**Jidi Jidi Aboriginal Corporation RNTBC ICN 3598**

**and**

**[Tenement Holder]**

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**Nharnuwangga Wajarri and Ngarlawangga Heritage Agreement**

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**Nharnuwangga Wajarri and Ngarlawangga Heritage Agreement**

**[Date]**

**Parties**

**Jidi Jidi Aboriginal Corporation RNTBC ICN 3598 and ABN 14 260 549 105**

c/-Houston Legal, PO Box 95, Victoria Park Western Australia 6979 (“JJAC”)

and

**[Name of Tenement Holder]** ("Tenement Holder")

**[Address of Tenement Holder]**

**RECITALS**

**A** The Nharnuwangga, Wajarri and Ngarlawangga People are common law holders of native title in respect of the Nharnuwangga Wajarri and Ngarlawangga Land.

**B** JJACis the Prescribed Body Corporate that manages and holds in trust the native title of the Nharnuwangga Wajarri and Ngarlawangga People**.**

**C** The Tenement Holder has applied for or is entitled to be registered under the Mining Act as the holder of the Tenement.

**D** The Parties have agreed to enter into this Agreement to ensure that in the exercise of rights under the Tenement by or on behalf of the Tenement Holder damage, disturbance or interference to an Aboriginal site is avoided so far as possible.

**The parties agree** as follows:

# Interpretation

## **Definitions**

## In this Agreement unless the context otherwise requires:

## **Aboriginal Heritage Act** means the Aboriginal Heritage Act 1972 of Western Australia;

## **Aboriginal site** has the same meaning as "Aboriginal site" in the Aboriginal Heritage Act;

## **Ancillary Activity** means any activity which may be conducted on a miscellaneous licence pursuant to the Mining Act 1978 other than the construction of an infrastructure facility (as that term is defined in the Native Title Act);

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

## **Category of Impact**means any of the categories of impact listed in Schedule 1;

## **Consultant** means any person nominated or appointed to conduct a Heritage Survey as the context requires;

#### **Exploration Activity** means any activity which may be conducted on a prospecting, special prospecting, exploration or retention licence pursuant to the Mining Act 1978;

## **Heritage Survey** means a heritage survey of a type listed in Schedule 1 and conducted pursuant to this Agreement;

## **JJAC** means JJAC or such other entity as may from time to time replace JJAC as manager and trustee of the native title of the Nharnuwangga Wajarri and Ngarlawangga People**;**

## **Mining Act** means the Mining Act 1978 of Western Australia;

## **Native Title Act** means the Native Title Act 1993 of the Commonwealth;

## **Nharnuwangga Wajarri and Ngarlawangga Determination** means the approved determination of native title made on 29 August 2000 by the Federal Court in WAG 72, 73, 74 and 75 of 1998;

## **Nharnuwangga Wajarri and Ngarlawangga Land** means the land described in Order 2.1 of the Nharnuwangga Wajarri and Ngarlawangga Determination in which native title is determined to exist;

## **Nharnuwangga Wajarri and Ngarlawangga Heritage Register** means the Nharnuwangga Wajarri and Ngarlawangga Heritage Register established and maintained pursuant to the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement;

## **Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement** means the agreement made 2000, registered by the National Native Title Tribunal in July 2001,between the State of Western Australia and the Nharnuwangga, Wajarri and Ngarlawangga People in respect of the Nharnuwangga Wajarri and Ngarlawangga Land;

## **Nharnuwangga Wajarri and Ngarlawangga People** means the native title holders of the Nharnuwangga Wajarri and Ngarlawangga land;

## **Other Information** means any information other than that strictly required for the purpose of completion of the Heritage Survey;

## **Panel** means the panel of arbitrators agreed from time to time by JJAC and the State under the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement.

