ALMAC Exploration Contract Conditions

The Honourable Michael John Atkinson, Attorney-General

and

Minister for Mineral Resources and Development

and

William Herbert Lennon Snr, Ian Crombie, Keith Smith Snr, David Brown, Herbert Joseph Lennon and Jean Wood, as registered native title claimants for and on behalf of the Antakirinja native title claim group

and

Antakirinja Land Management Aboriginal Corporation

and

The party specified in the acceptance document, executed by that party in relation to the authorised exploration tenements

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### ALMAC Exploration Contract Conditions
(Schedule 2 to Framework ILUA)

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Annexure A – Heritage Clearance Procedures
Annexure B – Mapping Access Procedures
Annexure C – Notice Details
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Annexure E – Exploration Contract Return
This document sets out the exploration contract conditions which, upon the explorer complying with the provisions of clause 5.1 of the framework ILUA in relation to the authorised exploration tenements, apply pursuant to the accepted exploration contract then formed between the following parties:

**Parties**

1. **The Honourable Michael John Atkinson, Attorney-General** for and on behalf of the Crown in right of the State of South Australia of Level 11, ING Building, 45 Pirie Street Adelaide South Australia 5000 (state)

2. **Minister for Mineral Resources Development** a corporation sole constituted by Section 11 of the Mining Act, 1971 and whose office is situated at 17th Floor, 25 Grenfell Street, Adelaide, 5000 in the State of South Australia (minister)

3. **William Herbert Lennon Snr, Ian Crombie, Keith Smith Snr, David Brown, Herbert Joseph Lennon and Jean Wood**, as registered native title claimants for and on behalf of the **Antakirinja native title claim group** in application no SG 6007/98 in the Federal Court of Australia, of care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4th Floor, 345 King William Street, Adelaide SA 5000 (native title parties)

4. **Antakirinja Land Management Aboriginal Corporation**, an Aboriginal Association incorporated under the Aboriginal Councils and Associations Act No 186 of 1976 (Cth), care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4th Floor, 345 King William Street, Adelaide SA 5000 (association)

5. **The party specified in the acceptance document executed by that party in relation to the authorised exploration tenements (explorer)**

**Recitals**

A. The registered native title claimants (as at the date of execution of the framework ILUA) are the registered native title claimants (as defined in the native title act) in relation to land and waters in the acceptance area and made the native title claim on behalf of the native title claim group.

B. Prior to the signing of the framework ILUA the native title claim group established the association and authorised the association to manage the native title claim and all matters relating to the native title claim on behalf of the native title parties.
C Prior to signing the framework ILUA the association (in conjunction with the registered native title claimants) consulted with the native title claim group and the native title claim group consented to and authorised the registered native title claimants to enter into the accepted exploration contract on behalf of the native title parties.

D The association:

(a) entered into the framework ILUA in the performance of its functions of managing the native title claim and all matters in relation to it; and

(b) by signing the framework ILUA confirmed that the registered native title claimants were authorised by the native title claim group to enter into the accepted exploration contract on behalf of the native title parties.

E The state:

(a) is the Crown in right of South Australia;

(b) through the minister, its departments and agencies administers the mining act including:

(i) the granting of all mining tenements; and

(ii) the management of Part 9B of the mining act, being the alternative state right to negotiate procedure; and

(c) is the first respondent to all native title determination applications in South Australia.

F. Pursuant to the framework ILUA the framework parties:

(i) consented to the grant of the authorised exploration tenements;

(ii) consented to the carrying out of authorised exploration activities under the authorised exploration tenements; and

(iii) agreed that the right to negotiate procedure does not apply to the grant of the authorised exploration tenements or the carrying out of authorised exploration activities under them.

G. The parties wish to set out in the accepted exploration contract the provisions that apply to the grant of the authorised exploration tenements and the carrying out of authorised exploration activities under them.
1. Preliminary

1.1 Definitions

In this document (including the annexures and appendices to it), unless the context otherwise requires:

Aboriginal heritage act means the Aboriginal Heritage Act No 12 of 1988 (SA);

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 a "significant Aboriginal object" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act No 79 of 1984 (Cth);

acceptance area means the geographical area (within the ILUA area) in relation to which the accepted exploration contract applies, being the area of land and/or waters the subject of those authorised exploration tenements details of which are specified in the acceptance document;

acceptance document means the deed forming part of the framework ILUA at schedule 3, as amended from time to time pursuant to the framework ILUA by which the explorer agrees to enter into the accepted exploration contract;

acceptance term means the period, within the term of the framework ILUA, starting on the date of commencement of the framework ILUA and ending on the date determined in accordance with clause 2.2(d) of the framework ILUA, during which the explorer is entitled to enter into the accepted exploration contract in accordance with the provisions of clause 5.1 of the framework ILUA;

acceptance fee means the fee payable by the explorer in consideration of the matters referred to in clause 6.1, determined in accordance with clause 6.2;

accepted exploration contract means the contract:
(a) on the terms of this document and the acceptance document signed by the explorer in relation to the authorised exploration tenements and
(b) formed between the parties upon the explorer complying with the provisions of clause 5.1 of the framework ILUA;

association means the party referred to in item 4 under the heading "Parties";

authorised exploration activities means exploration activities under an authorised exploration tenement;

authorised exploration tenement means:
(a) any exploration tenement granted, whether before or after the commencement date or the date of commencement of the framework ILUA, to the explorer:

(i) details of which are specified in the acceptance document executed by the explorer in order to enter into the accepted exploration contract;

(ii) to the extent that the land and/or waters the subject of the exploration tenement are within the ILUA area; and

(iii) in relation to which the provisions of clause 5.1 of the framework ILUA have been complied with;

(b) any exploration tenement to be granted to the explorer upon any renewal, regrant, remaking or extension of the term of any exploration tenement referred to in paragraph (a) in respect of the whole or any portion of the land and/or waters (within the acceptance area) the subject of that exploration tenement;

(c) any exploration tenement of a different type to that referred to in paragraphs (a) and (b) to be granted to the explorer during the acceptance term in respect of the whole or any portion of the land and/or waters (within the acceptance area) the subject of any exploration tenement referred to in paragraph (a) or (b); and

(d) any exploration tenement to be granted to the explorer during the acceptance term upon any renewal, regrant, remaking or extension of the term of any exploration tenement referred to in paragraph (c) in respect of the whole or any portion of the land and/or waters (within the acceptance area) the subject of that exploration tenement,

but excludes any excluded tenement and any exploration tenement in the circumstances set out in clauses 2.3(b) or 4.5;

authority means any statutory, public, governmental, semi-governmental, or municipal authority, body or department;

breached tenement means the authorised exploration tenement in relation to which the explorer has allegedly breached an essential term in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) of the accepted exploration contract;

business day means a day other than a Saturday, Sunday or public holiday in South Australia;

commencement date means the date upon which all of the following have occurred:

(a) the explorer has duly completed and signed the acceptance document in relation to the authorised exploration tenements;

(b) if required under the mining act, the explorer has registered the duly completed and signed acceptance document under the mining act or, if not so required, has provided a copy of the duly completed and signed acceptance document to the state and
(c) the explorer has notified the indigenous parties that the explorer has duly completed and signed the acceptance document and simultaneously has provided the indigenous parties with an original or duplicate original of the acceptance document and evidence that it has been duly stamped and, if applicable, registered under the mining act;

communication has, for the purposes of clause 17, the meaning given in clause 17.1;

compensation entitlement means any compensation, right or entitlement whether monetary or otherwise and whether under common law, equity, statute or otherwise in respect of native title with respect to:
(a) the grant of any authorised exploration tenement; or
(b) the carrying out of any authorised exploration activities under any authorised exploration tenement;

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

cultural mapping survey means a survey for purposes of preserving, protecting, maintaining or enhancing the culture of the native title parties in relation to Aboriginal sites, objects or remains, carried out pursuant to clause 8 of the framework ILUA and the mapping survey procedures;

dispose means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

dispute has the meaning given in clause 16.1;

dispute parties has the meaning given in clause 16.4;

encumbrance means any interest or power:
(a) reserved in, or over any interest in, any asset including any retention of title; or
(b) created or otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power, by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created;

essential term means the terms of each of clauses 5.1, 5.2, 5.3, 6.1, 6.3, 6.4(b), 7.1, 7.4, 8.3(c) and 8.3(d) of the accepted exploration contract;

excluded tenement means an exploration tenement to which the accepted exploration contract does not apply by reason of the provisions of clause 14.1 or 14.2 of the accepted exploration contract;

expert means the person appointed either:
(a) by agreement between the dispute parties within 5 business days of any dispute not being resolved in accordance with the provisions of clause 16.6; or

(b) failing such agreement, at the request of any dispute party by the President for the time being of the Law Society of South Australia Inc. (or the President’s nominee), being a person who has an understanding of, and experience in, both Aboriginal heritage and minerals exploration matters;

