

**HERITAGE CLEARANCE PROCEDURES  
(ANNEXURE A TO EXPLORATION CONTRACT CONDITIONS)**

## 1. Definitions and Interpretation

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### 1.1 Definitions

In these *heritage clearance procedures*:

**Aboriginal record** has the meaning given in the *Aboriginal heritage act*;

**Aboriginal site, object or remains** means any of:

- (a) an “Aboriginal site”, an “Aboriginal object”, or “Aboriginal remains” as defined in the *Aboriginal heritage act*; and
- (b) “Aboriginal remains”, a “significant Aboriginal area” or “significant Aboriginal object” as defined in the Aboriginal and Torres Strait Islander Protection Act No. 79 of 1984 (Cth);

**Aboriginal tradition** has the meaning given in the *Aboriginal heritage act*;

**advanced exploration activity** means:

- (a) grid-based pattern drilling with 100 metres x 100 metres or 200 metres x 50 metres (or equivalent) centres or less;
- (b) diamond drilling of at least five drill holes per square kilometre;
- (c) costeaning or trenching;
- (d) bulk sampling of more than 100 tonnes from a single surface location;
- (e) making new tracks using *declared equipment*; and
- (f) any *exploration activity* using explosives,

and includes any associated *land clearing*;

**clearance approval** means either:

- (a) approval by a *clearance team* pursuant to a *heritage clearance survey* under clause 4 and a *report* under clause 5.1;
- (b) approval pursuant to a *report* under clause 6.1; or
- (c) deemed approval pursuant to clause 8.3,

for *authorised exploration activities* to be undertaken on *cleared land*;

**clearance budget** means each budget for undertaking a *heritage clearance survey* established pursuant to clause 7;

**clearance survey area** means an area or areas (within the *exploration land*) within which the *explorer* proposes to carry out *authorised exploration activities* either:

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- (a) as identified on the maps and by the particulars provided by the *explorer* in accordance with clause 4.1; or
- (b) as agreed pursuant to clause 4.9;

**clearance team** means the persons referred to in clause 4.4(a) organised from time to time for purposes of carrying out any *heritage clearance survey* in accordance with clause 4;

**cleared land** means the whole or relevant portion(s) of any *clearance survey area* to which the *explorer* is entitled to have access for purposes of carrying out *authorised exploration activities*, with or without conditions, by reason of the relevant *clearance approval*;

**cultural confidence** means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

**custodian** in relation to an *Aboriginal site, object or remains* means an Aboriginal person who, in accordance with *Aboriginal tradition*, has social, economic or spiritual affiliations with, and responsibilities for, that *Aboriginal site, object or remains*;

**early exploration activity** means:

- (a) aerial surveys;
- (b) geological and surveying field work that does not involve *land clearing*;
- (c) sampling by hand methods;
- (d) ground based geophysical surveys that do not involve *land clearing*;
- (e) drilling and associated activities with drilling that do not involve *land clearing* or site excavation;
- (f) using and/or making tracks not using *declared equipment* and not involving *land clearing* or site excavation;
- (g) rehabilitation (not involving *land clearing* or site excavation) consequent upon undertaking any of the activities referred to in paragraphs (a) to (f); and
- (h) anything (not involving *land clearing* or site excavation) necessary or incidental to any of the activities referred to in paragraphs (a) to (g),

but does not include *authorised exploration activities* that are *advanced exploration activities*;

**explorer's representative** means a person or persons appointed by the *explorer* from time to time pursuant to clause 4.8(a);

**heritage clearance survey** means a survey carried out pursuant to these *heritage clearance procedures* by a *clearance team* in relation to a *clearance survey area* for the purposes of:

- (a) protecting any *Aboriginal site, object or remains* within the *clearance survey area* from being damaged, disturbed or interfered with; and

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- (b) enabling access by the *explorer* to *cleared land* to carry out *authorised exploration activities* on that land;

***labour price index*** means the labour price index (Table 2b: Total hourly rates of pay, excluding bonuses, SA; Industries; Private and Public; All Occupations) as published by the Australian Bureau of Statistics or its successors;

***labour price index base*** means the labour price index prevailing at 20 November 2005;

***labour price index current*** means the labour price index prevailing at the time when any daily rates are required to be calculated under clause 7.3(b);

***land clearing*** means:

- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
- (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
  - (ii) the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or
  - (iii) the clearing of noxious or introduced plant species; and
- (b) in the case of trees, cutting down, ringbarking or pushing over trees;

