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5 January 2016

INDIGENOUS LAND USE AGREEMENT

**SMALL SCALE MINING AND EXPLORATION ACTIVITIES
NORTH QUEENSLAND AREA**

DJUNGAN PEOPLE

**AN AREA AGREEMENT UNDER SUBDIVISION C
DIVISION 3 PART 2 OF THE NATIVE TITLE ACT 1993**

[] April 2015

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INDIGENOUS LAND USE AGREEMENT

AGREEMENT dated.....25th.....day of.....June.....2015

BETWEEN Ernest Burns; Lynette Geary; Maxwell Underwood; Karen Sanusi and Kate Higgins

("Native Title Parties") on their own behalf and on behalf of the Djungan People

AND Nguddaboolgan Native Title Aboriginal Corporation RNTBC ICN 7727 ("Nguddaboolgan PBC")

AND State of Queensland ("State")

AND North Queensland Miners Association Incorporated ("NQMA")

RECITALS

- A. The State proposes to grant Mining Tenements in the ILUA Area.
- B. On 2 August 2012 the Determinations of native title were made in that part of the ILUA Area shown shaded in dark green and orange on the map at Schedule 1. The Nguddaboolgan PBC is the Registered Native Title Body Corporate for that part of the ILUA Area covered by the Determinations.
- C. The Native Title Parties on their own behalf and on behalf of the Djungan People claim to hold Native Title in relation to that part of the ILUA Area not covered by the Determinations, being that part of the ILUA Area shown shaded in light green on the map at Schedule 1.
- D. The NQMA represents the interests of the North Queensland mining industry.
- E. The Native Title Parties, the Nguddaboolgan PBC, the NQMA and the State have negotiated this Agreement which deals with amongst other things, consent to the grant of Mining Tenements in the ILUA Area.
- F. Subject to the terms and conditions of this Agreement, the Parties agree, amongst other things, to the grant of Mining Tenements in the ILUA Area.
- G. The ILUA provides for a Small Scale Miner to execute an Opt in Deed and assume the rights and obligations of the Grantee Party in this ILUA.

- H. The ILUA also provides for a Small Scale Miner who has signed an Opt in Deed to assign his obligations under the Opt in Deed to another Small Scale Miner or to a person which is not a Small Scale Miner.
- I. This Agreement is entered into as an Indigenous Land Use Agreement and is intended by the Parties to be registered under Subdivision C, Division 3, Part 2 of the NTA to enable Mining Tenements to be validly granted in the ILUA Area.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this Agreement:

Aboriginal Cultural Heritage has the meaning given in the ACHA.

Aboriginal Cultural Heritage Protocol means the protocol contained in Schedule 4.

Aboriginal Cultural Heritage Find means a Significant Aboriginal Object or an artefact or other evidence of indigenous occupation that is likely to be a Significant Aboriginal Object found in the course of Mining Activities.

Aboriginal Cultural Heritage Finds Protocol means the protocol contained in Schedule 5.

Act attracting the expedited procedure has the meaning given in the NTA.

ACHA means *Aboriginal Cultural Heritage Act 2003* (Qld).

Address for Service means the contact details contained in Schedule 11 or amended in accordance with clause 35.

Agreed Acts means the acts consented and agreed to under clause 7 and clause 8.

Agreement or *ILUA* means this agreement and the schedules to this agreement.

Ancillary Rights means any or all of the following:

- (a) a referable dam licence;
- (b) a water pumping licence;
- (c) a tree clearing permit.

Application means an application for a Mining Tenement within the ILUA Area.

Application Area means the land described in an Application.

Assignee means the person to whom the Grantee intends to assign its rights and obligations under clause 25.

Business Day means any day, other than a Saturday, Sunday or a public holiday in the State of Queensland.

Business Hours means the hours between 8:30am and 4:30pm in Queensland on a Business Day.

Claims means any claim, proceeding, action, cause of action, demand, damages, costs, losses or expenses.

Commencement Date means the date on which the last Party signs this Agreement.

Company Limited by Guarantee has the meaning given in the *Corporations Act 2001* (Cth).

Compensation Entitlements means any compensation, right or entitlement including a right to damages or the like whether monetary or otherwise, under any law with respect to:

- (a) the consents for the Agreed Acts;
- (b) the doing and validation of the Agreed Acts;
- (c) the effect, if any, of the Agreed Acts on Native Title;
- (d) the effect on Native Title of the exercise of rights or discharge of obligations in connection with the Agreed Acts;
- (e) any effect of the application of the Non-extinguishment Principle on Native Title in the ILUA Area;

Confidential Information has the meaning given in clause 23.

CPI Number means the all groups consumer price index for the City of Brisbane as determined by the Australian Bureau of Statistics or other authority or instrumentality which publishes the index or any replacement measure.

Cultural Heritage Duty of Care has the meaning given in the ACHA.

Date of Assignment is the date referred to in clause 26.3 or clause 26.6, as applicable.

Deed of Assumption for Non-Small Scale Miner means the Deed in Schedule 7.

Deed of Assumption for the RNTBC means the Deed in Schedule 8.

Deed of Assumption for Small Scale Miner means the Deed in Schedule 6.

Determinations means the native title determinations made on 2 August 2012 in respect of part of the ILUA Area and known as Djungan People # 1 (QC95/11; QUD 208/97), Djungan People # 2 (QC96/5; QUD 6022/98), Djungan People # 3 (QC97/6; QUD 6116/98) and Djungan People # 4 (QC01/38; QUD 6036/01).

Dispute has the meaning given in clause 22.1.

Dispute Notice has the meaning given in clauses 22.2.

Djungan People means all those persons who assert that they hold Native Title in that part of the ILUA Area not covered by the Determinations, and who authorised the Native Title Parties to enter into this ILUA.

EPA means the *Environmental Protection Act 1994* (Qld).

Exclusion Zone means an area identified in an Inspection Report in which a Significant Aboriginal Area or a Significant Aboriginal Object is located and where no Mining Activities are to occur.

Expiry Date means the date that is 5 years from the Registration Date.

Exploration Interest means:

- (a) a Prospecting Permit;
- (b) an Exploration Permit; or
- (c) a Mineral Development Licence.

Exploration Permit has the meaning given in the MRA.

Exploration Permit (Low Impact) means the grant of an exploration permit under the MRA, which is an Act attracting the expedited procedure and is subject to the NTPCs.

Financial Year means a year commencing on 1 July and ending on 30 June.

Force Majeure Event means an event or circumstance that:

- (a) is beyond the reasonable control of the party affected by the event or circumstance;
- (b) causes or results in a default or delay in that party performing obligations under this Agreement,

and includes fire, lightning, explosion, flood, earthquake, storm, cyclone, force of nature, ceremony according to Aboriginal tradition, chemical contamination, riots, civil disturbance, war, strikes, lockouts, industrial disputes, action or inaction by, or order of, a court, government or other authority and the breakdown or failure of any equipment or machinery.

Future Act has the meaning given in the NTA.

GPS means Global Positioning System equipment.

GPS Coordinates means coordinates (AMG or longitude/latitude) on the GDA94/MGA94 datum.

Grantee Party means a Small Scale Miner who:

- (a) has made an Application; and
- (b) has executed an Opt in Deed and provided a copy of the executed deed to the Native Title Parties, the Nguddaboolgan PBC, NQMA and the State in accordance with clause 25.

GST means a tax in the nature of a goods and services tax levied or imposed by the Commonwealth Government of Australia.

GST Law means the *A New Tax System (Goods and Services Tax) 1999* (Cth).

ILUA Area means the area depicted and described in Schedule 1.

Indigenous Land Use Agreement has the meaning given in the NTA.

Input Tax Credit has the meaning given in the GST Law.

Inspection means an inspection undertaken by the Inspection Team for the purposes of preparing an Inspection Report.

Inspection Report means the report referred to in clause 6 of Schedule 4.

Inspection Team means a minimum of two representatives of the Djungan People or of persons nominated by the Nguddaboolgan PBC or as otherwise agreed under clause 5.2(b) of the Aboriginal Cultural Heritage Protocol to conduct an Inspection.

Invoice means an invoice for the compensation payable under clause 12 and calculated in accordance with the rates specified in Schedule 3.

Land Council means the North Queensland Land Council Native Title Representative Body Aboriginal Corporation ICN 1996 and for the purposes of clause 5.1 and Schedule 9 includes the Cape York Land Council Aboriginal Corporation ICN 1163.

Land Court means the Land Court established under the *Land Court Act 2000* (Qld).

Level 1 Environmental Authority means an environmental authority issued under the EPA in respect of a Level 1 Mining Project.

Level 1 Mining Project has the meaning given in the EPA.

Level 2 Environmental Authority means an environmental authority issued under the EPA in respect of a Level 2 Mining Project whether code compliant or not and with or without conditions.

Level 2 Mining Project has the meaning given in the EPA.

Mineral Development Licence has the meaning given in the MRA.

Mining Activities means activities that may be carried out pursuant to an Exploration Interest or Mining Interest under the MRA but limited to activities that may be conducted pursuant to a Level 2 Environmental Authority if required under the EPA.

