**[Insert “The Miner” Details]**

(If applicable - ACN: )

**and**

 **[Insert “The Determined Native Title Holder” or “The Native Title Claimant Group” Details]**

**REGIONAL STANDARD HERITAGE PROTECTION AND MINERAL EXPLORATION AGREEMENT**

**for**

**[Insert the Native Title Lands/People]**

**of**

**the MID-WEST and PILBARA Regions**

**(ARB 12 and ARB 14)**

|  |
| --- |
| **TENEMENTS COVERED BY THIS AGREEMENT** |
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|  |  |  |  |  |

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**REGIONAL STANDARD HERITAGE PROTECTION AND MINERAL EXPLORATION AGREEMENT**

**DATE OF AGREEMENT:**

**PARTIES:**

**[Insert Determined Native Title Holder or Claimant Group details or AUTHORISED AGENT]** (ABN: ) of [Insert Postal address for service];

and

**[Insert “The Miner” applicant details]** (If applicable - ACN: ) of

[Insert Postal address for service] (“**Miner**”)

**BACKGROUND:**

1. The Yamatji Marlpa Aboriginal Corporation ("YMAC") is the native title representative body for the Geraldton and Pilbara representative areas under the *Native Title Act 1993* ("NTA").
2. 1 - The Claimant Group (if applicable) has lodged an application for a determination of native title (WC \_\_\_\_ / \_\_\_\_) that has been registered by the National Native Title Tribunal pursuant to the NTA (“the Claim”) or,

2 – The Determined Native Title Holder (if applicable) has been determined to hold native title (WCD\_\_\_\_ / \_\_\_\_) as made on [insert date of determination] by the Full Court of the Federal Court (“the Determination”).

1. The Claim or Determination Area is wholly or partially located within the area for which the YMAC is the representative body.
2. The YMAC represents the Claimant Group in the prosecution of their Claim pursuant to its statutory functions and is the duly appointed agent of the Claimant Group in respect of this Agreement.
3. The subject matter of this Agreement is a matter arising under the NTA in relation to the Claim or Determination Area.
4. The Miner has made Tenement Application(s) for Exploration tenure within the Claim or Determination Area.
5. The Parties have agreed to enter this Agreement to ensure:
	1. the expeditious grant and validity of the Exploration Tenements without Objection by the Native Title Party (or if there are any existing Objections, to ensure that they are withdrawn immediately); and
	2. that the grant of the Exploration Tenements and the exercise of the rights under those Exploration Tenements will:
		1. not be likely to interfere directly with the community life of the Native Title Party;
		2. where practicable and in accordance with the law, avoid damage, disturbance or interference with areas or sites of particular significance to the Native Title Party; and
		3. be in compliance with the provisions of the *Aboriginal Heritage Act* 1972 and the *Aboriginal and Torres Strait Islander Heritage Act* 1984 (Cth).
6. The processes in this Agreement are intended to:
	1. allow the Native Title Party to maintain its cultural obligations over country in accordance with traditional law and custom;
	2. provide a basis for a mutually beneficial future relationship;
	3. enable each party to make informed decisions about their respective interests; and
	4. be transparent, timely, certain and cost effective for all Parties in protecting Aboriginal heritage in areas where prospecting and exploration takes place.
7. The generic form of this Agreement was negotiated by the Yamatji-Pilbara Heritage Protection Working Group, a subdivision of the State Heritage Protection Working Group comprised of representatives of the YMAC, the State, the National Native Title Tribunal and peak industry bodies, which itself was formed as a recommendation of the Technical Taskforce on Mineral Tenements and Land Title Applications.

**IT IS HEREBY AGREED:**

**DEFINITIONS AND INTERPRETATIONS**

**1 DEFINITIONS**

## In this Agreement, including the schedules and attachments, unless the contrary intention appears

**ACMC** means the Aboriginal Cultural Material Committee referred to in the Heritage Act.

**Aboriginal Site** means land or waters which are of cultural, social, or spiritual significance to Aboriginal persons traditionally responsible for that land or those waters, and includes:

1. any *“Aboriginal Site”* as defined in the Heritage Act*;* or
2. any *“Significant Aboriginal Area”* or *“Significant Aboriginal Object”* as defined in the Federal Heritage Act; or
3. any *“site of particular significance”* within the meaning of s.237(b) of the NTA, whether recorded or not.

**Agreement** means this document, including the recitals and schedules, as amended from time to time by agreement in writing of the Parties.

**Applicant** means the persons recorded on the Register of Native Title Claims in relation to the Claim as amended from time to time.

**Calendar Quarter** means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year.

**Claim** means the **Claim** referred to in Background B1 (if applicable)

**Claim Area** means the land and waters the subject of the **Claim**.

**Claimant Group** see Native Title Party.

**CPI** means, in respect of a Calendar Quarter, the Consumer Price Index Groups index number for the weighted average of 8 capital cities published by the Australian Bureau of Statistics (excluding the GST impact) under catalogue number 6401.0 for that Calendar Quarter.

**Current Work Program** means any Exploration Activity described in a Heritage Notice that the Proponent identifies as activity it has planned and intends to conduct.

**Determination** means the Determined Native Title Holder referred to in Background B2 (if applicable)

**Determination Area** means the land and waters subject to the Determination.

**Determined Native Title Holder** see Native Title Party.

**Exploration Activity** means any activity that may be conducted on an Exploration Tenement pursuant to the *Mining Act* 1978.