***mapping caretaker*** means the person approved from time to time pursuant to clause 8.1 of the *mapping survey procedures*, being the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation of the *state*, or its successor or such other person nominated by the *state* by notice given pursuant to that clause to the other *parties* after consultation with them;

***report*** means each written *report* which is prepared and, if applicable, signed pursuant to clause 5 or 6;

***specialist*** means an anthropologist or archaeologist or both, as appropriate:

- (a) appointed pursuant to clause 4.4(a)(i) for purposes of carrying out any *heritage clearance survey*; or
- (b) consulted pursuant to clause 6 for purposes of that clause.

other terms in italics which are defined or used in the *native title act* or the *mining act* or the *exploration contract conditions* (to which these *heritage clearance procedures* are annexed) bear their defined meanings when used in these *heritage clearance procedures*.

## 2. Purpose and Application

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- 2.1 These *heritage clearance procedures* set out the procedures which are required to be followed by the *explorer* in relation to the preservation and protection of

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any *Aboriginal site, object or remains* in respect of the carrying out by the *explorer* of *authorised exploration activities* on *exploration land*.

- 2.2 Clauses 4 to 12 of these *heritage clearance procedures* only apply if the provisions of clause 5.1(d) of the *exploration contract conditions* apply.
- 2.3 Clause 3 of these *heritage clearance procedures* only applies where:
- (a) clause 5.1(a) of the *exploration contract conditions* does not apply;
  - (b) the *exploration activities* proposed to be carried out by the *explorer* are *early exploration activities*; and
  - (c) clause 5.1(b)(ii) of the *exploration contract conditions* does not apply to the *early exploration activities* proposed to be carried out by the *explorer*.
- 2.4 Clause 3 is intended to enable the *explorer* to carry out *early exploration activities* without the need to undertake a *heritage clearance survey*.

### 3. Early Exploration Process

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#### 3.1 Notice

If the *explorer* wishes to carry out *early exploration activities* in reliance on the provisions of this clause 3 the *explorer* must give not less than 30 *business days* notice to the *native title parties* of its intention to carry out those *early exploration activities* and simultaneously provide the *native title parties* with:

- (a) two copies of:
  - (i) a 1:50,000 scale map; or
  - (ii) another appropriate and generally available map,  
detailing on the map:
    - (iii) each area within the *exploration land* upon which those *early exploration activities* are to be carried out; and
    - (iv) the proposed access routes for personnel and equipment to and from each such area;
- (b) details of those *early exploration activities*;
- (c) details of the equipment and vehicles anticipated to be used in carrying out those *early exploration activities*;
- (d) the estimated period during which those *early exploration activities* are to be carried out; and
- (e) the number of personnel (and their roles) estimated to be involved in carrying out those *early exploration activities*.

#### 3.2 Response to notice

Within 25 *business days* of receipt of the *explorer's* notice given under clause 3.1, the *native title parties* may give the *explorer* notice of any matter relating to:

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- (a) the protection and preservation of:
  - (i) any *Aboriginal site, object or remains*; and/or
  - (ii) any *native title* rights and interests of the *native title parties*, and/or
- (b) compliance by the *explorer* with its obligations under the *Aboriginal heritage act*,

which the *native title parties* wish to bring to the attention of the *explorer* in relation to the carrying out of the relevant *early exploration activities*.

### 3.3 Request for Meeting or Attendees

- (a) After receipt of the *native title parties'* notice given pursuant to clause 3.2(a) the *explorer* may give the *native title parties* a notice requesting:
  - (i) a meeting with representatives of the *native title claim group*; and/or
  - (ii) that a representative or representatives of the *native title claim group* attend prior to or during the undertaking of all or some of the notified *early exploration activities*,with a view to dealing with any matter notified by the *native title parties* in its notice.
- (b) The *explorer* and the relevant representatives of the *native title claim group* must use their best endeavours to meet within 10 *business days* of the *explorer* giving notice pursuant to clause 3.3(a).
- (c) The *native title parties* must ensure that any person(s) referred to in clause 3.3(a)(ii):
  - (i) have knowledge of the relevant *land* and/or *waters* on which the *early exploration activities* are to be carried out; and
  - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *land* and/or *waters*.
- (d) The provisions of clause 7.3(a), (b), (c), (e) and (f) will apply to payment of any representative who attends prior to or during the undertaking of all or some of the notified *early exploration activities* as if each reference in those clauses to:
  - (i) *clearance team* were a reference to that representative or those representatives; and
  - (ii) *specialist* were deleted.
- (e) The amount payable by the *explorer* to each representative pursuant to clause 3.3(d) must be paid within 10 *business days* of that representative attending prior to or during the undertaking of all or some of the notified *early exploration activities*.