Mining Claim has the meaning given in the MRA.

Mining Interest means a Mining Claim or a Mining Lease.

Mining Lease has the meaning given in the MRA.

Mining Tenement means a Prospecting Permit, Mining Claim, Exploration Permit, Mineral Development Licence or Mining Lease.

Month means a calendar month.

MRA means the *Mineral Resources Act 1989* (Qld).

Native Title and Native Title Rights and Interests has the meaning given in the NTA.

Native Title Agreement has the meaning given in the ACHA.

Native Title Claims means any future Native Title determination applications made in the Federal Court by the Djungan People in relation to that part of the ILUA Area not covered by the Determinations.

Native Title Parties means Ernest Burns, Lynette Geary, Maxwell Underwood, Karen Sanusi and Kate Higgins on their own behalf and on behalf of the Djungan People.

Native Title Registrar has the meaning given in the NTA.

Nguddaboolgan PBC means Nguddaboolgan Native Title Aboriginal Corporation RNTBC ICN 7727.

Nominated Body means the Nguddaboolgan PBC.

Non-Extinguishment Principle has the meaning given in the NTA.

NQMA means the North Queensland Miners Association Incorporated.

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

NTPCs mean the Native Title Protection Conditions relevant to the grant of an Exploration Permit (Low Impact) as determined by the Minister administering the MRA from time to time.

Operator has the meaning given in the *Mining and Quarrying Safety and Health Act 1999* (Qld).

Opt in Deed means the Deed in Schedule 2.

Parties means the Native Title Parties, the State, the Nguddaboolgan PBC and NQMA.

Plan of Operations has the same meaning as in Chapter 5 Part 7 of the EPA.

Proposed Work Area means the specific areas where a Grantee Party intends to conduct Mining Activities.

Prospecting Permit has the meaning given in the MRA but does not include a Prospecting Permit issued for pegging purposes.

Public Company has the meaning given in the *Corporations Act 2001*.

Recipient means, in respect of Supply made under this Agreement, the person obliged to pay for that Supply.

Recommendation Dispute has the meaning given in clause 8.1 of Schedule 4.

Recommendation Dispute Notice has the meaning given in clause 8.1 of Schedule 4.

Recommendations has the meaning given in clause 7.1 of Schedule 4.

Register means the Register of Indigenous Land Use Agreements under the NTA.

Registered Native Title Body Corporate has the meaning given in the NTA.

Registration means the entry of this Agreement by the Native Title Registrar on the Register.

Registration Date means the date this Agreement is entered on the Register.

Relevant Agency means relevant State agency administering the ACHA.

Right to Negotiate means the statutory obligations contained in Subdivision P Division 3 Part 2 of the NTA.

Significant Aboriginal Area means an area of particular significance to the Native Title Parties and the Nguddaboolgan PBC because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of any Aboriginal party for the area.

Significant Aboriginal Object is an object of particular significance to Aboriginal people because of either or both of the following:

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of an Aboriginal party for an area.

Single Integrated Project means a mining operation where two or more Mining Interests consented to under this Agreement are listed in a single royalty return required to be provided by a Grantee under the MRA.

Site Senior Executive has the meaning under the *Mining and Quarrying Safety and Health Act 1999*.

Small Scale Miner means a person who:

- (a) is not a Public Company or an entity that controls a Public Company; and
- (b) is not a proprietary company the shareholding of which is to any extent owned or held directly or indirectly by a Public Company; and
- (c) is not a Company Limited by Guarantee or an entity that controls a Company Limited by Guarantee; and
- (d) is not the holder of any number of Exploration Permits that together allow exploration on land in Queensland exceeding an aggregate total area of 150 Sub-blocks; and
- (e) is not the holder of any number of Mineral Development Licences that together allow activities on land in Queensland exceeding an aggregate total area of 150 hectares; and
- (f) is not the holder of any number of Mining Leases that together allow mining on land in Queensland exceeding an aggregate total area of 300 hectares, except where the Native Title Parties or the Nguddaboolgan PBC agree in writing to an aggregate

not exceeding a total of 500 hectares in recognition of existing Mining Leases covering multiple Watercourses.

State means State of Queensland.

Sub-block has the meaning given in the MRA.

Supplier means, in respect of a particular Supply made under this Agreement, the person entitled to payment for that Supply.

Supply has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law.

Tax Invoice has the meaning given in the GST Law.

Threshold Amount has the meaning given in clause 14.6.

Threshold Amount Report has the meaning given in clause 14.4.

Watercourse has the meaning given in the *Water Act 2000*.

Windfall Year has the meaning given in clauses 14.2 and 14.3.

2. INTERPRETATION

2.1 In this Agreement:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule to this Agreement and a reference to this Agreement includes any schedules;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State of Queensland;
- (h) a reference to a Party includes the party's heirs, executors, successors permitted assigns and nominees;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations and government agencies and departments;

- (j) a reference to any legislation or regulations is construed the same way as a reference to an Act or a provision of an Act is construed in s 10 of the *Acts Interpretation Act 1901* (Cth) or the same way as a reference to a law is construed in s 14H of the *Acts Interpretation Act 1954* (Qld), as applicable;
- (k) in the event of any inconsistency between the definition of the ILUA Area and the map contained in Schedule 1, the definition of the ILUA Area prevails;
- (l) an agreement, acknowledgement, representation or warranty on the part of two or more persons binds them jointly and severally; and
- (m) an agreement, acknowledgement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

3. COMMENCEMENT

3.1 Clauses 1 to 6 and 9 to 38 commence on the Commencement Date.

3.2 Clauses 7 and 8 commence on the Registration Date.

4. TERM OF AGREEMENT

4.1 Subject to clause 4.4, clauses 7.1, 7.2, and 7.3 will expire on the Expiry Date.

4.2 Notwithstanding clause 4.1, this Agreement will continue to apply to Mining Tenements that were granted in reliance on this Agreement prior to the Expiry Date and Mining Tenements that were granted in reliance on this Agreement prior to the Expiry Date and renewed pursuant to clause 7.4 before or after the Expiry Date.

4.3 Where Native Title has been extinguished over the whole or part of the ILUA Area, the Aboriginal Cultural Heritage Protocol and the Aboriginal Cultural Heritage Finds Protocol apply.

4.4 The Expiry Date may be extended by a further period of five (5) years if all Parties agree.

4.5 If a Party wishes to extend the Expiry Date under clause 4.4, that Party will give notice to that effect to the other Parties no later than twelve (12) months before the Expiry Date.

4.6 No later than one (1) month after receipt of a notice under clause 4.5, the other Parties will notify the Party who provided the notice, of their acceptance or non-acceptance of the extension.

5. AUTHORITY TO ENTER AGREEMENT

5.1 The Native Title Parties represent and warrant that:

- (a) they have the authority to enter into this Agreement on behalf of the Djungan People;
- (b) all reasonable efforts have been made (including consultation with the Land Council) to ensure that all persons who hold or may hold Native Title in relation to the ILUA Area have been identified; and

- (c) all of the persons so identified have authorised the making of this Agreement in accordance with section 251A of the NTA.
- (d) before entering into this Agreement they informed the Land Council of their intention to enter into this Agreement.

5.2 The Native Title Parties on their own behalf and on behalf of the Djungan People claim to hold Native Title in relation to all land and waters in the ILUA Area not covered by the Determinations.

5.3 The Nguddaboolgan PBC represents and warrants that:

- (a) it has authority to enter into this Agreement;
- (b) it has informed the Land Council of its intention to enter in this Agreement and has consulted with and considered the views of the Land Council about this Agreement;
- (c) it has consulted with, and obtained the consent of, the common law holders in accordance with the *Native Title (Prescribed Body Corporate) Regulations 1999* in relation to the making of a native title decision; and
- (d) it has complied with its Rulebook for the purposes of entering into the ILUA.

5.4 While details of this Agreement are entered on the Register, this Agreement is, by operation of the NTA, binding on all persons holding Native Title in relation to any part of the ILUA Area as if they were the Native Title Parties.

6. STATEMENTS FOR THE PURPOSES OF THE NTA

6.1 The Parties state as follows:

- (a) this Agreement is intended to be registered as an area agreement under Subdivision C, Division 3, Part 2 of the NTA and regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth);
- (b) this Agreement applies to the ILUA Area; and
- (c) Subdivision P, Division 3, Part 2 of the NTA is not intended to apply to the Agreed Acts described in clauses 7 and 8.

7. AGREED ACTS

7.1 The Parties consent to the grant of the following in the ILUA Area:

- (a) Prospecting Permits, with a Level 2 Environmental Authority if required under the EPA;
- (b) Mineral Development Licences with a Level 2 Environmental Authority;
- (c) Mining Claims with a Level 2 Environmental Authority; and
- (d) Mining Leases with a Level 2 Environmental Authority,

to a Grantee Party.

