of the Negotiation Period;
  - (ii) requesting, within 10 Business Days:
    - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Other Mining Tenure, a Certification Form; or
    - (B) if the Negotiation Parties have not reached agreement as to the grant of the Other Mining Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 6.6(a)(ii)(A):
  - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other Mining Tenure or the terms of the agreement reached by the Negotiation Parties); and
  - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Other Mining Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other Mining Tenement, to impose the following endorsement on the Other Mining Tenure (subject to any necessary modifications of terminology as required for the relevant Other Mining Tenure):



*To the extent that this [type of tenement] is located over the area of land the subject of the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement) and maintains such agreement for the term of this [type of tenement].*

## **6.7 Agreement not reached during Negotiation Period**

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 6.6(a), on the basis of any information received in response to the request made at clause 6.6(a)(ii)(B), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Other Mining Tenure not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Other Mining Tenure under section 111A of the Mining Act, the State may give a Section 29 Notice in respect the Other Mining Tenure.

## **6.8 State Participation following Section 29 Notice**

- (a) Following the Section 29 Notice referred to in clause 6.7(b) the State will, if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (b) A request for the State's assistance under clause 6.8(a) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance or participation being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

## 6.9 Future Act Determination Application

If, following the Section 29 Notice referred to in clause 6.7(b), Tjiwarl AC or the Proponent make a Future Act Determination Application, the State will:

- (a) to the extent reasonably practicable, or if required by the arbitral body, participate in the Future Act Determination Application including, where appropriate, making submissions as to whether a Negotiation Party has negotiated in good faith with a view to reaching agreement (as referred to in section 31(1)(b) of the Native Title Act) and/or whether the Other Mining Tenure should be granted and, if so, on what conditions; and
- (b) include in any information provided for the purpose of the Future Act Determination, the intention of the Minister for Mines and Petroleum to impose the following condition on the Other Mining Tenure (subject to any necessary modification of terminology as required for the Other Mining Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage (Agreement) (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
  - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and*
  - iii. *the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement)*

*as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

#### **6.10 Agreement reached following Section 29 Notice**

- (a) If, following the Section 29 Notice referred to in clause 6.7(b), Tjiwarl AC and the Proponent reach an agreement of the kind referred to in section 31(1)(b) of the Native Title Act, Tjiwarl AC must within 20 Business Days of reaching agreement provide the State with a Certification Form and a Deed for Grant executed by the Tjiwarl AC and the Proponent.
- (b) Upon receipt of the documents referred to in clause 6.10(a), the State will:
  - (i) execute the Deed for Grant and provide a completed copy to the Tjiwarl AC and the Proponent;
  - (ii) give a copy of the executed Deed for Grant to the arbitral body in accordance with section 41A(1)(a) and (c) of the Native Title Act; and
  - (iii) advise the relevant Minister for the purpose of the Native Title Act in writing of the making of the Deed for Grant.

#### **6.11 Where a Future Act Determination is made**

If a Future Act Determination is made that the Other Mining Tenure may be granted subject to the condition contained in clause 6.9(b):

- (a) the Minister for Mines and Petroleum, in granting the Other Mining Tenure, agrees to impose that condition (subject to any necessary modification of terminology as required for the Other Mining Tenure); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

## 7. Process for the grant of Mining Infrastructure Licences

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*This clause sets out the process the State and Tjiwarl AC will follow to grant miscellaneous licences that are not for the purpose of taking water or searching for groundwater. A diagram of the process described in this clause is contained in Annexure 1. The process for granting miscellaneous licences for taking or searching for water can be found in clause 8.*

### 7.1 Application of this clause

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) miscellaneous licences where the miscellaneous licence is not a Mining Water Licence, to which clause 8 applies

**(Mining Infrastructure Licences).**

### 7.2 Notification of application for Mining Infrastructure Licence

- (a) Within 10 Business Days of the lodgement of the written details referred to in regulation 37(3) of the Mining Regulations in respect of the Mining Infrastructure Licence the State must give:
  - (i) Tjiwarl AC:
    - (A) a copy of the Tenement Application Form for the Mining Infrastructure Licence;
    - (B) a map showing the boundaries of the Mining Infrastructure Licence as applied for; and
    - (C) a statement that clause 7 applies to the Mining Infrastructure Licence; and
  - (ii) the Proponent:
    - (A) the contact details of Tjiwarl AC;
    - (B) a copy of the Tjiwarl Engagement Protocol;
    - (C) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
    - (D) a statement that clause 7 applies to the Mining Infrastructure Licence; and

- (E) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Infrastructure Licence that identifies the activities to be undertaken on the Mining Infrastructure Licence.
- (b) Within 5 Business Days of the Mining Act Compliance Date for the Mining Infrastructure Licence the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

### **7.3 Engagement with the Proponent about Mining Infrastructure Licence**

- (a) Upon receiving the notification under clause 7.2(b), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Mining Infrastructure Licence, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 7.3(b) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

### **7.4 Agreement to grant of Mining Infrastructure Licence during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Mining Infrastructure Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.

- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 7.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 7.4(a), grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

## **7.5 Request for documents at the end of the Negotiation Period**

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 7.4(a), the State must give a notice to the Negotiation Parties:
  - (i) informing them of the end of the Negotiation Period;
  - (ii) requesting, within 10 Business Days:
    - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Mining Infrastructure Licence, a Certification Form; or
    - (B) if the Negotiation Parties have not reached agreement as to the grant of the Mining Infrastructure Licence Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 7.5(a)(ii)(A):
  - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required

by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties); and

- (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement) and maintains such agreement for the term of this [type of tenement].*

## **7.6 Agreement not reached during Negotiation Period**

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 7.5(a), on the basis of any information received in response to the request made at clause 7.5(a)(ii)(B), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Infrastructure Licence not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (b) If the Minister for Mines and Petroleum does not refuse the application for the Mining Infrastructure Licence under section 111A of the Mining Act, the State may give a Section 24MD Notice in respect the Mining Infrastructure Licence.

## **7.7 State Participation following Section 24MD Notice**

- (a) Following the Section 24MD Notice referred to in clause 7.6(b) the State will, if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (b) A request for the State's assistance under clause 7.7(a) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and

- (iii) contain sufficient detail of:
  - (A) the assistance or participation being sought from the State; and
  - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

## 7.8 Section 24MD Objection

If, following the Section 24MD Notice referred to in clause 7.6(b), Tjiwarl AC makes a Section 24MD Objection, the State will:

- (a) participate in any hearing of the Section 24MD Objection by the independent person including, where appropriate, making submissions as to whether the Mining Infrastructure Licence should be granted and, if so, on what conditions; and
- (b) include in the information provided in any hearing of the Section 24MD Objection by the independent person, the intention of the Minister for Mines and Petroleum to impose the following condition on the Mining Infrastructure Licence (subject to any necessary modification of terminology as required for the Mining Infrastructure Licence):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa Agreement execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa Agreement) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa Agreement) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
  - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage*



*Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and*

- iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

## **7.9 Agreement reached prior to Independent Person Determination**

- (a) If, following the Section 24MD Notice referred to in clause 7.6(b) but prior to the Independent Person Determination, the Negotiation Parties reach agreement as to the grant of the Mining Infrastructure Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent:
- (i) provide the State with a Certification Form; and
  - (ii) withdraw any Section 24MD Objection.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 7.9(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon the withdrawal of the Section 24MD Objection, grant the Mining Infrastructure Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Infrastructure Licence, to impose the following endorsement on the Mining Infrastructure Licence (subject to any necessary modifications of terminology as required for the relevant Mining Infrastructure Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

### **7.10 Where an Independent Person Determination is made**

If an Independent Person Determination is made that the Mining Infrastructure Licence may be granted subject to the condition contained in clause 7.8(b):

- (a) the Minister for Mines and Petroleum, in granting the Mining Infrastructure Licence, agrees to impose that condition (subject to any necessary modification of terminology as required for the Mining Infrastructure Licence); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

## **8. Process for the grant of Mining Water Licences**

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*This clause sets out the process the State and Tjiwarl AC will follow to grant miscellaneous licences that are for the purpose of taking water or searching for groundwater. A diagram of the process described in this clause is contained in Annexure 1.*

### **8.1 Application of this clause**

This clause applies to the following mining tenements that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) miscellaneous licences where:
  - (i) the purpose(s) of the miscellaneous licence are only those prescribed by regulation 42B(i) ("taking water") or 42B(ia) ("search for ground water") of the Mining Regulations; and
  - (ii) the written details lodged by the Proponent pursuant to regulation 37(3) of the Mining Regulations do not contemplate the Proponent conducting any works or operations pursuant to which the land would be used for any other purpose prescribed by regulation 42B of the Mining Regulations,

**(Mining Water Licences).**

## 8.2 Notification of application for Mining Water Licence

- (a) Within 10 Business Days of the lodgement of the written details referred to in regulation 37(3) of the Mining Regulations in respect of the Mining Water Licence the State must give:
- (i) Tjiwarl AC:
    - (A) a copy of the Tenement Application Form for the Mining Water Licence;
    - (B) a map showing the boundaries of the Mining Water Licence as applied for; and
    - (C) a statement that clause 8 applies to the Mining Water Licence; and
  - (ii) the Proponent:
    - (A) the contact details of Tjiwarl AC;
    - (B) a copy of the Tjiwarl Engagement Protocol;
    - (C) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
    - (D) a statement that clause 8 applies to the Mining Water Licence; and
    - (E) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Mining Water Licence that identifies the activities to be undertaken on the Mining Water Licence.
- (b) Within 5 Business Days of the Mining Act Compliance Date for the Mining Water Licence the State must give the Negotiation Parties notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.

## 8.3 Engagement with the Proponent about Mining Water Licence

- (a) Upon receiving the notification under clause 8.2(b), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Mining Water Licence, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.

- (c) A request for the State's assistance under clause 8.3(a) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

#### **8.4 Agreement to grant of the Mining Water Licence during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Mining Water Licence, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 8.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Water Licence or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 8.4(a), grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the following endorsement on the Mining Water Licence (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

### 8.5 Request for documents at the end of the Negotiation Period

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 8.4(a), the State must give a notice to the Negotiation Parties:
- (i) informing them of the end of the Negotiation Period; and
  - (ii) requesting, within 10 Business Days, a Certification Form if an agreement has been reached between the Negotiation Parties as to the grant of the Mining Water Licence.
- (b) If a Certification Form is provided to the State following the request in clause 8.5(a)(ii):
- (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Mining Water Licence or the terms of the agreement reached by the Negotiation Parties).
  - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the following endorsement on the Mining Water Licence (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [tenement holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

### 8.6 Agreement not reached during Negotiation Period

- (a) If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 8.5(a), the State must give a notice to the Negotiation Parties:
- (i) informing them that it is proceeding with the consideration of the application for the Mining Water Licence;
  - (ii) requesting, within 40 Business Days, any submissions from a Negotiation Parties that address:

- (A) whether the Mining Water Licence should be granted and, if so, on what conditions; and
  - (B) any discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties; and
- (iii) including a statement that, if the Mining Water Licence is granted, the Minister for Mines and Petroleum intends to impose the following condition on the Mining Water Licence (subject to any necessary modification of terminology as required for the Mining Water Licence):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
  - i. *the [tenement holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [tenement holder]; and*
  - iii. *the [tenement holder] provides the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise*

*any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

- (b) At the same time as providing the notice under clause 8.6(a), DMIRS must provide DWER with a notice containing:
  - (i) copy of the notice referred to in clause 8.6(a);
  - (ii) a copy of the Tenement Application Form for the Mining Water Licence; and
  - (iii) an opportunity, within 40 Business Days, to provide any submissions as to whether the Mining Water Licence should be granted and, if so, on what conditions.
- (c) On the basis of any information received in response to the request made at clause 8.6(a) or 8.6(b), together with any other facts or matters the State determines to be relevant, the State will consider whether a recommendation should be made to the Minister for Mines and Petroleum that the application for the Mining Infrastructure Licence not be granted on the grounds contained in section 111A(1) of the Mining Act.
- (d) If the Minister for Mines and Petroleum does not refuse the application for the Mining Infrastructure Licence under section 111A of the Mining Act, the Minister for Mines and Petroleum may grant the Mining Water Licence to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Mining Water Licence, to impose the condition contained in clause 8.6(a)(iii) (subject to any necessary modifications of terminology as required for the relevant Mining Water Licence):
- (e) If the Mining Water Licence is granted in accordance with clause 8.6(d), Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

## 9. Process for the grant of PGER Exploration Tenure

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*This clause sets out the process the State and Tjiwarl AC will follow to grant petroleum special prospecting authorities and access authorities that are not located in an Identified Area. A diagram of the process described in this clause is contained in Annexure 1.*

### 9.1 Application of this clause

This clause applies to the following PGER Titles that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) access authorities and special prospecting authorities where the area of land applied for does not include an Identified Area; and
- (b) access authorities and special prospecting authorities where the area of land applied for includes an Identified Area but where the nomination in clause 10.2(b) has been made by Tjiwarl AC

**(PGER Exploration Tenure).**

### 9.2 Notification of application for a PGER Exploration Tenure

- (a) Within 10 Business Days of the PGER Compliance Date in respect of a PGER Exploration Tenure referred to in clause 9.1(a) the State must give Tjiwarl AC:
  - (i) notice of the application for the PGER Exploration Tenure;
  - (ii) a map showing the boundaries of the PGER Exploration Tenure as applied for;
  - (iii) a statement that clause 9 applies to the PGER Exploration Tenure; and
  - (iv) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.
- (b) Within 10 Business Days of the PGER Compliance Date in respect of a PGER Exploration Tenure to referred to in clause 9.1(a), or within 10 Business Days of receiving the nomination referred to in clause 10.2(b), the State must give the Proponent:
  - (i) the contact details of Tjiwarl AC;
  - (ii) a copy of the Tjiwarl Engagement Protocol;



- (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
- (iv) a statement that clause 9 applies to the PGER Exploration Tenure;
- (v) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
- (vi) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the PGER Exploration Tenure that identifies the activities to be undertaken on the PGER Exploration Tenure.

### **9.3 Engagement with the Proponent about PGER Exploration Tenure**

- (a) Upon receiving the notification under clause 9.2(a), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the PGER Exploration Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 9.3(b) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

#### **9.4 Agreement to grant of the PGER Exploration Tenure during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the PGER Exploration Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 9.4(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant PGER Exploration Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 9.4(a), grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

#### **9.5 Request for documents at the end of the Negotiation Period**

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 9.4(a), the State must give a notice to the Negotiation Parties:
  - (i) informing them of the end of the Negotiation Period;
  - (ii) requesting, within 10 Business Days, a Certification Form if an agreement has been reached between the Negotiation Parties as to the grant of the PGER Exploration Tenure.
- (b) If a Certification Form is provided to the State following the request in clause 9.5(a)(ii):
  - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required

by the relevant Mining Infrastructure Licence or the terms of the agreement reached by the Negotiation Parties); and

- (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of tenement].*

## **9.6 Agreement not reached during Negotiation Period**

If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 9.5(a), the State may give a Section 29 Notice in respect the PGER Exploration Tenure and will, pursuant to section 29(7) of the Native Title Act, include in that Section 29 Notice a statement that the State considers that the grant of the PGER Exploration Tenure is an act attracting the expedited procedure.

## **9.7 State Participation in an Expedited Procedure Objection Application**

If, following the Section 29 Notice referred to in clause 9.6, Tjiwarl AC makes an Expedited Procedure Objection Application, the State will:

- (a) if requested, facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required; and
- (b) include in any information provided to the arbitral body for the purpose of the Expedited Procedure Determination, the intention of the Minister for Mines and Petroleum to impose the condition referred to in clause 9.9(a) on the PGER Exploration Tenure (subject to any necessary modification of terminology as required for the PGER Exploration Tenure).

### **9.8 Tjiwarl Exploration Agreement executed after Expedited Procedure Objection Application**

- (a) If, after Tjiwarl AC lodges an Expedited Procedure Objection Application but prior to the arbitral body making an Expedited Procedure Determination, the Negotiation Parties reach agreement as to the grant of the PGER Exploration Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent:
- (i) withdraw the Expedited Procedure Objection Application; and
  - (ii) provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 9.8(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant PGER Exploration Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon the withdrawal of the Expedited Procedure Objection, grant the PGER Exploration Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the PGER Exploration Tenure, to impose the following endorsement on the PGER Exploration Tenure (subject to any necessary modifications of terminology as required for the relevant PGER Exploration Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa Agreement**)), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

### **9.9 Expedited Procedure Objection Application not made or where the Expedited Procedure applies**

- (a) If, following the Section 29 Notice referred to in clause 9.6:
- (i) Tjiwarl AC does not make an Expedited Procedure Objection Application; or
  - (ii) the arbitral body makes an Expedited Procedure Determination that the grant of the PGER Exploration Tenure is an act attracting the expedited procedure,

subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum, in granting the PGER Exploration Tenure, agrees to impose the following condition on the PGER Exploration Tenure (subject to any necessary modification of terminology as required for the Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [title holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*
- b. *Where:*
  - i. *the [title holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [title holder]; and*
  - iii. *the [title holder] provides to the Minister for Mines and Petroleum a declaration from the [title holder] (or if the [title holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

- (b) If, following the grant of the PGER Exploration Tenure in accordance clause 9.9(a), the Proponent executes and enters into the Tjiwarl Heritage Agreement, Tjiwarl AC must

within 10 Business Days of receiving the executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

### 9.10 Where the Expedited Procedure does not apply

If, following the Section 29 Notice referred to in clause 9.6, the arbitral body makes an Expedited Procedure Determination that the grant of the PGER Exploration Tenure is not an act attracting the expedited procedure, clauses 10.9 to 10.11 below apply:

- (a) as if a reference to “*Other PGER Tenure*” was a reference to “*PGER Exploration Tenure*”;
- (b) as if a reference to the “*Section 29 Notice referred to in clause 10.8*” was a reference to the “*Section 29 Notice referred to in clause 9.6*”; and
- (c) subject to any other necessary modification of terminology as required for the PGER Exploration Tenure.

## 10. Process for the grant of Other PGER Tenure

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*This clause sets out the process the State and Tjiwarl AC will follow to grant petroleum leases, licences and permits (as well as special prospecting authorities and access authorities that are in an Identified Area). A diagram of the process described in this clause is contained in Annexure 1.*

### 10.1 Application of this clause

This clause applies to the following PGER Titles that are applied for on or after the Conclusive Registration Date to the extent that they are future acts located within the Agreement Area:

- (a) PGER Leases and PGER Licences; and
- (b) drilling reservations and PGER Permits;
- (c) access authorities and special prospecting authorities where the area of land applied for includes an Identified Area and where, for the avoidance of doubt, a nomination of the kind described in clause 10.2(b) has not been made,

**(Other PGER Tenure).**

## 10.2 Nomination for a PGER Title to be a PGER Exploration Tenure

- (a) Where an access authority or special prospecting authority is a future act applied for in the Agreement Area on or after the Conclusive Registration Date and the area of land applied for includes an Identified Area, the State must, within 10 Business Days of the PGER Compliance Date for the PGER Title, give Tjiwarl AC:
  - (i) notice of the application for the PGER Title;
  - (ii) a map showing the boundaries of the PGER Title as applied for;
  - (iii) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
  - (iv) a request for Tjiwarl AC to nominate whether clause 9, instead of clause 10, will apply to the PGER Title.
- (b) If, within 10 Business Days of the provision of the information in clause 10.2(a), Tjiwarl AC nominate that clause 9 should apply to the PGER Title, the PGER Title is, on and from the date of the nomination, a PGER Exploration Tenure to which clause 9 applies.
- (c) For the avoidance of doubt if, after 10 Business Days of the provision of the information in clause 10.2(a), a nomination under clause 10.2(b) has not been received by the State, the PGER Title is an Other PGER Tenure to which this clause 10 applies.

## 10.3 Acreage Releases

- (a) Where the State is considering an Acreage Release in respect of land or waters within the Agreement Area the State will, as part of any consultation it may undertake in respect of the proposed Acreage Release, provide Tjiwarl AC with notice of the area of the proposed Acreage Release and an opportunity to comment on it.
- (b) Where the State makes an Acreage Release in respect of land or waters within the Agreement Area the State will include in any information to be provided for an Acreage Release:
  - (i) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available;
  - (ii) a copy of the Tjiwarl Engagement Protocol; and

- (iii) a recommendation that an applicant for an Acreage Release engage with Tjiwarl AC with respect to their application and, where possible, obtain evidence of the support of Tjiwarl AC with respect to the application
- (c) The State will, in assessing applications for the award of PGER Permits and drilling reservations in the Agreement Area, consider the ability of the applicant to comply with the Native Title Act, the AHA, the ACHA and this Schedule, together with any other facts or matters the State determines to be relevant.

#### **10.4 Notification of application for Other PGER Tenure**

- (a) Within 10 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clauses 10.1(a) or 10.1(b), the State must give Tjiwarl AC:
  - (i) notice of the application for the Other PGER Tenure;
  - (ii) a map showing the boundaries of the Other PGER Tenure as applied for;
  - (iii) a statement that clause 10 applies to the Other PGER Tenure; and
  - (iv) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends.
- (b) Within 10 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clauses 10.1(a) or 10.1(b), or within 30 Business Days of the PGER Compliance Date for an Other PGER Tenure referred to in clause 10.1(c), the State must give the Proponent:
  - (i) the contact details of Tjiwarl AC;
  - (ii) a copy of the Tjiwarl Engagement Protocol;
  - (iii) a copy of this Schedule, or information as to where this Schedule is published or has otherwise been made publicly available; and
  - (iv) a statement that clause 10 applies to the Other PGER Tenure;
  - (v) notice of the Negotiation Period, including a statement specifying the day on which the Negotiation Period ends; and
  - (vi) a request that the Proponent provide Tjiwarl AC with a copy of any additional documentation lodged in support of the Other PGER Tenure that identifies the activities to be undertaken on the Other PGER Tenure.