### 3.4 Compliance with Aboriginal heritage act

The *explorer* must take account of any matter brought to its attention:

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- (a) by the *native title parties* by notice given pursuant to clause 3.2; and/or
  - (b) by the representatives of the *native claim group* pursuant to clause 3.3,
- and must comply with its obligations under the *Aboriginal heritage act* in carrying out the relevant *early exploration activities*.

### 3.5 No acknowledgments

- (a) The *explorer* does not acknowledge that any or all *early exploration activities* carried out by it on the whole or any part of the *exploration land* pursuant to this clause 3 affect any *native title* in relation to the *land* and/or *waters* within the *exploration land* or the relevant part of it.
- (b) The *native title parties* do not acknowledge that any *early exploration activities* carried out by the *explorer* on the whole or any part of the *exploration land* pursuant to this clause 3 do not affect any *native title* in relation to the *land* and/or *waters* within the *exploration land* or the relevant part of it.

## 4. Heritage Clearance Survey Process

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### 4.1 Notification

If the *explorer* wishes a *heritage clearance survey* to be carried out in relation to *authorised exploration activities* proposed by it, the *explorer* must notify the *native title parties* not less than 30 *business days* before the *explorer* proposes to commence to carry out the relevant *authorised exploration activities* and simultaneously provide them with the following:

- (a) the date by which the *explorer* wishes the *heritage clearance survey* to be commenced, being not less than 20 *business days* from the date of the notice;
- (b) 2 copies of:
  - (i) a 1:50,000 scale map; and
  - (ii) a 1:10,000 scale map, if necessary for clearly indicating for the purposes of clause 4.1(b)(vi) any area within a *clearance survey area* where any *advanced exploration activity* is to be carried out; or
  - (iii) in either case, another appropriate and generally available map,  
detailing on the relevant map:
    - (iv) each *clearance survey area* or location in respect of which the *heritage clearance survey* is to be undertaken;
    - (v) the proposed access routes for personnel and equipment to and from each *clearance survey area*; and
    - (vi) if known at the time at which the notice is given, each area or location within a *clearance survey area* where any *advanced exploration activity* is to be carried out;

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- (c) details of the *authorised exploration activities* proposed to be carried out:
  - (i) in each *clearance survey area* or location (within a *clearance survey area*); and
  - (ii) if known at the time that the notice is given, in each area or location (within a *clearance survey area*) where any *advanced exploration activity* is to be carried out;
- (d) the estimated period during which the *authorised exploration activities* are to be carried out in each *clearance survey area*; and
- (e) the number of personnel (and their roles) estimated to be involved in carrying out the *authorised exploration activities* in each *clearance survey area*;

## 4.2 Response

Within 10 *business days* of receipt of the *explorer's* notice that it wishes a *heritage clearance survey* to be carried out, the *native title parties* must notify the *explorer*:

- (a) that any *clearance survey area* is deemed to have been surveyed in relation to the *authorised exploration activities* without undertaking any further *heritage clearance survey*, if the *explorer's* notice relates to a *clearance survey area* in respect of which *clearance approval* as *cleared land* has previously been given:
  - (i) in relation to *exploration activities* substantially similar to those specified in that notice; and
  - (ii) pursuant to this *accepted exploration contract* or any other accepted exploration contract (as defined in the *framework ILUA*) or pursuant to any agreement with the *native title parties* entered into pursuant to the *right to negotiate procedure*; or
- (b) that either:
  - (i) any *clearance survey area* is deemed to have been surveyed in relation to the *authorised exploration activities* without any further *heritage clearance survey*; or
  - (ii) a *heritage clearance survey* is required to be undertaken in relation to the *authorised exploration activities*,if the *explorer's* notice relates to a *clearance survey area* in respect of which access has previously been granted for purposes of carrying out *exploration activities* under any *exploration tenement* pursuant to a *heritage clearance survey* undertaken otherwise than under this *accepted exploration contract* or any other accepted exploration contract (as defined in the *framework ILUA*) or otherwise than under an agreement with the *native title parties* entered into pursuant to the *right to negotiate procedure*; or
- (c) if neither clause 4.2(a) nor 4.2(b) applies, that a *heritage clearance survey* is required to be undertaken in relation to the *authorised exploration activities*; and

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- (d) if either of clause 4.2(b)(ii) or (c) applies, of the following:
- (i) the date(s) (not later than the date specified in the *explorer's* notice) on which the *native title parties* propose that the *heritage clearance survey* commence;
  - (ii) the date(s) upon which the *native title parties* propose to consult with the *custodians* of *Aboriginal sites, objects or remains* in any relevant *clearance survey area* regarding the *explorer's* notice, if the *native title parties* consider it necessary that the *explorer's representative* (or his nominee) attend any such consultations; and
  - (iii) any further details reasonably required by the *native title parties* to facilitate informed assessment of the potential impact on any *Aboriginal site, object or remains* of the *authorised exploration activities* proposed to be undertaken by the *explorer* within any *clearance survey area*.