**expert’s determination** has, for the purposes of clause 16, the meaning given in clause 16.7;

**exploration activities** means, in relation to an exploration tenement, all exploratory operations and other activities permitted to be carried out pursuant to the conditions of that exploration tenement under the mining act; **exploration contract return** means the form of return annexed to this document as annexure E or such other form of return as may be agreed from time to time between the explorer and the association;

**exploration mapping survey** means a survey, carried out pursuant to clause 8 of the framework ILUA and the mapping survey procedures, for purposes of preserving and protecting Aboriginal sites, objects or remains in relation to those exploration activities in respect of which the survey is undertaken;

**exploration land** means, at any time, land which is both the subject of any authorised exploration tenement granted at that time and within the acceptance area;

**exploration tenement** means a mineral claim, an exploration licence, a retention lease (but only if the mining operations to which the retention lease relates are limited to exploratory operations) and a miscellaneous purposes licence (but only if the purposes for which the licence is granted are limited to purposes ancillary to the conduct of exploratory operations);

**explorer** means the party specified as the explorer in the acceptance document executed by that party in relation to the authorised exploration tenements;

**force majeure** means any act, event or cause, which is beyond the reasonable control of a party, including such an act, event or cause being:

(a) an Act of God, war, sabotage, riot, civil commotion, national emergency (whether in fact or law), fire, lightning, flood, earthquake, landslide, drought, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of that party), epidemic, disease, pestilence, quarantine or radioactive contamination;

(b) action or inaction of any competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or
embargo by legislation, regulation, decree or other legally enforceable order or decision;

(c) religious or other ceremonial activities (carried out pursuant to obligations under Aboriginal tradition) of members of the native title claim group or other persons (if any) who hold native title in relation to any of the land or waters within the exploration land; or

(d) breakdown of plant, machinery or equipment (including ships, trains, trucks or vehicles) or shortage of labour, transportation, fuel, power, plant, machinery, equipment or material;

framework ILUA means the deed (including the schedules, annexures and appendices to it) between the framework parties which provides, amongst other things, that the framework parties:

(a) consent to the grant of the authorised exploration tenements;

(b) consent to the carrying out of authorised exploration activities under the authorised exploration tenements; and

(c) state that the right to negotiate procedure does not apply to the grant of the authorised exploration tenements or the carrying out of authorised exploration activities under them;

framework parties means the state, the native title parties, the association, Aboriginal Legal Rights Movement Inc and South Australian Chamber of Mines and Energy Inc, being the parties to the framework ILUA;

framework term means the period for which the framework ILUA operates, as referred to in clause 2.1(a) of the framework ILUA;

grant, in relation to an exploration tenement, includes

(a) any renewal, regrant, remaking or extension of the term of an exploration tenement; and

(b) any registration of a mineral claim;

gst has, for the purposes of clause 18, the meaning given in that clause;

gst legislation has, for the purposes of clause 18, the meaning given in that clause;

heritage clearance procedures means the procedures annexed to this document as annexure A, as amended from time to time pursuant to the framework ILUA;

heritage transition period means the period:

(a) commencing on the date upon which a provision in the Aboriginal heritage act of a kind referred to in clause 5.1(a)(i) commences to operate; and

(b) terminating on the expiry of a period of 30 months from the date referred to in paragraph (a);

ILUA area means the geographical area in relation to which the framework ILUA applies;
indigenous parties means the association and the native title parties;

law means any Act of Parliament (whether state or federal) and all regulations, by-laws, statutory instruments and orders made thereunder and any lawful requirement of any authority and includes the conditions of any authorised exploration tenement;

mapping access procedures means the procedures annexed to this document as annexure B;

mapping survey means either:
(a) an exploration mapping survey; or
(b) an exploration mapping survey and a cultural mapping survey;

mapping survey procedures means the procedures for carrying out a mapping survey forming part of the framework ILUA at schedule 4, as amended from time to time pursuant to the framework ILUA;

mining act means the Mining Act No 109 of 1971 (SA);

minister means the Minister of the Crown in right of South Australia for the time being administering the mining act or that Minister's duly authorised delegate, being the party referred to in item 2 under the heading “Parties”; 

native title has the meaning given in the native title act;

native title act means the Native Title Act No 110 of 1993 (Cth);

native title claim means the native title determination application referred to in item 3 under the heading “Parties”;

native title claim group means the native title claim group (as defined in the native title act) in respect of the native title claim;

native title parties means the native title claim group and includes the registered native title claimants, being the party referred to in item 3 under the heading "Parties";

nominated body means:
(a) the association;
(b) if nominated by the association pursuant to clause 6.5(a), a body corporate:
   (i) whose membership or shareholding by its constitution includes the members of the native title claim group;
   (ii) which is not in administration, receivership or liquidation under any laws applicable to the body corporate, and
   (iii) which is incorporated by the native title claim group for purposes that include the purposes of the accepted exploration contract;
(c) if nominated by the association pursuant to clause 6.5(a), a trust:
(i) whose beneficiaries by the trust deed include the members of the native title claim group;

(ii) the trustee of which:

(A) if a natural person, is not an undischarged bankrupt; or

(B) if a body corporate, is not in administration, receivership or liquidation under any laws applicable to the body corporate; and

(iii) which is established by the native title claim group for purposes that include the purposes of the accepted exploration contract; or

(d) if paragraphs (a), (b) and (c) do not apply, the native title parties.

notified party has, for the purposes of clause 16, the meaning given in clause 16.3;

notifying party has, for the purposes of clause 16, the meaning given in clause 16.3;

objection period means the period:

(a) commencing on the date upon which the native title parties have objected pursuant to clause 10.1(a) to the grant of any exploration tenement; and

(b) expiring on the earlier of the date upon which:

(i) that objection is deemed to have been withdrawn pursuant to clause 10.4; and

(ii) the accepted exploration contract ceases to apply pursuant to clause 14, in respect of that exploration tenement;

parties means the parties to the accepted exploration contract;

PIRSA report means a report prepared pursuant to clause 16.5;

provision has, for the purposes of clause 19.3, the meaning given in that clause;

recipient has, for the purposes of clause 18, the meaning given in that clause;

register means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the native title act;

registered native title claimants means the registered native title claimants (as defined in the native title act) from time to time in respect of the native title claim;

representatives means the representative(s) of the explorer and the representative(s) of the indigenous parties from time to time appointed pursuant to clause 15.1;
right to negotiate procedure means the procedures described in Part 9B of the mining act or Part 2, Division 3, Subdivision P of the native title act;

state means the party referred to in item 1 under the heading "Parties";

supplier has, for the purposes of clause 18, the meaning given in that clause;

taxable supply has, for the purposes of clause 18, the meaning given in that clause; and

term, in relation to the accepted exploration contract, means the period referred to in clause 2.1; and

other terms in italics which are defined or used in the Aboriginal heritage act, the native title act or the mining act bear their defined meanings when used in this document.

1.2 Interpretation

In this document (including the annexures and appendices to it), unless the context otherwise requires:

(a) the singular includes the plural and conversely;

(b) a gender includes all genders;

(c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

(e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to this document;

(f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;

(g) a reference to an agreement, deed or document (including this document and the accepted exploration contract) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this document, the accepted exploration contract or that other agreement, deed or document;

(h) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;

(i) a reference to a party to the accepted exploration contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);

(j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative
provision substituted for it and a regulation or statutory instrument issued under it;

(k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;

(l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

(m) a reference to a document includes an agreement (referred to in paragraph (l)) in writing and any certificate, notice, instrument and document of any kind;

(n) a reference to dollars and $ is to Australian currency;

(o) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;

(p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;

(q) a reference to agree, approve or consent on the part of a party is a reference to agree, approve or consent (as the case may be) on the part of that party in writing; and

(r) nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it.

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Schedules and annexures

Schedules, annexures and appendices form part of this document.

2. Term and Termination

2.1 Term

(a) The accepted exploration contract:

(i) commences on the commencement date and

(ii) continues until the earlier of:

(A) the date upon which all of the authorised exploration tenements have terminated or expired or been surrendered or cancelled for whatever reason; and

(B) the date upon which the accepted exploration contract no longer applies pursuant to clause 14 to all the authorised exploration tenements.
(b) The explorer must notify the other parties of the end of the term promptly after it occurs.

(c) The provisions of clause 2.1(b) survive the expiry or earlier termination for whatever reason of the accepted exploration contract.

2.2 Termination

(a) Subject to clauses 2.3 and 4.5, no party is entitled to terminate the accepted exploration contract for any reason including by reason of any breach or repudiation of the accepted exploration contract by any other party.

(b) Except as set out in clause 2.2(a), the rights and remedies of any party, whether under common law, equity, statute or otherwise, by reason of any breach of the accepted exploration contract by any other party are not limited in any way.