- 7.2 If the NTPCs are a condition of the grant of an Exploration Permit with a Level 2 Environmental Authority the Parties consent to the grant of an Exploration Permit to a Grantee Party.
- 7.3 The Parties consent to the grant of Ancillary Rights relevant to a Mining Tenement the grant of which was consented to under this Agreement.
- 7.4 The Parties consent to the renewal of the Mining Tenements the grant of which was consented to under this Agreement, over the same or smaller area as the grant at the time of renewal, on the same terms and conditions as the grant at the time of renewal and for the same or shorter term as the grant at the time of renewal, if the Grantee Party has complied with its obligations under clause 12. For the avoidance of doubt, if a Mining Tenement is renewed pursuant to this clause 7.4, this clause 7.4 will also apply to any subsequent renewals of the grant of the renewed Mining Tenement.

8. AMENDMENT TO THE MINING TENEMENTS

- 8.1 The Parties consent, subject to clauses 8.4 – 8.9, to the rights attaching to Mining Leases the grant of which was consented to under this Agreement and made to a Grantee Party, being varied as follows:
- (a) addition of another mineral;
 - (b) addition of an additional purpose;
 - (c) addition of additional surface area;
 - (d) consolidation of Mining Leases; and
 - (e) variation of the land used as access in relation to the land the subject of a Mining Lease.
- 8.2 The Parties consent, subject to clauses 8.4 to 8.9, to the rights attaching to Mining Claims the grant of which was consented to under this Agreement and made to a Grantee Party, being varied as follows:
- (a) addition of another mineral;
 - (b) variation of the land used as access in relation to the land the subject of a Mining Claim.
- 8.3 The parties consent, subject to clauses 8.4 to 8.9 to the rights attaching to Mineral Development Licences the grant of which was consented to under this Agreement and made to a Grantee Party, being varied as follows:
- (a) variation of the land used as access in relation to the land the subject of a Mineral Development Licence; and
 - (b) addition of another mineral;
 - (c) addition of excluded land.

- 8.4 A Grantee Party who is seeking to rely on a consent under clauses 8.1 to 8.3, must notify the Native Title Parties and the Nguddaboolgan PBC of the proposed variation and invite each of them to request a meeting if they wish to discuss the proposal, at least twenty (20) Business Days prior to lodging the application seeking the variation (Amendment Application).
- 8.5 If no request for a meeting under clause 8.4 is made within ten (10) Business Days of receipt of the notice:
- (a) the Grantee Party may lodge the Amendment Application together with evidence that the notice requirement in clause 8.4 has been satisfied, and a statutory declaration stating that no meeting has been requested and provide a copy of the Amendment Application to the Native Title Parties or the Nguddaboolgan PBC; and
 - (b) the Parties agree that the consents referred to in clauses 8.1 to 8.3 become unconditional upon lodgement of the Amendment Application.
- 8.6 If the Native Title Parties or the Nguddaboolgan PBC request a meeting, the Grantee Party will use its best endeavours to hold such a meeting within ten (10) Business Days of receipt of the request and the Grantee Party and the party requesting the meeting will conduct negotiations in good faith with a view to reaching agreement on the proposed variation.
- 8.7 The Grantee Party agrees to give favourable consideration to a request by the Native Title Parties or the Nguddaboolgan PBC for an agreed contribution towards their reasonable costs in attending and participating in the meeting referred to in clause 8.6.
- 8.8 If agreement referred to in clause 8.6 to the proposed variation is reached:
- (a) the Grantee Party may lodge the Amendment Application together with evidence of the written agreement; and
 - (b) the Parties agree that the consents referred to in clauses 8.1 to 8.3 become unconditional upon lodgement of the Amendment Application.
- 8.9 If the Parties do not reach agreement referred to in clause 8.6, prior to a Right to Negotiate process being notified, the variations may be agreed during that process and clause 8.8 will apply to that agreement.

9. COMPLIANCE WITH ABORIGINAL CULTURAL HERITAGE PROTOCOL

- 9.1 The Native Title Parties, the Nguddaboolgan PBC and the Grantee Party:
- (a) acknowledge that the Aboriginal Cultural Heritage Protocol (at Schedule 4) and the Aboriginal Cultural Heritage Find Protocol (at Schedule 5) impose obligations on the Native Title Parties, the Djungan People, the Nguddaboolgan PBC and the Grantee Party; and
 - (b) must comply with the obligations in those Protocols.
- 9.2 The Parties agree that:

- (a) prior to Registration, this Agreement is “another agreement” in accordance with section 23(3)(a)(iii) of the ACHA;
- (b) upon Registration:
 - (i) this Agreement is a “Native Title Agreement” in accordance with section 23(3)(a)(iii) of the ACHA; and
 - (ii) compliance with Schedule 4 and Schedule 5 by the Grantee Party is taken to be compliance with the Cultural Heritage Duty of Care.

10. NON-EXTINGUISHMENT PRINCIPLE

The Parties acknowledge and agree that the Non-Extinguishment Principle applies to the Agreed Acts to the extent they are Future Acts.

11. REGISTRATION BY THE NATIVE TITLE REGISTRAR

- 11.1 The Native Title Parties, the Nguddaboolgan PBC and the NQMA authorise the State on behalf of the Parties to apply for Registration. This is a statement for the purposes of sub-regulation 7(2)(b) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999*.
- 11.2 All Parties must take any steps necessary to aid the Registration.
- 11.3 Upon execution of this Agreement, the Native Title Parties will request the Land Council to certify this Agreement under section 203BE(1)(b) of the NTA for the purposes of section 24CG(3)(a) of the NTA and will provide the State with the written statement and reasons referred to in section 203BE(6) of the NTA.
- 11.4 If this Agreement is not certified in accordance with clause 11.3, the Native Title Parties will provide a statement to the State setting out the grounds on which the Native Title Registrar should be satisfied that the representations and warranties in clause 5 have been met in accordance with section 251A and section 24CG(3)(b) of the NTA.
- 11.5 Upon execution of this Agreement, the Nguddaboolgan PBC will ensure that a statement in terms contained in Schedule 9 is executed and provided to the State.

12. COMPENSATION PAYMENT

- 12.1 The Grantee Party must notify the Nominated Body within ten (10) Business Days of receipt of the notice of the grant or renewal of a Mining Tenement the grant or renewal of which was consented to under this Agreement and provide the following information to the Nominated Body:
 - (a) the date of the grant or renewal of the Mining Tenement; and
 - (b) a copy of the Level 2 Environmental Authority.
- 12.2 The Nominated Body will provide an Invoice to the Grantee Party:
 - (a) for the relevant amounts specified in Schedule 3 and adjusted in accordance with clause 15 and, if applicable, clause 24; and

- (b) within twenty (20) Business days of receiving the notice under clause 12.1 and on each anniversary date of the grant or renewal of the Mining Tenement.

12.3 The Grantee Party must pay the relevant amounts as set out in the Invoice to the Nominated Body no later than twenty (20) Business Days after receipt of the Invoice.

12.4 If the amount payable under the Invoice is consideration for a Taxable Supply then the Invoice must be in the form of a Tax Invoice.

13. PLAN OF OPERATIONS

13.1 The Grantee Party will provide the Native Title Parties or the Nguddaboolgan PBC with a copy of the Plan of Operations for the Mining Lease, the grant of which was consented to under this Agreement, within forty (40) Business Days of the Grantee Party receiving notice of the State's approval of the Plan of Operations for the Mining Lease in accordance with s 233 of the EPA. Where a Plan of Operations is not required under the EPA for the Mining Lease, the Grantee Party will instead provide the Native Title Parties or the Nguddaboolgan PBC with detailed information relating to the proposed operations under the Mining Lease.

13.2 Where the Grantee Party is the holder of a Level 2 Environmental Authority for the Mining Lease and wishes to apply for a Level 1 Environmental Authority, the Grantee Party agrees that:

- (a) prior to making an application the Grantee Party will contact the Native Title Parties or the Nguddaboolgan PBC to commence negotiations.
- (b) negotiations will be held in good faith with a view to reaching agreement on the terms on which the Native Title Parties or the Nguddaboolgan PBC would agree to the grant of the Level 1 Environmental Authority;
- (c) without limiting the scope of the negotiations, they may, if relevant, include the possibility of including a condition that has the effect that the Native Title Parties or the Nguddaboolgan PBC are to be entitled to payments in relation to the Mining Lease, that are worked out by reference to:
 - (i) the amount of future profit made; or
 - (ii) any future income derived; or
 - (iii) any thing produced in the future.

13.3 If after six (6) Months from the date of the commencement of negotiations referred to in clause 13.2(b), the parties to that negotiation have not reached agreement ("**Negotiations Dispute**") the following dispute resolution process will apply:

- (a) either the Native Title Parties or the Nguddaboolgan PBC or the Grantee Party may give notice to the other setting out why negotiations have failed. ("**Negotiations Failure Notice**").
- (b) the parties to the Negotiations Dispute must meet within fourteen (14) Business Days of receiving the Negotiations Failure Notice with a view to agreeing on the joint appointment of a mediator.