#### 4.3 Disagreement

- (a) If any date(s) proposed by the *native title parties* under clause 4.2(d) are not acceptable to the *explorer* on reasonable grounds, the *native title parties* and the *explorer* will use their best endeavours to agree upon a date or dates acceptable to them both.
- (b) If the *native title parties* and the *explorer* are unable to agree pursuant to clause 4.3(a) within 10 *business days* of endeavouring to do so, the provisions of clauses 17.6 to 17.13 of the *exploration contract conditions* will apply to the resolution of the dispute.

#### 4.4 Clearance Team Members

- (a) Each *clearance team* must comprise:
  - (i) up to 2 qualified *specialists* of appropriate qualifications and gender necessary for undertaking the relevant *heritage clearance survey*, to be engaged by the *native title parties* with the approval of the *explorer* whose approval must not be unreasonably withheld; and
  - (ii) the number of Aboriginal persons required to ensure the integrity of the relevant *heritage clearance survey* up to a maximum of 6 persons (other than in exceptional circumstances), consisting of such numbers of men and women as are considered by the *native title parties* to be appropriate in accordance with *Aboriginal tradition*.
- (b) The *native title parties* must ensure that the Aboriginal persons referred to in clause 4.4(a)(ii):
  - (i) have knowledge of the relevant *clearance survey area*; and
  - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *clearance survey area*.



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- (c) The *explorer* is only liable for the costs and expenses of the persons comprised in a *clearance team* as set out in clause 7.3 and if at any time more persons than permitted under the clause 4.4(a) are comprised in a *clearance team*, the *explorer* is not liable for any costs or expenses of those persons, unless otherwise agreed in writing between the *explorer* and the *native title parties*.

#### 4.5 Clearance Team functions

The functions of each *clearance team* are to assess the relevant *clearance survey area* for the purpose of:

- (a) determining whether the *authorised exploration activities* notified by the *explorer* pursuant to clause 4.1 would damage, disturb or interfere with any *Aboriginal site, object or remains*; and
- (b) nominating the conditions, if any, which are necessary and which should accordingly apply in order to protect each *Aboriginal site, object or remains*.

#### 4.6 Discharge of functions

Each *clearance team* will discharge its functions by:

- (a) conducting an inspection and assessment of the relevant *clearance survey area* in order to determine whether *clearance approval* will be given or withheld in relation to it;
- (b) having commenced the *heritage clearance survey*, undertaking and completing the *heritage clearance survey* as expeditiously as possible in all the circumstances;
- (c) in conjunction with the *specialist(s)*, providing a *report* detailing which parts of that *clearance survey area* are given, and which parts are not given, *clearance approval*;
- (d) in conjunction with the *specialist(s)*, identifying in the *report* any conditions, necessary in order to preserve and protect any *Aboriginal site, object or remains*, upon which *clearance approval* is given; and
- (e) promptly providing the *report* to the *native title parties*.

#### 4.7 Budget

Each *heritage clearance survey* must be undertaken in accordance with the *clearance budget* for that survey.

#### 4.8 Explorer Representative

- (a) The *explorer* may by notice to the *native title parties* from time to time appoint, remove and replace a representative or representatives for purposes of any specific *heritage clearance survey* or *heritage clearance surveys* generally.
- (b) An *explorer's* representative must be available at each *clearance survey area* for consultation by the *clearance team* at reasonable times during a *clearance survey* in respect of which he or she has been appointed, but

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may not otherwise be present whilst the *clearance survey* is being undertaken, except when requested by the *clearance team*.

- (c) Each *explorer's* representative is authorised by the *explorer* to act on its behalf in all matters relative to any *heritage clearance survey* in respect of which that *explorer's* representative has been appointed.