**Exploration Tenement** means the Tenement Application(s) when granted.

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

**Heritage Consultant** means a suitably qualified person engaged pursuant to this Agreement to carry out one or more Heritage Surveys.

**Heritage Information** means information provided by the Native Title Party during the course of, or in relation to, a Heritage Survey including that information contained in any report.

**Heritage Manager** means the person employed as Heritage Manager by the YMAC or any person acting in that position.

**Heritage Notice** means a notice issued to the Native Title Party by the Miner pursuant to clause 7 and substantially in the form explained in Schedule 1.

**Heritage Officer** means a suitably qualified person employed by the YMAC to carry out Heritage Surveys under the supervision of the Heritage Manager.

**Heritage Survey** means a survey conducted pursuant to this Agreement.

**Low Impact Exploration** includesaerial surveys, geological mapping, metal detecting, rock chip, hand specimen and soil and drainage sampling, only using hand-held tools and non-ground disturbing geophysical surveys including electrical and magnetic surveys and incidental activities.

**Map** means a map of the area the subject of the proposed Heritage Survey, on the scale of 1:250,000 or greater depicting relevant cadastral and topographic features.

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

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

**Native Title Party** means either (whichever is applicable to this agreement):

1. the Claimant Group referred to in Background B1, or
2. the Determined Native Title Holder referred to in Background B2.

**Objection** includes any objection:

* + - 1. under section 32(3) of the NTA to the inclusion in a notice under section 29 of the NTA of a statement that an act is an act attracting the Expedited Procedure; or
			2. to the grant of an Exploration Tenement under the provisions of the Mining Act.

**Parties** means all parties to this Agreement and their respective successors and permitted assigns.

**Survey Report** means a report arising out of a Heritage Survey as set out in clause 11 and Schedule 3 of this Agreement.

**Tenement Application** means the application(s) numbered **[Insert Tenement ID’s]** for a prospecting, special prospecting, exploration licence or retention licence pursuant to the Mining Act, depicted on the attached colour topographic map.

**Traditional Owners** means those Native Title Claimants or Determined Native Title Holders (as the case may be) who have in accordance with Aboriginal tradition, a social, economic and spiritual affiliation with and responsibilities for all or any part of the Lands over which the Tenements overlap.

**2 INTERPRETATION**

Headings and margin notes are for convenience only and do not affect interpretation. The following rules also apply in interpreting this Agreement unless the context makes it clear that a rule is not intended to apply:

* 1. Words defined in the NTA and the Heritage Act have the same meaning in this Agreement unless the context otherwise requires.
	2. A reference to a document, agreement or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced.
	3. The singular includes the plural and conversely.
	4. Any reference to gender includes both genders.
	5. If a word is defined, its other grammatical forms have a corresponding meaning.
	6. A reference to a person includes any corporation, trust, partnership, unincorporated body or other entity, whether or not it is incorporated or has a separate legal entity.
	7. A reference to a clause or Schedule is a reference to a clause or schedule of this Agreement.
	8. A reference to a Party to this Agreement or another agreement or document includes the Party’s successors, permitted substitutes and permitted assigns (and, where applicable, to Party’s legal personal representatives).
	9. A reference to legislation or to a provision of legislation is a reference to that legislation as amended, replaced or re-enacted and includes any subordinate legislation issued under it.
	10. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing.
	11. *‘Including’* means including but not limited to.
	12. A reference to anything is a reference to the whole of or any part of it and a reference to a group of persons is a reference to one or more of them.

**3 TIME**

 3.1 The Parties must co-operate to complete the processes contemplated by this Agreement expeditiously.

 3.2 The Parties also acknowledge that members of the Native Title Party may have cultural obligations that means some of the time frames specified in this Agreement may need to be extended for a reasonable time to take account of those traditional responsibilities.

1. **AUTHORITY TO ENTER THIS AGREEMENT**

4.1 YMAC warrants that it has been authorised by the Applicants in the Claim to act as their agent for the purposes of executing this Agreement and for undertaking and performing the obligations imposed by this Agreement.

4.2 This Agreement and a Heritage Survey completed in accordance with the terms of this Agreement shall be binding on the Applicants acting in that capacity pursuant to section 62A of the NTA.

1. **EXCHANGE OF INFORMATION**
	1. The Parties acknowledge the importance of a regular flow of information between the Miner and the Native Title Party, to ensure that people within the Native Title Party know what is going on, to avoid misunderstandings, to enable informed decisions to be made and in order that the desired outcomes are achieved. In accordance with this objective:
		1. The Miner will use its best endeavours to provide the Native Title Party each year with an outline of the nature, location and timing of Exploration Activities in the Claim/Determined Area on the Exploration Tenements (including Low Impact Exploration Activities) proposed for that year, prior to conducting those activities.
		2. The Miner will provide reasonable notice to the Native Title Party of any significant change to the scope of Exploration Activities notified under clause 5.1 (a).
		3. If requested by the Native Title Party, the Miner will provide an outline of the nature, location and timing of Exploration Activities to be undertaken in the Claim/Determined Area on the Exploration Tenements in the next exploration season, to the extent that such information is known to the Miner.
		4. Where, as a result of receiving the above information the Native Title Party becomes aware of any particular cultural heritage concern arising from a proposal to conduct the relevant Exploration Activity, the Native Title Party will use its reasonable endeavours to raise those concerns with the Miner if practicable.
2. **CIRCUMSTANCES WHEN NO SURVEY REQUIRED**
	1. The Miner may carry out Low Impact Exploration in the Claim/Determined Area on the Exploration Tenements without conducting a Heritage Survey on any area that is not recorded as a Protected Area under the Heritage Act*,* provided the requirements of clause 5.1 (a) are complied with.
	2. The Miner may also carry out Exploration Activity in the Claim/Determined Area on the Exploration Tenements without conducting a Heritage Survey despite clause 7 where:
		1. after consultation the Parties so agree;
		2. the Native Title Party waives all or part of its rights under this Agreement; or
		3. in the circumstances described in clause 7.2 (b). This means that once a Heritage Survey has been conducted, the area/Exploration Activity the subject of the Heritage Survey do not need to be the subject of another Heritage Survey (unless the Parties agree otherwise).
	3. Nothing in this Agreement purports to authorise any act or omission that would be in breach of the Heritage Act.
3. **THE HERITAGE NOTICE**