- (c) If the Native Title Parties or the Nguddaboolgan PBC and the Grantee Party have not agreed on the mediator within fifteen (15) Business Days of receipt of the Negotiations Failure Notice, the mediator is the person appointed by the President of the Queensland Law Society, or the President's nominee, acting on the request of any of the parties.
- (d) The parties must pay the mediator's remuneration in equal proportion unless otherwise agreed or determined by the mediator. Each party must pay its own costs of the mediation unless otherwise agreed or determined by the mediator.
- (e) If the matter referred to the mediator is not resolved within fifteen (15) Business Days of the date of appointment of the mediator, then the parties may take such other lawful action as they see fit to resolve the matter.

14. ADDITIONAL PAYMENT IN AN EVENT OF WINDFALL

- 14.1 The Grantee Party will provide the Native Title Parties and the Nguddaboolgan PBC with copies of the annual royalty returns lodged by the Grantee Party with the State pursuant to the MRA, if any, within five (5) Business Days of lodgement.
- 14.2 Where the Grantee Party's Gross Sales, if any, in relation to a Mining Lease consented to under this Agreement which does not form part of a Single Integrated Project exceed the Threshold Amount in any Financial Year (a "Windfall Year") the Grantee Party will pay to the Nominated Body an amount equal to 2.5% of that portion of the Gross Sales which exceed the Threshold Amount.
- 14.3 Where the Grantee Party's Gross Sales, if any, for two or more Mining Leases consented to under this Agreement in a Single Integrated Project exceed the Threshold Amount in any Financial Year (a "Windfall Year") the Grantee Party will pay to the Nominated Body an amount equal to 2.5% of that portion of the Gross Sales which exceed the Threshold Amount.
- 14.4 In each Windfall Year, the Grantee Party must provide the Native Title Parties and the Nguddaboolgan PBC with a written report (the "Threshold Amount Report") detailing the Threshold Amount for that Windfall Year. In particular, the Threshold Amount Report must:
 - (a) show the calculation of the Threshold Amount for the Windfall Year in question; and
 - (b) be attached to the annual royalty return for the Windfall Year.
- 14.5 The Native Title Parties and the Nguddaboolgan PBC agree to treat the information contained in a Threshold Amount Report and information provided under clause 14.1 as Confidential Information.
- 14.6 In this clause 14:

"Gross Sales" means gross sales identified in the annual royalty returns exclusive of any GST included in the sale price for the gross sales; and

"Threshold Amount" means:

- (a) for one Mining Lease for the first Financial Year (commencing on 1 July 2012) an amount equal to \$750,000;
- (b) for two or more Mining Leases in a Single Integrated Project, for the first Financial Year (commencing 1 July 2012) an amount equal to \$1.5 million;
- (c) for the second and subsequent Financial Years, an amount calculated annually in accordance with the following formula:

$$R = \frac{XY}{Z}$$

Where:

R is the Threshold Amount for the relevant Financial Year;

X is the CPI Number for the quarter ended 31 March immediately prior to the commencement of the relevant Financial Year;

Y is the Threshold Amount for the previous Financial Year;

Z is the CPI Number for the quarter ended 31 March immediately prior to the commencement of the previous Financial Year; and

- (d) for any relevant Financial Year, the amount will not be less than the Threshold Amount for the previous Financial Year.

14.7 For the purposes of this clause 14 “relevant Financial Year” means the Financial Year in which the Threshold Amount is being calculated.

15. ANNUAL CPI ADJUSTMENT

15.1 The Parties agree that the amounts specified in Schedule 3 which are marked with an asterix (“rates”) will be subject to an annual adjustment in accordance with clause 15.2.

15.2 The rates will be adjusted every Financial Year commencing on 1 July 2012 in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

A means the rates for the relevant Financial Year;

B means the rates for the previous Financial Year;

C is the CPI Number for the quarter ending 31 March immediately prior to the commencement of the relevant Financial Year; and

D is the CPI Number for the quarter ending 31 March immediately prior to the commencement of the previous Financial Year.

15.3 If a review under clause 15.2 results in a decrease in the rates, the rates for the previous Financial Year will continue to apply.

15.4 For the purposes of this clause 15, “relevant Financial Year” means the Financial Year in which the adjustment of the rates is being calculated.

16. SATISFACTION OF COMPENSATION ENTITLEMENTS UNDER THE NTA

16.1 The Native Title Parties agree on their own behalf and on behalf of the Djungan People and the people represented by the Nguddaboolgan PBC agree that any amounts paid by the Grantee Party under clause 12.3 are:

- (a) in full and final satisfaction of any Compensation Entitlement;
- (b) compensation for the purposes of “compensation provided for in the agreement” in accordance with section 24EB(5) of the NTA.

16.2 The Native Title Parties acknowledge on their own behalf and on behalf of the Djungan People and the Nguddaboolgan PBC acknowledges that any amounts payable under clause 12.3 are held by the Nominated Body for all members of the Djungan People and the people represented by the Nguddaboolgan PBC.

17. INDEMNITY

The Native Title Parties on their own behalf and on behalf of the Djungan People agree that if a person other than the Native Title Parties or a member of the Djungan People establishes that they:

- (a) hold Native Title in relation to the ILUA Area;
- (b) are not entitled to any of the benefits provided under this Agreement; and
- (c) are entitled to payment of compensation from the State or the Grantee Party for the doing of the Agreed Acts,

then the Native Title Parties and the Djungan People indemnify the State and the Grantee Party for the payment of any such compensation up to the amount of any payments paid or payable under this Agreement.

18. RELEASE AND WAIVER

18.1 The Native Title Parties on their own behalf and on behalf of the Djungan People release and discharge the State and the Grantee Party from all Claims in relation to the doing of the Agreed Acts.

18.2 The Native Title Parties waive any rights that the Native Title Parties or any of the Djungan People may have to make any Claim against the State or the Grantee Party in relation to the doing of the Agreed Acts.

18.3 The Nguddaboolgan PBC:

- (a) releases and discharges the State and the Grantee Party from all claims in relation to the doing of the Agreed Acts; and

- (b) waives any rights that the Nguddaboolgan PBC may have to make any Claim against the State or the Grantee in relation to the doing of the Agreed Acts.

18.4 This clause 18 may be pleaded as a complete bar to any Claims brought by any of the Native Title Parties, or any member of the Djungan People, or by the Nguddaboolgan PBC against the State or the Grantee Party in relation to the doing of the Agreed Acts.

19. ACCESS

19.1 Subject to clause 19.2, the Grantee Party recognises that members of the Djungan People and the people represented by the Nguddaboolgan PBC may wish to exercise Native Title Rights and Interests, not being inconsistent with State and Commonwealth law, within the Mining Tenements.

19.2 The Djungan People and the people represented by the Nguddaboolgan PBC must not access any part the Mining Tenement:

- (a) identified by signs placed by the Grantee Party warning of health or safety hazards, where the placement of those signs is reasonable;
- (b) within 50 metres of where plant and equipment are located;
- (c) within 50 metres of where activities permitted under the Mining Tenement are being undertaken; or
- (d) within such other lesser or greater distances from such hazards, plant, equipment or activities as reasonably directed by the Operator or Site Senior Executive or their delegate from time to time.

19.3 The Grantee Party agrees that subject to this Agreement, in particular clauses 19.1 and 19.2, it will use its best endeavours to minimise the effect of the Mining Activities on:

- (a) the free movement of the Djungan People and the people represented by the Nguddaboolgan PBC and the exercise of Native Title Rights and Interests within the Mining Tenement; and
- (b) the exercise by the Djungan People and the people represented by the Nguddaboolgan PBC and the pursuit of their customary and traditional activities within the Mining Tenement.

19.4 In considering what steps are best endeavours, the Grantee Party will take into account whether such movement, exercise or pursuit (as the case may be):

- (a) causes or could reasonably be expected to cause real danger to persons or property;
or
- (b) unreasonably interferes with the conduct of Mining Activities being carried out by the Grantee Party.

20. NATIVE TITLE CLAIM

20.1 If the Grantee Party's only interest in the area subject to any Native Title Claims is a Mining Tenement the grant of which was consented to under this Agreement, the Grantee Party agrees that:

- (a) it will not apply to become a respondent party to any of the Native Title Claims; or
- (b) if it is already a respondent party to the Native Title Claims, it will withdraw as a respondent party within 30 Business Days of the grant of a Mining Tenement consented to under this Agreement.

20.2 Nothing in this Agreement affects the existence of Native Title within the ILUA Area.

21. TERMINATION

The Parties agree that a breach of this Agreement by any Party will not give another Party ("Non-defaulting Party") a right to elect to terminate this Agreement. A Non-defaulting Party may exercise any other remedy available to it in respect of such breach.

22. RESOLUTION OF DISPUTES

22.1 In the event of a dispute arising under this Agreement where a dispute resolution process is not otherwise expressly provided for, this clause 22 will apply to the Dispute ("Dispute").

22.2 Any Party claiming that a Dispute has arisen must give notice in writing to the other Parties providing full details of the nature of the Dispute and specific clauses of this Agreement under which the Dispute has arisen ("Dispute Notice").

