

# Pastoral ILUA template

November 2011



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# Pastoral Indigenous Land Use Agreement

For *[insert name of holding]*

Lot **xxx** on Plan **xxx**

**Between**

"Native Title Party"

"Representative Body"

"AgForce Queensland (AgForce to confirm party status)"

"Other Parties"

**And**

"Lessee"

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## IT IS NOW AGREED AS FOLLOWS

### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires or the contrary intention appears, the following terms will have the following meanings:

**“Aboriginal Cultural Heritage”** has the same meaning as given in the ACHA;

**“Access Notice”** means a written notice issued to the Lessee by the Native Title Party in accordance with clause 11;

**“ACHA”** means *Aboriginal Cultural Heritage Act 2003* (Qld);

**“Agreement”** means this indigenous land use agreement, and includes all schedules to this Agreement and any subsequent variations, as recorded in the Register of Indigenous Land Use Agreements;

**“Agreement Area”** means that part of the Lease described in Schedule 4 over which the Native Title Party will gain access to the land and undertake Traditional Activities. Parts of the Agreement Area will be subject to conditions, as provided for in Schedule 3;

**“Applicant”** means XXX, and it has the same meaning as “applicant” under the NTA;

**“Application”** means XXXX People Claim (QUD XXX) as amended from time to time;

**“Business Day”** means any day, other than a Saturday, Sunday or Public Holiday;

**“Conservation Agreement”** means a conservation agreement under section 45 or 48 of the NCA;

**“Conservation Covenant”** means a covenant registered under section 373A of the Land Act that is of a type mentioned in section 373A(4)(b) of the Land Act where the covenantee is the State;

**“Contact Person”** means the person nominated in Schedule 1 as the first point of contact for the Native Title Party and the Lessee;

**“Determination”** means a Court Order which constitutes a determination of native title under the NTA in respect of the Application;

**“Dispute”** means a dispute between the Parties with respect to this Agreement or any of its provisions and includes any breaches of the terms of the Agreement;

**“Dispute Notice”** means a dated, written notice given to the other Party containing full particulars of the Dispute;

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

**“Extinguishment Areas”** means the land or waters within the Lease subject to Native Title Claim over which Native Title is deemed to be extinguished and includes the permanent exclusion areas in Item 9.1 of Schedule 3 and Item 2 of Schedule 4;

**“Land Act”** means *Land Act 1994* (Qld);

**“Land Register”** means a register under section 276 of the Land Act kept by the Land Registry;

**“Land Registry”** has the same meaning as given in the Land Title Act;

**“Land Title Act”** means the *Land Title Act 1994* (Qld);

**“Land Title Registrar”** means the registrar of titles under the Land Title Act and whose contact details can be found at Item 4 of Schedule 1;

**“Lease”** means the lease under the Land Act over Lot xxx on Plan xxx as described in Item 3 of Schedule 1 and includes, where the context permits, any renewal or extension of that lease or any new lease that replaces that lease;

**“Lessee”** means the holder(s) of the Lease as described in Item 1 of Schedule 1 and also includes where the context permits it, all of the Lessee’s employees, contractors, agents, invitees and all family members or other who cohabit with the Lessee;

**“NCA”** means *Nature Conservation Act 1992* (Qld);

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

**“Native Title”** has the same meaning as given in the NTA;

**“Native Title Claim”** means the native title determination application made by the Applicant for and on behalf of the Native Title Claim Group in Federal Court proceedings QUD xxx of xxxx;

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

**“Native Title Party”** means *[Insert names]* (and if they are signing on behalf of a particular group add the words “on their own behalf and on behalf of the *[Insert details]* People”) or the prescribed body corporate as determined by the court pursuant to sections 56 and 57 of the NTA for any portion of the Agreement Area;

**“Native Title Registrar”** has the same meaning as given in the NTA and whose contact details can be found at Item 5 of Schedule 1;

**“Nature Refuge Agreement”** means any agreement negotiated between the Lessee and the State entered into under the NCA which provides for the conservation and controlled use of the Lease area’s significant cultural and natural resources and which provides for the interest of the Lessee to be taken into account;

**“Nature Refuge”** has the same meaning as given in the NCA;

**“NNTT”** means the National Native Title Tribunal established under the NTA;

**“Notation Date”** means the date on which this Agreement is Noted by the Land Title Registrar, which will be the date on which the Agreement is recorded on the Land Register;

**“Noted”** and **“Noting”** mean the recording of this Agreement on the Land Register by the Land Title Registrar;

**“Parties”** means the parties to this Agreement, being the Lessee and the Native Title Party and reference to a Party means either one of them as the context requires;

**“Public Holiday”** means a public holiday in accordance with the *Holidays Act 1983* (Qld);

**“Queensland Law”** means the law in force in Queensland as at the Execution Date;

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

**“Representative Body”** means the representative Aboriginal body for the Agreement Area as defined in the NTA and listed in Item 2 of Schedule 1;

**“Rural Leasehold Land”** has the same meaning as given in the Land Act;

**“State”** means the State of Queensland, acting through the Department of Environment and Resource Management or other Queensland Government department or agency responsible for administering the Land Act from time to time;

**“Traditional Activities”** are those activities undertaken by the Native Title Party on the Agreement Area, as provided for in Schedule 2;

**“Traditional Natural Resources”** means:

- (a) animals as defined in the NCA but not including animals that are the private personal property of another;
- (b) plants as defined in the NCA; and
- (c) any clay, soil, sand, gravel or rock on or below the surface of the Agreement Area,

that have traditionally been taken and used by the Native Title Claim Group;

**“Water”** has the same meaning as given in the *Water Act 2000* (Qld).

1.2 Unless the contrary intention appears clause headings in this Agreement are for reference purposes only and may not be used in interpretation.

