

# Arabunna Area Indigenous Land Use Agreement

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The Honourable Michael John Atkinson, Attorney-General

and

Minister for Mineral Resources Development

and

Reginald Dodd, Laurie Stuart and Millie Warren as  
registered native title claimants for and on behalf of the  
Arabunna native title claim group

and

Ularaka Arabunna Association Inc

and

Aboriginal Legal Rights Movement Inc

and

South Australian Chamber of Mines and Energy Inc

# Arabunna Area Indigenous Land Use Agreement

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Schedule 2 – Exploration Contract Conditions

- Annexure A to Schedule 2 – Heritage Clearance Procedures
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- Annexure E to Schedule 2 – Exploration Contract Return

### Schedule 3 – Acceptance Document

- Annexure A to Schedule 3 – Exploration Contract Conditions

### Schedule 4 – Mapping Survey Procedures

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<b>Date</b>	
<b>Parties</b>	<ol style="list-style-type: none"><li>1. <b>The Honourable Michael John Atkinson, Attorney-General</b> 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 (<i>state</i>)</li><li>2. <b>Minister for Mineral Resources Development</b> a corporation sole constituted by Section 11 of the Mining Act No. 109 of 1971 and whose office is situated at 17<sup>th</sup> Floor, 25 Grenfell Street, Adelaide, 5000 in the State of South Australia (<i>minister</i>)</li><li>3. <b>Reginald Dodd, Laurie Stuart and Millie Warren as registered native title claimants for and on behalf of the Arabunna native title claim group</b> in application no SG 6025/98 in the Federal Court of Australia, of care of Mr S Kenny, Camatta Lempens Pty Ltd, 1<sup>st</sup> Floor, 345 King William Street, Adelaide, SA, 5000 (<i>native title parties</i>)</li><li>4. <b>Ularaka Arabunna Association Inc ABN [ ]</b>, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of care of Mr S Kenny, Camatta Lempens Pty Ltd, 1<sup>st</sup> Floor, 345 King William St, Adelaide, SA, 5000 (<i>association</i>)</li><li>5. <b>Aboriginal Legal Rights Movement Inc ABN 32 942 723 464</b>, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of Level 4, 345 King William Street, Adelaide SA 5000 (<i>ALRM</i>)</li><li>6. <b>South Australian Chamber of Mines and Energy Inc ABN 62 620 804 910</b>, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of 4 Greenhill Road, Wayville SA 5034 (<i>SACOME</i>)</li></ol>
<b>Recitals</b>	<p>A The <i>registered native title claimants</i> are (as at the date of execution of this <i>framework ILUA</i>) the registered native title claimants (as defined in the <i>native title act</i>) in relation to <i>land</i> and <i>waters</i> in the <i>ILUA area</i> and made the <i>native title claim</i> on behalf of the <i>native title claim group</i>.</p> <p>B The <i>native title claim group</i> has established the <i>association</i> and has authorised the <i>association</i> to manage the <i>native title claim</i> and all matters relating to the <i>native title claim</i> on behalf of the <i>native title parties</i>.</p> <p>C The <i>association</i> (in conjunction with the <i>registered native title claimants</i>) has consulted with the <i>native title claim group</i> and the <i>native title claim</i></p>

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- group* has consented to and authorised the *registered native title claimants* to enter into this *framework ILUA* on behalf of the *native title parties*.
- D The *association*:
- (a) enters into this *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters relating to it; and
  - (b) by signing this *framework ILUA* confirms that the *registered native title claimants* have been authorised by the *native title claim group* to enter into this *framework ILUA* on behalf of the *native title parties*.
- E *ALRM* is the *representative Aboriginal/Torres Strait Islander body* for the *ILUA area* pursuant to the *native title act*.
- F Before signing this *framework ILUA* *ALRM* has, as far as practicable, consulted with and had regard to the interests of the *native title claim group* and other persons (if any) who hold or may hold *native title* in relation to *land* or *waters* in the *ILUA area*.
- G The *state*:
- (a) is the Crown in right of the State 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.
- H *SACOME* represents the minerals, petroleum and energy industries in South Australia.
- I Each *party* recognises the interests of each other *party*, and of land owners and occupiers, in relation to the *ILUA area*.
- J In particular the *parties* recognise, in relation to the *native title parties*, that:
- (a) the relationship of Aboriginal people to *land* and *waters* is central to their well being and to their continuing connection to the religious, emotional, spiritual and non-

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	human world; and
	(b) the <i>native title parties</i> claim that <i>native title</i> exists in relation to <i>land</i> and <i>waters</i> in the <i>ILUA area</i> and that the <i>native title claim group</i> is the group that claims to hold the <i>native title</i> in relation to <i>land</i> and <i>waters</i> in the <i>ILUA area</i> .
K	The <i>parties</i> also recognise, in relation to the <i>state</i> , that the <i>state</i> asserts its ownership of <i>minerals</i> in the <i>ILUA area</i> and elsewhere in South Australia.
L	The <i>native title parties</i> , the <i>association</i> and <i>ALRM</i> have negotiated with the <i>state</i> and with <i>SACOME</i> for this <i>framework ILUA</i> , which promotes the exercise of rights under this <i>framework ILUA</i> in a way that advances economic development through <i>authorised exploration activities</i> being carried out in a sustainable manner for the benefit of current and future generations and which, amongst other things, provides for:  (a) consent to the <i>grant</i> of the <i>authorised exploration tenements</i> ;  (b) consent to the carrying out of <i>authorised exploration activities</i> under the <i>authorised exploration tenements</i> ; and  (c) procedures protecting the rights and interests of the <i>native title parties</i> in the <i>ILUA area</i> in relation to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.
M	Pursuant to this <i>framework ILUA</i> the <i>parties</i> consent to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.
N	The <i>non-extinguishment principle</i> applies to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.
O	The provisions of this <i>framework ILUA</i> apply instead of the <i>right to negotiate procedure</i> , which is not intended to apply to the <i>grant</i> of the <i>authorised exploration tenements</i> or the carrying out of <i>authorised exploration activities</i> under them.
P	This <i>framework ILUA</i> is an <i>area agreement</i> pursuant to sections 24CA to 24CL of the <i>native title act</i> and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth) and is intended to be registered on the <i>register</i> .