## **Party** means a party to this Agreement;

## **Program of Activity** means:

#### in the case of a prospecting licence, a statement by the Tenement Holder of the work intended to be carried out pursuant to the Tenement;

#### in the case of an exploration licence, a copy of that portion of the statement containing the information referred to in section 58(1)(b)(i) and (ii) of the Mining Act;

#### in the case of a miscellaneous licence, a statement by the Tenement Holder of the work intended to be carried out pursuant to the Tenement;

#### in the case of a retention licence, a copy of that portion of the statement containing the information referred to in section 70C(1)(e)(i) the Mining Act; and

## in the case of a mining lease, a statement by the Tenement Holder of the work intended to be carried out pursuant to the Tenement; and

## **Schedule** means a schedule to this Agreement;

## **Tenement** means a prospecting licence, exploration licence, miscellaneous licence, retention licence or mining lease granted under the Mining Act solely over Nharnuwangga Wajarri and Ngarlawangga Land and includes the specified land in respect of which the tenement is so granted;

## **Tenement Holder** means the person registered from time to time under the Mining Act as the holder of the Tenement including any permitted assignee; and

## **Term** means the term of the grant of the Tenement.

## **Interpretation**

## In this Agreement, unless the context otherwise requires:

#### headings or subheadings are inserted for guidance only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;

#### words expressed in the singular include the plural and vice versa;

#### words expressed in one gender include the other genders;

#### an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate or governmental or semi governmental entity;

#### a reference to a thing includes a part of that thing but is not to be taken as implying that performance of part of an obligation is the performance of the whole;

#### a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this Agreement;

#### where the day on or by which a thing is required to be done is not a Business Day that thing must be doneon or by the succeeding Business Day;

#### a covenant or agreement by morethan one person binds, and is enforceable against, thosepersons jointlyand each of them severally;

#### no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;

#### a reference to a statute, code, regulation, order,ordinance, by-law or other legislation or subordinated or delegated legislation or provision of it includes any amendment, substitution, re-enactment or consolidation of it;

#### areference to a statute includes every regulation, order, ordinance,by-law, subordinated or delegated legislation and proclamation made or issued under that statute;

#### where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

#### a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time; and

#### "including" means "including , but not limited to".

# Notification of Program of Activity

## During the Term, the Tenement Holder shall not carry out an Exploration Activity or Ancillary Activity unless:

#### a Program of Activity for that proposed Exploration Activity or Ancillary Activity has been provided to JJAC; and

#### any Heritage Survey proposed to be undertaken under clause 3 has been completed; and

#### if:

#### the Exploration Activity; or

#### the Ancillary Activity,

#### originally notified to JJAC would otherwise be carried out within an Aboriginal site identified by the Heritage Survey the Tenement Holder has provided JJAC with an amended Program of Activity in accordance with clause 7 avoiding the Aboriginal site and such activities are carried out in accordance with that amended Program of Activity.

# Heritage Surveys

## **Heritage Survey requirement**

## Within 30 days after being provided with a Program of Activity by the Tenement Holder JJAC shall:

#### consider the information on the Nharnuwangga Wajarri and Ngarlawangga Heritage Register;

#### consider the Program of Activity;

#### assess the Exploration Activities as proposed in the notified Program of Activity against the Categories of Impact; and

#### notify the Tenement Holder of, or provide the Tenement Holder with, as the case requires:

##### the information required to be delivered under clause 5 of this Agreement; and

##### any areas of proposed avoidance or proposed limitations on activities***;*** and

##### whether or not a Heritage Survey is proposed to be undertaken, and if it is, the type of Heritage Survey proposed; and

##### the name, address, qualifications and experience of the Consultants JJAC would prefer the Tenement Holder appoint to assist in the conduct of the Heritage Survey; and

##### if either a ground reconnaissance or an ethnographic survey Heritage Survey is proposed to be carried out the names of the informants appointed under clause 4.3(a) to assist in the conduct of the Heritage Survey.

## **JJAC may waive Heritage Survey requirements**

## JJAC may in its absolute discretion and notwithstanding Schedule 1 notify the Tenement Holder that a Heritage Survey is not required to be carried out in respect of the notified Exploration Activity, or, Ancillary Activity.