1.3 In this Agreement words in the singular include the plural and words in the plural include the singular.

## **2. Purpose of the Agreement**

2.1 The purpose of this Agreement is:

- (a) to negotiate and formalise access to and use of Rural Leasehold Land;  
and
- (b) to authorise access to the Agreement Area by the Native Title Party so that they may carry out Traditional Activities in a manner that is not inconsistent with the Lessee's rights and obligations under the Lease;  
and
- (c) to establish practical and flexible arrangements for access to and use of the Agreement Area, during the term of the Lease, and to manage any associated risks.

2.2 The Lessee warrants that within thirty (30) Business Days of the date this Agreement is registered and entered on the Register of Indigenous Land Use Agreements, the Lessee will withdraw as a respondent to the Native Title Party's Native Title Claim.

2.3 If the Native Title Party's Native Title Claim is withdrawn and replaced with a new claim for any reason, the Lessee will not become a party to the new claim by the same Native Title Claim Group in respect of the Lessee's interests under the Lease.

2.4 The Native Title Party warrants that in the event of a Determination recognising Native Title rights in relation to the Agreement Area:

- (a) the Determination will include as one of the other interests in the determination area the Lessee's interests under the Lease and this Agreement; and
- (b) the permanent exclusion areas described in Item 8.1 of Schedule 3 and Item 2 of Schedule 4 will be treated as if they were Extinguishment Areas.

### **3. Application of the Agreement**

3.1 This Agreement, and any activities authorised by or under this Agreement do not extinguish Native Title nor does the Native Title Party surrender any Native Title rights and interests in entering into this Agreement.

3.2 To remove any doubt, this is not a native title agreement or another agreement with an Aboriginal party for the purposes of the ACHA; rather, it is an indigenous land use agreement under Part 2, Division C of the NTA, to which sections 155(5), 155(6), 155B and/or 155BA of the Land Act apply.

### **4. Authority to Enter into the Agreement**

4.1 The Native Title Parties represent and warrant that:

(a) all reasonable efforts, including consulting the Representative Body, have been made to ensure that all persons who hold or may hold Native Title in relation to the Agreement Area have been identified; and

(b) 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.

### **5. Term of the Agreement**

5.1 Subject to clauses 5.4, 5.5 and 5.8, this Agreement takes effect on the Execution Date, and continues until:

(a) the date of expiry of the Lease term; or

(b) the date of surrender, resumption, forfeiture or termination of the Lease;  
or

(c) the date of removal of the Agreement from the Register of Indigenous Land Use Agreements.

5.2 The Parties will notify the State and the Land Title Registrar within 10 Business Days of the Agreement ending under clause 5.1(c).

- 5.3 Any entitlements owing to the Lessee under the provisions of the Land Act by virtue of the existence of this Agreement, relating to extensions, terms and other benefits in place at the time, take effect on the Notation Date.
- 5.4 In the event a Determination recognising the right to possession and occupation of the Agreement Area, to the exclusion of all others, is made to:
- (a) persons other than the Native Title Party, the Agreement terminates as at the date of the Determination; or
  - (b) the Native Title Party, the Agreement continues unless otherwise determined by the Native Title Party.
- 5.5 Unless otherwise agreed, this Agreement will end with the valid extinguishment of Native Title over the whole of the Agreement Area.
- 5.6 The Lessee will notify the State and the Land Title Registrar within 28 Business Days of the Agreement ending under clause 5.4(a) or 5.4(b) or clause 5.5.
- 5.7 The Parties acknowledge that upon details of this Agreement being removed from the Register of Indigenous Land Use Agreements and/or Land Register for any reason, the provisions of sections 155D to 155E of the Land Act and any subordinate legislation apply in relation to the Lease term.
- 5.8 Subject to the provisions of the Land Act, the Agreement will not terminate if:
- (a) the Lease has expired but application has been made for renewal or other action has been taken under the provisions of the Land Act for continuity of the Lease; or
  - (b) land dealings on the Lease in the form of subdivisions, amalgamations, additional areas or conversion to a perpetual tenure result in a new lease being issued; or
  - (c) the Lease or part of the Lease is converted to protected area tenure under the NCA.

