

**GAWLER RANGES NATIVE TITLE GROUP**

**MINERALS EXPLORATION  
INDIGENOUS LAND USE AGREEMENT**

**SUMMARY**

**NOTE**

This document is a summary of a larger and more detailed document. For a full understanding of the agreement, the source document should be consulted.

The parties to the agreement are not bound by the contents of this document in any way.

### 1. Overview

The ILUA is about exploration for minerals on native title land. It provides a voluntary alternative to the “right to negotiate” procedures set out in Part 9B of the Mining Act 1971.

The ILUA sets out the consent of the parties to the grant of exploration tenements and the carrying out of exploration activities under those tenements.

The Framework document is an agreement between the State of South Australia ('State'), South Australian Chamber of Mines and Energy ('SACOME'), Aboriginal Legal Rights Movement ('ALRM') and the Gawler Ranges native title group. They are the 'Framework parties'. Attached to the Framework are several other documents, in particular the Exploration Contract Conditions. Individual explorers can “sign up” to the ILUA by entering into a contract on the terms set out in the Exploration Contract Conditions. A contract between an individual explorer, the native title claim group, the Association and the State on these terms is called an accepted exploration contract.

### 2. Scope

When the explorer signs up to the ILUA it chooses the exploration tenements within the ILUA area to which the accepted exploration contract is to apply. These are called authorised exploration tenements.

Authorised under the ILUA are:

- The tenements chosen by the explorer in the acceptance document;
- Any additional tenements notified by the explorer to the native title claim group during the term of the accepted exploration contract; and
- Renewals, regrants and extensions of those exploration tenements; and
- Grants (and renewals, regrants and extensions) of exploration tenements of a different type within the area covered by the chosen or notified tenements (such as mineral claims, retention leases authorised for exploration only and miscellaneous purposes licences required for exploration ).

The ILUA does not authorise mining.

### 3. Term

The Framework begins when it is registered on the Register of Indigenous Land Use Agreements held by the National Native Title Tribunal. It ends when the last of the individual accepted exploration contracts expires.

### 4. Review

Every five years after the registration of the Framework, the Framework parties have a chance to review the Framework and make changes to it. During the review the Framework parties may agree to continue the Framework with any agreed changes. If they do so, the Framework (with any agreed changes) continues for another five years, when it is again reviewed.

If the Framework parties do not agree, no new accepted exploration contracts may be entered into under the Framework. This does not affect existing accepted exploration contracts entered into before the review.

#### **5. Consent to Future Acts**

The Framework parties consent to the grant of exploration tenements to explorers who sign up to the ILUA and the carrying out of exploration activities by them. The consent of the Framework parties ensures the validity of these tenements and activities (which would otherwise be in doubt because of native title).

#### **6. No Right to Negotiate Procedures**

The “right to negotiate” procedures set out in the Native Title Act and Part 9B of the Mining Act do not apply to either the grant of exploration tenements or the carrying out of exploration activities authorised by the ILUA.

#### **7. Breach of Accepted Exploration Contract**

If the explorer breaches what is called an essential term of an accepted exploration contract, the Framework and accepted exploration contract will continue to apply in relation to the breached exploration tenement.

If the essential term breached is about payment, the accepted exploration contract will not apply to any later tenements granted to that explorer within the ILUA area which would otherwise have been authorised under the accepted exploration contract.

If the essential term breached is of any other type, the accepted exploration contract will not apply to any renewals, regrants or extensions of the breached tenement nor any grants of exploration tenements of a different type within the area of the breached tenement (for example, a retention lease).

#### **8. Non-Extinguishment Principle**

Native title rights and interests continue to exist but have no limiting effect on the grant of exploration tenements or the carrying out of activities under them, as long as those exploration tenements and activities are authorised under the ILUA.

#### **9. Entry on Land**

Each accepted exploration contract is an agreement authorising the explorer to enter land to carry out authorised exploration activities in accordance with section 58 of the Mining Act.

*[The explorer must still comply with notice of entry obligations under the Mining Act in relation to other land owners.]*

#### **10. Authorised Exploration Tenements**

The explorer’s obligation to comply with the accepted exploration contract is not itself a condition of any authorised exploration tenement.

## 11. No Acknowledgement of Native Title

The State and SACOME are not acknowledging the existence or otherwise of native title in the ILUA area by entering into the Framework.

## 12. Employment and Training

The Framework parties agree to develop strategies and programs to provide government funded training for Aboriginal people in regional South Australia. The purpose of the training is to provide skills required for employment in the resources industry and which, where possible, are transferable to other industries.

However, the Framework parties acknowledge there are only limited jobs available in carrying out exploration activities and that those which do exist are mostly for people who have special skills and training.

SACOME and the State agree to support applications made by or on behalf of the native title claim group for traineeship grants to fund members of the group to attend heritage clearance surveys as trainees.

## 13. Native Title Claim Application

SACOME agrees not to become a respondent party to the Gawler Ranges native title claim.

## 14. Exploration Contract Conditions

The explorer may sign up to the ILUA by completing an acceptance document and providing copies to the State and the native title claim group.

