DD MMMM YYYY INSERT LOGO

PROPONENT NAME

ADDRESS LINE 1

ADDRESS LINE 1

CITY STATE

XXXX

By email [email address]

**WITHOUT PREJUDICE**

Dear Mr / Ms NAME

**Insert tenement description – insert tenement(s) reference numbers – Letter of Agreement for Heritage Survey**

We refer to recent request for a heritage survey in relation to the above.

In order to facilitate the heritage survey that you have requested, the [ Insert PBC Name Registered Native Title Body Corporate (ICN XXXX) *OR*  Insert Claim Group Name ] (**ABCD**) respectfully requests that Insert Proponent Name (the **Proponent**) agree to the covenants and undertakings in this Letter of Agreement.

This Letter of Agreement provides the basis for the conduct and coordination of the heritage survey (the **Heritage Survey**) that you have requested be undertaken in connection with certain activities to be carried out on tenements under the [ *Insert name of legislation to which tenement/s relate* ]. Details of the exploration authority/ies to which the Heritage Survey relates are described below.

This Letter of Agreement set out the covenants and undertakings that the Parties have agreed to for the Heritage Survey.

Please contact NAME on 0xxx xxx xxx if you have any queries.

Yours sincerely

INSERT SIGNATURE BLOCK

**Background**

The Proponent wishes to undertake certain activities in areas that are within the external boundaries of the PBC or Group Name Choose an item., being the lands and waters subject to a Choose an item. of native title Choose an item. [ Insert date of determination/s or court file number/s for the claim/s ] (theChoose an item.).

*OPTION 1 – where native title has been determined*

PBC Name is the Choose an item. prescribed body corporate that is nominated as the registered native title body corporate (**RNTBC**) in respect of the CD Lands. As the RNTBC, PBC Name exercises its functions on behalf of the persons who hold native title rights and interests in the CD Lands (the **Group Name Native Title Holders**).

*OPTION 2 – where registered claim has been lodged*

Group Name are the people who claim to hold native title rights and interests in the Claim Area.

The Choose an item. to which the Heritage Survey relates are numbered ‘XX-XXXXXX’, ‘XX-XXXXX’ (the **Tenement/s**). The Proponent seeks to carry out the Heritage Survey in respect of one or more locations that are situated within the Choose an item..

**Matters relating conduct of Heritage Survey**

By signing this Letter of Agreement, the Proponentand the PBC or Group Name agree to give the covenants and undertakings in relation to the Heritage Survey that are set out below:

1. The area/s to be surveyed for the Heritage Survey shall be notified to PBC or Group Name and must include the information set out in [Attachment A](#AttachA) (**Clearance Survey Request**).
2. As soon as reasonably practicable after receiving information in accordance with paragraph [1] above, PBC or Group Name must:
   1. prepare and submit a budget (the **Budget**) to the Proponent that is in substantially the same form as the budget template at [Attachment B](#AttachB); and
   2. engage and mobile a Heritage Survey Team (the **Survey Team**) in accordance with [Attachment C](#AttachC).
3. Within a reasonable time after completion of field work for the Heritage Survey, PBC or Group Name must provide a report (the **Report**) to the Proponent. The Report must be provided in accordance with, and include the information identified in, paragraph [6] to [Attachment C](#AttachC).
4. The Proponent will pay to or reimburse PBC or Group Name for the cost to engage and mobilise the Heritage Survey Team (the **Survey Team**) at the following rates:
   1. for each Specialist, his or her costs as agreed in the Budget for undertaking the Heritage Survey;[[1]](#footnote-1)
   2. for each Survey Team member (other than the Specialist/s) $XXX.00 per day plus GST for the period the Survey Team is in the field and for the period included in travelling to and from their normal place of residence to the place of commencement and conclusion of the Heritage Survey;
   3. 15% of the combined value of all costs and expenses as identified in the Budget (the **Administration Fee**); and
   4. any other such reasonable costs or expenses as are identified in the Budget and agreed by the Parties.
5. The Proponent will reimburse each member of the Survey Team for all reasonable accommodation, meals, fuel, allowances and out-of-pocket expenses reasonably incurred by the Survey Team in accordance with the Budget.
6. Subject to paragraph [7] below, the Proponent will at its own cost, provide sufficient all terrain four (4) wheel drive vehicles for use by the Survey Team to carry out the Heritage Survey and ensure that such vehicles are registered and equipped with sufficient spare parts for the duration of the Heritage Survey. The Proponent will ensure that any such vehicles are comprehensively insured and each member of the Survey Team is entitled to benefit of coverage under the relevant insurance policy.
7. The Proponent will reimburse a member of the Survey Team for use of a motor vehicle (provided by a member of the Survey Team), subject to agreement between the Parties that such motor vehicle can be used for the Heritage Survey in lieu of a vehicle provided by the Proponent. Where this is to occur, PBC or Group Name should notify the Proponent of this at the time of submitting the proposed budget in accordance with paragraph [2.a] above.