### **10.5 Engagement with the Proponent about Other PGER Tenure**

- (a) Upon receiving the notification under clause 10.4(a), the State and Tjiwarl AC acknowledge that there is an expectation that Tjiwarl AC and the Proponent will use reasonable endeavours within the Negotiation Period to commence discussions regarding entry into the Tjiwarl Engagement Protocol and the grant of the Other PGER Tenure, noting that the State may make enquiries of the Negotiation Parties to ascertain progress.
- (b) The Negotiation Parties may, at any time during the Negotiation Period, request that the State facilitate and/or participate in discussions between the Negotiation Parties or provide such other guidance or assistance to the Negotiation Parties as may be reasonably required.
- (c) A request for the State's assistance under clause 10.5(b) must:
  - (i) be made in writing to the State;
  - (ii) be provided to the other Negotiation Party; and
  - (iii) contain sufficient detail of:
    - (A) the assistance being sought from the State; and
    - (B) the discussions that have occurred between Negotiation Parties as at the date of such request, or evidence of attempts to hold such discussions between Negotiation Parties,to enable the State to reasonably assist the Negotiation Parties or participate in their discussions.

### **10.6 Agreement as to grant of the Other PGER Tenure during Negotiation Period**

- (a) If, prior to the end of the Negotiation Period, the Negotiation Parties reach agreement as to the grant of the Other PGER Tenure, Tjiwarl AC must, within 15 Business Days of reaching agreement with the Proponent, provide the State with a Certification Form.
- (b) Within 40 Business Days of receipt of the Certification Form referred to in clause 10.6(a), Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other PGER Tenure or the terms of the agreement reached by the Negotiation Parties).
- (c) The Minister for Mines and Petroleum may, upon receipt of the Certification Form referred to in clause 10.6(a), grant the Other PGER Tenure to the Proponent. Subject to clause 5.7

of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other PGER Tenement, to impose the following endorsement on the Other PGER Tenure (subject to any necessary modifications of terminology as required for the relevant Other PGER Tenure):

*To the extent that this [type of tenement] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (Tjiwarl Palyakuwa (Agreement)), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

### **10.7 Request for documents at the end of the Negotiation Period**

- (a) If, at the end of the Negotiation Period, the State has not received the Certification Form referred to in clause 10.6(a), the State must give a notice to the Negotiation Parties:
  - (i) informing them of the end of the Negotiation Period;
  - (ii) requesting, within 10 Business Days:
    - (A) if an agreement has been reached between the Negotiation Parties as to the grant of the Other PGER Tenure, a Certification Form; or
    - (B) if the Negotiation Parties have not reached agreement as to the grant of the Other PGER Tenure, information with respect to the discussions that have occurred between Negotiation Parties to date, or evidence of attempts to hold such discussions between Negotiation Parties.
- (b) If a Certification Form is provided to the State following the request in clause 10.7(a)(ii)(A):
  - (i) within 40 Business Days of receipt of the Certification Form, Tjiwarl AC and the State will agree, and Tjiwarl AC will execute, a deed in the form, or substantially in the form of, the Deed of Release (subject to any necessary modifications as required by the relevant Other PGER Tenure or the terms of the agreement reached by the Negotiation Parties); and
  - (ii) the Minister for Mines and Petroleum may, upon receipt of the Certification Form, grant the Other PGER Tenure to the Proponent. Subject to clause 5.7 of the Agreement, the Minister for Mines and Petroleum agrees, in granting the Other PGER Tenement, to impose the following endorsement on the Other PGER Tenure

(subject to any necessary modifications of terminology as required for the relevant Other PGER Tenure):

*To the extent that this [type of title] is located over the area of land the subject of Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**), the [title holder, e.g. licensee] has executed and entered into an agreement with Tjiwarl AC (as defined in Tjiwarl Palyakuwa (Agreement)) and maintains such agreement for the term of this [type of title].*

## **10.8 Agreement not reached during Negotiation Period**

If a Certification Form is not provided to the State within 10 Business Days of the notice given in clause 10.6(a), the State may give a Section 29 Notice in respect the Other PGER Tenure.

## **10.9 Future Act Determination Application**

If, following the Section 29 Notice referred to in clause 10.8, Tjiwarl AC or the Proponent make a Future Act Determination Application, the State will:

- (a) to the extent reasonably practicable or if required by the arbitral body, participate in the Future Act Determination Application including, where appropriate, making submissions as to whether a Negotiation Party has negotiated in good faith with a view to reaching agreement (as referred to in section 31(1)(b) of the Native Title Act) and/or whether the Other PGER Tenure should be granted and, if so, on what conditions; and
- (b) include in any information provided for the purpose of the Future Act Determination, the intention of the Minister for Mines and Petroleum to impose the following condition on the Other PGER Tenure (subject to any necessary modification of terminology as required for the Other Mining Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [title holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and enter into the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of title].*

- b. *Where:*
- i. *the [title holder] executes the Tjiwarl Heritage Agreement and provides a copy to Tjiwarl AC for execution; and*
  - ii. *within 40 Business Days of receiving the executed Tjiwarl Heritage Agreement, Tjiwarl AC does not execute the Tjiwarl Heritage Agreement and provide a copy of the executed Tjiwarl Heritage Agreement to the [title holder]; and*
  - iii. *the [title holder] provides to the Minister for Mines and Petroleum a declaration from the [title holder] (or if the [title holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [title holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of title] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

#### **10.10 Agreement reached following Section 29 Notice**

- (a) If, following the Section 29 Notice referred to in clause 10.8, Tjwarl AC and the Proponent reach an agreement of the kind referred to in section 31(1)(b) of the Native Title Act, Tjiwarl AC must within 20 Business Days of reaching agreement provide the State with a Certification Form and a Deed for Grant executed by the Tjiwarl AC and the Proponent.
- (b) Upon receipt of the documents referred to in clause 10.10(a), the State will:
  - (i) execute the Deed for Grant and provide a completed copy to the Tjwarl AC and the Proponent;
  - (ii) give a copy of the executed Deed for Grant to the arbitral body in accordance with section 41A(1)(a) and (c) of the Native Title Act; and
  - (iii) advise the relevant Minister for the purposes of the Native Title Act in writing of the making of the Deed for Grant.

### 10.11 Where a Future Act Determination is made

If a Future Act Determination is made that the Other PGER Tenure may be granted subject to the condition contained in clause 10.9(b):

- (a) the Minister for Mines and Petroleum, in granting the Other PGER Tenure, agrees to impose that condition (subject to any necessary modification of terminology as required for the Other PGER Tenure); and
- (b) Tjiwarl AC must, within 10 Business Days of receiving an executed Tjiwarl Heritage Agreement from the Proponent provide the State with a Certification Form.

## 11. Pending Mining Exploration Tenure applied for prior to the Conclusive Registration Date and pending grant as at the Execution Date

---

*This clause sets out the process that applies to applications for exploration licences, prospecting licences and retention leases made before the Conclusive Registration Date.*

- (a) This clause 11 applies to exploration licences, prospecting licences and retention leases (both that include and do not include Identified Areas) to the extent that they are future acts located within the Agreement Area that:
  - (i) are the subject of a valid application made under the Mining Act prior to the Conclusive Registration Date; but
  - (ii) as at the Execution Date, have not been granted by the Minister for Mines and Petroleum,

**(Pending Mining Exploration Tenure).**
- (b) The Minister for Mines and Petroleum, in granting Pending Mining Exploration Tenure, agrees to impose the following condition on the Pending Mining Exploration Tenure (subject to any necessary modification of terminology as required for the Pending Mining Exploration Tenure):

*As the Tjiwarl Palyakuwa Indigenous Land Use Agreement (**Tjiwarl Palyakuwa (Agreement)**) applies to this [type of tenement, e.g. exploration licence]:*

- a. *the [tenement holder, e.g. licensee] must, before exercising any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement) execute and*

*enter into the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) with Tjiwarl AC (as defined in the Tjiwarl Palyakuwa (Agreement)) and maintain such agreement for the term of the [type of tenement].*

*b. Where:*

- i. the [tenement holder] executes the Tjiwarl Exploration Agreement and provides a copy to Tjiwarl AC for execution; and*
- ii. within 40 Business Days of receiving the executed Tjiwarl Exploration Agreement, Tjiwarl AC does not execute the Tjiwarl Exploration Agreement and provide a copy of the executed Tjiwarl Exploration Agreement to the [tenement holder]; and*
- iii. the [tenement holder] provides to the Minister for Mines and Petroleum a declaration from the [tenement holder] (or if the [tenement holder] is a corporation, from a director of that corporation on its behalf) in the form of Annexure 9 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) as evidence that the requirements of paragraph (b)(i) and (ii) of this condition have been met,*

*then, as and from the date on which the declaration in (b)(iii) is received by the Minister for Mines and Petroleum, the requirements of paragraph (a) of this condition do not apply and the [tenement holder] may proceed to exercise any of the rights, powers or duties pursuant to this [type of tenement] over that portion of the area of land the subject of the Tjiwarl Palyakuwa (Agreement).*

- (c) If, following the grant of the Pending Mining Exploration Tenure in accordance clause 11(b), the Proponent executes and enters into the Tjiwarl Exploration Agreement, Tjiwarl AC must within 10 Business Days of receiving the executed Tjiwarl Exploration Agreement from the Proponent execute the Tjiwarl Exploration Agreement and provide the Proponent with a copy of the completed Tjiwarl Exploration Agreement.

## 12. Review of Tjiwarl Heritage Agreement & Tjiwarl Exploration Agreement

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*This clause sets out the process the State and Tjiwarl AC will follow to review the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement.*

### 12.1 Review following repeal of the AHA

- (a) Notwithstanding clause 19 of the Agreement, within six months of the repeal of the AHA, the State and Tjiwarl AC must undertake a review of the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement to consider whether the ACHA, or any subsidiary legislation made under the ACHA (**ACHA Regulations**), materially affects the operation of those agreements.
- (b) The State and Tjiwarl AC agree that the review in clause 12.1(a):
  - (i) is only for the purpose of considering such changes to the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement as may be reasonably necessary to meet the requirements of the ACHA or the ACHA Regulations;
  - (ii) shall not require Tjiwarl AC or the Tjiwarl People to give consent to or otherwise support the disturbance of Aboriginal cultural heritage to any greater extent or in a materially different way than that presently contemplated by the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement; and
  - (iii) will not otherwise materially alter the substance or effect of the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement.
- (c) The outcomes of a review under clause 12.1(a) must be reasonably considered by the State and Tjiwarl AC.
- (d) In the event that the State and Tjiwarl AC are unable to agree any proposed variation to the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement arising out of the review under clause 12.1(a), the matter becomes a dispute for the purposes of clause 23 of this Agreement.
- (e) For the avoidance of doubt unless and until varied under clause 13, the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement will remain in the form contained in the Annexures to this Schedule.

## 12.2 General Review

- (a) For the avoidance of doubt, the reviews contemplated by clause 19 of the Agreement include a consideration of the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement.
- (b) To the extent that any review conducted under clause 19 of the Agreement includes a review of the Tjiwarl Heritage Agreement or the Tjiwarl Exploration Agreement, the State and Tjiwarl AC acknowledge that, unless both Parties agree otherwise:
  - (i) the monetary compensation as provided by Schedule 5, clause 2 of the Tjiwarl Exploration Agreement will not be reduced;
  - (ii) fixed payments in the Tjiwarl Heritage Agreement or the Tjiwarl Exploration Agreement will be adjusted for CPI and taking into account industry standards;
  - (iii) Tjiwarl AC or the Tjiwarl People shall not be required to give consent to or otherwise support the disturbance of Aboriginal cultural heritage to any greater extent than that presently contemplated by the Tjiwarl Heritage Agreement or Schedule 2 of the Tjiwarl Exploration Agreement; and
  - (iv) the Tjiwarl Heritage Agreement and the Tjiwarl Exploration Agreement will not be varied in any way that results in Tjiwarl AC being materially worse off.

## 13. Variation

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*This clause sets out when the Parties may change the Schedule. Parties cannot change the Schedule unless everyone agrees.*

Notwithstanding clause 20.1(a) of this Agreement, this Schedule and any Annexures to this Schedule may be varied by the agreement of the State and Tjiwarl AC, with the variation put in writing and executed by the State and Tjiwarl AC.



## 14. Notices

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*This clause sets how the parties must send notices to each other under this Schedule.*

### 14.1 Notices under this Schedule

Notwithstanding clause 29.1 of this Agreement, any notice or other communication that may or must be made under this Schedule:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving the notice;
- (c) must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 14.2, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 14.1(e), is taken to be given or made:
  - (i) for delivery in person, when delivered;
  - (ii) for delivery by post, on the fifth Business Day after posting; and
  - (iii) for e-mail, on receipt of an automated message confirming delivery or 4 hours after the e-mail is sent; and
- (e) if received after 4.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

### 14.2 Addresses for Service

The Parties' addresses for any notice or other communication that may or must be under this Schedule are those set out below, or as varied from time to time by any notice given by a Party to the other Parties:

- (a) For **Tjiwarl AC**:
  - (i) By email: [compliance@tjiwarl.org.au](mailto:compliance@tjiwarl.org.au)
  - (ii) By post: The CEO, Tjiwarl (Aboriginal Corporation) RNTBC  
Unit 6, 524 Abernethy Road  
Kewdale WA 6105

(b) For the **State**:

- (i) By post: Department of Mines, Industry Regulation and Safety  
100 Plain Street  
East Perth WA 6004

## **15. No funding assistance**

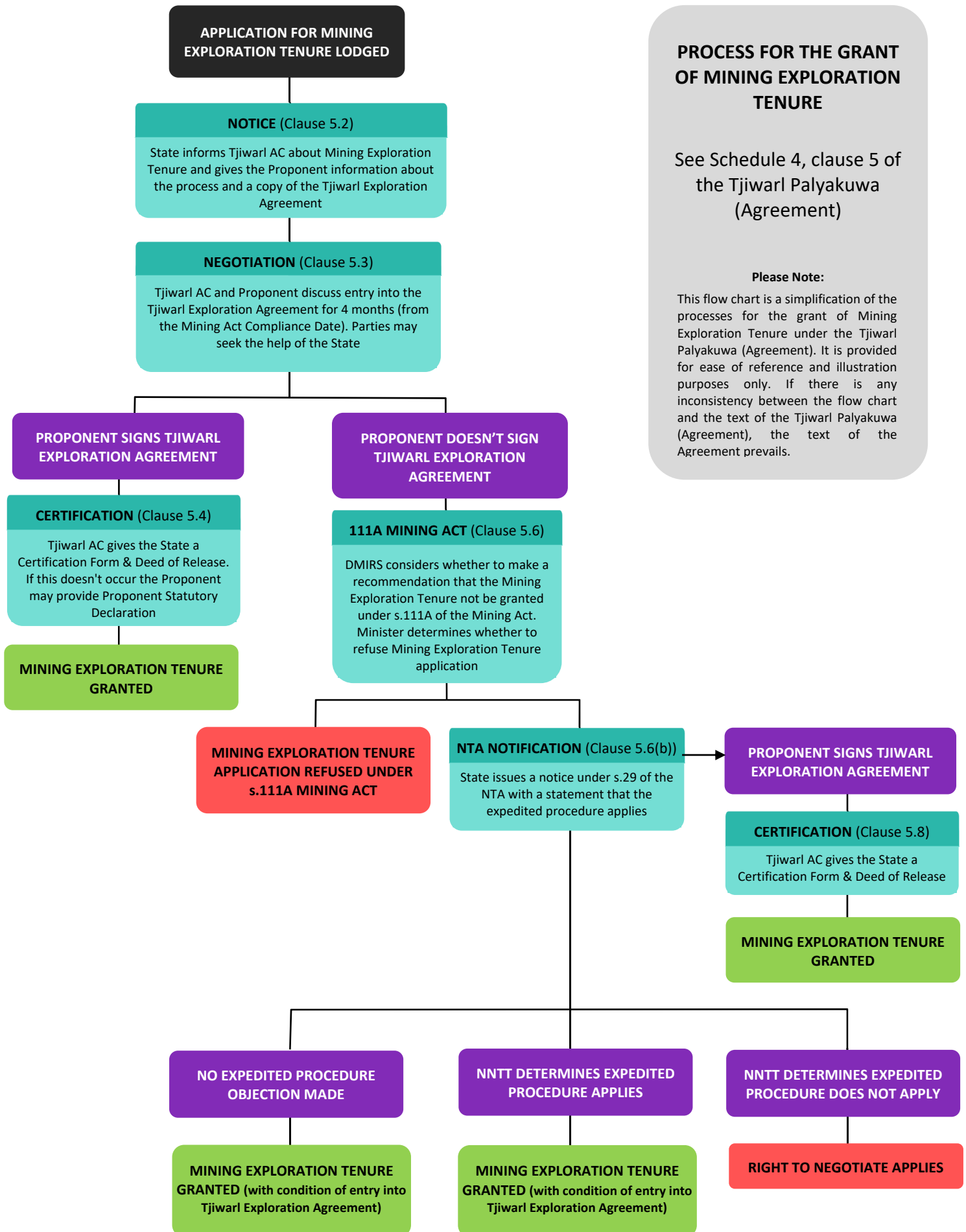
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For the avoidance of doubt, as provided under clause 10.6(c) of the Agreement, to the extent that clauses 5 to 10 (inclusive) require the State to facilitate and/or participate in discussions between the Negotiation Parties or provide any such other guidance or assistance to the Negotiation Parties as may be reasonable required, any such assistance in this Agreement of itself does not include the provision of any funding to the Negotiation Parties for meetings (or otherwise) and Tjiwarl AC acknowledges that there will not be any further funding provided by the State to the Negotiation Parties for this purpose.

**TJIWARL PALYAKUWA (AGREEMENT)****SCHEDULE 4 – Annexure 1**

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Mining Business Process Flow Charts

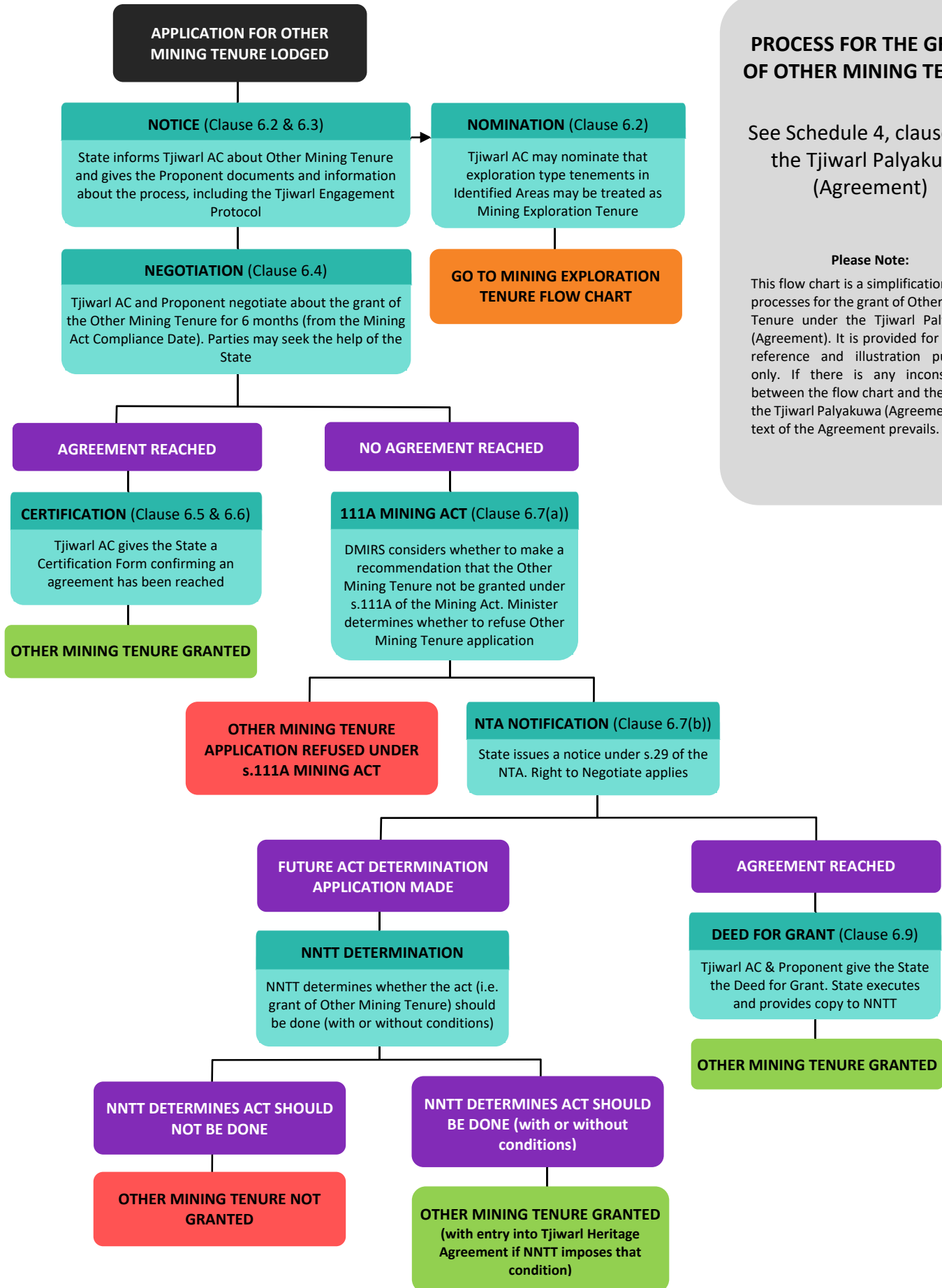


**PROCESS FOR THE GRANT OF MINING EXPLORATION TENURE**

See Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement)