## **Application of Schedule 1**

## If JJAC determine that a Heritage Survey is required, the required type of Heritage Survey notified to the Tenement Holder must be in accordance with the provisions of Schedule 1 relating to the notified Exploration Activity.

## **Archaeological Heritage Survey**

## Where an archaeological Heritage Survey is proposed to be carried out the Tenement Holder will consult with JJAC and will have due regard to any reasonable comments JJAC might have before carrying out the archaeological survey

## **Heritage Survey not required**

## If within the time period specified in clause 3.1:

#### JJAC notifies the Tenement Holder that a Heritage Survey is not required; or

#### JJAC fails to notify the Tenement Holder in accordance with clause 3.1,

#### the Tenement Holder may, subject to Aboriginal Heritage Act, proceed immediately to implement the notified Program of Activity.

## **Terms of Heritage Survey**

#### If in accordance with clause 3.1, JJAC notifies the Tenement Holder that a Heritage Survey is required to be carried out, JJAC and the Tenement Holder must negotiate the terms of the Heritage Survey in good faith. Issues to be agreed in respect of the Heritage Survey must as a minimum include the following:

#### the type of survey;

#### details of the participants;

#### timeframe for completion (including if necessary for each stage of the survey);

#### costs; and

#### format of the report.

## **If No Agreement Reached**

#### If the Parties cannot agree on the terms of the Heritage Survey within 2 months after the Tenement Holder is notified that a Heritage Survey is proposed then the Parties may agree that they are in dispute as to the terms and conditions of the Heritage Survey and to refer their dispute to arbitration in accordance with clause 8 of this Agreement.

# Conduct of Heritage Survey

## **Appointment of Consultants**

#### Subject to clause 4.1(b), the Tenement Holder shall appoint the Consultant nominated pursuant to clause 3.1(d)(iv) to assist with the conduct of the required Heritage Survey.

#### If the Tenement Holder considers that the Consultant nominated pursuant to clause 3.1(d)(iv) is inappropriate to conduct the required Heritage Survey, then it shall, within 30 days, advise JJAC by notice in writing to that effect. The Tenement Holder may also advise JJAC by notice in writing of an alternative Consultant who they consider is a more appropriate person to conduct the Heritage Survey.

#### JJAC shall, within 30 days of receipt of a notice from the Tenement Holder under clause 4.1(b), indicate:

#### whether the alternative Consultant nominated by the Tenement Holder is acceptable; or

#### if no alternative Consultant has been nominated by the Tenement Holder advise the Tenement Holder by notice in writing of the names, addresses, qualifications and experience of at least two (2) other consultants who JJAC considers would be acceptable to conduct the Heritage Survey.

#### The Tenement Holder shall within 30 days of receipt of a notice from JJAC under sub-clause 4.1(c)(ii), indicate which of the Consultants nominated by JJAC is acceptable. If the Tenement Holder considers that none of the alternative consultants nominated by JJAC is appropriate to conduct the Heritage Survey, then it shall, within 30 days, refer the matter to arbitration under clause 8.

#### If the matter is referred to arbitration under clause 4.1(d), then the arbitrator shall determine which, on reasonable grounds, of the various consultants nominated by the respective Parties under clauses 3.1 and 4.1 is the most appropriate to conduct the Heritage Survey. The Consultant determined by the arbitrator to be the most appropriate person must then be appointed by the Tenement Holder to conduct the Heritage Survey.

#### If any Consultant agreed by the parties or determined under sub-clause (e) is or becomes unavailable for any reason the parties must repeat the process set out in this clause 4.1 until a resolution is reached.

## **Guidelines for Consultants**

#### The Tenement Holder shall make it a condition of appointment of any Consultant that in assisting with the conduct of the Heritage Survey the Consultant shall comply with the guidelines set out in Schedule 2*.*

#### Any Consultant appointed must either:

* + - * 1. be a professional member of the Anthropological Society of Western Australia; or
        2. be a Fellow of the Australian Anthropological Society; or
        3. although not in fact a member of either Society mentioned in sub-clauses (i) or (ii), hold such qualifications that would entitle the Consultant to be a professional member or Fellow of either Society.