(c) Subject to clause 2.2 of the framework ILUA, the parties (other than the explorer) must not (as framework parties) agree to terminate the framework ILUA for any reason.

2.3 Termination by Explorer

(a) If the registrar removes, or is obliged under the native title act to remove, the entry on the register of native title claims that relates to the native title claim (other than where the removal or obligation to remove that entry relates to the finalisation of the native title claim by an approved determination of native title) then the explorer may terminate the accepted exploration contract.

(b) If:

(i) the registrar amends, or is obliged under the native title act to amend, the entry on the register of native title claims that relates to the native title claim; and

(ii) that amendment extends to the exclusion of any land or waters from the area of land and/or waters covered by the native title claim,

then the explorer may terminate the accepted exploration contract to the extent only that it applies in relation to excluded land and/or waters (other than where that exclusion relates to the finalisation of the native title claim as regards that excluded land and/or waters by an approved determination of native title).

(c) No party has any claim of whatever nature and however arising against any other party arising from or out of the termination of the accepted exploration contract pursuant to clause 2.3(a) or (b).

(d) Any termination of the accepted exploration contract pursuant to clause 2.3(a) or (b) is without prejudice to the accrued rights and remedies of the parties.
2.4 Non-Application to Excluded Tenements

The accepted exploration contract does not apply to an excluded tenement.

3. Native Title Act Statements

3.1 Consent to Future Acts

The parties record that under the framework ILUA the framework parties consented, subject to clauses 3.3, 3.5(b), 3.6, 3.7, 3.8 and 3.9 of the framework ILUA, to:

(a) the grant of each authorised exploration tenement:
   (i) in the case referred to in paragraph (a) of the definition of authorised exploration tenement, at any time, whether before or after the commencement date of the framework ILUA, but:
      (A) in relation to an authorised exploration tenement which (as at the commencement date) the explorer has applied for but has not been granted, before the end of the framework term; and
      (B) in relation to any other authorised exploration tenement, before the end of the acceptance term;
   (ii) in the case referred to in paragraph (b) of the definition of authorised exploration tenement, at any time after the commencement date of the framework ILUA but during the framework term; and
   (iii) in the cases referred to in paragraphs (c) and (d) of the definition of authorised exploration tenement, at any time after the commencement date of the framework ILUA but during the acceptance term; and

(b) the carrying out at any time after the commencement date of the framework ILUA but during the framework term of authorised exploration activities under each authorised exploration tenement (whether granted before or after the commencement date of the framework ILUA) in respect of which consent was given under the framework ILUA, as referred to in this clause 3.1.

3.2 No right to negotiate procedures

(a) The parties acknowledge and agree that the framework ILUA sets out procedures for:
   (i) the grant of the authorised exploration tenements; and
   (ii) the carrying out of authorised exploration activities under the authorised exploration tenements.
(b) The parties record that under the framework ILUA the framework parties agreed that the right to negotiate procedure is not intended to apply to either:

(i) the grant of the authorised exploration tenements; or

(ii) the carrying out of authorised exploration activities under the authorised exploration tenements.

3.3 When consent effective

To avoid doubt, the parties agree that the consent of the framework parties in clause 3.1 of the framework ILUA and their agreement in clause 3.2 of the framework ILUA are effective in relation to any authorised exploration tenement referred to in paragraph (a) of the definition of authorised exploration tenement which has not been granted as at the date of the formation of the accepted exploration contract, only upon that authorised exploration tenement being granted.

3.4 Amendments to Accepted Exploration Contract

(a) Subject to clause 3.4(b), the parties agree that the consent of the framework parties in clause 3.1 of the framework ILUA and their agreement in clause 3.2 of the framework ILUA apply to each authorised exploration tenement and any authorised exploration activities under it to which the accepted exploration contract, as amended from time to time, applies.

(b) Clause 3.4(a) does not apply where the accepted exploration contract is amended in a manner which is inconsistent in any way with the framework ILUA (excluding, for this purpose, all schedules, annexures and appendices to it).

3.5 Effect of Removal from Register

The parties agree that the consent of the framework parties in clause 3.1 of the framework ILUA and their agreement in clause 3.2 of the framework ILUA cease to apply to the accepted exploration contract with effect from the removal of the framework ILUA from the register, but the provisions of this clause 3.5 and clause 3.6 of the framework ILUA do not affect any such consent or agreement in relation to:

(a) any authorised exploration tenement granted prior to the removal of the framework ILUA from the register; or

(b) any authorised exploration activities carried out or to be carried out under any such authorised exploration tenement.

3.6 Effect of Breach of Essential Term

(a) The parties agree that the consent of the framework parties in clause 3.1 of the framework ILUA, their agreement in clause 3.2 of the framework ILUA and the accepted exploration contract do not apply in the circumstances set out in clause 14 (and, accordingly, subject to
clause 3.6(b), the right to negotiate procedure will apply to an excluded tenement).

(b) However, neither the state nor SACOME acknowledges that the right to negotiate procedure applies to any miscellaneous purposes licence which is an excluded tenement.

4. Other Statements

4.1 Non extinguishment principle
The parties acknowledge and agree that the non-extinguishment principle applies to:

(a) the grant of the authorised exploration tenements; and
(b) the carrying out of authorised exploration activities under the authorised exploration tenements.

4.2 Application
The parties state that the accepted exploration contract applies to the acceptance area.

4.3 Exploration only
The parties acknowledge and agree that pursuant to the framework ILUA and the accepted exploration contract:

(a) they do not agree to the validation of, or consent to, the grant to the explorer of any production tenement or the carrying out by the explorer of any mining operations under any production tenement; and

(b) the explorer will, if legally obliged to do so, be required:

(i) to enter into an indigenous land use agreement; or

(ii) in accordance with the right to negotiate procedure, to negotiate and enter into a separate agreement or obtain a determination from a court or tribunal of competent jurisdiction,

    to provide for the authorisation of the grant to the explorer of any production tenement or the carrying out of any mining operations under it.

4.4 Entry on Land
The parties acknowledge and agree that the accepted exploration contract constitutes an agreement between the native title parties and the explorer for the purposes of section 58 of the mining act.
4.5 Conjunctive Agreements

(a) The native title parties and the explorer may at any time during the term enter into an indigenous land use agreement or, if applicable, an agreement under the right to negotiate procedure which relates both:

(i) to some or all of the authorised exploration tenements; and

(ii) to other exploration authorities, production tenements and/or miscellaneous purposes licences whether granted or to be granted and whether wholly or partially within the acceptance area or not.

(b) If the circumstances referred to in clause 4.5(a) occur, the accepted exploration contract terminates as regards the authorised exploration tenements referred to in that clause immediately upon the relevant agreement being entered into.

4.6 Authorised Exploration Tenement Terms

The parties acknowledge and agree that compliance with the terms and conditions of the accepted exploration contract is not a condition of any authorised exploration tenement (or any other exploration tenement).

4.7 Other Native Title Holders

The parties acknowledge and agree that pursuant to section 24EA(1)(b) of the native title act, all persons holding native title in relation to any of the land and/or waters in the ILUA area who are not members of the native title claim group:

(a) are bound by the framework ILUA; and

(b) by reason of being bound by the framework ILUA are also bound by the accepted exploration contract in relation to the land and/or waters (within the ILUA area) to which the accepted exploration contract applies,

in the same way as the native title group (as defined in section 24CD(2) or (3) of the native title act).

4.8 No Acknowledgement of Native Title

By entering into the accepted exploration contract neither the explorer nor the state acknowledges the existence or otherwise of native title in relation to any land and/or waters within the whole or any part of the acceptance area.

5. Aboriginal Heritage

5.1 Requirement

The explorer may only carry out authorised exploration activities under an authorised exploration tenement:

(a) if:
(i) the Aboriginal heritage act at any time makes provision for the grant by an independent statutory authority of a document which, if held by the explorer, would allow the explorer, subject to any conditions in the document, to carry on the authorised exploration activities on that part of the exploration land to which the document relates; and

(ii) the explorer is the holder of such a document under the Aboriginal heritage act in relation to the relevant authorised exploration activities to be carried out on that part of the exploration land;

(b) if:

(i) 5.1(a) does not apply;

(ii) the accepted exploration contract is entered into prior to the commencement of the heritage transition period;

(iii) before the commencement of the heritage transition period, a mapping survey is undertaken in respect of that part of the exploration land in relation to which the explorer proposes to carry out the relevant authorised exploration activities; and

(iv) before the expiry of the heritage transition period, a mapping authorisation (as defined in the mapping access procedures) is issued to the explorer (subject to the conditions (if any) of the mapping authorisation) in respect of the relevant authorised exploration activities to be carried out on that part of the exploration land; or

(c) if:

(i) clause 5.1(a) does not apply;

(ii) the accepted exploration contract is entered into prior to the commencement of the heritage transition period;

(iii) before the commencement of the heritage transition period, the explorer complies with the heritage clearance procedures in relation to the relevant authorised exploration activities; and

(iv) before the commencement of the heritage transition period a clearance approval (as defined in the heritage clearance procedures) is given or is deemed to have been given to the explorer pursuant to the heritage clearance procedures (subject to the conditions, if any, of the clearance approval) in respect of the relevant authorised exploration activities to be carried out on that part of the exploration land.