**Please Note:**

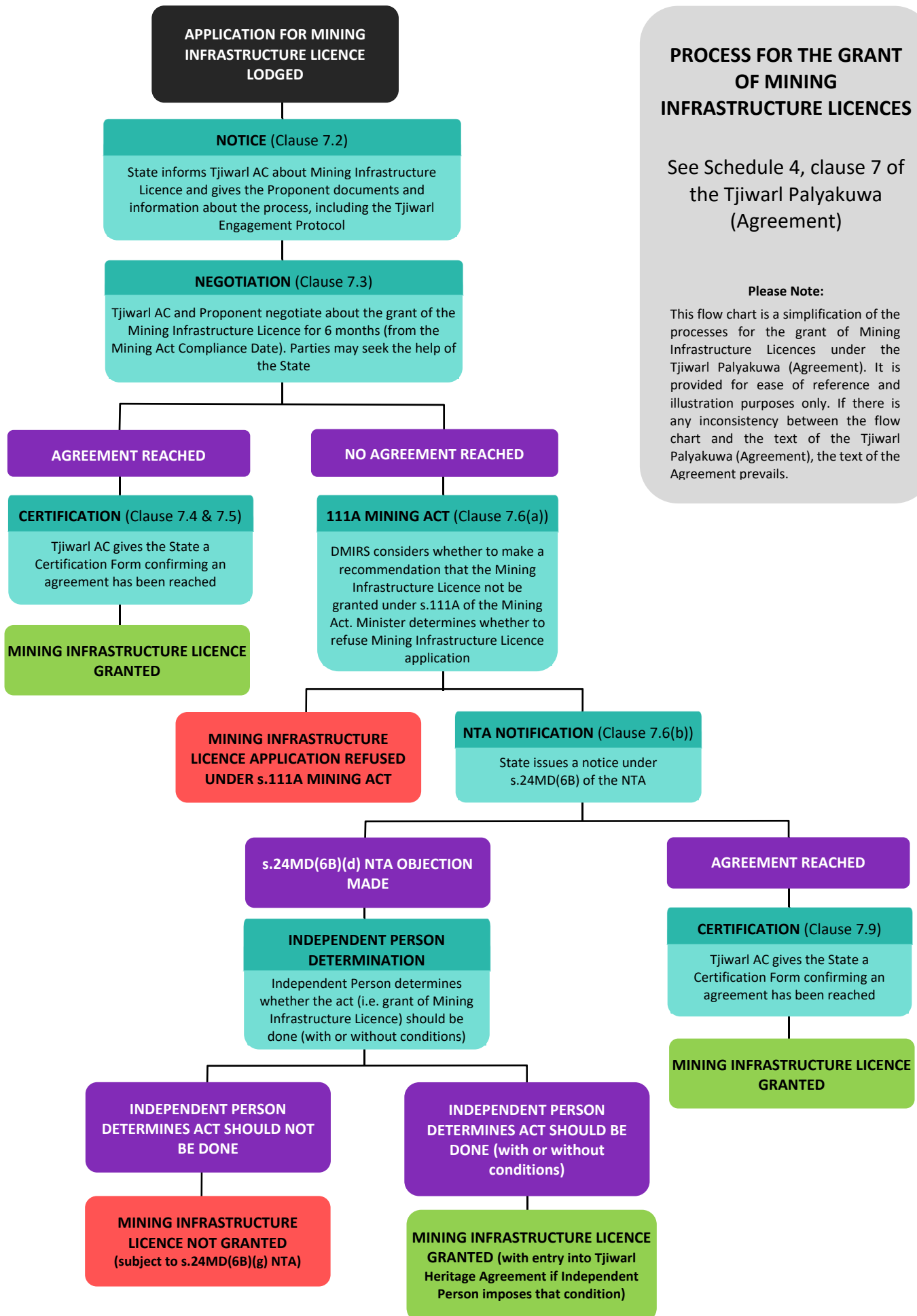
This flow chart is a simplification of the processes for the grant of Mining Exploration Tenure under the Tjiwarl Palyakuwa (Agreement). It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.

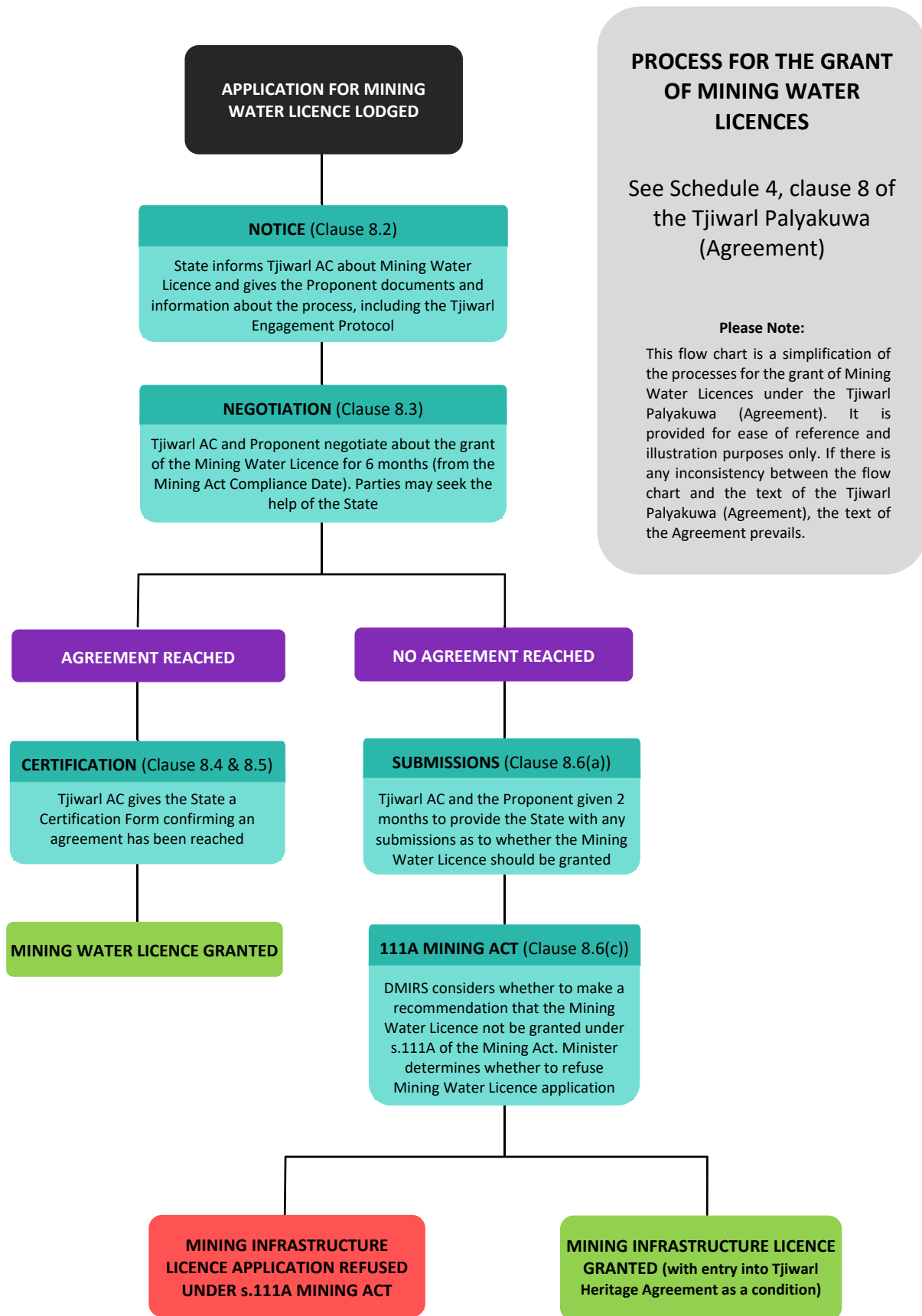


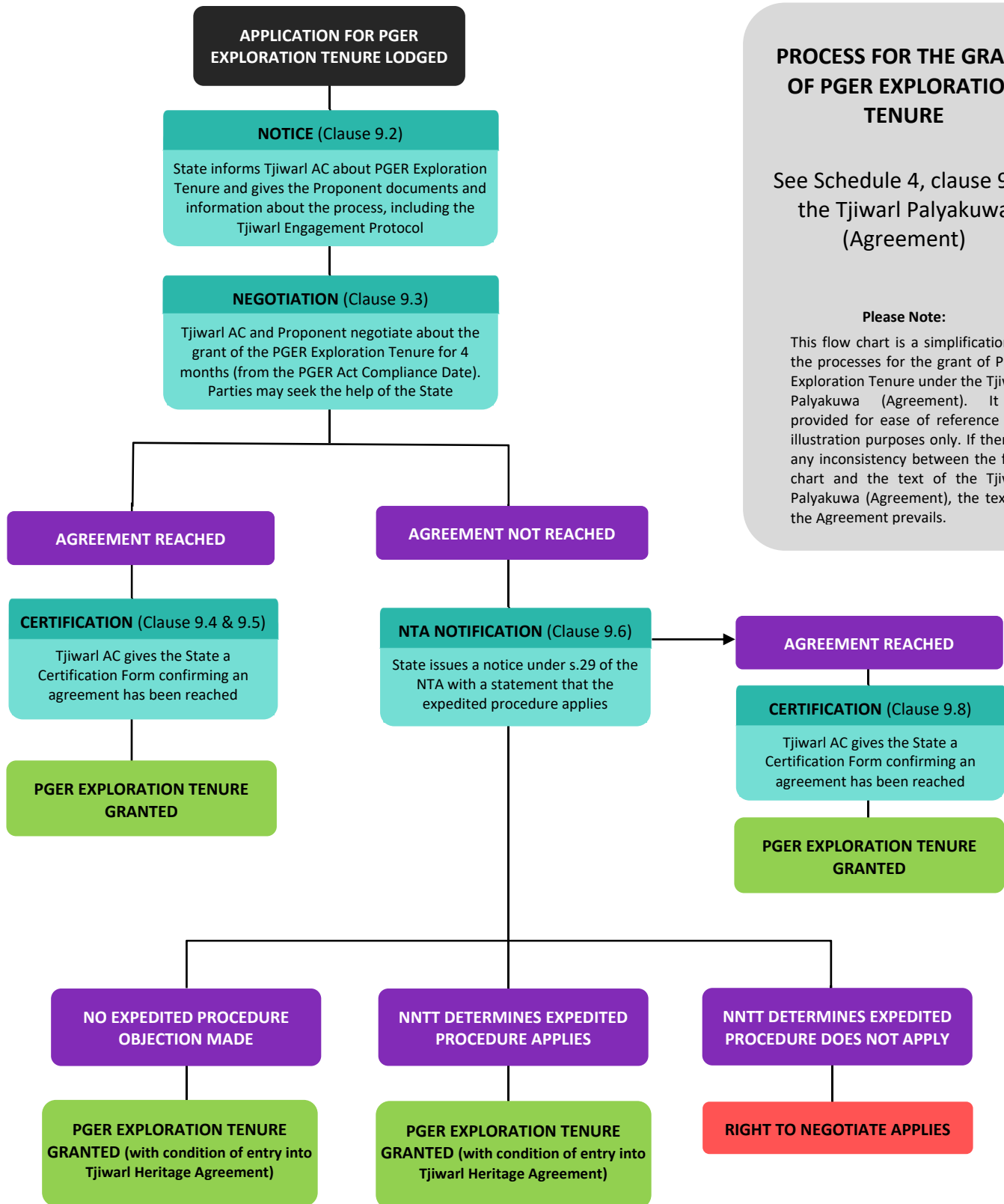
**PROCESS FOR THE GRANT OF OTHER MINING TENURE**

See Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement)

**Please Note:**  
This flow chart is a simplification of the processes for the grant of Other Mining Tenure under the Tjiwarl Palyakuwa (Agreement). It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.





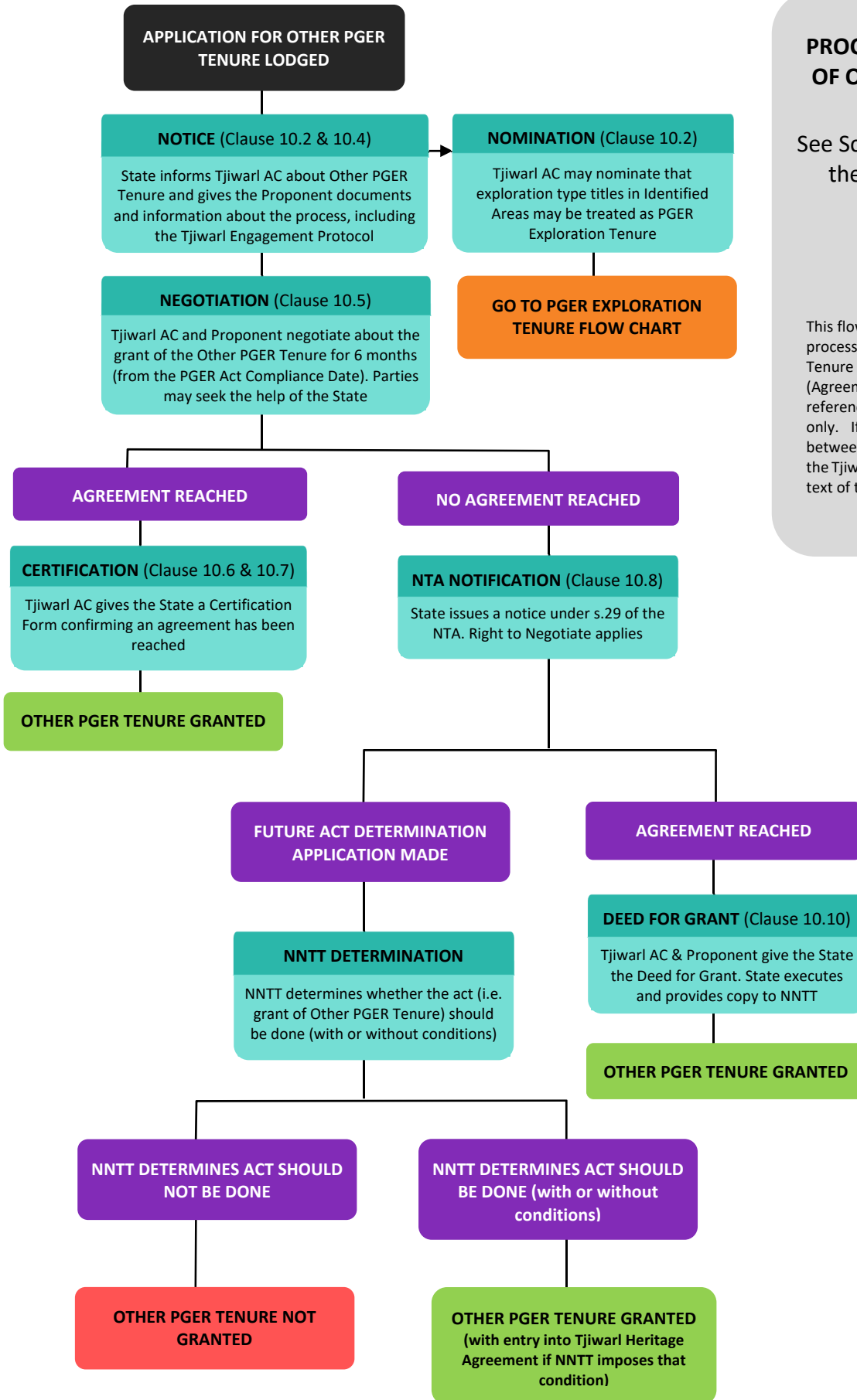


**PROCESS FOR THE GRANT OF PGER EXPLORATION TENURE**

See Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement)

**Please Note:**  
 This flow chart is a simplification of the processes for the grant of PGER Exploration Tenure under the Tjiwarl Palyakuwa (Agreement). It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.





**PROCESS FOR THE GRANT OF OTHER PGER TENURE**

See Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement)

**Please Note:**

This flow chart is a simplification of the processes for the grant of Other PGER Tenure under the Tjiwarl Palyakuwa (Agreement). It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Tjiwarl Palyakuwa (Agreement), the text of the Agreement prevails.

**TJIWARL PALYAKUWA (AGREEMENT)**

**SCHEDULE 4 – Annexure 2**

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Identified Areas Map



119°30'0"E 120°0'0"E 120°30'0"E 121°0'0"E

NOTES



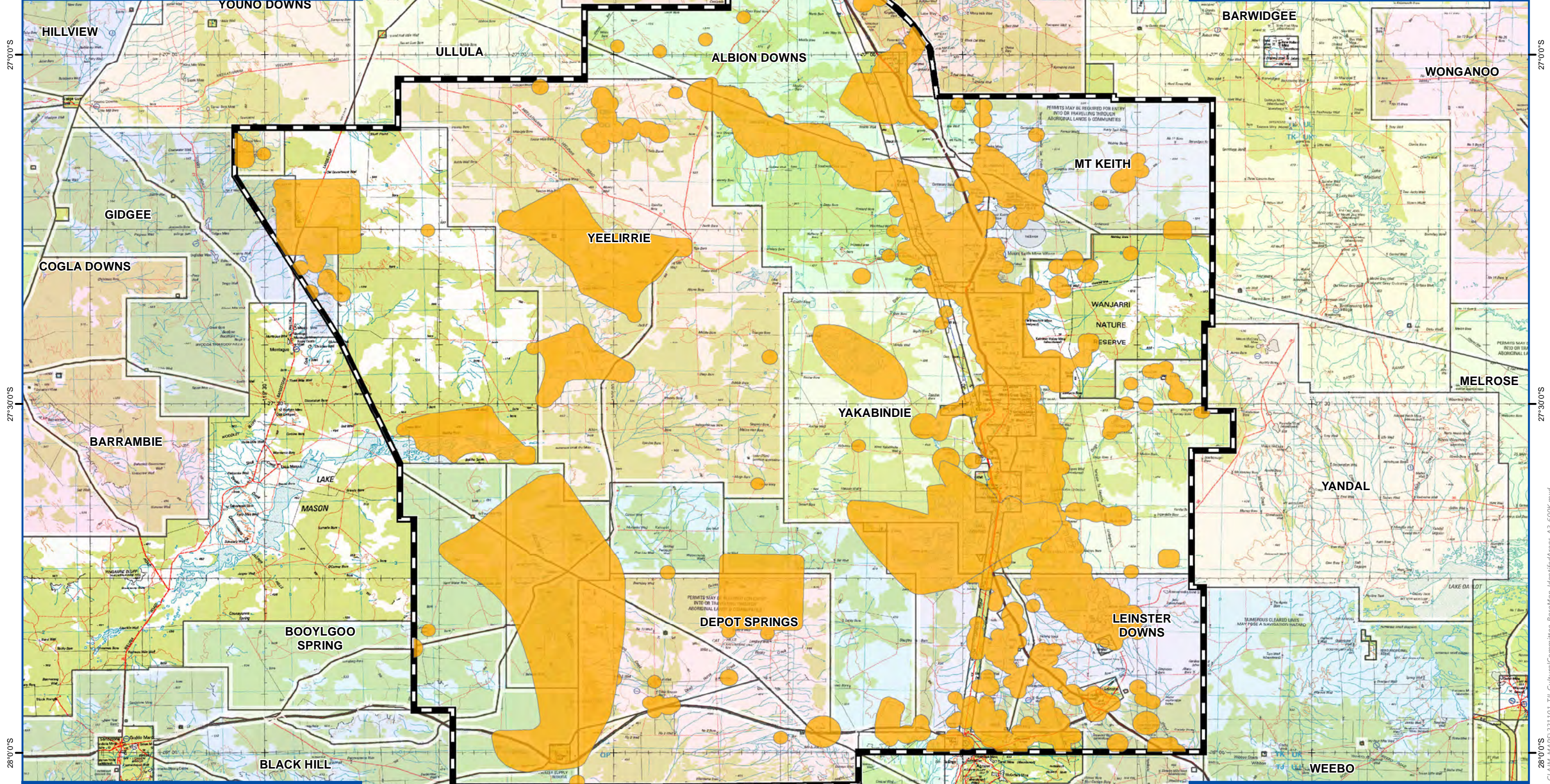
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Coordinate System: GDA2020  
Datum: GDA2020  
Base map: NatMap (GeoScience 2008)

01 November 2022

TJIWARL ABORIGINAL CORPORATION (RNTBC)



**TJIWARL**  
ABORIGINAL CORPORATION (RNTBC)



LEGEND

- Identified Areas (Tjiwarl AC 2022)
- Tjiwarl Determination Boundary (NNTT 2022)
- Pastoral Lease Boundaries (Landgate 2019)

A3 MAP



**IDENTIFIED AREAS  
SCHEDULE 4, ANNEXURE 2**

119°30'0"E 120°0'0"E 120°30'0"E 121°0'0"E



**TJIWARL PALYAKUWA (AGREEMENT)**

**SCHEDULE 4 – Annexure 3**

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Mining Business Working Group Terms of Reference

## **TJIWARL PALYAKUWA (AGREEMENT)**

### **TERMS OF REFERENCE**

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Mining Business Working Group

## 1. Background

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- (a) In accordance with clause 4 of the Mining Business Schedule to the Agreement, the Parties have agreed to establish the Mining Business Working Group to:
  - (i) oversee and inform the implementation of the processes contained in the Mining Business Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area;
  - (ii) track and report on mining tenements and PGER Titles within the Tjiwarl determination area, including the identification of trends and issues as they arise; and
  - (iii) foster open and regular communication between the State and Tjiwarl AC with respect to the Agreement.
- (b) This document sets out the Terms of Reference of the Mining Business Working Group.
- (c) All capitalised terms are as defined in the Agreement.

## 2. Aim and Purpose

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The aim and purpose of the Mining Business Working Group is to work collaboratively to:

- (a) oversee and inform the implementation of the processes contained in the Mining Business Schedule in relation to the granting of mining tenements and PGER Titles within the Agreement Area, including:
  - (i) developing information materials for third parties in relation to the processes; and
  - (ii) developing a process for:
    - (A) Tjiwarl AC to report to the State any issues of an Explorer's non-compliance under an executed Tjiwarl Exploration Agreement; and
    - (B) the State to consider any reports of non-compliance reported by Tjiwarl as part of its decision-making process with respect to Programmes of Works;
- (b) inform the reviews of the Tjiwarl Heritage Agreement and Schedule 2 of the Tjiwarl Exploration Agreement as required in the Mining Business Schedule with a view to providing recommendations to the Parties;
- (c) act as the communication forum for all matters relating to the granting of mining tenements and PGER Titles within the Agreement Area;

- (d) report on, and provide feedback about, the implementation of the processes contained in the Mining Business Schedule; and
- (e) achieve the objectives of these Terms of Reference.