## **Informants**

#### Where a ground reconnaissance Heritage Survey is required to be carried out, JJAC will appoint up to a maximum of 4 people only being Nharnuwangga, Wajarri and Ngarlawangga People or people nominated by JJAC to assist with the conduct of the Heritage Survey. The Tenement Holder will pay the reasonable costs of the persons nominated.

#### Where a full ethnographic Heritage Survey is required to be carried out JJAC will appoint a reasonable number of Nharnuwangga, Wajarri and Ngarlawangga People or people nominated by the JJAC (up to a maximum of 10 persons only) to assist with the conduct of the Heritage Survey. The Tenement Holder will pay the reasonable costs of the persons nominated.

#### JJAC will notify the Tenement Holder of the appointees under clauses 4.3(a) and (b) at the same time as it notifies the Tenement Holder under clause 3.1(d) whether or not a Heritage Survey is required to be undertaken.

#### If as a result of:

#### an amended Program of Activity; or

#### any determination under clause 8;

#### a ground reconnaissance Heritage Survey as opposed to a full ethnographic or archaeological Heritage Survey may be appropriate or determined, JJAC must immediately notify the Tenement Holder of the nominated (up to a maximum of 4) in place of those originally nominated.

#### The Consultant may only consult with the persons nominated by JJAC for the purpose of preparation of the Heritage Survey.

## **Completion of Heritage Survey**

## The Tenement Holder shall use all reasonable endeavours to ensure that the required Heritage Survey is compiled, and a report as to the results of the Heritage Survey provided to JJAC within 90 days after the Tenement Holder is under clauses 3.5 or 3.6 entitled to commence conducting the Heritage Survey.

# INFORMATION TO BE PROVIDED

#### Upon application by the Tenement Holder, JJAC make available for inspection to the Tenement Holder during normal business hours and days the complete report provided to them from which the information under clause 10.2 of the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement was obtained (and may impose a reasonable administration charge for doing so) unless and to the extent only that any such information is deemed by JJAC (acting in good faith) to be culturally sensitive and in excluding any such information, JJAC must provide reasonable grounds for doing so unless to provide such grounds would of itself involve disclosing culturally sensitive information.

# TERM OF AGREEMENT

# This Agreement commences on execution by the Parties and lasts until the expiry of the Term unless earlier terminated. For the avoidance of doubt this Agreement subsists notwithstanding termination of the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement.

# Amendment of Program of Activity

#### Subject to clause 7(e), the Tenement Holder may at any time amend the Program of Activity and if the amendment results in a change in the category of activity set out in Schedule 1 or an increased area or a different area, it must immediately provide JJAC with a copy of the amended Program of Activity.

#### If the amended Program of Activity does not involve a change in category of activity or area then the Tenement Holder is not obliged to notify JJAC and may proceed to carry out the amended Program of Activity.

#### If notice of the amended Program of Activity is given to JJAC before commencement of a Heritage Survey under the original Program of Activity, it shall be treated as if it was a new notice of a Program of Activity and the original Program of Activity shall be deemed withdrawn.

#### If notice of the amended Program of Activity:

* + - * 1. is given after commencement of a Heritage Survey but before its conclusion; and
        2. the amended Program of Activity includes a higher category of activity than previously included in the original Program of Activity the provisions of clause 2 shall apply to the new activities included in the amended Program of Activity;

## or

#### the amended Program of Activity includes a category of activity lower than that previously included in the original Program of Activity;

## or

#### the amended Program of Activity is for the same category of activity included in the original Program of Activity but is for an increased area or different area,

## the Consultant will be instructed to vary the type of Heritage Survey being conducted as the circumstances require and the provisions of this Agreement will then apply to that new Heritage Survey.

#### Any amendment to the Program of Activity after conclusion of the Heritage Survey shall be treated as a new Program of Activity.

# Arbitration Proceedings

## **Appointment of arbitrator**

#### For the purpose of an arbitration under clauses 3.7 or 4.1(d) of this Agreement the Parties shall appoint a sole arbitrator from the Panel.

#### If the Parties cannot agree on an arbitrator within 30 days of agreeing to refer their dispute to arbitration then the President for the time being of the Law Society of Western Australia shall appoint an arbitrator from the Panel.

## **Place of arbitration**

## The arbitration is to be conducted in Meekatharra in Western Australia or at such other place in Western Australia as the Parties may agree.

## **Application of Commercial Arbitration Act 1985**

#### The arbitration must be conducted in accordance with the provisions of the Commercial Arbitration Act 1985 of Western Australia as modified by this Agreement.

#### As provided for by section 40(1) of the Commercial Arbitration Act 1985, the right of appeal under section 38(2) of that Act or the right to make application under section 39(1) of that Act is excluded.

## **Legal representation**

## JJAC and the Tenement Holder may be represented by a legal representative or any other representative at an arbitration.

## **Proceedings to be conducted in private**

## Arbitration proceedings are to be conducted in private and information disclosed by the JJAC, Nharnuwangga, Wajarri and Ngarlawangga People or the Tenement Holder in the course of the arbitration is to the extent permitted by law be kept confidential by them and their advisers and representatives, except as otherwise agreed by the JJAC and the Tenement Holder or directed by a Court.

## **Determinations by arbitrator**

#### After hearing such evidence and submissions as JJAC and the Tenement Holder may desire to make to the arbitrator, and any other evidence and submissions as the arbitrator may think fit to receive, the arbitrator shall make a determination, as the case requires in relation to the dispute referred to the arbitrator.

#### In addition to the evidence and submissions referred to in paragraph (a) the arbitrator may have regard to information contained on the Nharnuwangga Wajarri and Ngarlawangga Heritage Register.

#### The arbitrator shall make a determination within 3 months of the referral of a dispute to the arbitrator.

#### The arbitrator is to have authority to give a Party such relief as could be ordered by a Court having appropriate jurisdiction.

#### The arbitrator must give immediate written notice of his determination to the Parties.

## If Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement Teminates

# The Parties acknowledge and agree that if the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement is terminated for any reason, the Parties must thereafter jointly assume the responsibilities of the State under Clause 12 of that agreement in respect of the appointment and payment of any arbitrator in order to give effect to the operation of this Clause 8.

# Aboriginal Heritage Act

## Nothing in this Agreement shall release or be construed as releasing the Parties from compliance with the Aboriginal Heritage Act.

## Notwithstanding any term of this Agreement, if:

#### the Parties are unable to reach agreement on the scope of a Heritage Survey; and

#### after arbitration the Tenement Applicant is still dissatisfied with the scope of the required Heritage Survey,

## then subject to the Tenement Applicant obtaining all necessary clearances under section 18 of the Aboriginal Heritage Act it may proceed with the Program of Activity.

# Nharnuwangga WAJARRI AND NGARLAWANGGA Indigenous Land Use Agreement

## **State not liable**

## The State shall incur no liability to the Parties if the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement is terminated for any reason whatsoever.

## **Inconsistency with Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement**

## This Agreement shall be read in accordance with the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement, and in the event of any inconsistency, the Nharnuwangga Wajarri and Ngarlawangga Indigenous Land Use Agreement shall prevail.

# JJAC may act by Agent

## All acts and things which JJAC is required or empowered to do under this Agreement may be done by JJAC or, at election of JJAC, by the representative body/bodies for the Nharnuwangga Wajarri and Ngarlawangga Land area from time to time as agent/s for JJAC.

# No Assignment or Transfer of Rights

#### JJAC may not assign, transfer, transmit, dispose of, encumber or otherwise deal with their rights and obligations under this Agreement.