5.2 Compliance with Aboriginal Heritage Requirements

The explorer must:
(a) not carry out any authorised exploration activities under an authorised exploration tenement except within a part of the exploration land in respect of which:

(i) the explorer is the holder of a document of a kind referred to in clause 5.1(a);

(ii) the explorer has been issued a mapping authorisation (as defined in the mapping access procedures); or

(iii) the explorer has complied with the provisions of the heritage clearance procedures and a clearance approval (as defined in the heritage clearance procedures) has been given or is deemed to have been given to the explorer pursuant to the heritage clearance procedures,

in respect of those authorised exploration activities;

(b) comply with the conditions of that document, mapping authorisation or clearance approval; and

(c) instruct its contractors, employees, agents and visitors accordingly in relation to its obligations under clauses 5.2(a) and (b).

5.3 Discoveries During Operations

If at any time during the carrying out of authorised exploration activities the explorer identifies any site, object or remains which the explorer suspects may be an Aboriginal site, object or remains, the explorer must, in addition to any other obligations under the Aboriginal heritage act:

(a) promptly report the location of that site, object or those remains to the association;

(b) not carry on any authorised exploration activities on the relevant site or the location of the relevant object or remains; and

(c) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains, unless and until:

(d) the relevant site, object or remains is determined not to be an Aboriginal site, object or remains; or

(e) if the relevant site, object or remains is determined to be an Aboriginal site, object or remains, the explorer is authorised under the Aboriginal heritage act to do otherwise.

5.4 Instruction in Aboriginal Culture

(a) The explorer must use reasonable endeavours to ensure that the explorer’s employees, contractors and subcontractors who may be involved in the carrying out of authorised exploration activities are aware, and have an understanding, of:

(i) the significance of land and waters to Aboriginal people;
(ii) their customary and traditional activities;
(iii) native title and
(iv) the obligations of the explorer, its employees, contractors and subcontractors under the Aboriginal heritage act, the Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 (Cth), the native title act and the accepted exploration contract in relation to avoiding disturbance, damage and interference to any Aboriginal site, object or remains.

(b) The explorer must ensure, in consultation with the association, that all such employees, contractors and subcontractors receive such training in the traditions, history and culture of the native title parties and such basic archaeological training as the explorer reasonably considers will facilitate such awareness and understanding and also the identification of any Aboriginal site, object or remains for the purposes of clause 5.3.

6. Consideration

6.1 Acceptance fee

In consideration of the native title parties agreeing to enter into the accepted exploration contract, the explorer must pay the acceptance fee to the nominated body on the commencement date.

6.2 Determination of Acceptance fee

(a) The acceptance fee is $8,000, if the number of authorised exploration tenements specified in the acceptance document executed by the explorer is 3 or less;
(b) $9,000, if the number of authorised exploration tenements specified in the acceptance document executed by the explorer is more than 3 but less than 7; or
(c) $10,000, if the number of authorised exploration tenements specified in the acceptance document executed by the explorer is 7 or more.

6.3 Individual Survey Payments

(a) If clause 5.1(b) applies, then the explorer must pay the mapping access application fee to the state as set out in the mapping access procedures in respect of each mapping access application (as defined in the mapping access procedures) made by the explorer.
(b) If clause 5.1(c) applies, then in consideration of the carrying out of each heritage clearance survey under the heritage clearance procedures, the explorer must pay the amounts specified in the heritage clearance procedures to the nominated body as set out in those procedures.
6.4 Manner of payment
All amounts payable by the explorer to the nominated body pursuant to this clause 6 must be paid:
(a) to the nominated body at its address for purposes of the accepted exploration contract; and
(b) free of exchange and without any deduction, set off or withholding.

6.5 Nominated Body
(a) The association must notify the state and the explorer of:
   (i) the nomination of any body corporate or trust as the nominated body and of the address of that nominated body for purposes of the accepted exploration contract; and
   (ii) any change of address of that nominated body.
(b) The nominated body is the agent of the native title parties in relation to all amounts paid to the nominated body pursuant to this clause 6.
(c) Any payment to the nominated body is a good and sufficient discharge of that payment as regards the native title parties.

6.6 Acknowledgment
The indigenous parties acknowledge and agree that, subject to clause 6.7:
(a) any amounts payable and any benefits provided under the accepted exploration contract and the framework ILUA to the native title parties or to any nominated body or any other agent on their behalf:
   (i) are in full and final satisfaction of any compensation entitlement of the native title parties; and
   (ii) for the purposes of section 24EB of the native title act, are compensation provided for by the framework ILUA; and
(b) the native title parties do not have any compensation entitlement other than for the amounts payable and benefits provided under the accepted exploration contract and the framework ILUA.

6.7 Exception
The provisions of clause 6.6 do not apply to any compensation entitlement of the native title parties against another party to the accepted exploration contract or any framework party arising by reason of any breach of the accepted exploration contract by that party or the framework ILUA by that framework party, respectively.

6.8 Sharing
The indigenous parties agree that the amounts payable and the benefits provided under the accepted exploration contract and the framework ILUA to
the native title parties or to any nominated body or any other agent on their behalf are held on behalf of all members of the native title claim group and all persons (if any) who hold native title in relation to the whole or any portion of the acceptance area.

6.9 Application Survival

The provisions of clauses 6.6, 6.7 and 6.8 survive the removal of the details of the framework ILUA from the register for whatever reason and remain in those circumstances binding on:

(a) all persons bound by the framework ILUA and the accepted exploration contract; and

(b) all persons entitled to any of the benefits under the framework ILUA and the accepted exploration contract.

7. Covenants by Explorer

7.1 Compliance with Laws

The explorer must comply with all applicable laws and good minerals exploration industry practice in:

(a) carrying out the authorised exploration activities, including in carrying out any conservation, protection and rehabilitation of the environment; and

(b) performing its obligations under the accepted exploration contract.

7.2 Rehabilitation

(a) The indigenous parties may notify the explorer of any proposals which they have in relation to the rehabilitation of land or waters within the exploration land to ensure, as far as is possible, that there will be no significant long term adverse effect, by reason of the carrying out of the authorised exploration activities on that land and/or those waters, on the ability of the native title parties to pursue on that land and/or those waters customary and traditional activities notified to the explorer.

(b) In complying with its obligations under clause 7.1(a) the explorer will give due consideration to any proposals notified to it by the native title parties pursuant to clause 7.2(a).

7.3 Exploration Contract Return

(a) The explorer must furnish a duly completed and signed exploration contract return in respect of each authorised exploration tenement:

(i) to the Director of Mines;
(ii) in respect of authorised exploration activities carried out during each calendar year falling wholly or partially during the term; and

(iii) within 20 business days of each anniversary of the grant, and the expiry, of that authorised exploration tenement.

(b) The explorer is not obliged to include any confidential information in any exploration contract return.

(c) The state must ensure that the Director of Mines provides a copy of any exploration contract return to the association as soon as practicable after it has been furnished to the Director of Mines.

(d) The explorer consents to the Director of Mines providing a copy of each exploration contract return to the association.

(e) The state does not warrant the accuracy or completeness of any information contained in any exploration contract return.

(f) Nothing in this clause 7.3 imposes a legal obligation on the State to do anything to ensure compliance by the explorer with the provisions of clause 7.3(a).

7.4 Limitations on Activities under Mineral Claim

If:

(a) the native title parties have objected pursuant to clause 10.1(a) to the grant of any authorised exploration tenement;

(b) that objection extends to the grant of a mineral claim; and

(c) that mineral claim is granted to the explorer,

then the explorer must not carry out any authorised exploration activities under that mineral claim during the objection period.

8. Rights of Explorer

8.1 Basis

The indigenous parties acknowledge and agree that the explorer’s right to carry out authorised exploration activities on the exploration land is determined under the mining act and by the terms of each authorised exploration tenement under which the authorised exploration activities are carried out.

8.2 Qualification

In the exercise of those rights the explorer must perform its obligations under the accepted exploration contract.

