

**THE "TOP END", NORTHERN TERRITORY**

**EXPLORATION & MINING**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**RIO TINTO EXPLORATION PTY LIMITED**

**AND THE**

**NORTHERN LAND COUNCIL**

**DATE:**

**DECEMBER 2001**

**THIS MEMORANDUM OF UNDERSTANDING** is made on December 2001.

**BETWEEN: RIO TINTO EXPLORATION PTY LIMITED** (ABN 00 76 000 057 125) whose principal office is situated at 37 Belmont Avenue, Belmont, Western Australia, 6104, ("Rio Tinto") of the first part;

**AND THE: NORTHERN LAND COUNCIL** (ABN 56 327 515 336) of 9 Rowling Street, Casuarina, Northern Territory, 0810, ("the NLC") of the second part.

**Introduction:**

- A. We acknowledge that Rio Tinto undertakes mineral exploration over the region of the Northern Territory for which the NLC has responsibilities as representative Aboriginal/Torres Strait Islander body under the *Native Title Act 1993*. Based on a relationship of mutual respect, and understanding, Rio Tinto and the NLC wish to establish a cooperative approach to the implementation of Rio Tinto's exploration and mining projects in the region of the Northern Territory, other than Aboriginal land, for which the NLC has responsibilities.
- B. Rio Tinto acknowledges that native title-holders maintain continuing responsibilities and rights under customary and statutory law and commits to exercising respect for those rights during the course of its exploration and mining activities.
- C. The NLC acknowledges that Rio Tinto endeavours to conduct its activities in a responsible and professional manner in relation to Aboriginal people and as such, will use its best endeavours to assist Rio Tinto to achieve its exploration and mining objectives pursuant to the terms and conditions of the Model Exploration and Mining Agreement.

**It is our understanding that:**

- 1. Rio Tinto will notify the NLC of each application (an "Application") for the grant of an Exploration Licence which it or any person under its management has made (and is current at the date of this Memorandum) or makes over any land, other than Aboriginal land, in the NLC Region, and will provide a copy of each Application to the NLC and request that the Application be dealt with pursuant to this Memorandum.
- 2. The parties will, within seven (7) days (or at such other time or within such other period as is agreed), meet to consider and, if possible, agree upon the scheduling of the consultations contemplated under this Memorandum with respect to the relevant Application and, in particular, whether a shorter or longer period than the sixty (60) days referred to in clause 5 below is feasible in the circumstances. The parties agree that such a scheduling meeting is especially relevant to those Applications made prior to the date of this Memorandum.
- 3. The NLC will identify the Local Aboriginal Groups of each area the subject of Application.
- 4. The NLC will use its best reasonable endeavours to consult with the Local Aboriginal Groups in relation to each Application and invite Rio Tinto to participate in such consultations.
- 5. The NLC will recommend that the Local Aboriginal Groups accept the Model Exploration & Mining Agreement and will notify Rio Tinto of the outcomes of such

consultations within sixty (60) days of the notice provided regarding each Application (or within such other period as is agreed, if any, under clause 2 above).

- 6. Rio Tinto and the NLC will meet regularly to discuss the Applications and, in particular, to consider:
  - (a) whether arrangements should be made to consult several Local Aboriginal Groups in relation to several Applications at the same time; and
  - (b) Rio Tinto's exploration priorities; with a view, *inter alia*, to assisting the NLC and Rio Tinto to better plan and implement their respective operations.
- 7. The parties confirm that, in-principle, the Model Exploration & Mining Agreement is mutually acceptable and either party may advise the other at any time it considers that some change should, in any particular circumstances, be made to that Agreement.
- 8. The parties agree to enter an agreement substantially in the form of the Model Exploration & Mining Agreement if the NLC advises that relevant Local Aboriginal Groups wish to enter that Agreement.
- 9. Rio Tinto and the NLC will review this Memorandum after twelve months to decide whether it should continue to operate and, if so, in what form.

And the following terms have the following meanings:

- “Application” is defined in Clause 1 above.
- “Exploration Licence” means an exploration licence or exploration retention licence under the *Mining Act*.
- “Local Aboriginal Groups”, in relation to an Application, means those Aboriginals who have or claim Native Title in the area the subject of that Application, including the Aboriginal custodians of Sacred Sites or Sacred Objects wholly or partly within that area.
- “Model Exploration & Mining Agreement” means the agreement annexed to this Memorandum.
- “NLC Region” means that region for which the NLC has responsibilities as the representative Aboriginal/Torres Strait Islander body under the *Native Title Act 1993*.

**And the parties acknowledge** that this Memorandum of Understanding is a statement of intent made in good faith and is not intended to be legally binding.

SIGNED by **JOHN STEPHENSON,** )  
 Exploration Director, **RIO TINTO** ) .....  
**EXPLORATION PTY LIMITED,** in the )  
 presence of: )  
 )  
 )  
 )  
 Name:

SIGNED by **NORMAN FRY,** )  
 Chief Executive Officer, **NORTHERN** )  
**LAND COUNCIL,** in the presence of: ) .....  
 )  
 )  
 )  
 Name:

**ANNEXURE**

***[DRAFT]***

**MODELEXPLORATION & MINING AGREEMENT**

**EXPLORATION LICENCE APPLICATION NO. [Number]**

**[LOCATION], NORTHERN TERRITORY**

**BETWEEN**

**RIO TINTO EXPLORATION PTY LIMITED [OR THE COMPANY THAT IS THE  
APPLICANT FOR THE EXPLORATION LICENCE]**

**AND**

**[THE LOCAL ABORIGINAL GROUPS]**

**AND THE**

**NORTHERN LAND COUNCIL**

**DATE:**

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- J. The Parties also wish to ensure that, so far as is reasonably practicable, the exploration and any mining carried out by the Exploration Company on the Application Area –
- (a) is undertaken with minimum interference and maximum benefit to the Local Aboriginal Groups and their members, and
  - (b) causes minimum Environmental Impact.
- K. This Agreement sets out the terms and conditions of the agreements which have been reached between the Parties.

**NOW THIS DEED WITNESSES** as follows:-

**1. Definitions, Interpretation & Other Matters**

- 1.1 In this Agreement and in the Recitals, unless the context otherwise requires, the following terms shall have the following meanings -

“AAPA” means the Aboriginal Areas Protection Authority established by Section 5(1) of the *Northern Territory Sacred Sites Act 1989*.

“Aboriginal” means a person who is a member of the Aboriginal race of Australia.

“Aboriginal tradition” means the body of traditions, observances, laws, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes those traditions, observances, laws, customs or beliefs relating to particular persons, areas, sites, objects or relationships, which includes Native Title.

“Agreement” means this deed, including the annexures.

“Applicable Laws” means every law and regulation (whether of the Commonwealth or of the Northern Territory) from time to time in operation in the Northern Territory which is applicable to the Project or any mining for minerals from any part of the Application Area.