There are circumstances in which an explorer may not sign up to the ILUA. An explorer may not sign up in relation to an exploration tenement:

- where the explorer has already given notice under Part 9B of the Mining Act to start negotiations in respect of that exploration tenement (except if the notice was given before the start of the Framework and no agreement was entered into); or
- if the exploration tenement was granted after the start of the Framework and the explorer has already carried out activities under that exploration tenement; or
- where the explorer has previously breached an essential term of an earlier accepted exploration contract and that contract has ceased to apply to that tenement as a result of that breach.

All people who hold or claim native title in the ILUA area who are not members of the native title claim group are bound by the Framework and any accepted exploration contracts under it in the same way as the native title claim group.

## 15. Registration and Removal from the Register

The ILUA will be registered on the Register of Indigenous Land Use Agreements held by the National Native Title Tribunal ('the NNTT') as an 'area agreement' under the Native Title Act. The Framework parties will try and maintain the ILUA on the NNTT Register.

The Framework parties may jointly request that the Framework be removed from the Register. In some cases the NNTT Registrar may be required by the Native Title Act to remove details of the Framework from the NNTT Register.

If the Framework is removed from the NNTT Register, no new accepted exploration contracts may be entered into.

The removal of the Framework from the NNTT Register does not affect accepted exploration contracts entered into before the removal of the Framework from the NNTT Register.

The Framework parties must promptly notify the NNTT Registrar when the last accepted exploration contract ends.

#### **16. Notification of Grants**

The State must notify the native title claim group within 10 business days of the grant of any new exploration tenement within the ILUA area to any person.

*[This provision in the Framework does not apply where the person is an explorer who is already a party to an accepted exploration contract. However, in the Exploration Contract Conditions there is a similar provision which applies to such an explorer.]*

#### **17. Mapping Survey** (see annexure 2 for more details)

Once the Framework has been registered, the native title claim group has the right to ask the State for a mapping survey to be carried out. A mapping survey will only be carried out if:

- the native title claim group asks for it; and
- it is in the best interests of the State for the survey to be carried out; and
- the State and the native title claim group agree on the conditions of the survey (including the budget).

The right to ask for a mapping survey ends:

- if amendments are made to the Aboriginal Heritage Act which provide for the establishment of an independent statutory authority to be responsible for the protection of Aboriginal Heritage in South Australia; or
- if, at a time set out in the ILUA, the State notifies the other parties that the right is at an end.

The State will pay the costs of a mapping survey as agreed in the budget.

#### **18. Consideration**

The Framework acknowledges that payments and benefits are to be provided to the native title claim group under each accepted exploration contract.

Under the agreement the State must provide to the native title claim group:

- \$30 000 upon registration of the ILUA; and

- office equipment including office furniture, a computer, printer, fax machine and telephone as well as such other assistance as may be agreed between the native title claim group and the State.

The State must also ensure that a group personal accident insurance policy is in place for the duration of the Framework to cover Aboriginal people who are members of heritage clearance teams.

The payments and benefits received under the Framework and the accepted exploration contract include any claims for compensation under the Native Title Act for the grant of authorised exploration tenements and the carrying out of authorised exploration activities under them.

However, the native title claim group's rights to claim compensation for a breach of the Framework or the accepted exploration contract are not affected.

### **19. Statements and Authority**

The native title claim group says that it has consented to and authorised the registered native title claimants and the Association to enter into the ILUA on its behalf.

### **20. Dispute Resolution**

If a party has a dispute with any other party it must notify that party of the details of the dispute. A copy of the notice must be provided to the other parties to the Framework.

The disputing parties must then try to meet and resolve the dispute. If the dispute is not resolved, the parties may appoint a mediator. If the dispute is still not resolved, the parties may appoint an expert to make a determination. The decision of an expert is final and binding on all the parties.

### **21. Amendments**

The Framework cannot be amended unless all the Framework parties agree in writing.

No amendment to the Framework affects any accepted exploration contract entered into before the amendment is made.

### **22. Announcements**

No Framework party may make an announcement or statement relating to the Framework unless all the Framework parties agree.

### **23. Assignment and Transfer**

No party may deal with its rights and obligations under the Framework without the permission of all the parties.

*[The explorer is not a party to the Framework. Under the Exploration Contract Conditions the explorer may assign or transfer its rights and obligations.]*

## **Early Exploration Activities**

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A heritage clearance survey may not be required for certain activities which are early exploration activities.

An early exploration activity is any of the following exploration activities;

- aerial surveys
- geological and surveying field work that does not involve land clearing
- sampling by hand methods
- ground based geophysical surveys that do not involve land clearing
- drilling and associated activities that do not involve land clearing or site excavation
- using and/or making tracks not using declared equipment and not involving land clearing or site excavation
- rehabilitation (not including land clearing or site excavation) needed as a result of any of the above activities
- anything necessary or incidental to the above activities (not involving land clearing or site excavation).

### ***1. Application of Early Exploration Process***

The early exploration process will not apply if there has been a relevant exploration mapping survey of the area.

### ***2. Early Exploration Process***

The explorer must give the native title claim group notice 30 business days before it wants to carry out early exploration activities. The notice must provide details of the early exploration activities to be undertaken, how long the activities will take and how many people will be involved. The notice must be accompanied by relevant maps.