## **6. Registration of Agreement**

### ***Register of Indigenous Land Use Agreements***

- 6.1 The Parties agree that this Agreement is intended to be registered as an area agreement under sections 24CA to 24CL of the NTA and the *Native Title (Indigenous Land Use Agreement) Regulations 1999* (Cth).
- 6.2 The Lessee is authorised on behalf of the Parties to apply to the Native Title Registrar for this Agreement to be registered and entered on the Register of Indigenous Land Use Agreements and will endeavour to do so in a timely manner.
- 6.3 Upon execution of this Agreement by the Native Title Party, the Native Title Party will provide, or cause to be provided to the NNTT all documents or information required to satisfy section 24CG of the NTA.
- 6.4 The Parties must take all steps necessary to assist in the registration of this Agreement on the Register of Indigenous Land Use Agreements.

### ***Land Register***

- 6.5 The Lessee is authorised on behalf of the Parties to make written application to the Land Title Registrar for this Agreement to be Noted on the Land Register.
- 6.6 The Lessee will make the application under clause 6.5 within 30 Business Days of the registration of this Agreement on the Register of Indigenous Land Use Agreements.
- 6.7 The Lessee agrees that once the Agreement is Noted, the Lease conditions will be varied to take into account this Agreement and the Lessee will not oppose those variations.
- 6.8 Once Noted, copies of the Agreement may be made available through any search or discovery motion by a member of the public or party to legal proceedings.

## **7. Notices**

- 7.1 The Lessee will nominate in Item 1 of Schedule 1 the person to whom notice is to be given.
- 7.2 All notices given under this Agreement must be:
- (a) in writing; and
  - (b) delivered or sent by prepaid post to the Contact Person's address in Schedule 1; or
  - (c) sent by facsimile or email to the Contact Person's fax or email address in Schedule 1.
- 7.3 Notice given in accordance with clause 7.2 will be treated as given and received:
- (a) if hand delivered, on delivery; or
  - (b) if sent by prepaid post – 10 Business Days after the date of posting; or
  - (c) if sent by facsimile, when the sender's facsimile system generates a report confirming the transmission of the number of pages in the Notice; or
  - (d) if sent by email, when the sender's email transmission system confirms the email has been successfully relayed to the Contact Person's email address.
- 7.4 If a notice is hand delivered or sent by facsimile or email on a day that is not a Business Day or after 5.00 pm on a Business Day it will be treated as given on the next Business Day at 9.00 am.
- 7.5 Changes to any of the contact information in Schedule 1 must be advised by reasonable written notice to the other Party.

## **8. Access and Use of Agreement Area**

- 8.1 The Parties must determine the most suitable route of access to the Agreement Area.
- 8.2 If access to the Agreement Area requires traversing the property of third parties, including areas subject to other native title claims, the Native Title Party must negotiate with those third parties in order to gain access to the Agreement Area.
- 8.3 The Lessee will use its best endeavours to assist the Native Title Party to gain access to the Agreement Area via third parties' property.
- 8.4 The Lessee will not unreasonably restrict the Native Title Party's access to the Agreement Area to carry out Traditional Activities and other agreed activities included in Schedule 2, except where necessary and in accordance with any conditions provided for in this clause and Schedule 3.
- 8.5 The Lessee will respect the Native Title Party's use of the Agreement Area without supervision or other interference, subject to clause 8.6 and any further conditions provided in Schedule 3.
- 8.6 The Native Title Party may not, while traversing or conducting Traditional Activities in the Agreement Area, interfere with the Lessee's property, and in particular may not:
- (a) use or interfere with any buildings, dams, other constructed stock watering points, or any other improvements or plant and equipment except to the extent that the Lessee has specifically agreed otherwise; or
  - (b) interfere with the Lessee's stock or crops.

## **9. Nature Refuges**

- 9.1 Subject to clauses 9.2 to 9.5, the Native Title Party acknowledges and agrees that, if the land the subject of the Lease is suitable, a Conservation Agreement

or Conservation Covenant may be proposed for some or all of this land, including on the Agreement Area.

- 9.2 If the Native Title Party wishes to, they may choose to be a party to the Conservation Agreement or Conservation Covenant.
- 9.3 If a Conservation Agreement or Conservation Covenant is proposed on the land, or if an amendment to an existing Conservation Agreement or Conservation Covenant is proposed, and the Native Title Party is not a party to the Conservation Agreement or Conservation Covenant, the Lessee will:
- (a) consult with the Native Title Party regarding the proposed conservation area, or amendments to the Conservation Agreement or Conservation Covenant; and
  - (b) give due consideration to the continuity of activities permitted under the terms of this Agreement as far as practicable; and
  - (c) not enter into a Conservation Agreement or Conservation Covenant, with the State until it has consulted with the Native Title Party.
- 9.4 The Parties agree that the Conservation Agreement or Conservation Covenant must not materially affect the Native Title Party's Native Title rights and interests except with the consent of the Native Title Party.
- 9.5 If the Native Title Party is not a party to the Conservation Agreement or Conservation Covenant:
- (a) the Native Title Party agrees that they will not unreasonably withhold agreement to the Conservation Agreement or Conservation Covenant; and
  - (b) the Lessee agrees that they will be responsible for any management activities or costs associated with the Conservation Agreement or Conservation Covenant, unless the parties agree otherwise.