8.3 Emergency

If any emergency situation occurs anywhere on the exploration land:
9. Additional Covenants of Native Title Parties

9.1 Non-Interference, Objections and Compliance

The indigenous parties must:

(a) not interfere with:
   (i) the exercise by the explorer of its rights under the mining act or under the terms of any authorised exploration tenement; or
   (ii) the carrying out of authorised exploration activities under any authorised exploration tenement;

(b) not make any objection to any grant to the explorer of any exploration tenement wholly or partially within the acceptance area to which the accepted exploration contract applies or is capable of applying, except where entitled to do so pursuant to clause 10.1;

(c) not make any submission that any authorised exploration tenement be cancelled or suspended, except where entitled to do so pursuant to clause 10.2;

(d) use their best endeavours to ensure that neither ALRM nor any member, agent or representative of, or other person associated with ALRM, the native title claim group or the association:
   (i) makes any objection to the grant to the explorer of any exploration tenement wholly or partially within the acceptance area to which the accepted exploration contract applies or is capable of applying; or
   (ii) makes any submission that any authorised exploration tenement be cancelled or suspended,

except where the indigenous parties are entitled to make an objection or submission pursuant to clause 10.1 or 10.2, respectively; and

(e) comply with all applicable laws in performing their obligations under the accepted exploration contract.
9.2 Administration

The association is responsible for the administration of the accepted exploration contract on behalf of the native title parties.

10. Rights of Native Title Parties

10.1 Right to Object to Grants

(a) The indigenous parties may make an objection to the grant to the explorer of any exploration tenement wholly or partially within the acceptance area to which the accepted exploration contract applies or is capable of applying, if:

(i) the explorer has allegedly breached:
   
   (A) an essential term in clause 6.1, 6.3 or 6.4(b); or
   
   (B) an essential term in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to any breached tenement;

(ii) that exploration tenement is an exploration tenement to which the provisions of clause 14.1 or 14.2 are capable of applying as an excluded tenement; and

(iii) either:

   (A) notice has been given by the indigenous parties under clause 14.1 or 14.2 of such alleged breach by the explorer; or
   
   (B) otherwise than pursuant to clause 16 it has been agreed between the indigenous parties and the explorer or finally determined that the explorer has committed such breach.

(b) The indigenous parties may also make an objection to the grant to the explorer of any exploration tenement wholly or partially within the acceptance area to which the accepted exploration contract applies or is capable of applying (other than an exploration tenement referred to in clause 10.1(a) or a mineral claim), if:

(i) that exploration tenement may be granted to the explorer at any time after the alleged breach of the breached tenement referred to in clause 10.1(a)(i)(B);

(ii) that alleged breach is of an essential term in clause 5.1, 5.2 or 5.3; and

(iii) the indigenous parties have made or are entitled to make an objection to the grant of an exploration tenement referred to in clause 10.1(a), pursuant to that clause.

(c) The indigenous parties may make an objection pursuant to clause 10.1(a) or (b) whether or not the explorer has applied to the state for the grant of the relevant exploration tenement.
10.2 Right to Request Cancellation or Suspension

The indigenous parties may make a submission that any authorised exploration tenement be cancelled or suspended if:

(a) the indigenous parties have made or are entitled to make an objection to the grant of an exploration tenement referred to in clause 10.1(a), pursuant to that clause;

(b) the authorised exploration tenement in respect of which the indigenous parties may make a submission is the breached tenement referred to in clause 10.1(a)(i)(B);

(c) the alleged breach by the explorer of an essential term in relation to that breached tenement is of clause 5.1, 5.2 or 5.3 of the accepted exploration contract; and

(d) that alleged breach or any consequences of it constitute grounds under the mining act and that breached tenement for the cancellation or suspension of that breached tenement by reason of that breach or those consequences constituting non-compliance by the explorer with any provision of the Aboriginal heritage act.

10.3 Recipient of Objection or Submission

(a) Any objection pursuant to clause 10.1 must be made in writing to the state setting out the reasons for that objection together with any supporting information, with a copy of that objection promptly provided to the explorer.

(b) Any submission pursuant to clause 10.2 must be made in writing to the state setting out the reasons for that submission together with any supporting information, with a copy of that submission promptly provided to the explorer.

10.4 Withdrawal of Objection or Submission

The indigenous parties are deemed to have withdrawn an objection made in relation to any exploration tenement pursuant to clause 10.1 or a submission made pursuant to clause 10.2, respectively if the exploration tenement referred to in clause 10.1(a)(ii) is no longer capable of being an excluded tenement.

10.5 Notice of Withdrawal

Each of the indigenous parties and the explorer must notify the state of the deemed withdrawal pursuant to clause 10.4 of an objection or submission pursuant to clause 10.1 or 10.2, respectively within 10 business days of that deemed withdrawal.

10.6 Explorer's Acknowledgment

As between the explorer and the indigenous parties the explorer acknowledges that members of the native title claim group have the following rights:
(a) to pursue customary and traditional activities on the exploration land, including, where applicable, the rights conferred under section 47 of the Pastoral Land Management and Conservation Act 1989 (SA); and

(b) to have access to the exploration land for the purposes of pursuing the rights referred to in clause 10.6(a).

except where and to the extent that their presence will or is likely to:

(c) cause danger to health and safety of the explorer or any of its officers, employees, contractors, agents or invitees; or

(d) interfere with the carrying out of authorised exploration activities.

10.7 Use of Roads

The indigenous parties acknowledge and agree that the use pursuant to clause 10.6 by members of the native title claim group of any roads and tracks constructed for the purposes of carrying out authorised exploration activities is subject to:

(a) reasonable control by the explorer for the purposes of safety; and

(b) priority of use by the explorer for the purpose of carrying out authorised exploration activities,

without the explorer undertaking any liability for that use.

11. Covenants by State

11.1 Consideration by Minister

(a) Where the indigenous parties have made an objection pursuant to clause 10.1 to the grant of an exploration tenement (other than a mineral claim) not less than 5 business days before the grant of that exploration tenement and that objection is not deemed withdrawn, in relation to that exploration tenement pursuant to clause 10.4, at the time when the minister is considering whether or not to grant that exploration tenement, the state must ensure that the minister takes into account:

(i) that objection and any supporting information provided pursuant to clause 10.3(a);  
(ii) any relevant notice of the alleged breach given pursuant to clause 14.1(b) or (d) of clause 14.2(a)(iii) of (v); 
(iii) any relevant notice of dispute given pursuant to clause 16.3; 
(iv) any relevant PIRSA report; and 
(v) any relevant notice given pursuant to clause 16.12,

in exercising the minister's discretion as to:
(vi) whether to grant or refuse to grant the relevant exploration tenement; and

(vii) the conditions upon which the relevant exploration tenement is granted, if the minister decides to grant it.

(b) Where the indigenous parties have made a submission pursuant to clause 10.2 that an authorised exploration tenement be cancelled or suspended and that submission is not deemed withdrawn, in relation to that authorised exploration tenement pursuant to clause 10.4, at the time the minister considers whether or not to cancel or suspend that authorised exploration tenement, the state must ensure that the minister takes into account such submission and any supporting information provided pursuant to clause 10.3(b) in exercising the minister’s discretion as to whether or not to cancel or suspend that authorised exploration tenement.

(c) The provisions of clauses 11.1(a) and (b) do not prevent the minister from taking into account other relevant matters in exercising any discretion of the minister under the mining act.

11.2 Records
For the purposes only of clause 11.1, the state must ensure that records are kept and maintained during the term, and for a period of 6 years after the end of the term, of any objection, submission, notices and PIRSA report referred to in clause 11.1.

11.3 Notification of Grants
The state must notify the association of the grant of any exploration tenement within the acceptance area to the explorer, within 10 business days of that grant.

11.4 Survival
The provisions of clauses 11.1 and 11.2 survive the expiry or termination for whatever reason of the accepted exploration contract.

12. Employment

12.1 Acknowledgment
(a) The parties acknowledge that:

(i) there are limited opportunities for the explorer and its contractors to employ persons during the carrying out of the authorised exploration activities, including for the employment of members of the native title claim group; and

(ii) those employment opportunities that do exist during the carrying out of the authorised exploration activities are primarily for people with specialist skills and training.
12.2 Notification of vacancies

(a) The explorer must notify the association of the particulars of any job vacancy in relation to the carrying out of the authorised exploration activities that arises in the explorer’s work force:

(i) if the vacancy is one which is advertised in any printed media, not less than 15 business days before applications for that vacancy must be made to the explorer; or

(ii) otherwise, not less than 2 business days before authorised exploration activities are carried out in relation to which the vacancy exists.

(b) For the purposes of clause 12.2(a)(ii) notice includes informing the association personally or by e-mail, telephone or other form of instantaneous communication.

12.3 Notification by Native Title Parties

The association may notify the explorer of the particulars of any person who is a member of the native title claim group who, in the reasonable opinion of the association, has skills or qualifications that may enable that person to be employed within the explorer’s work force in relation to the authorised exploration activities.