“Application” means the Exploration Company’s application or applications under the Mining Act for the grant of the Exploration Licence, being for exploration licence[s] numbered [Number(s)] and each such further of the Exploration Company’s applications under the Mining Act for the grant of an Exploration Licence over land which the Exploration Company from time to time requests and the LAG Representative, on behalf of Local Aboriginal Groups, from time to time agrees is to be an “Application” for the purposes of this Agreement.

“Application Area” means the areas of land the subject of the Application.

“Archaeological Object” means Aboriginal portable cultural objects including but not limited to secret and ceremonial objects, log or bark coffins, human remains, portable rock or wood carvings or engravings or stone tools, but excluding Sacred Objects.

“Archaeological Place” means a place pertaining to the past occupation by Aboriginal or Macassan people that has been modified by the activity of such people and in or on which the evidence of such activity exists, and includes:

- (a) places containing rock paintings or rock carvings;
- (b) prehistoric or protohistoric occupation places;
- (c) places (not being cemeteries within the meaning of the *Cemeteries Act*) containing human remains or burial artifacts;

but excluding Sacred Sites.

“to assign” means to sell, assign, transfer, convey, licence, make a declaration of trust or otherwise dispose of; and “assign”, “assigned” and “assigning” have corresponding meanings.

“Authorisation” means any authorisation, lease, licence, permit, approval, certificate, consent, direction or notice from any government or governmental or other competent authority which is necessary or desirable for the carrying out of –

- (a) the Project, or
  - (b) any mining for minerals from any part of the Application Area, including a Mineral Lease,
- but excluding the Exploration Licence.

“Authority Certificate” means a certificate issued by the AAPA pursuant to Section 22 of the *Northern Territory Sacred Sites Act 1989*.

“Best Practicable Technology” means that technology from time to time relevant to the Mining Operation which produces the minimum Environmental Impact that can reasonably be achieved having regard, *inter alia*, to-

- (a) the level of effluent control achieved, and the extent to which Environmental Impacts are avoided, prevented or minimized, in mining operations in the mining industry anywhere in the world;
- (b) the total cost of the application or adoption of that technology relative to the environmental protection and rehabilitation to be achieved by its application or adoption;
- (c) evidence of Environmental Impact, or lack of such Impact, after the commencement of the Mining Operation;
- (d) the physical location of the Mining Operation; and
- (e) social and cultural factors, including the social, cultural and economic interests of the Local Aboriginal Groups and their members, and possible beneficial and adverse social effects of introducing new technology.

“Custodian” means an Aboriginal who, by Aboriginal tradition, has responsibility for a Sacred Site or Sacred Object.

“Development”, in relation to minerals of possible economic interest, means all Exploration, studies, tests and investigations undertaken for the purposes of evaluating the development potential of those minerals. “Development Review Committee” means the committee referred to in Clause 11.2 [Negotiation of a Mining Agreement].

“Ecologically Sustainable Development” means development which accords with the principle of inter-generational equity, that is, that the present generation ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

“environment” includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or social groupings, including the physical, biological, economic, cultural and social aspects; and “environmental” has a corresponding meaning.

“Environmental Assessment” means a written report –

- (a) evaluating and assessing the potential impact upon the environment (both within and outside the Application Area) likely to result from any proposed Mining Operation from any part of the land the subject of the Exploration Licence at the date of its grant (or, if the Exploration Licence includes more than one (1) exploration licence, from any part of the land the subject of all of such exploration licences at the date of grant of the first of those exploration licences)
- (b) identifying measures and alternative measures, safeguards and standards for the protection of the environment and minimizing the potential impact of the proposed Mining Operation, and
- (c) including a detailed program for the rehabilitation of areas expected to be disturbed by the proposed Mining Operation and for the minimization, control and monitoring of the effects of the proposed Mining Operation on the environment and on the Local Aboriginal Groups.

“Environmental Impact” means a change or potential change to the environment, including any aspect of the environment, whether temporary or permanent or direct or indirect, and including changes to-

- (a) biological diversity (that is, the variety within and among living organisms and of the ecological systems they comprise); or
- (b) ecosystem health (that is, the ability to support and maintain a balanced, integrative, adaptive community of organisms having a species composition, diversity and functional organisation comparable to that of the natural state of the region of the Application Area immediately prior to the grant of the Exploration Licence (or, if the Exploration Licence includes more than one (1) exploration licence, immediately prior to the grant of the first of those exploration licences)); or
- (c) human health.

“Exploration” has the same meaning as is ascribed to that expression by the Mining Act.

“Exploration Company” means each person who from time to time holds a legal or beneficial interest in any or all of the Exploration Licence.

“Exploration Licence” means the exploration licence or exploration licences granted to the Exploration Company pursuant to the Application, including any renewal or further renewal of such exploration licence or exploration licences, any substituted exploration licence(s) and any derivative exploration retention licence(s).

“Feasibility Study” means a comprehensive study used to assess the technical and economic viability of establishing and carrying out mining and which is in a form acceptable to reputable financial institutions to enable them to decide whether or not to provide financial accommodation for the development and operation of a Mining Operation. The Feasibility Study must include –

- (a) appropriate sampling programs which provide estimates of the tonnes or proven and probable reserves of ore and grades thereof;
- (b) estimates of capital costs and operating costs likely to be incurred in establishing and conducting the Mining Operation, including costs to be incurred in mine development, pre-production, crushing and treatment, development of a processing plant and transport and port facilities;

- (c) reference to relevant marketing and financial aspects of establishing and conducting the Mining Operation;
- (d) analysis of whether or not establishment of the Mining Operation is commercially viable; and
- (e) a schedule of relevant approvals necessary before the Mining Operation may commence.

“GST” and related terms are defined in Annexure C [Budget & Payment Process].

“Indexed” means multiplied by the index rate which is calculated as follows:-

$$\text{Index rate} = \frac{\text{CPI}(2)}{\text{CPI}(1)}$$

where,

CPI(2) is the consumer price index (all groups) -Weighted average of the eight capital cities as published quarterly by the Australian Bureau of Statistics (or any index published quarterly in substitution therefor) being the last such index published before the date upon which the amount is to be indexed; and

CPI(1) is the consumer price index (all groups) - Weighted average of the eight capital cities as published quarterly by the Australian Bureau of Statistics (or any index published quarterly in substitution therefor) last published before the date of this Agreement.

“Local Aboriginal Business” means a proposed or existing business, in whatever form (and, for example, in the form of an incorporated or unincorporated joint venture), in which members of the Local Aboriginal Groups are engaged or proposed to be engaged and of which business 40%, or a higher percentage, of the beneficial ownership is held by or on behalf of such members.

“LAG Representative” means the person from time to time appointed by the Local Aboriginal Groups pursuant to Clause 13 [LAG Representative].