## **10. Lessee's Obligations**

10.1 The Lessee may, where particular circumstances arise that make it necessary to do so because of:

- (a) the need to avoid interference with particular activities being carried out on the Agreement Area pursuant to the Lease; or
- (b) potential hazards temporarily affecting the Agreement Area,

temporarily exclude the Native Title Party from part of the Agreement Area, or temporarily require the Native Title Party not to undertake certain activities, including but not limited to those activities outlined in Schedule 2, in that part of the Agreement Area, by giving reasonable written notice of this to the Native Title Party (a "temporary exclusion").

10.2 By way of example only, a temporary exclusion may be considered necessary:

- (a) where and when the Lessee is mustering, and the presence of people not involved in the mustering work would be likely to hinder or interfere, with the mustering work, or
- (b) where and when the Lessee is engaged in the conduct of a potentially dangerous activity such as:
  - (i) controlled burning, or
  - (ii) spraying with hazardous chemicals,

for the safety of the Native Title Party and in order to prevent hindrance of or interference with those activities.

10.3 The Lessee may not temporarily exclude any Native Title Party from any part of the Agreement Area unless:

- (a) it is for purposes authorised by the Lease, and
- (b) there are particular circumstances that make it necessary for the exclusion to be imposed, and

- (c) in any case, only in relation to the part of the Agreement Area that is reasonably necessary.

10.4 The Lessee may not temporarily exclude any Native Title Party from any part of the Agreement Area for any period longer than is necessary having regard to the circumstances in clause 10.3.

10.5 The Native Title Party and the Lessee will use reasonable endeavours to negotiate, where possible, a solution that minimises as far as possible the impact on the conduct of Traditional Activities on the Agreement Area during a temporary exclusion.

### ***Lessee to Limit Temporary Exclusions***

10.6 The Lessee agrees to, as far as practicable:

- (a) minimise both the frequency of temporary exclusions and the area which is affected by those exclusions and where such exclusions are put in place;
- (b) ensure that access for the purposes of undertaking Traditional Activities is available to all other parts of the Agreement Area while the temporary exclusion is in place; and
- (c) notify the Native Title Party of the construction of any improvements within the Agreement Area which may impact on the Native Title Party carrying out Traditional Activities in that area.

### ***Lessee's Notice of Temporary Exclusion***

10.7 The Lessee must provide reasonable written notice to the Native Title Party via the Contact Person of a temporary exclusion and the notice must include details of:

- (a) the circumstances giving rise to the need for the temporary exclusion;
- (b) the starting date and time for the exclusion;
- (c) the duration of the exclusion; and

- (d) the part of the Agreement Area from which the Native Title Party is to be temporarily excluded; or
- (e) the part of the Agreement Area which the Native Title Party is temporarily prohibited from undertaking certain Traditional Activities and a list of those activities.

10.8 The Lessee may also place a notice of a temporary exclusion in a prominent location on main access gates on the Lease.

10.9 The Lessee agrees to provide written notice as soon as practicable after the Lessee becomes aware that a temporary exclusion will be necessary and in any event will endeavour to provide a reasonable time before the exclusion is to operate.

## **11. Native Title Party Obligations**

11.1 When the Native Title Party proposes to access and use the Agreement Area, an Access Notice must be given to the Lessee.

11.2 An Access Notice must be provided by the Native Title Party to the Lessee at least 14 days prior to entering the property, unless otherwise agreed by the Parties and that notice must include:

- (a) the date or dates and approximate time of the proposed access;
- (b) the part of the Agreement Area to which the Native Title Party intends to have access;
- (c) the general nature of the activities that the Native Title Party intends to undertake;
- (d) the proposed access route/s;
- (e) the proposed number of members of the Native Title Party who will be visiting or using the Agreement Area; and
- (f) whether it is proposed to bring any items subject to conditions in Schedule 3 (for example, firearms or animals).

- 11.3 Within seven (7) days of receiving the Access Notice, the Lessee must provide reasonable written notice to the Contact Person for the Native Title Party granting access and advising of any conditions or exclusions on the Agreement Area at the particular time of the proposed access.
- 11.4 If a member of the Native Title Party causes damage to the Lessee's property, stock or crops, the Native Title Party will give reasonable written notice of the damage to the Lessee as soon as practicable and provide steps to rectify or make good the damage.
- 11.5 Subject to Schedule 3, the Native Title Party is not permitted to construct any dwellings or permanent structures on the Agreement Area.
- 11.6 Nothing in clause 11 is intended to prevent the Lessee from giving notice to the Native Title Party waiving or suspending the notice requirements in this clause, in relation to access:
- (a) by particular members of the Native Title Party;
  - (b) to all or particular parts of the Agreement Area; and
  - (c) for the purposes of carrying out particular Traditional Activities.

## **12. Statutory Obligations**

- 12.1 The Parties acknowledge that the Lessee must comply with all Lease conditions and any Land Management Agreement in force under Part 3 Division 6 of the Land Act and in the event of an inconsistency with any of the Lease conditions and this Agreement, the Lease conditions will prevail.
- 12.2 The Lessee recognises that there may be Aboriginal Cultural Heritage on the land the subject of the Lease, and the Lessee:
- (a) will take all reasonable and practicable measures to ensure that the Lessee's activities do not harm Aboriginal Cultural Heritage; and
  - (b) must comply with the Aboriginal Cultural Heritage duty of care guidelines under the ACHA.