12.4 Employment preference

Where it is both lawful and practical to do so, the explorer must give preference to the employment of a member of the native title claim group in relation to the carrying out of the authorised exploration activities if:

(a) the relevant member has, through training in skills required for employment in the resources industry provided pursuant to clause 4.7 of the framework ILUA, acquired the necessary skills and ability to carry out the relevant duties in a satisfactory manner;

(b) both that member and another person (who is not a member of the native title claim group) apply for employment by the explorer; and

(c) the skills, ability and experience, relevant to the particular position applied for, of that other person are no greater than those of that member.

12.5 Training

To the extent that the explorer provides any on-job training to any employee employed by it in any capacity similar to that in which any member of the native title claim group is employed by the explorer, the explorer must, insofar as is practicable and on a basis consistent with that applied in respect of that other employee, provide on-job training to that member of the native title claim group.
12.6 Contractors

The explorer must use its best endeavours to ensure that:

(a) each of its contractors complies with the provisions of clause 12.2, 12.4 and 12.5 as if each contractor were the explorer; and

(b) any particulars provided by the association to the explorer pursuant to clause 12.3 are, where appropriate, provided by the explorer to its relevant contractors.

13. Warranties and Authority

13.1 Preliminary

The indigenous parties record that:

(a) the registered native title claimants were (as at the date of the framework ILUA) the registered native title claimants (as defined in the native title act) in relation to land and/or waters in the acceptance area and made the native title claim on behalf of the native title claim group;

(b) the native title claim group established the association and authorised the association to manage the native title claim and all matters relating to the native title claim on behalf of the native title parties;

(c) prior to signing the framework ILUA the association (in conjunction with the registered native title claimants) consulted with the native title claim group and the native title claim group consented to and authorised the registered native title claimants to enter into the accepted exploration contract on behalf of the native title parties; and

(d) the association:

(i) entered into the framework ILUA in the performance of its functions of managing the native title claim and all matters relating to it; and

(ii) by signing the framework ILUA confirmed that the registered native title claimants were authorised by the native title claim group to enter into the accepted exploration contract on behalf of the native title parties.

13.2 Warranties by Native Title Parties

Regard being had to the provisions of clause 13.1, the indigenous parties represent and warrant to the other parties to the accepted exploration contract that the matters set out in clauses 13.1 (a) to (d) are true and correct.
13.3 Warranties by Explorer

The explorer represents and warrants to the indigenous parties that, prior to the explorer’s execution of the acceptance document in relation to an exploration tenement, the explorer had not given any notice to initiate negotiations under the right to negotiate procedure in respect of that exploration tenement, except where that notice was given prior to the commencement of the framework term and the explorer and the native title claim group have not previously entered into an agreement pursuant to the right to negotiate procedure in relation to that exploration tenement.

13.4 Registered native title body corporate

If an approved determination of native title is made in respect of the whole or any part of the exploration land and a registered native title body corporate is determined to hold the rights and interests from time to time comprising the native title in trust for the native title holders:

(a) the indigenous parties must use their best endeavours to ensure that the registered native title body corporate becomes a party to the accepted exploration contract in place of both the native title parties and the association in relation to the whole or relevant part of the exploration land and assumes the rights and obligations of both the native title parties and the association under the accepted exploration contract in relation to the whole or that part of the exploration land;

(b) the parties (other than the indigenous parties) to the accepted exploration contract consent to the registered native title body corporate becoming a party to the accepted exploration contract and assuming the rights and obligations of both the native title parties and the association, in accordance with clause 13.4(a); and

(c) each of the parties to the accepted exploration contract must sign such documents as are necessary to give effect to the provisions of this clause 13.4.

14. Breach of Essential Terms

14.1 Non-Payment Breach

The accepted exploration contract does not apply to an exploration tenement (nor to the carrying out of exploration activities under that exploration tenement), where it is an exploration tenement of a kind referred to in paragraph (b), (c) or (d) of the definition of authorised exploration tenement, granted in respect of the whole or any portion of the land and/or waters (within the acceptance area), in the following circumstances:

(a) the explorer has allegedly breached an essential term in clause 6.1, 6.3 or 6.4(b);

(b) within 20 business days of the association or the representatives of the native title parties becoming aware of that alleged breach, the
indigenous parties have given notice of that alleged breach to the explorer (with a copy to the state) setting out:

(i) details of that alleged breach; and

(ii) that the explorer is required to remedy that alleged breach within a period of 20 business days of the date of that notice;

(c) the explorer has not remedied that alleged breach within the 20 business days period notified by the indigenous parties under clause 14.1(b)(ii) and that 20 business days period expires prior to the grant of that exploration tenement;

(d) the state is given a notice by the explorer or the association not less than 5 business days before the grant of that exploration tenement that it has been agreed, resolved or determined pursuant to clause 16 or otherwise that the explorer has breached that essential term; ; and

(e) prior to the grant of that exploration tenement, the explorer has not remedied that breach.

14.2 Other Breaches

(a) The accepted exploration contract also does not apply to an exploration tenement (nor the carrying out of exploration activities under that exploration tenement), where it is an exploration tenement referred to in clause 14.2(b), in the following circumstances:

(i) the explorer has allegedly breached an essential term in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to the breached tenement;

(ii) that alleged breach is committed wilfully, recklessly or negligently;

(iii) within 20 business days of the association or the representatives of the native title parties becoming aware of that alleged breach, the indigenous parties have given notice of that alleged breach to the explorer (with a copy to the state) setting out:

(A) details of that alleged breach; and

(B) where that alleged breach is capable of being remedied, that the explorer is required to remedy that alleged breach within a period of 20 business days of the date of that notice;

(iv) where that alleged breach is capable of being remedied, the explorer has not remedied that alleged breach within the 20 business days period notified by the indigenous parties under clause 14.2(a)(iii)(B) or (if that alleged breach is not capable of being remedied within that 20 business days period) such longer period as is reasonable in the circumstances;
(v) the state is given a notice by the explorer or the association that it has been agreed, resolved or determined pursuant to clause 16 or otherwise that the explorer has breached the relevant essential term in relation to the breached tenement; and

(vi) prior to the grant of the exploration tenement to which the accepted exploration contract will not apply if all of the circumstances in this clause 14.2(a) are met, the explorer has, where that breach is capable of being remedied, not remedied that breach.

(b) If all of the circumstances referred to in clause 14.2(a) are met, the accepted exploration contract does not apply to an exploration tenement (nor the carrying out of exploration activities under that exploration tenement), being an exploration tenement which is:

(i) where:

(A) the state has been given a notice pursuant to clause 14.2(a)(v) not less than 5 business days before the grant of that exploration tenement; and

(B) the alleged breach of the relevant essential term in relation to the breached tenement:

(1) is not capable of being remedied; or

(2) is capable of being remedied and the period for remedying that breach pursuant to clause 14.2(a)(iii)(B) has expired before the grant of that exploration tenement,

an exploration tenement of a kind referred to in:

(C) paragraph (b) or (d) of the definition of authorised exploration tenement, granted upon the renewal, regrant, remaking or extension of the term of the breached tenement; or

(D) paragraph (c) of the definition of authorised exploration tenement, granted after the breached tenement in respect of the whole or any portion of the land and/or waters (within the acceptance area) the subject of the breached tenement; or

(ii) where either:

(A) the state has been given a notice pursuant to clause 14.2(a)(v) less than 5 business days before, or after, the grant of an exploration tenement referred to in clause 14.2(b)(i)(C) or (D) (subsequent tenement); or

(B) the alleged breach of the relevant essential term in relation to the breached tenement is capable of being remedied and the period for remedying that breach
pursuant to clause 14.2(a)(iii)(B) has not expired before the grant of the subsequent tenement, an exploration tenement of a kind referred to in:

(C) paragraph (b) or (d) of the definition of authorised exploration tenement, granted upon the renewal, regrant, remaking or extension of the term of the subsequent tenement; or

(D) an exploration tenement of a kind referred to in paragraph (c) of the definition of authorised exploration tenement, granted after the subsequent tenement in respect of the whole or any portion of the land and/or waters (within the acceptance area) the subject of the breached tenement.

14.3 Remedying of Breach

(a) Subject to the provisions of clause 14.3(b), for purposes of clauses 14.2(a)(iii),(iv) and (vi) a breach is deemed to be capable of being remedied by the explorer and the explorer is deemed to have remedied that breach if:

(i) that breach has arisen by reason of the explorer having failed to do, or failed to cause or permit to be done, something; and

(ii) within the relevant period referred to in clause 14.2(a)(iv) or prior to the grant of the relevant exploration tenement referred to in clause 14.2(a)(vi) (as the case requires) the explorer has done, or has caused or permitted to be done, that thing.

(b) The provisions of clause 14.3(a) do not apply to the breach of an essential term in clause 5.1, 5.2 or 5.3 in relation to any authorised exploration tenement.

