ANNEXURE 'B'

**2014**

|  |  |  |
| --- | --- | --- |
|  |  | Esperance Nyungar Proponent Standard Heritage Agreement |
|  |  |  |
|  |  | [XX – Insert name of PBC]  [XX – Insert name of Proponent] |

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Date

|  |
| --- |
| THIS AGREEMENTis made on [XX – Insert date] |

Parties

|  |
| --- |
| [XX - Insert name of PBC] (**PBC**) |
| [XX - Insert name of Proponent] (**Proponent**) |

Recitals

A. The PBC represents the Native Title Group in relation to native title and Aboriginal Heritage matters in the Aboriginal Heritage Area.

B. The Native Title Group and the State are, together with others, parties to the ILUA.

C. The Proponent is the registered holder of the Tenure.

D. In accordance with the ILUA the Tenure has been granted subject to a condition requiring the Proponent to enter into an Aboriginal Heritage Agreement that applies to the Tenure and Activities within the Tenure Area carried out pursuant to that Tenure. This PSHA is one form of Aboriginal Heritage Agreement that the Proponent can enter into in order to comply with that condition.

E. The Proponent has agreed to enter into this PSHA with the PBC to comply with the abovementioned condition imposed on the Tenure.

The Parties agree as follows:

Agreed Terms

1. Definitions and interpretation
   1. Definitions

In this PSHA, unless the contrary intention appears:

**Aboriginal Consultants** means those members of, or persons appointed by or on behalf of the Native Title Group, through the PBC, who have authority to speak for the land and waters the subject of a Survey on behalf of the Native Title Group.

**Aboriginal Cultural Business** means any cultural practice or ceremony associated with the death of a member of the community, including a funeral, or any other ceremony or cultural practice that the members of the Native Title Group are required to attend or that prevents the Native Title Group from attending to day to day business in accordance with traditional laws and customs.

**Aboriginal Heritage** means the cultural heritage value of an Aboriginal Site or of an Aboriginal Object.

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

**Aboriginal Heritage Act Minister** means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Register** means the register of Aboriginal Sites established and maintained under section 38 of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Registrar** means the ‘Registrar of Aboriginal Sites’ appointed under section 37(1) of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Section 16 Application** means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove anything on or under the site.

**Aboriginal Heritage Act Section 18 Application** means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

**Aboriginal Heritage Agreement** means an agreement with the Native Title Group or PBC concerning the management of Aboriginal Heritage and other matters under the Aboriginal Heritage Act with respect to areas in or near the Aboriginal Heritage Area. To avoid doubt, this PSHA is a form of Aboriginal Heritage Agreement, but not for the purposes of paragraph (a)(i) of the condition set out in each of clauses 10.3 and 10.4 of the ILUA.

**Aboriginal Heritage Area** means the area to which this PSHA applies, being the area the subject of the Esperance Nyungar native title determination application (WAD6097/1998) as described in schedule 3.

**Aboriginal Heritage Liaison Officer** means the person appointed under clause 10.1(a)(ii).

**Aboriginal Heritage Service Provider** means the person or company engaged by or on behalf of the Native Title Group, through the PBC, to plan and carry out Surveys for that Native Title Group. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity.

**Aboriginal Heritage Survey** means an ethnographic and/or archaeological survey (including a physical inspection) of an area of land and/or waters in order to avoid possible damage to Aboriginal Site(s) or Aboriginal Object(s). To avoid doubt, an **Aboriginal Heritage Survey** includes a Survey.

**Aboriginal Object** means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

**Aboriginal Site** means a place to which the Aboriginal Heritage Act applies by operation ofsection 5 of the Aboriginal Heritage Act.

**ACMC** means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

**Activity** means any activity, including physical works or operations, involving entry onto the Aboriginal Heritage Area (whether on the surface of the land or waters, or under or over that surface).

**Activity Notice** means a notice issued by the Proponent to the PBC under clause 8.2.

**Activity Notice Date** has the meaning given in clause 8.2(g).

**Activity Notice Response** means notice given by the PBC to the Proponent under clause 8.3(a).

**Activity Program** means all Activities described in an Activity Notice.

**Anthropologist** means a person with an honours degree in anthropology unless otherwise agreed in writing.

**Archaeologist** means a person with an honours degree in archaeology unless otherwise agreed in writing.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**Confidential Information** has the meaning given in clause 19.1.

**CPI** 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 **CPI** shall mean such other index as represents the rise in the cost of living in Perth, Western Australia, as the State reasonably determines after consulting with the PBC.

**CPI** Calculation means:

*A* × 

where:

*A* = the initial base payment under this PSHA as set out in schedule 6

*CPIn* = the latest June quarterly CPI number as published each year by the Australian Bureau of Statistics

*CPIbase* = the June 2014 quarterly CPI number (base quarter) as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

**DAA** has the meaning given to **Department** in section 4 of the Aboriginal Heritage Act and as at the Effective Date is the State's Department of Aboriginal Affairs.

**Determination** means the approved determination of native title described in items 1 to 3 of schedule 2.

**Determination Area** means the area in which native title was held to exist in the Determination. To avoid doubt, the **Determination Area** is the same as the Agreement Area as defined in the ILUA.

**Due Diligence Guidelines** means the Aboriginal heritage due diligence guidelines issued by the Department of the Premier and Cabinet and DAA dated 30 April 2013 and as amended from time to time.

**Effective Date** means the date on which this PSHA comes into force and effect as an agreement between the Parties, as more particularly described in clause 3.1.

**Event of Default** means any of the events described in clause 17.1(b).

**Force Majeure** meansan event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under this Agreement and which is unforeseeable and beyond the reasonable control of the affected Party including:

(a) acts of God;

(b) explosion or fire;

(c) storm or cyclone (of any category);

(d) flood;

(e) landslides;

(f) earthquake or tsunami;

(g) volcanic eruption;

(h) impact of vehicles or aircraft;

(i) failure of a public utility;

(j) epidemic or pandemic;

(k) civil unrest;

(l) industrial action (other than industrial action limited to the affected Party);

(m) war (including civil war);

(n) acts of terrorism;

(o) radioactive or biological contamination;

(p) the effect of any law or authority exercised by government official by law (other than a State law or a State government official),

but does not include:

(i) lack of or inability to use funds for any reason;

(ii) any occurrence which results from the wrongful or negligent act or omission of the affected Party or the failure by the affected Party to act in a reasonable and prudent manner;

(iii) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations, or receive the benefit of the other Party's obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person;

(iv) the failure by a third party to fulfil a contractual commitment with the affected Party other than as a result of any of items (a) to (o) above; or

(v) any act or omission of an agent or contractor of the affected Party.

**GPS** means a global positioning system device.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

**Heritage Information Submission Form** means the form referred to, with website reference, in schedule 8.

**ILUA** means the Indigenous land use agreement described in item 4 of schedule 2.

**ILUA Commencement Date** has the meaning given to ‘Commencement Date’ in clause 1.2 of the ILUA.

**ILUA Execution Date** has the meaning given to ‘Execution Date’ in clause 1.2 of the ILUA.

**Insolvency Event** means where a Party:

1. commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
2. is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth); or
3. is placed under external administration under and for the purposes of Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
4. is unable to pay all its debts as and when they become due and payable.

**Last Fieldwork Day** has the meaning given in clause 12.1.

**LEADR** means the dispute resolution organisation of that name. If LEADR ceases to exist as an organisation, then LEADR shall be taken to mean any other dispute resolution organisation with similar objects agreed by a majority of the Parties to the relevant dispute or, if no majority agreement can be reached, decided by the Party that first notified the relevant dispute.

**Low Ground Disturbance Activity** means any Activity that does not involve major or significant ground disturbance:

1. field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation; and
2. sampling, including removing soil, rock and flora using hand methods (including hand augering) from the natural surface; and
3. remote sensing, biological, environmental or conservation surveys, including installing monitoring plots and marker posts but not otherwise involving the permanent disturbance of soil and vegetation; and
4. reconnaissance and patrol in light vehicles; and
5. drilling using hand held rig or rig mounted on 4 wheel vehicle; and
6. digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
7. collecting and removing loose rocks, firewood, flora or fauna; and
8. fossicking for rocks and gemstones; and
9. conducting tests for water, site contamination, or other scientific or conservation purposes; and
10. maintaining and refurbishing, including widening, expanding or moving, existing facilities, including recreation and camping facilities, water points, signs and other structures; and
11. maintaining, including by widening, expanding or moving, existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
12. erecting signage and barriers using hand and mechanical augers; and
13. revegetating of degraded areas, including fencing areas of vegetation; and
14. rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
15. carrying out species recovery programs; and
16. erosion control activities on and in the immediate vicinity of existing roads infrastructure or facilities; and
17. weed control using hand, mechanical and chemical methods of control; and
18. conducting tourism operations that are based in established facilities; and
19. public events not exceeding 60 days in duration, such as car rallies and marathons, using existing roads, stock routes or pastoral lease tracks; and
20. walking, driving or riding tours using existing roads, stock routes or pastoral lease tracks or official historical trails; and
21. the laying of temporary water pipelines across the ground where no excavation is required; and
22. any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

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

**Mining Act Department** has the meaning given to **Department** in section 8 of the Mining Act and at the Effective Date is the State's Department of Mines and Petroleum.

**Minister for Mines** has the meaning given by the Mining Act.

**Minor Impact Activity** means any Activity that involves negligible or no ground disturbance and is not a Low Ground Disturbance Activity:

* + 1. walking, photography, filming; and
    2. aerial surveying and magnetic surveys; and
    3. use of existing tracks and water courses; and
    4. environmental monitoring; and
    5. water sampling; and
    6. spatial measurement; and
    7. geological scientific research, including rock chipping, using hand held tools; and
    8. maintaining and refurbishing (but not widening, expanding or moving) existing facilities, including recreation and camping facilities, water points, signs and other structures; and
    9. maintaining (but not widening, expanding or moving) existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
    10. establishing temporary camps for surveying, environment or conservation purposes, where the establishment of the temporary camp involves use of swags ("fly camps"), does not require the removal of trees or shrubs and does not require any earthworks; and
    11. any other Activities agreed in writing by the Parties to be Minor Impact Activities.

**Native Title Group** means the common law holders of native title in the Determination Area who are described in the Determination. The Native Title Group is described in item 1(e) of schedule 2 to the ILUA.

**Notice of Application** has the meaning given in clause 16.2.

**Notice to Consult** has the meaning given in clause 16.2.

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

**Other Aboriginal Consultants** means those Aboriginal persons who are not members of the Native Title Group but who have, or are likely to have, knowledge of places or objects in that part of the Aboriginal Heritage Area outside of the Determination Area to which sections 5 or 6 of the Aboriginal Heritage Act apply.

**Party** means a party to this PSHA and **Parties** mean any 2 or more of them as the case requires.

**PBC** means the ‘prescribed body corporate’ (as that term is used in Division 6 of Part 2 of the NT Act) in respect of the Native Title Group for the Determination Area (details of which are listed in items 8 and 9 of schedule 2).

**PBC Regulations** means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

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

**POW** means programme of work to be lodged with the Mining Act Department in compliance with the Mining Act or a condition imposed on Tenure under the Mining Act.