Within 25 business days of receiving notice from the explorer, the native title claim group may respond by notifying the explorer of any matters relating to the protection and preservation of its Aboriginal heritage or native title in the area.

The explorer may respond by asking for a meeting with representatives of the native title claim group or that a representative attend before or during the carrying out of early exploration activities. Representatives of the native title claim group will be paid for attending before or during the activities in the same way as a member of a Heritage Clearance Survey (see Annexure 1).

### ***3. Aboriginal Heritage Act***

The explorer must comply with its obligations under the Aboriginal Heritage Act in carrying out early exploration activities.

## EXPLORATION CONTRACT CONDITIONS

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### 1. Overview

Individual explorers may “sign up” to the ILUA by completing and signing an acceptance document in the form attached to the Framework. In this way, an explorer enters into a contract with the State, the Arabunna native title claim group and its Association on the terms set out in the Exploration Contract Conditions. Such a contract is called an accepted exploration contract.

### 2. Scope

When an explorer signs up to the ILUA it identifies the exploration tenements to which the accepted exploration contract is to apply. These are called authorised exploration tenements.

Authorised under the ILUA are:

- The tenements chosen by the explorer in the acceptance document;
- Any additional tenements notified by the explorer to the native title claim group during the term of the accepted exploration contract (see 33 below); and
- Renewals, regrants and extensions of those exploration tenements; and
- Grants (and renewals, regrants and extensions) of exploration tenements of a different type within the area covered by the chosen or notified tenements (such as mineral claims, retention leases authorised for exploration only and miscellaneous purposes licences required for exploration ).

The ILUA does not authorise mining.

### 3. Term

The accepted exploration contract begins when the explorer completes and signs an acceptance document and provides copies of it to the relevant parties. It ends when all of the exploration tenements to which the contract applies have ended.

The accepted exploration contract may cease to apply to an authorised exploration tenement if there is a breach of an essential term of the contract.

### 4. Termination

No party may terminate the accepted exploration contract for any reason, including breach (subject to the exceptions set out below). A party may pursue any other rights and remedies (such as damages) that they may have for a breach of the accepted exploration contract.

In certain circumstances, the explorer may terminate the accepted exploration contract if the Registrar amends or removes details of the native title claim on the Register of Native Title Claims. This does not apply if the amendment or removal relates to the finalisation of the native title claim by a Court determination that the native title claim group holds native title over the ILUA land.



## **5. Consent to Future Acts**

The parties confirm that consent is given in the Framework to the grant of the authorised exploration tenements and the carrying out of exploration activities under them. The consent ensures the validity of the tenements and activities (which might otherwise have been in doubt because of native title).

## **6. No Right to Negotiate Procedures**

The "right to negotiate" procedures set out in the Native Title Act and Part 9B of the Mining Act do not apply to either the grant of authorised exploration tenements or the carrying out of authorised exploration activities.

## **7. Amendments**

The accepted exploration contract can be amended as long as the amendments are consistent with the terms of the Framework and all the parties agree in writing.

## **8. Effect of Removal from the Register**

If the Framework is removed from the Register of Indigenous Land Use Agreements held by the NNTT, no new accepted exploration contract may be entered into.

The removal of the Framework from the Register does not affect accepted exploration contracts entered into before that removal.

## **9. Non-Extinguishment Principle**

Native title rights and interests continue to exist but have no limiting effect on the grant of exploration tenements or the carrying out of activities under them, as long as those exploration tenements and activities are authorised under the ILUA.

## **10. Entry on Land**

Each accepted exploration contract is an agreement authorising the explorer to enter land to carry out authorised exploration activities in accordance with section 58 of the Mining Act.

*[The explorer must still comply with notice of entry obligations under the Mining Act in relation to other land owners.]*

## **11. Conjunctive Agreements**

At any time the explorer and the native title claim group may enter into a separate agreement (i.e. another ILUA or an agreement under Part 9B of the Mining Act) which covers any of the authorised exploration tenements as well as other exploration tenements, production tenements or miscellaneous purposes licences.

If such an agreement is entered into, the accepted exploration contract will cease to apply to those authorised exploration tenements that are covered by the separate agreement.

## **12. Authorised Exploration Tenement Terms**

The explorer's obligation to comply with the accepted exploration contract is not itself a condition of any authorised exploration tenement.

## **13. Other Native Title Holders**

All people who hold native title in the ILUA area who are not members of the native title claim group are bound by the Framework and the accepted exploration contract in the same way as members of the native title claim group.

## **14. No Acknowledgement of Native Title**

By entering into the accepted exploration contract neither the State nor the explorer acknowledges the existence or otherwise of native title in the area.

## **15. Aboriginal Heritage**

In addition to its obligations under the Aboriginal Heritage Act, the explorer may only carry out exploration activities under an authorised exploration tenement if:

1. The explorer holds and complies with an authorisation to carry out the activities granted by an independent statutory authority established under any revised Aboriginal Heritage Act; or
2. The explorer holds and complies with a relevant mapping authorisation issued by the Mapping Caretaker (see Annexure 2); or
3. The activities are early exploration activities and the explorer has complied with the requirements relating to early exploration activities (see Annexure 3); or
4. The explorer has been given clearance by the native title claim group to carry out the activities under the Heritage Clearance Procedures (see Annexure 1) and complies with the clearance conditions.

