

TJIWARL ENGAGEMENT PROTOCOL

TABLE OF CONTENTS

| | |
|--|-----------|
| Details of Engagement Protocol | 5 |
| Recitals | 5 |
| 1. Definitions and Interpretation | 6 |
| General Definitions | 6 |
| Specific Definitions | 6 |
| Interpretations | 11 |
| 2. Agreement to Negotiate | 12 |
| 3. Negotiation Teams | 12 |
| Tjiwarl Negotiation Team | 12 |
| Proponent Negotiation Team | 13 |
| 4. Authority of the Negotiators | 14 |
| 5. Negotiation Meetings | 14 |
| Holding of Negotiation Meetings | 14 |
| Other Meetings | 14 |
| 6. Tjiwarl Consent Requirements | 15 |
| 7. Consultation Meetings | 15 |
| Purpose of Consultation Meetings | 15 |
| Manner in which Consultation Meetings are to be held | 16 |
| 8. Information about the Tenure Operations | 16 |
| Provision of Information about Tenure Operations | 16 |
| On-country Visit | 17 |
| 9. Tjiwarl Expert Advisors | 17 |
| 10. Negotiation and Consultation Funding | 18 |
| Proponent's Costs | 18 |

| | |
|--|-----------|
| Tjiwarl AC's Costs | 18 |
| Budget Estimate Process & Payment of Costs | 18 |
| 11. Review of Rates | 20 |
| 12. GST | 20 |
| 13. Duty | 20 |
| 14. Confidentiality | 21 |
| 15. Public Announcements | 22 |
| 16. Assignment | 22 |
| Assignment by the Proponent | 22 |
| Assignment by Tjiwarl AC | 23 |
| 17. Unexpected Delays | 24 |
| Notice of Unexpected Delays | 24 |
| 18. Dispute Resolution | 24 |
| Notification and Negotiation of a Dispute | 24 |
| Mediation | 25 |
| Costs | 25 |
| Court Proceedings | 26 |
| 19. Term and Termination | 26 |
| Term | 26 |
| Termination | 26 |
| 20. Without Prejudice | 26 |
| 21. Entire Agreement | 27 |
| 22. Variation | 27 |
| 23. Further Assurances | 27 |
| 24. Severance | 27 |

| | |
|--|-----------|
| 25. Governing Law | 27 |
| 26. Counterparts | 27 |
| 27. Notice | 28 |
| Notice | 28 |
| Address for Notices | 28 |
| Schedule 1 – Details of the Tjiwarl Engagement Protocol | 35 |
| Schedule 2 – Initial Tjiwarl Negotiation Team | 36 |
| Schedule 3 – Initial Proponent Negotiation Team | 37 |
| Schedule 4 – Matters for Negotiation | 38 |
| Schedule 5 – Negotiation Cost Guidelines | 41 |

Details of Engagement Protocol

THIS ENGAGEMENT PROTOCOL is made on the date specified in item 1 of Schedule 1.

BETWEEN

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

and

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

Recitals

- A. The Proponent has made an application for the Tenure in the Tjiwarl Determination Area and wishes to establish the Tenure Operations.
- B. Pursuant to the Tjiwarl Determination, Tjiwarl AC is the registered native title body corporate that holds the native title rights and interest on trust for the Tjiwarl People.
- C. Tjiwarl AC is an incorporated body under the CATSI Act. It is governed by the Tjiwarl Rule Book and has the power to, amongst other things:
 - (a) negotiate with the Proponent;
 - (b) enter into agreements; and
 - (c) exercise procedural rights under the Native Title Acton behalf of the Tjiwarl People in accordance with the Tjiwarl Rule Book and the CATSI Act.
- D. Tjiwarl AC and the State have entered into an ILUA (body corporate agreement) entitled the Tjiwarl Palyakuwa (Agreement). The Agreement Area in relation to the Tjiwarl Palyakuwa (Agreement) includes part or all of the area of the Tenure.
- E. Schedule 4 to the Tjiwarl Palyakuwa (Agreement) provides a process for the grant of the Tenure. Relevantly, the Tjiwarl Palyakuwa (Agreement) provides that Tjiwarl AC and the Proponent are to enter into Negotiations about the grant of the Tenure and the Tenure Operations. The content of the Negotiations includes those initial matters listed at Schedule 4

to this Engagement Protocol in a way that is consistent with the Tjiwarl People's native title rights and interests with a view to reaching agreement for the parties' mutual benefit.

- F. This Engagement Protocol sets out the rules that the Parties must abide by during the Negotiations.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

General Definitions

- 1.1 In this Engagement Protocol words and expressions defined in the Native Title Act including **native title, native title rights and interests, prescribed body corporate and registered native title body corporate** have the same meaning when used in this Engagement Protocol.

Specific Definitions

- 1.2 In this Engagement Protocol, unless the context requires otherwise the following words and phrases have the following meanings:

Australian Stock Exchange means the stock exchange known as the 'Australian Securities Exchange' operated by ASX Limited ABN 98 008 624 691.