It is agreed as follows.



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## 1. Preliminary

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### 1.1 Definitions

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

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

*accepted exploration contract* means each contract:

- (a) on the terms of the *exploration contract conditions* and the relevant executed *acceptance document*; and
- (b) formed between the *state*, the *minister*, the *native title parties*, the *association* and an *explorer* upon that *explorer* complying with the provisions of clause 5.1;

*advanced exploration activities* means:

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

and includes any associated *land clearing*;

*ALRM* means the *party* referred to in item 5 under the heading "Parties";

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

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*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 relevant *accepted exploration contract*, to an *explorer*:
  - (i) being an *exploration tenement*
    - (A) details of which are specified in the *acceptance document* executed by that *explorer* in order to enter into that *accepted exploration contract*;
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*; and
    - (C) in relation to which the provisions of clause 5.1 have been complied with; or
  - (ii) being an *exploration tenement*:
    - (A) details of which are specified in a notice given by that *explorer* pursuant to clause 12.1 of that *accepted exploration contract*; and
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*; and
- (b) any *exploration tenement* to be *granted* to that *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 *ILUA area*) the subject of that *exploration tenement*; and
- (c) any *exploration tenement* of a different type to that referred to in paragraphs (a) and (b) to be *granted* to that *explorer* during the *acceptance term* in respect of the whole or any portion of the *land* and/or *waters* (within the *ILUA area*) the subject of any *exploration tenement* referred to in paragraph (a) or (b); and
- (d) any *exploration tenement* to be *granted* to that *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 *ILUA area*) the subject of that *exploration tenement*,

but excludes any *excluded tenement* and any *exploration tenement* in the circumstances set out in clause 2.3(b) or 4.5 of an *accepted exploration contract*;

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*breached tenement* means the *authorised exploration tenement* in relation to which an *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 relevant *accepted exploration contract*;

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

*commencement date* means the date on which details of this *framework ILUA* are entered on the *register* pursuant to section 199B of the *native title act*;

*communication* has, for the purposes of clause 12, the meaning given in clause 12.1;

*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 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 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, for the purposes of clause 11, the meaning given in clause 11.1;

*dispute parties* has, for the purposes of clause 11, the meaning given in clause 11.4;

*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 each *accepted exploration contract*;

*excluded tenement* means an *exploration tenement* to which an *accepted exploration contract* does not apply by reason of the provisions of clause 15.1 or 15.2 of that *accepted exploration contract*;

*expert* means the person appointed either:

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- (a) by agreement between the *dispute parties* within 5 *business days* of any *dispute* not being resolved in accordance with the provisions of clause 11.5; 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 11, the meaning given in clause 11.6;

*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 conditions* means the terms forming part of this *framework ILUA* at schedule 2, as amended from time to time pursuant to this *framework ILUA*;

*exploration mapping survey* means a survey, carried out pursuant to clause 8 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 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 any person who at any time before or after complying with clause 5.1 is the holder of an *exploration tenement* which, upon that person complying with clause 5.1, becomes an *authorised exploration tenement*;

*framework ILUA* means this deed as amended from time to time, including the *exploration contract conditions* (and the annexures to it, being the *heritage clearance procedures*, mapping access procedures and deed of assumption), the *acceptance document* and the *mapping survey procedures* and all other schedules, annexures and appendices;

*framework term* means the period referred to in clause 2.1(a);

*grant*, in relation to an *exploration tenement*, includes:

- (a) any renewal, regrant, remaking or extension of the term of an *exploration tenement*; and
- (b) registration of a *mineral claim*;

*gst* has, for the purposes of clause 13, the meaning given in that clause;

*gst legislation* has, for the purposes of clause 13, the meaning given in that clause;

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*heritage clearance procedures* means the procedures annexed to the *exploration contract conditions* as annexure A, as amended from time to time pursuant to this *framework ILUA*;

*ILUA area* means the geographical area in relation to which this *framework ILUA* applies, as specified in item 1 of schedule 1;

*indigenous parties* means the *association* and the *native title parties*;

*land clearing* means:

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

*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 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 this *framework ILUA* at schedule 4, as amended from time to time pursuant to this *framework ILUA*;

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

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

*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* of the *native title parties*, details of which are set out in item 2 of schedule 1;

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

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*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) of any *accepted exploration contract*, 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) of any *accepted exploration contract*, 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 11, the meaning given in clause 11.3;

*notifying party* has, for the purposes of clause 11, the meaning given in clause 11.3;

*parties* means the parties to this *framework ILUA*;

*provision* has, for the purposes of clause 14.3, the meaning given in that clause;

*recipient* has, for the purposes of clause 13, 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*;

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*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*;

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

*review date* has, for the purposes of clause 2.2, the meaning given in that clause;

*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*;

*SACOME* means the *party* referred to in item 6 under the heading "Parties";

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

*supplier* has, for the purposes of clause 13, the meaning given in that clause;

*taxable supply* has, for the purposes of clause 13, the meaning given in that clause; and

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

### 1.2 Interpretation

In this *framework ILUA*, 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 *framework ILUA*;
- (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 *framework ILUA*) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this *framework ILUA* 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;

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- (i) a reference to a *party* to this *framework ILUA* 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 *framework ILUA* is to be interpreted against a *party* solely on the ground that the *party* put forward this *framework ILUA* or any part of it.

### 1.3 Headings

Headings do not affect the interpretation of this *framework ILUA*.

### 1.4 Schedules and annexures

Schedules, annexures and appendices form part of this *framework ILUA*.

## 2. Term

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### 2.1 Term

- (a) This *framework ILUA*, other than clauses 1, 2.1(b), 6.1, 6.2, 9.1(b) and (e), 10.1(e), 10.2 (insofar as it relates to clause 10.1(e)), 11, 12 and 14:
  - (i) commences on the *commencement date*, and



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- (ii) continues until the later of:
  - (A) the expiry of the *acceptance term*, and
  - (B) the date upon which all of the *accepted exploration contracts* have expired or been terminated for whatever reason.
- (b) Clauses 1, 6.1, 6.2, 9.1(b) and (e), 10.1(e), 10.2 (insofar as it relates to clause 10.1(e)), 11, 12 and 14 and this clause 2.1(b):
  - (i) commence on the date of execution of this *framework ILUA* by all of the *parties*, and
  - (ii) continue until:
    - (A) the date being 12 months after the date referred to in clause 2.1(b)(i), if this *framework ILUA* has not been registered on the *register* by that date; or
    - (B) if clause 2.1(b)(ii)(A) does not apply, the date upon which all of the *accepted exploration contracts* have expired or been terminated for whatever reason.