12.3 The Native Title Party must not do anything which restricts or interferes with the performance of the Lessee's statutory obligations.

### **13. Communication and Review**

13.1 To assist in identifying and addressing any difficulties that may arise regarding the implementation of this Agreement and to foster the development and maintenance of the relationship, the Parties will meet at a mutually convenient time (within 20 Business Days of date of notice) and at the agreed meeting place, when either Party gives written notice to the other Party in accordance with the notice requirements in clause 7.

13.2 Despite clause 13.1, the Parties must meet to review the Agreement at least once every 5 years, within 60 days of the anniversary of the Execution Date.

### **14. Dispute Resolution**

14.1 The Parties will use their best endeavours to resolve any Dispute in good faith.

14.2 If one (1) Party alleges that a Dispute exists, that Party may issue the other Party with a Dispute Notice in accordance with the notice requirements in clause 7.

14.3 A Dispute Notice must contain details of:

- (a) the Dispute;
- (b) proposed arrangements for a meeting to discuss the Dispute; and
- (c) if the Dispute concerns an alleged breach of this Agreement, the steps requested to address that breach including any action to remedy, rectify or cease that breach; and
- (d) if the Dispute concerns a substantial breach, a statement that if the breach is capable of remedy and is not remedied the Agreement may be terminated in accordance with clause 14.5(b).

14.4 Within 21 Business Days of the Dispute Notice being given, the Parties must meet to discuss the Dispute and negotiate to resolve the Dispute.

- 14.5 If the Dispute is not resolved by the Parties within 21 Business Days after the Dispute Notice is given, then a Party may by notice given to the other Party:
- (a) request the Dispute be referred to a mediator to mediate the Dispute in accordance with the Australian Institute of Arbitrators and Mediators Mediation Rules; or
  - (b) if the Dispute concerns a substantial breach of this Agreement capable of being remedied and which has not been remedied, terminate the Agreement.
- 14.6 If a Party gives a notice in accordance with clause 14.5(a) and the Parties cannot agree on a mediator to be appointed within seven (7) Business Days of giving that notice, either Party may apply to the Queensland President of the Australian Institute of Arbitrators and Mediators for the appointment of a mediator to mediate the Dispute.
- 14.7 The Lessee will notify the State and the Land Title Registrar within 10 Business Days of the Agreement ending under clause 14.5(b).
- 14.8 Despite clauses 14.4 and 14.5, if the Dispute is not resolved within 45 Business Days after the Dispute Notice is given, any Party may seek to resolve the Dispute in a court of competent jurisdiction.
- 14.9 Each Party bears its own costs under this clause.
- 14.10 Nothing in this clause is to be construed as prohibiting a Party from applying to a court of competent jurisdiction for interlocutory relief.

## **15. Assignment of Lease**

- 15.1 If the Lessee transfers, or otherwise disposes, of part or the whole of the Lease:

- (a) the Lessee must inform the transferee of the existence of the Agreement and provide the transferee with a copy no less than 28 days prior to the transfer taking effect;
- (b) the transferee is taken to be a Party to the Agreement in place of the Lessee; and
- (c) the rights and responsibilities of the Lessee under the Agreement become the rights and responsibilities of the transferee and the transferee must comply with the Agreement.

15.2 The transferee must notify the Land Title Registrar and the Native Title Registrar of the transfer no more than 28 days after the transfer taking effect.

15.3 If the Lessee sublets part or the whole of the land under the Lease, the Lessee:

- (a) continues to be liable for all the Lease conditions in accordance with section 337 of the Land Act;
- (b) must inform the sublessee of the existence of the Agreement and provide the sublessee with a copy no less than 28 days prior to the sublease taking effect; and
- (c) use best endeavours to ensure the sublessee complies with the Agreement.

## **16. Liability**

16.1 The Parties agree and acknowledge that the Native Title Party accesses and uses the Agreement Area at their own risk, except to the extent that risks are caused by the negligent or wilful acts or omissions of the Lessee.

16.2 The Lessee and the Native Title Party will take reasonable care not to create or contribute to any new or hidden risks on the Agreement Area and will inform each other of any risks on the Agreement Area of the Lease which are unmarked and unguarded of which they are aware or ought to be aware.

## **17. State's Indemnity**

### 17.1 The Parties:

- (a) indemnify and agree to keep indemnified the Minister administering the Land Act, and the State of Queensland, (the "Indemnified parties") against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses ("Claim") arising out of or in any way connected to or resulting from the operation of this Agreement which is connected to or resulting from the Parties' use and occupation of the Lease (all of which are referred to as "the indemnified acts or omissions"); and
- (b) release and discharge the Indemnified parties from any Claim relating to the indemnified acts or omissions which may be made against the Indemnified parties,

save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified parties, however, any negligent act or omission of one of the Indemnified parties does not negate the indemnity, release and discharge to any of the other Indemnified parties.