“Local Aboriginal Groups” means those Aboriginals who have or claim Native Title in the Application Area as at the date of this Agreement, that is, the areas of land the subject of the Exploration Company’s application or applications under the Mining Act for the grant of exploration licence[s] numbered [Number(s)], including the Custodians of Sacred Sites or Sacred Objects wholly or partly within that Application Area.

“to mine” means to mine, extract, recover, treat and process minerals; and “mined”, “mineable”, and “mining” have corresponding meanings.

“Mining Act” means the *Mining Act* of the Northern Territory.

“Mining Agreement” means a deed referred to in Clause 11.2 [Negotiation of a Mining Agreement].

“Mineral Lease” has the same meaning as is ascribed to that expression in the Mining Act, and being a Mineral Lease derived from the Exploration Licence and over all or a part of the Application Area.

“Mining Operation” means all operations proposed or undertaken by the Exploration Company for or incidental to the mining of minerals from any part(s) of the Application Area pursuant to a Mineral Lease, and related activities, including rehabilitation.

“Native Title” has the same meaning as is ascribed to that expression by the Native Title Act.

“Native Title Act” means *Native Title Act 1993* of the Commonwealth.

“NLC” means the Northern Land Council and its successors.

“Party” means a party to this Agreement and its successors and permitted assigns; and “Parties” means all parties and their respective successors and permitted assigns.

“Precautionary Principle” is the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible Environmental Impact.

“Project” means the Exploration and Development provided for under this Agreement.

“Pollution” means -

- (a) a Contaminant or Waste that is, directly or indirectly, emitted, discharged, deposited or disturbed or that escapes; or
- (b) a Contaminant or Waste, effect or phenomenon, that is present in the environment as a consequence of a, direct or indirect, emission, discharge, deposition, escape or disturbance of a Contaminant or Waste;

And -

“Contaminant” means a solid, liquid or gas or any combination of such substances and includes noise, odour, heat and electromagnetic radiation;

“Waste” means -

- (a) a solid, a liquid or a gas; or
- (b) a mixture of such substances,

that is or are left over, surplus or an unwanted by-product from any activity (whether or not the substance is of value).

“Recovery Documents” means the Feasibility Study, the Environmental Assessment and all similar and other documents required to be submitted or otherwise submitted by the Exploration Company to Government (whether the Northern Territory or the Commonwealth) or any governmental or other competent authority for the purpose of enabling a Mining Operation to be undertaken, whether required by law or otherwise; but excluding the Mining Agreement.

“Sacred Object” means an object which is sacred to Aboriginals or otherwise of significance according to Aboriginal tradition.

“Sacred Site” means an area or site, including land or water, that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition.

“Term” means the period of the duration of this Agreement as provided for in Clause 3.1 [Term].

“Work Program” means a written proposal for Exploration and Development which conforms with Clause 5.2 [Exploration Clearances / Provision of Work Programs].

- 1.2 Unless the contrary intention appears in this Agreement:-
- (a) monetary references are references to Australian currency;
  - (b) a reference to an act or regulation includes any amendments to that act or regulation for the time being in force and also to any act or regulation passed in substitution therefor;
  - (c) the singular includes the plural and vice versa and words importing the masculine gender include the feminine or neuter gender;
  - (d) a reference to a person includes a firm, company, corporation, authority or body whether incorporated or not;
  - (e) a reference to a Minister, Department, authority, body or person includes the Minister, Department, authority, body or person for the time being performing the functions of such Minister, Department, authority, body or person;
  - (f) a reference to “the Exploration Company” includes the persons from time to time engaged directly or indirectly by or on behalf of the Exploration Company for the purposes of the Project and their permitted invitees;
  - (g) The Exploration Company agrees to procure that, where relevant, its agent, contractor or sub-contractor and the employees, servants and agents of such agent, contractor or sub-contractor and their permitted invitees comply with the obligations or duties of the Exploration Company under this Agreement; and
  - (h) any consent, undertaking, agreement, advice, approval or similar communication required under any provision of this Agreement may only be given in writing and may be given subject to conditions.
- 1.3 This Agreement shall be governed by and construed in accordance with the Applicable Laws and the terms and conditions of this Agreement shall apply to the full extent that they are capable of operating concurrently with Applicable Laws.
- 1.4 Each Party submits to the jurisdiction of the appropriate courts of the Northern Territory and the Commonwealth and any courts competent to hear appeals therefrom.
- 1.5 The Parties may at any time by agreement in writing executed by the Parties change any term or condition of this Agreement and no modification, variation or amendment to this Agreement shall be of any force unless –
- (a) agreed in writing and executed by each Party, and
  - (b) the NLC certifies that it is satisfied that –
    - (i) all reasonable efforts have been made to ensure that the Local Aboriginal Groups have authorized the modification, variation or amendment –
      - (A) where there is a process of decision-making that, under Aboriginal tradition, must be complied with in relation to authorizing such a request or things of that kind – in accordance with that process, or
      - (B) where there is no such process – in accordance with a process of decision-making agreed to and adopted by the members of the Local Aboriginal Groups in relation to authorizing such a modification, variation or amendment or things of that kind; and
    - (ii) the modification, variation or amendment is reasonable.
- 1.6 No waiver by a Party of any of the provisions of this Agreement shall be binding unless made in writing and any such waiver shall relate only to the specific matter, non-compliance or breach in respect of which it is given and shall not apply to any subsequent or other matter, non-compliance or breach.
- 1.7 Each Party agrees to execute and deliver such deeds and documents and do such further acts and things as shall be reasonably required to give full effect to each provision of this Agreement and

to refrain from taking any action which is or is likely to be inconsistent with the proper fulfilment of its undertakings and obligations under each provision of this Agreement.

- 1.8 Nothing in this Agreement:
- (a) constitutes an acknowledgement by the Exploration Company that Native Title exists over the Application Area; or
  - (b) is intended to derogate from any Native Title the members of the Local Aboriginal Groups may have or be determined to have.