**Preliminary Advice** means advice, in writing, complying with clause 12.3(a).

**Principal Aboriginal Heritage Consultant** means the anthropologist or archaeologist nominated and agreed under clauses 8.3(d)(v) or 9.6.

**Proponent Acceptance Deed** means a deed in the form contained in schedule 10 to the ILUA which has been executed by the Proponent.

**PSHA** means this Proponent Standard Heritage Agreement.

**RNTBC Orders** means the orders of the Federal Court, under section 56 or section 57 of the NT Act in relation to the PBC and the Determination. Details of the RNTBC Orders are set out in item 13 of schedule 2.

**Sensitive Heritage Information** means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by or on behalf of the Native Title Group during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

**Site Avoidance Model** means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site within that area.

**Site Avoidance Survey** means a Survey carried out using the Site Avoidance Model.

**Site Identification Model** means a Survey methodology involving the identification of Aboriginal Sites by an Aboriginal Consultant.

**Site Identification Survey** means a Survey carried out using the Site Identification Model.

**Survey** means an Aboriginal Heritage Survey conducted under this PSHA.

**Survey Agreement Date** has the meaning given in clauses 9.1(a) or 9.1(b).

**Survey Agreement Period** has the meaning given in clause 9.1(d).

**Survey Area** means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

**Survey Methodology** means either a Site Avoidance Model or a Site Identification Model.

**Survey Report** means a report of the results of a Survey, containing the information set out in clause 12.4 and schedule 7.

**Survey Team** has the meaning given in clause 10.1.

**Tenure** means the tenures listed in part A of schedule 4 (or by virtue of the Proponent Acceptance Deed deemed to be listed where this PSHA commences in the manner described in clause 3.1(b)), and granted pursuant to the Mining Act, the PGER Act or section 91 of the *Land Administration Act 1997* (WA), including any renewal or extension of that tenure from time to time.

**Tenure Area** means in relation to each tenure listed, or deemed to be listed, in part A of schedule 4, that part of such tenure which is located wholly or partially within the Aboriginal Heritage Area as described in part B of schedule 4 (or by virtue of the Proponent Acceptance Deed deemed to be so described where this PSHA commences in the manner described in clause 3.1(b)).

* 1. Interpretation – general

In this PSHA, unless the contrary intention appears:

* + 1. the headings and subheadings in this PSHA are inserted for guidance only and do not govern the meaning or construction of any provision of this PSHA;
    2. words expressed in the singular include the plural and vice versa;
    3. a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this PSHA and a reference to this PSHA includes any recital, schedule or annexure;
    4. a reference to a document, agreement (including this PSHA) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
    5. a ‘person’ includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Party;
    6. a reference to a 'person' (including a Party to this PSHA) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
    7. a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
    8. a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
    9. ‘including’ means ‘including but not limited to’;
    10. a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
    11. a reference to dollars or $ is a reference to the currency of Australia;
    12. a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
    13. a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next calendar month or if there is no such day, at the end of the next calendar month;
    14. references to time are to local time in Perth, Western Australia;
    15. where time is to be reckoned from a day or event, that day or the day of that event is excluded;
    16. if the day on or by which a person must do something under this PSHA is not a Business Day, the person must do it on or by the next Business Day; and
    17. if any conflict arises between the terms and conditions contained in the clauses of this PSHA and any recitals, schedules or annexures to this PSHA, the terms and conditions of the clauses of this PSHA shall prevail.
  1. Interpretation – liabilities and benefits

In this PSHA, unless the contrary intention appears:

* + 1. any agreement, representation, warranty or indemnity set out in this PSHA which is in favour of the Native Title Group and the PBC is for the benefit of them jointly and severally; and
    2. any agreement, representation, warranty or indemnity in favour of the Proponent, where the Proponent comprises more than one entity, is for the benefit of them jointly and severally; and
    3. any agreement, representation, warranty or indemnity which is given by the Proponent, where the Proponent comprises more than one entity, binds them jointly and severally.

1. No Application of this PSHA to Emergency Activities
   * 1. This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person in accordance with the law.
     2. In the event that the creation of a new road or new track is urgently required for a purpose described in clause 2(a), the Proponent must as soon as practicable after the event, advise the PBC of the newly created road or track and provide a map showing clearly the area the subject of the new road or new track.

**2A**. Execution and effect of this PSHA

* + 1. Execution of this PSHA may take place by the PBC and the Proponent executing any number of counterparts of this PSHA, with all counterparts together constituting the one instrument.
    2. If this PSHA is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
    3. Notwithstanding the prior provisions of this clause 2A, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).
    4. The provisions of this PSHA will only apply to the Tenure held by the Proponent, and any Activities undertaken within the Tenure Areas by the Proponent pursuant to that Tenure, on and from the Effective Date until the termination of this PSHA as referred to in clause 3.2.
    5. Where this PSHA commences in the manner described in clause 3.1:
       1. the Proponent binds itself including, where applicable, each entity comprising the Proponent; and
       2. to the extent permissible by law, the PBC binds itself and all members of the Native Title Group.

1. Term and termination
   1. Commencement

This PSHA comes into force and effect as between the Proponent and the PBC:

* + 1. where this PSHA has been executed by the Parties, on the date that the last of those Parties executes this PSHA; or
    2. where the Proponent has executed a Proponent Acceptance Deed, on the date that all of the conditions precedent set out in clause 3 of the Proponent Acceptance Deed have been satisfied.
  1. Termination

This PSHA shall terminate on the occurrence of whichever of the following events is first to occur:

* + 1. all Parties agree in writing to end this PSHA;
    2. all Tenure held by the Proponent that is located wholly or partially within the Aboriginal Heritage Area has terminated or expired or been surrendered or cancelled;
    3. as referred to in clause 17.2(c)(ii), a court order is made to wind up the Proponent as the result of an Event of Default.
  1. Termination or de-registration of ILUA does not affect PSHA

Notwithstanding the termination or de-registration of the ILUA, this PSHA shall continue to apply to the Parties with full force and effect, to the extent that this PSHA has commenced under clause 3.1.

* 1. Survival of provisions and entitlements upon termination

This PSHA ceases to have any force or effect on and from the date of termination, save that:

* + 1. any entitlements, obligations or causes of action which accrued under this PSHA prior to termination survive termination;
    2. clauses 1, 3.4, 5, 12.5, 13, 18, 19, 21, 22, 25.2, 25.3, 25.4 and 25.6 survive termination.

1. Area to which this PSHA applies

This PSHA applies to the Aboriginal Heritage Area.

1. Authority, representations and warranties
   1. PBC’s role and functions
      1. The PBC enters into this PSHA, on behalf of the Native Title Group, in the PBC’s capacity as holder of the relevant native title rights and interests on behalf of the Native Title Group, or as agent for the native title holders and in performance of the functions given to a trustee prescribed body corporate under the NT Act and the PBC Regulations.
      2. To the extent permitted by law, the PBC binds itself and all members of the Native Title Group by entering into this PSHA.
   2. PBC representations and warranties

The PBC represents and warrants, for the benefit of the Proponent, that:

* + 1. it is a ‘prescribed body corporate’ within the meaning of section 59 of the NT Act and regulation 4 of the PBC Regulations and it is the ‘registered native title body corporate’ (as defined in section 253 of the NT Act) for the Determination Area; and
    2. under regulation 6 or 7 (as the case may be) of the PBC Regulations, it enters into this PSHA on behalf of the Native Title Group; and
    3. it has full power and authority to enter into this PSHA and represent the Native Title Group in respect of all matters arising in respect of this PSHA; and
    4. all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under, this PSHA have been fulfilled or done; and
    5. it has received independent legal advice about the effects of this PSHA; and
    6. it knows of no impediment to it performing its obligations under this PSHA.
  1. Proponent representations and warranties

The Proponent represents and warrants, for the benefit of the PBC and the Native Title Group, that:

* + 1. it is authorised to enter into this PSHA; and
    2. all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Proponent lawfully to enter into, exercise its rights and perform its obligations under, this PSHA have been fulfilled or done; and
    3. it knows of no impediment to the Proponent performing its obligations under this PSHA.
  1. Reliance on warranties

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 5.2 or 5.3 (as the case may be) to enter into this PSHA.

* 1. Acknowledgement regarding legal advice

Each Party acknowledges that it has:

* + 1. had the benefit of legal advice in respect of all matters in this PSHA and the effect of the rights, obligations and liabilities of each of the Parties to it; and
    2. been provided with an opportunity to consider that advice and all of the provisions of this PSHA before entering into it.
  1. Ministers may act through authorised officers

Where in this Agreement including any schedule reference is made to a Minister of the State, and the relevant Minister may, or is required to, give any notice or do any other act or thing, that notice may be given and that other act or other thing may be done by a duly authorised officer of the relevant Department in the name of and on behalf of the relevant Minister.

1. Time limits
   1. Time for compliance and consequences of non-compliance
      1. The Parties must each meet the time limits imposed under the following provisions of this PSHA:
         1. the receipt by the Proponent of an Activity Notice Response (clause 8.3(a)); and
         2. the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
         3. the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clauses 8.3(d)(iii)) or 9.7; and
         4. the receipt by the Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a));
         5. the receipt by the Proponent of the final Survey Report (clause 12.1(c)).
      2. The time limits on the steps referred to in clause 6.1(a) may be extended by agreement in writing between the Parties. Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.
      3. To avoid doubt, any failure to comply with the time limits for the steps described in clause 6.1 (a) does not give the Proponent a right to terminate this PSHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 6.1.
      4. If the PBC fails to comply, or to ensure that the Aboriginal Heritage Service Provider complies, with any of the time limits on the steps listed in clause 6.1(a), including an extension of time agreed pursuant to 6.1(b), then the Proponent may provide a written notice to the PBC, with such a notice to nominate a date by which the non-compliance must be rectified. The date nominated by the Proponent must allow a reasonable period, in all the circumstances, for rectification of the non-compliance, and in any event the date must not be less than 12 Business Days after the date of receipt of the notice of non-compliance.
      5. If the PBC is unable to comply with, or to ensure that the Aboriginal Heritage Service Provider complies with, the time limits imposed by the provisions referred to in 6.1(a)(ii) because they are (or either of them as the case may be, is) unable to engage a Principal Aboriginal Heritage Consultant at the rate set out in schedule 6, the PBC must advise the Proponent that this is the case and provide 3 written competitive quotes from external consultant anthropologists (or archaeologists where appropriate) and reasons why the higher rates quoted are justified in the circumstances.  If the Proponent is aware of an alternative external consultant anthropologist (or archaeologist, as the case may be) who will undertake the work for the rate set out in schedule 6, then the Proponent may notify the PBC in accordance with clause 6.1(f)(iii) and 6.1(g) that alternative arrangements will be made for the Aboriginal Heritage Survey.
      6. If the PBC fails to comply with a notice sent by the Proponent under clause 6.1(d), then the Proponent may notify the PBC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this PSHA in respect of the relevant Activity Program with effect from the date on which the PBC receives the latter notice. The Proponent may then at its election:
         1. decide not to proceed with the relevant Activity Program; or
         2. conduct the relevant Activity Program at its own risk; or
         3. make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such Surveys.
      7. In the circumstances described in clause 6.1(f)(iii), where the Proponent makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
         1. the Proponent shall inform the PBC of the alternative arrangements made; and
         2. neither the PBC nor the Aboriginal Heritage Service Provider shall have any claim against the Proponent arising from the making of those alternative arrangements.
      8. To avoid doubt:
         1. the effect of this clause 6.1 is not limited by any dispute resolution processes under clause 18 of this PSHA, and in particular the time limits on the steps referred to in clause 6.1 continue to apply where a dispute resolution process is commenced; and
         2. the dispute resolution provisions in clause 18 of this PSHA do not apply to any decision by the Proponent to issue a notice of non-compliance under clause 6.1(d), and the provisions of this clause 6.1 apply instead. However, the Proponent may elect, by notice in writing to the PBC, to allow use of the dispute resolution provisions in clause 18.