14.4 Examples of Breach Provisions

(a) This clause 14.4(a) sets out an example of the application of clause 14.1 (where the breach of the relevant essential term is not remedied by the explorer):

(i) the explorer enters into the accepted exploration contract in accordance with clause 5.1 of the framework ILUA;

(ii) the accepted exploration contract applies to authorised exploration tenements EL1, EL2 and EL3;

(iii) a heritage clearance survey is undertaken pursuant to the heritage clearance procedures in relation to EL1;

(iv) a payment for that heritage clearance survey is due on 1 January 2005;
(v) the explorer does not make the payment by that date;

(vi) this failure to pay is a breach of clause 6.3 of the accepted exploration contract;

(vii) clause 6.3 is an essential term of the accepted exploration contract;

(viii) the association becomes aware on 3 January 2005 of the failure of the explorer to make the required payment for the heritage clearance survey;

(ix) the indigenous parties give the explorer notice of the breach on 6 January 2005. A copy of this notice is also provided to the state on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 business days (ie by 4 February 2005);

(x) EL1, EL2 and EL3 expire on 1 January 2006, 1 January 2007 and 1 January 2008, respectively;

(xi) The state is thus notified of the breach more than 5 business days before any renewal or regrant of EL1, EL2 or EL3;

(xii) The explorer has not remedied the breach by 1 January 2008;

(xiii) the accepted exploration contract:

  (a) will continue to apply to EL1, EL2 and EL3; and
  (b) will not apply to the renewal or regrant of EL1, EL2 or EL3.

(b) This clause 14.4(b) sets out an example of the application of clause 14.1 (where the breach of the relevant essential term is remedied by the explorer):

(i) the explorer enters into the accepted exploration contract in accordance with clause 5.1 of the framework ILUA;

(ii) the accepted exploration contract applies to exploration tenements EL1, EL2 and EL3;

(iii) a heritage clearance survey is undertaken pursuant to the heritage clearance procedures in relation to EL1;

(iv) payment for that heritage clearance survey is due on 1 January 2008;

(v) the explorer does not make payment by that date;

(vi) this failure to pay is a breach of clause 6.3 of the accepted exploration contract;

(vii) clause 6.3 is an essential term of the accepted exploration contract;
(viii) the association becomes aware on 3 January 2008 of the failure of the explorer to make the required payment for the heritage clearance survey;

(ix) the indigenous parties give the explorer notice of the breach on 6 January 2008. A copy of this notice is also provided to the state on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 business days (ie by 4 February 2008);

(x) the explorer makes the required payment on 8 January 2008;

(xi) the accepted exploration contract will continue to apply to EL1, EL2 and EL3 and any renewal or regrant of those ELs.

(c) This clause sets out an example of the application of clauses 14.2 and 14.3:

(i) the explorer enters into the accepted exploration contract in accordance with the framework ILUA;

(ii) the accepted exploration contract applies to exploration tenements EL1, EL2 and EL3;

(iii) the explorer holds a required environment protection licence under the Environment Protection Act 1993 in relation to its authorised exploration activities on EL1;

(iv) the explorer fails to renew its environment protection licence by the due date;

(v) this failure is a contravention of the Environment Protection Act 1993;

(vi) this failure is also a breach of clause 7.1 of the accepted exploration contract;

(vii) clause 7.1 is an essential term of the accepted exploration contract;

(viii) the association becomes aware of the failure to hold an environment protection licence on 3 January 2008;

(ix) the indigenous parties give the explorer notice of the breach on 6 January 2008. A copy of this notice is also provided to the state on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 business days (ie by 4 February 2008);

(x) EL1 expires on 10 March 2008 and is to be renewed or regranted on 11 March 2008;

(xi) assume the following two scenarios:

(A) the explorer obtains an environment protection licence on 8 March 2008 and thereby remedies the
breach of clause 7.1 of the accepted exploration contract; and

(B) the explorer does not obtain an environment protection licence by 11 March 2008; and

(xii) the accepted exploration contract will apply to:

(A) EL1 until 11 March 2008 and also to EL2 and EL3 and to any renewal or regrant of EL1, EL2 or EL3 (in the scenario referred to in 14.4(c)(xi)(A)); and

(B) EL1 until 10 March 2008, EL2 and EL3 (and any renewal or regrant of those ELs), but not to any renewal or regrant of EL1 (in the scenario referred to in clause 14.4(c)(xi)(B)).

15. Representatives

15.1 Right to Representative(s)

(a) The indigenous parties and the explorer may from time to time during the term appoint, remove and replace representative(s) by notice given to the other.

(b) The maximum number of representatives entitled to be appointed by each of the indigenous parties and the explorer is 4.

15.2 Continuity

Each of the indigenous parties and the explorer must ensure that:

(a) its first representative(s) are appointed within 20 business days of the commencement date and

(b) at all times thereafter representative(s) remain appointed by it or them.

15.3 Functions

The function of the representatives is to act as the primary point of contact between the indigenous parties and the explorer for all purposes in connection with the accepted exploration contract including:

(a) ensuring compliance by the explorer and by the indigenous parties with their respective obligations under the accepted exploration contract;

(b) establishing and developing a positive relationship and understanding between the explorer and the indigenous parties in relation to the accepted exploration contract and the carrying out of the authorised exploration activities pursuant to it;

(c) for purposes of consultation with the association pursuant to clause 5.4(b);
(d) for purposes of any consultation pursuant to clause 8.3(d);
(e) for purposes of any matters relating to administration as referred to in clause 9.2;
(f) for purposes of liaising with the explorer in relation to clause 12 (including in respect of matters relating to Aboriginal culture relevant to the employment of any member of the native title claim group employed by the explorer);
(g) for purposes of resolving any potential dispute before clause 16 is invoked and of resolving any dispute pursuant to clause 16.4(a); and
(h) to be the representatives of the indigenous parties and of the explorer for whose attention any notice is to be addressed, pursuant to the provisions of clause 17.

15.4 Cooperation
The indigenous parties and the explorer must:
(a) use their best endeavours to ensure that their representatives are able to perform their functions pursuant to clause 15.3; and
(b) co-operate with each other for that purpose.

15.5 Survival
The provisions of this clause 15 survive the expiry or termination for whatever reason of the accepted exploration contract.

16. Dispute Resolution

16.1 Clause applies
All disputes or differences between any of the parties in connection with the interpretation, effect or any other matter in any way relating to the accepted exploration contract (dispute) will be dealt with in accordance with this clause 16 whether the dispute is first raised before, during or after the term.

16.2 Avoidance
The parties agree that:
(a) they will make every effort to ensure that disputes do not arise;
(b) if a dispute does arise, they must make every reasonable effort to resolve the dispute in accordance with this clause 16 and without recourse to litigation or arbitration proceedings; and
(c) the provisions of clauses 16.1 and 16.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.
16.3 Notification

A party (notifying party) will, within 20 business days after the dispute arises, give a notice to the other party or parties with which it has the dispute (notified party) and a copy of that notice to the other parties setting out details of the dispute and any other matter that may, in the reasonable opinion of the notifying party, be relevant to the resolution of the dispute.

16.4 Initial Meeting

(a) Within 5 business days of the date of the notice the notifying party and notified party (dispute parties) will use their respective reasonable endeavours to meet and resolve the dispute within a further period of 10 business days.

(b) The dispute parties will use their reasonable endeavours to ensure that at least their respective representatives attend that meeting.

16.5 Breach of Essential Term

(a) If a dispute relates to an alleged breach of an essential term by the explorer (other than an essential term in clause 6.1, 6.3 or 6.4(b)) and is not resolved by a meeting held in accordance with clause 16.4, either the explorer or the indigenous parties may within 10 business days of that meeting by notice to the state and the other party refer that dispute to the state for purposes of the preparation of a PIRSA report.

(b) If a dispute is referred to the state pursuant to clause 16.5(a) the state must at its cost ensure that:

(i) Primary Industries and Resources South Australia, Minerals, Petroleum and Energy Division, or its successor, prepares a PIRSA report in relation to the facts surrounding the alleged breach of the relevant essential term by the explorer;

(ii) the PIRSA report is prepared and completed as soon as practicable in the circumstances; and

(iii) copies of the PIRSA report are provided to each dispute party promptly after it has been completed.

(c) Each of the dispute parties must co-operate with the state for purposes of the preparation of a PIRSA report in relation to that dispute.

(d) A PIRSA report prepared in relation to a dispute must be taken into account for purposes of resolving that dispute pursuant to this clause 16.

(e) Within 10 business days of copies of a PIRSA report prepared in relation to a dispute being provided to the dispute parties, the dispute
parties will use their respective reasonable endeavours to meet and resolve the dispute within a further period of 10 business days.

16.6 Mediation
If a dispute is not resolved in accordance with the provisions of clause 16.4 or 16.5(e) (as the case requires):
(a) any dispute party may request the President for the time being of the Law Society of South Australia, or his or her nominee, to appoint a mediator to mediate that dispute;
(b) within 5 business days of a mediator being appointed, the mediator will convene an initial meeting of the dispute parties in an attempt to resolve that dispute; and
(c) if that dispute is not resolved at that initial meeting, the mediator will convene such further meetings of the dispute parties during the subsequent 10 business days as the mediator reasonably considers necessary for the purpose of resolving that dispute.

16.7 Expert
If a dispute is not resolved in accordance with the provisions of clause 16.6, any dispute party may refer the determination of that dispute (determination) to the expert.

16.8 Capacity of Expert
The expert is an expert and not an arbitrator.

16.9 Expert’s Determination
The expert’s determination is final and binding on the dispute parties.

16.10 Determination costs
(a) The expert may determine that any dispute party must pay the whole or a specified portion of the costs and expenses of the other dispute party in relation to the expert’s determination.
(b) Unless clause 16.10(a) applies, each dispute party will bear its own costs and expenses in relation to the expert’s determination.

16.11 Expert’s Fees
(a) The expert may determine that any dispute party must pay all, or that the dispute parties must pay in specified portions, the expert’s fees and expenses and the cost of the expert’s determination.
(b) Unless clause 16.11(a) applies, the dispute parties will pay in equal shares the expert’s fees and expenses and the cost of the expert’s determination.
16.12 Notification of State
(a) Subject to clause 16.12(b), where a dispute relates to an alleged breach of an essential term by the explorer, the dispute parties must notify the state within 10 business days of the resolution or determination of that dispute of the terms and conditions upon which that dispute has been resolved or determined.
(b) Clause 16.12(a) does not apply if clause 10.4 requires notice to be given in relation to the resolution or determination of that dispute.

16.13 Survival
The provisions of this clause 16 survive the expiry or termination for whatever reason of the accepted exploration contract.

17. Communications

17.1 Writing required
Subject to the accepted exploration contract, any notice, direction, request, consent, approval, demand, report or other communication (communication) to be given under the accepted exploration contract will be in writing, be signed by the representative(s) of the party giving the communication as set out in annexure C and be addressed for the attention of the representative(s) of the party or parties as set out in annexure C.

17.2 Manner of giving
A communication may be delivered by hand, sent by prepaid post or sent by facsimile transmission to the address of the party or parties to which it is being given and is deemed to have been received:
(a) if delivered by hand, upon delivery;
(b) if sent by post, 3 business days after posting; and
(c) if sent by facsimile transmission, on receipt by the sender of a confirmation report.

17.3 Change of details
Details specified in annexure C in respect of a party may, subject to clause 15.3(h), be changed by the party by not less than 5 business days notice to the other parties.

18. GST
The parties agree that, if a goods and services, value-added or a comparable tax (gst) applies under the “A New Tax System (Goods and Services Tax) Act 1999” or associated legislation (gst legislation) in relation to any taxable supply (within the gst legislation) (taxable supply) made by a party
(supplier) to another party (recipient) under or pursuant to the accepted exploration contract:

(a) the amount payable by the recipient to the supplier in respect of the taxable supply (payment) does not include gst;

(b) the supplier may, in addition to the payment, recover from the recipient (and the recipient will pay to the supplier) an additional amount on account of the gst, such additional amount to be calculated in accordance with the gst legislation; and

(c) the supplier will provide to the recipient a tax invoice (within the meaning of the gst legislation) in respect of the taxable supply as required by the gst legislation.

19. General

19.1 Entire agreement

The accepted exploration contract contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

19.2 Amendment

No amendment or variation of the accepted exploration contract:

(a) is valid or binding on a party unless made in writing executed by all parties to it; or

(b) may be made if the amendment or variation is inconsistent in any way with the provisions of the framework ILUA (excluding, for this purpose, all schedules, annexures and appendices to it).

19.3 Severability

Each word, phrase, sentence, paragraph and clause (a provision) of the accepted exploration contract is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of the accepted exploration contract.

19.4 No announcements

No party may make, issue, permit or suffer to be made, or issued, any statement or announcement concerning any of the matters the subject of the accepted exploration contract unless such statement or announcement is first approved as to the timing and content by each other party or is required by law.

19.5 Confidential Information

(a) Each of the state and the explorer must keep confidential each and every cultural confidence of which it becomes aware.
(b) Each of the indigenous parties and the State must keep confidential all information pertaining to the authorised exploration tenements and the authorised exploration activities which is disclosed to any of them and which is either designated as confidential by the person who discloses it or is by its nature confidential.

19.6 Assignment and transfer

(a) The explorer may assign and transfer any or all of its rights and/or obligations under the accepted exploration contract in relation to any or all of the authorised exploration tenements to a transferee of the relevant authorised exploration tenements, if:

(i) any required consent of the minister is obtained under the mining act to the transfer of the relevant authorised exploration tenements and

(ii) the transferee executes in favour of the parties to the accepted exploration contract a deed of assumption in substantially the form attached to this document as annexure D, under which the transferee assumes the explorer's rights and obligations under the accepted exploration contract in relation to the relevant authorised exploration tenements.

(b) Any assignment and transfer pursuant to clause 19.6(a) releases the explorer from its obligations under the accepted exploration contract in relation to the relevant authorised exploration tenements with effect from the date of that assignment and transfer, but without prejudice to the accrued rights and remedies of the parties for any antecedent breach of the accepted exploration contract.

(c) Except as set out in clause 19.6(a):

(i) the rights and obligations of each party to the accepted exploration contract are personal; and

(ii) those rights and obligations cannot be encumbered or disposed of, or otherwise dealt with and no party may attempt, or purport, to do so without the prior consent of the other parties.

19.7 Force Majeure

(a) If any party becomes wholly or partly unable because of force majeure to perform any of its obligations under the accepted exploration contract, then the party affected by the force majeure must give the other parties notice of the force majeure specifying:

(i) details of the force majeure;

(ii) insofar as it is known, the probable scope of the force majeure; and

(iii) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,
and the relevant obligation shall be deemed to be suspended, but:

(iv) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of force majeure; and

(v) the party affected by the force majeure must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.

(b) Nothing in clause 19.7(a)(v) requires a party to:

(i) settle any strike or other labour dispute otherwise than on terms acceptable to it; or

(ii) contest the validity or enforceability of any law, regulation or order, or determination of any authority, by way of legal proceedings.

19.8 No waiver

(a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.

(b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

(c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

19.9 Minister's Discretion

Nothing in the accepted exploration contract fetters the discretion of any Minister of the Crown in the right of South Australia.

19.10 Further assurances

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of the accepted exploration contract and the transactions contemplated by it.

19.11 No merger

(a) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by the accepted exploration contract.

(b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

19.12 Costs and stamp duty

(a) Unless and to the extent otherwise agreed, each party must bear its own costs arising out of the negotiation, preparation and entering into of the accepted exploration contract.
(b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with the accepted exploration contract and any instrument executed under the accepted exploration contract must be borne by the explorer.

19.13 Governing law and jurisdiction

(a) The accepted exploration contract is governed by the laws of South Australia.

(b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning the accepted exploration contract.

19.14 Relationship

(a) The relationship between the parties is that of independent contractors.

(b) The parties are not partners, joint venturers or, subject to clause 19.14(c), principal and agent.

(c) The association is an agent of the native title parties.

(d) Any registered native title body corporate which becomes a party to the accepted exploration contract pursuant to clause 13.4 holds the rights and interests from time to time comprising the native title in the whole or relevant part of the exploration land in trust for the native title holders.
ANNEXURE A

Heritage Clearance Procedures
ANNEXURE B

Mapping Access Procedures
ANNEXURE C

Notice Details

State

Address: Department for Primary Industries and Resources
Level 5, 101 Grenfell Street
Adelaide SA 5000

Attention: Mining Registrar

Facsimile No.: (08) 8463 3101

Minister

Address: Department for Primary Industries and Resources
Level 5, 101 Grenfell Street
Adelaide SA 5000

Attention: Mining Registrar

Facsimile No: (08) 8463 3101

Native Title Parties

Address: Aboriginal Legal Rights Movement Inc
4th Floor, 345 King William Street
Adelaide SA 5000

Attention: Tim Wooley

Facsimile No.: (08) 8211 7424

Association

Address: Aboriginal Legal Rights Movement Inc
4th Floor, 345 King William Street
Adelaide SA 5000

Attention: Tim Wooley
ALMAC Exploration Contract Conditions
(Schedule 2 to Framework ILUA)

Facsimile No.: (08) 8211 7424

Explorer

Address:

Attention:

Facsimile No:
ANNEXURE D

Deed of Assumption
ANNEXURE E

Exploration Contract Return