If a revised Aboriginal Heritage Act is introduced (see option 1 above), there is a limited period during which the option in 4 continues to apply.

## **16. Discoveries During Operations**

If during operations the explorer discovers anything which it suspects might be an Aboriginal site, object or remains the explorer must, in addition to any other obligations under the Aboriginal Heritage Act, notify the native title claim group, stop work at the location and not disturb the site, object or remains.

The explorer may resume work at the location if it is determined that there is no Aboriginal site, object or remains located there, or if the explorer is appropriately authorised under the Aboriginal Heritage Act.

## **17. Instruction in Aboriginal Culture**

The explorer must try to provide relevant training about Aboriginal culture, native title and relevant legislation to its employees, contractors and subcontractors who carry out activities under the accepted exploration contract.

## 18. Nominated Body

The nominated body is the body that will receive payments under the accepted exploration contract on behalf of the native title claim group. This may be the Association, a body chosen by the Association or, if neither of these, the native title claim group.

The Association will notify the other parties to the accepted exploration contract of the details of any nominated body .

## 19. Consideration

The explorer must pay an acceptance fee of \$6000 to the nominated body. This fee is payable within 10 business days of the first occasion that the explorer :

1. is granted or deemed to be granted clearance approval under the Heritage Clearance Procedures; or
2. applies for a Mapping Authorisation from the Mapping Caretaker (other than an authorisation that relates only to early exploration activities); or
3. applies for an authorisation from an independent authority established to protect Aboriginal Heritage (other than an authorisation that relates only to early exploration activities).

The explorer must pay a further \$1800 to the nominated body each time any of the above events occurring in relation to an authorised exploration tenement where they have previously occurred in relation to at least 3 other authorised exploration tenements under that accepted exploration contract.

If a mapping survey has been carried out the explorer must pay the State a mapping access application fee for a mapping authorisation.

If a Heritage Clearance Survey is carried out, the explorer must pay the amounts specified in the Heritage Clearance Procedures.

The payments and benefits received under the Framework and the accepted exploration contract include any claims for compensation under the Native Title Act for the grant of authorised exploration tenements and the carrying out of authorised exploration activities under them.

However, the native title claim group's rights to claim compensation for a breach of the Framework or the accepted exploration contract are not affected.

## 20. Compliance with Laws

The explorer must comply with all applicable laws and good minerals exploration industry practice when carrying out exploration activities (including rehabilitation of the environment) and performing obligations under the accepted exploration contract.

The Association and the native title claim group must comply with all applicable laws in performing their obligations under the accepted exploration contract.

## 21. Rehabilitation

The native title claim group may send a notice to the explorer suggesting ways that an area may be rehabilitated after exploration activities have been carried out. The notice will set out the native title claim group's proposals for rehabilitation to ensure that its ability to carry out traditional and customary activities is not significantly affected by those activities. The explorer must give due consideration to these proposals in complying with all applicable laws and good minerals exploration industry practice.

## **22. Exploration Contract Return**

Each year the explorer must complete and send to the Director of Mines a form called an Exploration Contract Return for each of its authorised exploration tenements. The Exploration Contract Return provides details about the exploration activities that were carried out in that year. The Director of Mines must send a copy of each Exploration Contract Return to the native title claim group, but is not responsible for ensuring that the explorer submits the Exploration Contract Return. The explorer does not have to include any confidential information in any Exploration Contract Return.

## **23. Emergency**

If there is an emergency on the land where the explorer is carrying out authorised exploration activities the explorer may take any action it considers necessary in the circumstances. The Aboriginal Heritage provisions of the accepted exploration contract do not prevent such action being taken.

The explorer must tell the native title claim group about the emergency as soon as possible. After the emergency, the explorer and the native title claim group must talk to each other about any further measures to be taken.

## **24. Non-Interference**

The native title claim group may not interfere with the explorer's right to carry out exploration activities authorised by the accepted exploration contract.

## **25. Administration**

The Association is responsible for the administration of the accepted exploration contract on behalf of the native title claim group.

## **26. Right to Object**

If the explorer is alleged to have breached an essential term (other than non-payment) of the accepted exploration contract in relation to an exploration tenement, the native title claim group has the right to object in certain circumstances to:

- the regrant, renewal, remaking or extension of that tenement; or
- the grant of an exploration tenement of a different type in replacement for that tenement;

which may be excluded from the accepted exploration contract as a result of that breach.

If the explorer is alleged to have breached an essential term of the accepted exploration contract in relation to payment, the native title claim group has the right to object in certain circumstances to:

- the regrant, renewal, remaking or extension of any tenement; or
- the grant of an exploration tenement of a different type in replacement for any tenement;

which may be excluded from the accepted exploration contract as a result of that breach.

If the essential term breached relates to Aboriginal heritage, the native title claim group also has the right to object to the grant to the explorer of any other exploration tenement covered by the accepted exploration contract (e.g. if the accepted exploration contract applies to EL1 and EL2 and the explorer breaches the Aboriginal heritage provisions of EL1, the native title claim group can object to the renewal of both EL1 and EL2).

An objection may only be made if the native title claim group has given notice of the breach to the explorer or if it has been agreed or otherwise determined that there was a breach of an essential term.

Any objection made by the native title claim group must be made in writing to the State, with a copy provided to the explorer by the native title claim group.

If it is resolved that there was no breach of an essential term the objection will automatically be withdrawn. Both the explorer and the indigenous parties must notify the State if this occurs.

If the native title claim group objects to the registration of a mineral claim and, despite the objection, that mineral claim is registered, the explorer may not carry out any activities under that mineral claim until the objection is withdrawn or otherwise resolved.

The native title claim group may not object to the grant of an exploration tenement in any other circumstances. The native title claim group must try to ensure that others associated with the native title claim group do not object to the grant of an exploration tenement to the explorer.

## **27. Right to Request Cancellation or Suspension**

If the explorer breaches an essential term relating to the Aboriginal heritage provisions and that breach is:

1. also a breach of the Aboriginal Heritage Act; and
2. grounds for suspension or cancellation of the exploration tenement under the Mining Act;

the native title claim group may request the cancellation or suspension of the breached tenement.

The native title claim group may not request the cancellation or suspension of an authorised exploration tenement in any other circumstances. The native title claim group must try to ensure that others associated with the native title claim group do not request the cancellation or suspension of an authorised exploration tenement.

Any request for cancellation or suspension must be made in writing to the State and copied to the explorer by the native title claim group. If it is determined that there was no relevant breach of the accepted exploration contract the objection will automatically be withdrawn. Both the explorer and the native title claim group must notify the State if this occurs.

### **28. Explorer's Acknowledgement**

The explorer acknowledges that members of the native title claim group have rights to access land to carry out traditional and customary activities on that land, so long as those activities do not interfere with exploration activities or cause danger to the explorer or any of the people that work for the explorer.

### **29. Use of Roads**

The native title claim group may use roads and tracks made by the explorer but the explorer has priority of use. The explorer may control use for the purposes of safety.

### **30. Consideration by Minister**

If the native title claim group has objected to the grant of an exploration tenement, the State will make sure that the Minister takes into account the objection and any relevant notices and reports when deciding whether or not to grant the exploration tenement and any conditions which may apply to it.

If the native title claim group has requested the cancellation or suspension of an authorised exploration tenement, the State must make sure that the Minister takes into account the request when deciding whether to cancel or suspend that exploration tenement.

### **31. Records**

The State will keep a record of all objections, PIRSA reports (see Dispute Resolution) and relevant notices for a period of six years from the end of the accepted exploration contract.

### **32. Notification of Grants**

The State must notify the native title claim group within 10 business days of the grant to the explorer of any exploration tenement in the area to which the accepted exploration contract applies .

### **33. Additional Tenements**

During the term of the accepted exploration contract, the explorer may give a notice to the native title claim group nominating additional exploration tenements to which the ILUA will apply.

Circumstances in which an explorer may not give a notice nominating an additional tenement include:

- if the explorer has previously breached an essential term of an earlier accepted exploration contract and that contract has ceased to apply to that tenement as a result of that breach; or
- where the tenement was granted after the start of the Framework and the explorer has previously carried out exploration activities under that exploration tenement.

### **34. Employment**

The explorer must notify the native title claim group if a job carrying out exploration activities for the explorer becomes available.

The native title claim group may tell the explorer about any person within the native title claim group who has skills or training that might qualify that person to be employed by the explorer. The explorer must, where appropriate, try to provide this information to its contractors.

Where it is both lawful and practical to do so, the explorer must (all other things being equal) give employment preference to a member of the native title claim group.

The explorer must provide on the job training to any member of the native title claim group employed by the explorer in the same way that it provides training to other employees in similar positions.

The explorer must try to ensure that its contractors also comply with these provisions.

However, the parties acknowledge there are only limited jobs available in carrying out exploration activities and that those which do exist are mostly for people who have special skills and training.

### **35. Statements by Native Title Claim Group**

The native title claim group says that it has consented to and authorised the registered native title claimants and the Association to enter into the ILUA on its behalf.

### **36. Statements by Explorer**

The explorer says that:

1. as at the date of entering into the accepted exploration contract or giving notice to include an additional tenement, the explorer had not started the normal "right to negotiate" process under Part 9B of the Mining Act. This does not apply if the "right to negotiate" process was initiated before the start of the Framework but no agreement was made about the exploration tenement.
2. where the authorised exploration tenement was granted after the start of the Framework, the explorer had not carried out any exploration activities under that exploration tenement before entering into the accepted exploration contract.
3. where the authorised exploration tenement was granted before the start of the Framework, any exploration activities carried out by the explorer under that tenement before entering into the accepted exploration contract were carried

out in accordance with all applicable laws and good minerals exploration industry practice.

### **37. Registered Body Corporate**

If a court finds that native title exists over land, it may also decide that a registered body corporate is to hold the native title for the native title holders. If this happens in relation to land over which there is an authorised exploration tenement, the registered body corporate will become a party to the accepted exploration contract for that land and take over the role of the Association and the native title claim group.

### **38. Breach of Essential Terms**

If an explorer breaches what is called an essential term of an accepted exploration contract, the Framework and accepted exploration contract will continue to apply to the breached exploration tenement.

If the essential term breached is about payment, the accepted exploration contract will not apply to any later tenements granted to that explorer within the ILUA area which would otherwise have been authorised under the accepted exploration contract.

If the essential term breached is of any other type, the accepted exploration contract will not apply to any renewals, regrants or extensions of the breached tenement nor any grants of exploration tenements of a different type within the area of the breached tenement (for example, a retention lease).

### **39. Representatives**

The native title claim group and the explorer may each appoint up to four representatives. The representatives are the first point of contact between the explorer and the native title parties for all matters about the accepted exploration contract. These representatives can be changed as long as the other is notified. Both the explorer and the native title claim group must ensure that they each have at least one appointed representative for the duration of the accepted exploration contract.

### **40. Dispute Resolution**

If a party has a dispute with any other party it must notify that party of the details of the dispute. A copy of the notice must also be provided to the other parties to the accepted exploration contract.

The disputing parties must then try to meet and resolve the dispute. If the dispute is about an alleged breach of an essential term (not relating to payment) and is not resolved at the meeting, Primary Industry and Resources South Australia (PIRSA) can be asked to prepare a report, called a PIRSA report, to set out the facts of the dispute. After PIRSA has prepared a report the parties must try to meet again and resolve the dispute, taking into account the content of the report.

If the dispute is not resolved, the parties may appoint a mediator. If the dispute is still not resolved, the parties may appoint an expert to make a determination. The decision of the expert is final and binding on all the parties.



#### **41. Announcements**

No party may make an announcement or statement regarding the accepted exploration contract unless all the parties agree.

#### **42. Confidential Information**

In addition to any obligations under the Aboriginal Heritage Act, the State and the explorer must keep confidential all cultural information the disclosure of which is restricted or forbidden by Aboriginal tradition.

The native title claim group and the State must not disclose any confidential information about authorised exploration tenements or authorised exploration activities.

#### **43. Assignment and Transfer**

The explorer's rights and obligations under an accepted exploration contract may be transferred to a person who takes over an authorised exploration tenement if that person executes a Deed of Assumption (a copy of which is attached to the Exploration Contract Conditions).

#### **44. Events Beyond Control**

If there is an event beyond the control of a party which prevents the party from complying with an obligation under the accepted exploration contract, the party may notify the other parties and the obligation is suspended for the time taken to remove the consequences of the event.

## Heritage Clearance Surveys

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The rules for carrying out a Heritage Clearance Survey are set out in the Heritage Clearance Procedures<sup>1</sup>.

### **1. *Right to ask for Heritage Clearance Survey***

The explorer has the right to ask for a Heritage Clearance Survey to be carried out at any time after the start of the accepted exploration contract.

The right to ask for a Heritage Clearance Survey ends if an independent statutory authority is established for the purpose of protecting and preserving Aboriginal heritage under the Aboriginal Heritage Act.

### **2. *Heritage Clearance Survey Process***

If the explorer wants a Heritage Clearance Survey to be carried out, the explorer must notify the native title claim group at least 30 business days before the explorer intends to start exploration activities in the area. When notifying the native title claim group, the explorer must provide maps of the area and details of any exploration activities to be carried out within the area, in particular any known advanced exploration activities. The notice must specify the date by which the explorer wants the survey to be started. That date must be not less than 20 business days from the date of the notice.

Within 10 business days of receiving the notice the native title claim group must respond by telling the explorer whether a Heritage Clearance Survey is required. A Heritage Clearance Survey may not be required if a Heritage Clearance Survey has previously been carried out in the area in relation to the same type of activities.

If a Heritage Clearance Survey is to be carried out, the native title claim group must tell the explorer the proposed date of the survey. That date must not be later than the date specified in the explorer's notice requesting the survey. The native title claim group may also ask the explorer to provide more details to assist it to carry out the survey.

If there is a dispute about the proposed date of the Heritage Clearance Survey the explorer and native title claim group must try to agree upon a date that is acceptable to both parties. If they cannot agree, the dispute resolution process set out in the Exploration Contract Conditions will apply.

### **3. *Explorer's Representative***

The explorer may appoint a representative to act on the explorer's behalf in matters relating to a Heritage Clearance Survey. During the survey, the representative must be available in the clearance survey area. The representative may only accompany the Clearance Team members during the Heritage Clearance Survey if asked by the Clearance Team members.

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<sup>1</sup> These rules will cease to apply (except for a limited transition period) if an amended Aboriginal Heritage Act is introduced which gives an independent statutory authority responsibility for Aboriginal Heritage protection in South Australia and provides for Aboriginal Heritage clearance to be obtained by an explorer in the form of a certificate issued by that authority,

#### **4. Clearance Team**

A Heritage Clearance Survey is carried out by a Clearance Team. Each Clearance Team may consist of up to 2 qualified specialists (e.g. anthropologists) and the number of Aboriginal people required to ensure the integrity of the survey (but no more than 6 people). Clearance Team members must be of the appropriate gender and have the appropriate knowledge and authority to carry out the survey. The specialist[s] will be chosen by the native title claim group with the approval of the explorer (not to be unreasonably withheld).