(i) The Proponent must act reasonably in asserting its rights under clause 6.1.

* 1. Justifiable delay
     1. Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 6.1.
     2. The period specified in item 10 of schedule 2 shall also be excluded from the time limits referred to in clause 6.1.
     3. A Party asserting the existence of a delay to which clause 6.2(a) or clause 6.2(b) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

1. Cooperation regarding Aboriginal Sites and proposed Activities
   1. Exchange of information

The Parties acknowledge the importance of a regular flow of information between the Proponent and the PBC, to ensure that members of the Native Title Group and the PBC know what Activities within the Tenure Areas are proposed by the Proponent, 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 Proponent will provide an outline of the nature, location and timing of Activity to be undertaken in each Tenure Area in the next field season or next field operations program, to the extent that such information is known to the Proponent; and
    2. where, as a result of receiving the above information the PBC becomes aware of any particular cultural heritage concern arising from a proposal to conduct an Activity in a Tenure Area, the PBC will use its reasonable endeavours to raise those concerns with the Proponent.
  1. Obligation to comply with Aboriginal Heritage Act
     1. The Parties acknowledge that they are bound by the provisions and obligations of the Aboriginal Heritage Act.
     2. Nothing in this PSHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
     3. If the Proponent carries out any Activities through contractors, then the Proponent will ensure that such contractors are made aware of all relevant obligations of the Proponent pursuant to the Aboriginal Heritage Act and this PSHA including by providing copies of the Aboriginal Heritage Act and this PSHA to the contractors.

1. The Activity Notice
   1. Circumstances where no Activity Notice needs to be given
      1. The Proponent does not have to give an Activity Notice where the Activities proposed to be conducted consist entirely of:
         1. Minor Impact Activities; or
         2. Activities of a class that the PBC has notified in writing to the Proponent need not be the subject of an Activity Notice.
      2. If the Proponent has a reasonable doubt (taking into account the Due Diligence Guidelines) as to whether clause 8.1(a) operates to exempt the Proponent from giving an Activity Notice, then the Proponent should give the Activity Notice in any event.
   2. Giving the Activity Notice
      1. Except where clause 8.1 applies, if the Proponent intends to undertake an Activity in a Tenure Area, it must issue a notice in writing to the PBC in accordance with this clause 8.2 (**Activity Notice**). An Activity Notice may be given in respect of more than one Tenure Area.
      2. The main purposes of an Activity Notice are:
         1. to determine whether a Survey is required and if so, what kind; and
         2. if a Survey is required, to provide information relevant to the conduct of that Survey.
      3. The Activity Notice shall contain:
         1. the basic information specified in part 1.1 of schedule 5; and
         2. the key statements and nominations specified in part 1.2 of schedule 5 or if clause 8.2(e) applies, the default provisions of part 3 of schedule 5; and
         3. the additional information specified in part 2 of schedule 5.
      4. The PBC acknowledges that the inclusion in an Activity Notice of the matters described in parts 1.2(c) to (f) of schedule 5 does not prejudice any statement by the Proponent that it considers that a Survey is not required.
      5. If the Proponent omits to specify or nominate, in an Activity Notice, any of the particular items referred to in part 1.2 of schedule 5, then the default provisions provided in part 3 of schedule 5 apply.
      6. To avoid doubt, the Proponent may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Parties but, acting reasonably, the PBC shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. The Proponent may also request any of the items referred to in part 1.2(f) of schedule 5 at any later time, in accordance with clause 12.2.
      7. The date of receipt by the PBC of the Activity Notice (or fresh Activity Notice if requested under clause 8.2(f)) is the **Activity Notice Date**.
   3. Considering the Activity Notice and deciding whether a Survey  
      is required
      1. The PBC will promptly consider the Activity Notice and shall, within 15 Business Days where the proposed Activity constitutes Low Ground Disturbance Activity, but otherwise within 30 Business days, after receipt of such Activity Notice or modified Activity Notice, notify the Proponent in writing as to whether the PBC considers that a Survey is required (**Activity Notice Response**). In coming to its decision the PBC shall take into account:
         1. the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; and
         2. the extent to which the land and waters the subject of the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, the PBC will consider whether it is reasonably clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without breaching the Aboriginal Heritage Act; and
         3. any relevant previous decisions by the PBC under clause 8.3(b); and
         4. any other matter the PBC reasonably considers relevant.
      2. The Proponent shall be free to carry out any Activity in a Tenure Area without conducting a Survey of the land and waters within that Tenure Area where:
         1. the PBC so agrees in writing; or
         2. the PBC waives its right under clause 6.1(f) of this PSHA to require a Survey of the proposed Activity,

after considering an Activity Notice or at any other time.

* + 1. Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
    2. If in its Activity Notice Response the PBC indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
       1. if different to the opinion given by the Proponent in the Activity Notice in accordance with part 1.2(a) of schedule 5, a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the PBC’s opinion; and
       2. if different to the nomination by the Proponent in the Activity Notice in accordance with part 1.2(c) of schedule 5, a nomination of the PBC’s proposed Survey Methodology, subject however to clause 9.4; and
       3. if different to the date or dates nominated by the Proponent in the Activity Notice in accordance with part 1.2(e) of schedule 5, a nomination of a proposed Survey start date or finish date; and
       4. subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
       5. a nomination of the Native Title Group’s proposed Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) Principal Aboriginal Heritage Consultant.
  1. Disagreements following Activity Notice Response

If, following receipt by the Proponent of the Activity Notice Response, the Parties are in disagreement on any matter about the conduct of a proposed Survey, then the Parties shall endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until the Parties have consulted under clause 9 during the period referred to in clause 9.1(d), no Party is entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8 or clause 9.

1. Survey agreement and planning
   1. Operation of this clause 9 – Survey Agreement Date
      1. Subject to clause 9.1(b), the date on which agreement is reached between the Parties on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.
      2. If after receipt by the Proponent of the Activity Notice Response under clause 8.3(a) the Parties are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity Notice Response shall be deemed to be the Survey Agreement Date otherwise referred to in clause 9.1(a).
      3. The Parties’ discussions under this clause 9 shall be conducted reasonably and in good faith.
      4. The Parties shall ensure that the Survey Agreement Date occurs within 20 Business Days where the proposed Activity constitutes Low Ground Disturbance Activity, but otherwise within 30 Business Days, after the date of receipt by the Proponent of the Activity Notice Response (**Survey Agreement Period**).
      5. If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then the Proponent may, by notice in writing to the PBC, agree that the Survey Agreement Date has been reached notwithstanding the lack of agreement on that matter or matters. In such a case, the Parties will continue to discuss the non-agreed matters with a view to resolving them as quickly as practicable. To avoid doubt, a notice under this clause has effect to waive the right of the Proponent to rely on clause 6.1(a), but does not otherwise affect the rights of the Proponent under clause 6.
   2. Whether a Survey is required
      1. The Parties’ discussions regarding whether a Survey is required will be guided by the matters in clauses 8.3(a) and 9.2(b).
      2. The following provisions shall apply to the Parties’ discussions about whether a Survey is required.
         1. Where no previous Aboriginal Heritage Survey (whether under this PSHA or otherwise) has been undertaken in relation to the area of land and waters the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
         2. Where this PSHA does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
         3. Where a previous Aboriginal Heritage Survey (whether conducted under this PSHA or otherwise) has, or if not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Proponent must (if it is in their possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to the PBC (if such copy has not already been provided with the Activity Notice).
         4. Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Parties will have regard to the following matters:
            1. the nature of the Activities outlined in the Activity Notice; and
            2. whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that Survey; and
            3. the extent to which the land has been affected by previous ground disturbing activities; and
            4. whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
            5. any relevant matters relating to the Native Title Group’s practices, laws and customs; and
            6. any other relevant matters raised by any of the Parties.
   3. Agreements regarding Low Ground Disturbance Activity
      1. The Parties’ discussions to confirm the extent of Low Ground Disturbance Activity will be guided by the definition of Low Ground Disturbance Activity in this PSHA.
      2. If the PBC considers that a Survey for any Low Ground Disturbance Activity is required, then the PBC and the Proponent will each use their reasonable endeavours to address the concerns of the PBC, by modifying the proposed Low Ground Disturbance Activity to the extent necessary to remove the need to conduct a Survey.
   4. Selection of Survey Methodology

If the PBC's proposed Survey Methodology is different to the nomination by Proponent in its Activity Notice, the discussion between the PBC and the Proponent about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to the PBC's concerns for the Survey Area and the Activities proposed by the Proponent.

* 1. Estimate of costs of Survey
     1. The Parties acknowledge that it may not always be possible for the PBC or the Native Title Group’s nominated Aboriginal Heritage Service Provider to provide an accurate Survey cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.
     2. If an estimate of Survey costs has not been provided earlier, then the PBC must ensure that during the Survey Agreement Period, the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Proponent for approval by the Proponent.
     3. The PBC must ensure that in the estimate of Survey costs the Aboriginal Heritage Service Provider clearly indicates those items that the Proponent will be asked to pay in advance under clause 11(b).
     4. During the Survey Agreement Period, the PBC and the Proponent shall agree on a budget for the proposed Survey (such agreement not to be unreasonably withheld or delayed by either Party).
  2. Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant
     1. If the PBC’s Activity Notice Response does not identify the Native Title Group’s nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) Principal Aboriginal Heritage Consultant, then the PBC will advise the Proponent of these nominations during the Survey Agreement Period.
     2. Subject to clause 9.6(c), the Parties acknowledge that the Proponent will not usually have any role in nominating an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant, subject however to the rights of the Proponent under clause 6.1(f)(iii) in the event of delays.
     3. If the Proponent has reasonable concerns about the competence or professionalism of the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) nominated by the Native Title Group, it may request the PBC to request that the Native Title Group consider another anthropologist or archaeologist to act as Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be). In such circumstances, the PBC shall consider in good faith the Proponent's request.
  3. Estimate of time for Survey commencement or completion

If following the Activity Notice Response the Parties are not in agreement about the date of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, the Parties shall agree on such date or dates.