### 2.2 Review

- (a) Not more than 12 months, and not less than 6 months, before the date of expiry of the 5 year period calculated from the *commencement date* and each successive 5 year period during the *framework term (review date)* any *party* may give the other *parties* notice that it requires a review of this *framework ILUA*.
- (b) If any *party* gives the other *parties* a notice under clause 2.2(a) the *parties* must:
  - (i) meet as soon as possible, but in any event within 20 *business days* after the date of that notice; and
  - (ii) negotiate in good faith with a view to reaching agreement between the *parties* in relation to any amendments proposed to this *framework ILUA* by any *party*.
- (c) The *parties* may agree:
  - (i) upon the amendments required to this *framework ILUA* by any *party* and record the relevant agreement in a written document signed by all of the *parties*, or
  - (ii) that no amendments are required to this *framework ILUA*, and, if the *parties* do so agree, this *framework ILUA* continues to apply (where appropriate, as amended in accordance with clause 2.2(c)(i)) to enable an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1.
- (d) If any *party* has given notice under clause 2.2(a) and no agreement has been made pursuant to clause 2.2(c) by the relevant *review date* or such later date agreed by the *parties*, then:

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- (i) this *framework ILUA* no longer enables an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1; and
  - (ii) the *acceptance term* ends on that *review date* or such later date agreed by the *parties*.
- (e) The provisions of clause 2.2(d) do not in any way affect:
- (i) the continued application of this *framework ILUA* after the *review date* (or such later date as agreed between the *parties*) and during the remainder of the *framework term*, other than for purposes of enabling an *explorer* to enter into an *accepted exploration contract* pursuant to clause 5.1; and
  - (ii) any *accepted exploration contracts* entered into prior to the relevant *review date* (or such later date as agreed between the *parties*).

### 2.3 No Termination

Subject to clause 2.2 and clause 6.3(a), no *party* is entitled to terminate this *framework ILUA* for any reason, including by reason of any breach or repudiation of this *framework ILUA* by any other *party*.

## 3. Native Title Act Statements

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### 3.1 Consent to Future Acts

Subject to clauses 3.3, 3.5(b), 3.6, 3.7, 3.8 and 3.9 the *parties*:

- (a) consent to 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*, but:
    - (A) in relation to an *authorised exploration tenement*, as referred to in clause 5.1(b), 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* but during the *framework term*; or
  - (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* but during the *acceptance term*;
- (b) consent to the carrying out at any time after the *commencement date* but during the *framework term* of *authorised exploration activities* under each *authorised exploration tenement* (whether *granted* before or

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after the *commencement date*) in respect of which consent is given in accordance with clause 3.1(a); and

- (c) to the extent necessary, agree to the validating of any *future act* constituted by the *grant* of any *authorised exploration tenement*, referred to in paragraph (a) of the definition of *authorised exploration tenement*, at any time before the *commencement date*.

### 3.2 No right to negotiate procedures

- (a) The *parties* acknowledge and agree that this *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* agree 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 Consent Conditional on Compliance

The consent of the *parties* in clause 3.1 in relation to any *authorised exploration tenement* and any *authorised exploration activities* under it is conditional on an *explorer* having complied with the provisions of clause 5.1 or clause 12.1 of the *accepted exploration contract*, as appropriate, in relation to the relevant *authorised exploration tenement*.

### 3.4 When Consent effective

To avoid doubt, the consent of the *parties* in clause 3.1 and their agreement in clause 3.2 are effective in relation to any *authorised exploration tenement* referred to in:

- (a) paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of formation of the *accepted exploration contract* in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*; and
- (b) paragraph (a)(ii) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of notice given under clause 12.1 of the *accepted exploration contract* in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*.

### 3.5 Amendments to Accepted Exploration Contracts

- (a) Subject to clause 3.5(b), the consent of the *parties* in clause 3.1 and their agreement in clause 3.2 apply to each *authorised exploration*

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*tenement* and any *authorised exploration activities* under it to which any *accepted exploration contract*, as amended from time to time, applies.

- (b) Clause 3.5(a) does not apply where the relevant *accepted exploration contract* is amended in a manner which is inconsistent in any way with this *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to this deed).

### 3.6 Effect of Removal from Register

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

- (a) any *authorised exploration tenement granted* prior to the removal of this *framework ILUA* from the *register*, or
- (b) any *authorised exploration activities* carried out or to be carried out under any such *authorised exploration tenement*.

### 3.7 Effect of Breach of Non-Payment Essential Term

The consent of the *parties* in clause 3.1, their agreement in clause 3.2 and an *accepted exploration contract* do 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 as defined in that *accepted exploration contract*), in the following circumstances:

- (a) the *explorer* which is a party to that *accepted exploration contract* has allegedly breached an *essential term* in clause 6.1, 6.3 or 6.4(b) of that *accepted exploration contract*,
- (b) within 20 *business days* of the *association* or the representatives of the *native title parties* appointed pursuant to that *accepted exploration contract* becoming aware of that alleged breach, the *indigenous parties* have, pursuant to clause 15.1(b) of that *accepted exploration contract*, given notice of that alleged breach to the *explorer* (with a copy to the *minister*) 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 15.1(b)(ii) of that *accepted exploration contract* and that 20 *business days* period expires prior to the *grant* of that *exploration tenement*,

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- (d) pursuant to clause 15.1(d) of that *accepted exploration contract* the *minister* is given a notice by that *explorer* or that *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 17 of that *accepted exploration contract* 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.

