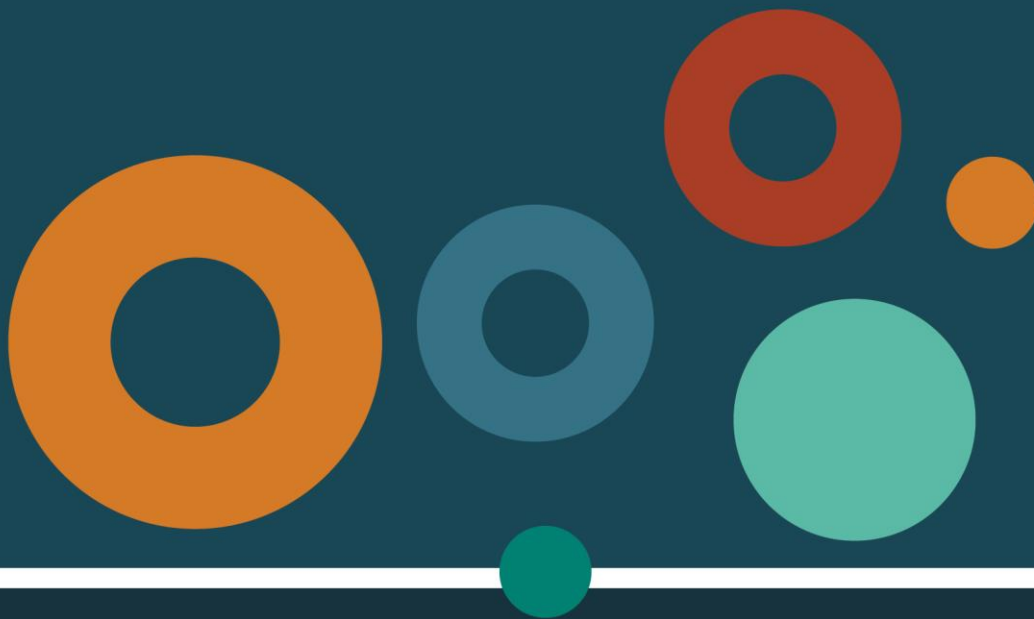


Indigenous Land Use Agreement: Guide for negotiation and registration

May 2019



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Introduction

This guide will assist you where you have applied to the Department of Natural Resources, Mines and Energy (DNRME) for a dealing under the *Land Act 1994* (Qld) and have:

- received an offer from DNRME indicating that the application for the dealing has been approved subject to native title issues being satisfactorily addressed; or
- consulted your legal advisors, who have recommended that an Indigenous Land Use Agreement (ILUA) be used to address native title for your proposed dealing.

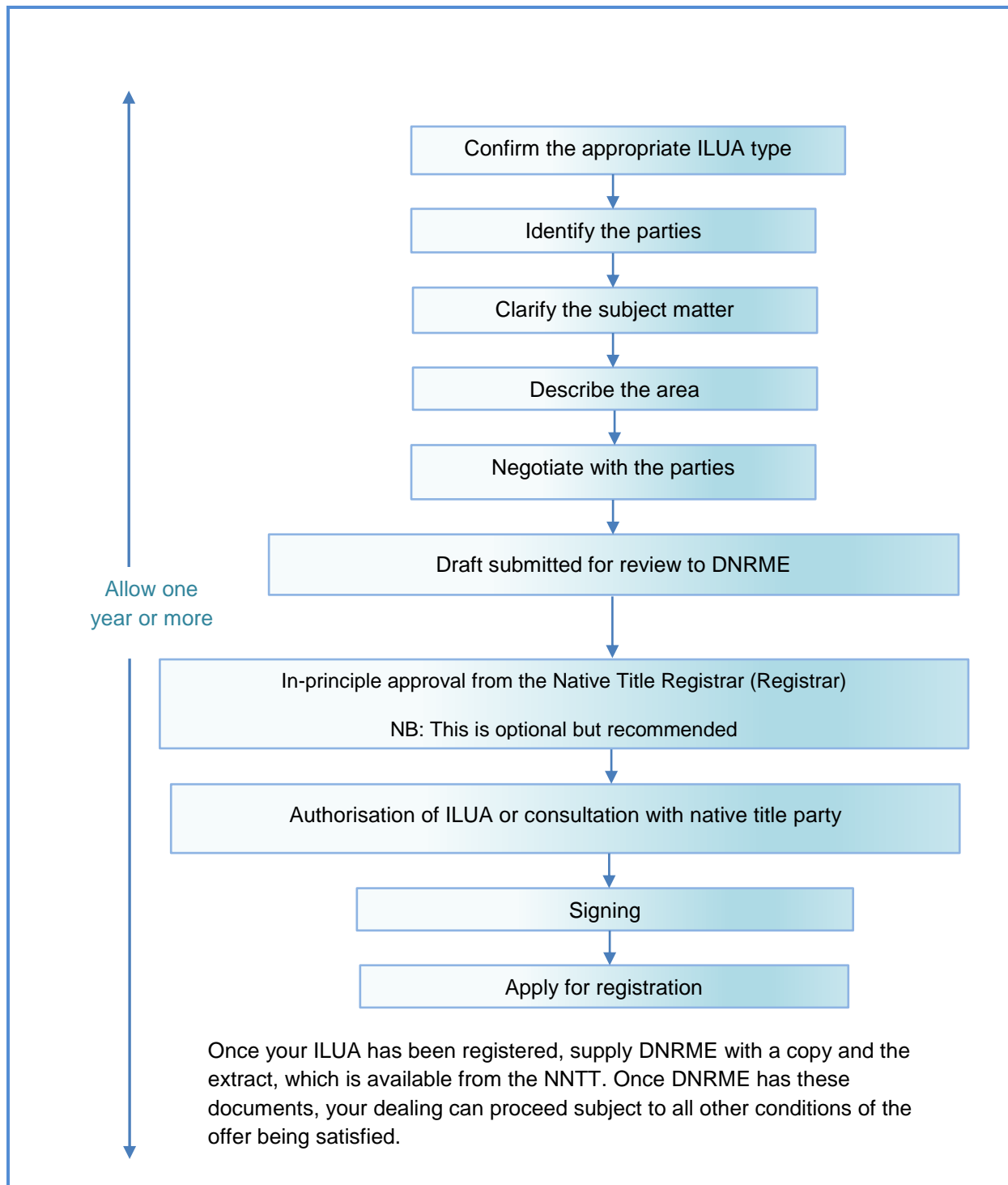
This guide explains the steps to negotiate and register an ILUA for the purpose of addressing native title for a dealing under the *Land Act 1994*. The guide includes two sample ILUAs – an area agreement and a body corporate agreement.

This guide is not legal advice, and you and the other parties to the ILUA are strongly advised to seek independent legal advice.

This guide is to be read in conjunction with ILUA information detailed on the National Native Title Tribunal (NNTT) website.

Steps to negotiation and registration

The following flowchart explains the steps to negotiation and registration of an ILUA for the purpose of addressing native title for a dealing under the *Land Act 1994*.



Step 1: Confirm the appropriate ILUA type

The *Native Title Act 1993* (Cth) (NTA) sets out when an area agreement or a body corporate agreement should be used.

An area agreement is required:

- if only part of the area of the proposed ILUA is covered by one (or more) registered native title body corporate (RNTBC); or
- if there is no RNTBC for the ILUA area (i.e. there have been no determinations of native title for the area).

A body corporate agreement is required if there is a RNTBC or RNTBCs for the whole of the ILUA area (i.e. there has been a determination or determinations of native title for the area).

Step 2: Identify the party

It is important that you identify the correct native title party for the ILUA in order to have it registered by the Registrar and to enable your proposed dealing to go ahead. The identity of the native title party differs depending on whether the ILUA is an area agreement or a body corporate agreement.

There may also be other parties to the ILUA. For example, the State must be a party to the ILUA if the ILUA involves the surrender of native title or if this is otherwise a condition as set out in your offer from DNRME.

The sample ILUAs list the State as a party as they involve the surrender of native title; but if there is no surrender of native title the State will not usually need to be a party unless the nature of the dealing or the activities being done in accordance with the dealing are such that the State should be a party to the ILUA.

At this stage, it is also recommended that you consult with the relevant Aboriginal or Torres Strait Islander Representative Body.

Step 3: Clarify the subject matter

The subject matter of your ILUA is:

- the type of dealing (eg. convert a term lease to freehold);
- the native title consents required to complete the dealing (eg surrender of native title to the State); and
- any other activities for which the ILUA provides.

Clarifying the subject matter will assist you to identify who else, apart from the native title party, must be a party to the ILUA.

It is also important to be aware that if the State is not a party to the ILUA then you cannot make commitments on the State's behalf.

Step 4: Describe the area

Your offer from DNRME will usually identify the area over which native title needs to be addressed to allow the dealing to proceed. Where this information is not clear from the nature of the dealing itself then it will be a matter of negotiation between the parties to determine the ILUA area.

Step 5: Negotiate with the parties

Before beginning negotiations, it is a good idea to try to identify some of the other matters that may impact on the success and pace of your negotiations. In the State's experience these include:

- cultural differences between the parties;
- logistics (who to negotiate with, where, how often, and who pays for the negotiations).

You should be mindful that there is no onus or obligation on the native title party to enter into any negotiations and/or reach an agreement with you.

People of different cultures and life experience often have different expectations. Considering these before entering into negotiations with the parties might help you to develop culturally appropriate processes such as:

- understanding Queensland's contact history and its effect on Indigenous culture;
- considering differences in life experience in work, education, access to health care, etc.;
- considering differences in belief systems related to physical and spiritual connection to land.

Both the negotiation process and the implementation of the ILUA, in the long term, will benefit from a sound understanding between the parties, especially if a continuing relationship is required. If this is so, then it might be a good idea to first jointly develop a communication strategy.

Once the parties have been identified, questions like the following might arise:

- How often will the parties meet
- Which representative of the parties will attend
- Where is the most appropriate or cost-effective place to meet
- How will the parties communicate between meetings
- Who will pay for a suitable meeting venue and any refreshments
- What will the time frames between meetings be
- Do the parties need to meet at all, or can they conduct negotiations by teleconference or by correspondence
- Who will record the outcomes of the meeting
- How will achievements and milestones be acknowledged to maintain the momentum of the negotiations
- Who will pay for any travel costs and expenses incurred (if parties decide to meet face to face)
- Who will pay for any accommodation costs incurred (if parties must stay overnight)
- Will parties receive an allowance to compensate them for the time they spend attending meetings.