22.3 Each party (or a representative of each party) to the Dispute ("Dispute Party") must meet or have a telephone conference within 5 Business Days of receipt of the Dispute Notice and negotiate in good faith to resolve the Dispute.

22.4 If the Dispute is not resolved by the Dispute Parties within ten (10) Business Days of the receipt of the Dispute Notice, then any Dispute Party may refer the Dispute to mediation. The mediation may be conducted in Mareeba, or at such place as the parties agree.

22.5 Subject to clause 22.4, the mediation may be conducted by the Land Court.

22.6 If the Dispute Parties have not agreed on the mediator within fifteen (15) Business Days of receipt of the Dispute Notice, the mediator is the person appointed by the President of the Queensland Law Society, or the President's nominee, acting on the request of any Dispute Party.

22.7 The Dispute Parties must pay the mediator's remuneration in equal proportion unless otherwise agreed or determined by the mediator. Each Dispute Party must pay its own costs of the mediation unless otherwise agreed or determined by the mediator.

22.8 If the Dispute, referred to a mediator, is not resolved within fifteen (15) Business Days of the date of appointment of the mediator, then the Dispute Parties may take such other lawful action as they see fit to resolve the Dispute.

22.9 This clause 22 does not prevent any Dispute Party from obtaining any urgent injunctive, declaratory or other relief from a court.

23. CONFIDENTIALITY

23.1 The following information is Confidential Information:

- (a) all anthropological and ethnographic information and information concerning indigenous law and custom, cultural heritage and areas of traditional significance relating to the Djungan People or the people represented by the Nguddaboolgan PBC; and
- (b) commercial information of a confidential nature relating to business and financial activity of a Grantee Party, including information contained in the Application, information regarding production levels and production values and theories of mineral occurrence and mineral discoveries and information contained in a Threshold Amount Report ,

which is received or acquired in writing, orally or through observation, or is identified in writing as being confidential.

23.2 The Parties acknowledge that this Agreement is not Confidential Information.

23.3 Each Party undertakes not to disclose Confidential Information without the written consent of each of the Parties unless:

- (a) required by law; or
- (b) it is, or becomes public knowledge (other than in breach of this Agreement); or
- (c) it was received from another person having the unrestricted legal right to disclose the information; or
- (d) it is disclosed to the Parties' accountants, financiers, financial institutions, legal advisers, auditors, proposed Assignees or employees on their undertaking to keep the information confidential in accordance with this Agreement.

23.4 Ownership of intellectual property in Inspection Reports remains with the Djungan People or the people represented by the Nguddaboolgan PBC. The Grantee Party will have a right to use and retain a copy of the Inspection Report relevant to a Mining Tenement the grant of which was consented to under this Agreement for the purposes of conducting Mining Activities and for purposes identified in this Agreement.

24. GST

24.1 The Parties acknowledge that GST may be payable on a Supply under this Agreement.

24.2 Amounts payable under this agreement, including percentages under clause 14, are specified exclusive of GST.

24.3 Where GST is payable upon any Supply under this Agreement, the consideration payable by the Recipient to the Supplier for the Supply will be adjusted in accordance with clause 24.4 and clause 24.5.

- 24.4 Subject to the Supplier issuing a valid Tax Invoice, the consideration payable by the Recipient to the Supplier for the Supply will be increased by the amount equal to that which the Supplier is obliged to remit as GST on the Supply ("the Amount").
- 24.5 If it is determined on reasonable grounds that the amount of GST collected from the Recipient under this clause 24 differs, for any reason, from the amount of GST paid or payable by the Supplier, including by reason of:
- (a) any amendment to the GST;
 - (b) the issue of a ruling or advice by the Commissioner of Taxation; or
 - (c) a refund to the Supplier in respect of a Supply made under this Agreement,
- the Recipient will be entitled to a refund of the additional consideration collected from the Recipient.
- 24.6 The Parties will exchange such information as is reasonably necessary for each to make a reasonable assessment of the Amount.
- 24.7 If a payment to a party under this Agreement is a reimbursement or indemnification calculated by reference to a cost or expense of that party, the payment must be reduced by any Input Tax Credit to which that party is entitled for that cost or expense.

25. OPT IN DEED

- 25.1 Subject to clause 25.2, prior to making an application for the grant of a Mining Tenement, the Small Scale Miner must sign the Opt in Deed.
- 25.2 Where a Small Scale Miner has made an application for a Mining Tenement prior to the Commencement Date, the Opt in Deed may be signed after the Commencement Date.
- 25.3 Within ten (10) Business Days of the Small Scale Miner signing the Opt in Deed, the Small Scale Miner will provide a copy of that executed deed to the Native Title Parties, the Nguddaboolgan PBC, the NQMA and the State.
- 25.4 The Parties agree that, on and from the commencement of the Opt in Deed, the Small Scale Miner will be required to observe and be bound by all the obligations, covenants, terms and conditions in this Agreement that are applicable to the Grantee Party.

26. ASSIGNMENT

- 26.1 A Grantee Party who is a Small Scale Miner may assign its rights and obligations under the Opt in Deed to another Small Scale Miner, if:
- (a) the Grantee Party has provided to the Native Title Parties, the Nguddaboolgan PBC, NQMA and the State, a notice of intent to assign the Mining Tenement granted or renewed under this Agreement and referred to in the Opt in Deed; and
 - (b) the Assignee and the Grantee Party execute a deed on substantially the same terms as the Deed of Assumption for Small Scale Miner.

- 26.2 Within twenty (20) Business Days of execution of the Deed of Assumption for Small Scale Miner by the Grantee Party and the Assignee, the Grantee Party will provide a copy of the executed deed to the Native Title Parties, the Nguddaboolgan PBC, the NQMA and the State.
- 26.3 The Deed of Assumption for Small Scale Miner comes into effect on the day on which the last party signs it.
- 26.4 A Grantee Party who is a Small Scale Miner may assign its rights and obligations under the Opt in Deed to a person who is not a Small Scale Miner if:
- (a) the Grantee Party has provided to the Native Title Parties, the Nguddaboolgan PBC, NQMA and the State, a notice of intent to assign the Mining Tenement granted or renewed under this Agreement and referred to in the Opt in Deed;
 - (b) the Assignee and the Grantee Party execute a deed on substantially the same terms as the Deed of Assumption for Non-Small Scale Miner.
- 26.5 Within twenty (20) business days of execution of the Deed of Assumption for Non-Small Scale Miner by the Grantee Party and the Assignee, the Grantee Party will provide a copy of the deed to the Native Title Parties, the Nguddaboolgan PBC, NQMA and the State.
- 26.6 The Deed of Assumption for Non-Small Scale Miner comes into effect on the day on which the last party signs it.
- 26.7 The Grantee Party acknowledges that it will remain liable for a breach of this Agreement committed prior to the Date of Assignment.

27. ASSIGNMENT TO RNTBC

- 27.1 Subject to clause 27.4, if a determination of Native Title is made by the Federal Court in relation to Native Title Claims ("Further Determination") and a Registered Native Title Body Corporate ("RNTBC") is established to hold the Native Title or act as agent or representative of the common law holders, the Native Title Parties will:
- (a) direct the RNTBC to execute a deed on substantially the same terms as the Deed of Assumption for RNTBC in relation to the area covered by any Further Determination; and
 - (b) use their best endeavours to ensure that the RNTBC executes the Deed of Assumption for RNTBC in relation to the area covered by any Further Determination.
- 27.2 Within 20 business days of execution of the Deed of Assumption for RNTBC by the Native Title Parties and the RNTBC, the Native Title Parties will provide the deed to all of the other Parties for execution.
- 27.3 On and from the date the Deed of Assumption for RNTBC is executed by all the Parties, in relation to the area covered by any Further Determination:
- (a) the RNTBC will be substituted for the Native Title Parties as a Party to this Agreement;

- (b) the RNTBC will assume the rights and obligations of the Native Title Parties under this Agreement; and
- (c) all references to the Native Title Parties in this Agreement are to be read as references to the RNTBC and this Agreement will apply to the RNTBC as if it were the Native Title Parties.

27.4 If the RNTBC is the Nguddaboolgan PBC, the Nguddaboolgan PBC need not enter into a Deed of Assumption but the parties agree that the consequences in clause 27.3 will apply on and from the date the Further Determination comes into effect.

28. ENVIRONMENTAL CONDITIONS

The Grantee Party must comply with all the conditions of the Level 2 Environmental Authority relating to a Mining Tenement, the grant, renewal or variation of which was consented to under this Agreement.

29. REHABILITATION

- 29.1 The Grantee must comply with all the rehabilitation conditions of the Level 2 Environmental Authority relating to a Mining Tenement the grant, renewal or variation of which was consented to under this Agreement.
- 29.2 The Grantee Party must comply with the law relating to the protection of the environment and rehabilitation of any Mining Tenement the grant, renewal or variation of which was consented to under this Agreement.
- 29.3 The Grantee Party must rehabilitate the Mining Tenement the grant, renewal or variation of which was consented to under this Agreement to the standard in accordance with the Level 2 Environmental Authority.