#### 4.9 Alternative Area

- (a) During the undertaking of any *heritage clearance survey* the *clearance team* and the *explorer's* representative may agree upon any alternative area or location within or at which the *explorer* may carry out *authorised exploration activities*, if the *clearance team* does not intend to give *clearance approval* as *cleared land* to the whole or a part of an area or location notified under clause 4.1(b).
- (b) An alternative area or location agreed upon pursuant to clause 4.9(a) may be within or outside an area or location notified under clause 4.1(b).

## 5. Clearance Team Report and Clearance

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### 5.1 Report

- (a) Within 10 *business days* of completion of any *heritage clearance survey*, the *native title parties* must provide to:
  - (i) the *explorer* a written *report* in relation to that *heritage clearance survey*; and
  - (ii) the *state*, care of the *mapping caretaker*, a copy of that *report* for the purpose specified in clause 12(b).
- (b) The *report* must:
  - (i) identify those parts of the relevant *clearance survey area* which are:
    - (A) given *clearance approval* as *cleared land*; and
    - (B) not given *clearance approval*;
  - (ii) specify any conditions, necessary to preserve and protect any *Aboriginal site, object or remains*, attaching to the carrying out of any *authorised exploration activities* on any *cleared land*; and
  - (iii) be signed by the *specialist* or both *specialists* (if any).
- (c) The copyright in any *report* vests in the *native title parties*.

### 5.2 Non disclosure

- (a) Nothing in these *heritage clearance procedures* requires the *nominated body*, *native title parties* or any member of any *clearance team* to disclose to the *explorer*, the *explorer's* representative or the *state*:

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- (i) the location of any *Aboriginal site, object or remains*, if they consider that location to be a matter of *cultural confidence*, but they must disclose sufficient information in accordance with clauses 5.1(b)(i) and (ii) and 6.1(b)(i) and (ii) to enable the *explorer*, its employees, contractors and subcontractors to carry out *authorised exploration activities*, within those parts of the relevant *clearance survey area* in respect of which *clearance approval* is given, without damaging, disturbing or interfering with the relevant *Aboriginal site, object or remains*; or
  - (ii) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *clearance survey area*.
- (b) The *native title parties* must not disclose to any person any information provided by the *explorer* to any of the *native title parties* in connection with any *heritage clearance survey* which is designated by the *explorer* as confidential information.

## 6. Deemed Survey

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### 6.1 Report

- (a) Where clause 4.2(a) or 4.2(b)(i) applies, the *native title parties* must within 20 *business days* of notifying the *explorer* pursuant to that clause provide to:
- (i) the *explorer* a written *report* in relation to the relevant *clearance survey area*; and
  - (ii) the *state*, care of the *mapping caretaker*, a copy of that *report* for the purpose specified in clause 12(b).
- (b) The *report* must:
- (i) identify those parts of the relevant *clearance survey area* which are:
    - (A) given *clearance approval* as *cleared land*; and
    - (B) not given *clearance approval*;
  - (ii) specify any conditions, necessary to preserve and protect any *Aboriginal site, object or remains*, attaching to the carrying out of any *authorised exploration activities* on any *cleared land*; and
  - (iii) be signed by the *specialist* (if any).
- (c) The copyright in any *report* vests in the *native title parties*.

### 6.2 Consultation with Specialist

- (a) Subject to clause 6.2(b), the *native title parties* may consult a *specialist* for the purposes of:
- (i) determining whether clause 4.2(a) or 4.2(b)(i) applies; and/or

- (ii) the preparation of a *report* pursuant to clause 6.1.
- (b) Prior to consulting a *specialist* pursuant to clause 6.2(a) the *native title parties* must:
  - (i) notify the *explorer* of the *specialist's* costs; and
  - (ii) obtain the *explorer's* approval to incur such costs.

## 7. Budgets and Payments

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### 7.1 Agreed budgets

- (a) The *native title parties* and the *explorer* must use their respective best endeavours to agree upon a budget for the undertaking of any *heritage clearance survey* within 10 *business days* of the *explorer* notifying the *native title parties* that it wishes that *heritage clearance survey* to be undertaken.
- (b) A budget must reflect:
  - (i) all costs and expenses of undertaking the relevant *heritage clearance survey* for which the *explorer* is liable;
  - (ii) the period within which that *heritage clearance survey* will be undertaken and completed; and
  - (iii) the place of commencement and conclusion of that *heritage clearance survey* being Whyalla or such other place agreed in the *clearance budget* between the *native title parties* and the *explorer*.

### 7.2 Determined budget

If the *native title parties* and the *explorer* are unable to agree upon a budget within the period referred to in clause 7.1, the provisions of clauses 17.6 to 17.13 of the *accepted exploration contract* will apply to the determination of that budget.