Keep contact addresses for each party up-to-date throughout the negotiations to ensure that communication is easy and efficient.

The NNTT can help you manage the logistics of negotiations (e.g. by arranging and facilitating meetings and providing information and administrative support to the parties).

The more consideration you give to resolving logistical matters before starting formal negotiations, the more likely it is that your process will be smooth.

Step 6: Draft submitted for review to DNRME

Once agreement is reached between the parties to the ILUA, and prior to the ILUA being authorised by the native title party, provide a copy of the proposed ILUA to DNRME. DNRME will review the ILUA and advise if, in DNRME's opinion, the ILUA satisfactorily addresses native title for the purpose of the proposed dealing. DNRME will not provide legal advice and it gives no guarantee that its review will ensure registration of the ILUA.

Step 7: In-principle approval from the Registrar

To ensure that your ILUA is durable and your dealing is not subsequently delayed or subject to disputes:

- draft the agreement carefully to capture the substance of what has been agreed
- record what has been agreed by the parties
- make sure that what has been detailed as agreed actually means the same to each party.

The NTA and the *Native Title (Indigenous Land Use Agreements) Regulations 1999* set out what an application for registering an ILUA must contain. Application forms are available from the NNTT website <http://www.nntt.gov.au>.

The Registrar can provide feedback on your draft application for registration (including your draft ILUA). While it is optional, it is a good idea to take advantage of this service before the ILUA is signed so that any necessary changes can be made during negotiations.

In the usual case, if the State is a party to the ILUA, you will need to allow approximately six weeks for the Minister of Natural Resources, Mines and Energy to agree to the terms of the ILUA.

Step 8: Authorisation of the ILUA or consultation with native title party

Before an area agreement will be registered by the Registrar, it must be authorised by all those people who hold, or may hold, native title. This will generally occur at an advertised meeting.

For area agreements, the application for registration of the ILUA must either be:

- certified by a Representative Aboriginal or Torres Strait Islander body or
- accompanied by a statement confirming that all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to the land or waters in the area covered by the agreement have been identified and all persons so identified have authorised the making of the agreement.

The purpose of the certification or statement is to satisfy the Registrar that 'all reasonable efforts' have been made to identify all the native title party to the area of the proposed ILUA, and to ensure that they are in agreement. Once registered, the ILUA binds all native title party, whether or not they are parties to the agreement.

For body corporate agreements, the RNTBC, which holds the native title on behalf of the common law holders, must consult with and obtain the consent of, the common law holders before making a decision to enter into the agreement. The RNTBC will provide a signed document confirming this has taken place.

In some cases, the process can be quick, while in others it can take several months and involve considerable effort from the parties. However, a properly completed ILUA avoids any possible opposition to registration of the ILUA and the likelihood of you having to recommence negotiation.

Step 9: Signing

When considering the signing of the ILUA, you need to decide whether there will be a meeting to bring all the parties together. The native title parties may wish to have all members of the broader group present and have a ceremony to mark the significance of the occasion.

It is important to ensure that the native title parties are authorised to sign the ILUA.

If the State is a party, the Minister will sign the ILUA after all other parties have signed.

Step 10: Apply for registration

The ILUA should nominate one party to apply to the Registrar for registration of the ILUA.

The State will not progress your dealing until the ILUA has been registered and any conditions specified in it and in DNRME's offer have been met.

For area agreements, it will usually take about six months to complete the process for registration of an ILUA. For body corporate agreements, it will usually take three months. Where objections or material adverse to the registration of an agreement is received, it may take longer to register the ILUA.

Once the Minister is satisfied that the native title requirements are met, DNRME will review any valuation and forward a revised Offer Account if required. You will need to satisfy any outstanding offer requirements.

Sample ILUA

Two sample ILUAs have been provided, one which is an area agreement and one which is a body corporate agreement. The sample ILUAs are in a format that the State believes meets the legislative requirements for an ILUA to be registered. They are general examples of how to prepare these types of ILUAs, and the content is based on hypothetical scenarios and negotiations.

However, in reality, each dealing is unique, and the specific clauses used in your ILUA will depend on your particular dealing. Therefore, while your ILUA may be for a dealing very similar to that in the sample ILUAs, what is agreed during your negotiations may be quite different. As such, care should be taken in relying too heavily on the sample ILUAs and independent legal advice should be obtained by all parties.

**INDIGENOUS LAND USE AGREEMENT (AREA AGREEMENT)
TO ENABLE THE CONVERSION OF A TERM LEASE
TO FREEHOLD LAND**

**THIS IS A SAMPLE AGREEMENT ONLY. PARTIES SHOULD NEGOTIATE AN
INDIGENOUS LAND USE AGREEMENT THAT ADDRESSES THEIR INDIVIDUAL
CIRCUMSTANCES.**

**ANY AGREEMENT THAT INCLUDES THE STATE AS A PARTY MUST BE
SUBMITTED TO DNRME FOR REVIEW BEFORE AUTHORISATION AND
EXECUTION**

This Agreement is made between the Proponent, the Native Title Parties and the State. At the request of the Proponent, the Native Title Parties agree, subject to the conditions of this Agreement, to surrender to the State any Native Title in relation to the Agreement Area in exchange for the Compensation Amount.

Preliminary matters:

This Agreement is a sample Indigenous Land Use Agreement (area agreement) under the *Native Title Act 1993* (NTA). An area agreement must be used:

- if there is no registered native title body corporate (RNTBC) for the agreement area – that is, there have been no determinations of Native Title for the area; or
- if there is a RNTBC for part of the agreement area only – that is, there has been one (or more) determinations of Native Title for part of the area.

This Agreement comprises the following parts:

- Part A: Particular terms – Part A contains the particular terms of this Agreement. Part A should be completed in accordance with the notes that relate to Part A.
- Part B: General terms – Part B contains the standard terms of this Agreement.
- Part C: Additional terms – Additional terms may be included in Part C, although care should be taken to ensure that additional terms do not amend any of the required terms contained in Part B.

Where there is a discrepancy or inconsistency between a part of this Agreement and any other part, the following descending order of precedence of the parts will apply to resolve the discrepancy or inconsistency:

- Part A: Particular terms;
- Part B: General terms; and
- Part C: Additional terms.

Part A: Particular terms

ITEM

A **Execution Date:**

This Agreement is made on the day of..... 20....

See Note 1 **B** **Parties:**

See Note 2

Proponent

ABN/ACN:

Street address:

Postal address:

Facsimile:

Email:

See Note 3

**Registered Native
Title Body
Corporate (RNTBC)**

ICN:

See Note 4

which holds the
Native Title on trust
for, or as agent for:

Street address:

Postal address:

Facsimile:

Email:

See Note 5

Registered Native Title Body Corporate (RNTBC)

ICN:

See Note 6

which holds the Native Title on trust for, or as agent for:

Street address:

Postal address:

Facsimile:

Email:

See Note 7

Registered Native Title Body Corporate (RNTBC)

ICN:

See Note 8

which holds the Native Title on trust for, or as agent for:

Street Address:

Postal Address:

Facsimile:

Email:

See Note 9

Registered Native Title Claimant (RNTC) (i.e. the person or persons who will execute the Agreement on behalf of the native title party)

See Note 10

on their own behalf
and on behalf of

Street Address:

Postal Address:

Facsimile:

Email:

See Note 11

**Registered Native
Title Claimant
(RNTC) (i.e. the
person or persons
who will execute
the Agreement on
behalf of the native
title party)**

See Note 12

on their own behalf
and on behalf of

Street Address:

Postal Address:

Facsimile:

Email:

See Note 13

**Registered Native
Title Claimant
(RNTC) (i.e. the
person or persons
who will execute
the Agreement on
behalf of the native
title party)**

See Note 14

on their own behalf
and on behalf of

Street address:

Postal address:

Facsimile:

Email:

See Note 15

**Other Native Title
Party**

See Note 16

on their own behalf
and on behalf of

Street address:

Postal address:

Facsimile:

Email:

See Note 17

**Other Native Title
Party**

See Note 18

on their own behalf
and on behalf of

Street Address:

Postal Address:

Facsimile:

Email:

See Note 19

**Other Native Title
Party**

See Note 20

on their own behalf
and on behalf of

Street Address:

Postal Address:

Facsimile:

Email:

See Note 21

**State of
Queensland acting
through the
Department of
Natural Resources,
Mines and Energy
(State)**

Street Address:

Postal Address:

Facsimile:

Email:

See Note 22 **C**

Representative Body:

See Note 23 **D**

Agreement Area:

Term Lease No.

Lot: Plan:

Title Reference:

as shown on the plan in Schedule 1.

See Note 24 **E**

Compensation Amount:

\$

See Note 25

F

Settlement Date:

See clause 7.

See Note 26

G

Place for Settlement:

[tick one box
only]

- Brisbane Titles Registry Office
- Gold Coast Titles Registry Office
- Nambour Titles Registry Office
- Rockhampton Titles Registry Office
- Townsville Titles Registry Office
- Atherton DNRME Business Centre
- Ayr DNRME Business Centre
- Beenleigh DNRME Business Centre
- Brisbane CBD DNRME Business Centre
- Brisbane DNRME Business Centre
- Bundaberg DNRME Business Centre
- Caboolture DNRME Business Centre
- Cairns DNRME Business Centre
- Charleville DNRME Business Centre
- Cloncurry DNRME Business Centre
- Dalby DNRME Business Centre
- Emerald DNRME Business Centre
- Gold Coast (Robina) DNRME Business Centre
- Goondiwindi DNRME Business Centre
- Gympie DNRME Business Centre
- Ipswich DNRME Business Centre
- Innisfail DNRME Business Centre
- Kingaroy DNRME Business Centre
- Longreach DNRME Business Centre
- Mackay DNRME Business Centre
- Mareeba DNRME Business Centre
- Maryborough DNRME Business Centre
- Mount Isa DNRME Business Centre
- Nambour DNRME Business Centre
- Rockhampton DNRME Business Centre

- Roma DNRME Business Centre
- St George DNRME Business Centre
- Toowoomba DNRME Business Centre
- Townsville DNRME Business Centre
- Warwick DNRME Business Centre

SAMPLE

Notes that relate to Part A:

- Note 1** As well as providing for the relevant non-native title parties (i.e. the **'Proponent'** and the **'State'**), this section provides a number of different combinations of native title parties, depending on whether the native title is determined, claimed under a registered native title claim, or asserted, as applicable.
- To ensure that the requirements of the NTA are satisfied, the parties to this Agreement must include:
- any registered native title body corporate (i.e. any **'RNTBC'**) for any part of the Agreement Area where a determination of native title has been made. This Agreement makes provision for up to three RNTBCs; and
 - any registered native title claimant (i.e. any **'RNTC'**) for any part of the Agreement Area where a registered native title claim has been made – that is, where a claim has been made in the Federal Court of Australia on behalf of a native title claim group and the claim has been registered by the National Native Title Tribunal but is not yet determined. The person or persons who are authorised to execute the Agreement in accordance with the *Native Title Act 1993* should be listed, noting that the names of those persons may not be known until the ILUA is authorised. This Agreement makes provision for up to three RNTCs; and
 - where there is any part of the Agreement Area over which no determination of native title and no registered native title claim has been made, any other native title party, being (i) any person or persons who claim/s to hold native title in relation to the non-claimed/determined part of Agreement Area; or (ii) any Representative Body for the non-claimed/determined part of Agreement Area (i.e. an **'Other Native Title Party'**). This Agreement makes provision for up to three Other Native Title Parties.
- Note 2** Insert name and details of the Proponent which has applied to the State for the Freehold and which has requested the Surrender.
- Note 3** If there is a RNTBC for any part for the Agreement Area, insert its name and details.
- Note 4** If there is a RNTBC for any part for the Agreement Area, insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 5** If there is a second RNTBC for any part for the Agreement Area, insert its name and details.
- Note 6** If there is a second RNTBC for any part for the Agreement Area, insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 7** If there is a third RNTBC for any part for the Agreement Area, insert its name and details.
- Note 8** If there is a third RNTBC for any part for the Agreement Area, insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 9** If there is a RNTC for any part for the Agreement Area, insert the names of the persons who are authorised to execute the Agreement.
- Note 10** If there is a RNTC for any part for the Agreement Area, insert the name of the Aboriginal / Torres Strait Islander people on whose behalf native title is claimed.
- Note 11** If there is second RNTC for any part for the Agreement Area, insert the names of the persons who are authorised to execute the Agreement.
- Note 12** If there is a second RNTC for any part for the Agreement Area, insert the name of the Aboriginal / Torres Strait Islander people on whose behalf native title is claimed.
- Note 13** If there is a third RNTC for any part for the Agreement Area, insert the names of the persons who are authorised to execute the Agreement.
- Note 14** If there is a third RNTC for any part for the Agreement Area, insert the name of the Aboriginal / Torres Strait Islander people on whose behalf native title is claimed.
- Note 15** If there is an Other Native Title Party which claims to hold native title for any part for the Agreement Area, insert the names of those persons.
- Note 16** If there is an Other Native Title Party which claims native title for any part for the Agreement Area, insert the name of the Aboriginal / Torres Strait Islander people on whose behalf native title is claimed to be held.
- Note 17** If there is a second Other Native Title Party which claims native title for any part for the Agreement Area, insert the names of those persons.
- Note 18** If there is a second Other Native Title Party which claims native title for any part for the Agreement Area, insert the name of the Aboriginal / Torres Strait Islander people on whose behalf native title is claimed to be held.
- Note 19** If there is a third Other Native Title Party which claims native title for any part for the Agreement Area, insert the names of those persons.
- Note 20** If there is third Other Native Title Party which claims native title for any part for the Agreement Area, insert the name of the people on whose behalf native title is claimed to be held.
- Note 21** The State must be a party to this Agreement because this Agreement makes provision for the extinguishment of any Native Title in relation to the Agreement Area by way of surrender.

- Note 22** Insert the name of the Representative Body for the Agreement Area or, where there is more than one Representative Body for the Agreement Area, the name of each Representative Body for the Agreement Area.
- Note 23** Insert the written description of the Agreement Area, e.g. a 'lot on plan' The written description must accord with the plan inserted in Schedule 1.
- Note 24** Insert the Compensation Amount in dollars, being the amount payable at settlement by the Proponent to the Native Title Parties. Ensure the Compensation Amount specified is exclusive of any GST.
- Note 25** Insert the Settlement Date. If the Settlement Date is not a Business Day in the Place for Settlement then the Settlement Date will be the next Business Day.

- Note 26** Indicate the Place of Settlement by ticking one of the five boxes. The Place of Settlement must be one of the following Titles Registry Offices, unless otherwise agreed by the Parties:

Brisbane Titles Registry Office

Level 11, 53 Albert Street
Cnr Margaret Street
Brisbane Qld 4000

Gold Coast Titles Registry Office (Robina)

Level 1, AVC Building
14 Edgewater Court (off Robina Town Centre Drive)
Robina Qld 4226

Nambour Titles Registry Office

Ground Floor, Centenary Square Building
52-64 Currie St
Nambour Qld 4560

Rockhampton Titles Registry Office

Queensland Government Building
Level 1, 209 Bolsover St
Rockhampton Qld 4700

Townsville Titles Registry Office

445 Flinders Street
Townsville Qld 4810

Atherton DNRME Business Centre

25 Mabel Street
Atherton Qld 4883

Ayr DNRME Business Centre

33-43 Little Drysdale Street
Ayr Qld 4807

Beenleigh DNRME Business Centre

32 Tansey Street
Beenleigh Qld 4207

Brisbane DNRME Business Centre

Titles Registry
Level 11, 53 Albert Street
Cnr Margaret Street
Brisbane Qld 4000

Bundaberg DNRME Business Centre

16-32 Enterprise Street
Bundaberg Qld 4670

Caboolture DNRME Business Centre

Level 4, 33 King Street
Caboolture Qld 4510

Cairns DNRME Business Centre

Level 4, Building 2, William McCormack Place
5B Sheridan Street
Cairns Qld 4870

Charleville DNRME Business Centre

Hood Street
Charleville Qld 4470

Cloncurry DNRME Business Centre

Cloncurry Court House
Cnr Sheaffe & Daintree Streets
Cloncurry Qld 4824

Dalby DNRME Business Centre

Level 3, Ergon Energy Building
30 Marble Street (Cnr Drayton St)
Dalby Qld 4405

Emerald DNRME Business Centre

99 Hospital Road
Emerald Qld 4720

Gold Coast (Robina) DNRME Business Centre

Level 1, AVC Building
14 Edgewater Court (off Robina Town Centre Drive)
Robina Qld 4226

Goondiwindi DNRME Business Centre

44 Callandoon Street
Goondiwindi Qld 4390

Gympie DNRME Business Centre

Government Office Building
27 O'Connell Street
Gympie Qld 4570

Ipswich DNRME Business Centre

Level 4, Icon Building
117 Brisbane Street

Ipswich Qld 4305

Innisfail DNRME Business Centre

88 Rankin Street
Innisfail Qld 4860

Kingaroy DNRME Business Centre

214 Kingaroy Cooyar Road
Taabinga via Kingaroy QLD 4610

Longreach DNRME Business Centre

10357 Landsborough Highway
Longreach Qld 4730

Mackay DNRME Business Centre

Level 1, 22-30 Wood Street
Mackay Qld 4740

Mareeba DNRME Business Centre

28 Peters Street
Mareeba Qld 4880

Maryborough DNRME Business Centre

Station Chambers
120 Lennox Street
Maryborough Qld 4650

Mount Isa DNRME Business Centre

13 Isa Street
Mount Isa Qld 4825

Nambour DNRME Business Centre

Centenary Square
Ground Floor, 52-64 Currie Street
Nambour Qld 4560

Rockhampton DNRME Business Centre

State Government Building
Level 1, 209 Bolsover Street
Rockhampton Qld 4700

Roma DNRME Business Centre

1-3 Alfred Street
Roma Qld 4455

St George DNRME Business Centre

126 Alfred Street
St George Qld 4487

Toowoomba DNRME Business Centre

203 Tor Street
Toowoomba Qld 4350

Townsville DNRME Business Centre

Level 9, 445 Flinders Street
Townsville Qld 4810

Warwick DNRME Business Centre

Government Offices
1st Floor, Cnr Guy & Fitzroy Streets
Warwick Qld 4730

SAMPLE

Executed by the Parties on the dates appearing below.

[Insert execution clause for the Proponent]

[Insert execution clause for any RNTBC]

[Insert execution clause for any RNTC]

[Insert execution clause for any Other Native Title Parties]

SIGNED SEALED and DELIVERED

for and on behalf of the **STATE OF QUEENSLAND**

by the Honourable, Minister
for Natural Resources, Mines and Energy

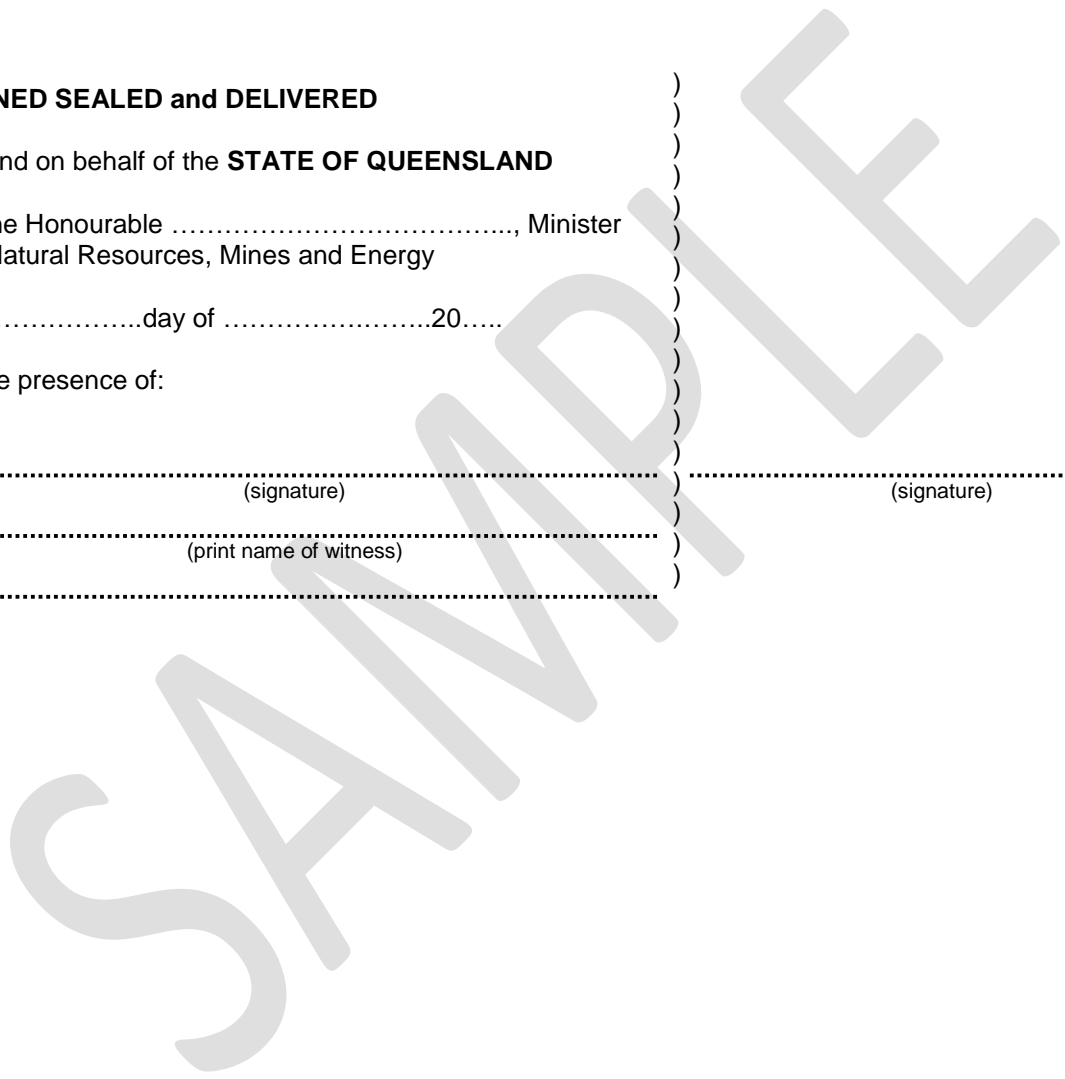
thisday of20.....