1. Survey Team and commencement of Survey
   1. Survey team
      1. As soon as possible after the Survey Agreement Date, the PBC or the Native Title Group’s nominated Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant (if appointed), will organise a Survey Team, which shall consist of:
         1. up to 6 Aboriginal Consultants, unless the Survey Area is outside of the Determination Area, in which case, the Survey Team will include up to 6 individuals who are either Aboriginal Consultants or Other Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), to examine the Survey Area and assist in the Survey; and
         2. if considered necessary by the PBC and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the Proponent, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
         3. where considered necessary by the PBC and supported by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the Proponent, another anthropologist of a specific gender; and
         4. subject to clause 10.1(b), where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the PBC and the Proponent, including during the course of the Survey, an archaeologist.
      2. Where considered necessary by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be), and agreed to by the PBC and the Proponent, more than one archaeologist may be appointed to the Survey Team.
      3. The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i). Additional members of the Native Title Group may accompany the Survey Team but the Proponent will not be liable for additional costs.
      4. The Proponent may send one or two nominees with relevant qualifications and authority on the Survey to assist the Survey Team conducting the Survey with information and direction where required. Such persons will at all times respect the privacy of the Aboriginal Consultants when sensitive cultural matters are being discussed
   2. Commencement and conduct of Survey
      1. The PBC will use its best endeavours to facilitate the commencement of the Survey within the time agreed by the Parties, or in the absence of such agreement, within 30 Business Days after the Survey Agreement Date.
      2. The Proponent will provide to members of the Survey Team (and any other attending members of the Native Title Group) before the Survey commences:
         1. details and explanation of any safety and other procedures and policies implemented from time to time by the Proponent over the Survey Area; and
         2. protective clothing and equipment if reasonably necessary in all the circumstances.
      3. The PBC acknowledges that the Proponent is not required to have insurance in place for the protection of Survey Team members.
      4. The Survey Team will as appropriate in the circumstances:
         1. visit the Survey Area; and
         2. identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and
         3. provide sufficient information to the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (as the case may be) to enable them to:
            1. record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using a GPS; and
            2. record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided, on a Heritage Information Submission Form; and
            3. mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map; and
            4. make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
            5. when an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is to be lodged, record sufficient information to address DAA's requirements for such an application; and
            6. generally, prepare a Survey Report that complies with the requirements of clause 12.
      5. When in the field, and in response to Aboriginal Heritage concerns raised by the Aboriginal Consultants, the representatives of the Proponent nominated under clause 10.1(d):
         1. shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information or other information pertaining to Aboriginal Sites; and
         2. may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.
2. Payment for Surveys
   * 1. The Proponent shall pay the costs and expenses of the Survey at the rates set out in schedule 6.
     2. The Proponent agrees to pay, in advance of the commencement of the Survey, the following components of the approved estimated costs:
        1. 50% of the estimated administration fee; and
        2. any disbursements that are to be paid by the Aboriginal Heritage Service Provider prior to the fieldwork component of the Survey being completed.
     3. If the Proponent does not pay that component of the costs referred to in clause 11(b)(i) within the period of 20 Business Days after the Survey Agreement Date (or by such earlier date agreed for the commencement of the Survey as may be applicable), the PBC may, at its discretion, advise the Proponent by notice in writing that:
        1. the Survey cannot commence until payment has been made;
        2. notwithstanding any other provisions of this PSHA:
           1. the date on which that payment is made will be deemed to be the new Survey Agreement Date;
           2. the date for commencement of the Survey will be 30 Business Days after the new Survey Agreement Date, unless otherwise agreed between the Parties; and
           3. if the dates have been agreed for the completion of the fieldwork for a Survey or the Survey Report, such dates are to be altered to reflect the delayed date for commencement of the Survey arising from the operation of this clause, unless otherwise agreed between the Parties,

provided that if the Proponent fails to make payment within 14 Business Days after receipt of the notice under this clause, the default provisions of clause 17 will apply.

* + 1. If the Survey is cancelled by the Proponent 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 Proponent.
    2. The balance of the Survey costs will be paid within 21 days after receipt of the Survey Report by the Proponent. The PBC must provide a tax invoice of the Survey costs that reconciles the costs estimated, and any costs advanced under clause 11(b), with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by an authorised officer of the PBC.

1. Survey Report
   1. Timing of Preliminary Advice and Survey Report

After the last day of fieldwork for a Survey (**Last Fieldwork Day**) the PBC will provide the Proponent with:

* + 1. Preliminary Advice (if requested on reasonable grounds by the Proponent in the Activity Notice or at any other time under clause 12.2 and agreed by the PBC (such agreement not to be unreasonable withheld)), as soon as reasonably practicable, and in any event within 7 Business Days after the Last Fieldwork Day;
    2. a draft Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event within 20 Business Days after the Last Fieldwork Day, to enable the Proponent to comment in writing to the PBC within 5 Business Days of receipt of the draft Survey Report on any identified technical, apparent factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of schedule 7 (as applicable); and
    3. a final Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant as soon as reasonably practicable, and in any event within 45 Business Days after the Last Fieldwork Day.
  1. Requests for reports
     1. Notwithstanding the relevant nominations by the Proponent in the Activity Notice under part 1.2(f) of schedule 5, the Proponent may by notice in writing request the PBC to provide a Preliminary Advice or draft Survey Report, prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant, at any time, subject to this clause.
     2. The Proponent acknowledges that a notification under clause 12.2(a) may impact on the times and costs for the Survey, and the PBC shall ensure that any revised times and costs are notified promptly to the Proponent.
  2. Preliminary Advice
     1. A Preliminary Advice shall record at least the information referred to in clause 12.4(c)(i).
     2. Upon receipt by the Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Proponent may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).
  3. Contents of Survey Report
     1. The Survey Report will record sufficient information to enable the Proponent to:
        1. plan and, subject to the law and this PSHA, undertake the things that are the subject of the Activity Notice; and
        2. lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application supported by all necessary information, where the Parties have been made aware of the proposed application.
     2. The Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will (as the case may be), in consultation with the Survey Team, be responsible for preparing a Survey Report:
        1. as per the guidelines in part 1 and part 2 of schedule 7, where the Survey being conducted is a Site Avoidance Survey; or
        2. as per the guidelines in part 1 and part 3 of schedule 7, where the Survey is a Site Identification Survey.
     3. In addition to the matters described in schedule 7, the Survey Report will:
        1. describe which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, may result in a breach of the Aboriginal Heritage Act; and
        2. record sufficient information to enable the Proponent to plan and, subject to the law and this PSHA, undertake the things that are the subject of the Activity Notice.
     4. The intellectual property rights in the Survey Report are governed by the provisions of clause 13.
     5. In the case of a Survey report where the Site Avoidance Model has been used, in addition to the Survey Report prepared by the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant in accordance with sub-clause 12.4(b)(i) (the "**Non-Redacted Survey Report**"), the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will prepare an identical copy of the Survey Report with the names and gender of the Aboriginal Consultants redacted (the "**Redacted Survey Report**").
     6. The PBC will hold the Non-Redacted Survey Report and ensure it is kept in a secure location.
     7. The Proponent may only request, and the PBC must provide, the Non-Redacted Survey Report if the veracity of the Redacted Survey Report is or becomes an issue in any legal, judicial or statutory proceedings related to the Survey Area.
  4. Reliance on Survey Report

The Parties each acknowledge that they may rely upon the contents of a Survey Report.

1. Intellectual Property
   1. Intellectual property of the Native Title Group

All intellectual property rights in the Survey Report vest absolutely and irrevocably in the Native Title Group.

* 1. Licence to use intellectual property

Subject to clause 19, the PBC on behalf of the Native Title Group grants to the Proponent an irrevocable, transferable, non‑exclusive, unrestricted, royalty-free licence to utilise any Survey Report for the purposes of the Proponent:

* + 1. conducting its Activities; and
    2. seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act; and
    3. enforcing its rights, and complying with its obligations, under this PSHA.

1. Environmental Protection
2. In co-operation with the PBC, the Proponent agrees to rehabilitate the Aboriginal Heritage Area as a result of its Activities as required by law.
3. The Proponent shall respond to any complaint or concern raised by the PBC regarding a failure to rehabilitate the Aboriginal Heritage Area as required by law.
4. Identification and Relocation of Ancestral Remains or Objects

(a) Where, as a result of an Activity, the Proponent uncovers skeletal remains or identifies an area or object which it reasonably suspects of being an Aboriginal Site or Aboriginal Object, the Proponent must:

* + - 1. cease all operations and activities in the immediate vicinity of such remains, area or objects;
      2. immediately notify the DAA and other relevant authorities in accordance with the Aboriginal Heritage Act and other applicable statutory law; and
      3. notify the PBC of the findings and, subject to other statutory requirements, meet on site where the Parties will discuss in good faith a culturally appropriate method of managing the discovery and how to deal with it in accordance with the provisions of the Aboriginal Heritage Act or other applicable statutory law; and

(b) For the avoidance of doubt, and subject to other statutory requirements, the Activity may continue in areas which are not in the immediate vicinity of the suspected skeletal remains or suspected Aboriginal Site or Aboriginal Object.

1. Programme of work under the Mining Act and Aboriginal Heritage Act applications
   1. Programme of work (POW)

(a) The Proponent must not lodge a POW with the Mining Act Department in respect of works proposed to be carried out within the boundaries of an Aboriginal Site recorded on the Aboriginal Heritage Act Register and located within the Aboriginal Heritage Area unless:

(i) the Proponent:

(A) has obtained the written consent of the PBC to both the lodging of the POW and to the works proposed in the POW in respect of that Aboriginal Site, such consent to be in the form or substantially in the form set out in schedule 9 to this PSHA; and

(B) if required by the Mining Act Department, has provided to the Mining Act Department written advice by the DAA that, based on the then current and available information, the works proposed to be carried out within the boundaries of that Aboriginal Site will avoid all relevant areas within that Aboriginal Site that are required to be avoided to ensure that such works do not impact on the Aboriginal Heritage of that Aboriginal Site; or

(ii) the Proponent has obtained an authorisation pursuant to an Aboriginal Heritage Act Section 16 Application or a consent granted pursuant to an Aboriginal Heritage Act Section 18 Application in relation to that registered Aboriginal Site.

(b) The Parties acknowledge and agree that the PBC's consent does not imply:

* + - 1. any release of the Proponent from any requirements or obligations under the Aboriginal Heritage Act, including any obligations in relation to the Aboriginal Sites recorded on the Aboriginal Heritage Act Register; or
      2. any assumption by the PBC of any responsibility or liability in respect of a POW lodged with, and approved by, the Mining Act Department.

(c) Subject to compliance with clauses 16.1(a)(i) and (ii), nothing in this PSHA prevents the Proponent from lodging a POW.