### **3. Membership and Attendees**

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#### **3.1 Members**

The members of the Mining Business Working Group are Tjiwarl AC and the Department of Mines, Industry Regulation and Safety (**DMIRS**).

#### **3.2 Co-Chairs**

The Mining Business Working Group will be co-chaired by a Tjiwarl Director nominated by Tjiwarl AC and a representative from DMIRS nominated by the State (the **Co-Chairs**).

#### **3.3 Non Member Attendees**

- (a) The Co-Chairs may, as required from time to time, invite any person with specialist knowledge, experience or responsibility relevant to the priorities and objectives of the Mining Business Working Group, including representatives of other State agencies, to attend meetings of the Mining Business Working Group.
- (b) All non-member attendees will be provided with a copy of these Terms of Reference in advance of attending a meeting of the Mining Business Working Group.

### **4. Meetings**

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#### **4.1 Attendance & Quorum**

- (a) There is an expectation that all members of the Mining Business Working Group will attend all meetings of the Mining Business Working Group.
- (b) The members agree that, for a meeting of the Mining Business Working Group to proceed the following members must be present:
  - (i) the Co-Chairs;
  - (ii) at least 1 other DMIRS representative; and

- (iii) at least 1 other Tjiwarl AC representative.
- (c) Any member may participate in a meeting through electronic communications, videoconferencing, teleconferencing or other available technology which allows the members to communicate simultaneously. Participation in a meeting through any such form of electronic communication technology constitutes presence in person at the meeting, however physical attendance is preferred.

#### **4.2 Meeting Agenda**

- (a) DMIRS, in consultation with the Co-Chairs, will circulate a:
  - (i) draft meeting agenda 10 Business Days prior to the meeting; and
  - (ii) finalised agenda and papers 5 Business Days prior to the meeting.
- (b) The Co-Chairs may choose to allow additional items to be added to the agenda after the finalised agenda has been circulated by written notice to members of the Mining Business Working Group.

#### **4.3 Frequency and Location of Meetings**

- (a) Unless otherwise agreed between the members at a meeting of the Mining Business Working Group, the Mining Business Working Group will meet:
  - (i) quarterly during the first year following the Conclusive Registration Date on dates to be agreed by the Co-Chairs; and
  - (ii) on dates and at a frequency to be agreed by the Co-Chairs thereafter during the Term of the Agreement, but no less than once each year.
- (b) The Mining Business Working Group will review their commitment and timing for ongoing meetings on the second anniversary of the Conclusive Registration Date and from time to time thereafter as agreed by the Co-Chairs. Following each review, the Co-Chairs must provide an update to the Implementation Committee as to the commitment and timing for ongoing meetings.
- (c) Meetings of the Mining Business Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable and which is agreed by the members.



#### **4.4 Costs**

Members and attendees of the Mining Business Working Group will each bear their own costs of attendance, including travel and accommodation as required.

#### **4.5 Resolutions**

- (a) The Mining Business Working Group is not a decision making body. It is advisory body that provides a forum for collaboration and engagement between Tjiwarl AC and the State. The proceedings of the Mining Business Working Group do not have any power to bind or fetter Tjiwarl AC or the State.
- (b) No resolution will be communicated as advice or recommendations of the Mining Business Working Group unless approved by consensus of the Co-Chairs.
- (c) Any matters of procedure or membership of the Mining Business Working Group will be determined by the Co-Chairs.

### **5. Roles and Obligations**

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#### **5.1 Co-Chairs Responsibilities**

The Co-Chairs' responsibilities include, but are not limited to:

- (a) ensuring the meetings are run in a respectful and culturally appropriate way;
- (b) ensuring all members have opportunities to participate and contribute to the meeting;
- (c) inviting non-member attendees to meetings to provide technical or other advice and assistance, if and when required;
- (d) guiding the meeting according to the agenda and the time available; and
- (e) ensuring all discussion items end with an action or outcome, when required.

#### **5.2 Administrative Support**

- (a) Administrative support for the Mining Business Working Group meetings will be provided by DMIRS.
- (b) Appropriate records of the Mining Business Working Group will be maintained in accordance with DMIRS's obligations under the *State Records Act 2000* (WA) and the *Public Sector Management Act 1994* (WA). These may include:

- (i) general correspondence with members;
- (ii) documents and papers circulated for review or comment;
- (iii) feedback and comments received from members;
- (iv) records of discussions, meetings or teleconferences, including meeting minutes, papers and agendas; and
- (v) communiqués (as required and as agreed in writing between the Co-Chairs).

### **5.3 Conduct of members**

All members of the Mining Business Working Group will:

- (a) consider the agenda papers before any meeting;
- (b) carry out allocated action items within the required timeframe; and
- (c) act with integrity, courtesy and respect.

### **5.4 Conflict of Interest**

All members of the Mining Business Working Group will:

- (a) declare any potential, perceived or actual conflict of interest in writing or verbally to the Co-Chairs, at the beginning of the meeting or agenda item;
- (b) remove themselves from any deliberations where such conflicts of interest arise, unless it is decided by the Co-Chairs that the member need not remove themselves;
- (c) ensure any potential, perceived or actual conflict of interest and any action taken in response is recorded in the minutes of meeting; and
- (d) have regard to the principles set out in the WA Public Sector Commission's Good Governance Guide - Conflicts of Interest.

### **5.5 Confidentiality**

- (a) All members are bound by the confidentiality requirements of:
  - (i) the Agreement; and
  - (ii) the organisation that they represent on the Mining Business Working Group.

- (b) Members should identify sensitive or confidential items as they arise when meeting agendas are being prepared and/or during meetings. Members will agree the appropriate treatment of this information on a case by case basis.

## **6. Communications and Reporting**

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### **6.1 General Communications**

- (a) To ensure members have all relevant information for the Mining Business Working Group, DMIRS will, from time to time, update and confirm the contact list for the members of the Mining Business Working Group.
- (b) Any other information required by the members of the Mining Business Working Group will be provided within the agreed timeframe at the time of request.

### **6.2 Minutes of Meetings**

- (a) DMIRS will provide the minutes of each meeting to the members of the Mining Business Working Group via email no later than 20 Business Days after each Mining Business Working Group meeting.
- (b) Members will be given an opportunity to correct and confirm the minutes as the first agenda item at the next subsequent meeting of the Mining Business Working Group.

### **6.3 Reporting**

DMIRS will, as required, report on the progress of matters before the Mining Business Working Group to:

- (a) members of the Mining Business Working Group by way of update;
- (b) other agencies across State government where required to support the outcomes of the Mining Business Working Group or the Agreement; and
- (c) the Implementation Committee prior to each Implementation Committee meeting or as otherwise requested by the Implementation Committee.

## **7. Amendment to the Terms of Reference**

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- (a) These Terms of Reference may only be amended:
  - (i) by the unanimous agreement of the members of the Mining Business Working Group; and
  - (ii) where the Implementation Committee has endorsed the amendment agreed by the Mining Business Working Group.
  
- (b) The Co-Chairs must, within 15 Business Days of any amendment to these Terms of Reference being agreed to by the Mining Business Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

## **TJIWARL PALYAKUWA (AGREEMENT)**

### **SCHEDULE 4 – Annexure 4**

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#### **Certification Forms**

Item A – Certification Form for Mining Exploration Tenure

Item B – Certification Form for Other Mining Tenure

Item C – Certification Form for Mining Infrastructure Licences

Item D – Certification Form for Mining Water Licences

Item E – Certification Form for PGER Exploration Tenure

Item F – Certification Form for Other PGER Tenure

## **Item A – Certification Form for Mining Exploration Tenure**

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The following Certification Form is provided for the purpose of Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Exploration Tenure.

## CERTIFICATION FORM FOR MINING EXPLORATION TENURE

### *Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following Mining Exploration Tenure (as defined in Schedule 4, clause 5.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Tenement 1:  Application No:  Tenement Type:  Tenement 2:  Application No:  Tenement Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Tenement Applicant / Holder 1:  Name*: *include ACN if a company  Address:  Tenement Applicant / Holder 2:  Name*: *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*)*Delete whichever is not applicable

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Exploration Tenure as defined in Schedule 4, clause 5.1 of the Tjiwarl Palyakuwa (Agreement).
3. The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_  
[Insert date]

4. By executing the Tjiwarl Exploration Agreement, Tjiwarl AC acknowledges and agrees that:
  - (\*) The Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (\*) clause 5.4(d) / (\*\*) clause 5.8(b) of the Tjiwarl Palyakuwa (Agreement).
  - (\*\*) The Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 5.9(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.
5. A copy of the Deed of Release (as defined in the Tjiwarl Palyakuwa (Agreement)) is attached to this Certification Form.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## **Item B – Certification Form for Other Mining Tenure**

---

The following Certification Form is provided for the purpose of Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement) in relation to Other Mining Tenure.

## CERTIFICATION FORM FOR OTHER MINING TENURE

### *Schedule 4, clause 6 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following Other Mining Tenure (as defined in Schedule 4, clause 6.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Tenement 1:  Application No:  Tenement Type:  Tenement 2:  Application No:  Tenement Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Tenement Applicant / Holder 1:  Name*: *include ACN if a company  Address:  Tenement Applicant / Holder 2:  Name*: *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*)(\*\*\*) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is an Other Mining Tenure as defined in Schedule 4, clause 6.1 of the Tjiwarl Palyakuwa (Agreement).
3. (\*) *Certification for purpose of Schedule 4, clause 6.5(a): Where a Section 29 Notice has not been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 6.5(c) of the Tjiwarl Palyakuwa (Agreement).

- (\*\*) *Certification for the purpose of Schedule 4, clause 6.9(a): Where a Section 29 Notice has been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure on:

\_\_\_\_\_  
[Insert date]

and a copy of the Deed for Grant (as defined in the Tjiwarl Palyakuwa (Agreement)) executed by Tjiwarl AC and the Proponent is attached to this Certification Form in accordance with Schedule 4, clause 6.9(a) of the Tjiwarl Palyakuwa (Agreement).

*(\*\*\*) Certification for the purpose of Schedule 4, clause 6.10(a): Where the Other Mining Tenure has been granted with the condition set out in Schedule 4, clause 6.8(b) of the Tjiwarl Palyakuwa (Agreement)*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 6.10(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Item C – Certification Form for Mining Infrastructure Licences**

---

The following Certification Form is provided for the purpose of Schedule 4, clause 7 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Infrastructure Licences.

## CERTIFICATION FORM FOR MINING INFRASTRUCTURE LICENCES

### *Schedule 4, clause 7 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following Mining Infrastructure Licences (as defined in Schedule 4, clause 7.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Tenement 1:  Application No:  Tenement Type:  Tenement 2:  Application No:  Tenement Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Tenement Applicant / Holder 1:  Name*: *include ACN if a company  Address:  Tenement Applicant / Holder 2:  Name*: *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*)(\*\*\*) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Infrastructure Licence as defined in Schedule 4, clause 7.1 of the Tjiwarl Palyakuwa (Agreement).
3. (\*) *Certification for the purpose of Schedule 4, clause 7.4(a) or 7.9(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (\*) clause 7.4(c) / (\*\*) clause 7.9(c) of the Tjiwarl Palyakuwa (Agreement).

- (\*\*) *Certification for the purpose of Schedule 4, clause 7.10(a): Where the Tenure has been granted with the condition set out in Schedule 4, clause 7.8(b) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 7.10(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Item D – Certification Form for Mining Water Licences**

---

The following Certification Form is provided for the purpose of Schedule 4, clause 8 of the Tjiwarl Palyakuwa (Agreement) in relation to Mining Water Licences.



## CERTIFICATION FORM FOR MINING WATER LICENCES

### *Schedule 4, clause 8 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following Mining Water Licences (as defined in Schedule 4, clause 8.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Tenement 1:  Application No:  Tenement Type:  Tenement 2:  Application No:  Tenement Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Tenement Applicant / Holder 1:  Name*:  *include ACN if a company  Address:  Tenement Applicant / Holder 2:  Name*:  *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*)* Delete whichever is not applicable

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a Mining Water Licence as defined in Schedule 4, clause 8.1 of the Tjiwarl Palyakuwa (Agreement).
3. *(\*)* *Certification for the purpose of Schedule 4, clause 8.4(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

\_\_\_\_\_

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 8.4(c) of the Tjiwarl Palyakuwa (Agreement).

- (\*\*)* *Certification for the purpose of Schedule 4, clause 8.6(e): Where the Tenure has been granted with the condition set out in Schedule 4, clause 8.6(a)(iii) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_

[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 8.6(d) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Item E – Certification Form for PGER Exploration Tenure**

---

The following Certification Form is provided for the purpose of Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement) in relation to PGER Exploration Tenure.

## CERTIFICATION FORM FOR PGER EXPLORATION TENURE

### *Schedule 4, clause 9 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following PGER Exploration Tenure (as defined in Schedule 4, clause 9.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Title 1:  Application No:  Title Type:  Title 2:  Application No:  Title Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Title Applicant / Holder 1:  Name*: *include ACN if a company  Address:  Title Applicant / Holder 2:  Name*: *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is a PGER Exploration Tenure as defined in Schedule 4, clause 9.1 of the Tjiwarl Palyakuwa (Agreement).
3. (\*) *Certification for the purpose of Schedule 4, clause 9.4(a) or 9.8(a): Where agreement has been reached as to the grant of the Tenure*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, (\*) clause 9.4(c) / (\*\*) clause 9.8(c) of the Tjiwarl Palyakuwa (Agreement).

- (\*\*) *Certification for the purpose of Schedule 4, clause 9.9(b): Where the Tenure has been granted with the condition set out in Schedule 4, clause 9.9(a) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 9.9(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Item F – Certification Form for Other PGER Tenure**

---

The following Certification Form is provided for the purpose of Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement) in relation to Other PGER Tenure.

## CERTIFICATION FORM FOR OTHER PGER TENURE

### *Schedule 4, clause 10 of the Tjiwarl Palyakuwa (Agreement)*

This Certification Form applies to the following Other PGER Tenure (as defined in Schedule 4, clause 10.1 of the Tjiwarl Palyakuwa (Agreement)).

ITEM	DETAILS
<b>1. Tenure</b>	Title 1:  Application No:  Title Type:  Title 2:  Application No:  Title Type:  <i>[insert or delete as required]</i>
<b>2. Proponent(s)</b>	Title Applicant / Holder 1:  Name*: *include ACN if a company  Address:  Title Applicant / Holder 2:  Name*: *include ACN if a company  Address:  <i>[insert or delete as required]</i>

**On behalf of Tjiwarl (Aboriginal Corporation) RNTBC, it is hereby certified that:**

*(\*)(\*\*)(\*\*\*) Delete whichever is not applicable*

1. I am a director of Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) and am duly authorised by it to give this certification.
2. The Tenure is an Other PGER Tenure as defined in Schedule 4, clause 10.1 of the Tjiwarl Palyakuwa (Agreement).
3. (\*) *Certification for the purpose of Schedule 4, clause 10.6(a): Where a Section 29 Notice has not been issued*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Minister for Mines and Petroleum may grant the Tenure to the Proponent in accordance with Schedule 4, clause 10.6(c) of the Tjiwarl Palyakuwa (Agreement).

- (\*\*) *Certification for the purpose of Schedule 4, clause 10.10(a): Where a Section 29 Notice has been issued:*

The Proponent for the Tenure and Tjiwarl AC have reached an agreement as to the grant of the Tenure on:

\_\_\_\_\_  
[Insert date]

and a copy of the Deed for Grant (as defined in the Tjiwarl Palyakuwa (Agreement)) executed by Tjiwarl AC and the Proponent is attached to this Certification Form in accordance with Schedule 4, clause 10.10(a) of the Tjiwarl Palyakuwa (Agreement).



(\*\*\*) *Certification for the purpose of Schedule 4, clause 10.11(b): Where the Other PGER Tenure has been granted with the condition set out in Schedule 4, clause 10.9(b) of the Tjiwarl Palyakuwa (Agreement).*

The Proponent for the Tenure and Tjiwarl AC executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications in terminology for the Tenure, on:

\_\_\_\_\_  
[Insert date]

and Tjiwarl AC acknowledges and agrees that the Proponent has satisfied the conditions (imposed in accordance with Schedule 4, clause 10.11(a) of the Tjiwarl Palyakuwa (Agreement)) applicable to the Tenure.

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**TJIWARL PALYAKUWA (AGREEMENT)**

**SCHEDULE 4 – Annexure 5**

---

Deed of Release

## **DEED OF RELEASE**

---

**By**

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

**In Favour of**

The State of Western Australia



## OPERATIVE PROVISIONS:

### 1. Definitions and Interpretation

---

#### 1.1 Definitions

In this Deed, unless the context requires otherwise:

**Agreement Date** means the date listed at item 3 of the Schedule to this Deed, being the date on which the Tjiwarl Exploration Agreement was entered into by Tjiwarl AC and the Proponent.

**Execution Date** means the date on which this Deed of Release is executed by Tjiwarl AC.

**Licence** means the mining tenement(s) listed at item 1 of the Schedule to this Deed.

**Mining Exploration Tenure** has the meaning given by clause 5.1 of Schedule 4 to the Tjiwarl Palyakuwa (Agreement).

**Native Title Compensation** means any compensation, damages, restitution, benefits, costs, expenses or loss whatsoever, whether arising or recoverable under any State or Commonwealth statute (including the *Native Title Act 1993* (Cth), *Mining Act 1978* (WA), or any other statute), or under common law or in equity, arising out of, or in connection with, any extinguishment, loss, diminution, impairment or other effect on native title rights and interests by:

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

**Proponent** means the party listed at item 2 of the Schedule to this Deed.

**Registered Native Title Body Corporate** has the meaning given to it in the *Native Title Act 1993* (Cth).

**State** means the legal entity of the Crown in right of the State of Western Australia.

**State's Personnel** means the State's employees, officers, agents, consultants and contractors.

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

Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

**Tjiwarl Exploration Agreement** means the agreement made by Tjiwarl AC and the Proponent on the Agreement Date that is substantially in the form of the 'Tjiwarl Exploration Agreement' at Annexure 6 to Schedule 4 of the Tjiwarl Palyakuwa (Agreement) and which relates to.

- (a) the Licence and any grant, renewal or extension of the Licence;
- (b) the doing of any act (including a future act) or any activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions; and
- (c) the payment of Native Title Compensation by the Proponent to Tjiwarl AC in relation to (a) and (b).

**Tjiwarl Palyakuwa (Agreement)** means the *Tjiwarl Palyakuwa (Agreement)*, an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the *Native Title Act 1993* (Cth) that was entered into on [insert date] and which was entered on the Register of Indigenous Land Use Agreements on [insert date].

**Tjiwarl Palyakuwa (Agreement) Area** means the area of land and waters of the Tjiwarl Palyakuwa (Agreement) as described in clause 2 of that agreement.

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

## 1.2 Interpretation

In this Deed, unless context requires otherwise:

- (a) headings are for reference only and do not govern the meaning or construction of this Deed or any provision contained in this Deed;
- (b) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers,

administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;

- (f) a singular word includes the plural, and vice versa;
- (g) the word "including" is to be read as if it were followed by, "but not limited to";
- (h) a word that suggests one gender includes the other genders;
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

## **2. Release and Discharge**

---

### **2.1 Full and final satisfaction of the State's Native Title Compensation liability**

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People acknowledge and agree that the Proponent's obligations under the Tjiwarl Exploration Agreement, including making the monetary compensation payments referred to in clause 4 of the Tjiwarl Exploration Agreement, are intended to be in full and final satisfaction of all liabilities, determinations, orders, applications, actions, suits, proceedings, claims or demands for, or any other entitlement to, Native Title Compensation which Tjiwarl AC or the Tjiwarl People now have or had at any time previously or might have in the future, against the State and/or the State's Personnel.

### **2.2 Deed may be pleaded**

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People:

- (a) release the State and/or the State's Personnel from, and acknowledge that this Deed may be pleaded as an absolute bar against, all liabilities, determinations, orders, applications, actions, suits, proceedings, claims or demands for, or any other entitlement to, Native Title Compensation; and
- (b) acknowledge and agree that Tjiwarl AC and the Tjiwarl People must not make, commence or facilitate any application, action, suit, proceeding, claim or demand against the State and/or the State's Personnel in any court, tribunal or other authority for Native Title Compensation, provided that the Proponent has complied with its obligations to make the

monetary compensation payments referred to in clause 4 of the Tjiwarl Exploration Agreement.

### **3. Governing Law**

---

- (a) This deed is governed by the law in force in the State of Western Australia.
- (b) Tjiwarl AC and the Tjiwarl People irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of Western Australia.



**EXECUTED AS A DEED:**

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of Director

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of Director

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
<p><b>1. Licence</b></p>	<p>Tenement 1:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Tenement Type:</p> <p>Tenement 2:</p> <p style="padding-left: 40px;">Application No:</p> <p style="padding-left: 40px;">Tenement Type:</p> <p><i>[insert or delete as required]</i></p>
<p><b>2. Proponent</b></p>	<p>Tenement Applicant / Holder 1:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 40px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p>Tenement Applicant / Holder 2:</p> <p style="padding-left: 40px;">Name*:</p> <p style="padding-left: 40px;">*include ACN if a company</p> <p style="padding-left: 40px;">Address:</p> <p><i>[insert or delete as required]</i></p>
<p><b>3. Agreement Date</b></p>	<p>Date:</p>

Tjiwarl Palyakuwa (Agreement)

**SCHEDULE 4 – Annexure 6**

---

Tjiwarl Exploration Agreement

Item A – Tjiwarl Exploration Agreement

Item B – Instructions for executing the Tjiwarl Exploration Agreement

## **Item A – Tjiwarl Exploration Agreement**

---

The following form of Tjiwarl Exploration Agreement is provided for the purpose of Schedule 4, clause 5 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Exploration (Agreement) are provided at Item B of this Annexure.

**TJIWARL EXPLORATION AGREEMENT**

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## Details of Agreement

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

### BETWEEN

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

and

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

### Recitals

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

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

## THE PARTIES AGREE THAT:

### 1. Definitions and Interpretation

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#### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Confidential Information** means:

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

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

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

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

**Dispute** has the meaning given by clause 23.1.

**Dispute Notice** has the meaning given by clause 23.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Heritage Monitoring Team** means:

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

**Index Rate** means the rate calculated as follows:

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

where:

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

whichever is the later.

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

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

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

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

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

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

- (a) Survey Team; or
  - (b) Heritage Monitoring Team;
- and includes that person's delegate.

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

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

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

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

and Maintaining has the corresponding meaning.

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

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

**Mining tenement** has the meaning given in the Mining Act.

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

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

- (a) the grant, renewal or extension of the Licence; or

(b) the doing of any act (including a future act) or any Activity (whether or not subject to any conditions) in accordance with the Licence and any such conditions, within the Tjiwarl Determination Area.

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

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

**Objection** means any objection:

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

**Parties** means the Explorer and Tjiwarl AC.

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

**Recipient** has the meaning given in clause 19.

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

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

**Replacement RNTBC** has the meaning given in clause 7.3.

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

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

**Supplier** has the meaning given in clause 19.



**Survey** means an ethnographic and/or archaeological survey of the Work Areas identified in a Work Program that is carried out in accordance with this Agreement to determine which parts of those Work Areas are Cleared Areas for the conduct of the Ground Disturbing Activity identified in that Work Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Interpretation

1.2 In this Agreement, unless context requires otherwise:

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

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

## **2. No Extinguishment of Native Title**

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

## **3. Agreement to the grant of the Licence**

---

Subject to this Agreement, Tjiwarl AC agrees:

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

## **4. Monetary Compensation**

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- 4.1 The Explorer shall compensate the Tjiwarl People in accordance with Schedule 5 in full and final satisfaction of any obligation by the Explorer to pay Native Title Compensation to Tjiwarl AC.
- 4.2 The Parties acknowledge that:
  - (a) under section 125A of the Mining Act, the Explorer is liable to pay Native Title Compensation to the Tjiwarl People; and
  - (b) pursuant to the Tjiwarl Palyakuwa (Agreement), Tjiwarl AC agrees to enter into a Deed of Release with the State to evidence that the State is released from any obligation to pay Native Title Compensation to the Tjiwarl People.

## **5. Access within and to the Licence Area**

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### **Access within the Licence Area**

5.1 Within the Licence Area, the Explorer and its Personnel:

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

### **Access outside of the Licence Area**

5.2 Within the Tjiwarl Determination Area but outside the Licence Area, the Explorer and its Personnel:

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

### **Lawful Access**

5.3 The parties acknowledge that:

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

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

## **6. Notification of changes to licences**

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

## **7. Assignment**

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### **Assignment by the Explorer**

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

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

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

### **Assignment by Tjiwarl AC**

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

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

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
  - (i) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and
  - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,  
as if it were a party to this Agreement; and
- (c) give evidence of that assumption to the Explorer.

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

## **8. Defaults and Termination**

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8.1 If the Explorer:

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

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

8.2 Where the Explorer fails to:

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

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

## **9. Rights of the Tjiwarl People**

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

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

## **10. Cultural Protection and Respect**

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

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

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

## **11. Cultural Awareness Training**

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### **Cultural Awareness**

11.1 The Explorer shall:

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

### **Cultural Awareness Training Package**

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

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

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

## **12. Environmental Protection and Rehabilitation**

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### **Activities conducted to minimise environmental impact**

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

- (a) any adverse environmental impact;



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

## **Rehabilitation**

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

## **Inspections and Consultation**

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

## **13. Employment and Contracting**

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

## **14. Warranties**

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

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

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

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

## **15. Aboriginal Cultural Heritage Protection**

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

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

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

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

## **16. Feedback**

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

## **17. Indemnity and Insurance**

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

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

## **18. Implementation Costs**

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

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

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

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

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

## **19. GST**

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

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

## **20. Duty**

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

## **21. Confidentiality**

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

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

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

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

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

## **22. Unexpected Delays**

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

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

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

- 22.2 A Party asserting the existence of a delay to which clause 22.1 above applies shall advise the other Party of that delay and take reasonable steps to mitigate that delay.
- 22.3 Where delay caused by the matters listed in clause 22.1 above occurs, the Explorer shall pay the reasonable, unrecoverable costs of Tjiwarl AC incurred as a result of that delay.

## **23. Dispute Resolution**

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### **Notification and Negotiation of a Dispute**

- 23.1 If a dispute arises between the Parties in connection with this Agreement or a Survey Report (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).
- 23.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute.
- 23.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

### **Mediation**

- 23.4 If the Dispute is referred to mediation:
- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
  - (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.
- 23.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.

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

### **Costs**

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

### **Court Proceedings**

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

## **24. Notice**

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### **Notice**

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



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

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

### **Address for Notices**

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

- (a) for Tjiwarl AC:

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

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

## **25. Entire Agreement**

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

## 26. Counterparts

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

## 27. Governing Law

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

## 28. Term and Termination

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

## 29. Review of Agreement

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### Briefings and Discussion

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

### Review of the Agreement

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

29.3 The Parties agree that:

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

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

### **Costs of Review**

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

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

**EXECUTED** by the parties as an agreement

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXPLORER<sup>1</sup>

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

\_\_\_\_\_  
Signature of [*insert Explorer name*]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

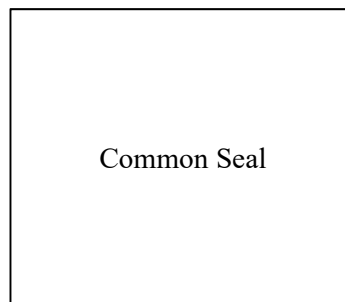
\_\_\_\_\_  
<sup>1</sup> Delete this footnote, the heading and the execution clauses for the Explorer that are not applicable.

**OR IF THE EXPLORER IS A COMPANY**

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

WITH A COMMON SEAL

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



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary\*

\*delete whichever is not applicable

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

WITHOUT A COMMON SEAL

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary\*

\*delete whichever is not applicable

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SOLE PROPRIETOR COMPANY

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

---

Signature of Director  
(as sole Director and Secretary)

---

Full name (print)

---

Date



## Schedule 1 – Details of the Tjiwarl Exploration Agreement

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

## Schedule 2 – Heritage Protection

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### 1. Interpretation

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

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

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

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

### **3. Where Non-Ground Disturbing Activity May Be Undertaken**

If:

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

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

### **4. Notification of Intention to Undertake Ground Disturbing Activity**

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

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

## **5. Consultation about whether a Survey is required**

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

- (iv) whether the register of places and objects maintained pursuant to section 38 of the AHA discloses the existence of any potential Aboriginal Sites or Aboriginal Objects in the proposed Work Area;
  - (v) the nature of the proposed Ground Disturbing Activity; and
  - (vi) any other relevant factor raised by either of the Parties.
- (d) The Explorer shall provide Tjiwarl AC with a copy of any report containing the results of any survey on which the Explorer wants to rely in consultations pursuant to clause 5(a).
- (e) If, after the Parties have consulted pursuant to clause 5(a):
- (i) the Parties agree that a survey has been conducted over the Work Area within the previous five years and, having regard to the factors in clause 5(c), the Parties agree that the previous survey was insufficient to determine which parts of the Work Area are Cleared Areas for the conduct of the Ground Disturbing Activity identified in the relevant Work Program; or
  - (ii) the Parties agree that no survey has been conducted over the Work Area within the previous five years and Tjiwarl AC, having considered the factors set out in clause 5(c), reasonably determines that a Survey is required; or
  - (iii) the Explorer requests,
- Tjiwarl AC shall arrange for a Survey over the proposed Work Area.
- (f) To avoid doubt, if a survey has been conducted over the Work Area within the previous five years and the Parties cannot reach agreement on whether that survey was sufficient in accordance with clause 5(e)(i), either Party may refer the matter to the dispute resolution process in clause 23 of the Agreement.

## **6. Conduct of Survey**

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

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

## **7. The Survey Team**

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

- (iv) if Tjiwarl AC requests, be of a particular gender.

## 8. Survey Payments and Costs

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

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



## **9. Survey Report**

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

## **10. Intellectual Property**

All intellectual property rights in:

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

## **11. Where Ground Disturbing Activity may be undertaken**

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

- (b) If:
- (i) the Explorer has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4(c); and
  - (ii) the Parties agree, after consultations pursuant to clause 5(a), that a Survey is not required,
- then the Explorer may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, except in areas identified by any previous survey relied on by the Parties to not be cleared for such Activities.

## 12. Heritage Monitoring

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

### **13. No employment or agency relationship**

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

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

### **14. If the Explorer finds an Aboriginal Site or Object**

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

### **15. Consent to section 16 or 18 AHA applications**

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

## **Schedule 3 – Contents of Survey Reports**

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### **1. Copyright / Confidentiality**

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

### **2. Assessment Personnel**

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

### **3. Survey Date(s)**

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

### **4. Survey Information**

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

### **5. Heritage Monitors**

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

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

## **Schedule 4 – Process to Construct New Roads or Tracks**

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### **1. Interpretation**

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

### **2. Application**

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

### **3. Process for negotiation about a Proposed Road**

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

## **Schedule 5 – Monetary Compensation**

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### **1. Interpretation**

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

### **2. Compensation Payments**

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

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

### **3. Calculation of Payments**

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

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

#### **4. Manner of Payment**

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

## **Item B – Instructions for completing Tjiwarl Exploration Agreement**

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The following is a guide for completing and executing the Tjiwarl Exploration Agreement. Please read this guide before attempting to complete the Tjiwarl Exploration Agreement as errors may render the Agreement invalid or may result in Tjiwarl AC declining to execute the Agreement

### **1. Form of the Tjiwarl Exploration Agreement**

- (a) Tjiwarl AC will execute the Tjiwarl Exploration Agreement only in the form provided by the Tjiwarl Palyakuwa (Agreement). Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC. Tjiwarl AC is not obliged to consider, or agree to, any changes to the standard form of the Agreement contained in the Tjiwarl Palyakuwa (Agreement).
- (b) The Tjiwarl Exploration Agreement has been designed to be submitted as an original document, but in the event of the Tjiwarl Exploration Agreement being re-typed, every care should be taken to avoid errors.

### **2. Completing the Tjiwarl Exploration Agreement**

- (a) Only the applicant(s) for the mining tenement (the Explorer), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Agreement.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals (whose signature must be witnessed).
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which Tjiwarl AC signs the Tjiwarl Exploration Agreement.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Exploration Agreement.

### **3. Provision of the Tjiwarl Exploration Agreement**

- (a) It is important to forward the Tjiwarl Exploration Agreement to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the completion of this Agreement or require further copies please contact Tjiwarl AC (at the address provided in clause 24 of the Tjiwarl Exploration Agreement).



#### **4. Checklist for the Tjiwarl Exploration Agreement**

Have you ensured that:

- The Tjiwarl Exploration Agreement is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Exploration Agreement have been initialled by all Parties?
- Schedule 1 has been completed?
- The Explorer has signed the document and where appropriate the company seal has been included?
- The Explorer's signature has been witnessed (if the Explorer is an individual)?
- Tjiwarl AC has signed the document?

## **TJIWARL PALYAKUWA (AGREEMENT)**

### **SCHEDULE 4 – Annexure 7**

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#### Deed for Grant

Item A – Form of Deed for Grant

Item B – Instructions for executing the Deed for Grant

## **Item A – Deed for Grant**

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The following form of Deed for Grant is provided for the purpose of Schedule 4, clauses 6.9 or 10.10 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Deed for Grant are provided at Item B of this Annexure.

## **DEED FOR GRANT**

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### **BETWEEN**

Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

The State of Western Australia

The Minister for Mines and Petroleum

Grantee Party

## Details of Deed

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

### **BETWEEN**

The **STATE OF WESTERN AUSTRALIA** and the **MINISTER FOR MINES AND PETROLEUM** as the Minister responsible for the administration of the *Mining Act 1978* (WA) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA) (together the **Government Party**).

and

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

and

The **GRANTEE PARTY** described in item 3 of the Schedule (**Grantee Party**).

### **Recitals**

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- A. The Grantee Party has made an application for the Tenure over the Subject Area.
- B. If the grant of the Tenure affects native title, the grant is a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the Native Title Act.
- C. A determination of native title has been made over the Tjiwarl Determination Area. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People. The Tjiwarl Determination Area includes part or all of the Subject Area.
- D. Tjiwarl AC and the Government Party have entered into an Indigenous Land Use Agreement entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the Subject Area.
- E. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Tenure. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that, where Tjiwarl AC and the Grantee Party were unable to come to an agreement regarding the grant of the Tenure under the processes provided by the Tjiwarl Palyakuwa (Agreement), the Government Party is to give notice of its

intention to grant the Tenure in accordance with section 29 of the Native Title Act, with the effect that right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(i) of the Native Title Act.

- F. The Government Party gave notice of its intention to grant the Tenure in accordance with section 29 of the Native Title Act.
- G. In accordance with Part 2 Division 3 Subdivision P of the Native Title Act, negotiations in respect of the grant of the Tenure have been conducted in good faith between the Government Party, the Grantee Party and Tjiwarl AC.
- H. Tjiwarl AC agrees to the grant of the Tenure and this Deed is entered into for the purpose of ensuring the validity of the Tenure under the Native Title Act and is provided in accordance with Schedule 4, clauses 6.9 or 10.10 of the Tjiwarl Palyakuwa (Agreement).

## **OPERATIVE PROVISIONS:**

### **1. Definitions and Interpretation**

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#### **1.1 General Definitions**

In this Schedule words and expressions defined in the Native Title Act including **arbitral body, common law holders, determination of native title, future act, National Native Title Register, native title, native title rights and interests, registered native title body corporate, and relevant Minister**, have the same meaning when used in this Deed.

#### **1.2 Specific Definitions**

In this Deed, unless the context requires otherwise:

**Act** means an Act of the Parliament of the Commonwealth or of the State of Western Australia.

**Agreement Area** means the land and waters of the Tjiwarl Palyakuwa (Agreement).

**Ancillary Agreement** means the agreement described in item 4 of the Schedule or any other agreement made between Tjiwarl AC and the Grantee Party or any other person in connection with the grant of the Tenure and/or the Grantee Party exercising its rights and discharging its obligations under the Tenure.

**Execution Date** is the date on which this Deed is made, being the date specified in item 1 of the Schedule.

**Government Party** means the Party named in this deed as the Government Party and, for the purposes of clauses 4, 5 and 6 includes the State, any State government department, agency, instrumentality, Minister and any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, an Act of the State (including body corporate Ministers) and any State Personnel.

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

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

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

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

**Party** means a party to this deed and **Parties** means the Government Party, Tjiwarl AC and the Grantee Party, collectively.

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

**State** means the legal entity of the Crown in right of the State of Western Australia.

**State's Personnel** means the State's employees, officers, agents, consultants and contractors.

**Subject Area** means the land and waters (if applicable) the subject of the application for the Tenure.

**Tenure** means the mining tenement(s) or petroleum title(s) described in item 2 of the Schedule to be granted under the Mining Act or the PGER Act.

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

Australia on 1 February 2018 (as itself amended by order 2 of the High Court of Australia on 17 April 2019).

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

**Tjiwarl Palyakuwa (Agreement)** means the *Tjiwarl Palyakuwa (Agreement)*, an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act that was entered into on [insert date] and which was entered on the Register of Indigenous Land Use Agreements on [insert date].

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

### 1.3 Interpretation

In this Deed, unless context requires otherwise:

- (a) headings are for reference only and do not govern the meaning or construction of this Deed or any provision contained in this Deed;
- (b) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) reference to a person or party includes that person's or party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assignees and, in the case of a natural person, also includes that person's executors and administrators;
- (e) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a singular word includes the plural, and vice versa;
- (g) a word that suggests one gender includes the other genders;
- (h) the word "including" is to be read as if it were followed by, "but not limited to";
- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and



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

## **2. Authority to Enter into this Deed**

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Tjiwarl AC represents and warrants that all necessary authorisations have been obtained to enter into this Deed and this Deed is valid, binding and enforceable in accordance with its terms against Tjiwarl AC and the Tjiwarl People.

## **3. Agreement to the Grant of the Tenure**

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- (a) The Parties agree that they have negotiated in good faith for the purposes of section 31(1)(b) of the Native Title Act and that this Deed is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the Native Title Act; and
- (b) Tjiwarl AC agrees to the grant of the Tenure and to the Grantee Party exercising its rights and discharging its obligations under the Tenure.

## **4. Release and Discharge**

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### **4.1 Government Party not liable for Native Title Compensation**

On and from the Execution Date, Tjiwarl AC, the Tjiwarl People and the Grantee Party agree that Government Party is not liable for any Native Title Compensation which Tjiwarl AC or the Tjiwarl People now have, or had at any time previously or might have in the future, against the Government Party respect of the grant by the Government Party of the Tenure or the exercise by the Grantee Party of its rights and obligations under the Tenure.

### **4.2 Deed may be pleaded**

On and from the Execution Date, Tjiwarl AC and the Tjiwarl People:

- (a) acknowledge and agree that Tjiwarl AC and the Tjiwarl People must not make, commence or facilitate any application, action, suit, proceeding, claim or demand against the Government Party in any court, tribunal or other authority for Native Title Compensation; and
- (b) release the Government Party from, and acknowledge that this Deed may be pleaded as an absolute bar against, all liabilities, determinations, orders, applications, actions, suits,

proceedings, claims or demands for, or any other entitlement to, Native Title Compensation.

## **5. Government Party not liable for Ancillary Agreement**

---

Tjiwarl AC and the Grantee Party acknowledge that the Government Party does not have any obligations or liability whatsoever in connection with the rights and obligations of Tjiwarl AC or the Grantee Party under the Ancillary Agreement.

## **6. Conditions and Position of the Government Party**

---

### **6.1 Conditions for the Purpose of Section 41(1) of the Native Title Act**

- (a) Clause 4 of this Deed constitutes conditions to be complied with by the Parties for the purposes of subsection 41(1) of the Native Title Act.
- (b) The terms of this deed and of the Ancillary Agreement are not conditions precedent nor conditions subsequent to the agreement of Tjiwarl AC to the grant of the Tenure and to the Grantee Party exercising its rights and discharging its obligations under the Tenure.
- (c) The provisions of this Deed and the Ancillary Agreement are not conditions of the Tenure when granted under the Mining Act or the PGER Act (as applicable).

### **6.2 Position of the Government Party**

- (a) Nothing in this Deed or the Ancillary Agreement shall fetter, act as an estoppel or an agreement in any way about:
  - (i) the exercise by any person (including a Minister of the Crown) of a statutory power or a discretion otherwise than in accordance with the Act under which the power or discretion is granted; or
  - (ii) the exercise by any person (including a Minister of the Crown) of a decision making power and this includes in respect of any decision of the Government Party.
- (b) The provisions of this Deed and of the Ancillary Agreement are not conditions of the Tenure when granted under the Mining Act or PGER Act (as applicable).

## **7. Deed Prevails**

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The Grantee Party and Tjiwarl AC acknowledge that the provisions of this Deed prevail over the provisions of the Ancillary Agreement to the extent of any inconsistency.

## **8. Determination By Arbitral Body and Copy of Deed to Arbitral Body and Relevant Minister**

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### **8.1 Determination by arbitral body**

If a determination under section 38 of the Native Title Act is applied for in relation to the Tenure, the Parties consent to the arbitral body making a determination to the effect that the Tenure may be granted subject only to the conditions in clause 4 of this Deed.

### **8.2 Copy of Deed to arbitral body and relevant Minister**

The Grantee Party and Tjiwarl AC authorise the Government Party, and the Government Party agrees, to give a copy of this deed to the arbitral body and to advise the relevant Minister in writing of the making of this deed.

## **9. General**

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### **9.1 Severability**

If any provision of this deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

### **9.2 Further Acts**

Each Party agrees, at its own expense, on the request of another Party, to do everything reasonably necessary to give effect to this deed and the matters contemplated by it.

### **9.3 Costs and Duty**

- (a) Subject to clause 9.3(b), each Party will pay its own legal and other costs and expenses in connection with the preparation and completion of this deed.
- (b) The Grantee Party is to pay all duty (including fines or penalties) payable on or with respect to this deed pursuant to the *Duties Act 2008* (WA).

### **9.4 Governing Law**

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

### **9.5 Counterparts**

- (a) This Deed may be executed in any number of counterparts and all counterparts taken together constitute one instrument.
- (b) If this Deed is to be executed in counterparts, the Parties must agree this ahead of the Deed being prepared in final form so that sufficient copies can be prepared and executed by each Party to enable each Party to have one complete instrument (as constituted by the counterparts).

**EXECUTED AS A DEED:**

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

\_\_\_\_\_  
Full name of Authorised Person (print)

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

GRANTEE PARTY<sup>1</sup>

**SIGNED** by [INSERT FULL NAME OF  
**GRANTEE PARTY**] in the presence of:

\_\_\_\_\_  
Signature of [*insert Grantee Party name*]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
<sup>1</sup> Delete this footnote, the heading and the execution clauses for the Grantee Party that are not applicable.

**OR IF THE GRANTEE IS A COMPANY**

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



WITH A COMMON SEAL

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



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary\*  
\*delete whichever is not applicable

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director / Secretary\* (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

WITHOUT A COMMON SEAL

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary\*  
\*delete whichever is not applicable

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director / Secretary\* (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SOLE PROPRIETOR COMPANY

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

---

Signature of Director

(as sole Director and Secretary)

---

Full name (print)

---

Date

## Schedule – Details of the Tjiwarl Exploration Agreement

ITEM	DETAILS
<p><b>1. Date of Deed</b></p> <p>(to be entered by Minister's representative only)</p>	
<p><b>2. Tenure</b></p>	<p>Tenement / Title 1:</p> <p>Application No:</p> <p>Tenement / Title Type:</p> <p>Tenement / Title 2:</p> <p>Application No:</p> <p>Tenement / Title Type:</p> <p><i>[insert / delete as required]</i></p>
<p><b>3. Grantee Party details</b></p>	<p>Tenement / Title Applicant 1:</p> <p>Name*:</p> <p>*include ACN if a company</p> <p>Address:</p> <p>Tenement / Title Applicant 2:</p> <p>Name*:</p> <p>*include ACN if a company</p> <p>Address:</p> <p><i>[insert / delete as required]</i></p>
<p><b>4. Ancillary Agreement Details</b></p>	<p>Parties:</p> <p>Date of Ancillary Agreement:</p>

## **Item B – Instructions for completing Deed for Grant**

---

The following is a guide for completing and executing the Deed for Grant. Please read this guide before attempting to complete the Deed for Grant as errors may render the Deed invalid or may result in the Government party declining to execute the Deed

### **1. Form of the Deed for Grant**

- (a) The Minister for Mines and Petroleum (or his representative) will execute the Deed for Grant only in the form provided by the Tjiwarl Palyakuwa (Agreement) and after execution by all other parties to the Deed. In exceptional circumstances, if the parties need to amend the basic document, then they should discuss the desired amendments with Department of Mines, Industry Regulation and Safety (**DMIRS**) before amending or signing the Deed.
- (b) The Deed for Grant, has been designed to be submitted as an original document, but in the event of the Deed for Grant being re-typed, every care should be taken to avoid errors.

### **2. Completing the Deed of Grant**

- (a) Only the applicant(s) for the mining tenement or the petroleum title (the Grantee Party), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Deed.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals, who must follow the directions contained within the Deed.
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which the Minister for Mines and Petroleum (or his representative) signs the Deed for Grant.
- (e) Any changes or amendments must be initialled by all parties to the Deed for Grant.

### **3. Provision of the Deed of Grant to DMIRS**

- (a) It is important to forward the Deed to the DMIRS, Resource Tenure Branch, for execution as soon as possible after all other parties have signed it as the Deed is not operative until it is executed by the Minister for Mines and Petroleum (or his representative).

(b) Forward at least one single unbound signed Deed to:

Department of Mines, Industry Regulation and Safety  
Resource Tenure Branch  
Locked Bag 100  
East Perth WA 6892

If you have any queries in relation to the completion of this Deed or require further copies (available via email) please contact the Resource Tenure Branch.

#### **4. Checklist for the Deed for Grant**

Have you ensured that:

- The Deed for Grant is in the correct form and has not been amended without the prior agreement of DMIRS?
- Any changes or alterations to the Deed for Grant have been initialled by all Parties?
- Each item of the Schedule has been completed?
- The Grantee Party has signed the document and where appropriate the company seal has been included?
- The Grantee Party signature has been witnessed (if the Grantee is an individual)?
- Tjiwarl AC has signed the document?

Tjiwarl Palyakuwa (Agreement)

**SCHEDULE 4 – Annexure 8**

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Tjiwarl Engagement Protocol

Item A – Tjiwarl Engagement Protocol

Item B – Instructions for executing the Tjiwarl Engagement Protocol

## **Item A – Tjiwarl Engagement Protocol**

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The following form of Tjiwarl Engagement Protocol is provided for the purpose of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Engagement Protocol are provided at Item B of this Annexure.

**TJIWARL ENGAGEMENT PROTOCOL**

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## Details of Engagement Protocol

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**THIS ENGAGEMENT PROTOCOL** is made on the date specified in item 1 of Schedule 1.

### BETWEEN

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

and

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

### Recitals

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- A. The Proponent has made an application for the Tenure in the Tjiwarl Determination Area and wishes to establish the Tenure Operations.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People.
- C. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book and has the power to, amongst other things:
  - (a) negotiate with the Proponent;
  - (b) enter into agreements; and
  - (c) exercise procedural rights under the Native Title Acton behalf of the Tjiwarl People in accordance with the Tjiwarl Rule Book and the CATSI Act.
- D. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the Tenure.
- E. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Tenure. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that Tjiwarl AC and the Proponent are to enter into Negotiations about the grant of the Tenure and the Tenure Operations. The content of the Negotiations includes those initial matters listed at Schedule 4

to this Engagement Protocol in a way that is consistent with the Tjiwarl People's native title rights and interests with a view to reaching agreement for the parties' mutual benefit.

- F. This Engagement Protocol sets out the rules that the Parties must abide by during the Negotiations.

## THE PARTIES AGREE THAT:

### 1. Definitions and Interpretation

---

#### General Definitions

- 1.1 In this Engagement Protocol words and expressions defined in the Native Title Act including **native title, native title rights and interests, prescribed body corporate and registered native title body corporate** have the same meaning when used in this Engagement Protocol.

#### Specific Definitions

- 1.2 In this Engagement Protocol, unless the context requires otherwise the following words and phrases have the following meanings:

**Australian Stock Exchange** means the stock exchange known as the 'Australian Securities Exchange' operated by ASX Limited ABN 98 008 624 691.

**Budget Estimate** means a written, itemised estimation of costs and expenses prepared in accordance with clause 10.

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

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

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

**Confidential Information** means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Engagement Protocol and during the term this Engagement Protocol;

- (b) all information, reports, maps, photographs, videos and other documents about or relating to the traditional laws and customs of the Tjiwarl People and any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Proponent's commercially sensitive information and any information the Proponent nominates as being provided on a confidential basis.

**Confirmation of Budget** has the meaning set out in clause 10.8.

**Confirmation of Budget Revision** has the meaning set out in clause 10.12.

**Consultation Meetings** means the meetings described at clause 7.1.

**Consumer Price Index** means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index will mean such other index as agreed by the Parties that reasonably reflects changes in the normal cost of living for permanent residents in Perth, Western Australia.

**CPI Calculation** means the following calculation

$$R = \frac{A \times B}{C}$$

where:

*R* is the specified rate adjusted for CPI.

*A* is the rate payable immediately prior to the Review Date.

*B* is the Consumer Price Index last published prior to the Review Date.

*C* is the Consumer Price Index last published prior to the Commencement Date.

*Review Date* means, successively, each anniversary of the Commencement Date.

**Cultural Business** means a funeral, event or other ceremony or cultural duty that any members of Tjiwarl AC or the Tjiwarl Negotiation Team are required to attend under their traditional laws and customs and that prevents any of them from performing their obligations under this Engagement Protocol. This includes, for the avoidance of doubt, the law business period between approximately 1 December to 1 March of each year.

**Delay Event** means an event that prevents a Party from performing its obligations under this Engagement Protocol and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave or tsunami, landslide, adverse weather conditions, volcanic eruption;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic, terrorism, radioactive or biological contamination, impact of vehicles or aircraft, failure of a public utility; or
- (d) the effect of any applicable Law or any authority exercised by a government or other competent authority.

**Dispute** has the meaning given in clause 18.1.

**Dispute Notice** has the meaning given in clause 18.1.

**Engagement Protocol** means this means this protocol and its schedules and includes any variation or replacement of it.

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

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

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

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

**Negotiation Matters** means those matters about which the Parties have from time to time agreed to negotiate as part of the Negotiations and include, but are not limited to, those matters listed at Schedule 4;

**Negotiation Meetings** means meetings held between the Parties in accordance with clause 5 of this Engagement Protocol.

**Negotiations** mean the negotiations to be conducted under this Engagement Protocol.

**Negotiators** means the members of each of the Proponent Negotiation Team and the Tjiwarl Negotiation Team.

**Party** means a party to this deed and **Parties** means the Tjiwarl AC and the Proponent collectively.

**PBC Regulations** means the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*.

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

**Proponent Co-ordinator** means the person co-ordinating the Negotiations on behalf of the Proponent and until notified otherwise shall be that person named at Schedule 3.

**Proponent Negotiation Team** means those people appointed from time to time to conduct the Negotiation on behalf of the Proponent and initially comprises the people named at Schedule 3.

**Proponent Advisors** means the people appointed from time to time to support, assist and advise the Proponent Negotiation Team by attending Negotiation Meetings and Consultation Meetings and participating in Negotiations as necessary, and initially comprises the people named at Schedule 3.

**Public Announcement** has the meaning given in clause 15.1.

**Recipient** has the meaning given in clause 12.

**Replacement RNTBC** has the meaning given in clause 16.3.

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

**Supplier** has the meaning given in clause 12.

**Tenure** means the mining tenement or petroleum title described in item 2 of Schedule 1 applied for by the Proponent under the Mining Act or the PGER Act.

**Tenure Operations** means the grant of the Tenure and any activities or approvals required or proposed to be conducted or obtained by the Proponent pursuant to, and in accordance with, the Tenure.



**Termination Date** means the date on which:

- (a) the Tenure is granted under the Mining Act or the PGER Act; or
- (b) the Engagement Protocol is terminated in accordance with clause 19.2.

**Tjiwarl Consent Requirements** means the requirements detailed in clause 6.

**Tjiwarl Co-ordinator** means the person co-ordinating the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be that person named at Schedule 2.

**Tjiwarl Cultural Advisors** means those Tjiwarl People appointed from time to time to advise Tjiwarl AC and Tjiwarl Negotiation Team in relation to cultural matters and initially comprises the people named at Schedule 2.

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

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

**Tjiwarl Expert Advisors** means those experts consulted or engaged by the Tjiwarl Negotiation Team to provide independent technical advice on matters relating to the Negotiations or the Tenure Operations and may include the following fields of expertise:

- (a) economic;
- (b) legal;
- (c) geological;
- (d) environmental;
- (e) hydrological;
- (f) radiation;
- (g) anthropology;
- (h) commercial and business; and/or
- (i) social impact,

and initially comprises the people named at Schedule 2.

**Tjiwarl Negotiation Team** means those people appointed from time to time to conduct the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be those people named at Schedule 2.

**Tjiwarl Palyakuwa (Agreement)** means the Tjiwarl Palyakuwa (Agreement), an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act that was entered into on [insert date] and which was entered on the Register of Indigenous Land Use Agreements on [insert date].

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

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

## Interpretations

1.3 In this Engagement Protocol, unless context requires otherwise:

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

- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

## **2. Agreement to Negotiate**

---

- 2.1 The Parties agree to negotiate in good faith on the matters contemplated under this Engagement Protocol, with a view to entering into a comprehensive agreement:
- (a) about the Tenure Operations, including agreement in relation to each of the Negotiation Matters; and
  - (b) that preserves the traditional way of life of the Tjiwarl People, including their language, cultural heritage and laws and customs.
- 2.2 Nothing in this Engagement Protocol is to be read as a commitment to entering into a comprehensive agreement with respect to the matters referred to in clause 2.1.

## **3. Negotiation Teams**

---

### **Tjiwarl Negotiation Team**

- 3.1 Tjiwarl AC:
- (a) shall be represented in the Negotiations by the Tjiwarl Negotiation Team; and
  - (b) may change the members of the Tjiwarl Negotiation Team by providing written notice of the change to the Proponent.
- 3.2 The Tjiwarl Negotiation Team and its role in the Negotiations shall be co-ordinated by the Tjiwarl Co-ordinator.
- 3.3 The Tjiwarl Co-ordinator shall be the primary contact with the Proponent in relation to the Negotiations.
- 3.4 The Tjiwarl Negotiation Team:
- (a) may, at its discretion, be assisted by Tjiwarl Expert Advisors and Tjiwarl Cultural Advisors;

- (b) shall show courtesy, respect and professionalism towards the Proponent Negotiation Team and respond to requests from the Proponent in a timely manner;
- (c) shall direct all contact with the Proponent in relation to the matters the subject of this Engagement Protocol through the Proponent Co-ordinator; and
- (d) shall notify the Proponent Co-ordinator immediately in the event that members of the Tjiwarl Negotiation Team or the Tjiwarl People are contacted directly by officers of the Proponent or members of the Proponent Negotiation Team in relation to the matters the subject of this Engagement Protocol.

### **Proponent Negotiation Team**

3.5 The Proponent:

- (a) shall be represented in the Negotiations by the Proponent Negotiation Team; and
- (b) may change the members of the Proponent Negotiation Team by providing written notice of the change to the Tjiwarl AC.

3.6 The Proponent Negotiation Team and its role in the Negotiations shall be co-ordinated by the Proponent Co-ordinator.

3.7 The Proponent Co-ordinator shall be the primary contact with Tjiwarl AC in relation to the Negotiations.

3.8 The Proponent Negotiation Team:

- (a) may, at its discretion, be assisted by Proponent Advisors;
- (b) shall show courtesy, respect and professionalism towards the Tjiwarl Negotiation Team and respond to requests from Tjiwarl AC in a timely manner;
- (c) shall direct all contact with Tjiwarl AC in relation to the matters the subject of this Engagement Protocol through the Tjiwarl Co-ordinator; and
- (d) shall notify the Tjiwarl Co-ordinator immediately in the event that officers of the Proponent are contacted directly by members of the Tjiwarl Negotiation Team or the Tjiwarl People in relation to the matters the subject of this Engagement Protocol.

#### **4. Authority of the Negotiators**

---

4.1 The Negotiators are authorised to:

- (a) conduct the Negotiations; and
- (b) make recommendations to the Parties in relation to the Negotiations.

4.2 The Negotiators are not authorised to:

- (a) execute any final agreement; or
- (b) otherwise bind the Parties.

4.3 For the avoidance of doubt any agreement reached by the Negotiators is an agreement ‘in principle’ only until ratified and executed in accordance with the respective rules and procedures of the Parties.

#### **5. Negotiation Meetings**

---

##### **Holding of Negotiation Meetings**

5.1 Negotiation Meetings shall:

- (a) only proceed with the agreement of both Parties;
- (b) occur with a timing and frequency agreed by the Negotiators, with an indicative schedule agreed at the first Negotiation Meeting; and
- (c) unless otherwise agreed, take place either at an ‘on-country’ location nominated by either Party in relation to the Tenure Operations, in Leinster or in Perth.

##### **Other Meetings**

5.2 The Tjiwarl Co-ordinator, the Proponent Co-ordinator and any relevant Negotiators will meet in between Negotiation Meetings as required to:

- (a) discuss the agenda of Negotiation Meetings or Consultation Meetings and matters preparatory to these meetings;
- (b) implement or follow up on the outcomes of Negotiation Meetings or Consultation Meetings; and
- (c) develop proposals to progress Negotiations that can be put to Negotiation Meetings or Consultation Meetings for discussion.

## 6. Tjiwarl Consent Requirements

---

- 6.1 The Proponent acknowledges and agrees that Tjiwarl AC is required to consult with, and obtain the consent of, the Tjiwarl People before making any native title decision (as defined in the PBC Regulations). This includes agreement to any act that affects the native title rights and interests of the Tjiwarl People.
- 6.2 The Proponent acknowledges and agrees that, in accordance with clause 6.1, the Tjiwarl AC is required to:
- (a) consult with the Tjiwarl People, in a manner that accords with their traditional laws and custom, prior to agreeing or authorising any proposal with respect to the Tenure Operations; and
  - (b) be satisfied that the Tjiwarl People, in particular those native title holders for the area affected:
    - (i) understand the nature and purpose of any proposal with respect to the Tenure Operations;
    - (ii) have the opportunity to express their views; and
    - (iii) consent to any proposal with respect to the Tenure Operations.

## 7. Consultation Meetings

---

### Purpose of Consultation Meetings

- 7.1 The Proponent acknowledges and agrees that, in addition to Negotiation Meetings, meetings of the Tjiwarl People are required to fulfil the Native Title Party Consent Requirements (**Consultation Meetings**).
- 7.2 The purpose of Consultation Meetings includes:
- (a) fully informing the Tjiwarl People of the proposals in relation to Tenure Operations and the general progress of the Negotiations;
  - (b) seeking directions from the Tjiwarl People on how to proceed with the Negotiations; and
  - (c) obtaining instructions from the Tjiwarl People on any in-principle or final agreement with respect to the Tenure Operations.

### **Manner in which Consultation Meetings are to be held**

- 7.3 The Proponent acknowledges and agrees that Tjiwarl AC is required to conduct Consultation Meetings in a culturally appropriate manner that is consistent with the traditional decision-making processes of the Tjiwarl People.
- 7.4 Consultation Meetings shall take place at Perth or Leinster, unless otherwise agreed by the Parties.
- 7.5 Tjiwarl AC may invite the Proponent to attend Consultation Meetings for the purpose of assisting Tjiwarl AC in fulfilling the Native Title Party Consent Requirements but, subject to clause 7.6, the Proponent is not otherwise entitled to attend Consultation Meetings.
- 7.6 If the Proponent seeks to attend a Consultation Meeting to provide written or oral information to the Tjiwarl People with respect to the Tenure Operations or the Negotiations, then:
- (a) the Proponent shall inform the Tjiwarl Co-ordinator that it seeks to attend a Consultation Meeting in order to provide that information; and
  - (b) the Tjiwarl Negotiation Team shall consider such requests and shall not unreasonably withhold permission for the Proponent to attend a Consultation Meeting.
- 7.7 The Proponent acknowledges and agrees that any information it provides for the purpose of Consultation Meeting will be provided in a culturally appropriate medium that allows the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

## **8. Information about the Tenure Operations**

---

### **Provision of Information about Tenure Operations**

- 8.1 The Proponent acknowledges that the provision of comprehensive and up to date information with respect to the Tenure Operation is central to Tjiwarl AC fulfilling the Native Title Party Consent Requirements.
- 8.2 The Proponent shall, prior to each Negotiation Meeting, and from time to time during the term of this Engagement Protocol, provide the Tjiwarl Co-ordinator and the Tjiwarl Negotiation Team with information about the nature and scope of the Tenure Operations, including information with respect to the extent, timing, impact, return, production and output projections of Tenure Operations.

- 8.3 The manner in which the information referred to in clause 8.2 will be provided by the Proponent is to be agreed by the Parties, but may include provision by way of:
- (a) presentations to the Tjiwarl Negotiation Team;
  - (b) discussions with the Tjiwarl Negotiation Team; and /or
  - (c) the provision of relevant information in writing.
- 8.4 The Proponent acknowledges and agrees that any information it provides under this clause 8 will be provided in a culturally appropriate medium that allows the Tjiwarl Negotiation Team or the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

### **On-country Visit**

- 8.5 After the first Negotiation Meeting, and if reasonably requested by the Tjiwarl Negotiation Team, the Proponent shall fund, at the rates set out in Schedule 5, a visit by the Tjiwarl Negotiation Team to an ‘on-country’ location nominated by either Party with respect to the Tenure Operations.

## **9. Tjiwarl Expert Advisors**

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- 9.1 To meet the Native Title Party Consent Requirements, Tjiwarl AC may engage, as required, Tjiwarl Expert Advisors.
- 9.2 If Tjiwarl AC engages any Tjiwarl Expert Advisor under clause 9.1, as soon as reasonably practicable after engaging any Tjiwarl Expert Advisor, the Tjiwarl Co-ordinator will provide the Proponent a written notice setting out:
- (a) the name, qualifications and practice area of that Tjiwarl Expert Advisor;
  - (b) a statement of the proposed scope of work of that Tjiwarl Expert Advisor;
  - (c) a copy of any written undertaking required to be procured from that Tjiwarl Expert Advisor pursuant to clause 14.4; and
  - (d) an initial schedule of rates for that Tjiwarl Expert Advisor and any update of that schedule from time to time.
- 9.3 The Proponent will provide Tjiwarl Expert Advisors with all reasonably requested information in order to ensure that accurate and timely advice can be provided to the Tjiwarl Negotiation Team and Tjiwarl AC.



## **10. Negotiation and Consultation Funding**

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### **Proponent's Costs**

10.1 The Proponent is responsible for all of its own costs in relation to the Negotiations.

### **Tjiwarl AC's Costs**

10.2 The Proponent acknowledges that Tjiwarl AC is unfunded and is unable to fund the Negotiations or any of the matters contemplated under this Engagement Protocol.

10.3 Subject to the Budget Estimate process set out in clauses 10.5 – 10.10 (inclusive), the Proponent shall fully fund the reasonable costs incurred by Tjiwarl AC in relation to the Negotiations agreed in accordance with this clause 10.

10.4 To avoid doubt, this clause does not prevent the Parties from agreeing on other items, rates or amounts from time to time.

### **Budget Estimate Process & Payment of Costs**

10.5 As soon as reasonably practicable prior to each Negotiation Meeting and Consultation Meeting, Tjiwarl AC will provide the Proponent with a Budget Estimate setting out the costs it expects to incur in relation to that Negotiation Meeting or Consultation Meeting.

10.6 Tjiwarl AC will also, from time to time, provide a Budget Estimate to the Proponent setting out the costs:

- (a) for any Tjiwarl Expert Advisors engaged under clause 9.1;
- (b) the meetings contemplated by clause 5.2; and
- (c) any on-country visit contemplated by clause 8.5,

to be incurred by Tjiwarl AC in relation to the Negotiations.

10.7 The Parties shall use the rates set out in Schedule 5, and any rates for Tjiwarl Expert Advisors notified by Tjiwarl AC under clause 9.2(d) (if applicable), as a guide to determine the costs of the Negotiations and the formulation of the Budget Estimate.

10.8 Each Budget Estimate provided pursuant to clause 10.5 or 10.6 must be accompanied by a written statement of the purposes for which those costs are sought to be incurred.

- 10.9 Within five (5) Business Days of receipt of a Budget Estimate provided pursuant to clause 10.5 or 10.6 the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the Budget Estimate (**Confirmation of Budget**).
- 10.10 Following receipt of the Confirmation of Budget by Tjiwarl AC, the Proponent will pay:
- (a) in respect of any Budget Estimate provided pursuant to clause 10.5:
    - (i) 50% of the amounts shown in the agreed Budget Estimate, within five (5) Business Days of agreeing to that Budget Estimate; and
    - (ii) the balance of the actual costs incurred by Tjiwarl AC in relation to the relevant Negotiation Meeting or Consultation Meeting within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC; and
  - (b) in respect of any Budget Estimate provided pursuant to clause 10.6, the costs incurred by Tjiwarl AC within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC.
- 10.11 If Tjiwarl AC considers that it will incur costs that are substantially increased from those set out in a Budget Estimate previously provided to the Proponent, Tjiwarl AC shall, as soon as practicable, notify the Proponent of:
- (a) the estimated increase of those costs;
  - (b) the purposes for which those costs are sought to be incurred; and
  - (c) the reasons for the cost increase,
- and provide the Proponent with a revised Budget Estimate.
- 10.12 Within five (5) Business Days of receipt of a revised Budget Estimate provided pursuant to clause 10.11, the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the revised Budget Estimate (**Confirmation of Budget Revision**).
- 10.13 If the Proponent is unable to provide Tjiwarl AC with:
- (a) Confirmation of Budget under clause 10.9; or
  - (b) Confirmation of Budget Revision under clause 10.12,
- then the Parties agree to follow the dispute resolution process set out in clause 18.

## 11. Review of Rates

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On each anniversary of the Commencement Date the Parties will review the rates specified in Schedule 5 and will, where necessary, adjust those rates:

- (a) to reflect movements in the market price of the relevant rates; and/or
- (b) in accordance with the CPI Calculation.

## 12. GST

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- 12.1 Any reference in this clause 12 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.
- 12.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.
- 12.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Engagement Protocol (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).
- 12.4 The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- 12.5 If a Recipient is required under this Engagement Protocol to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

## 13. Duty

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

## 14. Confidentiality

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- 14.1 Subject to clause 14.2 the following shall be treated by the Parties as confidential:
- (a) information given by the Proponent to Tjiwarl AC under this Engagement Protocol, including any correspondence exchanged between the Parties in relation to this Engagement Protocol;
  - (b) information given by Tjiwarl AC to the Proponent in respect of cultural information, photographs or video; and
  - (c) information furnished in, or pursuant to, this Engagement Protocol or in the course of negotiating this Engagement Protocol by or on behalf of Tjiwarl AC.
- 14.2 Notwithstanding clause 14.1, the Parties may divulge Confidential Information to a third party:
- (a) with the prior written consent of the other Party (which consent shall not be unreasonably withheld);
  - (b) to the extent required by law;
  - (c) to the extent expressly permitted under this Engagement Protocol, or required to enforce its rights under this Engagement Protocol ;
  - (d) to the extent that such information is already, or becomes, in the public domain, otherwise than by breach of this clause 14;
  - (e) who is a financier of, or holding company, or wholly owned subsidiary of the Proponent or Tjiwarl AC;
  - (f) who is the State for the purpose of the Tjiwarl Palyakuwa (Agreement);
  - (g) to the extent required to comply with the listing rules of the Australian Stock Exchange; or
  - (h) who is a prospective joint venturer or assignee.
- 14.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 14.4 Notwithstanding the provisions of clause 14.2 the Parties shall, to the extent permitted by law, require any person (other than members of Tjiwarl AC) to whom it intends to disclose such Confidential Information (who is not under a statutory, professional or contractual duty to keep

such Confidential Information confidential) to give a written undertaking to keep such Confidential Information confidential in accordance with clause 14.1.

14.5 The obligations of the Parties under this clause 14 shall survive the termination of this Engagement Protocol.

## **15. Public Announcements**

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15.1 The Parties must not make or authorise any comments or statements to the media and/or the public about the Negotiations (**Public Announcement**) unless:

- (a) it has been agreed in writing by the Proponent and Tjiwarl AC; or
- (b) is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing party as to the form and content of the Public Announcement.

15.2 For the avoidance of doubt, a Public Announcement includes comments or statements made on any social media or networking site.

15.3 The Parties will use their best endeavours to stop their members, employees or officers making Public Announcements.

15.4 If a Public Announcement is made contrary to this clause 15, the Parties will meet as soon as possible and issue a joint statement in response to that unauthorised Public Announcement.

## **16. Assignment**

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### **Assignment by the Proponent**

16.1 The Proponent may assign, transfer, novate or otherwise dispose of any or all of its rights, interests and obligations under this Engagement Protocol to any person provided that:

- (a) the Proponent notifies Tjiwarl AC in writing of the name and nature of the prospective assignee at least twenty (20) Business Days before the assignment;
- (b) the Proponent consults with Tjiwarl AC about the prospective assignee;
- (c) Tjiwarl AC consents to the assignment, which consent will not be unreasonable withheld;
- (d) the Proponent procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:

- (i) be bound by this Engagement Protocol and to assume all of the Proponent's obligations under the Engagement Protocol; and
- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,  
as if it were a party to this Engagement Protocol; and
- (e) evidence of that assumption is provided to Tjiwarl AC.

16.2 The Proponent will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by an assignee, save for any obligations pursuant to clause 14.

### **Assignment by Tjiwarl AC**

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

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

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
  - (i) be bound by this Engagement Protocol and to assume all of Tjiwarl AC's obligations under the Engagement Protocol; and
  - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,  
as if it were a party to this Engagement Protocol; and
- (c) give evidence of that assumption to the Proponent.

16.5 Tjiwarl AC will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 14.

## **17. Unexpected Delays**

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### **Notice of Unexpected Delays**

17.1 The Parties each acknowledge that Delay Events and Cultural Business may cause legitimate delays in the Parties progressing the Negotiations or performing obligations under this Engagement Protocol.

17.2 If a Party is prevented in whole or in part from carrying out its obligations under this Engagement Protocol or progressing the Negotiations as a result of a Delay Event or Cultural Business it must immediately notify the other Party of:

- (a) the obligations it cannot perform;
- (b) the nature of the Delay Event or Cultural Business; and
- (c) time during which it is estimated that the Delay Event or Cultural Business will continue.

17.3 For the avoidance of doubt, the Parties acknowledge that Cultural Business may not necessarily preclude the planning or holding of Negotiation Meetings or Consultation Meetings if the relevant personnel are available to meet.

17.4 The Party affected by the Delay Event or Cultural Business will give immediate notice to the other Parties of the cessation of the delay.

## **18. Dispute Resolution**

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### **Notification and Negotiation of a Dispute**

18.1 If a dispute arises between the Parties in connection with the Negotiations or this Engagement Protocol (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).

18.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute. A Party may also, for the avoidance of doubt, seek the assistance of the State to resolve the Dispute in accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

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

### **Mediation**

18.4 If the Dispute is referred to mediation:

- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
- (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.

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

18.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.

18.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.

18.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.



## **Costs**

18.9 Subject to clause 18.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 18.

## **Court Proceedings**

18.10 Subject to clause 18.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 18.8.

18.11 Nothing in this clause 18 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

## **19. Term and Termination**

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### **Term**

19.1 This Engagement Protocol commences on the Commencement Date and terminates on the Termination Date.

### **Termination**

19.2 This Engagement Protocol may be terminated by:

- (a) any Party by giving the other Parties no less than ten (10) Business Days written notice of such termination; or
- (b) by the mutual agreement of the Parties in writing.

19.3 If this Engagement Protocol is terminated for any reason:

- (a) each Party will remain liable to the other Party in respect of all obligations accrued under this Engagement Protocol to the date of termination; and
- (b) save for clause 14, the Parties will have no further rights or obligations under this Engagement Protocol.

## **20. Without Prejudice**

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- 20.1 This Engagement Protocol and the Negotiations are without prejudice to the legal positions of the Parties and will not be construed as admissions of fact or liability in relation to any legal proceeding or process except that, subject to clause 20.2, they may be used as evidence that the Parties have attempted to negotiate in good faith and/or consulted with each other.
- 20.2 Neither this Engagement Protocol nor the fact of the Negotiations are conclusive proof in themselves of a Party having negotiated in good faith.

## **21. Entire Agreement**

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This Engagement Protocol constitutes the entire agreement between the Parties relating to its subject matter.

## **22. Variation**

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This Engagement Protocol may only be varied by agreement in writing signed by both Parties.

## **23. Further Assurances**

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Each Party will, on the request of the other Party, do everything reasonably necessary to give effect to this Engagement Protocol.

## **24. Severance**

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If any part of this Engagement Protocol is or becomes unenforceable, that part is or will be severed from this Engagement Protocol so that the rest of this Engagement Protocol remains in force.

## **25. Governing Law**

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

## 26. Counterparts

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

## 27. Notice

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### Notice

- 27.1 Each notice or other communication given by one Party to another pursuant to this Engagement Protocol:
- (a) shall be in writing;
  - (b) must be delivered to the address for the Party specified in clause 27.3 or to such other address as a Party may nominate in writing;
  - (c) subject to clause 27.2, will be taken to be duly given or made:
    - (i) if delivered by hand, upon delivery;
    - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
    - (iii) if sent by email, at the earlier of:
      - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
      - (B) the time that the intended recipient confirms receipt of the email by reply email; and
      - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.
- 27.2 If the result of clause 27.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

## Address for Notices

27.3 For the purpose of this clause 27, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

(a) for Tjiwarl AC:

The CEO

Tjiwarl (Aboriginal Corporation) RNTBC

Unit 6, 524 Abernethy Road,

Kewdale WA 6105

Telephone: +61 (8) 9200 3730

Email: [compliance@tjiwarl.org.au](mailto:compliance@tjiwarl.org.au)

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

**EXECUTED** by the parties as an agreement

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

PROPONENT<sup>1</sup>

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

\_\_\_\_\_  
Signature of [*insert Proponent name*]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

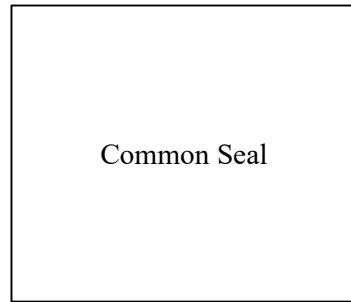
\_\_\_\_\_  
<sup>1</sup> Delete this footnote, the heading and the execution clauses for the Proponent that are not applicable.

**OR IF THE PROPONENT IS A COMPANY**

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

WITH A COMMON SEAL

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



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Signature of Director

---

Signature of Director / Secretary\*

\*delete whichever is not applicable

---

Full name of Director (print)

---

Full name (print)

---

Date

WITHOUT A COMMON SEAL

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

---

Signature of Director

---

Signature of Director / Secretary\*

\*delete whichever is not applicable

---

Full name of Director (print)

---

Full name (print)

---

Date

---

Date



SOLE PROPRIETOR COMPANY

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

---

Signature of Director  
(as sole Director and Secretary)

---

Full name (print)

---

Date

## Schedule 1 – Details of the Tjiwarl Engagement Protocol

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

## Schedule 2 – Initial Tjiwarl Negotiation Team

ROLE	DETAIL
<b>Tjiwarl Co-ordinator</b>	
<b>Tjiwarl People</b>	1. 2. 3. 4. [ <i>insert / delete as required</i> ]
<b>Tjiwarl Cultural Advisors</b>	1. 2. 3. [ <i>insert / delete as required</i> ]
<b>Tjiwarl Expert Advisors</b>	1. 2. 3. [ <i>insert / delete as required</i> ]
<b>Legal Services</b>	

### Schedule 3 – Initial Proponent Negotiation Team

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ROLE	DETAIL
<b>Proponent Co-ordinator</b>	
<b>Proponent Members</b>	1. 2. 3. 4. <i>[insert / delete as required]</i>
<b>Proponent Advisors</b>	1. 2. 3. <i>[insert / delete as required]</i>
<b>Legal Services</b>	

## **Schedule 4 – Matters for Negotiation**

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### **1. Culture, Country and Community**

- (a) Heritage protection, including protection of sites.
- (b) Avoiding damage to sites.
- (c) Facilitating ‘care for country’ obligations and maintaining connection with country.
- (d) Minimising the impact of the Tenure Operations on country and on native title.
- (e) Rehabilitation and restoration of country.
- (f) Support for law and culture.
- (g) Social impact base line assessment and minimising negative social impacts and maximising positive social impacts.
- (h) Environmental assurances and insurances.
- (i) Water Management.
- (j) Processes for involving Tjiwarl People in environmental matters.

### **2. Relationship between Tjiwarl AC, Tjiwarl People and the Proponent**

- (a) Development of long-term relationship between Tjiwarl AC, the Tjiwarl People and the Proponent.
- (b) Process for ongoing consultation between the Tjiwarl AC and the Proponent about the development, operation, decommissioning and rehabilitation of the Tenure Operations, including any issues and opportunities that arise during the life of the Tenure Operations.
- (c) Process for resolution of disputes between Tjiwarl AC and the Proponent.
- (d) Processes for assisting the Proponent to create a safe, productive and culturally aware workplace.
- (e) Cultural awareness training for all Proponent employees and contractors involved in the Tenure Operations.
- (f) Establishing a committee of representatives of the Proponent and Tjiwarl People to manage the ongoing relationship and the interface between the Proponent and Tjiwarl People.

### **3. Access and Consent**

- (a) Access by Tjiwarl People to the area of the Tenure over the life of the Tenure Operations.
- (b) Consent to the grant of the Tenure, the Tenure Operations and any other required approvals.

### **4. Community Development**

- (a) Maximising the economic viability of Tjiwarl AC.
- (b) Providing business and employment opportunities for Tjiwarl AC and Tjiwarl People.
- (c) Maximising training opportunities for Tjiwarl People.
- (d) Maximising economic development opportunities for Tjiwarl AC and Tjiwarl People.
- (e) Providing a legacy for Tjiwarl People.

### **5. Compensation**

- (a) Nature and quantum of compensation.
- (b) Body to hold compensation and other community benefits.

### **6. Tjiwarl Peoples' Lives**

- (a) Minimising any adverse impacts of the Tenure Operations on Tjiwarl People.
- (b) Minimising any adverse impact of Tenure Operations on the Tjiwarl Peoples' native title rights and interests.
- (c) Maximising education, training and mentoring opportunities for Tjiwarl People, including the development of a training and employment policy.
- (d) Maximising the social development of Tjiwarl People generally.
- (e) Support for sporting events in which Tjiwarl People participate.
- (f) Improving the general health and well-being of Tjiwarl People.
- (g) Ensuring that contractors and subcontractors working on Tenure Operations must comply with the Proponent's undertakings.
- (h) Development of management plans for the Tenure Operations.

### **7. Project Agreement**

- (a) Structure and content of the agreement with respect to the Tenure Operations, including parties to such an agreement.

- (b) Strong processes for implementation of the agreement with respect to the Tenure Operations.

## **8. Commercial Matters**

- (a) Providing commercial and contracting opportunities during the life of the Tenure Operations to Tjiwarl People and entities owned by Tjiwarl People.
- (b) Exploring the opportunity for Tjiwarl AC and Tjiwarl People be included in equity opportunities.

## Schedule 5 – Negotiation Cost Guidelines

ITEM	RATE
<b>Tjiwarl Negotiation Team Members</b>	\$750
<b>Tjiwarl Cultural Advisors</b>	At cost
<b>Tjiwarl Expert Advisors</b>	At cost
<b>GIS Officer</b>	\$60 per hour or \$500 per day
<b>Fuel</b>	At cost
<b>Meals</b> (where catering not provided)	\$80 per day per person
<b>Catering of meals</b>	At cost
<b>Accommodation</b>	At cost
<b>Airfares</b>	At cost
<b>Venue Hire</b>	At cost
<b>Administration</b>	20%



## **Item B – Instructions for completing the Tjiwarl Engagement Protocol**

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The following is a guide for completing and executing the Tjiwarl Engagement Protocol. Please read this guide before attempting to complete the Tjiwarl Engagement Protocol as errors may render the Engagement Protocol invalid or may result in Tjiwarl AC declining to execute the Engagement Protocol

### **1. Form of the Tjiwarl Engagement Protocol**

- (a) The final form of the Tjiwarl Engagement Protocol is to be agreed between the applicant(s) for the mining tenement or the petroleum title (the Proponent) and Tjiwarl AC. Any amendments or changes to the document will need to be discussed and agreed between the parties. Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC.
- (b) The Tjiwarl Engagement Protocol has been designed to be submitted as an original document, but in the event of the Tjiwarl Engagement Protocol being re-typed, every care should be taken to avoid errors.

### **2. Completing the Tjiwarl Engagement Protocol**

- (a) Only the Proponent, Tjiwarl AC, and those duly authorised by a power of attorney can sign the Tjiwarl Engagement Protocol.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals, whose signature must be witnessed.
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in by Tjiwarl AC with the date on which Tjiwarl AC signs the Tjiwarl Engagement Protocol.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Engagement Protocol.

### **3. Provision of the Tjiwarl Engagement Protocol**

- (a) Once the form of the Tjiwarl Engagement Protocol has been agreed between the Proponent and Tjiwarl AC and it has been signed by the Proponent it is important to forward the Tjiwarl Engagement Protocol to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the Tjiwarl Engagement Protocol please contact Tjiwarl AC (at the address contained in clause 27 of the Tjiwarl Engagement Protocol).

#### **4. Checklist for the Tjiwarl Engagement Protocol**

Have you ensured that:

- The Tjiwarl Engagement Protocol is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Engagement Protocol have been initialled by all Parties?
- Schedules 1, 2 and 3 have been completed?
- The Proponent has signed the document and where appropriate the company seal has been included?
- The Proponent's signature has been witnessed (where the Proponent is an individual)?
- Tjiwarl AC has signed the document?

## **TJIWARL PALYAKUWA (AGREEMENT)**

### **SCHEDULE 4 – Annexure 9**

---

#### Proponent Statutory Declarations

Item A – Form of Statutory Declaration for Schedule 4, clause 5.4(c)

Item B – Form of Statutory Declaration relating to conditions on title

Item C – Instructions for making a Statutory Declaration

## **Item A – Statutory Declaration (Clause 5.4(c))**

---

The following form of statutory declaration is provided for the purpose of Schedule 4, clause 5.4(c) of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the statutory declaration are provided at Item C of this Annexure.

## Statutory Declaration

### *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*

I, \_\_\_\_\_, a \_\_\_\_\_  
[Insert full name] [Insert occupation]  
of \_\_\_\_\_  
[Insert address]

#### **Do solemnly and sincerely declare:**

*(\* (\*\* Delete whichever is not applicable*

- (\*) I am the applicant for the following Tenure: \_\_\_\_\_  
[Insert details]

(\*\*) I am a director of : \_\_\_\_\_  
[Insert name of corporation]

being the applicant for the following Tenure: \_\_\_\_\_  
[Insert details]

and am duly authorised by it to make this declaration.

- The applicant for the Tenure has executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary modifications for the Tenure, and provided a copy of the Tjiwarl Exploration Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

\_\_\_\_\_  
[Insert date]

- The applicant for the Tenure has made reasonable endeavours to obtain an executed copy of the Tjiwarl Exploration Agreement from Tjiwarl AC within 20 Business Days of the date in paragraph 2 above.
- By executing the Tjiwarl Exploration Agreement and providing a copy to Tjiwarl AC in the manner provided in paragraphs 2 and 3 above and, not having received a copy that is executed by Tjiwarl AC within 20 Business Days of the date in paragraph 2 above, I believe that the applicant for the Tenure will, by providing this Statutory Declaration to the State of Western Australia, have satisfied the conditions contained in Schedule 4, clause 5.4(c) of the Tjiwarl Palyakuwa (Agreement).

5. Attached to this declaration is:
- (a) a copy of the Tjiwarl Exploration Agreement as executed by the applicant for the Tenure that was provided to Tjiwarl AC for execution;
  - (b) any covering email or letter which accompanied the executed Tjiwarl Exploration Agreement; and
  - (c) any proof of delivery or receipt of the executed Tjiwarl Exploration Agreement by Tjiwarl AC.
6. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
7. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

**Declared by:**

---

(Signature of person making declaration)

**In the presence of:**

---

(Signature of Authorised Witness)

---

(Name and Qualifications of Authorised Witness)

## **Item B – Statutory Declaration (Condition on Title)**

---

The following form of statutory declaration is provided for the purpose of the condition imposed on the mining tenement or PGER Title pursuant to Schedule 4, clauses 5.9, 6.10, 7.10, 8.6, 9.9 or 10.11 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the statutory declaration are provided at Item C of this Annexure.

## Statutory Declaration

### *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*

I, \_\_\_\_\_, a \_\_\_\_\_  
[Insert full name] [Insert occupation]

of \_\_\_\_\_  
[Insert address]

#### **Do solemnly and sincerely declare:**

*(\* (\*\* Delete whichever is not applicable*

1. (\*) I am the registered holder of the following Tenure: \_\_\_\_\_  
[Insert details]

(\*\*) I am a director of : \_\_\_\_\_  
[Insert name of corporation]

being the registered holder for the following Tenure: \_\_\_\_\_  
[Insert details]

and am duly authorised by it to make this declaration.

2. (\*) The registered holder of the Tenure has executed a copy of the Tjiwarl Exploration Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)), subject only to necessary for the Tenure, and provided a copy of the Tjiwarl Exploration Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

\_\_\_\_\_  
[Insert date]

(\*\*) The registered holder of the Tenure has executed a copy of the Tjiwarl Heritage Agreement (as defined in the Tjiwarl Palyakuwa (Agreement)) subject only to necessary modifications in terminology for the Tenure, and provided a copy of the Tjiwarl Heritage Agreement to Tjiwarl (Aboriginal Corporation) RNTBC (**Tjiwarl AC**) for execution on:

\_\_\_\_\_  
[Insert date]



3. The registered holder for the Tenure has made reasonable endeavours to obtain an executed copy of the (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement from Tjiwarl AC within 40 Business Days of the date in paragraph 2 above.
4. By executing the (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement and providing a copy to Tjiwarl AC in the manner provided in paragraphs 2 and 3 above and, not having received a copy of the (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement that is executed by Tjiwarl AC within 40 Business Days of the date in paragraph 2 above, I believe that the registered holder of the Tenure will, by providing this Statutory Declaration to the State of Western Australia, have satisfied the conditions applicable to the Tenure.
5. Attached to this declaration is:
  - (a) a copy of the (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement as executed by the applicant for the Tenure that was provided to Tjiwarl AC for execution;
  - (b) any covering email or letter which accompanied the executed (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement; and
  - (c) any proof of delivery or receipt of the executed (\*) Tjiwarl Exploration Agreement / (\*\*) Tjiwarl Heritage Agreement by Tjiwarl AC .
6. This declaration is true and I know that it is an offence to make a declaration knowing that it is false in any material particular.
7. This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

**Declared by:**

---

(Signature of person making declaration)

**In the presence of:**

---

(Signature of Authorised Witness)

---

(Name and Qualifications of Authorised Witness)

## Item C – Instructions to complete a Statutory Declaration

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The following is a guide for executing a statutory declaration pursuant to the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA). Please read this guide carefully before attempting to complete the Proponent Statutory Declaration as errors may render the declaration invalid.

It is also recommended that prior to executing the Proponent Statutory Declaration the person making the declaration should consult the provisions of *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) to ensure compliance with that Act.

### 1. Form of the Proponent Statutory Declaration

- (a) The Proponent Statutory Declaration will only be accepted by the Department of Mines, Industry Regulation and Safety (**DMIRS**) if executed in the form provided. In exceptional circumstances, if a Proponent needs to alter the basic form, then they should discuss the desired amendment with DMIRS prior to executing the declaration.
- (b) The Proponent Statutory Declaration, has been designed to be submitted as an original document, but in the event of the Proponent Statutory Declaration being re-typed, every care should be taken to avoid errors.

### 2. Signature by the person making the statutory declaration

The person who is making the Proponent Statutory Declaration must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any amendment that has been made to the statutory declaration (if any); and
- (c) in the presence of an authorised witness declare orally:
  - (i) that he or she is the person named as the maker of the statutory declaration;
  - (ii) that the contents of the statutory declaration are true;
  - (iii) that the signature or mark is his or hers; and
  - (iv) if necessary, that any attachment to the statutory declaration is the attachment referred to in it.

### **3. Witnessing of a statutory declaration**

After the maker of the Proponent Statutory Declaration has complied with the above the authorised witness must:

- (a) sign or personally mark the statutory declaration;
- (b) sign or initial any amendment in the statutory declaration (if any); and
- (c) imprint or clearly write his or her name and qualification as an authorised witness.

### **4. Categories of authorised witnesses**

The Proponent Statutory Declaration must be made before one of the following persons (**authorised witnesses**):

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank Manager, Chartered Secretary, Chemist, Chiropractor, Company Auditor or Liquidator, Court Officer, Defence Force Officer, Dentist, Doctor, Electorate Officer of a Member of State Parliament, Engineer, Commonwealth Industrial Organisation Secretary, Insurance Broker, Justice of the Peace, Landgate Officer, Lawyer, Local Government CEO or Deputy CEO, Local Government Councillor, Loss Adjuster, Marriage Celebrant, Member of Parliament, Minister of Religion, Nurse, Optometrist, Patent Attorney, Physiotherapist, Podiatrist, Police Officer, Post Office Manager, Psychologist, Public Notary, Public Servant (Commonwealth), Public Servant (State), Real Estate Agent, Settlement Agent, Sheriff or Deputy Sheriff, Surveyor, Teacher, Tribunal Officer or Veterinary Surgeon.

### **5. Provision of the Proponent Statutory Declaration to DMIRS**

It is important to forward the executed Proponent Statutory Declaration to DMIRS as soon as possible after execution.

### **6. Evidence of provision of the Tjiwarl Exploration Agreement or Tjiwarl Heritage Agreement to Tjiwarl AC**

It is recommended that you keep an accurate record of the date and manner of provision of the Tjiwarl Exploration Agreement or Tjiwarl Heritage Agreement to Tjiwarl AC. This may include, for example, copies of emails or registered post tracking numbers and receipts. These are required to be attached to the executed Proponent Statutory Declaration

Tjiwarl Palyakuwa (Agreement)

**SCHEDULE 4 – Annexure 10**

---

Tjiwarl Heritage Agreement

Item A – Tjiwarl Heritage Agreement

Item B – Instructions for executing the Tjiwarl Heritage Agreement

## **Item A – Tjiwarl Heritage Agreement**

---

The following form of Tjiwarl Heritage Agreement is provided for the purpose of Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

Instructions for completing the Tjiwarl Heritage (Agreement) are provided at Item B of this Annexure.

**TJIWARL HERITAGE AGREEMENT**

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## Details of Agreement

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

### BETWEEN

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

and

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

### Recitals

---

- A. The Proponent holds the Tenure within in the Tjiwarl Determination Area.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interests on trust for the Tjiwarl People. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book.
- C. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all the area of the Tenure.
- D. In accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement), the Tenure has been granted subject to a condition imposed on the Tenure requiring the Proponent to enter into this Agreement, and maintain it for the term of the Tenure, before exercising any of the rights, powers or duties pursuant to the Tenure.
- E. The Proponent has agreed to enter into this Agreement with Tjiwarl AC to comply with the abovementioned condition imposed on the Tenure.
- F. The Parties acknowledge that the AHA currently remains in force and, following the transition period, the ACHA will come into operation and the AHA will be repealed. Further, the Parties agree that this Agreement will need to be reviewed once the ACHA comes into operation.

## THE PARTIES AGREE THAT:

### 1. Definitions and Interpretation

---

#### Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Confidential Information** means:

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

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

**Dispute** has the meaning given by clause 13.1.

**Dispute Notice** has the meaning given by clause 13.1.

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

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

**First Review Date** has the meaning set out in clause 19.1(a).

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

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

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

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

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

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

**Heritage Monitoring Team** means:

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

**Index Rate** means the rate calculated as follows:

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

where:

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

whichever is the later.

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

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

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

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

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

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

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

and includes that person's delegate.

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

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

and Maintaining has the corresponding meaning.

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

**mining tenement** has the meaning given in the Mining Act.

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

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

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

**Parties** means the Proponent and Tjiwarl AC.

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

**PGER Act** means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

**PGER Title** means a permit, drilling reservation, access authority, lease, licence, or special prospecting authority granted under the PGER Act.

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

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

**Recipient** has the meaning given in clause 9.

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

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

**Replacement RNTBC** has the meaning given in clause 4.3.

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

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

**Supplier** has the meaning given in clause 9.

**Survey** means an ethnographic and/or archaeological survey of the Work Areas identified in a Work Program that is carried out in accordance with this Agreement to determine which parts of those Work Areas are Cleared Areas for the conduct of the Ground Disturbing Activity identified in that Work Program.

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

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

**Tenure** means the mining tenement or PGER Title held by the Proponent and identified Schedule 1, item 2 and includes a renewal or extension of that Tenure from time to time.

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

**Termination Date** means the date when the Proponent or its assignees cease to hold an interest in the Tenure, or the Agreement is terminated pursuant to clause 4.2, 5.2(b) or 18.2.

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

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

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

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

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

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

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

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

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

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

## Interpretation

1.2 In this Agreement, unless context requires otherwise:

- (a) a reference to a recital, clause or Schedule is to a recital, clause or Schedule of this Agreement;
- (b) headings are for reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;



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

## **2. Aboriginal Cultural Heritage Protection**

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- 2.1 The Proponent shall not enter the Tenure Area or conduct any Activities except in accordance with this Agreement.
- 2.2 The Parties agree to follow the processes set out in Schedule 2 of this Agreement in relation to the protection of Aboriginal Cultural Heritage in the Tenure Area.
- 2.3 Nothing in this Agreement is intended to or purports to:
  - (a) authorise the Explorer to breach the Heritage Acts;
  - (b) exclude, limit or modify the operation of the ACHA; or
  - (c) exclude, limit or modify any duty owed under the ACHA.

### **3. Notification of changes to the Tenure**

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

### **4. Assignment**

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#### **Assignment by the Proponent**

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

4.2 In the event that the Proponent purports to assign its interest in the Tenure or its rights, interests or obligations under this Agreement without following the assignment process contemplated in clause 4.1, Tjiwarl AC may terminate the Agreement without further notice to the Proponent.

### **Assignment by Tjiwarl AC**

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

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

- (a) give notice in writing of the name of the Replacement RNTBC at least twenty (20) Business Days before the assignment;
- (b) procure the Replacement RNTBC to execute a deed of assumption by which the Replacement RNTBC agrees to:
  - (i) be bound by this Agreement and to assume all of Tjiwarl AC's obligations under the Agreement; and
  - (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,  
as if it were a party to this Agreement; and
- (c) give evidence of that assumption to the Proponent.

4.5 Tjiwarl AC will be released from its obligations under this Agreement to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 11.

## **5. Defaults and Termination**

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5.1 If the Proponent:

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

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

5.2 Where the Proponent fails to:

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

and the requirements of clause 5.1 have been met then Tjiwarl AC may terminate the Agreement without further notice to the Proponent.

## **6. Cultural Protection and Respect**

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

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

6.3 The Proponent shall require its Personnel to comply with the provisions of this Agreement.

## **7. Warranties**

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7.1 Tjiwarl AC warrants that:

- (a) it is authorised to enter into this Agreement on behalf of the Tjiwarl People and the terms of this Agreement are binding on them;
- (b) to the best of their knowledge and information, the Tjiwarl People nominated by Tjiwarl AC to the Survey Team pursuant to Schedule 2, clause 7(a) are those who have the authority to speak for the relevant Work Area in accordance with the traditional laws

and customs of the Tjiwarl People and are Knowledge Holders for the purpose of the ACHA; and

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

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

## 8. Indemnity and Insurance

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

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

## 9. GST

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9.1 Any reference in this clause 9 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

9.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.

9.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).

9.4 The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.

9.5 If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax

credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

## **10. Duty**

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

## **11. Confidentiality**

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11.1 A Party shall not:

- (a) subject to 11.2, disclose the other Party's Confidential Information to a third party; or
- (b) use the other Party's Confidential Information unless that use is reasonably necessary for a Party to exercise its rights or comply with its obligations under this Agreement or any law.

11.2 A Party may disclose the other Party's Confidential Information to a third party:

- (a) with the prior written consent of the other Party;
- (b) to the extent required by law or any rule of a stock exchange;
- (c) to obtain legal advice or for use in legal proceedings;
- (d) to the extent that Confidential Information is already in the public domain, otherwise than by breach of this clause; or
- (e) where such third party is:
  - (i) a bona fide actual or potential assignee of all or part of the Proponent's interest in the Tenure;
  - (ii) a recognised financial institution that requires the disclosure in connection with any loans sought by a Party;
  - (iii) one of the Proponent's Personnel;
  - (iv) Tjiwarl AC's officer, employee, agent, consultant, contractor or advisor; or
  - (v) a Party's Related Body Corporate,

provided that the third party provides a written undertaking to Tjiwarl AC and the Proponent to be bound by this clause 11.

- 11.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 11.4 Without limiting the operation of this Agreement, the Agreement applies to all Confidential Information whether or not Confidential Information was disclosed to or accessed by the Proponent before the date of this Agreement.
- 11.5 The obligations of the Parties under this clause 11 survive the termination of this Agreement.

## **12. Unexpected Delays**

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- 12.1 If a delay in performing an obligation under this Agreement occurs, which is caused by:
- (a) any COVID-19 public health restrictions;
  - (b) the Law Business Period;
  - (c) weather and road conditions;
  - (d) bona fide cultural responsibilities (including funerals) of the relevant Traditional Owners;
  - (e) illness of the relevant Traditional Owners;
  - (f) force majeure; or
  - (g) the other Party's failure to comply in a timely way or at all with its obligations under this Agreement,
- then the time period of that delay shall be excluded from the calculation of any period of time mentioned in this Agreement.
- 12.2 A Party asserting the existence of a delay to which clause 12.1 above applies shall advise the other Party of that delay and take reasonable steps to mitigate that delay.
- 12.3 Where delay caused by the matters listed in clause 12.1 above occurs, the Proponent shall pay the reasonable, unrecoverable costs of Tjiwarl AC incurred as a result of that delay.

## 13. Dispute Resolution

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### Notification and Negotiation of a Dispute

- 13.1 If a dispute arises between the Parties in connection with this Agreement or a Survey Report (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).
- 13.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute.
- 13.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

### Mediation

- 13.4 If the Dispute is referred to mediation:
- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
  - (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.
- 13.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.
- 13.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- 13.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.
- 13.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be



agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

## **Costs**

13.9 Subject to clause 13.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 13.

## **Court Proceedings**

13.10 Subject to clause 13.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 13.8.

13.11 Nothing in this clause 13 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

## **14. Notice**

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### **Notice**

14.1 Each notice or other communication given by one Party to another pursuant to this Agreement:

- (a) shall be in writing;
- (b) must be delivered to the address for the Party specified in clause 14.3 or to such other address as a Party may nominate in writing;
- (c) subject to clause 14.2 and Schedule 2, will be taken to be duly given or made:
  - (i) if delivered by hand, upon delivery;
  - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
  - (iii) if sent by email, at the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the intended recipient confirms receipt of the email by reply email; and

- (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.

- 14.2 If the result of clause 14.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

### **Address for Notices**

- 14.3 For the purpose of this clause 14, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

- (a) for Tjiwarl AC:

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

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

## **15. Entire Agreement**

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

## **16. Counterparts**

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

## 17. Governing Law

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

## 18. Term and Termination

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18.1 This Agreement shall commence on the Commencement Date and shall come to an end on the Termination Date.

18.2 The Parties may terminate this Agreement by mutual agreement in writing.

## 19. Review of Agreement

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### Review of the Agreement

19.1 Subject to clause 19.2, at the request of any Party, the Parties will meet:

(a) as soon as reasonably practicable following the ACHA coming into operation (**First Review Date**); and

(b) no more than every two (2) years from the First Review Date,

to review the operation of this Agreement and to use their best endeavours to agree to such changes that may be required to ensure that this Agreement operates fairly to each of the Parties.

19.2 The Parties agree that if any party requests a review of this Agreement, then that party must invite the State to participate in any such review undertaken by the Parties by notifying the following representative of the State in writing:

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

### Costs of Review

19.3 Subject to clause 19.4, the Parties will bear their own costs, including legal costs, associated with the review of this Agreement.

19.4 If, as a result of a review of this Agreement under clause 19, the Proponent requires Tjiwarl AC to consider proposed amendments to the Agreement, the Proponent shall pay the reasonable costs of Tjiwarl AC incurred to consider such amendments, including the reasonable costs of legal advice and representation.

**EXECUTED** by the parties as an agreement

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Full name of Director (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

PROPONENT<sup>1</sup>

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

\_\_\_\_\_  
Signature of [*insert Explorer name*]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

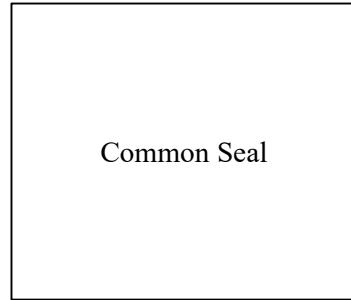
\_\_\_\_\_  
<sup>1</sup> Delete this footnote, the heading and the execution clauses for the Explorer that are not applicable.

**OR IF THE PROPONENT IS A COMPANY**

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

WITH A COMMON SEAL

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



---

Signature of Director

---

Signature of Director / Secretary\*

\*delete whichever is not applicable

---

Full name of Director (print)

---

Full name (print)

---

Date

---

Date

WITHOUT A COMMON SEAL

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

---

Signature of Director

---

Signature of Director / Secretary\*

\*delete whichever is not applicable

---

Full name of Director (print)

---

Full name (print)

---

Date

---

Date



SOLE PROPRIETOR COMPANY

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

---

Signature of Director  
(as sole Director and Secretary)

---

Full name (print)

---

Date

## Schedule 1 – Details of the Tjiwarl Heritage Agreement

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

## **Schedule 2 – Heritage Protection**

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### **1. Interpretation**

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

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

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

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

### **3. Where Non-Ground Disturbing Activity May Be Undertaken**

If:

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

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

### **4. Notification of Intention to Undertake Ground Disturbing Activity**

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

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

## **5. Consultation about whether a Survey is required**

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

- (d) The Proponent shall provide Tjiwarl AC with a copy of any report containing the results of any survey on which the Proponent wants to rely in consultations pursuant to clause 5(a).
- (e) If, after the Parties have consulted pursuant to clause 5(a):
  - (i) the Parties agree that a survey has been conducted over the Work Area within the previous five years and, having regard to the factors in clause 5(c), the Parties agree that the previous survey was insufficient to determine which parts of the Work Area are Cleared Areas for the conduct of the Ground Disturbing Activity identified in the relevant Work Program; or
  - (ii) the Parties agree that no survey has been conducted over the Work Area within the previous five years and Tjiwarl AC, having considered the factors set out in clause 5(c), reasonably determines that a Survey is required; or
  - (iii) the Proponent requests,  
Tjiwarl AC shall arrange for a Survey over the proposed Work Area.
- (f) To avoid doubt, if a survey has been conducted over the Work Area within the previous five years and the Parties cannot reach agreement on whether that survey was sufficient in accordance with clause 5(e)(i), either Party may refer the matter to the dispute resolution process in clause 13 of the Agreement.

## **6. Conduct of Survey**

- (a) Tjiwarl AC shall use its best endeavours to arrange for the Survey to commence no later than twenty (20) Business Days after the Proponent has accepted the estimate of costs pursuant to clause 8(b) subject to:
  - (i) any delays by the Proponent pursuant to clause 8(b)(ii);
  - (ii) the exclusions in clause 12.1 of the Agreement; or
  - (iii) the Parties agreeing otherwise.
- (b) In relation to any Survey:
  - (i) Tjiwarl AC shall:
    - (A) appoint a Survey Team to conduct the Survey on behalf of Tjiwarl AC; and
    - (B) use its best endeavours to ensure that the Survey Team diligently completes the fieldwork component of the Survey as soon as practicable; and

- (ii) subject to clause 7(d), the Proponent will confirm the name(s) of the Proponent's Nominee(s) to accompany the Survey Team.
- (c) If the Survey Team considers it likely that there are Aboriginal Objects in a Work Area, the Survey Team may recommend that a Heritage Monitoring Team monitor the conduct of all or some types of Ground Disturbing Activity in all or part of that Work Area.

## **7. The Survey Team**

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

## 8. Survey Payments and Costs

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



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

## 9. Survey Report

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

## 10. Intellectual Property

All intellectual property rights in:

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

## 11. Where Ground Disturbing Activity may be undertaken

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

- (b) If:
- (i) the Proponent has notified Tjiwarl AC of the proposed Ground Disturbing Activity in a Work Program provided in accordance with clause 4; and
  - (ii) the Parties agree, after consultations pursuant to clause 5(a), that a Survey is not required,
- then the Proponent may undertake that Ground Disturbing Activity, as identified in the relevant Work Program, except in areas identified by any previous survey relied on by the Parties to not be cleared for such Activities.

## **12. Heritage Monitoring**

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

### **13. No employment or agency relationship**

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

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

### **14. If the Proponent finds an Aboriginal Site or Object**

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

### **15. Consent to section 16 or 18 AHA applications**

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

## **Schedule 3 – Contents of Survey Reports**

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### **1. Copyright / Confidentiality**

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

### **2. Assessment Personnel**

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

### **3. Survey Date(s)**

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

### **4. Survey Information**

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

### **5. Heritage Monitors**

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

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

## **Item B – Instructions for completing Tjiwarl Heritage Agreement**

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The following is a guide for completing and executing the Tjiwarl Heritage Agreement. Please read this guide before attempting to complete the Tjiwarl Heritage Agreement as errors may render the Agreement invalid or may result in Tjiwarl AC declining to execute the Agreement

### **1. Form of the Tjiwarl Heritage Agreement**

- (a) Tjiwarl AC will execute the Tjiwarl Heritage Agreement only in the form provided by the Tjiwarl Palyakuwa (Agreement). Do not amend or otherwise attempt to change the document without the prior agreement of Tjiwarl AC. Tjiwarl AC is not obliged to consider, or agree to, any changes to the standard form of the Agreement contained in the Tjiwarl Palyakuwa (Agreement).
- (b) The Tjiwarl Heritage Agreement has been designed to be submitted as an original document, but in the event of the Tjiwarl Heritage Agreement being re-typed, every care should be taken to avoid errors.

### **2. Completing the Tjiwarl Heritage Agreement**

- (a) Only the holder of the Tenure (the Proponent), Tjiwarl AC, and those duly authorised by a power of attorney can sign the Agreement.
- (b) All parties must sign in accordance with their governing Articles of Association, except for individuals (whose signature must be witnessed).
- (c) All signatures must be witnessed by an independent party to the document.
- (d) Do not fill in the date in item 1 of the Schedule. This will be filled in with the date on which Tjiwarl AC signs the Tjiwarl Heritage Agreement.
- (e) Any changes or alterations must be initialled by all parties to the Tjiwarl Heritage Agreement.

### **3. Provision of the Tjiwarl Heritage Agreement**

- (a) It is important to forward the Tjiwarl Heritage Agreement to Tjiwarl AC for execution as soon as possible.
- (b) If you have any queries in relation to the completion of this Agreement or require further copies please contact Tjiwarl AC (at the address provided in clause 14 of the Tjiwarl Heritage Agreement).

#### **4. Checklist for the Tjiwarl Heritage Agreement**

Have you ensured that:

- The Tjiwarl Heritage Agreement is in the correct form and has not been amended without the prior agreement of Tjiwarl AC?
- Any changes or alterations to the Tjiwarl Heritage Agreement have been initialled by all Parties?
- Schedule 1 has been completed?
- The Proponent has signed the document and where appropriate the company seal has been included?
- The Explorer's signature has been witnessed (if the Proponent is an individual)?
- Tjiwarl AC has signed the document?