in the presence of:

.....
(signature)

.....
(print name of witness)

.....
(signature)



Part B: General terms

Recitals:

- A. The Native Title Parties are the native title group for the Agreement Area.
- B. The Native Title Parties have been authorised to enter into this Agreement by the Corresponding Aboriginal / Torres Strait Islander Peoples.
- C. The Proponent holds the Term Lease, and intends to make an application to the Chief Executive under section 166 of the Land Act to convert the Term Lease to Freehold Land. The Surrender is required to enable the grant of the Freehold Land.
- D. The Proponent has negotiated with the Native Title Parties and the Corresponding Aboriginal / Torres Strait Islander Peoples in relation to the Surrender.
- E. The Native Title Parties and the Corresponding Aboriginal / Torres Strait Islander Peoples consent to the Surrender, in exchange for the payment of the Compensation Amount.
- F. This Agreement is entered into as an Indigenous land use agreement (area agreement) and is intended to be Registered under Subdivision C, Division 3, Part 2 of the NTA.

1. Definitions

In this Agreement:

“Agreement” means this agreement including its schedules;

“Agreement Area” means the area described in Item D and shown on the plan in Schedule 1;

“Bank” means:

- (a) a bank as defined by section 5 of the *Banking Act 1955* (Cth); or
- (b) a bank constituted under a law of a state;

“Business Day” means a week day other than a Public Holiday in the Place for Settlement;

“Chief Executive” means the chief executive under the Land Act;

“Claims” means any claim, proceeding, action, cause of action, demand, damages, costs, losses or expenses;

“Compensation Amount” means the amount specified in Item E;

“Compensation Entitlement” means any compensation, monetary or otherwise, payable in relation to:

- (a) the consent provided by the Parties in clause 6.1;
- (b) the Surrender;
- (c) the extinguishment of Native Title in the Agreement Area in accordance with this Agreement;
- (d) the grant of the Freehold Land;

“Corresponding Aboriginal / Torres Strait Islander Peoples” means, in relation to each Native Title Party, the Aboriginal or Torres Strait Islander peoples specified in the details of each Native Title Party in Item B as follows:

- (a) in the case of a Native Title Party which is an RNTBC, the people for whom the RNTBC holds the native title on trust for, or as agent for, as noted in the rows annotated ‘See Note 4’, ‘See Note 6’ and ‘See Note 8’ in Item B;
- (b) in the case of a Native Title Party which is an RNTC, the people on whose behalf native title is claimed, as noted in the rows annotated ‘See Note 10’, ‘See Note 12’ and ‘See Note 14’ in Item B; or
- (c) in the case of a Native Title Party which is an Other Native Title Party, the people (if any) on whose behalf native title is claimed to be held as noted in the rows annotated ‘See Note 16’, ‘See Note 18’ and ‘See Note 20’ in Item B; or
- (d) ;

“Execution Date” means the day on which this Agreement is executed by the Parties and if executed on different days, the last of those days;

“Freehold Land” means a deed of grant in fee simple over the Agreement Area;

“GST” has the meaning given in the GST Act;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth);

“ILUA Regulations” means the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cwlth);

“Land Act” means the *Land Act 1994*;

“Native Title” has the meaning given in the NTA;

“Native Title Claim Group” has the meaning given in the NTA;

“Native Title Holder” has the meaning given in the NTA;

“Native Title Parties” means the RNTBC, RNTC and Other Native Title Party, as applicable, and specified in Item B;

“NTA” means the *Native Title Act 1993* (Cwlth);

“PBC Regulations” means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cwlth);

“Prescribed Documents” means the documents and information referred to in section 24CG(2) of the NTA;

“Parties” means the parties to this Agreement specified in Item B, and any one of them will be a **“Party”**;

“Place of Settlement” means the Titles Registry Office or DNRME Business Centre selected in Item G, or such other location as is agreed by the Parties;

“Proponent” means the Proponent specified in Item B;

“Public Holiday” has the meaning given in the *Acts Interpretation Act 1954* (Qld);

“Register of Indigenous Land Use Agreements” has the meaning given in the NTA;

“Registered” means registered on the Register of Indigenous Land Use Agreements;

“Registered Native Title Claimant” has the meaning given in the NTA;

“Registrar” has the meaning given in the NTA;

“Representative Body” means:

- (a) a body that is recognised as a representative body under section 203AD of the NTA; or

- (b) a body that is funded to perform the functions of a representative body under section 203FE of the NTA,

and for the purposes of this Agreement means the body in Item C;

“State” means State of Queensland, as specified in Item B;

“Surrender” means the surrender to the State of any Native Title in relation to the Agreement Area;

“Sunset Date” means the date two (2) years after the Execution Date;

“Tax Invoice” has the meaning given in the GST Act;

“Taxable Supply” has the meaning given in the GST Act; and

“Term Lease” means the term lease granted under the Land Act for agriculture, grazing or pastoral purposes over the Agreement Area as specified in Item D.

2. Interpretation

2.1 In this Agreement:

- (a) words indicating a gender include each other gender;
- (b) words in the singular include the plural and words in the plural include the signature;
- (c) the table of contents, the recitals and the headings are for ease of reference only and do not affect the meaning of this Agreement;
- (d) a reference to a clause or schedule is a reference to a clause in, or schedule to, this Agreement (including as varied in accordance with clause 20.3);
- (e) in the case of any inconsistency between a clause and a schedule, the clause will prevail to the extent of any inconsistency;
- (f) an agreement, acknowledgement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, acknowledgement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (h) a reference to a nominated time is a reference to that time in Queensland;

- (i) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the following Business Day;
- (j) where a period of time is to be calculated from after a given day, event or act, the period is to be calculated excluding the given day or the day on which the event or act occurs;
- (k) a reference to a Queensland statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1954* (Qld); and
- (l) a reference to a Commonwealth statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1901* (Cwth).

3. Authority to Enter into this Agreement

- 3.1 Each of the Native Title Parties represents and warrants that:
- (a) all reasonable efforts (including by consulting all representative Aboriginal/Torres Strait Islander bodies for the Agreement Area), have been made to ensure that all persons who hold or may hold Native Title in relation to land or waters in the Agreement Area have been identified;
 - (b) all of the persons so identified have authorised the making of this Agreement in accordance with section 251A of the NTA; and
 - (c) all of the persons so identified are the Corresponding Aboriginal / Torres Strait Islander Peoples;
 - (d) prior to executing this Agreement they consulted with the Representative Body regarding this Agreement and informed the Representative Body of their intention to enter into this Agreement; and
 - (e) if the Native Title Parties include an RNTBC:
 - (i) the RNTBC consulted with, and obtained the consent of, the common law holders of Native Title in accordance with regulation 8 of the PBC Regulations before making a decision to enter into this Agreement; and

- (ii) the RNTBC has consulted, and considered the views of, the Representative Body and either gave notice of those views to the common law holders of Native Title or did not consider it appropriate and practicable to do so.

- 3.2 The Parties agree that clauses 3.1(a) and (b) are a statement to the Registrar for the purposes of section 24CG(3)(b)(i) and (ii) of the NTA.

4. Commencement

This Agreement commences on the Execution Date.

5. Termination and Expiry

- 5.1 This Agreement may be terminated by a written agreement executed by the Parties.
- 5.2 If settlement has not been completed in accordance with clause 8 on or before 5pm on the Sunset Date, then:
- (a) this Agreement will expire; and
 - (b) any Party may notify the Registrar that this Agreement has expired.

6. Consent to Surrender

- 6.1 The Parties consent to the Surrender in accordance with clauses 6.2 to 6.4.
- 6.2 The Surrender will take effect immediately following settlement under clause 8.
- 6.3 The Parties agree that the Surrender is intended to extinguish any Native Title in relation to the Agreement Area.'
- 6.4 For the avoidance of doubt, if this Agreement expires under clause 5.2 or is terminated under clause 5.1 before settlement has been completed in accordance with clause 8, the Surrender will not have taken place.

7. Settlement Date

Upon the State being satisfied that:

- (a) this Agreement has been Registered; and
- (b) the Proponent has accepted the offer by the Chief Executive for the grant of the Freehold Land,

the State will notify the Proponent and the Native Title Parties of the Settlement Date, which will be a date not less than 14

Business Days after the date on which the notice is given.

8. Settlement

8.1 Settlement must occur between 9am and 5pm on the Settlement Date at the Place for Settlement.

8.2 At settlement:

- (a) the Proponent will pay to the Native Title Parties the Compensation Amount by Bank cheque, as the Native Title Parties direct; and
- (b) the Native Title Parties will deliver to the Proponent and to the State:
 - (i) a hard-copy computer print-out, obtained from the computer system maintained by the Registrar bearing the Settlement Date and evidencing that this Agreement is Registered as at the Settlement Date
 - (ii) an acknowledgment of receipt of the Bank cheque provided under clause 8.2(a).

8.3 The Proponent will pay the cost of the Bank cheques for settlement, up to a maximum of one cheque for each Native Title Party.