## **18. Insurance**

- 18.1 Subject to clause 18.3 below, the Lessee and Native Title Party will at all times each maintain a public liability insurance policy in relation to the Agreement Area for their respective rights and interests against any liability to third parties and an insurance policy for their respective rights and interests against any liability to the other.
- 18.2 The public liability policies to be maintained by the Lessee and the Native Title Party must each be for an amount of not less than \$10 million for any single event up to the total aggregate liability stipulated in the policy of insurance.
- 18.3 The Native Title Party will only be required to obtain and maintain a public liability insurance policy in relation to the Agreement Area if the Lessee:

- (a) identifies an insurer willing to provide such insurance to the Native Title Party;
- (b) gives reasonable written notice to the Native Title Party that it requires the Native Title Party to obtain such insurance;
- (c) advises in the written notice that the Lessee will meet the cost of obtaining such insurance; and
- (d) pays the cost of obtaining such insurance upon receipt of the insurer's tax invoice.

18.4 The Lessee in giving written notice under clause 18.3(b) above may nominate a premium cost the Lessee is prepared to pay.

18.5 The Lessee cannot be required to pay the cost of public liability insurance policy for the Native Title Party unless the Lessee gave the written notice referred to in clause 18.3 above.

18.6 Within three (3) months of the registration of this Agreement on the Register of Indigenous Land Use Agreements, and on each anniversary of that date, the Lessee must produce evidence of the currency of the Lessee's insurance policy to the Native Title Party and the State.

## **19. Costs**

19.1 Each Party bears its own costs in relation to the preparation, signing and review of this Agreement.

19.2 Unless otherwise provided in this Agreement, the Lessee pays any registration fees on this document and on any instrument or other document signed to give effect to this Agreement.

## **20. Independent Legal Advice**

20.1 The Parties acknowledge that they have had the benefit of independent legal advice in respect of all aspects of this Agreement.

## **21. Waiver**

21.1 A right under this Agreement may only be waived in writing, executed by the Party giving the waiver.

## **22. Governing Law**

22.1 This Agreement is governed by Queensland Law. 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.

## **23. Variations**

23.1 Any variations to this Agreement must be in writing, signed by all Parties.

23.2 Variations to the Agreement do not take effect until they are recorded in the Register of Indigenous Land Use Agreements.

23.3 The Lessee will notify the Land Title Registrar within 28 Business Days of any variation made to the Agreement for Noting on the Land Register.

## **24. General**

24.1 Each Party must do all things reasonably necessary to give full effect to this Agreement.

24.2 This Agreement may be executed in counterparts.

24.3 Unless otherwise agreed, this Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement between the Parties.

24.4 If part or all of any clause of this Agreement is void, illegal or unenforceable, that part may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

***[Insert Execution Clauses]***

**Schedule 1 - Details**

## Schedule 2 – Activities on the Agreement Area

### Traditional Activities

1.1 Traditional Activities permitted to be undertaken under this Agreement are:

- (a) Other than in relation to Water:
  - (i) Accessing, traversing and camping on the Agreement Area;
  - (ii) Taking (including by hunting and/or gathering), using, sharing and exchanging Traditional Natural Resources from the Agreement Area for personal, domestic and non-commercial communal purposes and not in contravention of the *Nature Conservation Act 1992* (Qld), *Vegetation Management Act 1999* (Qld), *Mineral resources Act 1989* (Qld) and other relevant legislation;
  - (iii) Conducting cultural and spiritual activities and ceremonies on the Agreement Area, including recording cultural heritage sites in a manner that is not inconsistent with the conditions for access to and use of the Agreement Area;
  - (iv) Being buried and burying Native Title Parties, in the ground within the Agreement Area, subject to Item 4 in Schedule 3;
  - (v) Maintaining places of importance and areas of significance to the Native Title Parties under their traditional laws and customs and protecting those places and areas, by lawful means, from physical harm;
  - (vi) Teaching on the Agreement Area the physical and spiritual attributes of the Agreement Area;
  - (vii) Holding meetings on the Determination area

(viii) Lighting fires on the Agreement Area for domestic purposes including camping, cooking and ceremonies, subject to item 6.5 in Schedule 3.

(b) In relation to Water:

(i) Hunting and fishing in or on, and gathering from, the Water for personal, domestic and non-commercial communal purposes;  
and

(ii) Taking and using the Water for personal, domestic and non-commercial communal purposes.

## **Schedule 3 – Specific Conditions, Restrictions and Exclusions**

### **1. Access**

- 1.1 The Parties agree that, unless the Lessee has given prior consent and agreement has been reached as to maintenance, the Native Title Party will:
- (a) limit the use of motor vehicles to existing roads and/or tracks; and
  - (b) not construct any new tracks on the Lease or the Agreement Area.
- 1.2 If the State has declared public roads closed to traffic, the Native Title Party will not travel on tracks or roads on the Lease except:
- (a) in the case of an emergency; or
  - (b) to return to their homes before the road closure has been lifted.
- 1.3 The Native Title Party agrees to:
- (a) leave all gates in the Agreement Area open or closed as they find them; and
  - (b) apply common sense when using fences and gates, and not damage, cut or otherwise alter any fence or gate in any way unless by prior arrangement with the Lessee.