# Dispute Resolution

#### In this clause 13 "Dispute Notice" means a notice given by a Party under paragraph (c).

#### If any dispute arises between the Parties in connection with any aspect of this Agreement other than as referred to in clauses 3.7 or 4.1 the Parties undertake with each other to use all reasonable endeavours, in good faith, to settle the dispute or difference by negotiation.

#### For the purpose of facilitating the process of negotiation referred to in paragraph (b):

* + - * 1. the Party claiming that the dispute or difference has arisen is to give notice to that effect to the other Party and the notice is also to designate a representative for the negotiation who will have authority to settle the dispute on behalf of that Party; and
        2. the other Party is then to promptly designate by notice to the other Party giving the Dispute Notice, its representative for the negotiation who will have authority to settle the dispute on behalf of the other Party.

#### If the Parties or their representatives do not settle the dispute or difference by negotiation within 90 days after the Dispute Notice is given, the Dispute Notice is to be taken to be the reference of the dispute or difference to arbitration in accordance the provisions of the Commercial Arbitration Act 1985 of Western Australia.

#### An arbitrator is to be appointed as follows:

* + - * 1. the Parties may jointly appoint a sole arbitrator as they may agree within 14 days after their dispute or difference is deemed referred to arbitration; or
        2. if an arbitrator is not jointly appointed within that period of time either Party may request the President for the time being of the Law Society of Western Australia to appoint an arbitrator.

#### The arbitration is to be conducted in Meekatharra in Western Australia or at such other place as the Parties may agree.

#### Each Party may at its own cost be represented by a duly qualified legal practitioner or other representative.

#### Arbitration proceedings are to be conducted in private and information disclosed by JJAC or the Tenement Holder in the course of the arbitration is to the extent permitted by law be kept confidential by them and their advisers and representatives, except as otherwise agreed by JJAC and the Tenement Holder or directed by a Court.

#### The arbitrator is to have authority to give a Party such relief as could be ordered by a Court having appropriate jurisdiction.

#### Each of the Parties agrees to indemnify the arbitrator against any loss, liability, cost or expense incurred or suffered by the arbitrator arising from or in connection with the arbitration.

# Intellectual Property

## All information provided by JJAC or/and the Nharnuwangga Wajarri and Ngarlawangga People during the course of or in relation to the Heritage Survey whatsoever remains the intellectual property of JJAC and the Nharnuwangga Wajarri and Ngarlawangga People.

## Subject to clause 14.3, the information referred to in 14.1 shall not be recorded or released to any person or entity whatsoever, except pursuant to this Agreement, without the express permission of the JJAC and the Nharnuwangga Wajarri and Ngarlawangga People.

## Clause 14.2 does not apply to information:

#### obtained from a source independent of the Nharnuwangga, Wajarri and Ngarlawangga People and JJAC (even if it is the same information);

#### generally available to the public other than as a result of the unauthorised disclosure by the Tenement Holder;

#### provided to the Tenement Holder's professional advisers for the purpose of obtaining their professional advice;

#### disclosed in order to comply with any applicable law or order of any court, authority, administrative or judicial body.

# Notices

## **Form and manner of notice**

## A notice, approval, consent or other communication in connection with this Agreement:

#### must be in writing;

#### must be marked for the attention of the person specified in paragraph (c) or, if a Party notifies another person, then to that person; and

#### must be left at the address of the addressee, or sent by prepaid ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this paragraph or, if the addressee notifies another address or facsimile number, then to that address or facsimile number.

## **Service by post or facsimile**

## The address and facsimile number of, and specified person for, each Party is:

#### Tenement Holder

# Attention: [Name]

## Address: [Address]

# Email: [Facsimile number]

#### JJAC

# Attention: Rob Houston

# c/- Houston Legal

## Address: PO Box 95

## VICTORIA PARK WA 6979

## Mobile:

# Email: [rob@houstonlegal.com.au](mailto:rob@houstonlegal.com.au)

## **When notice is effective**

## A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

## **When notice taken to be received**

## A letter or facsimile is taken to be received:

#### in the case of a posted letter, on the third Business Day after posting; and

#### in the case of facsimile, on production, by the machine from which the facsimile was sent, of a transmission report which indicates that the facsimile was sent in its entirety and in an error free form to the facsimile number of the recipient notified for the purpose of this clause.