9. Time

9.1 Time is of the essence of this Agreement, except regarding any agreement between the Parties on a time of day for settlement,

10. Satisfaction of Compensation Entitlement

10.1 Subject to the Surrender taking effect in accordance with clause 6.2, the Native Title Parties, on their own behalf and on behalf of the Corresponding Aboriginal / Torres Strait Islander Peoples, agree that the Proponent's payment to the Native Title Parties of the Compensation Amount:

- (a) constitutes "compensation provided for in the agreement" for the purposes of section 24EB(5) of the NTA and is in full and final satisfaction of any Compensation Entitlement; and
- (b) is for the benefit of all Native Title Holders who are Corresponding Aboriginal / Torres Strait Islander Peoples.

11. Indemnity

11.1 Subject to the Surrender taking effect in accordance with clause 6.2, each Native Title Parties, on their own behalf and on behalf of the Corresponding Aboriginal / Torres Strait Islander Peoples, agree that if a person other than the Native Title Parties or a member of the Corresponding Aboriginal / Torres Strait Islander Peoples establishes that:

- (a) they hold Native Title in relation to the Agreement Area; and
- (b) they are entitled to payment of compensation from the State or the Proponent,

then each of the Native Title Parties and each member of the Corresponding Aboriginal / Torres Strait Islander Peoples will indemnify the State and the Proponent for the payment of any such compensation up to the Compensation Amount.

12. Release and Waiver

12.1 Subject to the Surrender taking effect in accordance with clause 6.2:

- (a) each of the Native Title Parties, on their own behalf and on behalf of the Corresponding Aboriginal / Torres Strait Islander Peoples, release and discharge the State and the Proponent from any Claim in relation to the Surrender or the grant of the Freehold Land; and
- (b) each of the Native Title Parties waive any rights the Native Title Parties or the Corresponding Aboriginal / Torres Strait Islander Peoples may have to make any Claim against the State or the Proponent in relation to the Surrender or the grant of the Freehold Land.

12.2 This clause 12 may be pleaded as a complete bar to any Claim brought by any of the Native Title Parties or any member of the Corresponding Aboriginal / Torres Strait Islander Peoples against the State or the Proponent in relation to the Surrender or the grant of the Freehold Land.

13. Registration of ILUA

13.1 The Proponent is authorised on behalf of the Parties to apply to the Registrar in writing for this Agreement to be Registered.

13.2 The Proponent must apply to the Registrar in writing for this Agreement to be

- Registered as soon as reasonably practicable after the Execution Date.
- Party's address specified in Item B; and
- 13.3 Each of the Native Title Parties must promptly do all things necessary to assist this Agreement to be Registered, including:
- (a) providing the Proponent with a statement setting out the grounds on which the Registrar should be satisfied that the representations and warranties in clause 3.1(a) and (b) are correct;
 - (b) providing the Proponent with the certifications in Schedule 2 signed by the Native Title Holders and Representative Body;
 - (c) providing any other Prescribed Documents to the Proponent upon request.
- 15.2 Subject to clause 15.3, a notice given in accordance with clause 15.1 will be deemed to be given:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, three (3) Business Days after the date of posting;
 - (c) if sent by facsimile, on the date on which an apparently successful transmission is noted by the sender's facsimile system; or
 - (d) if sent by email, on the date of the email.
- 15.3 If a notice is hand delivered, sent by facsimile, or sent by email on a day that is not a Business Day or after 5.00 pm on a Business Day it will be deemed to be given on the next Business Day at 9.00 am.
- 15.4 Notices, requests, consents or approvals may be given by or to a Party's solicitor by any of the means specified in clause 15.1
- 14. Goods and Services Tax**
- 14.1 The Compensation Amount is specified in this Agreement exclusive of any GST.
- 14.2 The Parties acknowledge that the Native Titles Parties' supply under this Agreement might not be a Taxable Supply because, for example, it might not be made in the course or furtherance of an enterprise and the Native Title Parties might not be registered or required to be registered for GST.
- 14.3 If the Compensation Amount is, in fact, consideration for a Taxable Supply by the Native Title Parties then the Proponent must pay to the Native Title Parties, in addition to the Compensation Amount, an amount equivalent to the amount payable by the Native Title Parties as GST on the Taxable Supply.
- 14.4 The Proponent must pay the amount under clause 14.3 to the Native Title Parties by the later of:
- (a) the date the Compensation Amount is payable under clause 8; and
 - (b) the date the Native Title Parties have given the proponent a Tax Invoice for the Taxable Supply.
- 15. Notices**
- 15.1 All notices, requests, consents or approvals given under this Agreement must be:
- (a) in writing; and
 - (b) delivered by hand, sent by prepaid post, sent by facsimile transmission or sent by email to the relevant
- 16. No Termination for Breach**
- 16.1 A breach of this Agreement by any Party will not give any other Party a right to terminate this Agreement, but that non-defaulting Party may exercise any other remedy available to it in respect of such breach.
- 17. Costs**
- 17.1 Each Party will pay its own costs of and incidental to the negotiation, preparation, execution of this Agreement and this Agreement being Registered.
- 17.2 The Proponent must pay any stamp duty payable on this Agreement in accordance with the *Duties Act 2001* (Qld).
- 18. Independent Legal Advice**
- 18.1 The Native Title Parties represent and warrant that prior to executing this Agreement they and the Corresponding Aboriginal / Torres Strait Islander Peoples have received independent legal advice on all aspects of this Agreement.
- 19. Statement for the purpose of the NTA**
- 19.1 For the purposes of section 24EB(1)(c) of the NTA and regulation 7(5)(b) of the ILUA

Regulations, the Parties state that Subdivision P of Division 3 of Part 2 of the NTA is not intended to apply to the Surrender.

20. General

- 20.1 Each Party must do all things reasonably necessary to give full effect to this Agreement.
- 20.2 A right under this Agreement may only be waived in writing, executed by the Party giving the waiver.
- 20.3 This Agreement can only be varied by written agreement executed by each Party.
- 20.4 This Agreement may be executed in counterparts.
- 20.5 If any part of this Agreement is determined to be invalid, unlawful or unenforceable, then that part may be severed from the rest of this Agreement and the remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law.
- 20.6 This Agreement constitutes the entire agreement between the Parties and supersedes any prior negotiations, arrangements and agreements between the Parties.
- 20.7 This Agreement is governed by the laws of Queensland. Any proceedings arising from or in relation to this Agreement must be commenced in Queensland. To avoid any doubt, any such proceeding commenced in the Federal Court of Australia must be commenced in the Queensland District Registry.

Schedule 1 – Map of Agreement Area:

[Insert Plan showing Agreement Area]

SAMPLE

Schedule 2 – Certification under Regulation 9 of PBC Regulations:

Note :

- A certification in the form of Part A of this Schedule 2 is to be completed for each RNTBC which is a party to this Agreement. The name of the relevant RNTBC should be written in the blank space in paragraph (b).
- Each certification under Part A is to be signed by at least 5 members of the RNTBC who are common law holders whose native title rights would be affected by the surrender under the Agreement. If there are less than 5 members of the RNTBC whose native title rights would be affected by the surrender, the certification under Part A must be signed by at least 5 members of the RNTBC, including all members whose native title rights would be affected.
- A certification under Part B is to be signed by an authorised member of the Representative Body

Part A – Certification by Common Law Holders

We, the undersigned certify that:

- (a) this is a document for the purposes of regulation 9 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cwth) (PBC Regulations);
- (b) we are all members of the _____ RNTBC (RNTBC) and we are all common law holders represented by the RNTBC whose Native Title would be affected by the RNTBC entering into the Agreement;
- (c) the common law holders represented by the RNTBC have been consulted about, and have consented to, the RNTBC entering into the Agreement in accordance with regulation 8(1)(b) of the PBC Regulations;
- (d) prior to the common law holders represented by the RNTBC consenting to the RNTBC entering into the Agreement:
 - (i) the Representative Body was consulted about the proposed decision for the RNTBC for the RNTBC to enter into the Agreement; and
 - (ii) the Representative Body's views about the RNTBC entering into the Agreement were considered,in accordance with regulation 8(2) of the PBC Regulations.

[Insert execution clause for each person signing]

Part B – Certification by Representative Body

I, the undersigned, authorised member of the Representative Body, certify that the Representative Body has been consulted about the proposed decision by each RNTBC named as a party to this Agreement to enter into this Agreement.

[Insert execution clause for each person signing]

**INDIGENOUS LAND USE AGREEMENT (BODY CORPORATE
AGREEMENT)
TO ENABLE THE CONVERSION OF A TERM LEASE
TO FREEHOLD LAND**

**THIS IS A SAMPLE AGREEMENT ONLY. PARTIES SHOULD NEGOTIATE AN
INDIGENOUS LAND USE AGREEMENT THAT ADDRESSES THEIR INDIVIDUAL
CIRCUMSTANCES.**

**ANY AGREEMENT THAT INCLUDES THE STATE AS A PARTY MUST BE
SUBMITTED TO DNRME FOR REVIEW BEFORE AUTHORISATION AND
EXECUTION**

This Agreement is made between the Proponent, the Native Title Parties and the State. At the request of the Proponent, the Native Title Parties agree, subject to the conditions of this Agreement, to surrender to the State any Native Title in relation to the Agreement Area in exchange for the Compensation Amount.

Preliminary matters:

This Agreement is a sample Indigenous Land Use Agreement (body corporate agreement) under the *Native Title Act 1993* (NTA). A body corporate agreement must be used if there are registered native title bodies corporate (RNTBCs) for all of the agreement area – that is, there have been determinations of native title for the whole of the area.

This Agreement comprises the following parts:

- Part A: Particular terms – Part A contains the particular terms of this Agreement. Part A should be completed in accordance with the notes that relate to Part A.
- Part B: General terms – Part B contains the standard terms of this Agreement.
- Part C: Additional terms – Additional terms may be included in Part C, although care should be taken to ensure that additional terms do not amend any of the required terms contained in Part B.

Where there is a discrepancy or inconsistency between a part of this Agreement and any other part, the following descending order of precedence of the parts will apply to resolve the discrepancy or inconsistency:

- Part A: Particular terms;
- Part B: General terms; and
- Part C: Additional terms.

Part A: Particular terms

ITEM

A **Execution Date:**

This Agreement is made on the day of..... 20....

See Note 1 **B** **Parties:**

See Note 2

Proponent

.....
.....
.....

ABN/ACN:

Street address:

.....
.....

Postal address:

.....
.....

Facsimile:

.....
.....

Email:

.....
.....

See Note 3

**Registered Native
Title Body
Corporate (RNTBC)**

ICN:

.....
.....