Budget Estimate means a written, itemised estimation of costs and expenses prepared in accordance with clause 10.

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

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

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

Confidential Information means:

- (a) all information disclosed by one Party to another Party during the negotiations leading up to executing this Engagement Protocol and during the term this Engagement Protocol;

- (b) all information, reports, maps, photographs, videos and other documents about or relating to the traditional laws and customs of the Tjiwarl People and any information that Tjiwarl AC nominates as being provided on a confidential basis; and
- (c) the Proponent's commercially sensitive information and any information the Proponent nominates as being provided on a confidential basis.

Confirmation of Budget has the meaning set out in clause 10.8.

Confirmation of Budget Revision has the meaning set out in clause 10.12.

Consultation Meetings means the meetings described at clause 7.1.

Consumer Price Index means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index will mean such other index as agreed by the Parties that reasonably reflects changes in the normal cost of living for permanent residents in Perth, Western Australia.

CPI Calculation means the following calculation

$$R = \frac{A \times B}{C}$$

where:

R is the specified rate adjusted for CPI.

A is the rate payable immediately prior to the Review Date.

B is the Consumer Price Index last published prior to the Review Date.

C is the Consumer Price Index last published prior to the Commencement Date.

Review Date means, successively, each anniversary of the Commencement Date.

Cultural Business means a funeral, event or other ceremony or cultural duty that any members of Tjiwarl AC or the Tjiwarl Negotiation Team are required to attend under their traditional laws and customs and that prevents any of them from performing their obligations under this Engagement Protocol. This includes, for the avoidance of doubt, the law business period between approximately 1 December to 1 March of each year.

Delay Event means an event that prevents a Party from performing its obligations under this Engagement Protocol and which is unforeseeable and beyond the reasonable control of the affected Party including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave or tsunami, landslide, adverse weather conditions, volcanic eruption;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic, terrorism, radioactive or biological contamination, impact of vehicles or aircraft, failure of a public utility; or
- (d) the effect of any applicable Law or any authority exercised by a government or other competent authority.

Dispute has the meaning given in clause 18.1.

Dispute Notice has the meaning given in clause 18.1.

Engagement Protocol means this means this protocol and its schedules and includes any variation or replacement of it.

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

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

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

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

Negotiation Matters means those matters about which the Parties have from time to time agreed to negotiate as part of the Negotiations and include, but are not limited to, those matters listed at Schedule 4;

Negotiation Meetings means meetings held between the Parties in accordance with clause 5 of this Engagement Protocol.

Negotiations mean the negotiations to be conducted under this Engagement Protocol.

Negotiators means the members of each of the Proponent Negotiation Team and the Tjiwarl Negotiation Team.

Party means a party to this deed and **Parties** means the Tjiwarl AC and the Proponent collectively.

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

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

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

Proponent Co-ordinator means the person co-ordinating the Negotiations on behalf of the Proponent and until notified otherwise shall be that person named at Schedule 3.

Proponent Negotiation Team means those people appointed from time to time to conduct the Negotiation on behalf of the Proponent and initially comprises the people named at Schedule 3.

Proponent Advisors means the people appointed from time to time to support, assist and advise the Proponent Negotiation Team by attending Negotiation Meetings and Consultation Meetings and participating in Negotiations as necessary, and initially comprises the people named at Schedule 3.

Public Announcement has the meaning given in clause 15.1.

Recipient has the meaning given in clause 12.

Replacement RNTBC has the meaning given in clause 16.3.

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

Supplier has the meaning given in clause 12.

Tenure means the mining tenement or petroleum title described in item 2 of Schedule 1 applied for by the Proponent under the Mining Act or the PGER Act.

Tenure Operations means the grant of the Tenure and any activities or approvals required or proposed to be conducted or obtained by the Proponent pursuant to, and in accordance with, the Tenure.

Termination Date means the date on which:

- (a) the Tenure is granted under the Mining Act or the PGER Act; or

(b) the Engagement Protocol is terminated in accordance with clause 19.2.

Tjiwarl Consent Requirements means the requirements detailed in clause 6.

Tjiwarl Co-ordinator means the person co-ordinating the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be that person named at Schedule 2.

Tjiwarl Cultural Advisors means those Tjiwarl People appointed from time to time to advise Tjiwarl AC and Tjiwarl Negotiation Team in relation to cultural matters and initially comprises the people named at Schedule 2.

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

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

Tjiwarl Expert Advisors means those experts consulted or engaged by the Tjiwarl Negotiation Team to provide independent technical advice on matters relating to the Negotiations or the Tenure Operations and may include the following fields of expertise:

- (a) economic;
- (b) legal;
- (c) geological;
- (d) environmental;
- (e) hydrological;
- (f) radiation;
- (g) anthropology;
- (h) commercial and business; and/or
- (i) social impact,

and initially comprises the people named at Schedule 2.

Tjiwarl Negotiation Team means those people appointed from time to time to conduct the Negotiations on behalf of Tjiwarl AC and, until notified otherwise, shall be those people named at Schedule 2.