## **2. Co-operation**

- 2.1 The Parties acknowledge and agree that -
- (a) the objectives of this Agreement are to enable grant to the Exploration Company of the Exploration Licences and to enable the Exploration Company to undertake Exploration and, if warranted, Development on the Application Area in a manner which is not inconsistent with the rights and interests of the Local Aboriginal Groups and their members in relation to the Application Area; and
  - (b) they wish by this Agreement to ensure that the Project is undertaken in a way which, so far as reasonably possible –
    - (i) accords understanding and respect for the interests of the Local Aboriginal Groups and their members in the Application Area according to Aboriginal tradition and as people who will be affected by the Project and any subsequent Mining Operation;
    - (ii) minimizes the deleterious impact upon the Local Aboriginal Groups and their members;
    - (iii) minimizes the deleterious impact upon the environment; and
    - (iv) contributes to the social and economic well-being of the Local Aboriginal Groups.
- 2.2 The Local Aboriginal Groups and the LAG Representative agree, subject to this Agreement -
- (a) at all times to give due consideration to the Exploration Company's goals in carrying out the Project; and
  - (b) to use their best endeavours to promptly fulfil their functions under this Agreement so as to promote the efficient implementation of the Project and minimise any delay to such implementation.
- 2.3 The Exploration Company agrees to take all reasonable steps to minimize interference with-
- (a) the free movement of the members of the Local Aboriginal Groups throughout the Application Area subject to compliance with the Exploration Company's directions in respect of safety and provided that such access does not unreasonably interfere with the efficient implementation of the Project; and
  - (b) the exercise and pursuit of Native Title on the Application Area.
- 2.4 (1) The Exploration Company agrees to give all due consideration to ensuring that all Relevant Persons (as defined in Clause (2) below) are given appropriate instruction for the following purposes -
- (i) to promote an understanding of and respect for the tradition and culture of the Local Aboriginal Groups; and
  - (ii) to foster good relationships between members of the Local Aboriginal Groups, the LAG Representative and persons who are not members of the Local Aboriginal Groups.

- (2) “Relevant Persons” are persons, other than members of the Local Aboriginal Groups, who are engaged directly or indirectly by or on behalf of the Exploration Company in relation to the Project, especially, such persons who are engaged to make any substantial decision or provide any substantial recommendation concerning the Project or to undertake any substantial actions in implementation of the Project and who have not already undertaken similar appropriate instruction.
- (3) The Exploration Company agrees, upon request of the LAG Representative, to consult with and give due consideration to any proposals of the LAG Representative with respect to the presentation and content of the instruction referred to in Clause (1) above.

### **3. Term**

- 3.1 Subject to Clause 3.2, the term of this Agreement shall be from the date of this Agreement until the termination or relinquishment of the Exploration Licence (or, if the Exploration Licence includes more than one (1) exploration licence, until termination or relinquishment of the last of such exploration licences), including any applications therefor, and the completion of rehabilitation in accordance with Clauses 9.4 & 9.5 [Rehabilitation] and the provision of a final Work Report under Clause 6.3 [Information].
- 3.2 The following provisions shall continue to apply following the Term –
  - (a) Clause 11 [Negotiation of a Mining Agreement];
  - (b) Clause 15.2(a) [Native Title]; and
  - (c) Clause 16.1 [Confidentiality].

### **4. The Parties’ Obligations**

#### The Local Aboriginal Groups

- 4.1 The Local Aboriginal Groups agree -

- (a) that no objection will be lodged by them or on their behalf to the grant of the Exploration Licence, including any objection under section 32 of the Native Title Act against the inclusion in a notice issued by the Minister for Resource Development of the Northern Territory under section 29 of that Act in relation to the grant of the Exploration Licence of a statement that the grant of the Exploration Licence attracts the expedited procedure, and if any such objection has already been lodged by them or on their behalf, that such objection will be immediately withdrawn;
- (b) subject to the Exploration Company substantially complying with its obligations under this Agreement
  - (i) not to take any action to prevent, oppose or delay the grant of the Exploration Licence or any Authorisation over any part of the Application Area which is reasonably required by the Exploration Company for the purposes of the Project;
  - (ii) upon request of the Exploration Company to sign all documents, give all consents and do all things necessary to enable the grant of the Exploration Licence (including any renewal or further renewal of the Exploration Licence (including, if the Exploration Licence includes more than one (1) exploration licence, the renewal or further renewal of each such exploration licence) and the grant of any derivative exploration retention licence) to the Exploration Company;
  - (iii) not to challenge the validity of any notice issued by the Minister for Resource Development of the Northern Territory pursuant to section 29 of the Native Title Act in relation to his intention to grant the Exploration Licence; and
  - (iv) not to challenge the validity of the Exploration Licence or any Authorisation where such challenge relates to their Native Title in the Application Area (whether in relation to standing or otherwise); and
- (c) that this Clause may be pleaded by the Exploration Company as a bar to any proceedings which seek orders, declarations, remedies or findings of the kind contemplated in Clause 4.1(a) and (b) above.

4.2 The Local Aboriginal Groups covenant that-

- (a) they represent and, according to Aboriginal tradition, have the authority to speak for those persons who hold or may hold Native Title in respect of the Application Area;
- (b) the Aboriginal persons who have executed this Agreement on behalf of the Local Aboriginal Groups have been authorised by all of the persons, as a group, who, according to their traditional laws and customs, hold or may hold Native Title in respect of the Application Area to reach agreement in the terms of this Agreement, and they have the necessary authority (in accordance with Aboriginal traditional law and custom) to execute this Agreement for and on behalf of the Local Aboriginal Groups and
- (c) this Agreement is valid and binding and enforceable in accordance with its terms against all persons who hold or may hold Native Title in respect of the Application Area.

4.3 The Local Aboriginal Groups jointly and severally agree to indemnify the Exploration Company in respect of losses, expenses, damages or costs reasonably arising from:

- (a) any action, claim or proceeding by any member of the Local Aboriginal Groups which is inconsistent with any covenant or obligation incumbent upon the Local Aboriginal Groups pursuant to the provisions of this Agreement,

- (b) any dispute between any members of the Local Aboriginal Groups relating to the subject matter of this Agreement or the benefits provided by the Exploration Company under this Agreement;
- (c) any person lodging an objection under section 32(3) of the Native Title Act against the inclusion in a notice issued by the Minister for Resource Development of the Northern Territory under section 29 of that Act in relation to the grant of the Exploration Licence of a statement that the grant of the Exploration Licence attracts the expedited procedure (except an objection that is immediately withdrawn pursuant to Clause 4.1(a) above); and
- (d) any person, other than the Local Aboriginal Groups:
  - (i) establishing that he or she has Native Title in relation to any part of the Application Area and that he or she is entitled to payment of compensation from the Exploration Company directly or indirectly, whether under the Native Title Act, other legislation or at law as a consequence of his or her having such Native Title; or
  - (ii) establishing that he or she is entitled to damages against the Exploration Company on the basis of any derogation of the rights of a native title holder.

#### The Exploration Company

4.4 The Exploration Company agrees to :-

- (a) carry out the Project in accordance with the provisions of this Agreement and all Applicable Laws;
- (b) limit its Exploration and mining activities on the Application Area to such activities as accord with good exploration and mining industry practice, including Best Practicable Technology and comply with the Australian / New Zealand Standards ISO 14000 Series; and
- (c) subject to such reasonable conditions as the LAG Representative may, after discussion with the Exploration Company, reasonably request, ensure that any liquor brought onto the Application Area by it or its contractors is only consumed by the Exploration Company's employees, contractors and invitees, and may bring or permit to be brought onto the Application Area only such liquor as is reasonably required for the consumption of the Exploration Company's employees, contractors and invitees.