See Note 4

which holds the
Native Title on trust
for, or as agent for:

Street address:

.....
.....

Postal address:

.....
.....

Facsimile:

.....
.....

Email:

.....
.....

See Note 5

Registered Native Title Body Corporate (RNTBC)

ICN:

See Note 6

which holds the Native Title on trust for, or as agent for:

Street address:

Postal address:

Facsimile:

Email:

See Note 7

Registered Native Title Body Corporate (RNTBC)

ICN:

See Note 8

which holds the Native Title on trust for, or as agent for:

Street Address:

Postal Address:

Facsimile:

Email:

See Note 9

State of Queensland acting through the Department of Natural Resources, Mines and Energy (State)

Street Address:

Postal Address:

Facsimile:

Email:

See Note 10 C Representative Body:

See Note 11 D Agreement Area:

Term Lease No.

Lot: Plan:

Title Reference:

as shown on the plan in Schedule 1.

See Note 12 E Compensation Amount:

\$

See Note 13 F Settlement Date:

See clause 7.

See Note 14 G Place for Settlement:

[tick one box only]

- Brisbane Titles Registry Office
- Gold Coast Titles Registry Office
- Nambour Titles Registry Office
- Rockhampton Titles Registry Office
- Townsville Titles Registry Office
- Atherton DNRME Business Centre
- Ayr DNRME Business Centre
- Beenleigh DNRME Business Centre
- Brisbane CBD DNRME Business Centre
- Brisbane DNRME Business Centre
- Bundaberg DNRME Business Centre
- Caboolture DNRME Business Centre
- Cairns DNRME Business Centre

- Charleville DNRME Business Centre
- Cloncurry DNRME Business Centre
- Dalby DNRME Business Centre
- Emerald DNRME Business Centre
- Gold Coast (Robina) DNRME Business Centre
- Goondiwindi DNRME Business Centre
- Gympie DNRME Business Centre
- Ipswich DNRME Business Centre
- Innisfail DNRME Business Centre
- Kingaroy DNRME Business Centre
- Longreach DNRME Business Centre
- Mackay DNRME Business Centre
- Mareeba DNRME Business Centre
- Maryborough DNRME Business Centre
- Mount Isa DNRME Business Centre
- Nambour DNRME Business Centre
- Rockhampton DNRME Business Centre
- Roma DNRME Business Centre
- St George DNRME Business Centre
- Toowoomba DNRME Business Centre
- Townsville DNRME Business Centre
- Warwick DNRME Business Centre

Notes that relate to Part A:

- Note 1** As well as providing for the relevant non-native title parties (i.e. the '**Proponent**' and the '**State**'), this section provides for all registered native title bodies corporate (i.e. all 'RNTBCs') in the Agreement Area to be native title parties.
To ensure that the requirements of the NTA are satisfied, the parties to this Agreement must include all RNTBCs for the Agreement Area. There will be more than one RNTBC for the Agreement Area if there has been more than one native title determination in relation to the Agreement Area. This Agreement makes provision for up to three RNTBCs.
- Note 2** Insert name and details of the Proponent which has applied to the State for the Freehold and which has requested the Surrender.
- Note 3** Insert name and details of the first RNTBC for the Agreement Area.
- Note 4** Insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the first RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 5** If there is a second RNTBC for the Agreement Area, insert its name and details.
- Note 6** If there is a second RNTBC for the Agreement Area, insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 7** If there is a third RNTBC for the Agreement Area, insert its name and details.
- Note 8** If there is a third RNTBC for the Agreement Area, insert the name of the relevant Aboriginal or Torres Strait Islander People on whose behalf the RNTBC holds Native Title or for whom the RNTBC acts as agent.
- Note 9** The State must be a party to this Agreement because this Agreement makes provision for the extinguishment of any Native Title in relation to the Agreement Area by way of surrender.
- Note 10** Insert the name of the Representative Body for the Agreement Area or, where there is more than one Representative Body for the Agreement Area, the name of each Representative Body for the Agreement Area.
- Note 11** Insert the written description of the Agreement Area, e.g. a 'lot on plan' The written description must accord with the plan inserted in Schedule 1.
- Note 12** Insert the Compensation Amount in dollars, being the amount payable at settlement by the Proponent to the Native Title Parties. Ensure the Compensation Amount specified is exclusive of any GST.
- Note 13** Insert the Settlement Date. If the Settlement Date is not a Business Day in the Place for Settlement then the Settlement Date will be the next Business Day.
- Note 14** Indicate the Place of Settlement by ticking one of the five boxes. The Place of Settlement must be one of the following Titles Registry Offices, unless otherwise agreed by the Parties:
- Brisbane Titles Registry Office**
Level 11, 53 Albert Street
Cnr Margaret Street
Brisbane Qld 4000
- Gold Coast Titles Registry Office (Robina)**
Level 1, AVC Building
14 Edgewater Court (off Robina Town Centre Drive)
Robina Qld 4226
- Nambour Titles Registry Office**
Ground Floor, Centenary Square Building
52-64 Currie St
Nambour Qld 4560
- Rockhampton Titles Registry Office**
Queensland Government Building
Level 1, 209 Bolsover St
Rockhampton Qld 4700
- Townsville Titles Registry Office**
445 Flinders Street
Townsville Qld 4810

Atherton DNRME Business Centre

25 Mabel Street
Atherton Qld 4883

Ayr DNRME Business Centre

33-43 Little Drysdale Street
Ayr Qld 4807

Beenleigh DNRME Business Centre

32 Tansey Street
Beenleigh Qld 4207

Brisbane DNRME Business Centre

Titles Registry
Level 11, 53 Albert Street
Cnr Margaret Street
Brisbane Qld 4000

Bundaberg DNRME Business Centre

16-32 Enterprise Street
Bundaberg Qld 4670

Caboolture DNRME Business Centre

Level 4, 33 King Street
Caboolture Qld 4510

Cairns DNRME Business Centre

Level 4, Building 2, William McCormack Place
5B Sheridan Street
Cairns Qld 4870

Charleville DNRME Business Centre

Hood Street
Charleville Qld 4470

Cloncurry DNRME Business Centre

Cloncurry Court House
Cnr Sheaffe & Daintree Streets
Cloncurry Qld 4824

Dalby DNRME Business Centre

Level 3, Ergon Energy Building
30 Marble Street (Cnr Drayton St)
Dalby Qld 4405

Emerald DNRME Business Centre

99 Hospital Road
Emerald Qld 4720

Gold Coast (Robina) DNRME Business Centre

Level 1, AVC Building
14 Edgewater Court (off Robina Town Centre Drive)
Robina Qld 4226

Goondiwindi DNRME Business Centre

44 Callandoon Street
Goondiwindi Qld 4390

Gympie DNRME Business Centre

Government Office Building
27 O'Connell Street
Gympie Qld 4570

Ipswich DNRME Business Centre

Level 4, Icon Building
117 Brisbane Street
Ipswich Qld 4305

Innisfail DNRME Business Centre

88 Rankin Street
Innisfail Qld 4860

Kingaroy DNRME Business Centre

214 Kingaroy Cooyar Road
Taabinga via Kingaroy QLD 4610

Longreach DNRME Business Centre

10357 Landsborough Highway
Longreach Qld 4730

Mackay DNRME Business Centre

Level 1, 22-30 Wood Street
Mackay Qld 4740

Mareeba DNRME Business Centre

28 Peters Street
Mareeba Qld 4880

Maryborough DNRME Business Centre

Station Chambers
120 Lennox Street
Maryborough Qld 4650

Mount Isa DNRME Business Centre

13 Isa Street
Mount Isa Qld 4825

Nambour DNRME Business Centre

Centenary Square
Ground Floor, 52-64 Currie Street
Nambour Qld 4560

Rockhampton DNRME Business Centre

State Government Building
Level 1, 209 Bolsover Street
Rockhampton Qld 4700

Roma DNRME Business Centre

1-3 Alfred Street
Roma Qld 4455

St George DNRME Business Centre

126 Alfred Street
St George Qld 4487

Toowoomba DNRME Business Centre

203 Tor Street
Toowoomba Qld 4350

Townsville DNRME Business Centre

Level 9, 445 Flinders Street
Townsville Qld 4810

Warwick DNRME Business Centre

Government Offices
1st Floor, Cnr Guy & Fitzroy Streets
Warwick Qld 4730

Executed by the Parties on the dates appearing below.

[Insert execution clause for the Proponent]

[Insert execution clause for all RNTBCs]

SIGNED SEALED and DELIVERED

for and on behalf of the **STATE OF QUEENSLAND**

by the Honourable, Minister
for Natural Resources, Mines and Energy

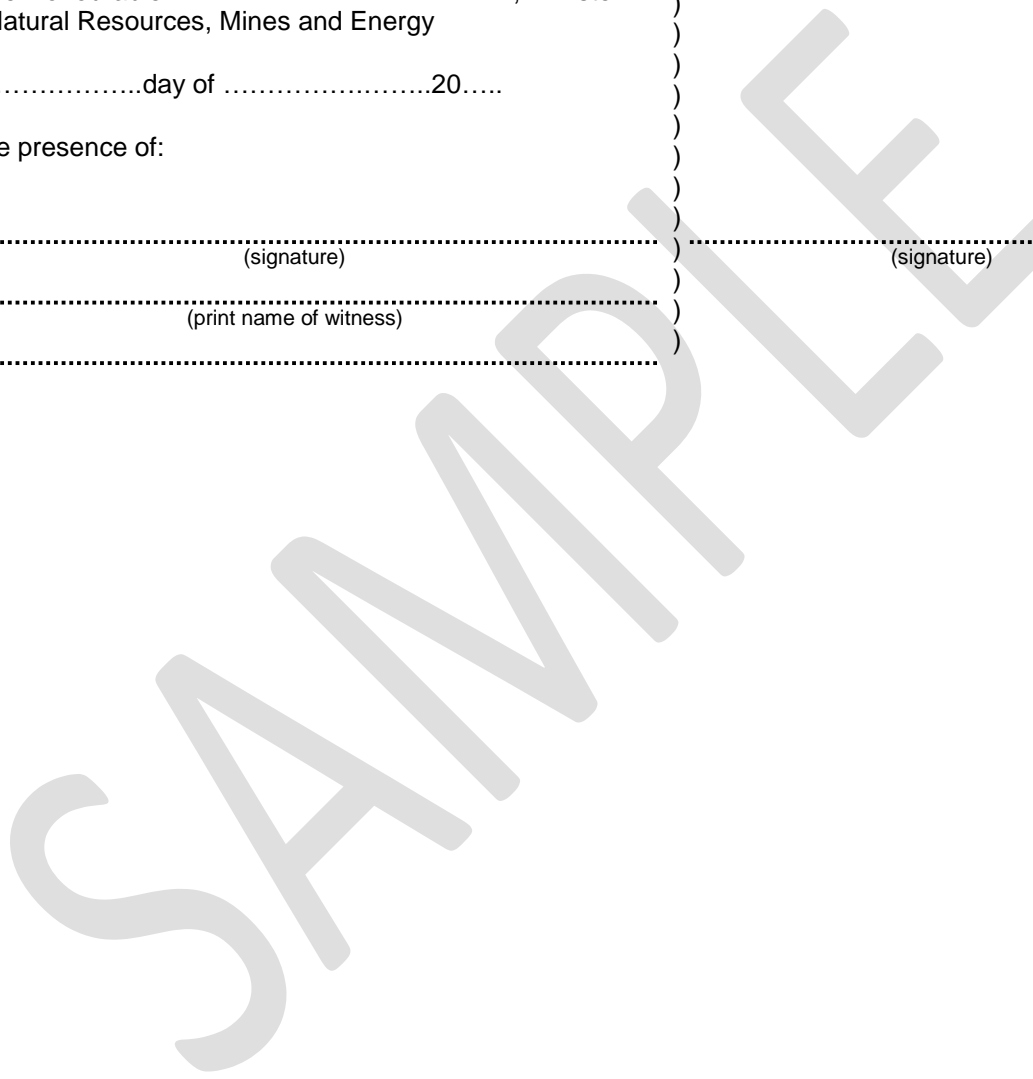
thisday of20.....