### 3.8 Effect of Breach of Other Essential Terms

- (a) The consent of the *parties* in clause 3.1, their agreement in clause 3.2 and an *accepted exploration contract* also do not apply to an *exploration tenement* (nor to the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* referred to in clause 3.8(b), in the following circumstances:
  - (i) the *explorer* which is a *party* to that *accepted exploration contract* 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 that *accepted exploration contract* 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* appointed pursuant to that *accepted exploration contract* becoming aware of that alleged breach, the *indigenous parties* have, pursuant to clause 15.2(a)(iii) of that *accepted exploration contract*, given notice of that breach to the *explorer* (with a copy to the *minister*) 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 the 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 the alleged breach within the 20 *business days* period notified by the *indigenous parties* under clause 15.2(a)(iii)(B) of that *accepted exploration contract* 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) pursuant to clause 15.2(a)(v) of that *accepted exploration contract*, the *minister* is given a notice by that *explorer* or that *association* that it has been agreed, resolved or determined pursuant to clause 17 of that *accepted exploration contract* or

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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 that *accepted exploration contract* will not apply if all of the circumstances in clause 15.2(a) of that *accepted exploration contract* are met, the *explorer* has, where that breach is capable of being remedied, not remedied the breach.

(b) If all of the circumstances referred to in clause 3.8(a) are met, that *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 *minister* has been given a notice pursuant to clause 15.2(a)(v) of that *accepted exploration contract* 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 15.2(a)(iii)(B) of that *accepted exploration contract* 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 as defined by that *accepted exploration contract*) the subject of the *breached tenement*; or

(ii) where either:

(A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) of that *accepted exploration contract* less than 5 *business days* before, or after, the *grant* of an *exploration tenement* referred to in clause 3.8(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

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remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) of that *accepted exploration contract* 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 as defined by that *accepted exploration contract*) the subject of the *breached tenement*.

### 3.9 Remedy of Breach

- (a) Subject to the provisions of clause 3.9(b), for purposes of clauses 3.8(a)(iii),(iv) and (vi) a breach of a relevant *essential term* is deemed to be capable of being remedied by an *explorer* and that *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 permit to be done, something; and
  - (ii) within the relevant period referred to in clause 3.8(a)(iv) or prior to the *grant* of the relevant *exploration tenement* referred to in clause 3.8(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 3.9(a) do not apply to the breach of an *essential term* in clause 5.1, 5.2 or 5.3 of the relevant *accepted exploration contract* in relation to any *authorised exploration tenement*.

### 3.10 Right to Negotiate Procedure

- (a) Subject to clause 3.10(b) the *right to negotiate procedure* applies to an *excluded tenement*.
- (b) However, by entering into this *framework ILUA* 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

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### 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 and registration

The *parties* state that:

- (a) this *framework ILUA* applies to the *ILUA area*; and
- (b) this *framework ILUA* is intended to be registered on the *register* as an *area agreement* under sections 24CA to 24CL of the *native title act* and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).

### 4.3 Exploration only

The *parties* acknowledge and agree that:

- (a) pursuant to this *framework ILUA* they do not agree to the validation of, or consent to, the grant of any *production tenement* or the carrying out 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 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 each *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 Authorised Exploration Tenement Terms

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



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### 4.6 No Acknowledgement of Native Title

By entering into this *framework ILUA* neither the *state* nor *SACOME* acknowledges the existence or otherwise of *native title* in relation to any *land* and/or *waters* within the whole or part of the *ILUA area*.

### 4.7 Native Title Claim Application

*SACOME* agrees not to become a party, as a respondent, to the *native title claim*.

### 4.8 Employment and Training

- (a) The *parties* acknowledge that:
  - (i) there are limited opportunities for an *explorer* and its contractors to employ persons during the carrying out of *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 *authorised exploration activities* are primarily for people with specialist skills and training.
- (b) The *parties* also acknowledge that it is in their mutual interests that government funded training for Aboriginal people is offered in regional South Australia to provide those people with skills required for employment in the resources industry and which, where possible, are also transferable to other industries.
- (c) The *parties* also acknowledge that the training referred to in clause 4.7(b) may include:
  - (i) training in skills for exploration and mining field assistants; and
  - (ii) training in exploration methods.
- (d) The *parties* agree to consult with the relevant Aboriginal communities and to develop the necessary strategies and programs for the training referred to in clause 4.7(b).
- (e) *SACOME* and the *state* agree to support any application(s) to the *state* or to the Commonwealth made by or on behalf of the *native title parties* for traineeship grant(s) for member(s) of the *native title claim group* to attend heritage clearance surveys (as defined in the *heritage clearance procedures*) as trainees.

## 5. Exploration Contract Conditions

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### 5.1 Binding Explorer

- (a) Subject to clauses 5.1(b), (c), (d), (e) and (f), the *parties* agree that a person may enter into an *accepted exploration contract* in relation to any *exploration tenement* and the carrying out of *exploration activities*

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under it by doing the following at any time during the *acceptance term*:

- (i) duly completing and signing an *acceptance document*,
  - (ii) if required under the *mining act*, registering the duly completed and signed *acceptance document* under and in accordance with the *mining act* or, if not so required, providing a copy of the duly completed and signed *acceptance document* to the *minister*, and
  - (iii) notifying the *indigenous parties* of the *explorer's* due completion and signature of the *acceptance document* and simultaneously providing the *indigenous parties* with an original or duplicate original of the *acceptance document* and, if applicable, evidence that it has been duly stamped and, registered under the *mining act*.
- (b) A person may only enter into an *accepted exploration contract* in relation to an *exploration tenement* of a kind referred to in paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* at the time clause 5.1(a) is complied with, if prior to that time the person has applied for the *grant* to it of that *exploration tenement*.
- (c) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement* if notice has previously been given to initiate negotiations under the *right to negotiate procedure* in respect of that *exploration tenement* or any *exploration activities* under it except where that notice was given prior to the *commencement date* and that person 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*.
- (d) A person may not enter into an *accepted exploration contract* in relation to an *exploration tenement* if that *exploration tenement* was *granted* to that person after the *commencement date* and that person has previously carried out any *exploration activities* under that *exploration tenement*.
- (e) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement* if:
- (i) that person or a related body corporate (within the meaning of the Corporations Act) of that person has previously entered into another *accepted exploration contract* with the *native title parties* in relation to that *exploration tenement*, and
  - (ii) the provisions of the *accepted exploration contract* referred to in clause 5.1(e)(i) have ceased to apply, pursuant to clause 15.1 or 15.2 of that *accepted exploration contract*, to that *exploration tenement*.