* 1. Proponent must consult about Aboriginal Heritage Act applications
     1. Subject to the provisions of this clause 16.2, each Party acknowledges the benefit of the PBC being consulted about a proposal by the Proponent to lodge an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application in respect of any area within the Aboriginal Heritage Area.
     2. Unless otherwise agreed between the Parties, the Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application without first giving the PBC prior written notice of its intention to do so (**Notice of Application**) and the opportunity for consultation.
     3. If the Proponent gives to the PBC a Notice of Application under clause 16.2(b):
        1. the PBC must, if it wishes to proceed to consultation under clause 16.2(d), within 15 Business Days of receiving the Notice of Application, give to the Proponent a further written notice stating that the PBC would like to proceed to consultation (**Notice to Consult**); or
        2. if the PBC does not give a Notice to Consult to the Proponent within the time period specified in clause 16.2(c)(i), the Proponent may lodge the Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application (as the case may be) the subject of the Notice of Application without further consultation with the PBC under this clause 16.2.
     4. If the Proponent receives a Notice to Consult within the period specified in clause 16.2(c)(i), the Proponent must consult with the PBC for a minimum of 30 Business Days immediately after receipt of such Notice to Consult, including by making reasonable efforts to meet with the PBC, about the proposal which is the subject of the Notice of Application, with a view to agreeing:

(i) where appropriate, that the proposal is not likely to impact Aboriginal Sites or Aboriginal Objects; or

(ii) ways to avoid the need to lodge the Aboriginal Heritage Act Section 16 Application or the Aboriginal Heritage Act Section 18 Application (as the case may be); or

(iii) where the Proponent considers that agreement under clause 16.2(d)(ii) is not likely, ways to minimise and mitigate the impact of an authorisation under section 16 of the Aboriginal Heritage Act or consent under section 18 of the Aboriginal Heritage Act, as the case may be (including through salvage or relocation of Aboriginal Sites or Aboriginal Objects).

* + 1. If the Parties do not agree in respect of any matter arising from the consultation under clause 16.2(d), then such matter may be determined, at the election of either Party, as a dispute pursuant to the provisions of clause 18 subject to the following:
       1. the requirements to give a dispute notice pursuant to clause 18.2 and to endeavour to resolve the dispute pursuant to clause 18.3 are satisfied, respectively, by the giving of the Notice to Consult and consultation by the Parties pursuant to this clause 16.2; and
       2. the arbitration provisions of clause 18 will not apply in respect of such dispute.
    2. Subject to compliance with clauses 16.2(b) to (e), nothing in this PSHA prevents the Proponent lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.
  1. Justifiable delay
     1. A delay caused by an event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.2.
     2. A Party asserting the existence of a delay to which clause 16.3(a) applies must advise the other Party of that delay and take reasonable steps to mitigate (to the extent applicable) that delay.

1. Default and enforcement
   1. Interpretation
      1. In this clause 17 a reference to a Party means a party to the default or dispute.
      2. An **Event of Default** occurs where a Party:
         1. breaches an obligation under this PSHA; or
         2. commits an Insolvency Event.
   2. Default
      1. If a Party (the **Defaulting Party**) commits an Event of Default under clause 17.1(b)(i) the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 5 Business Days after receiving the Default Notice.
      2. If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the PBC, then the PBC shall as soon as possible notify the Proponent:
         1. that the Event of Default has occurred; and
         2. of the appointment of any administrator, receiver or manager to manage the affairs of the PBC; and
         3. when the relevant Event of Default ceases to exist.
      3. If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the Proponent, then:
         1. the Proponent shall as soon as possible notify the PBC:
            1. that the Event of Default has occurred; and
            2. of the appointment of any administrator, receiver or manager to manage the affairs of the Proponent; and
            3. when the relevant Event of Default ceases to exist;
         2. where the Event of Default results in a court order to wind up the Proponent, this PSHA shall by force of this clause terminate with effect from the date of the court order.
      4. The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party’s rights under this PSHA until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
      5. Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this PSHA or otherwise at law (including the right to seek interlocutory relief and specific performance).
2. Dispute resolution
   1. No arbitration or court proceedings
      1. Subject to clause 18.1(b), if a dispute arises under this PSHA including a dispute in respect of this clause 18.1 (**Dispute**), a Party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
      2. The provisions of this clause 18 are subject to clause 8.4.
   2. Notification

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

* 1. Parties to resolve Dispute

During the 20 Business Days after a notice is given under clause 18.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 18.4.

* 1. Mediation
     1. If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chairman of LEADR will appoint a mediator at the request of either Party.
     2. 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 Parties agree in advance in writing.
     3. Any information or documents disclosed by a Party under this clause 18:
        1. must be kept confidential; and
        2. may only be used to attempt to resolve the Dispute.
     4. Each Party to a Dispute must pay its own costs of complying with this clause 18.4. The Parties to the Dispute must equally pay the costs of any mediator unless otherwise agreed in writing by the parties.
     5. The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation with 20 Business Days of the mediator appointed under this clause commencing the mediation, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 18.6) referring the matter to arbitration or commencing legal proceedings.
  2. Arbitration
     1. If the Parties to a Dispute have complied with clauses 18.2 to 18.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 2012* (WA)*.*
     2. The arbitration will be held within the Aboriginal Heritage Area or any other place agreed by the Parties.
     3. The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
     4. If the Parties fail to agree on a person to be the arbitrator under clause 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural and/or native title matters.
     5. Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.
  3. Breach of this clause

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

* 1. Obligations continue

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this PSHA so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

* 1. Extension of time

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this PSHA, in order to preserve the rights of a Party to a Dispute, the Party or Parties to the Dispute, as applicable, will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

1. Confidentiality
   1. Confidential information

Each Party agrees that the following information disclosed by one Party (**disclosing Party**) to another Party (**receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 19.3:

* + 1. information disclosed during the course of a Survey and the contents of any Survey Report provided under this PSHA, including any Sensitive Heritage Information; and
    2. information given by the Proponent to the PBC in respect of the Activities of the Proponent where the Proponent advises the PBC that the relevant information is confidential; and
    3. the information described in clause 19.2; and
    4. any other information disclosed by one Party to another under this PSHA which is identified by the disclosing Party as confidential,

but not including information:

* + 1. the receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the disclosing Party; or
    2. that is public knowledge (otherwise than as a result of a breach of confidentiality by the receiving Party or any of its permitted disclosees).
  1. Unrelated information obtained during Survey is confidential

In the course of a Survey being conducted the Aboriginal Heritage Liaison Officer may obtain, or cause to be obtained, information in relation to the native title rights and interests of the Native Title Group that is not related to the purpose of the Survey. Such information is separate from the Survey and is confidential to the Native Title Group.

* 1. Permitted disclosure
     1. Subject to clauses 19.3(b) and 19.3(c) and 19.4, a receiving Party may disclose Confidential Information in any of the following circumstances:
        1. if it has the prior written consent of the Party which provided the information;
        2. to the extent required by any law or applicable securities regulation or rule;
        3. to the extent that the information is reasonably necessary for any processes or applications under any native title laws or related to any statutory approvals;
        4. in connection with any dispute or litigation concerning this PSHA or its subject matter;
        5. to the receiving Party’s members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors and related bodies corporate, or, a Principal Aboriginal Heritage Consultant or Aboriginal Heritage Service Provider appointed under this PSHA;
        6. where the receiving Party is the Proponent, to a *bona fide* proposed assignee of the Proponent’s rights or obligations under this PSHA;
        7. where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
        8. to a proposed registered native title body corporate assignee of the PBC’s rights, title and interests under this PSHA;
        9. in accordance with clause 19.5;
        10. where disclosure is required by the Proponent to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
        11. as otherwise permitted or required by the terms of this PSHA.
     2. To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Proponent may disclose that Confidential Information to the DAA and ACMC, including for the purposes of the Proponent:
        1. making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application;
        2. providing a copy of each Survey Report to the DAA for DAA’s collection of Aboriginal Heritage Survey reports; and
        3. seeking any necessary or desirable statutory approvals or pursuing any rights under law, including under the Aboriginal Heritage Act.
     3. To avoid doubt, except for the circumstances described in clause 19.3(b), disclosure of Sensitive Heritage Information may only occur if the PBC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
     4. The PBC must inform the Proponent of any information which it discloses during the course of the Survey to the Proponent, including by inclusion in a Survey Report, which comprises Sensitive Heritage Information.
  2. Disclosure requirements

Before making any disclosure to a person under clause 19.3, the receiving Party must:

* + 1. in each case, inform the entity or person to whom the Confidential Information is being disclosed of the receiving Party's obligations under this PSHA;
    2. before doing so notify the disclosing Party and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
    3. in the case of a disclosure to a person or entity under clauses 19.3(a)(v), 19.3(a)(vi), 19.3(a)(vii) or 19.3(a)(viii), but with the exception of employees or officers of a receiving Party, procure that the person or entity executes a deed with the disclosing Party in such form acceptable to the disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 19.
  1. Provision of Aboriginal Heritage Information to DAA

Following the preparation of the Survey Report, the PBC must ensure that the Aboriginal Heritage Service Provider provides the following information to the Aboriginal Heritage Act Registrar:

* + 1. copy of the Survey Report; and
    2. if Aboriginal Sites have been identified during the Survey, a Heritage Information Submission Form (see website details at schedule 8) with respect to each site.

1. Assignment
   1. Generally

Neither the PBC nor the Proponent may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this PSHA except in accordance with this PSHA.

* 1. Assignment by Proponent
     1. The Proponent may from time to time assign all or part of its rights, title, and interests under this PSHA (whether by farm out, joint venture, sale or otherwise) where the Proponent is also assigning all or part of its interest in the Tenure to which this PSHA applies.
     2. Before such assignment, the Proponent must:
        1. gives the PBC at least 20 Business Days’ notice prior to the proposed assignment; and
        2. within 20 Business Days after giving the PBC the notice referred to in clause 20.2(b)(i), first obtain an executed deed of assumption in a form acceptable to the PBC (acting reasonably) in favour of the PBC and the Native Title Group by which the assignee agrees to be bound, alone or jointly with the Proponent, by the provisions of this PSHA and to assume, observe and perform (alone or jointly with the Proponent) the obligations of the Proponent under this PSHA.
     3. Once executed, the Proponent shall provide a copy of the relevant deed to the PBC and shall do all other things necessary to give effect to the assumption by the assignee of the relevant obligations under this PSHA.
  2. Assignment by PBC

The PBC may assign its rights, title and interests under this PSHA to a registered native title body corporate in accordance with the provisions of the NT Act (including due to the RNTBC Orders being vacated or replaced by a subsequent determination under sections 56 or 57 of the NT Act of the Federal Court) provided:

* + 1. the PBC gives the Proponent at least 20 Business Days’ notice prior to the proposed assignment, and
    2. within 20 Business Days after giving the Proponent the notice referred to in clause 20.3(a), the proposed new registered native title body corporate enters into a deed, in a form acceptable to the Proponent (each acting reasonably), by which it agrees to be bound by this PSHA and to assume all of the PBC’s obligations under this PSHA, and provides a copy of that deed to the Proponent; and
    3. the PBC does all other things necessary to give effect to the assumption by the new registered native title body corporate of the obligations under this PSHA.
  1. Effect of Assignment
     1. Once an assignment by a Proponent of all of its rights, title and interests under this PSHA has occurred under clause 20.2, then the assigning Proponent will be deemed to have been released to the extent of the assignment from all claims and liabilities arising under or in respect of this PSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
     2. Once an assignment of this PSHA has occurred under clause 20.3, the assigning PBC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this PSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.
     3. Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 20 shall not affect the operation of this PSHA.
  2. No encumbrance
     1. Except as permitted by clause 20.5(b), no Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this PSHA.
     2. The Proponent may with the prior written consent of the PBC grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this PSHA provided that clause 20.2 shall apply mutatis mutandis to any assignment upon enforcement of such encumbrance, mortgage or charge.

1. Notices

Any notice:

* + 1. must be in writing and signed by a person duly authorised by the sender;
    2. must be delivered to the intended recipient by registered mail or by hand or fax to the intended recipient's address or fax number specified in schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to the PBC under clause 8.2); and
    3. will be taken to be received by the recipient:
       1. in the case of delivery in person, when delivered;
       2. in the case of delivery by post (which shall be by registered mail), 2 Business Days after the date of posting; and
       3. in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number and name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

1. GST
   1. Interpretation

Any reference in this clause 22 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.

* 1. Amounts exclusive of GST

### Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Agreement are exclusive of GST.

* 1. GST payable
     1. If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
     2. 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.
     3. 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.

1. Costs and duties
   * 1. The Proponent shall bear any duties or fees or taxes of a similar nature associated with this PSHA.
     2. Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this PSHA.
2. Force Majeure and Aboriginal Cultural Business
   * 1. If a Party is prevented in whole or in part from carrying out its obligations under this PSHA as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
        1. specify the obligations it cannot perform;
        2. fully describe the event of Force Majeure or Aboriginal Cultural Business;
        3. estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and
        4. specify the measures proposed to be adopted to remedy or abate the Force Majeure.
     2. Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this PSHA shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
     3. The Party that is prevented from carrying out its obligations under this PSHA as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this PSHA.
3. General
   1. Review and variation

Where this PSHA is to be amended or varied, then this PSHA may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

* 1. Entire agreement

This PSHA (together with the Proponent Acceptance Deed (if any)) constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

* 1. Governing law and jurisdiction
     1. This PSHA is governed by the law applicable in the State of Western Australia.
     2. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.
  2. Severance

If any provisions of this PSHA 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 PSHA to the extent necessary unless it would materially change the intended effect and objectives of this PSHA.

* 1. Waiver

A right or power under this PSHA shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

* + 1. no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
    2. a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party’s other rights or powers or future rights or powers in respect of the right or power waived; and
    3. the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.
  1. No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this PSHA. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

* 1. Further action

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this PSHA and the matters contemplated by it.

Schedule 1 – Party Details

(Clause 21 Notices)

|  |  |  |
| --- | --- | --- |
| [XX –Insert PBC's name]  Notice Details | Address: | [XX – Insert PBC's address in Western Australia] |

Fax No: [XX – Insert PBC's fax details]

|  |  |  |
| --- | --- | --- |
| [XX –Insert Proponent's name]  Notice Details | Address: | [XX – Insert Proponent's address in Western Australia] |

Fax No: [XX – Insert Proponent's fax details]

Schedule 2 – Determination and Aboriginal Heritage Details

| **Item No.** | **Item Description** | **Details** |
| --- | --- | --- |
| **Details of Determination** | | |
| Item 1 | Name of Determination (or name of Native Title Group) | Esperance Nyungars |
| Item 2 | Date of Determination | 14 March 2014 |
| Item 3 | Federal Court or High Court decision in which the Determination was made (including any decisions varying the original decision, where applicable) | *Bullen on behalf of the Esperance Nyungar People v State of Western Australia* [2014] FCA 197 |
| **Details of ILUA (as recorded on the Register of Indigenous Land Use Agreements)** | | |
| Item 4 | Short name of ILUA | Esperance Nyungar Government Indigenous Land Use Agreement |
| Item 5 | National Native Title Tribunal file no. | [XX] |
| Item 6 | Date registered | [XX] |
| Item 7 | Local government region(s) | Shire of Esperance and Shire of Ravensthorpe |
| **Details of PBC** | | |
| Item 8 | PBC’s Indigenous corporation number (**ICN**), as recorded on the Register of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) | ICN [XX] |
| Item 9 | Whether PBC holds native title on trust for, or acts as a non-trustee agent or representative of, the Native Title Group | Trustee  Non-trustee (Delete as applicable) |

|  |  |  |
| --- | --- | --- |
| **Details of period under clause 6.2(b)** | | |
| Item 10 | The 5 Business Days preceding Christmas Day and the 15 Business Days following Christmas Day. |  |
| **Pre-existing Aboriginal Heritage Agreements** | | |
| Item 11 | Details of all pre-existing Aboriginal Heritage Agreements | [XX – insert sufficient details of prior agreements] |
| Item 12 | List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this PSHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write ‘whole agreement’). | [XX – insert sufficient details of prior agreements] |
| **Details of RNTBC Orders** | | |
| Item 13 | Date on which RNTBC Orders came into effect | [XX] |
| Item 14 | Federal Court or High Court decision in which the RNTBC Orders were made (including any decision(s) varying the original decision, where applicable) | [XX]  as varied by [XX] |

Schedule 3 – Aboriginal Heritage Area

(Clause 1.1 Definition of **Aboriginal Heritage Area**; and Clause 4)

All those lands and waters commencing at the intersection of the Lowest Astronomical Tide with Longitude 120.465236º East and extending north to Latitude 33.966954º South, Longitude 120.465236º East; Then northerly to intersect the land division boundary between South West and Eucla Land Divisions (being the Rabbit Proof Fence) at Latitude 33.692936º South; Then generally northwesterly along that land division boundary to the intersection of the prolongation westerly of the southern boundary of Reserve 27023; Then easterly along that prolongation to the southernmost southwestern corner of Reserve 27023; Then easterly and generally northeasterly along boundaries of that reserve until it intersects the prolongation westerly of the southern boundary of Reserve 36004; Then easterly to and along the southern boundary of Reserve 36004 to its southeastern corner; Then easterly to the southwestern corner of Lot 1276 as shown on Deposited Plan 152267; Then northwesterly along the western boundary of that lot and western and northern boundaries of Lot 1241 as shown on Deposited Plan 152283 to the southwestern corner of Lot 1255 as shown on Deposited Plan 152557; Then northwesterly and northeasterly along boundaries of that lot to intersect with a prolongation southeasterly of the western boundary of Lot 1403 as shown on Deposited Plan 152558; Then northwesterly to and along the western boundary of that lot to a southern boundary of Lot 702 as shown on Deposited Plan 152282; Then southwesterly and northwesterly along boundaries of that lot to its northwestern corner; Then northwesterly to the southwestern corner of Lot 1249 as shown on Deposited Plan 152286; Then northwesterly and northeasterly along boundaries of that lot and onwards to the southwestern corner of Lot 1245 as shown on Deposited Plan 152285; Then northwesterly and northeasterly along the boundaries of that lot to its northeastern corner; Then northwesterly to the westernmost southwestern corner of the northeastern severance of Lot 1433 as shown on Deposited Plan 152563; Then northwesterly along boundaries of that severance to the southernmost southwestern corner of Lot 1538 as shown on Deposited Plan 172656; Then generally northeasterly along boundaries of that lot to the northwestern corner of Lot 579 as shown on Deposited Plan 202841; Then southeasterly and northeasterly along boundaries that lot and onwards to the northwestern corner of Lot 562 as shown on Deposited Plan 201880; Then southeasterly, northeasterly and northwesterly along the boundaries of that lot to the southwestern corner of Lot 556 as shown on Deposited Plan 201879; Then northwesterly and northeasterly along boundaries of that lot and onwards to the northwestern corner of Lot 555 as shown on Deposited Plan 201879; Then southeasterly along the western boundary of that lot and southeasterly and northeasterly along western and southern boundaries of Lot 554 as shown on Deposited Plan 201879 to the western boundary of Reserve 20487; Then northwesterly and easterly along boundaries of that reserve and onwards to the northwestern corner of Lot 553 as shown on Deposited Plan 201879; Then easterly along the northern boundary of that lot to a western side of the Coolgardie-Esperance Highway; Then generally northwesterly along western sides of that highway to the northeastern corner of the southern severance of Lot 112 as shown on Deposited Plan 141275; Then northwesterly to the southernmost southeastern corner of Reserve 19875; Then northerly and northwesterly along eastern boundaries of that reserve to a southeastern corner of the northern severance of Lot 112 as shown on Deposited Plan 141275; Then generally northwesterly, generally northerly and westerly along boundaries of that severance to its northernmost northwestern corner; Then southerly to the northeastern corner of Lot 931 as shown on Deposited Plan 203675; Then westerly along the northern boundary of that lot to its northwestern corner; Then southerly to the easternmost southeastern corner of Lot 928 as shown on Deposited Plan 203686; Then generally westerly and northerly along boundaries of that lot to a southern boundary of Lot 927 as shown on Deposited Plan 203697; Then westerly, northerly and generally easterly along the boundaries of that lot and onwards to the northwestern corner of Lot 933 as shown on Deposited Plan 203675; Then southerly and easterly along western and southern boundaries of that lot and onwards to the northwestern corner of the eastern severance of Lot 932 as shown on Deposited Plan 203675; Then easterly along the northern boundary of that severance to a western side of the Coolgardie-Esperance Highway; Then northerly along the western side of that highway to the intersection of the prolongation westerly of the southern boundary of Reserve 42943; Then easterly to and generally easterly along the southern boundary of that reserve to the southernmost southwestern corner of Lot 966 as shown on Deposited Plan 203731; Then northeasterly along the southern boundary of that lot to the western boundary of Reserve 19439; Then northwesterly, generally easterly and southerly along the boundaries of that reserve to its southeastern corner; Then southerly to northernmost northwestern corner of the eastern severance of Lot 1552 as shown on Deposited Plan 210892; Then easterly and southerly along boundaries of that severance and onwards to the northern boundary of Lot 987 as shown on Deposited Plan 203725; Then southwesterly along the northern boundary of that lot and onwards to the northeastern corner of Lot 986 as shown on Deposited Plan 203725; Then southwesterly and southeasterly along boundaries of that lot to the northwestern corner of Lot 991 as shown on Deposited Plan 203725; Then southeasterly along the western boundary of that lot and onwards to the northwestern corner of Lot 998 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot and onwards to the northwestern corner of Lot 999 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot to the westernmost northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly along the northern boundary of that lot to the northwestern corner of Reserve 19873; Then northeasterly along the northern boundary of that reserve to a northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly and southeasterly along boundaries of that lot to the northeastern corner of Lot 1001 as shown on Deposited Plan 203623; Then southeasterly along the eastern boundary of that lot and onwards to the northeastern corner of Lot 1012 as shown on Deposited Plan 203623; Then southeasterly along eastern boundaries of that lot and Lot 1013 as shown on Deposited Plan 203623 to the northeastern corner of Lot 1024 as shown on Deposited Plan 203621; Then southeasterly along eastern boundaries of that lot and Lot 1025 as shown on Deposited Plan 203621 to the northern side of Holt Road; Then northeasterly and southeasterly along sides of that road to the northwestern corner of Lot 574 as shown on Deposited Plan 202847; Then northeasterly and generally southeasterly along boundaries of that lot to the northeastern corner of Lot 577 as shown on Deposited Plan 202847; Then southeasterly along the eastern boundary of that lot to a northern side of Swann Road; Then generally easterly and generally south easterly along northern sides of Swann Road and McCrea Road to the intersection with the eastern side of Davies Road; Then southeasterly to the northernmost corner of Lot 491 as shown on Deposited Plan 215215; Then southeasterly along the northeastern boundary of that lot to its easternmost corner; Then southeasterly to the intersection of the Lowest Astronomical Tide with Longitude 123.754068° East, being a point southwest of Point Malcolm; Then generally westerly along the Lowest Astronomical Tide back to the commencement point.

**Excluded Areas**

All that land comprising Lot 50 as shown on Diagram 34438 and being the land described in certificate of title volume 63 folio 118A: and

All that land comprising Lot 324 as shown on Plan 13885 and being the land described in certificate of title volume 1630 folio 141.

**AREA IN WHICH THE ESPERANCE NYUNGARS HOLD EXCLUSIVE HERITAGE KNOWLEDGE:**

All those lands and waters commencing at the intersection of the Lowest Astronomical Tide with Longitude 120.465236º East and extending north to Latitude 33.966954º South, Longitude 120.465236º East; Then northerly to intersect the land division boundary between South West and Eucla Land Divisions (being the Rabbit Proof Fence) at Latitude 33.692936º South; Then generally northwesterly along that land division boundary to the intersection of the prolongation westerly of the southern boundary of Reserve 27023; Then easterly along that prolongation to the southernmost southwestern corner of Reserve 27023; Then easterly and generally northeasterly along boundaries of that reserve until it intersects the prolongation westerly of the southern boundary of Reserve 36004; Then easterly to and along the southern boundary of Reserve 36004 to its southeastern corner; Then easterly to the southwestern corner of Lot 1276 as shown on Deposited Plan 152267; Then easterly to the intersection of Latitude 32.997899º South with the eastern boundary of the western severance of Reserve 19549; Then northerly along the eastern boundary of that severance to its northeastern corner, being a point on a present boundary of the Salmon Gums Townsite boundary; Then northerly, easterly, generally northerly, again easterly and southerly along that townsite boundary to its easternmost southeastern corner; Then southerly to Latitude 33.016047 South, Longitude 121.657724 East; Then westerly to the southwestern boundary of Native Title Determination Application WAD6020/1998 Ngadju (WC1999/002) at Latitude 33.018101º South; Then southeasterly along that application boundary to the northernmost corner of Lot 491 as shown on Deposited Plan 215215; Then southeasterly along the northeastern boundary of that lot to its easternmost corner; Then southeasterly to the intersection of the Lowest Astronomical Tide with Longitude 123.754068° East, being a point southwest of Point Malcolm; Then generally westerly along the Lowest Astronomical Tide back to the commencement point.

**Excluded Areas**

All that land comprising Lot 50 as shown on Diagram 34438 and being the land described in certificate of title volume 63 folio 118A: and

All that land comprising Lot 324 as shown on Plan 13885 and being the land described in certificate of title volume 1630 folio 141.

**AREA IN WHICH THE ESPERANCE NYUNGARS SHARE HERITAGE KNOWLEDGE WITH OTHERS:**

All those lands and waters commencing at the southwestern corner of Lot 1276 as shown on Deposited Plan 152267 and extending northwesterly along the western boundary of that lot and western and northern boundaries of Lot 1241 as shown on Deposited Plan 152283 to the southwestern corner of Lot 1255 as shown on Deposited Plan 152557; Then northwesterly and northeasterly along boundaries of that lot to intersect with a prolongation southeasterly of the western boundary of Lot 1403 as shown on Deposited Plan 152558; Then northwesterly to and along the western boundary of that lot to a southern boundary of Lot 702 as shown on Deposited Plan 152282; Then southwesterly and northwesterly along boundaries of that lot to its northwestern corner; Then northwesterly to the southwestern corner of Lot 1249 as shown on Deposited Plan 152286; Then northwesterly and northeasterly along boundaries of that lot and onwards to the southwestern corner of Lot 1245 as shown on Deposited Plan 152285; Then northwesterly and northeasterly along the boundaries of that lot to its northeastern corner; Then northwesterly to the westernmost southwestern corner of the northeastern severance of Lot 1433 as shown on Deposited Plan 152563; Then northwesterly along boundaries of that severance to the southernmost southwestern corner of Lot 1538 as shown on Deposited Plan 172656; Then generally northeasterly along boundaries of that lot to the northwestern corner of Lot 579 as shown on Deposited Plan 202841; Then southeasterly and northeasterly along boundaries that lot and onwards to the northwestern corner of Lot 562 as shown on Deposited Plan 201880; Then southeasterly, northeasterly and northwesterly along the boundaries of that lot to the southwestern corner of Lot 556 as shown on Deposited Plan 201879; Then northwesterly and northeasterly along boundaries of that lot and onwards to the northwestern corner of Lot 555 as shown on Deposited Plan 201879; Then southeasterly along the western boundary of that lot and southeasterly and northeasterly along western and southern boundaries of Lot 554 as shown on Deposited Plan 201879 to the western boundary of Reserve 20487; Then northwesterly and easterly along boundaries of that reserve and onwards to the northwestern corner of Lot 553 as shown on Deposited Plan 201879; Then easterly along the northern boundary of that lot to a western side of the Coolgardie-Esperance Highway; Then generally northwesterly along western sides of that highway to the northeastern corner of the southern severance of Lot 112 as shown on Deposited Plan 141275; Then northwesterly to the southernmost southeastern corner of Reserve 19875; Then northerly and northwesterly along eastern boundaries of that reserve to a southeastern corner of the northern severance of Lot 112 as shown on Deposited Plan 141275; Then generally northwesterly, generally northerly and westerly along boundaries of that severance to its northernmost northwestern corner; Then southerly to the northeastern corner of Lot 931 as shown on Deposited Plan 203675; Then westerly along the northern boundary of that lot to its northwestern corner; Then southerly to the easternmost southeastern corner of Lot 928 as shown on Deposited Plan 203686; Then generally westerly and northerly along boundaries of that lot to a southern boundary of Lot 927 as shown on Deposited Plan 203697; Then westerly, northerly and generally easterly along the boundaries of that lot and onwards to the northwestern corner of Lot 933 as shown on Deposited Plan 203675; Then southerly and easterly along western and southern boundaries of that lot and onwards to the northwestern corner of the eastern severance of Lot 932 as shown on Deposited Plan 203675; Then easterly along the northern boundary of that severance to a western side of the Coolgardie-Esperance Highway; Then northerly along the western side of that highway to the intersection of the prolongation westerly of the southern boundary of Reserve 42943; Then easterly to and generally easterly along the southern boundary of that reserve to the southernmost southwestern corner of Lot 966 as shown on Deposited Plan 203731; Then northeasterly along the southern boundary of that lot to the western boundary of Reserve 19439; Then northwesterly, generally easterly and southerly along the boundaries of that reserve to its southeastern corner; Then southerly to northernmost northwestern corner of the eastern severance of Lot 1552 as shown on Deposited Plan 210892; Then easterly and southerly along boundaries of that severance and onwards to the northern boundary of Lot 987 as shown on Deposited Plan 203725; Then southwesterly along the northern boundary of that lot and onwards to the northeastern corner of Lot 986 as shown on Deposited Plan 203725; Then southwesterly and southeasterly along boundaries of that lot to the northwestern corner of Lot 991 as shown on Deposited Plan 203725; Then southeasterly along the western boundary of that lot and onwards to the northwestern corner of Lot 998 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot and onwards to the northwestern corner of Lot 999 as shown on Deposited Plan 203623; Then northeasterly along the northern boundary of that lot to the westernmost northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly along the northern boundary of that lot to the northwestern corner of Reserve 19873; Then northeasterly along the northern boundary of that reserve to a northwestern corner of Lot 1000 as shown on Deposited Plan 203623; then northeasterly and southeasterly along boundaries of that lot to the northeastern corner of Lot 1001 as shown on Deposited Plan 203623; Then southeasterly along the eastern boundary of that lot and onwards to the northeastern corner of Lot 1012 as shown on Deposited Plan 203623; Then southeasterly along eastern boundaries of that lot and Lot 1013 as shown on Deposited Plan 203623 to the northeastern corner of Lot 1024 as shown on Deposited Plan 203621; Then southeasterly along eastern boundaries of that lot and Lot 1025 as shown on Deposited Plan 203621 to the northern side of Holt Road; Then northeasterly and southeasterly along sides of that road to the northwestern corner of Lot 574 as shown on Deposited Plan 202847; Then northeasterly and generally southeasterly along boundaries of that lot to the northeastern corner of Lot 577 as shown on Deposited Plan 202847; Then southeasterly along the eastern boundary of that lot to a northern side of Swann Road; Then generally easterly and generally south easterly along northern sides of Swann Road and McCrea Road to the intersection with the eastern side of Davies Road, being a point on a present boundary of Native Title Determination Application WAD6020/1998 Ngadju (WC1999/002); Then southeasterly along that application boundary to Latitude 33.018101º South; Then westerly to Latitude 33.016047º South, Longitude 121.657724º East; Then northerly to the easternmost southeastern corner of the Salmon Gums Townsite boundary; Then northerly, westerly, generally southerly, again westerly and southerly along that townsite boundary to the easternmost northeastern corner of the western severance of Reserve 19549; Then southerly along the eastern boundary of that severance to Latitude 32.997899º South and then westerly back to the commencement point.

* **Note:**
* **Geographic Coordinates provided in Decimal Degrees.**
* **All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.**
* **Cadastral, Townsite and Land Division Boundaries sourced from Landgate Spatial Cadastral Database (SCDB) dated 30th December 2013.**
* **Native Title Determination Application WAD6020/1998 Ngadju (WC1999/002), as registered by the National Native Title Tribunal on 28 September 2000.**

**Datum: Geocentric Datum of Australia 1994 (GDA94)**

**Prepared By: Native Title Spatial Services (Landgate) 21th February 2014**

**Use of Coordinates:**

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Schedule 4 – Tenure and Tenure Areas

(Clauses 1.1 Definition of **Tenure** and **Tenure Area**)

**Part A: Tenure**

The Tenure held by the Proponent to which this PSHA applies is as follows:

|  |
| --- |
|  |
|  |
|  |
|  |

[XX – Insert details of each Exploration Tenement, Access Authority or LA Act High Impact Licence, as applicable]

**Part B: Tenure Areas**

A map identifying the boundaries of the above Tenure and the extent to which it is wholly or partially within the Aboriginal Heritage Area is set out below or attached:

[XX - Insert below, or attach, map]

Schedule 5 – Contents of Activity Notice

**Part 1 – Primary contents of Activity Notice**

(Clause 8.2 Giving the Activity Notice)

**1.1 Basic information**

(Clause 8.2(c)(i))

Every Activity Notice must contain:

1. a statement that it is an Activity Notice issued under this PSHA (by reference to the name of the Determination or ILUA as set out in item 1 or item 4 of schedule 2);
2. the name of the Proponent, and:
3. an address in Western Australia for service of notices, under this PSHA, on the Proponent (if no address for service has previously been given by the Proponent); and
4. full contact details for a primary contact person within the Proponent (if a body corporate).