#### The NLC

4.5 The NLC covenants that, to the best of its knowledge, skill and belief –

- (a) it has consulted with the Local Aboriginal Groups, as a group; and
- (b) it is satisfied that the covenant of the Local Aboriginal Groups contained in Clause 4.2 above is true and accurate and has been made in accordance with the processes of decision-making that, according to Aboriginal tradition, are appropriate to the Local Aboriginal Groups.

4.6 The NLC covenants that if a person that is not a party to this Agreement lodges an objection under section 32 of the Native Title Act against the inclusion in a notice issued by the Minister for Resource Development of the Northern Territory under section 29 of that Act in relation to the grant of the Exploration Licence of a statement that the grant of the Exploration Licence attracts the expedited procedure, it will use its best reasonable endeavours to ensure that such person enters into an agreement with the Exploration Company on the same terms as this Agreement that provides for the withdrawal of that objection.

### 5. Exploration Clearances

5.1 (1) The Exploration Company agrees, subject to Clause (2) below, only to undertake such Exploration and Development on the Application Area –

- (a) as has been cleared by the LAG Representative in accordance with an advice under Clause 5.5 [Clearance Advice] below, or
  - (b) as it is permitted to undertake pursuant to Clause 5.10 [No Clearance Advice] below.
- (2) The Parties agree that airborne surveys undertaken by the Exploration Company which do not require land-based support on the Application Area are not required to be cleared by the LAG Representative in accordance with an advice under Clause 5.5 [Clearance Advice] below.

Provision of Work Program

- 5.2 (1) The Exploration Company shall, from time to time, provide the LAG Representative with Work Programs (in duplicate) in accordance with Clause (2) below with respect to the activities it proposes undertaking on the Application Area.
- (2) A Work Program provided under Clause (1) above is to include written particulars of each activity proposed to be undertaken on the Application Area by the Exploration Company. Without limiting the generality of the foregoing, the Work Program is to include –
- (a) two (2) 1:100,000 scale topographic maps and, if appropriate, aerial or satellite images showing the location of the activity (and in digital form if such is reasonably available to the Exploration Company); and
  - (b) details of -
    - (i) the nature, scope and objectives of the activity;
    - (ii) the estimated time and period for the performance of the activity;
    - (iii) the techniques, infrastructure and major items of equipment to be used;
    - (iv) the likely effect of the activity on the environment and proposals to minimise both the Environmental Impact and disturbance to the Local Aboriginal Groups of such activity;
    - (v) any significant amounts of water, timber or other resources proposed to be obtained from the Application Area;
    - (vi) the anticipated number of personnel likely to be on the Application Area from time to time; and
    - (vi) details of any other aspect of the activity which is likely to have an adverse impact upon or cause disturbance to the environment and, in particular, the Local Aboriginal Groups.

Initial Consideration

- 5.3 (1) Within twenty-one (21) days of receiving a Work Program, the LAG Representative is to advise the Exploration Company of the period of time within which it anticipates providing advice pursuant to Clause 5.5(1) [Clearance Advice] below, including a comment as to whether, on the basis of the information then available to it, the LAG Representative considers that any field inspections will be required.
- (2) Within forty-five (45) days of receiving a Work Program (or such longer period as is permitted under Clause 5.8 [Timing of Initial Consideration & Site Inspection] below), the LAG Representative is, to the extent and by such means as it considers appropriate in the particular circumstances, to consult with the Local Aboriginal Groups, or relevant members of those Groups, in relation to the Work Program and advise the Exploration Company -
- (a) whether the Exploration Company can proceed to undertake the proposed activities without any further consultation or field inspection, whether because the proposed activities are so minimal or because sufficient previous clearances have been conducted over the area the subject of the Work Program or for any

- other reason (in which case the LAG Representative is to immediately provide advice pursuant to Clause 5.5(1) [Clearance Advice] below); or
- (b) whether the proposed activities can proceed on the basis of a field inspection by one (1) or two (2) members of the Local Aboriginal Groups (or by such higher number of members of the Local Aboriginal Groups as the Exploration Company may agree) and if so, which, if any, one (1) or two (2) members of the Local Aboriginal Groups, and alternate members (in the event that any of the nominated members are not able to accompany the Exploration Company), (and, if the Exploration Company has so agreed, other member(s) of the Local Aboriginal Groups) must accompany the Exploration Company in the course of implementing the Work Program (in which case the LAG Representative is to immediately provide advice pursuant to Clause 5.5(1) [Clearance Advice] below); or
  - (c) whether field inspections of the areas the subject of the Work Program are required pursuant to Clause 5.4(1) [Field Inspections] for the purposes of ascertaining whether the proposed activities may be upon or interfere with any Sacred Sites or Sacred Objects, having regard to the nature of each of the activities proposed; and/or
  - (d) whether an archaeological survey (for Archaeological Places and Archaeological Objects) is required of all or any of the areas the subject of the Work Program, which survey may only be required if reasonable having regard, *inter alia*, to the particular Work Program.
- (3) Unless the Local Aboriginal Groups have requested the LAG Representative to do otherwise, the LAG Representative is to provide reasonable notice to the Exploration Company of the time and place of the consultations referred to in Clause (2) above so that an appropriately qualified and authorised employee or consultant of the Exploration Company may be available to participate in those consultations to explain and clarify the details of the Work Program.

#### Field Inspections

- 5.4 (1) Where the LAG Representative's advice under Clause 5.3(2)(c) [Initial Consideration] is that a field inspection and/or under Clause 5.3(2)(d) [Initial Consideration] is that an archaeological survey is required, within sixty (60) days of receiving the Work Program (or such longer period as is permitted under Clause 5.8 [Timing of Initial Consideration & Site Inspection] below), the LAG Representative is to arrange for such inspections or archaeological survey to be undertaken and provide advice pursuant to Clause 5.5(1) [Clearance Advice] below.
- (2) Unless the Local Aboriginal Groups have requested the LAG Representative to advise the Exploration Company that its representative is not required to be present at an inspection referred to in Clause (1) above, the LAG Representative agrees to provide reasonable notice to the Exploration Company of the time and place of the inspections referred to in Clause (1) above so that an appropriately qualified and authorised employee or consultant of the Exploration Company may be present at those inspections to –
- (a) explain and clarify the details and impacts of the Work Program; and
  - (b) vary the locations of the proposed activities so as not to disturb Sacred Sites or Sacred Objects;

but –

- (c) such person shall not be privy to confidential discussions between the LAG Representative staff or consultants and members of the Local Aboriginal Groups or between the members themselves; and
  - (d) communications between such person and the LAG Representative staff or consultants or members of the Local Aboriginal Groups shall not constitute advice from the LAG Representative under Clause 5.5 [Clearance Advice] below.
- (3) Unless the Exploration Company requests otherwise following receipt of advice from the LAG Representative under Clause 5.3(1) [Initial Consideration] above, inspections undertaken pursuant to Clause (1) above shall be of sufficient detail and competence and carried out by such qualified persons as are likely to enable the results of the inspection to be sufficient for an Authority Certificate to be issued in respect of the relevant activities; and the LAG Representative agrees to provide the relevant information to the AAPA, provided always that the relevant members of the Local Aboriginal Groups are reasonably satisfied that the confidentiality of culturally sensitive information will be properly respected.
- (4) The parties acknowledge that it is their intention that, in order to minimize costs and inconvenience and to promote efficiency, it is expected that field inspections under this Clause 5.4 will, so far as is practicable in the circumstances, immediately follow the consultations under Clause 5.3(2) [Initial Consideration].