#### **5. Clearance Team Functions**

The Clearance Team must carry out a survey of the area and prepare a report. The report must specify:

- where the explorer may carry out exploration activities without damaging, disturbing or interfering with any Aboriginal site, object or remains; and
- any conditions that apply to the carrying out of those activities necessary to protect any Aboriginal site, object or remains.

The report must be given to the explorer and copied to the State, care of the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation.

If the Clearance Team decides that there is a location within the survey area where exploration activities are not able to be carried out, the Clearance Team and the explorer's representative may agree on a different location where those activities may be carried out.

#### **6. Budget**

The explorer and the native title claim group must try to agree a budget for a Heritage Clearance Survey within 10 business days of the explorer telling the native title claim group that it wants a Heritage Clearance Survey to be carried out. The budget must outline the costs of the survey for which the explorer is liable and an estimate of how long the survey will take. If the native title claim group and the explorer cannot agree on a budget, the dispute resolution process outlined in the Exploration Contract Conditions will apply.

The explorer must pay the costs of a Clearance Survey as agreed in the budget. The explorer must pay these costs to the native title claim group through the nominated body or other body chosen by the native title claim group. The explorer does not have to pay any costs which are not provided for in the budget. The explorer and the native title claim group may agree to amend the budget at any time.

The explorer is only liable for the following costs in relation to a heritage clearance survey:

- Daily rates of \$300 (increasing annually with WCI) for up to 6 clearance team members during the undertaking of the heritage clearance survey;
- Agreed daily rates for up to 2 specialists during the undertaking of the heritage clearance survey;
- Agreed daily rates for up to 2 specialists for travel;
- Daily rates of \$150 (increasing annually with WCI) for up to 2 days for up to 6 clearance team members for travel from their normal place of residence to the

survey commencement point and return, where that travel exceeds 50km each way;

- The reasonable costs of road or air travel for up to 2 specialists and up to 6 clearance team members entitled to travel rates;
- The reasonable costs of accommodation and food as agreed in the budget for each specialist and up to 6 other clearance team members.

#### **7. *Failure by Native Title Claim Group***

If the native title claim group does not within the relevant time limits:

- respond to the explorer's notice requesting a survey; or
- commence or complete the survey; or
- provide a report to the explorer;

the explorer may give a notice to the native title claim group requiring compliance within 10 business days.

If the native title claim group does not then comply within 10 business days, the explorer may proceed to carry out the proposed exploration activities. Aboriginal heritage clearance for those exploration activities will be deemed to have been given.

#### **8. *Vehicles***

The explorer must provide appropriate four wheel drive all terrain vehicles for use by the Clearance Team in carrying out the Heritage Clearance Survey. The vehicles provided by the explorer must be registered, comprehensively insured and have enough spare parts to last for the duration of the Heritage Clearance Survey.

The Association must make sure that details of the use of any other vehicles during the Heritage Clearance Survey are recorded in a log book. The explorer may inspect the log book on request.

#### **9. *Deemed Surveys***

If a Heritage Clearance Survey has previously been carried out over the survey area in relation to similar exploration activities, the native title claim group may be required to give heritage clearance without a further Heritage Clearance Survey of the area being carried out. Instead, the native title claim group must provide a report to the explorer based on the information gathered in the previous survey. The native title claim group may, with the approval of the explorer, consult a specialist to help it decide whether it is necessary to conduct a further Heritage Clearance Survey and to help it prepare the report. A copy of any such report must be provided to the State, care of the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation.

#### **10. *Confidentiality***

The Heritage Clearance Procedures do not require the Association, the native title claim group or any member of the Clearance Team to tell anyone where Aboriginal sites, objects or remains are located or why they are significant (if this is considered a matter of cultural confidence). However, the Association, the native title claim group and the Clearance Team must provide enough information so that the explorer may

carry out the exploration activities without disturbing any Aboriginal sites, objects or remains.

**11. *Provision of Reports***

Any report provided to the State under the Heritage Clearance Procedures must only be used by the State in relation to the administration of the Aboriginal Heritage Act.

If an independent statutory authority is established for the purpose of protecting and preserving Aboriginal heritage under the Aboriginal Heritage Act, the native title claim group consents to the State providing copies of any report to that authority.

## **Mapping Surveys and Mapping Authorisations**

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### ***1. Mapping Surveys***

There are two types of mapping survey; exploration mapping surveys and cultural mapping surveys. The rules for carrying out mapping surveys are set out in the Mapping Survey Procedures.

An exploration mapping survey is a survey carried out for the purposes of preserving and protecting Aboriginal sites, objects and remains. Its practical effect is to identify in an exploration mapping report areas where a future explorer may carry out exploration activities and any conditions which may apply to those activities.

A cultural mapping survey is a survey carried out for the cultural purposes (and sole benefit) of the native title claim group. Each cultural mapping survey will result in a cultural mapping report about Aboriginal sites, objects and remains identified during the survey and their significance to the native title claim group. A cultural mapping survey will only be carried out together with an exploration mapping survey.