# General

## **Entire agreement**

## This Agreement constitutes the full and complete understanding between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

## **Suspension of Time Limits**

## For the purpose of calculating any time limits under this Agreement, the period 15 December to 31 January shall be disregarded.

## **Variations**

## No modification, amendment or other variation of this Agreement shall be valid or binding on a Party unless made in writing duly executed by that Party.

## The Parties acknowledge and agree that they cannot amend or agree to amend any material terms of this Agreement without first receiving the prior consent in writing of the State of Western Australia ("**State**"), which consent may be granted or withheld in the absolute discretion of the State and if granted, may be granted subject to such conditions as the State, again in its absolute discretion, considers necessary and appropriate.

## **Waivers**

## The terms and conditions of this Agreement may be waived wholly or in part by the Party benefiting by that Party providing written notice of such waiver. Unless expressly stated otherwise in the notice of waiver, the waiver shall only apply to the particular terms and occasions in question.

## **Supervening legislation**

## Any present or future legislation which operates to vary an obligation or right, power or remedy of a Party in connection with this Agreement is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **Severability**

## If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal in any jurisdiction, 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 Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which will continue in full force and effect.

## **Assignment by Tenement Holder**

## If the Tenement Holder assigns, transfers or otherwise parts with possession of the Tenement ("***Dealing***") to a third party ("***Third Party***"), the Tenement Holder must contemporaneously with the Dealing assign its whole right, title and interest in this Agreement to that Third Party. To the extent required by law the JJAC must consent to that assignment of the right, title and interest in this Agreement.

## **Counterparts**

## This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

## **Governing law**

## This Agreement shall be governed by and construed in accordance with the laws of the State of Western Australia and each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of that State and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to this Agreement.

## **Execution by Representatives**

## This Agreement may be executed for and on behalf of the Nharnuwangga, Wajarri and Ngarlawangga People and JJAC by JJAC.

## JJAC warrants and represents to the Tenement Holder that it has full authority to enter into this Agreement, to bind itself and the Nharnuwangga, Wajarri and Ngarlawangga People and it is authorised to give effect to the terms of this Agreement.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Category of Impact** | **Category of Activity** | **Search AAD register of sites (including the Nharnuwangga Wajarri and Ngarlawangga Heritage Register)** | **Notification of JJAC**  **[Clause 2 of the Heritage Agreement]** | **Site avoidance advice from JJAC**  **[Clause 3.1 of the Heritage Agreement]** | **Ground reconnaissance survey**  **[Clause 4 of the Heritage Agreement]** | **Full ethnographic survey**  **[Clause 4 of the Heritage Agreement]** |
| **No entry onto ground** | Low altitude aerial survey |  |  |  |  |  |
| **Low Level disturbance** | * Field Mapping * Sampling using hand methods (including panning, metal detecting and hand augering * Ground geophysical surveys * Small exploration camps * Reconnaissance in light vehicles * Drilling using hand held rig or rig mounted on 4 wheel vehicle |  |  |  | If Required |  |
| **High Impact** | * More intensive removal of vegetation or ground disturbance – includes costeaning and excavating and bulk sampling * Construction of new roads and tracks * Large scale exploration camps * Line clearing involving extensive clearing of vegetation using bulldozers or front end loaders |  |  |  | If Required | |

**Schedule 2**

**Guidelines for Consultants**

1. In most cases, Aboriginal heritage sites fall into two broad but overlapping categories. They are sites of current significance to Aboriginal people and sites which provide physical evidence of past use. The assessment of these categories requires distinct anthropological or archaeological expertise.