7.1 Except where excluded by clause 7.2, if the Miner intends to undertake Exploration Activity in the Claim/Determined Area on the Exploration Tenements, it must issue a Heritage Notice to the Native Title Party. The purpose of a Heritage Notice is to determine whether a Heritage Survey is required and if so, what kind.

* 1. Clause 7.1 does not apply to any Exploration Activity which is:

		1. an activity to which clause 6 applies; or
		2. an activity:

			1. that has been the subject of a previous Heritage Notice; and
			2. to which the provisions of this Agreement have already been applied.
1. **CONSIDERING THE HERITAGE NOTICE: WHEN WILL A SURVEY BE REQUIRED?**
	1. Where the Miner submits a Heritage Notice, the Parties will consult with each other to determine whether a Heritage Survey is required, in which consultation the following binding rules and non-binding presumptions will apply:

		1. Where no previous heritage survey (whether under this Agreement or otherwise) has been undertaken in relation to the area of the Exploration Tenement, a Heritage Survey is required unless otherwise agreed or waived in accordance with clause 6.2 (a) or 6.2 (b).
		2. Where a previous Heritage Survey has occurred on the Exploration Tenement, but has not covered the area/proposed Exploration Activity the subject of the Heritage Notice, a Heritage Survey is required unless otherwise agreed or waived in accordance with clause 6.2 (a) or 6.2 (b) or unless clause 8.1(c) applies.
		3. Where a previous heritage survey (not conducted under this Agreement) has prima facie covered the area/proposed Exploration Activity the subject of the Heritage Notice, there is no presumption either way but:
2. subject to confidentiality provisions, the Miner must provide by way of notice a copy of the previous heritage survey to the Native Title Party; and
3. the Parties must endeavour to reach agreement about whether a Heritage Survey is required.

	* 1. Where this Agreement does not deal with the particular circumstance, there is a presumption that a Heritage Survey is required.
	1. If the Parties cannot reach agreement about whether a Heritage Survey is required under clause 8.1 (c) or 8.1 (d), either Party may invoke the dispute resolution provisions of this Agreement.
	2. Subject to the presumptions and rules in clause 8.1, in determining whether a Heritage Survey is required, the Parties will have regard to the following factors:
		1. The nature of the Exploration Activity outlined in the Heritage Notice and any anticipated development identified;
		2. Whether there has been any previous Heritage Survey or other ethnographic heritage survey and the age, methodology, participants, standard and results of that survey;
		3. The extent to which the land has been affected by previous ground disturbing activities;
		4. Whether the register maintained by the Department of Planning, Lands and Heritage discloses any Aboriginal Sites on the relevant land;
		5. Any relevant matter relating to the Native Title Party practices, laws and customs; and
		6. Any other relevant factor raised by any of the Parties.
	3. Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Heritage Notice.
4. **SURVEY METHODOLOGY**
	1. If after the consultation about the Heritage Notice set out in clause 8 above it is determined by the Parties that a Heritage Survey is required, the methodology to be adopted and the report delivered will be in accordance with this clause.
	2. Subject to clause 9.3 but otherwise despite anything else in this Agreement, the Native Title Party is not obliged to provide culturally sensitive information.
	3. The information provided by the Native Title Party and recorded a Survey Report will be determined as follows:
		1. Where the Miner provides details in its Heritage Notice only of a particular Exploration Activity to be undertaken pursuant to its Current Work Program, the Survey Report will clearly indicate (using maps and co-ordinates) that part of the Exploration Activity that is cleared or not cleared. Should the proposed activities change then a new Heritage Notice will need to be issued.

b) Where the Miner provides details in its Heritage Notice of a range of possible Exploration Activities in an area (including activities outside its Current Work Program), the Survey Report will clearly indicate (using maps and co-ordinates) any parts of that area to be avoided because they contain Aboriginal Sites.

c) Where any of the following applies:

(i) a survey has been conducted and a Survey Report completed pursuant to 9.3 (a) or 9.3 (b) above;

(ii) an ethnographic survey in relation to the relevant area which the Native Title Party accepts as valid has been completed; or

* + - 1. the Miner has conducted or proposes in a Current Work Program in a Heritage Notice drilling involving the construction of drill pads;

and the Miner provides details in its Heritage Notice of possible future developments (outside what is permitted by the Exploration Tenements, such as the possible location of a mine), the Survey Report will give a clear indication of the ethnographic landscape, such that the grantee can understand the heritage situation in order to facilitate development. This will include a description (using maps and co-ordinates) of:

1. the location and nature of any Aboriginal Sites which, in the view of the Native Title Party, are of sufficient significance that they may need to be considered in planning the possible future developments described in the Heritage Notice; but

2. for the avoidance of doubt, the Survey Report need not include information to the level of detail sufficient to enable the Minister to determine a section 18 notice for permission to disturb or destroy an Aboriginal Site under the Heritage Act.