**Information prepared or obtained by the Parties**

1. PBC or Group Name agrees that all information provided by the Proponent to PBC or Group Name and/or the Survey Team in the course of the Heritage Survey (**Proponent’s Confidential Information**) is confidential and remains the property of the Proponent. PBC or Group Name must not divulge the Proponent’s Confidential Information to any third party except to the extent necessary for the conduct of the Heritage Survey by the Survey Team or in general terms to the Group Name Choose an item. who may be affected by the Proponent’s proposed activities. PBC or Group Name will take all reasonable steps that are necessary to keep the Proponent’s Confidential Information secure.
2. The Proponent agrees that all information provided by PBC or Group Name and/or during the course of, or in relation to, the Heritage Survey (including any reports and any information, maps or diagrams within such reports) (**Heritage Information**) is confidential and remains the property of the PBC or Group Name. PBC or Group Name will retain the copyright and ownership of all Heritage Information that may be prepared by the Specialist or any of the Group Name Choose an item. in connection with the Heritage Survey.
3. Subject to paragraph [9], PBC or Group Name grants the Proponent a non‑transferable, royalty free licence to use the Heritage Information for purposes directly related to the conduct of Exploration Operations, as described in the Choose an item. issued under the *insert name of legislation* (the **Act**) in relation to the relevant Tenement/s.
4. Further to paragraphs [8] and [9], the Proponent and the PBC or Group Name agree that they will not disclose any information provided to each other in the course of the Heritage Survey, including the Heritage Information and the Proponent’s Confidential Information, to any third party except:
   1. with the prior consent of the other Party;
   2. to the extent required by any law or applicable securities regulation or rule;
   3. to the extent that the information is relevant to any processes or applications under any native title laws or Government approvals;
   4. in connection with any dispute or litigation concerning this Letter of Agreement or its subject matter;
   5. a third party that is:
      1. an employee, legal advisor, heritage consultant or other specialist (**Specialist**), assignee or, in relation to the Proponent, a joint venture partner;
      2. in relation to the Proponent and subject to paragraphs [10] above, an employee or contractor of the Proponent for the purpose of managing or planning any existing, planned or potential activity relating to Exploration Operations on the land within the Heritage Survey Area;
   6. to the extent that the information is already in, or comes into, the public domain otherwise than by breach of this Letter of Agreement.

**Heritage Survey Areas**

1. The Clearance Survey Request must specify the area/s in which the Heritage Survey will be carried out (the **Heritage Survey Area**). The Heritage Survey Area must not include any Excluded Areas (as defined in paragraph [13] below).
2. The Parties agree that, where the land described, or referred to, in the Tenement/s includes areas that are outside the external boundaries of the CD Lands, those areas are excluded from the Heritage Survey Area (**Excluded Areas**). This means that, for the purposes of this Letter of Agreement, a Heritage Survey cannot be carried out in relation to any Excluded Areas.
3. The Proponent acknowledges and agrees that it is responsible for ensuring that it has entered into appropriate arrangements with relevant parties who hold or assert rights and interests in Excluded Areas, whether native title or otherwise.

*Include the below where native title has been determined and there are areas within the external boundary of the determination area in which native title has been extinguished.*

1. To the extent the Heritage Survey Area includes locations within the external boundaries of the CD Lands in which native title has been extinguished, the Parties agree that the covenants and undertakings in this Letter of Agreement may apply to the conduct of the Heritage Survey in those areas.

**Interpretation and other matters**

1. The information that appears under the heading “Background” and attachments labelled “A”, “B” and “C” (the **Attachments**) form part of this Letter of Agreement.
2. Definitions which are given to words and phrases in the Background also apply in the operative paragraphs and the Attachments.
3. Unless otherwise stated, defined or contact otherwise requires, terms used in this Letter of Agreement shall have the same meaning as given in the Mining Act or the *Native Title Act 1993* (Cth), as the case may be.
4. “**Clearance Survey Request**” means a written request made by the Proponent that includes the information set out in Attachment A, being a request for PBC or Group Name to undertake a Heritage Survey.
5. The Parties acknowledge and agree that, unless otherwise indicated by context:
   1. words importing the singular include the plural and vice versa;
   2. a reference to a paragraph, attachment or item is a reference to a paragraph, attachment or item within this Letter of Agreement;
   3. where any word or phrase is given a definite meaning in this Letter of Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
   4. a reference to a paragraph, Party, attachment or item is a reference to a paragraph, Party, attachment or item to, this Letter of Agreement and a reference to this Letter of Agreement includes any paragraph, attachment or item;
   5. a reference to a Party to this Letter of Agreement or other document includes that Party’s legal personal representatives, successors and permitted assigns including persons taking by way of novation and, in the case of a trustee, includes a substitute or an additional trustee and further includes any person claiming on behalf of or under or through a Party to this Letter of Agreement;
   6. a covenant, obligation or liability assumed by, or a right conferred on or for the benefit of, two or more persons binds or benefits them jointly and severally;
6. a reference to a body, other than a Party to this Letter of Agreement, whether statutory or not:
7. which ceases to exist; or
8. whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

* 1. a provision of this Letter of Agreement shall not be construed to a Party’s disadvantage only by reason that the Party introduced that provision or a variation of that provision for the purposes of this Letter of Agreement; and
  2. specifying anything in this Letter of Agreement after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included and when introducing an example, do not limit meaning of words to which the example relates to examples of a similar word.

If the Proponent agrees to this proposal and covenants and undertakings set out above, we respectfully request that you sign this Letter of Agreement in your capacity as agent where indicated below and return it to our offices or by email to [name@emailaddress.com.au](mailto:name@emailaddress.com.au)

**Executed as an agreement on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020**

|  |  |  |
| --- | --- | --- |
| **Executed** by insert Proponent name |  |  |
|  |  |  |
| Director |  | Director/Secretary |
|  |  |  |
| Print full name of Director |  | Print full name of Director/Secretary |

|  |  |  |
| --- | --- | --- |
| **Signed** by insert name as Choose an item. the PBC or Group Name on INSERT DATE |  |  |
|  |  |  |
|  |  | Signature of witness |
|  |  |  |
|  |  | Print full name of Witness |

ATTACHMENT A – CLEARANCE SURVEY REQUEST

A Clearance Survey Request by the Proponent must include the following materials:

1. Two (2) copies of a 1:100,000 scale or other appropriate and generally available map and other additional maps and aids (if any) as may be reasonably required clearly identifying the Tenement areas and the location of each of the proposed drill sites and other Heritage Survey Area; and
2. Particulars of:
   1. the nature, scope and objectives of the proposed activities to be carried out in the Heritage Survey Area;
   2. the estimated duration and periods for performance of the proposed activities;
   3. the techniques, infrastructure and major items of exploration facilities to be used;
   4. the proposed camp sites;
   5. the access routes for personnel and equipment, both to and within the Tenement areas, including particulars of the estimated amount of vehicle and aircraft access and any proposals to construct or upgrade roads, landing strips or other access facilities;
   6. any water, timber or other resources proposed to be obtained from the Tenement areas;
   7. the likely effect of the proposed activities on the environment and proposals to minimise both their environmental impact and their disturbance to the Choose an item.;
   8. the identity of any contractors and subcontractors (if known at the time) engaged or likely to be engaged and the estimated minimum and maximum number of personnel likely to be on the Tenement areas from time to time and their roles in carrying out the proposed activities; and
   9. an estimate of the total area or, where appropriate, line distance the subject of the Heritage Survey (in square or, where appropriate, line kilometres).