#### Clearance Advice

- 5.5 (1) At the times identified in Clause 5.3(2)(a) [Initial Consideration] or Clause 5.4(1) [Field Inspection] above, the LAG Representative is to advise the Exploration Company of which proposed areas of activity have been cleared by the Local Aboriginal Groups for the purposes of the activities proposed in the relevant Work Program and which, due to the presence of Sacred Sites or Sacred Objects, have not been cleared and such advice—
- (a) is to include a signed and dated copy of the map referred to in Clause 5.2(2)(a) [Provision of Work Program] above which clearly delineates the areas which have not been cleared, and
  - (b) may include conditions relating to activities which may be done on or use that may be made of land, being conditions intended to prevent damage or interfere with a Sacred Site or Sacred Object or to prevent distress to a Custodian of a Sacred Site or Sacred Object; and
  - (c) where an archaeological survey (for Archaeological Places and Archaeological Objects) has been undertaken, is to include the results of such survey.
  - (d) where Reconnaissance is proposed pursuant to Clause 5.11 [Reconnaissance], is to include a statement as to whether members of the Local Aboriginal Group or LAG Representative need accompany the Exploration Company during the proposed Reconnaissance.
- (2) Following receipt of an advice under Clause (1) above, the Exploration Company may, in accordance with any conditions included in such advice, proceed with those activities which have been cleared in the advice.

#### Variation of the Work Program

- 5.6 If at any time the Exploration Company wishes to substantially vary an activity which has been the subject of an advice under this Clause 5.5 [Clearance Advice] above, the provisions of this Clause 5 shall apply *mutatis mutandis* to such proposed variation as if it were a new activity.

#### Clearance Costs

- 5.7 (1) Subject to Clause (2) below, the Exploration Company will pay or reimburse the LAG Representative its reasonable costs of and incidental to -
- (a) holding the consultations referred to in Clause 5.3(2) [Initial Consideration] above of -
    - (i) \$2,000.00 Indexed for the first consultation meeting to consider the initial Work Program; and
    - (ii) \$1,000.00 Indexed for each subsequent consultation meeting to consider any Work Program, the number of meetings for consultations with respect to each Work Program being such as is reasonably proposed having regard to the number of Local Aboriginal Groups concerned and the appropriate means for considering the Work Program; and
  - (b) undertaking the inspections referred to in Clause 5.4(1) [Field Inspection] above in accordance with Annexure C [Budget & Payment Process], which may include the costs associated with the attendance field inspections of up to—
    - (i) eight (8) members of the Local Aboriginal Groups; and
    - (ii) two (2) LAG Representative members, staff members or consultants, one (1) of whom may be an anthropologist.
- (2) With respect to any archaeological survey required under Clause 5.3(2)(d) [Initial Consideration], the Exploration Company will, in accordance with Annexure C [Budget & Payment Process], pay or reimburse the LAG Representative only the reasonable travel and accommodation expenses of an archaeologist in relation to an archaeological survey undertaken contemporaneously with a field inspection required under Clause 5.3(2)(c) [Initial Consideration] and which does not unduly delay the completion of such a field inspection.
- (2) With respect to any archaeological survey required under Clause 5.3(2)(d) [Initial Consideration], the Exploration Company will, in accordance with Annexure C [Budget & Payment Process], pay or reimburse the LAG Representative only the reasonable travel and accommodation expenses of an archaeologist, and such expenses are only payable or reimbursable if the archaeological survey is undertaken contemporaneously with a field inspection required under Clause 5.3(2)(c) [Initial Consideration] and without unduly delaying the completion of such a field inspection.

#### Timing of Initial Consideration & Site Inspection

- 5.8 The periods of time within which the LAG Representative is to provide advice under Clause 5.3(2) [Initial Consideration] and Clause 5.4(1) [Field Inspection] above are to be extended by any periods of time during which-
- (a) for reasons outside the reasonable control of the LAG Representative, it is unable to undertake the consultations or inspection, including for reasons such as –
    - (i) the unavailability of relevant members of the Local Aboriginal Groups for any reason, including for ceremony, deaths or funerals; or
    - (ii) inclement weather conditions; or
  - (b) the Exploration Company has not accepted the relevant budget under paragraph (2) of the Budget and Payment Process (at Annexure C) or the LAG Representative and the Exploration Company have not reached agreement on the relevant budget under that paragraph (2); or
  - (c) a notice has been served on the Exploration Company by the LAG Representative under Clause 17.1(1) [Concerns & Disputes] and -
    - (i) the matter the subject of the notice has not been resolved, or
    - (ii) if a determination (or order) has been made by an arbitrator (or a Court) in relation to the matter the subject of the notice, the Exploration Company has failed to comply with or is not promptly complying with such determination (or order).

- 5.9 (1) The LAG Representative agrees to advise the Exploration Company at any time it considers that it expects that it will not be able to provide advice under Clause 5.3 [Initial Consideration] and Clause 5.4 [Field Inspection] above within –
- (a) the periods of time specified in those provisions (as extended having regard to Clause 5.9 [Timing of Initial Consideration & Site Inspection] above),
  - (b) the period of time advised under Clause 5.3(1) [Initial Consideration] above, or
  - (c) a period accepted by the Exploration Company.
- (2) The LAG Representative and the Exploration Company agree that, immediately following an advice under Clause (1) above, they will discuss the matter with a view to reaching agreement about the period of time within which the relevant advice is to be provided.