### **2. Disposal of Rubbish**

- 2.1 The Native Title Party is to remove and dispose of, or place in designated rubbish storage areas on the Agreement Area, any rubbish created by them.
- 2.2 The Lessee will ensure that any contractors, subcontractors or third parties either remove or place in designated rubbish storage areas on the Agreement Area, any rubbish created by them.

### **3. Workplace Health and Safety**

- 3.1 The Native Title Party recognises that the Lessee is, and may further become, legally obliged to observe and comply with workplace health and safety policies, procedures or measures (including, without limitation, the obligations under Division 2 of the *Workplace Health and Safety Act 1995* (Qld)).
- 3.2 The Lessee will at all times observe its workplace health and safety policies, procedures and measures.
- 3.3 The Native Title Party will at all times take care to ensure that their access to and use of the Agreement Area does not cause any breach of any reasonable workplace health and safety policies, procedures and measures that they have been provided with the details of.
- 3.4 The Lessee may conduct a workplace induction program so as to provide the Native Title Party with details of the Lessee's workplace health and safety policies, procedures and measures.
- 3.5 In the event that the Lessee conducts a workplace induction program the Native Title Party agree that at least six (6) members of the Native Title Party will attend the induction program.
- 3.6 Members of the Native Title Party are not required to attend more than one (1) workplace induction program in any calendar year.

### **4. Burial**

- 4.1 The Native Title Party will not bury human remains on the Agreement Area without the prior written consent of the Lessee and the State.
- 4.2 In the event that the Native Title Party wants to obtain the consent of the Lessee to bury human remains on the Agreement Area, the Native Title Party must give reasonable written notice to the Lessee providing details of:
  - (a) the proposed burial site;

- (b) the date on which the remains are to be disposed of;
- (c) the manner in which the remains are to be disposed of;
- (d) the person who will prepare the grave;
- (e) the likely number of persons who will witness the burial of the human remains;
- (f) the marker or memorial proposed to be erected to mark the burial site;
- (g) the person who will erect the marker or memorial to mark the burial site and the date on which that work will be done;
- (h) any structures that are proposed to protect the site, in accordance with Item 7 of Schedule 3; and
- (i) the State's consent for the burial to occur on the Lease.

4.3 The Lessee must not unreasonably withhold written consent to any request by the Native Title Party to bury human remains on the Agreement Area.

4.4 The Lessee in providing written consent to the burial of human remains on the Agreement Area may nominate alternative:

- (a) locations for the burial site;
- (b) dates for the burial of human remains; or
- (c) forms of a marker or a memorial to mark the burial site.

4.5 In the event that the Native Title Party buries human remains on the Agreement Area after obtaining the consent of the State and the Lessee, the Native Title Party is solely responsible for maintenance and upkeep of the burial site, and any marker or memorial erected.

4.6 Prior to the Native Title Party carrying out any maintenance or upkeep of the burial site, or any marker or memorial erected, the Native Title Party must give reasonable oral or reasonable written notice to the Lessee of their

intention to do so including, if required by the Lessee, the details in clause 11.2 of the Agreement.

- 4.7 The burial of human remains on the Agreement Area by the Native Title Party will comply with all laws of the State and the relevant Local Authority relating to the disposal of human remains.

## **5. Weeds**

- 5.1 The Native Title Party will comply with the Weed Management Strategy marked “\*\*” annexed to this Agreement. ***[Insert this clause if written strategy exists].***

### **Or**

- 5.1 The Native Title Party will:
- (a) not intentionally introduce any plants or plant seeds to the Lease;
  - (b) remove or eradicate any plants introduced to the Lease by the Native Title Party; and
  - (c) comply with all reasonable requirements of the Lessee concerning the control of weeds on the Lease.

## **6. Restrictions<sup>1</sup>**

The following restrictions apply to the Native Title Party in accessing and using the Agreement Area:

### ***Firearms***

- 6.1 The Native Title Party will not carry or use firearms on the Agreement Area without the permission of the Lessee in accordance with clause 11.3.
- 6.2 In considering a request by the Native Title Party to carry or use firearms the Lessee must not treat the Native Title Party differently to any persons who may be lawfully invited or otherwise permitted to access the Agreement Area

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<sup>1</sup> These clauses are optional and can be modified.

and entitled or permitted to carry or use firearms.

6.3 When permission is given by the Lessee for the Native Title Party to use firearms on the Agreement Area, the Native Title Party agrees:

- (a) firearms may be used in the Agreement Area only in accordance with the law, including the *Weapons Act 1990* (Qld);
- (b) not to use firearms:
  - (i) where livestock are present;
  - (ii) within a radius of five (5) kilometres of any house; and
  - (iii) in any area specified by the Lessee as a no firearm area.
- (c) not to discharge a firearm in, into, towards, over or through:
  - (i) a road (whether public or private) adjoining or traversing the Agreement Area;
  - (ii) an airstrip;
  - (iii) a building; or
  - (iv) an adjoining property unless notice of intent to do so has been provided to the owner/lessee/occupier of that adjoining property and the owner/lessee/occupier of that adjoining property has consented.