### 7.3 Contents

Any budget agreed or determined pursuant to clauses 7.1 or 7.2 must:

- (a) be substantially in the form set out in Appendix A;
- (b) reflect daily rates (which must be pro-rated for any part day) for the *clearance team* (other than any *specialist*) for undertaking the *heritage clearance survey*, calculated and determined in accordance with the following formula:

$$A = B \times \frac{C \times D}{E}$$

Where:

- A = the daily rates payable for the *clearance team* (other than any *specialist*);
- B = \$300 per day;

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C = 6 or the number of *clearance team* members (other than any *specialist*), if that number is less than 6;

D = the *labour price index current*; and

E = the *labour price index base*;

- (c) reflect daily rates (which must be pro-rated for any part day) for the *clearance team* (other than any *specialist*) during the period of travelling (when in excess of 50 kilometres each way) from their normal places of residence to the place of commencement and conclusion of the *heritage clearance survey* and return, calculated and determined in accordance with the following formula (but subject to the maximum number of 2 days payable for travel) :

$$A = B \times \frac{C \times D}{E}$$

Where:

A = the daily travel rates payable for the *clearance team* (other than any *specialist*);

B = \$150 per day;

C = 6 or the number of *clearance team* members (other than any *specialist*), if that number is less than 6;

D = the *labour price index current*; and

E = the *labour price index base*;

- (d) reflect rates for each *specialist* for:
- (i) undertaking the *heritage clearance survey* from the place of commencement and conclusion of the *heritage clearance survey* ;
  - (ii) for travel from their normal places of residence to the place of commencement and conclusion of the *heritage clearance survey* and return; and
  - (iii) preparation of the *report* and associated research,  
as agreed between that *specialist* and the *explorer*;
- (e) reflect that any reasonable costs of road travel for attending at any *heritage clearance survey* of any *specialist* and/or up to 6 other *clearance team* members who are entitled to payment for travel pursuant to clauses 7.3(c) and/or 7.3(d)(ii), are at the rate per kilometre specified in Appendix A;
- (f) reflect that any reasonable costs of air travel for attending any *heritage clearance survey* of any *specialist* and/or other *clearance team* member who is entitled to payment for travel pursuant to clauses 7.3(c) and/or 7.3(d)(ii), are at economy class airfares;
- (g) reflect the reasonable costs of accommodation, food and vehicle hire of and for any *specialist* and up to 6 other *clearance team* members; and

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- (h) reflect that any additional reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the *clearance budget*.

#### 7.4 Amended budget

The *explorer* and the *native title parties* may at any time agree to amend any *clearance budget* agreed upon or determined pursuant to clause 7.1 or 7.2.

#### 7.5 Excess costs

The *explorer* is not responsible for any costs or expenses of carrying out any *heritage clearance survey* to the extent that they exceed, or are not provided for, in the *clearance budget* for that *heritage clearance survey*, if applicable, as amended pursuant to clause 7.4.

#### 7.6 Payment

- (a) The *explorer* must pay the *nominated body* the costs and expenses of carrying out any *heritage clearance survey* (up to a maximum of the amount stated in the relevant *clearance budget*) as follows:
  - (i) 25% not less than 5 *business days* prior to the mobilisation of the *clearance team* to undertake that *heritage clearance survey*;
  - (ii) 50% upon completion of that *heritage clearance survey*; and
  - (iii) 25% or the balance thereof within 5 *business days* of receipt of the *report* and an invoice of all costs and expenditure incurred in carrying out that *heritage clearance survey*.
- (b) The *explorer* must pay the *nominated body* the *specialist's* costs notified and incurred pursuant to clause 6.2 within 10 *business days* of receipt of an invoice of those costs.

#### 7.7 Evidence

- (a) Any invoice provided to the *explorer* pursuant to clause 7.6(a)(iii) or 7.6(b) must be accompanied by evidence, reasonably satisfactory to the *explorer*, of the incurral of the relevant costs and expenses.
- (b) That evidence must include evidence that any costs and expenses claimed on a per kilometre basis are in respect of kilometres properly travelled and recorded in the log book kept pursuant to clause 11.3.

#### 7.8 Nominated Body

- (a) The *nominated body* is the agent of each of the *native title parties* and the *native title parties* in relation to all amounts paid to the *nominated body* pursuant to this clause 7.
- (b) Any payment to the *nominated body* is a good and sufficient discharge of that payment as regards each of the *native title parties*.