30. NON-COMPLIANCE WITH CLAUSES 28 AND 29

Notwithstanding any other provision of this Agreement, if a Party considers that the Grantee Party is not complying with its obligations in clauses 28 and 29, that Party may take any action available in accordance with the EPA in relation to such non-compliance.

31. EMPLOYMENT

- 31.1 The Grantee Party agrees that where it employs 4 permanent employees in its operation that it will provide notice of any further employment opportunities to the Native Title Parties.
- 31.2 The NQMA agrees to facilitate employment opportunities between the Grantee Party and the Djungan People as contemplated by clause 31.1 by performing a liaison role to establish a contact point between the Grantee Party and appropriately qualified members of the Djungan People.

32. LIAISON COMMITTEE

- 32.1 The NQMA and the Native Title Parties agree to meet within 2 years from the Commencement Date and 4 years after the Commencement Date (unless otherwise agreed) for the purposes of reviewing the operation of this Agreement and to identify

aspects of this Agreement which are working satisfactorily and unsatisfactorily ("Liaison Committee").

32.2 The Liaison Committee will comprise 2 representatives of the NQMA and 2 representatives of the Native Title Parties unless otherwise agreed.

32.3 The outcomes from this process will be considered by the Parties when considering the extension of the Expiry Date under clauses 4.4 to 4.6.

32.4 Nothing in this clause obliges the Parties to amend this Agreement to address any of the matters identified under clause 31.1.

33. PROCEDURES FLOWCHART

The procedure intended to be followed in relation to the grant of Mining Tenements pursuant to this Agreement is set out in the flowchart in Schedule 10. The Parties agree that this flowchart is included in this Agreement for information and communication purposes only, and does not affect the rights and obligations of the Parties arising under this Agreement.

34. FORCE MAJEURE

If a Party is unable to wholly or in part perform any obligation (other than an obligation to pay money) under this Agreement as a result of a Force Majeure Event, that Party must give notice to the other Parties of that Force Majeure Event outlining reasonably full particulars of the Force Majeure Event, in which case the obligation is suspended so far as the Party's ability to perform the obligation is affected by that Force Majeure Event for the duration of the Force Majeure Event.

35. NOTICE

35.1 Any Party wishing to give notice for any purpose under this Agreement must do so in the following manner, unless another manner is expressly provided for:

- (a) by notice in writing directed to the recipient's Address for Service; or
- (b) hand delivered or sent by prepaid post or facsimile or email to the Address for Service.

35.2 A notice given in accordance with clause 35.1 is taken to be received if:

- (a) hand delivered, on delivery;
- (b) sent by prepaid post, with confirmation from the recipient; and
- (c) sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 8 Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice;

35.3 A Party must inform the other Parties of any change of address to the Address for Service within 10 Business Days of that change.

35.4 Any change notified under clause 35.3 will become the Address for Service for that Party.

36. STATE'S DECISION-MAKING

- 36.1 Nothing in this Agreement will act as an agreement, a fetter, or as an estoppel about the exercise of discretion, or the making of a decision by the State.
- 36.2 The Parties acknowledge that the grant of Mining Tenements and other rights consented to in clause 7 and clause 8 are subject to the exercise of discretions and the consents provided in clause 7 and clause 8 are not to be construed as a representation by the State that the Mining Tenements and other rights will be granted.

37. INDEPENDENT LEGAL ADVICE

- 37.1 The Native Title Parties represent and warrant that prior to the signing of this Agreement they and the Djungan People have received independent legal advice on all aspects of this Agreement.
- 37.2 The Nguddaboolgan PBC represents and warrants that prior to the execution of this Agreement it received independent legal advice on all aspects of this Agreement.
- 37.3 NQMA represents and warrants that prior to the signing of this Agreement it has received independent legal advice on all aspects of this Agreement.

38. GENERAL

- 38.1 This Agreement does not create a relationship of employment, agency or partnership between the Parties.
- 38.2 If part or all of any provision of this Agreement is illegal or unenforceable, that part may be severed from this Agreement and the remaining provisions of this Agreement continue in force.
- 38.3 A right under this Agreement will only be waived where that waiver is in writing and is signed by the Party whose right is waived. Where a right under this Agreement is waived, the waiver will be limited to the specific right stipulated in writing.
- 38.4 Each Party must use its best efforts to do all things necessary to give effect to this Agreement and refrain from doing anything that could hinder the performance of this Agreement.
- 38.5 This Agreement may be executed in any number of counterparts. All counterparts taken together will constitute one instrument.
- 38.6 This Agreement must only be altered in writing signed by all Parties, but such an amendment would not come into effect until the amended ILUA is registered by the National Native Title Tribunal and the original ILUA is deregistered
- 38.7 Each Party will pay its own costs of and incidental to:
- (a) the negotiation, preparation and execution of this Agreement; and
 - (b) this Agreement being registered on the Register.

38.8 This Agreement will be governed by the laws of Queensland and each Party submits to the non-exclusive jurisdiction of the courts of Queensland.

38.9 This Agreement is the entire agreement between the Parties in respect of its subject matter.

EXECUTED AS A DEED.

SIGNED SEALED AND DELIVERED by
Ernest Burns for him/herself
and on behalf of the Djungan People

this 24th day of APRIL 2015

in the presence of



(signature of witness)

Rhonda M. Jacobsen

(print name of witness)

61 Anderson St Manunda

(address of witness)


(signature)

SIGNED SEALED AND DELIVERED by
Lynette Geary for him/herself
and on behalf of the Djungan People

this 24th day of APRIL 2015

in the presence of



(signature of witness)

Rhonda M. Jacobsen

(print name of witness)

61 Anderson St Manunda

(address of witness)


(signature)

SIGNED SEALED AND DELIVERED by
Maxwell Underwood for him/herself
and on behalf of the Djungan People

this 24th day of April 2015

in the presence of



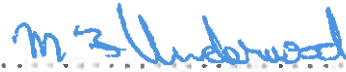
(signature of witness)

Rhonda M Jacobsen

(print name of witness)

61 Anderson St Manunda

(address of witness)



(signature)

SIGNED SEALED AND DELIVERED by
Karen Sanusi for him/herself
and on behalf of the Djungan People

this 24th day of April 2015

in the presence of



(signature of witness)

Rhonda M Jacobsen

(print name of witness)

61 Anderson St Manunda

(address of witness)



(signature)

SIGNED SEALED AND DELIVERED by
Kate Higgins for him/herself
and on behalf of the Djungan People

this 24th day of April 2015

in the presence of



(signature of witness)

Rhonda M Jacobson

(print name of witness)

61 Anderson St Manunda

(address of witness)



(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the Nguddaboolgan Native Title
Aboriginal Corporation RNTBC ICN 7727

by Lynette Geary

(full name)

DIRECTOR

(position)

this 24th day of April 2015



(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the Nguddaboolgan Native Title
Aboriginal Corporation RNTBC ICN 7727

by Maxwell Underwood

(full name)

DIRECTOR

(position)

this 24th day of April 2015



(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the Nguddaboolgan Native Title
Aboriginal Corporation RNTBC ICN 7727

by Karen Sanusi
(full name)
DIRECTOR
(position)

this 24th day of APRIL 2015

K. Sanusi
(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the Nguddaboolgan Native Title
Aboriginal Corporation RNTBC ICN 7727

by Kate Higgins
(full name)
DIRECTOR
(position)

this 24th day of APRIL 2015

K. Higgins
(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the Nguddaboolgan Native Title
Aboriginal Corporation RNTBC ICN 7727

by KENNETH RODERICK JACKSON
(full name)
DIRECTOR
(position)

this 27th day of APRIL 2015

K. R. Jackson
(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the **State of Queensland**

by Anthony Lynam
(full name)

Minister
(position)

a person duly authorised to act on this behalf,

this 25th day of JUNE 2015

in the presence of

[Signature]
(signature of witness)

JOSH LOCKYER
(print name of witness)

123. ROYAL PDE. BANYO. Q. 4014.
(address of witness)

[Signature]
(signature)