#### No Clearance Advice

- 5.10 (1) If the LAG Representative –
- (a) advises that it will not be able to provide advice under Clause 5.5 (1) [Clearance Advice] within the relevant period of time, or
  - (b) does not provide advice under Clause 5.5(1) [Clearance Advice] within the period of time specified in that provision (as extended having regard to Clause 5.8 [Timing of Initial Consideration & Site Inspection] above or with the approval of the Exploration Company),
- then, following discussion between the LAG Representative and the Exploration Company, the Exploration Company may, without such advice –
- (c) proceed with the relevant activity on condition that it does so in accordance with a process agreed by the LAG Representative, or
  - (d) subject to Clause (3) below, apply for an Authority Certificate based on the relevant Work Program and, subject to such Authority Certificate, proceed with such of the activities included in that Work Program as that Authority Certificate provides may be carried out without there being a substantive risk of damage to or interference with a Sacred Site.
- (2) If the LAG Representative does not provide the advice in accordance with Clause 5.5(1) [Clearance Advice] and the Exploration Company obtains an AAPA Certificate with respect to the relevant Work Program, the LAG Representative will not invoice the Exploration Company for an Exploration Clearance.
- (3) Subject to Clause (4) below, if the Exploration Company -
- (a) advises the LAG Representative prior to undertaking the activities included in the relevant Work Program that it wishes to clarify or verify an aspect of an advice provided pursuant to Clause 5.5(1) [Clearance Advice], the LAG Representative will provide such further information as it deems reasonable in the circumstances; and
  - (b) considers that an aspect of an advice provided pursuant to Clause 5.5(1) [Clearance Advice] unreasonably impacts upon its Exploration or Development pursuant to the Exploration Licence, it may, no sooner than thirty (30) days after advising the LAG Representative under Paragraph (a) above, apply for an Authority Certificate based on the relevant Work Program and, subject to such Authority Certificate, proceed with such of the activities included in that Work Program as that Authority Certificate provides may be carried out without there being a substantive risk of damage to or interference with a Sacred Site.
- (4) Clause (3) above applies only while the establishment, composition, meetings, protection of members and Authority Certificates of the AAPA accord with, or substantially accord with, section 5 [Establishment of Authority], section 6 [Composition of Authority], section 12 [Meetings of Authority], section 13 [Protection of Members] and section 22

[Authority Certificate], respectively, of the *Northern Territory Sacred Sites Act* as in force at the date of this Agreement.

### Reconnaissance

- 5.11 (1) Notwithstanding any other provision of this Agreement, if
- (a) the Exploration Company seeks in a Work Program to only conduct Reconnaissance (as defined in Clause (2) below), whether before or after grant of the Exploration Licence, and
  - (b) persons considered appropriate by the LAG Representative for the purposes of paragraph (d) below are reasonably available,
- then, providing the first payment under Clause 13.2 [LAG Representative] has been made (and any subsequent payments required under that Clause are not overdue), the LAG Representative agrees –
- (c) to provide advice pursuant to Clause 5.5(1) [Clearance Advice] above as soon as reasonably possible permitting the Reconnaissance, or such of it as the LAG Representative is satisfied will not damage or interfere with a Sacred Site or Sacred Object or cause distress to a Custodian of a Sacred Site or Sacred Object, to proceed (subject to such conditions as may be specified under Clause 5.5(1)(b) [Clearance Advice]), and
  - (d) where pursuant to Clause 5.5(1)(d) [Clearance Advice] there is advice that members of the Local Aboriginal Group or LAG Representative need accompany the Exploration Company, to promptly provide the Exploration Company with the names and contact details of up to three (3) members of each Local Aboriginal Group (or two (2) such members and one (1) LAG Representative member or member of staff or consultant), and alternative members of the Local Aboriginal Group (in the event that any of the nominated members of the Local Aboriginal Group are not able to accompany the Exploration Company), who are appropriate to accompany the Exploration Company during the proposed Reconnaissance of the traditional land estate of that Local Aboriginal Group; and where such persons are not readily available, the LAG Representative agrees to promptly advise the Exploration Company;
- And the Exploration Company agrees –
- (e) to use its best endeavours to ensure that the persons named in Paragraph (d) above accompany the Exploration Company during the proposed Reconnaissance,
  - (f) to comply with the requests and directions of such persons in relation to where it may, and where it may not, conduct the Reconnaissance,
  - (g) to meet the costs of such members of the Local Aboriginal Group as accompany the Exploration Company in accordance with Annexure C [Budget & Payment Process].
- (2) “Reconnaissance” means the surveying, non systematic and limited sampling, and reconnoitering of land to establish its Exploration potential using only hand – held instruments and devices and does not include the use of power-operated mechanical equipment.

### LAG Representative’s Functions

- 5.12 Without limiting its capacity to permit or authorize persons to undertake particular aspects of its functions under this Agreement, the Exploration Company agrees and acknowledges that the LAG Representative may, from time to time, engage any person, including the AAPA, to undertake, for or on behalf of the LAG Representative, consultations for the purposes of Clause 5.3(2) [Initial Consideration] or field inspections for the purposes of Clause 5.4(1) [Field Inspections], or aspects of such consultations and field inspections.

## 6. Information

- 6.1 With respect to the Application Area, the Exploration Company agrees to promptly provide the LAG Representative with -
- (a) a copy of the Exploration Licence (or, if the Exploration Licence includes more than one (1) exploration licence, a copy of each such exploration licence) and applications for any renewal or further renewal of the Exploration Licence (or if the Exploration Licence includes more than one (1) exploration licence, a copy of each application for the renewal or further renewal of each such exploration licence) and any exploration retention licence (encompassed by the definition or "Exploration Licence") and copies of each licence granted in response to each such application;
  - (b) a copy of or with reasonable access to inspect and copy each report submitted pursuant to the Mining Act in connection with the Exploration Licence, the raw data of which may be inspected and copied by the LAG Representative upon its provision to the Exploration Company of appropriate undertakings as to confidentiality (and the Exploration Company will provide appropriate authority for such inspection and copying); and
  - (c) Work Reports pursuant to Clauses 6.2 & 6.3 below.
- 6.2 (1) During the Term, the Exploration Company agrees, within thirty (30) days of each anniversary of the grant of the Exploration Licence, to provide a Work Report to the LAG Representative, in a form reasonably satisfactory to the LAG Representative, for the twelve (12) months prior to date of such anniversary.
- (2) A Work Report provided under Clause (1) above or under Clause 6.3 below will include specific particulars (including maps, plans and photographs, where appropriate) of the Exploration and Development by means of which the Project has been implemented and the effects of the Project upon the environment and, in particular, the Local Aboriginal Groups, including particulars of -
- (a) the nature, scope and location and when, how and by whom the Exploration and Development was undertaken, together with geological, geochemical and geophysical survey reports and interpretations of those reports and other reports completed by or becoming available to the Exploration Company in relation to its Exploration and Development;
  - (b) any water sources encountered;
  - (c) any environmental monitoring, such as soil analysis, erosion studies and water quality analysis;
  - (d) any incidents which affected or may affect the environment, such as fuel spills and fires;
  - (e) any modification or alteration to a Work Program (including the reason(s) for such modification or alteration);
  - (f) the rehabilitative activities and methods undertaken and proposed to be undertaken; and
  - (g) the Exploration Company's compliance during the previous twelve (12) months with Clause 8 [Employment, Training & Business Opportunities];
- But Work Reports need not include -
- (h) any raw data which is included in the reports referred to in Clause 6.1(b) above nor
  - (i) details of the Exploration Company's exclusive proprietary techniques or financial details which are commercially sensitive to the Exploration Company.
- 6.3 The Exploration Company shall, within three (3) months after the completion of rehabilitation in accordance with Clauses 9.4 & 9.5 [Rehabilitation], provide the LAG Representative with a final

Work Report for the period extending from the date of this Agreement until the completion of such rehabilitation.