6.4 Either Party whenever requested by the other must produce evidence of the currency of any:

- (a) Licences issued under the *Weapons Act 1990* (Qld); and
- (b) Registration of a firearm that is to be used on the Agreement Area.

### **Fire**

6.5 The Native Title Party agrees that:

- (a) they may not light fires for the purpose of clearing vegetation or hunting unless this has been specifically agreed to in advance by the Lessee, and appropriate permits have been obtained; and
- (b) fires lit on the Agreement Area by the Native Title Party for camping, cooking or ceremonies must be extinguished before leaving the area where the fire has been lit.

### ***Accompanying Animals***

- 6.6 The Native Title Party will not bring onto the Agreement Area any animal without the permission of the Lessee.
- 6.7 When permission is given by the Lessee for the Native Title Party to bring onto the Agreement Area an animal, the Native Title Party agrees:
- (a) not to allow their animal to interfere or mingle with livestock; and
  - (b) in the case of a dog, not to allow the dog to be in the vicinity of livestock unless on a leash.

### ***Camping***

- 6.8 The Lessee may restrict:
- (a) camping activities by the Native Title Party to designated areas on the Agreement Area;
  - (b) the maximum number of persons who can camp on the Agreement Area at the same time; or
  - (c) the duration of any camping on the Agreement Area.
- 6.9 The Lessee in designating camping areas on the Agreement Area must consider:
- (a) the suitability of the area for camping;
  - (b) the likely number of campers;

- (c) the availability of water;
  - (d) the means of access to the area;
  - (e) the likely pastoral activities to be undertaken in the vicinity; and
  - (f) any areas nominated for camping areas by the Native Title Party.
- 6.10 If the Lessee designates camping areas on the Agreement Area, reasonable written notice of those areas must be given to the Native Title Party.
- 6.11 The Lessee will not restrict the maximum number of campers at any one time to less than 12 persons (including children).
- 6.12 The Lessee will not restrict the duration of camping to less than seven (7) days.
- 6.13 If the Native Title Party proposes to build temporary structures and other facilities such as camp kitchens and single-drop toilets, the Native Title Party will provide the Lessee with a reasonable written notice which provides details of:
- (a) the proposed location of the structure;
  - (b) the proposed structure to be erected;
  - (c) the date on which the structure is to be erected; and
  - (d) the person who will erect the structure.
- 6.14 The Lessee will not oppose the erection of the structure provided the structure will not impact on the Lessee's activities on the Lease.
- 6.15 The Native Title Party will:
- (a) bear the cost of erecting the structure;
  - (b) be responsible for maintenance of the structure; and

- (c) remove the structure and take the materials used for the structure from the Agreement Area once the structure is no longer being used.

### ***Alcohol***

6.16 The Native Title Party agrees not to consume alcohol on the Agreement Area.

### **Or**

6.16 The Parties acknowledge the need to act responsibly, and with due concern for each Party's safety and right to quiet enjoyment, with respect to the consumption of alcohol on the Agreement Area and the Lease.

## **7. Protection of Sites and Objects**

7.1 The Native Title Party will give reasonable written notice to the Lessee of any steps they want to take on the Agreement Area to erect a structure to protect from harm an area, place, object or area of importance or significance to them under their traditional laws and customs (the "structure"), and the notice must include details of:

- (a) the location of the structure;
- (b) the proposed structure to be erected;
- (c) the date on which the structure is to be erected; and
- (d) the person who will erect the structure.

7.2 The Lessee will not oppose the erection of the structure provided the structure will not impact on the Lessee's activities on the Lease.

7.3 The Native Title Party is to bear the cost of erecting the structure and be responsible for maintenance of the structure.

## **8. Permanent Exclusion Areas**

8.1 The Native Title Party is permanently excluded from the land or waters within the Agreement Area of the Lease described in Item 2 of Schedule 4.

8.2 The Native Title Party agrees not to access or use the following areas on the Agreement Area:

*[Insert any specific location that is not to be used by agreement. These locations must justify permanent exclusion – as opposed to temporary exclusion. For example, a heavily irrigated farm area.]*

## **Schedule 4 – Agreement Area**

### **1. Map**

*Include description (if Agreement Area is the whole lease area, then reference to the lot plan is required. If it is only part of the lease area, then a full description describing that part of the lease is required).*

### **2. Extinguishment Areas**

2.1 The Extinguishment Areas are the land or waters within the Lease subject to the Native Title Claim on which any permanent improvement consisting of:

- (a) a house, shed or other outbuilding;
- (b) an airstrip;
- (c) a dam or other stock watering point, bore, turkey nest, squatters' tank or other water storage facility;
- (d) stock yards or trap yards;

have been constructed at the date of the Agreement (including any adjacent land the exclusive use of which is reasonably necessary for the enjoyment of the improvement) in accordance with the rights of the Lessee.