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

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

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

Interpretations

1.3 In this Engagement Protocol, unless context requires otherwise:

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

- (i) if a word is defined, a derivative of the word has a corresponding meaning;
- (j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. Agreement to Negotiate

- 2.1 The Parties agree to negotiate in good faith on the matters contemplated under this Engagement Protocol, with a view to entering into a comprehensive agreement:
- (a) about the Tenure Operations, including agreement in relation to each of the Negotiation Matters; and
 - (b) that preserves the traditional way of life of the Tjiwarl People, including their language, cultural heritage and laws and customs.
- 2.2 Nothing in this Engagement Protocol is to be read as a commitment to entering into a comprehensive agreement with respect to the matters referred to in clause 2.1.

3. Negotiation Teams

Tjiwarl Negotiation Team

- 3.1 Tjiwarl AC:
- (a) shall be represented in the Negotiations by the Tjiwarl Negotiation Team; and
 - (b) may change the members of the Tjiwarl Negotiation Team by providing written notice of the change to the Proponent.
- 3.2 The Tjiwarl Negotiation Team and its role in the Negotiations shall be co-ordinated by the Tjiwarl Co-ordinator.
- 3.3 The Tjiwarl Co-ordinator shall be the primary contact with the Proponent in relation to the Negotiations.
- 3.4 The Tjiwarl Negotiation Team:
- (a) may, at its discretion, be assisted by Tjiwarl Expert Advisors and Tjiwarl Cultural Advisors;

- (b) shall show courtesy, respect and professionalism towards the Proponent Negotiation Team and respond to requests from the Proponent in a timely manner;
- (c) shall direct all contact with the Proponent in relation to the matters the subject of this Engagement Protocol through the Proponent Co-ordinator; and
- (d) shall notify the Proponent Co-ordinator immediately in the event that members of the Tjiwarl Negotiation Team or the Tjiwarl People are contacted directly by officers of the Proponent or members of the Proponent Negotiation Team in relation to the matters the subject of this Engagement Protocol.

Proponent Negotiation Team

3.5 The Proponent:

- (a) shall be represented in the Negotiations by the Proponent Negotiation Team; and
- (b) may change the members of the Proponent Negotiation Team by providing written notice of the change to the Tjiwarl AC.

3.6 The Proponent Negotiation Team and its role in the Negotiations shall be co-ordinated by the Proponent Co-ordinator.

3.7 The Proponent Co-ordinator shall be the primary contact with Tjiwarl AC in relation to the Negotiations.

3.8 The Proponent Negotiation Team:

- (a) may, at its discretion, be assisted by Proponent Advisors;
- (b) shall show courtesy, respect and professionalism towards the Tjiwarl Negotiation Team and respond to requests from Tjiwarl AC in a timely manner;
- (c) shall direct all contact with Tjiwarl AC in relation to the matters the subject of this Engagement Protocol through the Tjiwarl Co-ordinator; and
- (d) shall notify the Tjiwarl Co-ordinator immediately in the event that officers of the Proponent are contacted directly by members of the Tjiwarl Negotiation Team or the Tjiwarl People in relation to the matters the subject of this Engagement Protocol.

4. Authority of the Negotiators

- 4.1 The Negotiators are authorised to:
- (a) conduct the Negotiations; and
 - (b) make recommendations to the Parties in relation to the Negotiations.
- 4.2 The Negotiators are not authorised to:
- (a) execute any final agreement; or
 - (b) otherwise bind the Parties.
- 4.3 For the avoidance of doubt any agreement reached by the Negotiators is an agreement ‘in principle’ only until ratified and executed in accordance with the respective rules and procedures of the Parties.

5. Negotiation Meetings

Holding of Negotiation Meetings

- 5.1 Negotiation Meetings shall:
- (a) only proceed with the agreement of both Parties;
 - (b) occur with a timing and frequency agreed by the Negotiators, with an indicative schedule agreed at the first Negotiation Meeting; and
 - (c) unless otherwise agreed, take place either at an ‘on-country’ location nominated by either Party in relation to the Tenure Operations, in Leinster or in Perth.

Other Meetings

- 5.2 The Tjiwarl Co-ordinator, the Proponent Co-ordinator and any relevant Negotiators will meet in between Negotiation Meetings as required to:
- (a) discuss the agenda of Negotiation Meetings or Consultation Meetings and matters preparatory to these meetings;
 - (b) implement or follow up on the outcomes of Negotiation Meetings or Consultation Meetings; and
 - (c) develop proposals to progress Negotiations that can be put to Negotiation Meetings or Consultation Meetings for discussion.

6. Tjiwarl Consent Requirements

- 6.1 The Proponent acknowledges and agrees that Tjiwarl AC is required to consult with, and obtain the consent of, the Tjiwarl People before making any native title decision (as defined in the PBC Regulations). This includes agreement to any act that affects the native title rights and interests of the Tjiwarl People.
- 6.2 The Proponent acknowledges and agrees that, in accordance with clause 6.1, the Tjiwarl AC is required to:
- (a) consult with the Tjiwarl People, in a manner that accords with their traditional laws and custom, prior to agreeing or authorising any proposal with respect to the Tenure Operations; and
 - (b) be satisfied that the Tjiwarl People, in particular those native title holders for the area affected:
 - (i) understand the nature and purpose of any proposal with respect to the Tenure Operations;
 - (ii) have the opportunity to express their views; and
 - (iii) consent to any proposal with respect to the Tenure Operations.