## 7.9 Labour Price Index

- (a) If the Labour Price Index ceases to be published or the basis upon which the Labour Price Index is calculated is changed to such a material extent that it is no longer appropriate to be used, the *native title parties* and the *explorer* must meet to endeavour to agree upon another appropriate index or indices with the intention that neither will be disadvantaged or benefit by the substitution.
- (b) If the *native title parties* and the *explorer* are unable to agree under clause 7.9(a), then either may request the President for the time being of the Institute of Actuaries of Australia or that person's nominee to provide (on the basis that neither party will be disadvantaged or benefit thereby) alternative figures or indices which will be equivalent to the Labour Price Index and such figures or indices will then for the purposes of these *heritage clearance procedures* be deemed to be the Labour Price Index and be binding on the *native title parties* and the *explorer*.

## 8. Failure by Native Title Parties

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### 8.1 Notice by Explorer

If within 5 *business days* of the date by which:

- (a) the *native title parties* are required to notify the *explorer* pursuant to clause 4.2, the *native title parties* fail to give the *explorer* that notice;
- (b) any *heritage clearance survey* is required to be commenced, that *heritage clearance survey* has not been commenced;
- (c) the *clearance budget* reflects any *heritage clearance survey* is to be completed, that *heritage clearance survey* has not been completed; or
- (d) the *native title parties* are required to provide a *report* to the *explorer* pursuant to clause 5.1 or 6.1, the *explorer* has not received that *report*,

the *explorer* may give notice to the *native title parties*:

- (e) requiring that:
  - (i) notice be given to the *explorer* pursuant to clause 4.2;
  - (ii) the relevant *heritage clearance survey* be commenced;
  - (iii) the relevant *heritage clearance survey* be completed; or
  - (iv) a *report* be provided to the *explorer* pursuant to clause 5.1 or 6.1,

within 10 *business days* of the *explorer* giving that notice to the *native title parties*; and

- (f) stating that, if the *native title parties* do not comply with that notice within that period, the *explorer* intends to proceed with the *authorised exploration activities* within each *clearance survey area*, as specified in that

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notice (being *authorised exploration activities* and *clearance survey areas* specified in the *explorer's* relevant notice pursuant to clause 4.1).

## 8.2 Explorer's Rights

If:

- (a) the *explorer* has given a notice pursuant to clause 8.1; and
- (b) the *native title parties* fail to comply with that notice within the period of 10 *business days* specified in that clause,

the *explorer* may carry out the *authorised exploration activities* within each *clearance survey area*, as specified in that notice.

## 8.3 Consequences

If clause 8.2 applies, the *native title parties* are deemed to have:

- (a) given *clearance approval* as *cleared land* for each *clearance survey area*; and
- (b) authorised the carrying out by the *explorer* of the *authorised exploration activities*,

as specified in the *explorer's* notice pursuant to clause 8.1.

## 9. Status

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### 9.1 Relationship

Nothing in the *exploration contract conditions* or these *heritage clearance procedures* creates the relationship of:

- (a) employer and employee, partners or joint venturers between either of the *native title parties* and any member of the *clearance team* or any *specialist*; or
- (b) employer and employee, principal and agent, partners or joint venturers between any of those persons and the *explorer*.

### 9.2 Agent

Each member of a *clearance team* is an agent of the *native title parties* authorised by them to carry out the functions set out in these *heritage clearance procedures*.

## 10. Compliance with Laws

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The *native title parties* must ensure that all applicable *laws* are complied with in relation to:

- (a) the performance by them of their obligations under these *heritage clearance procedures*; and
- (b) the employment, retention or engagement of any person for the purposes of performing their obligations under these *heritage clearance procedures*, including under the Workers Rehabilitation &



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Compensation Act 1986 (SA), the Occupational Health Safety & Welfare Act 1986 (SA), the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

## 11. Vehicles

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### 11.1 Provision

The *explorer* must provide sufficient and appropriate all terrain 4 wheel drive vehicles for use by a *clearance team* for the purposes of undertaking any *heritage clearance survey*.

### 11.2 Insurance and Spare Parts

The *explorer* must ensure that all vehicles provided pursuant to clause 11.1 for purpose of undertaking any *heritage clearance survey* are:

- (a) registered and comprehensively insured; and
- (b) equipped with sufficient spare parts for the duration of the relevant *heritage clearance survey*.

### 11.3 Log Book

The *native title parties* must cause a log book to be kept and will ensure that the following information is recorded in the log book in relation to each vehicle (other than a vehicle provided pursuant to clause 11.1) used in relation to any *heritage clearance survey*:

- (a) date;
- (b) place of departure;
- (c) destination;
- (d) reason for the journey;
- (e) name of driver; and
- (f) number of kilometres travelled.