**1.2 Key statements and nominations under clause 8.2**

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(e), contain the following required key statements:

1. a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Proponent; and
2. a statement of whether the Proponent considers that a Survey is required (taking into consideration the matters referred to in clause 8.3); and
3. a nomination, by the Proponent, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model; and
4. where a Site Avoidance Model is nominated, a statement of whether the Proponent requires any Survey to be conducted in respect of:
   * + 1. only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice (commonly known as a 'work program clearance' survey); or
       2. a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice (commonly known as a 'work area clearance' survey); and
5. a nomination, by the Proponent, of a proposed Survey fieldwork start date or end date; and
6. a nomination, by the Proponent, as to whether it requires:
   * + 1. a Preliminary Advice (see clause 12.1(a)); or
       2. a draft of the Survey Report (see clause 12.1(b)).

Where any of those key statements are omitted, Part 3 of this schedule 5 provides default provisions.

**Part 2 – Additional detailed contents of Activity Notice**

(Clauses 8.2(b) and 8.2(c)(iii))

In accordance with clause 8 of this PSHA, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

1. a map showing clearly the area the subject of the Activity Notice; and
2. aerial photographs (if available) or smaller scale maps; and
3. where applicable, identifying numbers (or other identifying information) of each Tenure to which the Activity Notice relates; and
4. all known vehicular access routes to the area the subject of the Activity Notice; and
5. any ground disturbing Activities that the Proponent intends to undertake; and
6. the nature, scope, objectives and estimated timeframe of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
7. the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and
8. any requirement to restrict access by any persons to the area, and if so, the nature and extent of that restriction; and
9. the approximate number of personnel who will be involved in any proposed Activity; and
10. any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.

An Activity Notice may also set out:

1. whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that Survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report; and
2. the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
3. whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
4. any additional information which explains what sort of Survey outcome is being sought (if a Survey is required); and
5. any other background material which will better help the PBC and the Native Title Group to understand the potential impacts of what is proposed.

**Part 3 – Default provisions of Activity Notice**

(Clauses 8.2(c) and 8.2(e))

For the purposes of clause 8.2(e), the following default provisions apply in respect of any item in part 1.2 of this schedule 5 that is not specified or nominated in the Activity Notice.

|  |  |
| --- | --- |
| **Clause No.** | **Default Provision** |
| Item (a) | The Activity Program contains no Low Ground Disturbance Activity. |
| Item (b) | A Survey is required. |
| Item (c) | Site Avoidance Model. |
| Item (d) | Only the areas of specific Activities described in the Activity Notice are required to be Surveyed. |
| Item (e) | Not applicable (Parties to discuss and agree proposed Survey fieldwork start date or end date). |
| Item (f) | There is no requirement for a Preliminary Advice or a draft of the Survey Report. |

Schedule 6 – Costs for conduct of a Survey

(Clauses 9.5(a) Estimate of costs of Survey; and Clause 11 Payment for Surveys)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Ethnographic Assessment** | | | | | |
|  | Aboriginal Heritage Service Provider | At cost  [Usually $900 - $1200  (Indexed to CPI)] | | +GST | per person per day or pro rata for part thereof |
|  | Principal Aboriginal Heritage Consultant (if agreed) | At cost  [Usually $900 - $1200  (Indexed to CPI)] | | +GST | per person per day or pro rata for part thereof |
|  | External Consultant Anthropologist | At cost  [Usually $900 – $1200 (Indexed to CPI)] | | +GST | per person per day or pro rata for part thereof |
|  | Aboriginal Heritage Act Register Search | $200.00 or as advised by DAA | | +GST | per person per day or pro rata for part thereof |
|  | Aboriginal Liaison Officer (if required) | $500.00  (Indexed to CPI) | | +GST | per person per day or pro rata for part thereof |
| **Archaeological Assessment** (if necessary and agreed) | | | | | |
|  | Archaeologist (archaeological team external contractors) | At cost  [Usually $900 – $1200 (Indexed to CPI)] | |  |  |
|  | Fieldwork and reporting | At cost  [Usually $900 – $1200 (Indexed to CPI)] | |  |  |
| **Aboriginal Consultants** (Clause 10.1(a)(i)) | | | | | |
|  | Aboriginal Consultants - up to 6 | $500 (max) (Indexed to CPI) | | +GST | per person per day or pro rata for part thereof where a day is 7.5 hours. |
| **Regional Allowance (in addition to the Aboriginal Consultants' Costs set out above)** | | | | | |
|  | Aboriginal Consultants - up to 6 unless otherwise agreed | Equivalent to the Standard District Allowance Rate ("Rate") per week for the Regional Development Zone in which the relevant Aboriginal Consultant ordinarily resides. The Rate for the relevant Regional Development Zone is as referred to in the *District Allowance (Government Officers) General Agreement,* as adjusted from time to time, | | +GST | per person per 5 day week or pro rata for part thereof |
| **Field Expenses** | | | | | |
|  | Principal Aboriginal Heritage Consultant (if agreed) accommodation/meals | At cost | | +GST |  |
|  | Aboriginal Liaison Officer or Anthropologist accommodation/meals | At cost | | +GST |  |
|  | Archaeologist or Archaeological Team accommodation/meals | At cost | | +GST |  |
|  | Aboriginal Consultants accommodation/meals | At cost | | +GST |  |
| **Travel Expenses** | | | | | |
|  | Vehicle mileage (km) | $ As per Australian Taxation Office tax schedule for location | | +GST | per km |
|  | Hire Vehicle (if survey vehicle is hired) | commercial rates, plus fuel | |  |  |
|  | Aboriginal Consultants travel expenses (if required) | Rate as per tax schedule for location | | +GST | per km |
|  | Airfares | At cost (economy) | |  |  |
|  | Taxi travel (to and from airports or meetings) | At cost | |  |  |
| **Incidental Expenses** | | | | | |
|  | Film, maps, report production and expendables | At cost | +GST | |  |
| **Administration Fee and Disbursements** | | | | | |
|  | Administration Fee | 10% of total expenditure | +GST | |  |
|  | Disbursements, including telephone calls, facsimiles, etc. | At cost |  | |  |

Initials: Aboriginal Heritage Service Provider \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Initials: Proponent/Authorised officer of the Proponent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CPI Indexation**

Where a rate listed in this annexure is indicated to be "*Indexed to CPI*" it shall be varied annually on 31 August each year in accordance with the CPI Calculation.

Schedule 7 – Contents of Survey Report

(Clause 12.4)

**Part 1 – Guidelines for all Survey Reports**

**1.1 Copyright and confidentiality**

Insert a statement to the effect that the report may only be copied in accordance with this PSHA and subject to any other restrictions agreed to, from time to time, by the Proponent and the PBC on behalf of the Native Title Group.

**1.2 Survey personnel**

1. Author’s name in full and occupation and author’s business or company name.
2. Subject to clause 12.4(e), the full name and gender of each Aboriginal Consultant, and their cultural identity (e.g. the native title holding group and/or cultural group they represent).
3. Full names and gender of other personnel participating in the Survey and the purpose of their attendance.
4. Confirmation that the Aboriginal Heritage Service Provider considers the Aboriginal Consultants to be appropriate to speak for Aboriginal Heritage in relation to the area Surveyed.

**1.3 Survey date(s)**

Insert the date(s) on which fieldwork was conducted.

**1.4 Spatial information**

1. The general location of the area within which the Survey was undertaken (e.g.. title numbers ‘x’ to ‘z’, or the ‘abc’ pastoral lease, or the area shown on a map contained in the Survey Report).
2. Grid references of the Survey Area.
3. A map of the Survey Area.

**1.5 Other information**

1. Summary of results of searches of the Aboriginal Heritage Act Register including the site number and name, if given, and the reference number.
2. A general description of the fieldwork undertaken.
3. Details of ethnographic and (if relevant) archaeological consultation and assessment carried out during the Survey.
4. Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.
5. In respect of any Aboriginal Objects identified:
   1. a description of such Aboriginal Objects;
   2. the location of any Aboriginal Objects so identified; and
   3. the date on which each Aboriginal Object was identified.
6. Any discussion and recommendations.

**Part 2 – Additional guidelines for Survey Reports where Site Avoidance Model is used**

**2.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information**

1. Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
2. Grid references of the area where Activity should not be carried out, i.e.. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
3. Dimensions of the area, e.g. approximately 100m east-west and 50m north-south.
4. Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
5. Subject to clauses 12.4(e) to (g) inclusive, full names of persons(s) who provided the information set out at (a) – (d) above.

**Part 3 – Additional guidelines for Survey Reports where Site Identification Model is used**

**3.1 Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information**

Please complete and attach copy of *Heritage Information Submission Form* – see clause 19.5 and schedule 8.

**3.2 Recommendations and comments**

1. *Recommendations regarding the Aboriginal Site(s),* e.g. whether the site is:

* + a place of importance or significance where persons of Aboriginal descent have, or appear to have left, any object used for, or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or
  + a sacred/ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
  + a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or
  + a place where Aboriginal objects to which the Aboriginal Heritage Act applies are traditionally stored.

2. *Recommendations for how the Aboriginal Sites(s) should be protected.*

Schedule 8 – DAA Heritage Information Submission Form

(Clause 19.5 Provision of Aboriginal Heritage Information to DAA)

The Department of Aboriginal Affairs *Heritage Information Submission Form* is available for download on the DAA's website by accessing:

[www.daa.wa.gov](http://www.daa.wa.gov)

and searching for Heritage Information Submission Form.

Please download, complete and submit this form to the Department of Aboriginal Affairs in compliance with clause 19.5.

Schedule 9 – PBC Consent to the lodging of POW

(Clause 16.1(a)(i)(A))

[Letterhead of PBC]

Our ref: [number]

[Name of Proponent]

[Address of Proponent]

[Date]

Dear [Name of Proponent or relevant officer of the Proponent]

**PBC consent to the lodging of a programme of work**

We refer to the programme of work which we received from you on [insert date] in accordance with clause 16.1 of the Proponent Standard Heritage Agreement (PSHA) we entered into on [insert date].

In that programme of work you describe works that will take place within the boundaries of the registered site/s identified as [insert site identifier].

You advise us that you propose to lodge this programme of work as required by the Mining Act, including those works which will take place within the boundaries of [insert site identifier] site/s.

We are pleased to confirm that the [PBC] consents to the [Proponent] lodging the proposed programme of work, including those works proposed to be carried out within the boundaries of [insert site identifier] site. We further confirm that this is a letter of consent for the purposes of clause 16.1(a)(i)(A) of the PSHA entered into on [insert date].

Yours faithfully

[PBC]

Signing Pages

**EXECUTED** as a deed.

|  |  |  |
| --- | --- | --- |
| **Executed** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) on behalf of [XX –insert name of PBC]: | )  )  )  ) |  |
|  |  |  |
| Director (signature) |  | Director or secretary (signature)  (Delete whichever is not applicable) |
| Director (print full name) |  | Director or secretary (print full name) |
|  |  |  |
| Date |  |  |

|  |  |  |
| --- | --- | --- |
| Executed by (XX – Insert name of Proponent] ACN [XX – Insert ACN number] in accordance with section 127(1) of the *Corporations Act 2001* (Commonwealth): | )  )  )  ) |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |  |

|  |  |  |
| --- | --- | --- |
| The Common Seal of [XX – Insert name of Proponent] ACN [XX – Insert ACN number] was hereunto affixed by authority of its Directors in the presence of: | )  )  )  ) |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |  |
| Executed by [XX – Insert name of Proponent (if an individual)] in the presence of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness' Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) | )  ) |  |