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- (f) A person may not at any time enter into an *accepted exploration contract* in relation to an *exploration tenement granted* or to be *granted* to that person in respect of the whole or any part of the *ILUA area* if:
- (i) that person or a related body corporate (within the meaning of the Corporations Act) of that person has previously entered into another *accepted exploration contract* with the *native title parties*, and
  - (ii) that person or related body corporate has committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 of that *accepted exploration contract* which (or the consequences of which) also constitute non-compliance by that person with the provisions of the *Aboriginal heritage act*.

### 5.2 Effect

The *parties* acknowledge and agree that upon a person complying with the provisions of clause 5.1 an agreement on the terms of the *exploration contract conditions* and the relevant *acceptance document* comes into force and effect as an *accepted exploration contract*.

- (a) in respect of:
- (i) the *authorised exploration tenements* to which the *acceptance document* completed and signed by that person, as an *explorer*, applies; and
  - (ii) the carrying out of *authorised exploration activities* under those *authorised exploration tenements*, and
- (b) between:
- (i) the *state*;
  - (ii) the *minister*;
  - (iii) the *native title parties*;
  - (iv) the *association*; and
  - (v) the *explorer*.

### 5.3 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 this *framework ILUA*; and
- (b) by reason of being bound by this *framework ILUA* are also bound by an *accepted exploration contract* in relation to any of the *land*

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and/or *waters* (within the *ILUA area*) to which that *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*).

## 6. Registration

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### 6.1 Application

- (a) The *parties* (other than the *state*) authorise and direct the *state* to apply to the *registrar* for this *framework ILUA* to be registered and entered on the *register* as an *area agreement* pursuant to sections 24CA to 24CL of the *native title act* and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth).
- (b) Subject to clause 6.1(c) the *state* agrees to comply with the authorisation and direction in clause 6.1(a).
- (c) For the purposes of registering and entering this *framework ILUA* on the *register* as referred to in clause 6.1(a) either:
  - (i) *ALRM* will certify in accordance with the *native title act* the application to the *registrar* referred to in clause 6.1(a); or
  - (ii) if *ALRM* does not certify in accordance with the *native title act* the application to the *registrar* referred to in clause 6.1(a), the *indigenous parties* will prepare a statement which complies with the requirements of section 24CG(3)(b) of the *native title act* and provide that statement to the *state* for inclusion in that application.

### 6.2 Best endeavours

Each of the *parties* agrees to use its best endeavours to obtain the registration of this *framework ILUA* on the *register* as soon as possible after the date of execution of this *framework ILUA* by all of the *parties* and to maintain that registration at all times after the date of registration until the end of the *framework term*.

### 6.3 Removal from Register

- (a) All of the *parties* may request the *registrar* pursuant to section 199C(1)(c)(ii) of the *native title act* to remove the details of this *framework ILUA* from the *register* by advising the *registrar* in writing that they wish to terminate this *framework ILUA*.
- (b) The *parties* acknowledge that the *registrar* is required to remove the details of this *framework ILUA* from the *register* in the circumstances set out in sections 199C(1)(b), (c)(i) and (c)(iii) of the *native title act*.
- (c) The *parties* agree to promptly notify the *registrar* when the *framework term* ends.

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- (d) Upon details of this *framework ILUA* being removed from the *register* the provisions of clauses 3.1 and 3.2 cease to apply to any *future act* done after that removal by way of:
  - (i) the *grant* of any *exploration tenement*; or
  - (ii) the carrying out of any *exploration activities* under any such *exploration tenement*.
- (e) The provisions of clauses 6.3(a), (c) and (d) survive the expiry or termination for whatever reason of this *framework ILUA*.

### 7. Notification of Grants

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The *minister* must notify the *association* of the *grant* of any *exploration tenement* within the *ILUA area* to any person within 10 *business days* of that *grant*, except where:

- (a) that *grant* is by way of a renewal, regrant, remaking or extension of the term of that *exploration tenement*; or
- (b) the person to whom that *exploration tenement* is *granted* is an *explorer* which is a party to an *accepted exploration contract* and that *exploration tenement* is an *authorised exploration tenement* which relates to *land* and/or *waters* wholly within the *acceptance area* (as defined in that *acceptance exploration contract*).

### 8. Mapping Survey

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#### 8.1 Notice

- (a) The *association* may at any time during the period referred to in clause 8.1(c) notify the other *parties* to this *framework ILUA* that the *association* wishes:
  - (i) an *exploration mapping survey*; or
  - (ii) a *cultural mapping survey* and an *exploration mapping survey*,  
to be undertaken of the whole, part or parts of the *ILUA area*.
- (b) Any notice in respect of any *exploration mapping survey* must specify:
  - (i) the *exploration activities* to which the notice relates (including or excluding some or all *advanced exploration activities*); and
  - (ii) the area (being the whole, part or parts of the *ILUA area*) in respect of which it is given.
- (c) The period during which the *association* may give a notice under clause 8.1(a):

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- (i) commences on the *commencement date*, and
- (ii) ends on the earliest of:
  - (A) the commencement date of a provision in the *Aboriginal heritage act* for the grant by an independent statutory authority of a document which, if held by an *explorer*, would allow that *explorer*, subject to any conditions in the document, to carry on the *exploration activities* on the *land* and/or *waters* to which the document relates;
  - (B) if the *state* gives the other *parties* notice to that effect within 20 *business days* after expiry of the *acceptance term*, the expiry of the *acceptance term*; and
  - (C) otherwise, the expiry of the *framework term*.

### 8.2 Survey procedure

Subject to clause 8.3, if the *association* gives a notice under clause 8.1, the *mapping survey* will be undertaken in accordance with the *mapping survey procedures*.