SIGNED SEALED AND DELIVERED for and
on behalf of the **North Queensland Miners
Association Incorporated**

this 5th day of May 2015

by RALPH DE LACEY
(full name)

the President and countersigned

by Paul E. Grossland
(full name)

the Secretary

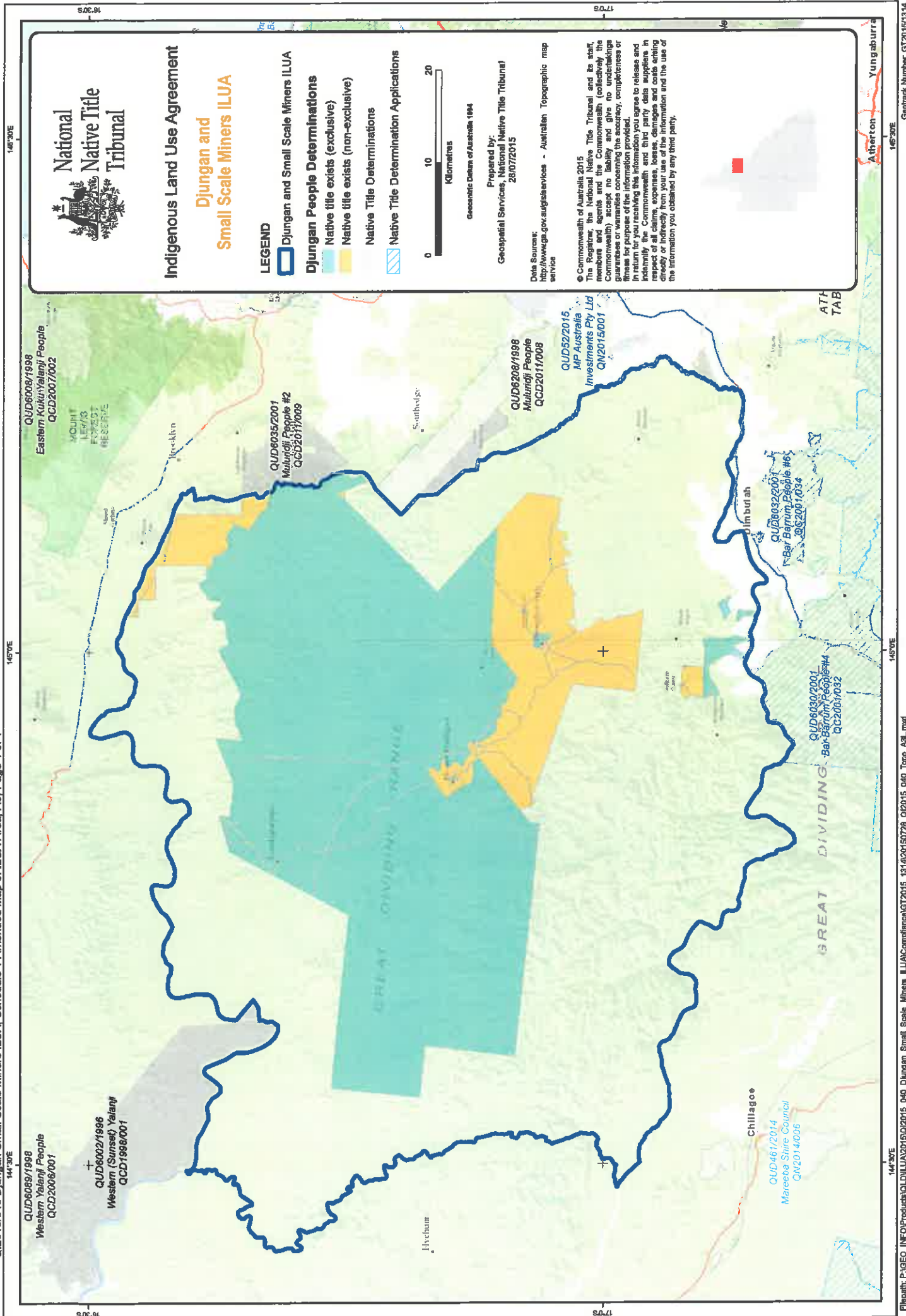
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(signature)

P.E. Grossland
(signature)

SCHEDULE 1 – ILUA MAP AND WRITTEN DESCRIPTION

ILUA MAP

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WRITTEN DESCRIPTION

External Boundary Description:

Commencing at the junction of the centrelines of the Walsh River and Cattle Creek; then generally westerly and generally north westerly along the centreline of the Walsh River to Doolan Creek, then generally north easterly along the centreline of Doolan Creek to its intersection with an unnamed creek at approximately Longitude 144.529050° East, Latitude 16.986010° South, then generally northerly along that creek to Longitude 144.530680° East, Latitude 16.919720° South; then north westerly to a point on another unnamed creek at Longitude 144.525530° East, Latitude 16.917110° South; then generally northerly along that creek and Elizabeth Creek to Longitude 144.521940° East, Latitude 16.873250° South; then northerly to a point on an unnamed creek at Longitude 144.521760° East, Latitude 16.859910° South; then generally northerly along that creek to Big Watson Creek; then generally north westerly and generally north easterly along the centreline of that creek to the Mitchell River; then in a generally easterly direction along the left (Southern bank) of the Mitchell River to the south western corner of the eastern severance of Lot 285 on SP108034; then generally easterly and generally north westerly along boundaries of that lot to, again the left (Southern bank) of the Mitchell River; then generally easterly along that river to Pocket Creek; then generally southerly along the centreline of Pocket Creek to Latitude 16.626660° South; then generally southerly passing through the following co-ordinate points.

Longitude ° (East)	Latitude ° (South)
145.148626	16.629799
145.148038	16.631859
145.148038	16.633625
145.148038	16.636272
145.148479	16.639656
145.149803	16.643922

Then to the intersection of the centreline of Charcoal Creek and Latitude 16.648481° South, being a north west corner of QUD6035/01 Muluridji People 2 (QC01/37); then generally southerly passing through the following co-ordinate points.

Longitude ° (East)	Latitude ° (South)
145.154696	16.661533
145.152474	16.663200
145.151363	16.664033
145.150529	16.665978
145.150807	16.66738-6
145.151362	16.669311
145.152474	16.669866
145.155529	16.672644
145.156085	16.674311

Then southerly to the boundary of Lot 4513 on PH1727 (Fonthill Pastoral Holding) at Latitude 16.677185° South, being a boundary of QUD6035/01 Muluridji People 2 (QC01/37), then generally southerly along the boundaries of that lot to Latitude 16.750084° South; then southerly and generally south westerly passing through the following co-ordinate points.

Longitude ° (East)	Latitude ° (South)
145.174970	16.768003
145.174415	16.768225
145.172470	16.770447
145.169970	16.772669
145.161837	16.777669

Then south westerly to the northernmost corner of Lot 56 on NPW767 (Hann Tableland National Park); then south westerly and generally south easterly along the western boundaries of that lot to Latitude 16.879437° South. Then generally south easterly passing through the following co-ordinate points.

Longitude ° (East)	Latitude ° (South)
145.186637	16.884058
145.187193	16.885725
145.191915	16.891558
145.193457	16.894716
145.193948	16.897369
145.193583	16.905447
145.193880	16.907391
145.194030	16.907486
145.195680	16.911860
145.197546	16.917743
145.202210	16.928360
145.206799	16.936538
145.209310	16.940127
145.209669	16.941704
145.211170	16.945080
145.212350	16.945530
145.212940	16.948130
145.215050	16.949820
145.214820	16.952870
145.218110	16.956940
145.221640	16.958630
145.221400	16.960770

Then south easterly to an unnamed track at approximately Longitude 145.224340° East, Latitude 16.963490° South; then generally south easterly along the centreline of that track to Longitude 145.241160° East; then generally south easterly passing through the following co-ordinate points.

Longitude ° (East)	Latitude ° (South)
145.243390	16.976500

Longitude ° (East)	Latitude ° (South)
145.248695	16.978074
145.254290	16.994388
145.257590	16.993285

Then southerly to a point on Cattle Creek at Latitude 16.997620° South; then generally southerly along the centreline of that creek back to the commencement point.

Note

Data Reference and source

- Agreement boundary data compiled by National Native Title Tribunal based on data sourced from North Queensland Land Council
- Native title determination application QUD6035/01 Muluridji People 2 (QC01/37) as accepted for registration on 05 November 2001.
- Cadastral data sourced from Department of Environment & Resource Management, Qld (1 August 2011).
- Rivers / Creeks based on cadastre where available, elsewhere, Topographic vector data © Commonwealth of Australia (Geoscience Australia) 2003.

Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

SCHEDULE 2 – OPT IN DEED

THIS OPT IN DEED is made

By:

[insert name of Small Scale Miner]

BACKGROUND

- A. The Small Scale Miner will apply/has applied for an Interest in the Area.
- B. The ILUA provides consent to the grant of the Interest.
- C. Clause 25 of the ILUA provides that prior to the application for the grant of the Mining Tenement in the Area, the Small Scale Miner must execute the Opt in Deed unless the application was made prior to the Commencement Date in which event the Opt in Deed may be signed after the application.
- D. The Small Scale Miner wishes to enter into this Deed, as the Opt in Deed referred to in clause 25 of the ILUA, to record the agreement of the Small Scale Miner to assume the rights and obligations of the Grantee Party under the ILUA.
- E. Upon execution of this Deed by the Small Scale Miner, the Small Scale Miner assumes the rights and obligations of the Grantee Party under the ILUA as if the Small Scale Miner were the Grantee Party referred to in the ILUA.
- F. In assuming the rights and obligations under the ILUA as if the Small Scale Miner were the Grantee Party, the Small Scale Miner acknowledges that he executes this Deed with the intent that by his execution he binds himself legally such that the Native Title Parties, the Nguddaboolgan PBC and the State shall have the benefit of the terms and conditions of the ILUA and may enforce, as against the Small Scale Miner, the terms and conditions of the ILUA as if the Small Scale Miner were the Grantee Party referred to in the ILUA.