1. **THE HERITAGE SURVEY**

10.1 The survey team shall consist of:

a) the Heritage Officer or a Heritage Consultant;

b) such Traditional Owners as advised by the Heritage Manager**[[1]](#footnote-1),** as are necessary to examine and assist in the survey; and

c) an Aboriginal Liaison Officer, if required.

10.2 The Miner will send a nominee(s) with appropriate qualifications and authority on the survey to assist the person conducting the survey with information and direction where required.

10.3 Prior to commencement of the survey the Native Title Party shall submit an estimate of the costs to the Miner for its approval.

10.4 The Miner shall pay the costs and expenses of the Heritage Survey set at the rates set out in Schedule 2 to this Agreement.

10.5 The Miner agrees to pay in advance of the commencement of the survey the following components of the approved estimated costs:

(a) 50% of the estimated administration fee; and

* + 1. any disbursements that are to be paid by the Native Title Party prior to the fieldwork component of the survey being completed.

If the survey is cancelled by the Miner before it is completed, the part of the administration fee that has been advanced and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Miner.

10.6 The balance of the survey costs will be paid within 21 days after the Survey Report is delivered. The tax invoice of the survey costs must reconcile the costs advanced with the costs incurred.

10.7 If the Miner has, on reasonable grounds (which will not include the mere fact that the person is employed by the Native Title Party), concerns about the person to be appointed pursuant to clause 10.1 (a), they may request the Heritage Manager to consider another person identified by the Miner to conduct the survey. If after meeting to discuss the issue, the Miner and the Heritage Manager do not agree as to who should conduct the survey, either party may refer the matter to the President of the National Native Title Tribunal or a member of the National Native Title Tribunal who is agreed to by the Parties who will choose from the persons nominated, a person to conduct the survey.

1. **SURVEY REPORT**
	1. The Heritage Consultant will provide the Parties with:
		1. preliminary advice recording the results of the Heritage Survey as soon as reasonably practicable;

b) a draft Survey Report as soon as reasonably practicable to enable them to comment on it; and

c) a final Survey Report as soon as reasonably practicable after the Native Title Party have had an opportunity to consider the draft Survey Report, through its usual decision making structure.

11.2 In accordance with clause 9 the Survey Report will record sufficient information to enable the Miner to plan and (subject to the Law and this Agreement) undertake the things that are the subject of the Heritage Notice.

11.3 Unless otherwise agreed the Survey Report will substantially be in the form of Schedule 3.

11.4 The Survey Report (in a form that can be relied upon by the Miner) must, subject to clause 11.5, be provided to the Miner within 90 days of the delivery of the relevant Heritage Notice to the Native Title Party.

11.5 Delay caused by any of the following matters will be excluded from the 90 day period referred to in clause 11.4:

* + - * 1. circumstances beyond the control of YMAC and/or the Native Title Party;
				2. the cultural responsibilities (such as law business or funerals) of the Native Title Party;
				3. the Parties’ bona fide compliance with dispute resolution processes in this Agreement;
				4. consultations undertaken by the Parties in compliance with clause 8; and
				5. the acts or omissions of the Miner.

11.6 A Party asserting the existence of a delay to which clause 11.4 applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

11.7 For the avoidance of doubt, if the Survey Report is not delivered as required by this clause, the Miner will be released from its obligations under this Agreement in relation to the matters the subject of the relevant Heritage Notice.

1. **HERITAGE INFORMATION**

12.1 **Heritage Information remains property of the Native Title Party**

Heritage Information remains the intellectual property of the Native Title Party.

12.2 **No Heritage Information to be released**

Except as provided in clause 20.2 no Heritage Information shall be recorded or released to any person or entity whatsoever, without the express written permission of the Native Title Party.

12.3 **Acknowledgment of Unrelated information**

In the course of the Heritage Survey being conducted the Heritage Officer may obtain or cause to be obtained, information in relation to the Claim/Determination that is not related to the purpose of the Heritage Survey. Such information is separate from the Heritage Survey and is confidential to the Native Title Party.

12.4 **No use of Information in determination of the Claim**

The Miner will not use any information from the Native Title Party of which it becomes aware as a result of the conduct of the Heritage Survey in the Claim/Determination proceedings brought by the Native Title Party.

1. **NO EXTINGUISHMENT OF NATIVE TITLE**

Nothing in this Agreement is intended to or will in any way derogate from the native title rights and interests of the Native Title Party and that the non-extinguishment principle will apply to Exploration Tenements.

1. **SECTION 18 APPLICATIONS**

14.1 The Miner shall not give notice under section 18 of the Heritage Act over any area within the Exploration Tenements without first giving the Native Title Party at least 30 days’ notice of its intention to do so.

14.2 The Miner must consult, including by making reasonable efforts to meet with the Native Title Party, about any proposal that is the subject of such a notice.