### 8.3 Survey conditional

A *mapping survey* of which notice has been given under clause 8.1 will only be undertaken if:

- (a) the *state* has not notified the *association* within 20 *business days* of the giving of a notice under clause 8.1 that the *state* is not satisfied on reasonable grounds that the undertaking of a *mapping survey* is in the best interests of the *state*; and
- (b) the *state* and the *association* agree upon the following:
  - (i) the area (within the *ILUA area*) in respect of which the relevant *mapping survey* is to be undertaken;
  - (ii) where clause 8.1(a)(ii) applies, that the relevant *mapping survey* comprises both an *exploration mapping survey* and a *cultural mapping survey*;
  - (iii) the *exploration activities* in respect of which the relevant *exploration mapping survey* is to be undertaken;
  - (iv) the budget for undertaking the relevant *mapping survey*; and
  - (v) any conditions relating to the undertaking of the relevant *mapping survey*.

### 8.4 Costs

The *state* agrees that it is responsible for all costs and expenses incurred in:

## Arabunna Area Indigenous Land Use Agreement

- (a) the carrying out of any *mapping survey* (up to the maximum of the amount of the budget for that *mapping survey* agreed in accordance with clause 8.3(a)(iv));
- (b) keeping a copy of the exploration mapping report (as defined in the *mapping survey procedures*) in relation to any *mapping survey*; and
- (c) the appointment of the mapping caretaker (as defined in the *mapping survey procedures*) and the performance by the mapping caretaker of its functions,

in accordance with the *mapping survey procedures* and the mapping access procedures (as defined in the *exploration contract conditions*).

### 9. Consideration

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#### 9.1 State Contribution

In consideration of the *indigenous parties* entering into this *framework ILUA*, the *state* must:

- (a) upon the registration of this *framework ILUA*, make a once-off payment of \$30,000 to the *nominated body*;
- (b) provide office equipment including office furniture, a computer, printer, facsimile machine and telephone and such other plant and equipment and assistance as may be agreed between the *state* and the *indigenous parties*; and
- (c) ensure that a group personal accident insurance policy is effected and maintained during the *framework term* on terms approved by the *association* and *ALRM* (such approval not to be unreasonably withheld), to cover Aboriginal persons who are members of any clearance team (as defined in the *heritage clearance procedures*) in respect of whom such cover is obtainable on reasonable commercial terms.

#### 9.2 Payment

All amounts payable and benefits required to be provided under an *accepted exploration contract* must be paid and provided:

- (a) in accordance with the terms of that *accepted exploration contract*;
- (b) by the person specified in that *accepted exploration contract*; and
- (c) to the person specified in that *accepted exploration contract*.

#### 9.3 Acknowledgment

The *indigenous parties* acknowledge and agree that, subject to clause 9.4:

- (a) any amounts payable and any benefits provided under this *framework ILUA* and any *accepted exploration contract* to the *native*

## Arabunna Area Indigenous Land Use Agreement

*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 this *framework ILUA*; and
- (b) the *native title parties* do not have any *compensation entitlement* other than for the amounts payable and benefits provided under this *framework ILUA* and any *accepted exploration contract*.

### 9.4 Exception

The provisions of clause 9.3 do not apply to any *compensation entitlement* of the *native title parties* against any other *party* to this *framework ILUA* or any other person who is a party to any *accepted exploration contract* arising by reason of any breach of this *framework ILUA* or that *accepted exploration contract* by that *party* or that person.

### 9.5 Sharing

The *indigenous parties* agree that the amounts payable and the benefits provided under this *framework ILUA* and the relevant *accepted exploration contract* 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 *ILUA area* to which this *framework ILUA* or the relevant *accepted exploration contract* (as the case may be) relates.

### 9.6 Application Survival

The provisions of clauses 9.3, 9.4 and 9.5 survive the removal of the details of this *framework ILUA* from the *register* for whatever reason and remain in those circumstances binding on:

- (a) all persons bound by this *framework ILUA* and any *accepted exploration contract*; and
- (b) all persons entitled to any of the benefits under this *framework ILUA* and any *accepted exploration contract*.

## 10. Warranties and Authority

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### 10.1 Preliminary

The *indigenous parties* record that:

- (a) the *registered native title claimants* are (as at the date of this *framework ILUA*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and/or *waters* in the *ILUA area* and made the *native title claim* on behalf of the *native title claim group*,



## Arabunna Area Indigenous Land Use Agreement

- (b) the *native title claim group* has established the *association* and has 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) the *association* (in conjunction with the *registered native title claimants*) has consulted with the *native title claim group* and the *native title claim group* has consented to and authorised the *registered native title claimants* to enter into this *framework ILUA* on behalf of the *native title parties*;
- (d) the *association*:
  - (i) enters into this *framework ILUA* in the performance of its functions of managing the *native title claim* and all matters relating to it; and
  - (ii) by signing this *framework ILUA* confirms that the *registered native title claimants* have been authorised by the *native title claim group* to enter into this *framework ILUA* on behalf of the *native title parties*; and
- (e) if clause 6.1(c)(ii) applies:
  - (i) all reasonable efforts have been made (including by consulting the *representative Aboriginal/Torres Strait Islander body* for the *ILUA area*) to ensure that all persons who hold or may hold *native title* in relation to *land* or *waters* in the *ILUA area* have been identified; and
  - (ii) all of the persons so identified have authorised the making of this *framework ILUA* in accordance with section 251A of the *native title act*.

### 10.2 Warranties

Regard being had to the provisions of clause 10.1, the *indigenous parties* represent and warrant to the other *parties* to this *framework ILUA* that the matters set out in clauses 10.1(a) to (e) are true and correct.

### 10.3 Registered native title body corporate

If an *approved determination of native title* is made in respect of the whole or any part of the *ILUA area* 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 this *framework ILUA* in place of both the *native title parties* and the *association* in relation to the whole or relevant part of the *ILUA area* and assumes the rights and obligations of both the *native title parties* and the *association* under this *framework ILUA* in relation to the whole or that part of the *ILUA area*;

## Arabunna Area Indigenous Land Use Agreement

- (b) the *parties* (other than the *indigenous parties*) to this *framework ILUA* consent to the *registered native title body corporate* becoming a *party* to this *framework ILUA* and assuming the rights and obligations of both the *native title parties* and the *association*, in accordance with clause 10.3(a); and
- (c) each of the *parties* to this *framework ILUA* must sign such documents as are necessary to give effect to the provisions of this clause 10.3.