### 11.4 Inspection

The *native title parties* must make any log book maintained pursuant to clause 11.3 available to the *explorer* for examination upon request.

## 12. Provision of Reports

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- (a) The *native title parties* consent to the *state* providing, and the *state* must provide, copies of any *report* to an independent statutory authority established for the purpose of the protection and preservation of *Aboriginal heritage* pursuant to the *Aboriginal heritage act*.
- (b) The *state* must use all copies of any *report* provided to it pursuant to clause 5.1(a)(ii) or 6.1(a)(ii) solely in the management and administration of the *Aboriginal heritage act*.

**APPENDIX A**

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| <b>CLEARANCE BUDGET</b>   |  |         |                      |          |                      |              |       |  |
|---|--|---------|----------------------|----------|----------------------|--------------|-------|--|
| Native Title Claim Group:   |  |         |                      | Date:    |                      |              |       |  |
| <i>Explorer:</i>  |  |         |                      |          |                      |              |       |  |
| <i>Heritage clearance survey for authorised exploration activities: EL No's</i> |  |         |                      |          |                      |              |       |  |
| <i>Period for undertaking and completing heritage clearance survey:</i>         |  |         |                      |          |                      |              |       |  |
| <i>Place for commencement and conclusion of heritage clearance survey:</i>      |  |         |                      |          |                      |              |       |  |
| Item  | Description  | Remarks | Units                | Quantity | Unit Rate \$         | Survey Costs | NOTES |  |
|   | <b><i>Personnel</i></b>  |         |                      |          |                      |              |       |  |
|   | <i>Survey</i><br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance<br>team Members <sup>ii</sup>                               |         | Days<br>Days<br>Days |          | \$300 <sup>iii</sup> |              |       |  |
|   | <i>Travel</i><br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance<br>team Members <sup>iv</sup>                               |         | days<br>days<br>days |          | \$150 <sup>iii</sup> |              |       |  |
| 1   | <b>TOTAL PERSONNEL</b>   |         |                      |          |                      |              |       |  |
|   | <b><i>Vehicle &amp; Travel Costs</i></b>   |         |                      |          |                      |              |       |  |
|   | Air Travel Costs <sup>i</sup>  | Economy |                      |          |                      |              |       |  |
|   | Private Vehicle<br>Costs – 2WD<br>allowance<br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance <sup>iv</sup><br>Team Members |         | km                   |          | 52c/km               |              |       |  |
|   | Private Vehicle<br>Costs- 4WD<br>allowance<br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance <sup>iv</sup><br>Team Members  |         | km                   |          | 55c/km               |              |       |  |

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| Item | Description  | Remarks | Units  | Quantity | Unit Rate \$ | Survey Costs | NOTES |
|------|--|---------|--------|----------|--------------|--------------|-------|
| 2    | <b>TOTAL VEHICLE &amp; TRAVEL</b>  |         |        |          |              |              |       |
|      | <i>Accommodation &amp; Food</i>  |         |        |          |              |              |       |
|      | <i>Food</i><br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance team Members <sup>v</sup> |         | days   |          |              |              |       |
|      | <i>Accommodation</i><br>Specialist #1 <sup>i</sup><br>Specialist #2 <sup>i</sup><br>Other Clearance team Members     |         |        |          |              |              |       |
|      | Accommodation  |         | nights |          |              |              |       |
| 3    | <b>TOTAL ACCOMMODATION &amp; FOOD</b>  |         |        |          |              |              |       |
| 4    | <b>SUB-TOTAL</b>   |         |        |          |              |              |       |
| 5    | <b>Administrative Expenses</b>   |         |        |          |              |              |       |
| 6    | <b>GST</b>   |         |        |          |              |              |       |
| 7    | <b>GRAND TOTAL</b>   |         |        |          |              |              |       |

<sup>i</sup> Delete if not applicable

<sup>ii</sup> Up to a maximum of 6 *clearance team* members in accordance with clauses 4.4(c) and 7.3(b)

<sup>iii</sup> Escalating annually in accordance with labour price index

<sup>iv</sup> Up to a maximum of 6 team members for the period of travelling (when in excess of 50 km each way) from their normal place of residence to the place of commencement and conclusion of the *heritage clearance survey* and return, up to a maximum of 2 days, in accordance with clauses 4.4(c) and 7.3(c)

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## **ANNEXURE B**

### **Mapping Access Procedures**