In making this determination the Consultant should have regard to:

(a) Any place of importance or significance where people of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of Aboriginal people, past or present;

(b) Any sacred, ritual or ceremonial site, which is of importance and special significance to people of Aboriginal descent;

(c) Any place which is or was associated with Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; and

(d) Any place where objects to which the Aboriginal Heritage Act applies are traditionally stored, or to which, under the provisions of that Act, such objects have been taken or removed.

2. In evaluating the importance of places and objects the Consultant shall have regard to:

(a) Any existing use or significance attributed under relevant Aboriginal custom;

(b) Any former or reputed use or significance which may be attributed on the basis of tradition, historical association, or Aboriginal sentiment;

(c) Any potential anthropological, archaeological or ethnographical interest; and

(d) Aesthetic values.

3. Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object.

4. When a report is being prepared a number of factors should be taken into account. The following points should be adhered to:

* A clear and detailed statement of the terms of reference for the study;
* A full discussion as to why the people who have been consulted, or have participated in the survey, are considered appropriate to speak for Aboriginal heritage in the area concerned;
* A discussion of other concerns which might affect the conduct of the survey;
* A clear and detailed account of the process of consultation;
* Clear and accurate maps, at appropriate scales, which represent the area surveyed;
* A clear description of the physical extent of sites, including maps and photographs;
* Sufficient detail about both culturally significant sites and archaeological sites to reasonably assess the significance of the site;
* Recommendations which are practicable and which detail the steps an applicant should take to fulfil any obligations under the Heritage Agreement;
* A statement verifying that the scientific archaeological significance of any sites which may be disturbed has been explained to the relevant and interested Aboriginal people, and their comments recorded where appropriate.

5. In carrying out the various types of survey, the following guidelines should be adopted:

**Anthropological Surveys**

The religious aspect of Aboriginal culture reflects a strong spiritual affinity with the land. Accordingly, the importance Aboriginal people attach to, and show concern for, sites of continuing religious significance has been recognised.

The restriction of knowledge plays a fundamental role in Aboriginal religious belief and culture and various hierarchies and protocols exist to protect this confidentiality. One of the major tasks of the anthropological consultant, is to make clients aware of the difficulty Aboriginal people have in discussing this highly sensitive and personal information. No Aboriginal person is required to divulge information which may conflict with their customary law or tradition. An appropriate level of information is nevertheless required in relation to any site. In such circumstances, culturally sensitive data can be submitted in a restricted format.

**Archaeological Surveys**

Archaeological surveys differ somewhat from anthropological surveys in that they have to consider both the Aboriginal and scientific significance of any site(s). It is expected that the archaeologist will consult with the relevant Aboriginal people about the importance of any site. The advice of anthropologists may assist this process.

Regardless of the type of anthropological survey being undertaken, it is essential that archaeological investigations are carried out. Archaeologists, in general, are primarily concerned with the scientific importance of sites. There are two commonly used and interrelated research frameworks for assessing this importance:

* Research potential should be looked at using a wider regional context. The consultant can then measure how any site information will relate to the overall knowledge of the area; and,
* Representativeness and rarity is a measure of the frequency of occurrence and distribution of specific sites. Sites which are rare at a national or regional level would naturally be assessed as scientifically more significant.
* Archaeological advice of the scientific value of each site should be provided to help in the determination and evaluation of any cultural material found. The following is a guide:
* The site is a surface site only and no stratification is present;
* Sufficient information to ascertain its archaeological value has been gathered;
* There is enough data to suggest that further investigation is warranted; and,
* The site information is of sufficient magnitude to be viewed as being of considerable scientific significance.

**Executed** as a deed in Western Australia

Executed as a deed by **Jidi Jidi Aboriginal Corporation RNTBC** ICN 3598 acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*:

……………………………… ………………………………

Director (print name) Director (signature)

……………………………… ………………………………

Director (print name) Director (signature)

Signed by [insert name], for and on behalf of the Tenement Holder.

………………………………

Signature

………………………………………………………………….

Name and position

In the presence of:

………………………………

Witness name

………………………………

Witness signature