## 11. Dispute Resolution

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### 11.1 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 this *framework ILUA (dispute)* will be dealt with in accordance with this clause 11 whether the *dispute* is first raised before, during or after the *framework term*.

### 11.2 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 11 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 11.1 and 11.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

### 11.3 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*.

### 11.4 Meeting

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*.

### 11.5 Mediation

If a *dispute* is not resolved in accordance with the provisions of clause 11.4:

## Arabunna Area Indigenous Land Use Agreement

- (a) any *dispute party* may request the President for the time being of the *National Native Title Tribunal* 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*.

### 11.6 Expert

If a *dispute* is not resolved in accordance with the provisions of clause 11.5, any *dispute party* may refer the determination of that *dispute (determination)* to the *expert*.

### 11.7 Capacity of Expert

The *expert* is an expert and not an arbitrator.

### 11.8 Expert's Determination

The *expert's determination* is final and binding on the *dispute parties*.

### 11.9 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 11.9(a) applies, each *dispute party* will bear its own costs and expenses in relation to the *expert's determination*.

### 11.10 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 11.10(a) applies, the *dispute parties* will pay in equal shares the *expert's* fees and expenses and the cost of the *expert's determination*.

### 11.11 Survival

The provisions of this clause 11 survive the expiry or termination for whatever reason of this *framework ILUA*.

## 12. Communications

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### 12.1 Writing required

Subject to this *framework ILUA*, any notice, direction, request, consent, approval, demand, report or other communication (*communication*) to be given under this *framework ILUA* will be in writing, be signed by the representative(s) of the *party* giving the *communication* as set out in item 3 of Schedule 1 and be addressed for the attention of the representative(s) of the recipient *party* or *parties* as set out in item 3 of schedule 1.

### 12.2 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.

### 12.3 Change of details

Details specified in item 3 of schedule 1 in respect of a *party* may be changed by the *party* by not less than 5 *business days* notice to the other *parties*.

## 13. GST

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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 this *framework ILUA*:

- (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*.

## 14. General

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### 14.1 Entire agreement

This *framework ILUA* 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.

### 14.2 Amendment

No amendment or variation of this *framework ILUA*:

- (a) is valid or binding on a *party* unless made in writing executed by all *parties*, or
- (b) in any way affects any *accepted exploration contract* entered into prior to that amendment or variation.

### 14.3 Severability

Each word, phrase, sentence, paragraph and clause (a *provision*) of this *framework ILUA* 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 this *framework ILUA*.

### 14.4 No announcements

No *party* may make, issue, permit or suffer to be made, or issued, any statement or announcement concerning the terms of this *framework ILUA* unless such statement or announcement is first approved as to the timing and content by each other *party* or is required by law.

### 14.5 Assignment and transfer

- (a) The rights and obligations of each *party* under this *framework ILUA* are personal.
- (b) Those rights and obligations cannot be *disposed of, encumbered* or otherwise dealt with and no *party* may attempt, or purport, to do so without the prior consent of the other *parties*.

### 14.6 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.

## Arabunna Area Indigenous Land Use Agreement

### 14.7 Further assurances

Each *party* agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this *framework ILUA* and the transactions contemplated by it.

### 14.8 No merger

- (a) The rights and obligations of the *parties* will not merge on the completion of any transaction contemplated by this *framework ILUA*.
- (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.

### 14.9 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 execution of this *framework ILUA*.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this *framework ILUA* and any instrument executed under this *framework ILUA* must be borne by the *state*.

### 14.10 Governing law and jurisdiction

- (a) This *framework ILUA* 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 this *framework ILUA*.

### 14.11 Counterparts

- (a) This *framework ILUA* may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

### 14.12 Relationship

- (a) The relationship between the *parties* is that of independent contractors.
- (b) The *parties* are not partners, joint venturers or, subject to clause 14.12(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 this *framework ILUA* pursuant to clause 10.3 holds the rights and interests from time to time comprising the *native title* in the whole or relevant part of the *ILUA area* in trust for the *native title holders*.

Arabunna Area Indigenous Land Use Agreement

**Executed** as a deed

SIGNED by )  
HONOURABLE MICHAEL JOHN ATKINSON )  
Attorney-General, for and on behalf of the Crown in right )  
of the State of South Australia, in the presence of: )



.....

Witness



.....

Name of Witness *PETER HALL*

Arabunna Area Indigenous Land Use Agreement



THE COMMON SEAL of the MINISTER FOR )  
MINERAL RESOURCES DEVELOPMENT )  
was hereunto fixed in the presence of: )

.....  
The Honourable Paul Holloway  
Minister for Mineral Resources Development  
.....

Witness *[Signature]*  
.....  
Name of Witness *PETER HALL*

SIGNED by Reginald Dodd )  
for and on behalf of the Arabunna )  
Native Title Claim Group in the presence of: )  
..... )  
Reginald Dodd

*[Signature]*  
.....

*[Signature]*  
.....  
Witness  
.....  
Name of Witness *GARTH DODD*

SIGNED by Laurie Stuart )  
for and on behalf of the Arabunna )  
Native Title Claim Group in the presence of: )  
..... )

*[Signature]*  
.....  
Laurie Stuart

*[Signature]*  
.....  
Witness  
.....  
Name of Witness *STEPHEN KERNY*



Arabunna Area Indigenous Land Use Agreement

SIGNED by Millie Warren )  
for and on behalf of the Arabunna )  
Native Title Claim Group in the presence of: )

*Millie Warren*  
.....  
Millie Warren

*J. Milera*  
.....  
Witness  
*VERONICA J. MILERA*  
.....  
Name of Witness

THE COMMON SEAL of the )  
ULARAKA ARABUNNA )  
ASSOCIATION INC )  
was hereunto affixed in accordance with )  
its constitution in the presence of: )



*J. Milera*  
.....  
Director/Secretary

*Bradley James Strangways / Leon Arthur Wilson*  
.....  
Director/Secretary

*VERONICA J. MILERA*  
.....  
Name

*BRADLEY JAMES STRANGWAYS / Leon Arthur Wilson*  
.....  
Name

THE COMMON SEAL of the )  
ABORIGINAL LEGAL RIGHTS )  
MOVEMENT INC was hereunto affixed )  
in the presence of: )



*M. J. Davies*  
.....  
Chairperson

*Loelia Thirchausen*  
.....  
Executive Member

Arabunna Area Indigenous Land Use Agreement

THE COMMON SEAL OF )  
The SOUTH AUSTRALIAN )  
CHAMBER OF MINES AND ENERGY )  
INC was hereunto affixed in the presence of:)



*[Handwritten signature]*  
.....