in the presence of:

..... (signature) (signature)

..... (print name of witness)

.....



Part B: General terms

Recitals:

- A. The Native Title Parties are all of the Registered Native Title Bodies Corporate for the Agreement Area.
- B. The Native Title Parties have consulted with, and obtained the consent of, the Corresponding Aboriginal / Torres Strait Islander Peoples in relation to entering into this Agreement.
- C. The Proponent holds the Term Lease, and intends to make an application to the Chief Executive under section 166 of the Land Act to convert the Term Lease to Freehold Land. The Surrender is required to enable the grant of the Freehold Land.
- D. The Proponent has negotiated with the Native Title Parties and the Corresponding Aboriginal / Torres Strait Islander Peoples in relation to the Surrender.
- E. The Native Title Parties and the Corresponding Aboriginal / Torres Strait Islander Peoples consent to the Surrender, in exchange for the payment of the Compensation Amount.
- F. This Agreement is entered into as an Indigenous land use agreement (body corporate agreement) and is intended to be Registered under Subdivision B, Division 3, Part 2 of the NTA.

1. Definitions

In this Agreement:

“Agreement” means this agreement including its schedules;

“Agreement Area” means the area described in Item D and shown on the plan in Schedule 1;

“Bank” means:

- (a) a bank as defined by section 5 of the *Banking Act 1955* (Cth); or
- (b) a bank constituted under a law of a state;

“Business Day” means a week day other than a Public Holiday in the Place for Settlement;

“Chief Executive” means the chief executive under the Land Act;

“Claims” means any claim, proceeding, action, cause of action, demand, damages, costs, losses or expenses;

“Compensation Amount” means the amount specified in Item E;

“Compensation Entitlement” means any compensation, monetary or otherwise, payable in relation to:

- (a) the consent provided by the Parties in clause 6.1;
- (b) the Surrender;
- (c) the extinguishment of Native Title in the Agreement Area in accordance with this Agreement;
- (d) the grant of the Freehold Land;

“Corresponding Aboriginal / Torres Strait Islander Peoples” means, in relation to each Native Title Party, the Aboriginal or Torres Strait Islander peoples specified in the details of each Native Title Party in Item B, being the people for whom the RNTBC holds the native title on trust for, or as agent for, as noted in the rows annotated ‘See Note 4’, ‘See Note 6’ and ‘See Note 8’ in Item B;

“Execution Date” means the day on which this Agreement is executed by the Parties and if executed on different days, the last of those days;

“Freehold Land” means a deed of grant in fee simple over the Agreement Area;

“GST” has the meaning given in the GST Act;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth);

“ILUA Regulations” means the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cwth);

“Land Act” means the *Land Act 1994*;

“Native Title” has the meaning given in the NTA;

“Native Title Claim Group” has the meaning given in the NTA;

“Native Title Parties” means the RNTBC, or RNTBCs, as applicable, specified in Item B;

“NTA” means the *Native Title Act 1993* (Cwth);

“PBC Regulations” means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cwth);

“Prescribed Documents” means the documents and information referred to in section 24BG(2) of the NTA;

“Parties” means the parties to this Agreement specified in Item B, and any one of them will be a **“Party”**;

“Place of Settlement” means the Titles Registry Office or DNRME Business Centre selected in Item G, or such other location as is agreed by the Parties;

“Proponent” means the Proponent specified in Item B;

“Public Holiday” has the meaning given in the *Acts Interpretation Act 1954* (Qld);

“Register of Indigenous Land Use Agreements” has the meaning given in the NTA;

“Registered” means registered on the Register of Indigenous Land Use Agreements;

“Registered Native Title Body Corporate” has the meaning given in the NTA;

“Registrar” has the meaning given in the NTA;

“Representative Body” means:

- (a) a body that is recognised as a representative body under section 203AD of the NTA; or
- (b) a body that is funded to perform the functions of a representative body under section 203FE of the NTA,

and for the purposes of this Agreement means the body in Item C;

“State” means State of Queensland, as specified in Item B;

“Surrender” means the surrender to the State of any Native Title in relation to the Agreement Area;

“Sunset Date” means the date two (2) years after the Execution Date;

“Tax Invoice” has the meaning given in the GST Act;

“Taxable Supply” has the meaning given in the GST Act; and

“Term Lease” means the term lease granted under the Land Act for agriculture, grazing or pastoral purposes over the Agreement Area as specified in Item D.

2. Interpretation

2.1 In this Agreement:

- (a) words indicating a gender include each other gender;
- (b) words in the singular include the plural and words in the plural include the signature;
- (c) the table of contents, the recitals and the headings are for ease of reference only and do not affect the meaning of this Agreement;
- (d) a reference to a clause or schedule is a reference to a clause in, or schedule to, this Agreement (including as varied in accordance with clause 19.3);
- (e) in the case of any inconsistency between a clause and a schedule, the clause will prevail to the extent of any inconsistency;
- (f) an agreement, acknowledgement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, acknowledgement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (h) a reference to a nominated time is a reference to that time in Queensland;
- (i) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the following Business Day;
- (j) where a period of time is to be calculated from after a given day, event or act, the period is to be calculated excluding the given day or the day on which the event or act occurs;
- (k) a reference to a Queensland statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1954* (Qld); and
- (l) a reference to a Commonwealth statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1901* (Cwth).

3. Authority to Enter into this Agreement

- 3.1 Each of the Native Title Parties represents and warrants that:
- (a) the requirements in regulation 4(2)(a) to (d) of the PBC Regulations are met;
 - (b) the RNTBC is the Registered Native Title Body Corporate in relation to all of the Agreement Area, or if there is more than one RNTBC, the RNTBCs are all of the Registered Native Title Bodies Corporate in relation to all of the Agreement Area;
 - (c) the RNTBC holds Native Title to the Agreement Area in trust for or acts as agent or representative for the Corresponding Aboriginal / Torres Strait Islander Peoples;
 - (d) prior to executing this Agreement they consulted with the Representative Body regarding this Agreement and informed the Representative Body of their intention to enter into this Agreement;
 - (e) the RNTBC consulted with, and obtained the consent of, the common law holders of Native Title in accordance with regulation 8 of the PBC Regulations before making a decision to enter into this Agreement; and
 - (f) prior to entering into this Agreement, the RNTBC has consulted, and considered the views of, the Representative Body and either gave notice of those views to the common law holders of Native Title or did not consider it appropriate and practicable to do so.

4. Commencement

This Agreement commences on the Execution Date.

5. Termination and Expiry

- 5.1 This Agreement may be terminated by a written agreement executed by the Parties.
- 5.2 If settlement has not been completed in accordance with clause 8 on or before 5pm on the Sunset Date, then:
- (a) this Agreement will expire; and
 - (b) any Party may notify the Registrar that this Agreement has expired.

6. Consent to Surrender

- 6.1 The Parties consent to the Surrender in accordance with clauses 6.2 to 6.4.
- 6.2 The Surrender will take effect immediately following settlement under clause 8.
- 6.3 The Parties agree that the Surrender is intended to extinguish any Native Title in relation to the Agreement Area.'
- 6.4 For the avoidance of doubt, if this Agreement expires under clause 5.2 or is terminated under clause 5.1 before settlement has been completed in accordance with clause 8, the Surrender will not have taken place.

7. Settlement Date

Upon the State being satisfied that:

- (a) this Agreement has been Registered; and
- (b) the Proponent has accepted the offer by the Chief Executive for the grant of the Freehold Land,

the State will notify the Proponent and the Native Title Parties of the Settlement Date, which will be a date not less than 14 Business Days after the date on which the notice is given.

8. Settlement

- 8.1 Settlement must occur between 9am and 5pm on the Settlement Date at the Place for Settlement.
- 8.2 At settlement:
- (a) the Proponent will pay to the Native Title Parties the Compensation Amount by Bank cheque, as the Native Title Parties direct; and
 - (b) the Native Title Parties will deliver to the Proponent and to the State:
 - (i) a hard-copy computer print-out, obtained from the computer system maintained by the Registrar bearing the Settlement Date and evidencing that this Agreement is Registered as at the Settlement Date
 - (ii) an acknowledgment of receipt of the Bank cheque provided under clause 8.2(a).

8.3 The Proponent will pay the cost of the Bank cheques for settlement, up to a maximum of one cheque for each Native Title Party.

9. Time

9.1 Time is of the essence of this Agreement, except regarding any agreement between the Parties on a time of day for settlement,

10. Satisfaction of Compensation Entitlement

10.1 Subject to the Surrender taking effect in accordance with clause 6.2, the Native Title Parties, on their own behalf and on behalf of the Corresponding Aboriginal / Torres Strait Islander Peoples, agree that the Proponent's payment to the Native Title Parties of the Compensation Amount:

- (a) constitutes "compensation provided for in the agreement" for the purposes of section 24EB(4) of the NTA and is in full and final satisfaction of any Compensation Entitlement; and
- (b) is for the benefit of all native title holders who are Corresponding Aboriginal / Torres Strait Islander Peoples.