7. Consultation Meetings

Purpose of Consultation Meetings

- 7.1 The Proponent acknowledges and agrees that, in addition to Negotiation Meetings, meetings of the Tjiwarl People are required to fulfil the Native Title Party Consent Requirements (**Consultation Meetings**).
- 7.2 The purpose of Consultation Meetings includes:
- (a) fully informing the Tjiwarl People of the proposals in relation to Tenure Operations and the general progress of the Negotiations;
 - (b) seeking directions from the Tjiwarl People on how to proceed with the Negotiations; and
 - (c) obtaining instructions from the Tjiwarl People on any in-principle or final agreement with respect to the Tenure Operations.

Manner in which Consultation Meetings are to be held

- 7.3 The Proponent acknowledges and agrees that Tjiwarl AC is required to conduct Consultation Meetings in a culturally appropriate manner that is consistent with the traditional decision-making processes of the Tjiwarl People.
- 7.4 Consultation Meetings shall take place at Perth or Leinster, unless otherwise agreed by the Parties.
- 7.5 Tjiwarl AC may invite the Proponent to attend Consultation Meetings for the purpose of assisting Tjiwarl AC in fulfilling the Native Title Party Consent Requirements but, subject to clause 7.6, the Proponent is not otherwise entitled to attend Consultation Meetings.
- 7.6 If the Proponent seeks to attend a Consultation Meeting to provide written or oral information to the Tjiwarl People with respect to the Tenure Operations or the Negotiations, then:
- (a) the Proponent shall inform the Tjiwarl Co-ordinator that it seeks to attend a Consultation Meeting in order to provide that information; and
 - (b) the Tjiwarl Negotiation Team shall consider such requests and shall not unreasonably withhold permission for the Proponent to attend a Consultation Meeting.
- 7.7 The Proponent acknowledges and agrees that any information it provides for the purpose of Consultation Meeting will be provided in a culturally appropriate medium that allows the Tjiwarl People to understand the information and may include a 'plain English' version of that information.

8. Information about the Tenure Operations

Provision of Information about Tenure Operations

- 8.1 The Proponent acknowledges that the provision of comprehensive and up to date information with respect to the Tenure Operation is central to Tjiwarl AC fulfilling the Native Title Party Consent Requirements.
- 8.2 The Proponent shall, prior to each Negotiation Meeting, and from time to time during the term of this Engagement Protocol, provide the Tjiwarl Co-ordinator and the Tjiwarl Negotiation Team with information about the nature and scope of the Tenure Operations, including information with respect to the extent, timing, impact, return, production and output projections of Tenure Operations.

- 8.3 The manner in which the information referred to in clause 8.2 will be provided by the Proponent is to be agreed by the Parties, but may include provision by way of:
- (a) presentations to the Tjiwarl Negotiation Team;
 - (b) discussions with the Tjiwarl Negotiation Team; and /or
 - (c) the provision of relevant information in writing.
- 8.4 The Proponent acknowledges and agrees that any information it provides under this clause 8 will be provided in a culturally appropriate medium that allows the Tjiwarl Negotiation Team or the Tjiwarl People to understand the information and may include a ‘plain English’ version of that information.

On-country Visit

- 8.5 After the first Negotiation Meeting, and if reasonably requested by the Tjiwarl Negotiation Team, the Proponent shall fund, at the rates set out in Schedule 5, a visit by the Tjiwarl Negotiation Team to an ‘on-country’ location nominated by either Party with respect to the Tenure Operations.

9. Tjiwarl Expert Advisors

- 9.1 To meet the Native Title Party Consent Requirements, Tjiwarl AC may engage, as required, Tjiwarl Expert Advisors.
- 9.2 If Tjiwarl AC engages any Tjiwarl Expert Advisor under clause 9.1, as soon as reasonably practicable after engaging any Tjiwarl Expert Advisor, the Tjiwarl Co-ordinator will provide the Proponent a written notice setting out:
- (a) the name, qualifications and practice area of that Tjiwarl Expert Advisor;
 - (b) a statement of the proposed scope of work of that Tjiwarl Expert Advisor;
 - (c) a copy of any written undertaking required to be procured from that Tjiwarl Expert Advisor pursuant to clause 14.4; and
 - (d) an initial schedule of rates for that Tjiwarl Expert Advisor and any update of that schedule from time to time.
- 9.3 The Proponent will provide Tjiwarl Expert Advisors with all reasonably requested information in order to ensure that accurate and timely advice can be provided to the Tjiwarl Negotiation Team and Tjiwarl AC.