President

*[Handwritten signature]*  
.....

Chief Executive

27 November 2003

Arabunna Area Indigenous Land Use Agreement

SCHEDULE 1

Item 1 – ILUA Area

The area commences on the northeastern corner of Coorikiana Pastoral Lease, then extends easterly, northerly, again easterly and again northerly along the boundaries of Todmorden Pastoral Lease, being also the boundaries of *native title determination application* SG6025/98 – “The Arabunna People’s Native Title Claim” (SC98/2), to Latitude 27.370907° South; then, along the boundaries of that claim, north easterly through coordinate point Longitude 135.685875° East, Latitude 27.216449° South, to the centreline of Macumba River (approximated by Longitude 135.717429° East, Latitude 27.205415° South), being also the boundary of *native title determination application* SG6016/98 – “The Wangkangurru/Yarluyandi Native Title Claim” (SC97/3).

Then generally easterly and southeasterly along the centrelines of the Macumba and Warburton Rivers, being also the common boundaries of *native title determination applications* SC98/2 and SC97/3, to Longitude 137.265386° East; then southeasterly through the following coordinate points:

<b>Longitude East (Decimal Degrees)</b>	<b>Latitude South (Decimal Degrees)</b>
137.384790	27.906602
137.415622	27.928522
137.462797	27.967863
137.513903	28.012450
137.557166	28.056982

being the boundaries of SC98/2. Then westerly, generally northwesterly and generally southerly along the northern and western boundaries of Lake Eyre National Park, to intersect the northern boundary of *native title determination application* SG6004/98 – “Kujani” (SC00/3) at Longitude 136.960827° East; then generally southwesterly through the following coordinates:

<b>Longitude East (Decimal Degrees)</b>	<b>Latitude South (Decimal Degrees)</b>
136.866269	28.975909
136.695200	28.933393
136.579436	28.914085
136.481035	28.914085
136.423153	28.925669

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136.376847	28.935324
136.274588	28.977801
136.191623	29.022209
136.126022	29.066618
136.044987	29.116819
135.950445	29.190189
135.913162	29.233469
135.905304	29.239761
135.882431	29.259241
135.857498	29.283449
135.838318	29.305105
135.771713	29.397509
135.740112	29.445843
135.682098	29.544893

being the boundaries of that of *native title determination application* SC00/3, to the boundary of *native title determination application* SG6007/98 – “Antakirinja Native Title Claim” (SC95/7) at Longitude 135.676464° East, Latitude 29.555045° South;

Then northwesterly, and northerly along the northeastern boundary of Balta Baltana South Pastoral Lease, the western boundary of Anna Creek Pastoral Lease, the eastern boundary of Mount Barry Pastoral Lease, the southern and eastern boundaries of Coorikiana Pastoral Lease, being also the boundaries of that claim, to the boundary of *native title determination application* SC98/2; then continues northerly along the eastern boundaries of Coorikiana Pastoral Lease, being also the boundary of that claim, back to the commencement point.

The area EXCLUDES lands and waters subject Lots 1188, 1193 known as the Oodnadatta Common.

### Note

#### Reference Data and Source:

Geographical coordinates have been provided by the NNTT Geospatial Unit and are referenced to the Australian Geodetic Datum 1984 (AGD84), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Native title applications as filed in the Federal Court:

- ♦ SG6007/98 Antakirinja Native Title Claim (SC95/007) filed on 14/11/1995
- ♦ SG6016/98 – “The Wangkangurru/Yarluyandi Native Title Claim” (SC97/3) filed on 21/08/1997

## Arabunna Area Indigenous Land Use Agreement

- SG6025/98 The Arabunna People's Native Title Claim (SC98/002) filed on 16/01/1998
- SG6004/98 Kujani (SC00/003) filed on 22/12/2000.

Pastoral lease data sourced from Dept of Environment and Heritage, SA (1993).

Lake Eyre National Park boundary data sourced from Dept of Environment and Heritage, SA (2002).

ILUA Area boundary description compiled by the National Native Title Tribunal from data sourced from the Dept of Environment and Heritage (SA) and Geoscience Australia. Attribution maintained by NNTT.

### Item 2 – Native Title Claim

*Native title determination application* No SG 6025/98 as lodged in the Federal Court of Australia on 16 January 1998 in accordance with the *native title act* by the *registered native title claimants* for and on behalf of the Arabunna native title claim group.

### Item 3 – Notice Details

#### State

Address: Attorney-General's Department  
Level 3, 45 Pirie Street  
Adelaide SA 5000

Attention: Principal Negotiator, ILUA

Facsimile No.: (08) 8207 2235

#### 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

## Arabunna Area Indigenous Land Use Agreement

Address: Camatta Lempens Pty Ltd  
1<sup>st</sup> floor, 345 King William Street  
ADELAIDE SA 5000

Attention: Stephen Kenny

Facsimile No.: (08) 8410 0566

### **Association**

Address: Camatta Lempens Pty Ltd  
1<sup>st</sup> floor, 345 King William Street  
ADELAIDE SA 5000

Attention: Stephen Kenny

Facsimile No.: (08) 8410 0566

### **ALRM**

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

Attention: Executive Officer, Native Title Unit

Facsimile No.: (08) 8211 7424

### **SACOME**

Address 4 Greenhill Road  
Wayville SA 5034

Attention: Chief Executive

Facsimile No: (08) 8373 9699

# Arabunna Area Indigenous Land Use Agreement

Arabunna Area Indigenous Land Use Agreement

**SCHEDULE 2**  
**Exploration Contract Conditions**



Arabunna Area Indigenous Land Use Agreement

**SCHEDULE 3**  
**Acceptance Document**

Arabunna Area Indigenous Land Use Agreement

**SCHEDULE 4**  
**Mapping Survey Procedures**