1. INTERPRETATION

In this Deed, terms that are not defined in clause 2 have the same meaning as they are given in the ILUA.

2. DEFINITIONS

Aboriginal Cultural Heritage Protocols means the Aboriginal Cultural Heritage Protocol and Aboriginal Cultural Heritage Finds Protocol contained in Schedules 4 and 5 of the ILUA.

Small Scale Miner means **[insert the Small Scale Miner's name]**

Area means the area to which the ILUA applies.

Deed means this document.

ILUA means the Indigenous Land Use Agreement, including its schedules, dated [insert date] between the Native Title Parties, the Nguddaboolgan PBC, the State and the NQMA and registered on the Register pursuant to section 24CG(1) of the NTA on [insert date] as agreement number [insert number].

Interest means the Exploration Interest or Mining Interest applied for under the MRA described as follows:

- (a) Type: (Prospecting Permit/Exploration Permit/Mineral Development Licence/ Mining Claim/Mining Lease)
- (b) Description [insert tenure ID]:
- (c) Date of application: [insert details]

Native Title Parties means *[insert names of the Native Title Parties under the ILUA]*.

Nguddaboolgan PBC means Nguddaboolgan Native Title Aboriginal Corporation RNTBC ICN 7727.

NQMA means the North Queensland Miners Association Incorporated.

State means State of Queensland.

3. APPLICATION FOR GRANT OF INTEREST

3.1 The Small Scale Miner acknowledges that the Interest is within the Area.

3.2 The Small Scale Miner agrees that by signing this Deed the Small Scale Miner:

- (a) assumes the rights and obligations of the Grantee Party under the ILUA in relation to the Interest as if the Small Scale Miner were the Grantee Party referred to in the ILUA;
- (b) assumes the rights and obligations of the Grantee Party under the ILUA for the benefit of the Native Title Parties, the Nguddaboolgan PBC and the State;
- (c) acknowledges that the ILUA, including the Aboriginal Cultural Heritage Protocols, is enforceable as between the Native Title Parties, the Nguddaboolgan PBC, the State and the Small Scale Miner as if the Small Scale Miner were the Grantee Party referred to in the ILUA; and
- (d) acknowledges that he or she is legally bound by the ILUA.

4. INDEPENDENT LEGAL ADVICE

4.1 The Small Scale Miner acknowledges that he or she has had an opportunity to seek independent legal advice with respect to all aspects of this Deed, and the ILUA.

5. EXECUTION

5.1 No later than 10 Business Days after signing this Deed the Small Scale Miner must provide a copy of this Deed to the Native Title Parties, the Nguddaboolgan PBC, NQMA and the State.

6. GOVERNING LAW

This Deed will be governed by the law of the State of Queensland.

EXECUTED AS A DEED.

SIGNED SEALED AND DELIVERED

by
(name of Small Scale Miner)

this day of 20

in the presence of

(signature of witness)

(print name of witness)

(address of witness)

(signature)

SCHEDULE 3 – COMPENSATION and COSTS FOR CULTURAL HERITAGE

1. Benefits, Payments and related items

1.1 The following payments apply in accordance with clauses 12 and 15:

1.2 Table

Tenement Type	Rate (exclusive of GST) up to 30/6/12
Exploration Permits	Refer to NTPCs
Prospecting Permit	\$50* per permit
Mineral Development Licence	\$500* for the first 50 ha then \$10* per ha thereafter for the balance of the Mineral Development Licence area per annum
Mining Lease	\$500* for the first 50 ha then \$10* per ha thereafter for the balance of the Mining Lease area per annum
Mining Claim	\$70* per annum

Costs Cultural Heritage

Item	Costs (exclusive of GST)
1. Site Inspection	
(a) Up to the first 15ha	\$1500*
(b) Additional hectares (after 15ha)	\$80*
2. Mileage	
(a) ATO vehicle mileage allowance > 2.5 litres (capacity); currently	74 cents per kilometre
(b) Off-road allowance is 15% of (a)	11.1 cents per kilometre
3. Accommodation	
3.1 Camping	
(a) Overnight allowance	\$10 per person per day
3.2 Commercial Accommodation	At cost

3.3 Accommodation in Mining Camp	Grantee to provide free of charge
4. Meals	\$50 per Inspector per day* (or as otherwise agreed)
5. Report	
(a) If a Site Inspection is undertaken	No fee
(b) If a Site Inspection is not undertaken	10% of 1(a)
6. Administration	
Administrative charge	15% of the Site Inspection fee in 1(a) above

All amounts denoted with an asterix are subject to annual CPI adjustment from 1 July 2012 in accordance with clause 15 of ILUA. As soon as practicable after 1 July each year, the NQMA will publish on its website the CPI adjusted amounts calculated in accordance with clause 15.

SCHEDULE 4 - ABORIGINAL CULTURAL HERITAGE PROTOCOL

1. Compliance with Protocol

- 1.1 The Parties agree that the protection of Aboriginal Cultural Heritage is of primary importance.
- 1.2 A Grantee Party may comply with this Aboriginal Cultural Heritage Protocol ("Protocol") prior to the grant of a Mining Lease, Mining Claim or Mineral Development Licence.
- 1.3 A Grantee Party must not undertake Mining Activities on a Proposed Work Area until the Grantee Party has complied with the conditions of this Protocol.
- 1.4 The Native Title Parties may nominate an entity to act on their behalf in relation to actions they may take in accordance with this Schedule.

2 Notice

- 2.1 The Grantee Party will not issue a notice under clause 2.2 of this Protocol for an Inspection to take place during the period 1 October – 31 March in any calendar year, unless otherwise agreed by the Native Title Parties or the Nguddaboolgan PBC.
- 2.2 Before a Grantee Party undertakes Mining Activities on a Proposed Work Area the Grantee Party must give notice to the Native Title Parties or the Nguddaboolgan PBC of the Mining Activities which the Grantee Party intends to undertake in the Proposed Work Area.
- 2.3 The notice referred to in clause 2.2 must include:
 - (a) a copy of the Grantee Party's application for a Mining Lease, Mineral Development Licence or Mining Claim;
 - (b) the name of the Grantee Party and their authorised representative, if applicable;
 - (c) the street address of the Grantee Party and where available a facsimile number;
 - (d) telephone number and email address for the Grantee Party;
 - (e) details of the Mining Activities which the Grantee Party intends to undertake in the Proposed Work Area including information indicating:
 - (i) the minerals to be mined from the Proposed Work Area;
 - (ii) the proposed method of extracting and separating the minerals including a description of any machinery to be used;
 - (iii) the duration of the proposed activities and the term of the Mining Lease, Mineral Development Licence or Mining Claim;
 - (iv) whether existing access roads will be used, and if not, the location and method of construction of any new roads or tracks;
 - (v) the proposed water, timber and other natural resource requirements for the proposed activities;

- (vi) whether explosives will be used, and if so, what type;
 - (vii) the estimated tonnage of ore to be produced annually from the Proposed Work Area; and
 - (viii) whether it is proposed to engage any contractors in or in relation to the proposed activities;
- (f) two copies of a map (either A3 or A4 size) of a scale 1:10,000 or larger magnification sufficient to allow the Native Title Parties or the Nguddaboolgan PBC to clearly identify the Mining Lease, Mineral Development Licence or Mining Claim, Proposed Work Area and the proposed location of access roads or tracks, tailings and other dams, camp sites, plant sites, infrastructure sites and any other areas to be disturbed as a result of the activities;
 - (g) a topographical map showing the location of the Mining Lease, Mineral Development Licence or Mining Claim and Proposed Work Area;
 - (h) aerial photographs (where available), if requested by Native Title Parties or the Nguddaboolgan PBC;
 - (i) a description of any landmarks or features which will assist the Native Title Parties or the Nguddaboolgan PBC to locate the Mining Lease, Mineral Development Licence or Mining Claim and Proposed Work Area;
 - (j) details of any other matter which may assist the Native Title Parties or the Nguddaboolgan PBC to understand the impact of the Mining Activities on the Proposed Work Area;
 - (k) a statement that the Native Title Parties or the Nguddaboolgan PBC can respond to the notice by stating that:
 - (i) the Grantee Party can only undertake the Mining Activities referred to in the notice given under clause 2.2 subject to the recommendations of an Inspection Report which will be prepared:
 - A. without an Inspection of the Proposed Work Area; or
 - B. following an Inspection of the Proposed Work Area;
 - (ii) a further statement that the Grantee Party can undertake the Mining Activities referred to in the notice given under clause 2.2 if the Native Title Parties or the Nguddaboolgan PBC do not respond within 10 Business Days of receipt of the notice.

3 Native Title Parties' Response to Notice

- 3.1 Within 10 Business Days of the receipt of a notice given under clause 2.2, the Native Title Parties or the Nguddaboolgan PBC must notify the Grantee Party that the Mining Activities referred to in the notice may be undertaken subject to the recommendations of an Inspection Report which will be prepared either: