|  |  |  |
| --- | --- | --- |
| Deed Number | | : |
|  | | [for office use only] |
|  | | | | | | |
| DATED | hand written | day of | hand written | | 20 hand written | |
| (to be filled in by the Minister only) | | | | | | |
|  | | | | | | |
| THE STATE OF WESTERN AUSTRALIA | | | | | | |
|  | | | | | | |
| and  THE MINISTER FOR MINES AND PETROLEUM  and | | | | | | |
| [INSERT DETAILS OF THE REGISTERED NATIVE TITLE BODY CORPORATE] | | | | | | |
| and | | | | | | |
| [INSERT DETAILS OF THE GRANTEE PARTY] | | | | | | |
|  | | | | | | |
| DEED FOR GRANT OF MINING TENEMENT (DETERMINED NTP)  **Native Title Act 1993 (Cth) - Sections 28(1)(f) and 31(1)(b)** | | | | | | |
|  | | | | | | |
| DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY  Locked Bag 100  EAST PERTH WA 6892  TEL: (08) 9222 3333 | | | | | | |

**SCHEDULE**

|  |  |
| --- | --- |
| 1. **DATE OF DEED**   **(t**o be entered by Minister only) |  |
| 1. **MINING TENEMENT(S)** |  |
| 1. Application number(s) |  |
| 1. Type of tenement |  |
| 1. **REGISTERED NATIVE TITLE BODY CORPORATE DETAILS** |  |
| 1. Names of the registered native title body corporate (Include ICN) |  |
| 1. Address |  |
| 1. Determination | The determination of native title made by the Federal Court on [insert date] in [insert judgment case details] and being NNTT Determination Number WCD [insert NNTT reference number]. |
| 1. **GRANTEE PARTY DETAILS** |  |
| 1. Name(s) (include ACN if grantee party is a company) |  |
| 1. Address |  |
| 1. **ANCILLARY AGREEMENT** |  |
| 1. Native Title Party |  |
| 1. Other party/parties |  |
| 1. Date of ancillary agreement |  |

**THIS DEED** is made on the date specified in item 1 of the schedule

BETWEEN

The **STATE OF WESTERN AUSTRALIA** and the **MINISTER FOR MINES AND PETROLEUM**, as the Minister responsible for the administration of the Mining Act (together the **Government Party**)

and

The **NATIVE TITLE PARTY** described in item 3(a) of the schedule **[Registered Native Title Body Corporate]**, acting for and on behalf of themselves and all of the common law holders under the Determination

and

The **GRANTEE PARTY** described in item 4 of the schedule (**Grantee Party**)

**RECITALS**

1. The Grantee Party has made an application pursuant to the Mining Actfor the Tenement(s) over the Subject Area.
2. A determination of native title has been made over the Determination Area pursuant to the Determination and the Native Title Party is the registered native title body corporate that holds the native title either on trust for OR as agent for the common law holders under the Determination.
3. The Determination Area affects land and waters that includes part or all of the Subject Area.
4. The Government Party has given notice of its intention to grant the Tenement(s) in accordance with section 29 of the Native Title Act*.*
5. If the grant of the Tenement(s) affects native title it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the Native Title Actand the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(i) of the Native Title Act.
6. In accordance with the Right to Negotiate Procedure, negotiations in good faith in respect of the grant of the Title have been conducted by the Government Party, the Grantee Party and the Native Title Party.
7. The Native Title Party agrees to the grant of the Title and this deed is an agreement of the kind referred to in section 31(1)(b) of the Native Title Act and is entered into for the purpose of ensuring the validity of the Title under the Native Title Act.

The parties covenant and agree as follows:

**AGREED TERMS**

# 1. DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this deed unless the contrary intention appears:

**Act** means an Act of the Parliament of the Commonwealth or of the State of Western Australia.

**Ancillary Agreement** means the agreement described in item 5 of the schedule or any other agreement made between the Native Title Party and the Grantee Party or any other person in connection with the grant of the Tenement(s) and/or the Grantee Party exercising its rights and discharging its obligations under the Tenement(s)*.*

**Arbitral body**, **common law holders**, **determination of native title**, **future act**, **native title**, **native title rights and interests**, **registered native title body corporate**, and **relevant Minister** have the same meanings as they have in the Native Title Act*.*

**Compensation** means compensation for any loss, diminution, impairment or other effect on any native title rights and interests whether arising under the Native Title Act, the Mining Act, any other Act, at equity, at law or otherwise.

**Details** means the details of a Party specified in Item 3 and 4 of the Schedule.

**Determination** means the determination described in item 3 the schedule.

**Determination Area** means the land and waters described in the Determination in relation to which native title has been determined to exist.

**Government Party** means the Party named in this deed as the Government Party and, for the purposes of clauses 4, 5 and 6 includes any State government department, agency, instrumentality, Minister and any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, an Act of the State (including body corporate Ministers) and any employee, agent or contractor of the aforementioned persons.

**Mining Act** means the *Mining Act 1978* (WA).

**Native Title Act** means the *Native Title Act 1993* (Cth).

**Party** means a party to this deed and **Parties** means the Government Party, the Native Title Party and the Grantee Party, collectively.

**Right to Negotiate Procedure** means the procedure under Subdivision P of Division 3, Part 2 of the Native Title Act.

**Schedule** means the schedule to this deed.

**Subject Area** means the land and waters (if applicable) the subject of the application for the Tenement(s) described in item 2 of the Schedule.

**Tenement(s)** means the mining tenement(s) described in items 2(a) and 2(b) of the schedule to be granted under the Mining Act over part or all of the Subject Area.

## 1.2 Interpretation

In this deed, unless the contrary intention appears:

(a) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this deed and a reference to this deed includes any recital, schedule or addendum;

(b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c) the singular includes the plural and vice versa;

(d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;

(e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(f) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any Act includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;

(g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(h) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;

(i) headings are inserted for convenience and do not affect the interpretation of this deed; and

(j) the word "including" is to be read as if it were followed by, "but not limited to".

# 2. AUTHORITY TO ENTER INTO DEED

The Native Title Party represents and warrants that all necessary authorisations have been obtained to enter into this deed and this deed is valid and binding and enforceable in accordance with its terms against the Native Title Party and the common law holders under the Determination.

# 3. AGREEMENT TO GRANT OF TENEMENT

The Native Title Party:

1. acknowledges that it has had the opportunity to make submissions to the Government Party pursuant to section 31(1)(a) of the Native Title Act.
2. agrees that this deed is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the Native Title Act.
3. agrees to the grant of the Tenement(s) and to the Grantee Party exercising its rights and discharging its obligations under the Tenement(s).

# 4. COMPENSATION

## 4.1 Government Party not liable for Compensation

The Native Title Party and the Grantee Party agree that the Government Party is not liable for any Compensation that the Native Title Party, members of the Native Title Claim Group or any persons determined to be common law holders of native title in relation to the Subject Area may be entitled to in respect of the grant by the Government Party of the Tenement(s) or the exercise of its rights and discharge of obligations under the Tenement(s) by the Grantee Party.

## 4.2 Deed may be pleaded

* + 1. The Native Title Party agrees that it will not make any claim for Compensation nor will it authorise any other person to bring such a claim against the Government Party in respect of the effects of, or the exercise of any right or discharge of any obligation created by, the grant of the Tenement(s) on any native title in relation to the Subject Area.
    2. If the Native Title Party or the common law holders under the Determination make a claim for Compensation against the Government Party, the Government Party may plead the terms of this deed in bar of that claim.

# 5. GOVERNMENT PARTY NOT LIABLE FOR ANCILLARY AGREEMENT

The Native Title Party and the Grantee Party acknowledge that the Government Party does not have any obligations or liability whatsoever in connection with the rights and obligations of the Native Title Party or the Grantee Party under the Ancillary Agreement.

# 6. POSITION OF THE GOVERNMENT PARTY

(a) Nothing in this deed or the Ancillary Agreement shall fetter, act as an estoppel or an agreement in any way about:

(i) the exercise by any person (including a Minister of the Crown) of a statutory power or a discretion otherwise than in accordance with the Act under which the power or discretion is granted; or

(ii) the exercise by any person (including a Minister of the Crown) of a decision making power including in respect of any decision of the Government Party.

# 7. CONDITIONS FOR THE PURPOSES OF SECTIONS 41(1) OF THE NATIVE TITLE ACT

(a) Clauses 4.1 and 4.2 of this deed constitute conditions to be complied with by the Parties for the purposes of section 41(1) of the Native Title Act.

(b) The terms of this deed and the Ancillary Agreement, are neither conditions precedent nor conditions subsequent to the agreement of the Native Title Party to the grant of the Tenement(s) or to the Grantee Party exercising its rights and discharging its obligations under the Tenement(s).

(c) The provisions of this deed and the Ancillary Agreement are not conditions of the Tenement(s) when granted under the Mining Act.

# 8. DEED PREVAILS

The Grantee Party and the Native Title Party agree that the provisions of this deed prevail over the provisions of the Ancillary Agreement to the extent of any inconsistency between this deed and the Ancillary Agreement.

# 9. DETERMINATION BY ARBITRAL BODY AND COPY OF DEED TO ARBITRAL BODY AND RELEVANT MINISTER

(a) If a determination under section 38 of the Native Title Act is applied for in relation to the Tenement(s), the Parties consent to the arbitral body making a determination to the effect that the Tenement(s) may be granted subject only to the conditions in subclauses 4.1 and 4.2.

(b) The Grantee Party and the Native Title Party authorise the Government Party, and the Government Party agrees, to give a copy of this deed to the arbitral body and to advise the relevant Minister in writing of the making of this deed as required by section 41A(1) of the Native Title Act.

# 10. COSTS AND DUTIES

**10.1 Costs**

Subject to clause 10.2, each Party shall bear their own costs including legal costs in connection with the preparation and completion of this deed.

**10.2 Duties**

The Grantee Party is to pay all duty (including fines or penalties) payable on or with respect to this deed pursuant to the Duties Act 2008 (WA).

# 11. GENERAL

**11.1 Severability**

If any provision of this deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

**11.2 Further action**

Each Party must at its own expense use its best efforts to do all things necessary or desirable to give full effect to this deed and the matters contemplated by it.

**11.3 Governing law and jurisdiction**

(a) This deed is governed by the laws applicable in the State of Western Australia.

(b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

**11.4 Counterparts**

(a) This deed may be executed in a number of counterparts and all counterparts taken together constitute one instrument.

(b) If this deed is to be executed in counterparts, the Parties must agree this ahead of the deed being prepared in final form so that sufficient copies can be prepared and executed by each Party to enable each Party to have one complete instrument (as constituted by the counterparts).

**EXECUTION PROVISIONS**

**GOVERNMENT PARTY**

**SIGNED** for and on behalf of the **STATE OF WESTERN AUSTRALIA** acting through the **MINISTER FOR MINES AND** **PETROLEUM** by an authorised officer with the Department of Energy, Mines, Industry Regulation and Safety in the presence of:

**SIGNED BY:**

|  |  |  |
| --- | --- | --- |
| Name of Authorised person in full |  |  |
| Position of Authorised person |  |  |
| Signature of Authorised person |  | Date |
| **In the presence of:** |  |  |
| Full name of witness |  |  |
| Address of witness |  |  |
| Signature of witness |  | Date |

**EXECUTION PROVISIONS**

**GRANTEE PARTY**

**IF AN INDIVIDUAL**

**SIGNED by:**

|  |  |  |
| --- | --- | --- |
| Name of person in full |  |  |
| Position of Authorised person |  |  |
| Signature of Authorised person |  | Date |
| **In the presence of:** |  |  |
| Full name of witness |  |  |
| Address of witness |  |  |
| Signature of witness |  | Date |

OR IF THE GRANTEE IS A COMPANY

Note*: The deed must be executed by the affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001, a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.*

**EXECUTION PROVISIONS**

COMMON SEAL

**GRANTEE PARTY**

**IF A COMPANY [WITH COMMON SEAL]**

**The COMMON SEAL of** **[insert company name]** ACN **[insert ACN]** was affixed to this deed in the presence of:

|  |  |  |
| --- | --- | --- |
| Signature of Director |  | Signature of Director/Secretary (delete whichever is not applicable) |
| Name of person in full |  | Name of person in full |
| Date |  | Date |

**IF A COMPANY [WITHOUT COMMON SEAL]**

**SIGNED** for **[insert company name] ACN [insert ACN]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

|  |  |  |
| --- | --- | --- |
| Signature of Director |  | Signature of Director/Secretary (delete whichever is not applicable) |
| Name of person in full |  | Name of person in full |
| Date |  | Date |

**EXECUTION PROVISIONS**

**GRANTEE PARTY**

**IF A SOLE PROPRIETOR**

**SIGNED** for **[insert company name] ACN [insert ACN]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

|  |  |
| --- | --- |
| Signature of Director (as Sole Director and Secretary) |  |
| Name of person in full |  |
| Date |  |

**EXECUTION PROVISIONS**

COMMON SEAL

**NATIVE TITLE PARTY1**

**WITH COMMON SEAL**

**The COMMON SEAL of** **[insert RNTBC name] RNTBC I**CN **[insert ICN]** was affixed to this deed in accordance with its rules and section 99.5(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

|  |  |  |
| --- | --- | --- |
| Signature of Director |  | Signature of Director/Secretary (delete whichever is not applicable) |
| Name of person in full |  | Name of person in full |
| Date |  | Date |

**IF A COMPANY [WITHOUT COMMON SEAL]**

**SIGNED** for **[insert RNTBC name] RNTBC I**CN **[insert ICN]** in accordance with its rules and section 99.5(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

|  |  |  |
| --- | --- | --- |
| Signature of Director |  | Signature of Director/Secretary (delete whichever is not applicable) |
| Name of person in full |  | Name of person in full |
| Date |  | Date |

1 By executing this deed the signatories represent and warrant that they are authorised to execute this deed on behalf of the Native Title Party and all common law holders under the Determination.