### ***2. Right to ask for Mapping Survey***

Once the Framework has been registered, the native title claim group has the right to ask the State for a mapping survey to be carried out. The right to ask for a mapping survey ends:

- if amendments are made to the Aboriginal Heritage Act allowing Aboriginal Heritage clearance in the form of a document from an independent statutory authority; or
- at the end of the term during which an explorer is entitled to enter into an accepted exploration contract, if the State gives notice then of the end of the right.

### ***3. Mapping Survey Conditional***

If the native title claim group wants a mapping survey to be carried out it must notify the other parties. A mapping survey will only be carried out if:

- the native title claim group ask for it; and
- it is in the State's best interests for such a survey to be carried out; and
- the State and the native title claim group agree on the conditions of the survey (including the budget).

### ***4. Mapping Survey Team***

Each mapping survey must be carried out by a Mapping Survey Team. A Mapping Survey Team will be made up of such Aboriginal people and specialists as are agreed by the State and the native title claim group. The native title claim group must ensure that the Aboriginal survey team members have the relevant traditional knowledge and authority.

### ***5. Mapping Survey Reports***

The Mapping Survey Team must inspect the survey area and provide a report to the native title claim group.

All mapping survey reports must be in writing and signed by the specialists. All mapping reports belong to and may be kept by the native title claim group.

An exploration mapping survey report must specify:

- where future explorers may carry out exploration activities without damaging, disturbing or interfering with any Aboriginal sites, objects or remains; and
- any conditions that apply to the carrying out of those activities.

The native title claim group must provide a copy of each exploration mapping report to the State, care of the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation. The Mapping Caretaker (the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation) will keep a copy of each exploration mapping report for future use in relation to mapping authorisations.

If the survey includes a cultural mapping survey a separate report must be prepared detailing the Aboriginal sites, objects and remains identified by the survey team and their significance to the culture of the native title parties. This is called a cultural mapping report. The native title claim group has no obligation to provide a copy of a cultural mapping report to anyone else.

#### **6. Budget and payments**

The State must pay the costs of the mapping survey as specified in the agreed mapping survey budget. The State and the native title claim group may agree to amend the budget at any time. The State does not have to pay any costs which are not provided for in the budget.

The State must make payments to the native title claim group through the nominated body or other body nominated by the native title claim group.

#### **7. Vehicles**

The State must provide sufficient four wheel drive all terrain vehicles for use by the Mapping Survey Team in carrying out the mapping survey. The vehicles provided by the State must be registered, comprehensively insured and have enough spare parts to last for the duration of the mapping survey. The native title claim group must make sure that details of vehicle use during the mapping survey are recorded in a log book. The State may inspect the log book on request.

#### **8. Compliance with Laws**

The native title claim group and the Association must make sure that they comply with all applicable laws in carrying out their obligations under the Mapping Survey Procedures.

#### **9. Mapping Caretaker**

The Mapping Caretaker is the Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation. The role of the Mapping Caretaker is to:

- keep a copy of each exploration mapping report;
- provide information to explorers about exploration mapping reports;
- assess applications for mapping authorisations;
- issue or refuse to issue mapping authorisations.

The State is responsible for paying costs associated with the Mapping Caretaker.

**10. Mapping Authorisation**

A mapping authorisation is an authorisation issued to an explorer by the Mapping Caretaker permitting the explorer to carry out authorised exploration activities in a particular area.

An explorer may apply for a mapping authorisation if the Mapping Caretaker holds a relevant exploration mapping report about the land where the explorer proposes to carry out the exploration activities. The explorer must include in the application details of the exploration activities proposed and relevant maps.

The explorer must pay a fee of \$2,500 (or such other reasonable amount specified by the State) to the Mapping Caretaker upon application for a mapping authorisation, except where the application relates only to exploration activities when the fee will be no more than \$150.

The Mapping Caretaker must provide a copy of the explorer's application to the native title claim group.

The Mapping Caretaker must assess the explorer's application with reference to the relevant exploration mapping report and decide whether to issue a mapping authorisation to the explorer. The Mapping Caretaker may consult with the native title claim group when deciding whether to issue a mapping authorisation.

If a mapping authorisation is issued to the explorer, the Mapping Caretaker may impose conditions on the carrying out of exploration activities by the explorer in order to protect Aboriginal sites, objects or remains.

**11. Right to apply for a Mapping Authorisation**

An explorer may only apply for a mapping authorisation if the accepted exploration contract was entered into, and a relevant exploration mapping survey was carried out, before the establishment of an independent authority established to protect Aboriginal Heritage.

**12. Confidentiality**

The Mapping Survey Procedures do not require the native title claim group, the Association or any member of a survey team to disclose to any person any part of a cultural mapping report. The Mapping Survey Procedures do not require an exploration mapping report to disclose where Aboriginal sites, objects or remains are located or why they are significant.

The Mapping Caretaker must not disclose to any person where Aboriginal sites, objects or remains are located or why they are significant if the disclosure of that information is restricted or forbidden by Aboriginal tradition. The Mapping Caretaker must not disclose to any person information that the explorer has said is confidential.

**13. Consent to Provision of Copies**

If an independent statutory authority is established for the purpose of protecting and preserving Aboriginal heritage under the Aboriginal Heritage Act, the native title



claim group consents to the Mapping Caretaker providing copies of any exploration mapping report to that Authority.