10. Negotiation and Consultation Funding

Proponent's Costs

10.1 The Proponent is responsible for all of its own costs in relation to the Negotiations.

Tjiwarl AC's Costs

10.2 The Proponent acknowledges that Tjiwarl AC is unfunded and is unable to fund the Negotiations or any of the matters contemplated under this Engagement Protocol.

10.3 Subject to the Budget Estimate process set out in clauses 10.5 – 10.10 (inclusive), the Proponent shall fully fund the reasonable costs incurred by Tjiwarl AC in relation to the Negotiations agreed in accordance with this clause 10.

10.4 To avoid doubt, this clause does not prevent the Parties from agreeing on other items, rates or amounts from time to time.

Budget Estimate Process & Payment of Costs

10.5 As soon as reasonably practicable prior to each Negotiation Meeting and Consultation Meeting, Tjiwarl AC will provide the Proponent with a Budget Estimate setting out the costs it expects to incur in relation to that Negotiation Meeting or Consultation Meeting.

10.6 Tjiwarl AC will also, from time to time, provide a Budget Estimate to the Proponent setting out the costs:

- (a) for any Tjiwarl Expert Advisors engaged under clause 9.1;
- (b) the meetings contemplated by clause 5.2; and
- (c) any on-country visit contemplated by clause 8.5,

to be incurred by Tjiwarl AC in relation to the Negotiations.

10.7 The Parties shall use the rates set out in Schedule 5, and any rates for Tjiwarl Expert Advisors notified by Tjiwarl AC under clause 9.2(d) (if applicable), as a guide to determine the costs of the Negotiations and the formulation of the Budget Estimate.

10.8 Each Budget Estimate provided pursuant to clause 10.5 or 10.6 must be accompanied by a written statement of the purposes for which those costs are sought to be incurred.

- 10.9 Within five (5) Business Days of receipt of a Budget Estimate provided pursuant to clause 10.5 or 10.6 the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the Budget Estimate (**Confirmation of Budget**).
- 10.10 Following receipt of the Confirmation of Budget by Tjiwarl AC, the Proponent will pay:
- (a) in respect of any Budget Estimate provided pursuant to clause 10.5:
 - (i) 50% of the amounts shown in the agreed Budget Estimate, within five (5) Business Days of agreeing to that Budget Estimate; and
 - (ii) the balance of the actual costs incurred by Tjiwarl AC in relation to the relevant Negotiation Meeting or Consultation Meeting within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC; and
 - (b) in respect of any Budget Estimate provided pursuant to clause 10.6, the costs incurred by Tjiwarl AC within ten (10) Business Days of receipt of a tax invoice from Tjiwarl AC.
- 10.11 If Tjiwarl AC considers that it will incur costs that are substantially increased from those set out in a Budget Estimate previously provided to the Proponent, Tjiwarl AC shall, as soon as practicable, notify the Proponent of:
- (a) the estimated increase of those costs;
 - (b) the purposes for which those costs are sought to be incurred; and
 - (c) the reasons for the cost increase,
- and provide the Proponent with a revised Budget Estimate.
- 10.12 Within five (5) Business Days of receipt of a revised Budget Estimate provided pursuant to clause 10.11, the Proponent must provide Tjiwarl AC with a written statement of whether or not it agrees with the revised Budget Estimate (**Confirmation of Budget Revision**).
- 10.13 If the Proponent is unable to provide Tjiwarl AC with:
- (a) Confirmation of Budget under clause 10.9; or
 - (b) Confirmation of Budget Revision under clause 10.12,
- then the Parties agree to follow the dispute resolution process set out in clause 18.

11. Review of Rates

On each anniversary of the Commencement Date the Parties will review the rates specified in Schedule 5 and will, where necessary, adjust those rates:

- (a) to reflect movements in the market price of the relevant rates; and/or
- (b) in accordance with the CPI Calculation.

12. GST

12.1 Any reference in this clause 12 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

12.2 Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under this Agreement are exclusive of GST.

12.3 If GST is or becomes payable by a Party in relation to any supply that it makes under, in connection with or resulting from this Engagement Protocol (**Supplier**), the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for a supply from the Supplier, the Recipient must also pay the Supplier, at the same time as providing the consideration, the amount of any GST for which the Supplier is liable in relation to that supply (**additional amount**).

12.4 The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.

12.5 If a Recipient is required under this Engagement Protocol to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

13. Duty

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

14. Confidentiality

- 14.1 Subject to clause 14.2 the following shall be treated by the Parties as confidential:
- (a) information given by the Proponent to Tjiwarl AC under this Engagement Protocol, including any correspondence exchanged between the Parties in relation to this Engagement Protocol;
 - (b) information given by Tjiwarl AC to the Proponent in respect of cultural information, photographs or video; and
 - (c) information furnished in, or pursuant to, this Engagement Protocol or in the course of negotiating this Engagement Protocol by or on behalf of Tjiwarl AC.
- 14.2 Notwithstanding clause 14.1, the Parties may divulge Confidential Information to a third party:
- (a) with the prior written consent of the other Party (which consent shall not be unreasonably withheld);
 - (b) to the extent required by law;
 - (c) to the extent expressly permitted under this Engagement Protocol, or required to enforce its rights under this Engagement Protocol ;
 - (d) to the extent that such information is already, or becomes, in the public domain, otherwise than by breach of this clause 14;
 - (e) who is a financier of, or holding company, or wholly owned subsidiary of the Proponent or Tjiwarl AC;
 - (f) who is the State for the purpose of the Tjiwarl Palyakuwa (Agreement);
 - (g) to the extent required to comply with the listing rules of the Australian Stock Exchange; or
 - (h) who is a prospective joint venturer or assignee.
- 14.3 The Parties shall take all steps reasonably necessary to ensure that the Confidential Information is known only to such persons (including any employees of the Parties) as may reasonably require knowledge thereof in the course of their duties or functions.
- 14.4 Notwithstanding the provisions of clause 14.2 the Parties shall, to the extent permitted by law, require any person (other than members of Tjiwarl AC) to whom it intends to disclose such Confidential Information (who is not under a statutory, professional or contractual duty to keep such Confidential Information confidential) to give a written undertaking to keep such Confidential Information confidential in accordance with clause 14.1.

14.5 The obligations of the Parties under this clause 14 shall survive the termination of this Engagement Protocol.

15. Public Announcements

15.1 The Parties must not make or authorise any comments or statements to the media and/or the public about the Negotiations (**Public Announcement**) unless:

- (a) it has been agreed in writing by the Proponent and Tjiwarl AC; or
- (b) is required to be made by Law and the disclosing party has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with, the non-disclosing party as to the form and content of the Public Announcement.

15.2 For the avoidance of doubt, a Public Announcement includes comments or statements made on any social media or networking site.

15.3 The Parties will use their best endeavours to stop their members, employees or officers making Public Announcements.

15.4 If a Public Announcement is made contrary to this clause 15, the Parties will meet as soon as possible and issue a joint statement in response to that unauthorised Public Announcement.

16. Assignment

Assignment by the Proponent

16.1 The Proponent may assign, transfer, novate or otherwise dispose of any or all of its rights, interests and obligations under this Engagement Protocol to any person provided that:

- (a) the Proponent notifies Tjiwarl AC in writing of the name and nature of the prospective assignee at least twenty (20) Business Days before the assignment;
- (b) the Proponent consults with Tjiwarl AC about the prospective assignee;
- (c) Tjiwarl AC consents to the assignment, which consent will not be unreasonable withheld;
- (d) the Proponent procures the prospective assignee to execute a deed of assumption by which the prospective assignee agrees to:
 - (i) be bound by this Engagement Protocol and to assume all of the Proponent's obligations under the Engagement Protocol; and

- (ii) execute all documents and do (or refrain from doing) all acts and things necessary to ensure the performance of and compliance with those obligations in a timely manner,
- as if it were a party to this Engagement Protocol; and
- (e) evidence of that assumption is provided to Tjiwarl AC.

16.2 The Proponent will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by an assignee, save for any obligations pursuant to clause 14.

Assignment by Tjiwarl AC

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

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

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

16.5 Tjiwarl AC will be released from its obligations under this Engagement Protocol to the extent that those obligations have been assumed by the Replacement RNTBC, save for any obligations pursuant to clause 14.

17. Unexpected Delays

Notice of Unexpected Delays

- 17.1 The Parties each acknowledge that Delay Events and Cultural Business may cause legitimate delays in the Parties progressing the Negotiations or performing obligations under this Engagement Protocol.
- 17.2 If a Party is prevented in whole or in part from carrying out its obligations under this Engagement Protocol or progressing the Negotiations as a result of a Delay Event or Cultural Business it must immediately notify the other Party of:
- (a) the obligations it cannot perform;
 - (b) the nature of the Delay Event or Cultural Business; and
 - (c) time during which it is estimated that the Delay Event or Cultural Business will continue.
- 17.3 For the avoidance of doubt, the Parties acknowledge that Cultural Business may not necessarily preclude the planning or holding of Negotiation Meetings or Consultation Meetings if the relevant personnel are available to meet.
- 17.4 The Party affected by the Delay Event or Cultural Business will give immediate notice to the other Parties of the cessation of the delay.

18. Dispute Resolution

Notification and Negotiation of a Dispute

- 18.1 If a dispute arises between the Parties in connection with the Negotiations or this Engagement Protocol (**Dispute**) either Party may give notice in writing to the other Party identifying the nature of the Dispute (**Dispute Notice**).
- 18.2 Following the issue of a Dispute Notice, senior representatives of the Parties shall consult with each other in good faith in a timely manner to seek to resolve the Dispute. A Party may also, for the avoidance of doubt, seek the assistance of the State to resolve the Dispute in accordance with Schedule 4 of the Tjiwarl Palyakuwa (Agreement).

18.3 If the Parties cannot resolve the Dispute within twenty (20) Business Days of a Dispute Notice being served (or other such longer period as may be agreed between the Parties) any Party may refer the dispute to mediation.

Mediation

18.4 If the Dispute is referred to mediation:

- (a) the Parties must seek to agree on the appointment of an independent mediator with relevant experience; or
- (b) if the Parties cannot agree on a mediator within seven (7) Business Days of the referral to mediation, a person nominated by the President or Acting President of the Law Society of Western Australia.

18.5 The reasonable cost of the mediator is to be borne by the Party that refers the Dispute to mediation.

18.6 The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.

18.7 The Parties to the Dispute will engage in the mediation process in good faith and in an open and conciliatory manner, taking into account any cultural or customary concerns or considerations, with a view to reaching a mutually acceptable compromise to the issues in dispute.

18.8 If the Parties to the Dispute fail to achieve a resolution of the Dispute within thirty (30) Business Days of the appointment of the mediator (or such other longer period as may be agreed between the Parties to the Dispute), any Party to the Dispute may by written notice to the other Parties to the Dispute terminate the mediation process.

Costs

18.9 Subject to clause 18.5, the Parties shall bear their own costs of participating in any consultation or mediation conducted pursuant to this clause 18.

Court Proceedings

18.10 Subject to clause 18.11, a Party to a Dispute may not start court proceedings in relation to a Dispute unless the Dispute has first been referred to mediation and the mediation has been terminated in accordance with clause 18.8.

18.11 Nothing in this clause 18 precludes a Party from seeking urgent interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

19. Term and Termination

Term

19.1 This Engagement Protocol commences on the Commencement Date and terminates on the Termination Date.

Termination

19.2 This Engagement Protocol may be terminated by:

- (a) any Party by giving the other Parties no less than ten (10) Business Days written notice of such termination; or
- (b) by the mutual agreement of the Parties in writing.

19.3 If this Engagement Protocol is terminated for any reason:

- (a) each Party will remain liable to the other Party in respect of all obligations accrued under this Engagement Protocol to the date of termination; and
- (b) save for clause 14, the Parties will have no further rights or obligations under this Engagement Protocol.

20. Without Prejudice

20.1 This Engagement Protocol and the Negotiations are without prejudice to the legal positions of the Parties and will not be construed as admissions of fact or liability in relation to any legal proceeding or process except that, subject to clause 20.2, they may be used as evidence that the Parties have attempted to negotiate in good faith and/or consulted with each other.

20.2 Neither this Engagement Protocol nor the fact of the Negotiations are conclusive proof in themselves of a Party having negotiated in good faith.

21. Entire Agreement

This Engagement Protocol constitutes the entire agreement between the Parties relating to its subject matter.

22. Variation

This Engagement Protocol may only be varied by agreement in writing signed by both Parties.

23. Further Assurances

Each Party will, on the request of the other Party, do everything reasonably necessary to give effect to this Engagement Protocol.

24. Severance

If any part of this Engagement Protocol is or becomes unenforceable, that part is or will be severed from this Engagement Protocol so that the rest of this Engagement Protocol remains in force.

25. Governing Law

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

26. Counterparts

26.1 This Engagement Protocol may be executed in two counterparts.

26.2 If executed in two counterparts, both counterparts together shall be taken to constitute one instrument.

27. Notice

Notice

27.1 Each notice or other communication given by one Party to another pursuant to this Engagement Protocol:

- (a) shall be in writing;
- (b) must be delivered to the address for the Party specified in clause 27.3 or to such other address as a Party may nominate in writing;
- (c) subject to clause 27.2, will be taken to be duly given or made:
 - (i) if delivered by hand, upon delivery;
 - (ii) if sent by ordinary pre-paid post, ten (10) Business Days after posting; and
 - (iii) if sent by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered.

27.2 If the result of clause 27.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

Address for Notices

27.3 For the purpose of this clause 27, unless notified by a Party otherwise, the address to which notices and other communications are to be sent shall be:

- (a) for Tjiwarl AC:

The CEO

Tjiwarl (Aboriginal Corporation) RNTBC

Unit 6, 524 Abernethy Road,
Kewdale WA 6105
Telephone: +61 (8) 9200 3730
Email: compliance@tjiwarl.org.au

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

EXECUTED by the parties as an agreement

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

Signature of Director

Signature of Director

Full name of Director (print)

Full name of Director (print)

Date

Date

PROPONENT¹

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

Signature of [*insert Proponent name*]

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

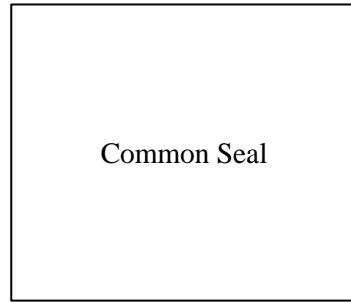
¹ Delete this footnote, the heading and the execution clauses for the Proponent that are not applicable.

OR IF THE PROPONENT IS A COMPANY

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

WITH A COMMON SEAL

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



Signature of Director

Signature of Director / Secretary*
*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

WITHOUT A COMMON SEAL

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

Signature of Director

Signature of Director / Secretary*
*delete whichever is not applicable

Full name of Director (print)

Full name (print)

Date

Date

SOLE PROPRIETOR COMPANY

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

Signature of Director

(as sole Director and Secretary)

Full name (print)

Date

Schedule 1 – Details of the Tjiwarl Engagement Protocol

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

Schedule 2 – Initial Tjiwarl Negotiation Team

| ROLE | DETAIL |
|----------------------------------|--|
| Tjiwarl Co-ordinator | |
| Tjiwarl People | 1. 2. 3. 4. <i>[insert / delete as required]</i> |
| Tjiwarl Cultural Advisors | 1. 2. 3. <i>[insert / delete as required]</i> |
| Tjiwarl Expert Advisors | 1. 2. 3. <i>[insert / delete as required]</i> |
| Legal Services | |

Schedule 3 – Initial Proponent Negotiation Team

| ROLE | DETAIL |
|-------------------------------|--|
| Proponent Co-ordinator | |
| Proponent Members | 1. 2. 3. 4. <i>[insert / delete as required]</i> |
| Proponent Advisors | 1. 2. 3. <i>[insert / delete as required]</i> |
| Legal Services | |

Schedule 4 – Matters for Negotiation

1. Culture, Country and Community

- (a) Heritage protection, including protection of sites.
- (b) Avoiding damage to sites.
- (c) Facilitating ‘care for country’ obligations and maintaining connection with country.
- (d) Minimising the impact of the Tenure Operations on country and on native title.
- (e) Rehabilitation and restoration of country.
- (f) Support for law and culture.
- (g) Social impact base line assessment and minimising negative social impacts and maximising positive social impacts.
- (h) Environmental assurances and insurances.
- (i) Water Management.
- (j) Processes for involving Tjiwarl People in environmental matters.

2. Relationship between Tjiwarl AC, Tjiwarl People and the Proponent

- (a) Development of long-term relationship between Tjiwarl AC, the Tjiwarl People and the Proponent.
- (b) Process for ongoing consultation between the Tjiwarl AC and the Proponent about the development, operation, decommissioning and rehabilitation of the Tenure Operations, including any issues and opportunities that arise during the life of the Tenure Operations.
- (c) Process for resolution of disputes between Tjiwarl AC and the Proponent.
- (d) Processes for assisting the Proponent to create a safe, productive and culturally aware workplace.
- (e) Cultural awareness training for all Proponent employees and contractors involved in the Tenure Operations.
- (f) Establishing a committee of representatives of the Proponent and Tjiwarl People to manage the ongoing relationship and the interface between the Proponent and Tjiwarl People.

3. Access and Consent

- (a) Access by Tjiwarl People to the area of the Tenure over the life of the Tenure Operations.
- (b) Consent to the grant of the Tenure, the Tenure Operations and any other required approvals.

4. Community Development

- (a) Maximising the economic viability of Tjiwarl AC.
- (b) Providing business and employment opportunities for Tjiwarl AC and Tjiwarl People.
- (c) Maximising training opportunities for Tjiwarl People.
- (d) Maximising economic development opportunities for Tjiwarl AC and Tjiwarl People.
- (e) Providing a legacy for Tjiwarl People.

5. Compensation

- (a) Nature and quantum of compensation.
- (b) Body to hold compensation and other community benefits.

6. Tjiwarl Peoples' Lives

- (a) Minimising any adverse impacts of the Tenure Operations on Tjiwarl People.
- (b) Minimising any adverse impact of Tenure Operations on the Tjiwarl Peoples' native title rights and interests.
- (c) Maximising education, training and mentoring opportunities for Tjiwarl People, including the development of a training and employment policy.
- (d) Maximising the social development of Tjiwarl People generally.
- (e) Support for sporting events in which Tjiwarl People participate.
- (f) Improving the general health and well-being of Tjiwarl People.
- (g) Ensuring that contractors and subcontractors working on Tenure Operations must comply with the Proponent's undertakings.
- (h) Development of management plans for the Tenure Operations.

7. Project Agreement

- (a) Structure and content of the agreement with respect to the Tenure Operations, including parties to such an agreement.

- (b) Strong processes for implementation of the agreement with respect to the Tenure Operations.

8. Commercial Matters

- (a) Providing commercial and contracting opportunities during the life of the Tenure Operations to Tjiwarl People and entities owned by Tjiwarl People.
- (b) Exploring the opportunity for Tjiwarl AC and Tjiwarl People be included in equity opportunities.

Schedule 5 – Negotiation Cost Guidelines

| ITEM | RATE |
|--|--------------------------------|
| Tjiwarl Negotiation Team Members | \$750 |
| Tjiwarl Cultural Advisors | At cost |
| Tjiwarl Expert Advisors | At cost |
| GIS Officer | \$60 per hour or \$500 per day |
| Fuel | At cost |
| Meals (where catering not provided) | \$80 per day per person |
| Catering of meals | At cost |
| Accommodation | At cost |
| Airfares | At cost |
| Venue Hire | At cost |
| Administration | 20% |