ATTACHMENT B – SURVEY BUDGET

|  |  |  |
| --- | --- | --- |
|  | **Description** | **Rate $ (ex GST)** |
| **1.** | **Specialist**  Fees for services undertaken to carry out Heritage Survey, travel to / from normal place of residence to Heritage Survey Area and complete report  Meals & Accommodation |  |
| **2.** | **Other Survey Team Members**  Daily rate (includes field work and travel to and from Heritage Survey Area)  Meals & Accommodation | **$600 (ex GST)** |
| **3.** | **Vehicle Costs**  2WD[[2]](#footnote-2)  4WD[[3]](#footnote-3) |  |
| **4.** | **Equipment**  GPS unit  Satellite telephone |  |
| **5.** | **Other Costs and Expenses** *(where applicable)* |  |
| **6.** | Survey costs and expenses subtotal |  |
| **7.** | Administration Fee[[4]](#footnote-4) |  |
| **8.** | Legal Costs[[5]](#footnote-5) |  |
| **9.** | Second subtotal[[6]](#footnote-6) |  |
| **10.** | Contingency |  |
|  | **INDICATIVE TOTAL** |  |

ATTACHMENT C – SURVEY TEAM AND SURVE REPORT

1. Prior to the proposed date for the Heritage Survey and at the cost of the Proponent in accordance with the budget pursuant to paragraph [2.a] of the Letter of Agreement, PBC or Group Name will identify and organise the members of a Survey Team.
2. The Survey Team must comprise:
   * + 1. up to two qualified Specialists nominated by PBC or Group Name and approved by the Proponent (such approval not to be unreasonably withheld); and
       2. subject to paragraph [3] of this Attachment C, up to six representatives (consisting of such numbers of men and women as are considered by PBC or Group Name to be appropriate in accordance with Aboriginal tradition) who have:
          1. knowledge of the Heritage Survey Area; and
          2. traditional knowledge and authority to determine whether there is any sites of significance within the Heritage Survey Area.
3. PBC or Group Name acknowledges that in most areas up to six (6) representatives on the Survey Team will be sufficient to ensure the integrity of the Heritage Survey. However, it reserves the right to include up to a maximum of eight representatives in the event that PBC or Group Name believes it is necessary and appropriate to do so. PBC or Group Name will consult with the Proponent about the number of persons to be included in a Survey Team not later than at the time of submitting a proposed Budget to the Proponent in accordance with paragraph [2.a] of the Letter of Agreement.
4. PBC or Group Name will be responsible for the administration of all matters relevant to the conduct of the Heritage Survey, including mobilisation of the Survey Team members, travel budget receipt and disbursement of funds, and liaison with Specialists.
5. In carrying the Heritage Survey, the Survey Team will:
   * + 1. inspect the Heritage Survey Area proposed by the Proponent to determine whether and to what extent clearance to carry out the proposed Exploration Operation/s will or may be given;
       2. by considering and advising the Proponent in respect of any alternative areas proposed by the Proponent (or their representative) during the conduct in the Heritage Survey;
       3. through the provision of a Report prepared by the Specialist/s advising which Heritage Survey Area/s (or part thereof) are cleared or not cleared and (where appropriate) identifying on suitably scaled maps of those Heritage Survey Areas where activities specified in the Clearance Survey Request are not permitted; and
       4. through identifying in the Report any conditions, qualifications or limitations attached to any clearance.
6. The Report required under paragraph [3] of the Letter of Agreement must:
   * + 1. identify those parts of any Heritage Survey Area which is:
          1. given a clearance to carry out the activities specified in the Heritage Survey Request; or
          2. denied a clearance to carry out the activities specified in the Heritage Survey Request.
       2. identify any areas (other than areas that are within the Excluded Areas) for which clearance is given;
       3. set out any conditions, qualifications or limitations attached to any clearance; and
       4. be signed by at least one of the Specialists.

1. Costs and expenses of the Specialist are identified in Item 1, [Attachment B](#AttachB). [↑](#footnote-ref-1)
2. The use of a 2WD vehicle supplied by a member of the Survey Team shall be reimbursed at the rate of $131.00 per day. [↑](#footnote-ref-2)
3. The use of a 4WD vehicle supplied by a member of the Survey Team shall be reimbursed at the rate of $198.00 per day. [↑](#footnote-ref-3)
4. In accordance with paragraph [4.c] of the Letter of Agreement, an Administration Fee (not exceeding more than 15% of the combined value of all costs and expenses in the budget) is included to reflect the total costs of the survey costs of the project and will take into account the administrative burden of PBC or Group Name and/or its Heritage Manager. [↑](#footnote-ref-4)
5. Legal costs for agreements will be subject to a specific charge by the legal advisor and agreed between the parties to be paid as and when required as long as it is deemed reasonable and acceptable by the Parties. [↑](#footnote-ref-5)
6. The “second subtotal” includes subtotal at Item 6 plus the Administration Fee (Item 7) and Legal Costs (Item 8) (where applicable). [↑](#footnote-ref-6)