11. Release and Waiver

11.1 Subject to the Surrender taking effect in accordance with clause 6.2:

- (a) each of the Native Title Parties, on their own behalf and on behalf of the Corresponding Aboriginal / Torres Strait Islander Peoples, release and discharge the State and the Proponent from any Claim in relation to the Surrender or the grant of the Freehold Land; and
- (b) each of the Native Title Parties waive any rights the Native Title Parties or the Corresponding Aboriginal / Torres Strait Islander Peoples may have to make any Claim against the State or the Proponent in relation to the Surrender or the grant of the Freehold Land.

11.2 This clause 11 may be pleaded as a complete bar to any Claim brought by any of the Native Title Parties or any member of the Corresponding Aboriginal / Torres Strait Islander Peoples against the State or the Proponent in relation to the Surrender or the grant of the Freehold Land.

12. Registration of ILUA

12.1 The Proponent is authorised on behalf of the Parties to apply to the Registrar in writing for this Agreement to be Registered.

12.2 The Proponent must apply to the Registrar in writing for this Agreement to be Registered as soon as reasonably practicable after the Execution Date.

12.3 Each of the Native Title Parties must promptly do all things necessary to assist this Agreement to be Registered, including:

- (a) providing the Proponent with the certifications in Schedule 2 signed by the common law holders of Native Title and Representative Body;
- (b) providing any other Prescribed Documents to the Proponent upon request.

13. Goods and Services Tax

13.1 The Compensation Amount is specified in this Agreement exclusive of any GST.

13.2 The Parties acknowledge that the Native Titles Parties' supply under this Agreement might not be a Taxable Supply because, for example, it might not be made in the course or furtherance of an enterprise and the Native Title Parties might not be registered or required to be registered for GST.

13.3 If the Compensation Amount is, in fact, consideration for a Taxable Supply by the Native Title Parties then the Proponent must pay to the Native Title Parties, in addition to the Compensation Amount, an amount equivalent to the amount payable by the Native Title Parties as GST on the Taxable Supply.

13.4 The Proponent must pay the amount under clause 13.3 to the Native Title Parties by the later of:

- (a) the date the Compensation Amount is payable under clause 8; and
- (b) the date the Native Title Parties have given the proponent a Tax Invoice for the Taxable Supply.

14. Notices

14.1 All notices, requests, consents or approvals given under this Agreement must be:

- (a) in writing; and
- (b) delivered by hand, sent by prepaid post, sent by facsimile transmission or sent by email to the relevant

- Party's address specified in Item B;
and
- (c) on the relevant Party's letterhead and signed by an authorised person.
- 14.2 Subject to clause 14.3, a notice given in accordance with clause 14.1 will be deemed to be given:
- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, three (3) Business Days after the date of posting;
- (c) if sent by facsimile, on the date on which an apparently successful transmission is noted by the sender's facsimile system; or
- (d) if sent by email, on the date of the email.
- 14.3 If a notice is hand delivered, sent by facsimile, or sent by email on a day that is not a Business Day or after 5.00 pm on a Business Day it will be deemed to be given on the next Business Day at 9.00 am.
- 14.4 Notices, requests, consents or approvals may be given by or to a Party's solicitor by any of the means specified in clause 14.1

15. No Termination for Breach

- 15.1 A breach of this Agreement by any Party will not give any other Party a right to terminate this Agreement, but that non-defaulting Party may exercise any other remedy available to it in respect of such breach.

16. Costs

- 16.1 Each Party will pay its own costs of and incidental to the negotiation, preparation, execution of this Agreement and this Agreement being Registered.
- 16.2 The Proponent must pay any stamp duty payable on this Agreement in accordance with the *Duties Act 2001* (Qld).

17. Independent Legal Advice

- 17.1 The Native Title Parties represent and warrant that prior to executing this Agreement they and the Corresponding Aboriginal / Torres Strait Islander Peoples have received independent legal advice on all aspects of this Agreement.

18. Statement for the purpose of the NTA

- 18.1 For the purposes of section 24EB(1)(c) of the NTA and regulation 6(5)(b) of the ILUA

Regulations, the Parties state that Subdivision P of Division 3 of Part 2 of the NTA is not intended to apply to the Surrender.

19. General

- 19.1 Each Party must do all things reasonably necessary to give full effect to this Agreement.
- 19.2 A right under this Agreement may only be waived in writing, executed by the Party giving the waiver.
- 19.3 This Agreement can only be varied by written agreement executed by each Party.
- 19.4 This Agreement may be executed in counterparts.
- 19.5 If any part of this Agreement is determined to be invalid, unlawful or unenforceable, then that part may be severed from the rest of this Agreement and the remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law.
- 19.6 This Agreement constitutes the entire agreement between the Parties and supersedes any prior negotiations, arrangements and agreements between the Parties.
- 19.7 This Agreement is governed by the laws of Queensland. Any proceedings arising from or in relation to this Agreement must be commenced in Queensland. To avoid any doubt, any such proceeding commenced in the Federal Court of Australia must be commenced in the Queensland District Registry.

Part C: Additional terms:

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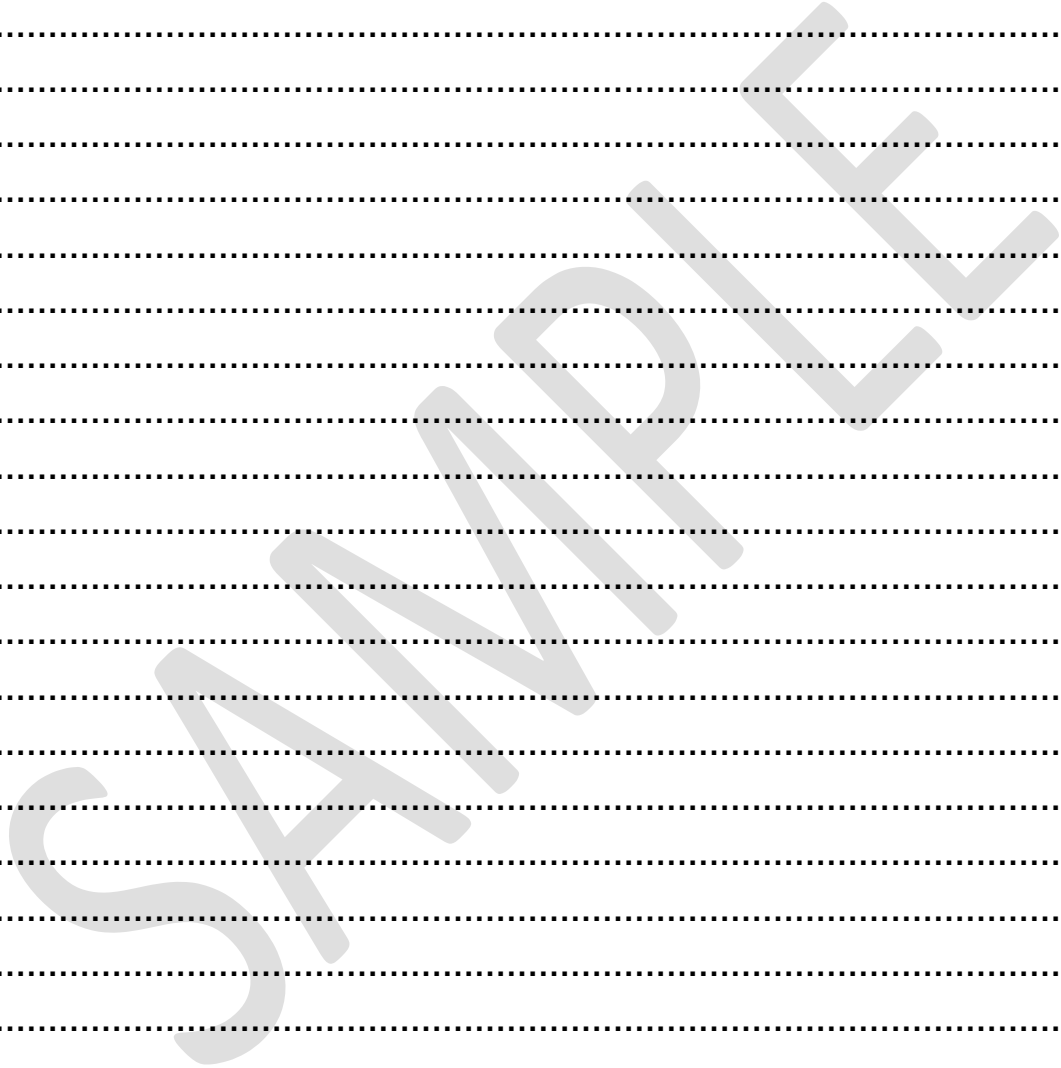
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Schedule 1 – Map of Agreement Area:

[Insert Plan showing Agreement Area]

SAMPLE

Schedule 2 – Certification under Regulation 9 of PBC Regulations:

Note :

- A certification in the form of Part A of this Schedule 2 is to be completed for each RNTBC which is a party to this Agreement. The name of the relevant RNTBC should be written in the blank space in paragraph (b).
- Each certification under Part A is to be signed by at least 5 members of the RNTBC who are common law holders whose native title rights would be affected by the surrender under the Agreement. If there are less than 5 members of the RNTBC whose native title rights would be affected by the surrender, the certification under Part A must be signed by at least 5 members of the RNTBC, including all members whose native title rights would be affected.
- A certification under Part B is to be signed by an authorised member of the Representative Body

Part A – Certification by Common Law Holders

We, the undersigned certify that:

- (a) this is a document for the purposes of regulation 9 of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cwth) (PBC Regulations);
- (b) we are all members of the _____ RNTBC (RNTBC) and we are all common law holders represented by the RNTBC whose Native Title would be affected by the RNTBC entering into the Agreement;
- (c) the common law holders represented by the RNTBC have been consulted about, and have consented to, the RNTBC entering into the Agreement in accordance with regulation 8(1)(b) of the PBC Regulations;
- (d) prior to the common law holders represented by the RNTBC consenting to the RNTBC entering into the Agreement:
 - (i) the Representative Body was consulted about the proposed decision for the RNTBC for the RNTBC to enter into the Agreement; and
 - (ii) the Representative Body's views about the RNTBC entering into the Agreement were considered,in accordance with regulation 8(2) of the PBC Regulations.

[Insert execution clause for each person signing]

Part B – Certification by Representative Body

I, the undersigned, authorised member of the Representative Body, certify that the Representative Body has been consulted about the proposed decision by each RNTBC named as a party to this Agreement to enter into this Agreement.

[Insert execution clause for each person signing]