14.3 Prior to the ACMC considering such a notice, the Miner must give reasonable notice to the ACMC and Native Title Party of the detail of consultation that has taken place.

1. **NO OBJECTIONS TO TENEMENT APPLICATIONS**

The Native Title Party will:

* + 1. withdraw any existing Objection to the grant of any Tenement Applications within 7 days after the date of this Agreement;
		2. not make any further Objection to the grant of the Tenement Applications; and
		3. enter into any further or supplementary agreement (including an agreement of the type referred to in section 31 of the NTA) necessary to perfect the grant of Tenement Applications from time to time.
1. **ASSIGNMENT**

16.1 The Miner may from time to time assign to any person (whether by farm-out, joint venture, sale or otherwise) all or any part of its rights under this Agreement, but must first procure an executed deed of assumption in favour of the Native Title Party by which the assignee, to the extent of the assignment, agrees to be bound, alone or jointly with the Miner, as the case may be, by the provisions of this Agreement and to assume, observe and perform (alone or jointly with the Miner, as the case may be) the obligations of the Miner under the Agreement.

16.2 If the Miner makes an assignment in accordance with sub-clause (a) then the Miner is released from its obligations under this Agreement to the extent of the assignment.

1. **NOTICES**
	1. Unless this Agreement expressly states that the Parties may communicate in a different way, the Parties must communicate by written notice.
		* 1. For the purpose of this clause the address or email address to which notices are to be sent shall be:

**[The Miner]**

Postal Address:

Phone:

Email:

Attention:

**[The Determined Native Title Holder (If applicable)]**

Postal Address:

Phone:

Email:

Attention:

**[The Native Title Claim Group, or Authorised Agent]**

Postal Address:

Phone:

Email:

Attention:

* + - 1. Subject to a negative notification, a notice sent by email is received when the sender receives a delivery status notification form the recipient’s email server.
			2. A notice takes effect at the time stated in the notice.
			3. If no time is stated or the time is before receipt, than a notice takes effect upon receipt.
			4. A Party may vary its address by sending a written notice to the other Party.
			5. A Party must use the new address from the time that it receives the notice.

1. **DISPUTE RESOLUTION**

18.1 If a dispute arises under this Agreement, before resorting to external dispute resolution mechanisms, the Parties shall attempt to resolve the dispute pursuant to this clause.

18.2 Either Party may give the other Party notice of a dispute, whereupon the dispute will be submitted to the dispute resolution process described in this clause.

18.3 Any dispute shall be dealt with in the following manner:

* + 1. The dispute shall be referred initially to a nominated officer of the Miner and Principal Legal Officer of the YMAC or Determined Holder;
		2. If the representatives of the Parties are unable to resolve the dispute within 20 working days or such other period as mutually agreed, the dispute must (subject to clause 18.3 (c)) be referred to mediation in accordance with this clause;
		3. If the Parties agree, the matter may be referred to arbitration instead of mediation or after the mediation is concluded;
		4. Any mediation shall be conducted by a single mediator to be appointed in the absence of agreement by the Parties by the President of the Law Society of Western Australia. Unless otherwise agreed, the mediation shall take place at a location of the Native Title Party’s choosing that is within a town or regional centre in Western Australia.

18.4 If the dispute is not resolved by mediation with 55 working days (or such longer period as the Parties may agree in writing) after formal notice of the dispute was given to the other Party either Party may take whatever action is available to it under the general law.

1. **DEFAULT**

19.1 If one Party makes a material breach of this Agreement, including any warranty or representation, the other Party may give written notice of the breach to the defaulting Party.

19.2 If the breach is not remedied (if it is capable of being remedied) within 60 days after notice has been given, the Party giving the notice may give written notice to the other party terminate this Agreement.

1. **CONFIDENTIALITY**

20.1 **Confidential Information**

* + - 1. Subject to the following subclauses, the following information is confidential:

(i) any report or Heritage Information provided under or pursuant to this Agreement; and

(ii) information given by the Miner to the other Parties in respect of its Exploration Activity.

20.2 **Disclosure**

1. A Party may divulge confidential information to a third party:

(i) with the prior consent of the Party which provided the information;

(ii) to the extent required by any law or applicable securities regulation or rule;

(iii) to the extent that the information is relevant to any processes or applications under any native title laws (but not including proceedings concerning the Claim/Determination) or Government approvals;

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

(v) being an employee or legal advisor of the Party, or a Heritage Consultant appointed pursuant to this Agreement;

(vi) who is an employee of or contractor to the Miner for the purpose of managing or planning any existing, planned or potential activity on the land the subject of the Exploration Tenements;

(vii) to the extent that the information is already in, or comes into, the public domain otherwise than by breach of this clause; and

(viii) as otherwise permitted or required by the terms of this Agreement.

1. The Miner may also disclose this Agreement to a bona fide proposed assignee of the Miner and to any employee, officer, financier, joint venture partner or related body corporate of the Miner.
2. The rights of the Parties under this clause survive the termination of this Agreement.
3. **GENERAL**

21.1 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes and cancels all existing agreements, letters of intent and undertakings including correspondence, negotiations and communications between the Parties.

21.2 **Waiver and Variation**

a) A provision of or a right created under this Agreement may not be:

1. waived except in writing signed by the Party granting the waiver; or
2. varied except in writing signed by the Parties.

b) The Parties record their understanding that there will, from time to time, be reviews of the overall heritage administration framework of which this Agreement forms part as identified in Background I, which will be conducted by relevant peak bodies including the YMAC.

c) When a review occurs pursuant to clause 21.2 (b) and has identified shortcomings within agreements like this one, the Parties will, in good faith, jointly consider making a variation to this Agreement in accordance with the recommendation of the review. However, neither Party will be obliged to agree to a variation of this Agreement.

* 1. **Termination**

This Agreement may be terminated in any of the following ways:

* 1. by the mutual agreement of the Parties;
	2. in accordance with clause 19.2; or
	3. subject to clause 16, where the Miner ceases to have any interest in any of the Exploration Tenements, whichever is the earlier.

21.4 **Further Assurances**

Each Party will, on the request of the other Party, execute agreements, deeds and other documents and do everything reasonably necessary to give effect to this Agreement.

21.5 **Severance**

If any part of this Agreement is or becomes unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect or are unaffected by that severance. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

21.6 **Stamp Duty**

The Miner will pay any and all stamp duty assessed in relation to this Agreement and will attend to all stamping requirements.

21.7 **Governing Law**

This Agreement is subject to the laws of Western Australia and of the Commonwealth of Australia as applicable in Western Australia. The Parties submit to the non-exclusive jurisdiction of the courts having jurisdiction in the State.

21.8 **Counterparts**

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

21.9 **Address for Notices**

Subject to this Agreement, any agreement, advice, notice, request, consent, proposal, modification, waiver, approval, allowance or other communication or any document to be given under this Agreement must be in writing to the addresses specified in the Notice clauses of this Agreement or to such other address as a Party may nominate in writing to the other Party.

1. **GOODS AND SERVICES TAX**

22.1 Words defined in *A New Tax System (Goods and Services Tax)* Act 1999 (Cth) have the same meaning in this clause unless the context otherwise requires.

22.2 **GST‑exclusive amounts**

All consideration in respect of a supply under this Agreement is exclusive of GST except to the extent that it is expressed to include GST.

22.3 **GST payable in addition to consideration**

If GST is imposed on or in respect of any supply under or in connection with this Agreement by one party (the "**Supplier**") to another party (the "**Recipient**"), then in addition to paying the consideration for that supply, the Recipient must:

1. pay to the Supplier an amount equal to any GST payable on any supply by the Supplier under or in connection with this Agreement, without deduction or set‑off of any other amount; and
2. make that payment as and when the consideration or part of it must be paid or provided, except that the Recipient need not pay unless the Recipient has received a tax invoice (or an adjustment note) for that supply.

22.4 **Tax invoice**

The Supplier must issue a tax invoice (or an adjustment note) to the Recipient for any supply for which the Supplier may recover GST from the Recipient under this Agreement, and must include in the tax invoice (or adjustment note) the particulars required by the GST law.

22.5 **Adjustments**

The Supplier must promptly create an adjustment note for, and refund to the Recipient, the amount of any overpayment by the Recipient for GST.

22.6 **GST on claims**

If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST (except any GST for which that Party is entitled to an input tax credit).

**EXECUTION PROVISIONS**

**THE MINER**

**IF AN INDIVIDUAL**

**SIGNED by**

Name of Signatory in full Signature of Miner

Signatory’s position

AN AUTHORISED REPRESENTATIVE

AND ON BEHALF OF THE MINER

in the presence of:

Witness name Witness signature

**IF A COMPANY**

In accordance with section 127 of the Corporations Act 2001 (Cth):

**[INSERT COMPANY NAME AND ACN\*\*\*\*]**

Signature of Director Signature of Secretary/Other Director

Name of Director in full Name of Secretary/Other Director in full

**EXECUTION PROVISIONS**

**REGISTERED NATIVE TITLE CLAIMANTS**

**HEREIN REPRESENTED BY [INSERT REPRESENTATIVE]**

**SIGNED ON BEHALF OF THE [INSERT NATIVE TITLE CLAIMANT GROUP]**

**THE COMMON SEAL of [INSERT REPRESENTATIVE]** **ABN: [INSERT ABN NUMBER]** was hereunto affixed in the presence of:

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**EXECUTION PROVISIONS**

**DETERMINED NATIVE TITLE HOLDERS**

**SIGNED ON BEHALF OF THE [INSERT DETERMINED NATIVE TITLE HOLDERS]**

**THE COMMON SEAL** of **[INSERT PRESCRIBED BODY CORPORATE DETAILS]** [ABN: \*\*\*\*\*\*\*\*\*\*] was hereunto affixed in the presence of:

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**SIGNED by**

Name of Authorised Person in full Signature of Authorised Person

ON BEHALF OF THE NTP in the presence of:

Witness name Witness signature

**SCHEDULE 1**

**HERITAGE NOTICE**

In accordance with clause 7 of the Agreement, the purpose of the information provided in and with the Heritage Notice is to determine whether a Heritage Survey is required and if so, its nature and extent. In order to facilitate this objective, a Heritage Notice must at least contain the following:

1. A statement by the Miner as to whether it considers that a Heritage Survey is necessary.
2. Which of the methodologies referred to in Clause 9.3 the Proponent nominates in the event that a Heritage Survey is undertaken.
3. Topographic maps of a reasonable scale showing the area to be surveyed.
4. Aerial photographs (if available) or smaller scale maps.
5. All known vehicular access routes to the Exploration Tenement.
6. Any ground disturbing notice provided to the District Mining Engineer.
7. Details of any Current Work Program, and the area and level of potential Exploration Activity/development on the Exploration Tenement.
8. The techniques and types of infrastructure, items of equipment and vehicles to be used in relation to Exploration Activity.
9. The approximate number of personnel who will be involved in Exploration Activity.
10. Any water, biological or other materials or resources proposed to be obtained from the Exploration Tenement in relation to proposed Exploration Activity.

And may also set out

1. Whether there has been any previous Heritage Survey or other heritage survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that survey.
2. The extent to which the land has been affected by previous ground disturbing activities.
3. Whether the register maintained by the Department of Planning, Lands and Heritage discloses any Aboriginal Sites on the land.
4. Any additional information which explains what sort of survey outcome is being sought and any other background material which will better helps the Native Title Party to understand the potential impacts of what is proposed.

**SCHEDULE 2**

**COSTS FOR THE CONDUCT OF A HERITAGE SURVEY**

**This Schedule is agreed pursuant to an Agreement between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ["the Miner"] and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [“the Native Title Party”], dated [date of Agreement] \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_**.

**It is noted that this is a standard Agreement. Accordingly parties will bear their own costs in relation to preparation and execution. However, if parties make substantial changes to the Agreement then the costs relating to those changes will be a matter for agreement between them on a case-by-case basis.**

**COSTS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  | **ITEM** | **RATE** | **GST** | **DESCRIPTION** |
| **ETHNOGRAPHIC ASSESSMENT** |  |  |  |
| Heritage Officer or Anthropologist  | $600.00 | +GST | per person per day or pro rata for part thereof |
| External Consultant Anthropologist  | At Cost | +GST | per person per day |
| DIA Register of Aboriginal Sites Search | $600.00 | +GST | per person per day or pro rata for part thereof  |
| Aboriginal Liaison Officer (if required) | $400.00 | +GST | per person per day |
| **ARCHAEOLOGICAL ASSESSMENT**(if necessary and agreed) |  |   |   |
| Archaeologist(Archaeological Team) external contractors | At Cost |  |   |
| Fieldwork and reporting | At Cost |   |   |
| **FIELD EXPENSES** |  |   |   |
| Heritage Officer or Anthropologist accommodation/meals | $150.0 At cost | +GST |  |
| Archaeologist or Archaeological Team accommodation/meals | At cost | +GST |  |
| Aboriginal Consultants accommodation/meals | At cost | +GST |  |
| **ABORIGINAL CONSULTANTS** (Traditional Owners – clause 10.1.2) |  |   |   |
| Aboriginal Consultants 4-6 (unless otherwise agreed) | $300.00 (indexed to CPI**[[2]](#footnote-2)**) | +GST | per person per day |
| **TRAVEL EXPENSES** |   |   |   |
| PNTS YMAC Vehicle mileage (km) | $0.70  | +GST | per km |
| Hire Vehicle (if survey vehicle is hired) | commercial rates, plus fuel |  |   |
| Aboriginal Consultants travel expenses(if required) | $0.70 if using a 4WD, or $0.55 if using a 2WD | +GST | per km |
| Airfares | At cost |   |   |
| Taxi travel (to and from airports or meetings) | At cost |   |   |
| **INCIDENTAL EXPENSES** |   |   |   |
| Film, maps, report production and expendables | At cost. Nominal estimate $100-$400 | +GST |   |
| **ADMINISTRATION FEE** |   |   |   |
| Administration Fee(10% of total expenditurecapped at $1,200) |  | +GST |   |
| Disbursements | At cost |  |  |

* *Schedule of Fees may be subject to change if Parties agree*

**INITIALS: NATIVE TITLE PARTY**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**INITIALS: THE PROPONENT:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 3**

**CONTENTS OF SURVEY REPORT**

 The format of the Survey Report will be as follows:

1. **Copyright/Confidentiality**

It will contain a statement to the effect that the Survey Report may only be copied in accordance with the Agreement and subject to other any other restriction agreed to by the Native Title Party and the Miner from time to time.

1. **Who conducted the Survey**
* Name and contact details of the Heritage Officer or Heritage Consultant
* Names of Traditional Owners consulted
* Confirmation that the Traditional Owners speak for the land and waters surveyed
* Names of any other persons who participated in the survey
1. **Survey Date**

The date the fieldwork was conducted

1. **Survey Methodology**

Provide a description of the survey methodology that was adopted (in accordance with clause 10 of the Agreement).

1. **Information in relation to the Area Surveyed**

The Survey Report will contain the information required by clause 11 of the Agreement, including but not limited to:

* + The general location of the area within which the survey was undertaken (possibly by reference to the tenement boundaries, pastoral lease or a map)
	+ Grid references of the area surveyed
	+ Results of search of the sites register at the Department of Planning, Lands and Heritage including the site number and name, if given and the reference number
	+ A description of the fieldwork undertaken
	+ Sufficient information to enable the Miner to plan and (subject to the Law and this Agreement) undertake the things that are the subject of the Heritage Notice including appropriate maps and co-ordinates
	+ Any discussion and recommendations

1. **Survey database information**

 Details of information to be provided to DIA, which will include:

|  |  |  |
| --- | --- | --- |
| **INFORMATION** | **DESCRIPTION OF CONTENT** | **FURTHER COMMENTS** |
| Title of Survey Report | Title of Survey Report containing information on survey. |  |
| Project Name | Project name. |  |
| Proponent | Name(s) of the Proponent |  |
| Consultant Organisation | Lead consultant or consultant group undertaking study. | *This will be the Native Title Party*  |
| Reporting Person(s) | Role in survey: * Author(s)
* Recorder (if not the same as author)

NameGroup/Organisation they representContact Details | *These will include the Heritage Officer and/or Anthropologist and Recorder (if not the same as author)* |
| Survey Date | Date that survey commenced |  |
| Report Date | Date of report  |  |
| Survey Area(s) | * A text description of survey area.
* Boundary to be defined by:
	+ coordinates; or
	+ cadastral or tenement identifier.

The coordinates of survey boundaries, maps and capture of ground coordinates as described in Introductory Notes. |  |

|  |  |  |
| --- | --- | --- |
| Organisation that holds complete report | [Organisation name]  | *This will be the Native Title Party* |
| Aboriginal People Consulted (Native Title Party) | Native Title Party(s) represented  |  |
| Other Participants | Role in survey (e.g. proponent representative)NameGroup/Organisation they representContact details  |  |
| Survey Type | * Archaeological
* Ethnographic
* Both
 |  |
| Survey Methodology | Reference to relevant clause in Agreement  |  |
| Archaeological Method  | Description of archaeological method employed (e.g. sampling strategy); Transect; and/or purposive; and/or random or arbitrary; or none stated. Percentage coverage of survey area. |  |
| Ethnographic Method  | Provide an account of the consultation process (including all informants/ reporters, any potentially relevant people who were not consulted, and why)  | *This will be answered by setting out in short form the process by which the Native Title Party takes instructions on heritage survey participants.* |
| Contact for further information | Name of relevant Native Title Representative Body | *This will be the Native Title Party*  |

# ADDITIONAL SURVEY INFORMATION TO BE PROVIDED TO DPLH IN SITUATIONS WHERE CLIENTS OF YMAC DECIDE TO ‘OPT IN’ TO DISCLOSE SUCH INFORMATION:

|  |
| --- |
| SURVEY CONDUCTED PURSUANT TO CLAUSE 9.3 (a) OF AGREEMENT |
| **INFORMATION**  | **DESCRIPTION OF CONTENT** |
| Aboriginal Consultants (see clause 10.1 (b)) (For each area) | Group/organisation they represent. |
| Name of each area | Names of area(s) if applicable (e.g. drillhole xyz) |
| Area characteristics | * A textual description of each area.
* Boundaries to be defined by coordinates.
	+ The coordinates of each area, maps and capture of ground coordinates as described in the End Notes
 |
| Cleared for activity? Conditions? | * Activity (specify type(s) of activity)
* Activity(s) cleared? Y/N
* Outline any conditions associated with the clearance (if applicable) and/or recommendations for heritage management.
 |

|  |
| --- |
| SURVEY CONDUCTED PURSUANT TO CLAUSE 9.3 (b) OF AGREEMENT |
| **INFORMATION**  | **DESCRIPTION OF CONTENT** |
| Aboriginal Consultants(For each area) | Group/Organisation they represent. |
| Avoidance area(s) | Name of area(s) if applicable |
| Area characteristics | * A textual description of each avoidance area.
* Boundaries to be defined by coordinates.
	+ The coordinates of survey boundaries, maps and capture of ground coordinates as described in the End Notes.
 |
| Conditions or recommendations? | Outline any conditions on the activity proceeding and/or recommendations for heritage management. |

|  |
| --- |
| SURVEY CONDUCTED PURSUANT TO CLAUSE 9.3 (c) OF AGREEMENT |
| **INFORMATION**  | **DESCRIPTION OF CONTENT** |
| Aboriginal Consultants(For each site) | Group/Organisation they represent. |
| Site location and extent | Define location and extent of site with three or more listed coordinate points. The coordinates of site area, maps and capture of ground coordinates are to be as described in the End Notes. |

|  |  |
| --- | --- |
| Site information | Provide a textual description of the site. DPLH’s preference is for sufficient information about the site to be provided to enable the Aboriginal Cultural Material Committee to perform its site evaluation function with reference to sections 5 and 39 of the *Aboriginal Heritage Act 1972.* Optional hyperlink to DPLH site registration form??? |
| Conditions or recommendations? | Outline any conditions on the activity proceeding and/or recommendations for heritage management. |

# END NOTES:

* All coordinates should be expressed in northings and eastings, in Map Grid of Australia (MGA) or Australian Map Grid (AMG) coordinate systems with MGA or AMG Zone details.
* Maps are to include relevant land cadastre, mining tenure (tenement numbers “x” to “z)”, pastoral leases (“abc”), other relevant topography, map scale and north point.
* Ground coordinates should be recorded using GPS, DGPS or terrestrial survey.
1. ***For numbers see Schedule 2*** [↑](#footnote-ref-1)
2. The Aboriginal Consultant’s fee will be adjusted for CPI increases on 1 January each year by multiplying it by:



Where:

	* CPIn is the CPI for the Quarter ending 31 December in the year before each anniversary of 1 January 2003 in respect of which the revised amount is being determined; and
	* CPI4Q2002 is the CPI for the Quarter ending 31 December 2002. [↑](#footnote-ref-2)