- 6.4 The Exploration Company shall permit the LAG Representative, along with a reasonable number of members of the Local Aboriginal Groups, to inspect the Project provided such inspection is not dangerous to human health and is not likely to substantially and unduly interfere with the efficient implementation of the Project.

## **7. Sacred Sites & Sacred Objects**

- 7.1 Except in accordance with a clearance advice under Clause 5.5 [Clearance Advice] or an Authority Certificate pursuant to Clause 5.10(1)(d) or Clause 5.10(3)(b), the Exploration Company shall not -
- (a) enter upon or undertake any activity likely to damage or interfere with a Sacred Site where the location of such has been advised to the Exploration Company or where the Exploration Company has reasonable grounds for suspecting that the relevant area of land is or includes a Sacred Site; or
  - (b) undertake any activity likely to damage or interfere with any Sacred Object where the location of such has been advised to the Exploration Company or where the Exploration Company has reasonable grounds for suspecting that the relevant object is sacred according to Aboriginal tradition.

- 7.2 For the purpose of this Agreement, a Sacred Site or Sacred Object shall be taken to be damaged or interfered with if -

- (a) in the case of a Sacred Site -
  - (i) it is used or treated in a manner inconsistent with Aboriginal tradition;
  - (ii) by reason of anything done in or on the site, the use or significance of the site in accordance with Aboriginal tradition is adversely affected; or
  - (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition; or
- (b) in the case of a Sacred Object - it is used or treated in a manner inconsistent with Aboriginal tradition;

And references in this Agreement to damage or interference shall be construed accordingly.

- 7.3 The Exploration Company acknowledges that Sacred Sites may extend below the surface of the land.

- 7.4 If at any time, in the course of carrying out the Project, the Exploration Company identifies any significant archaeological or historical site or object, or any site or object which the Exploration Company has reason to suspect is a Sacred Site or Sacred Object (not being a Sacred Site or Sacred Object previously advised to the Exploration Company), then it shall promptly report the whereabouts of such Site or Object to the LAG Representative and comply with the requirements of this Clause 7.

- 7.5 (1) Where, contrary to the provisions of this Clause 7, the Exploration Company deliberately or negligently enters upon or undertakes any activity which damages or interferes with a Sacred Site or moves or undertakes any activity which damages or interferes with a Sacred Object then the Exploration Company, the LAG Representative and such members of the Local Aboriginal Groups as the LAG Representative considers appropriate shall meet to discuss the matter; and, where members of the Local Aboriginal Groups so request, the Exploration Company agrees -
- (a) at the option of the LAG Representative, to either take remediation action to address the damage caused to the integrity of the Sacred Site or Sacred Object in accordance with the reasonable directions of the LAG Representative or

reimburse the LAG Representative for the reasonable costs incurred by it in undertaking such remediation; and

(b) to pay to the LAG Representative, which shall accept such payment on behalf of the Local Aboriginal Groups or the relevant members thereof, such amount as is agreed by the Exploration Company and the LAG Representative or, if after meeting to discuss the matter agreement is not reached, as is determined pursuant to sub-clause (2) below, being compensation for any anxiety, anguish, distress, injury, affront, trauma, whether spiritual, physical or emotional, caused to any Aboriginal having any interest in accordance with Aboriginal tradition in the Sacred Site or Sacred Object as a result of the Exploration Company's breach (taking into account the extent to which remediation restoration has been or will be effective).

(2) Where there is a dispute between the Parties concerning Clause (1) above then the Parties agree, unless they otherwise agree, to refer the dispute to the arbitration of one (1) arbitrator agreed by the Exploration Company and the LAG Representative and, in default of such agreement, an arbitrator appointed by an Aboriginal Land Commissioner, being a person whom the Aboriginal Land Commissioner considers to be unbiased and of recognised high reputation and capacity and who has acknowledged familiarity with the matter referred to arbitration.

7.6 (1) Following completion of the procedures in Clause 5 [Exploration Clearances], the Local Aboriginal Groups and the LAG Representative agree to take all such reasonable steps as the Exploration Company may request to assist the Exploration Company to obtain an Authority Certificate in relation to the Work Program, provided always that the Local Aboriginal Groups and the LAG Representative will not be required to provide culturally sensitive information to any person if relevant members of the Local Aboriginal Groups are not reasonably satisfied that the confidentiality of that information will be properly respected. The Parties agree that the Exploration Company may provide a copy of the clearance advice under Clause 5.5 [Clearance Advice] to the AAPA.

(2) The Exploration Company agrees to take all reasonable steps to ensure that the procedures in Clause 5 [Exploration Clearances] are completed before any Authority Certificate is sought or provided in relation to the relevant Work Program.

## **8. Employment, Training and Business Opportunities**

8.1 For the purposes of this Clause 8, a reference to "the Exploration Company" does not include a reference to its contractors and sub-contractors.

8.2 The Exploration Company shall, in the course of conducting the Project, maximise the employment, training and contracting, and opportunities therefor, of the members of the Local Aboriginal Groups and Local Aboriginal Businesses; and shall ensure that as many members of the Local Aboriginal Groups and Local Aboriginal businesses as is practicable are employed or contracted where they are capable of carrying out in a satisfactory manner the particular work required.

8.3 For the purposes of implementing Clause 8.2 above, following the discovery of minerals of possible economic interest, the Exploration Company shall -

(a) to such extent as is practicable, give on-the-job training to members of the Local Aboriginal Groups employed on the Project who demonstrate a desire and capacity to be trained, with a view to increasing the job skills of those Aboriginals to enable them to hold permanent positions throughout the range of work relevant to the Project and a Mining Operation;

- (b) nominate from time to time an employee to be responsible for identifying areas in which members of the Local Aboriginal Groups and Local Aboriginal Businesses might successfully be employed or contracted for the supply of goods and services, which employee will assist such person or body in the preparation and submission of their application or tender (as the case may be);
- (c) provide the LAG Representative and, by such means as the LAG Representative suggests from time to time, the Local Aboriginal Groups and Local Aboriginal Businesses as much advance notice as is reasonably possible of its intention to call tenders for a contract for the supply of goods or services in relation to the implementation of the Project or in relation to a Mining Operation;
- (d) where there are equally satisfactory tenders, including a tender or tenders from members of the Local Aboriginal Groups or Local Aboriginal Businesses, including joint venture businesses between an incorporated association composed of members of Local Aboriginal Groups and another person, give a preference to such members or Businesses on the tendering for contracts for the supply of goods or services; and
- (e) require all contractors and sub-contractors engaged by it for the purposes of the Project or a Mining Operation to maximise the employment, training and contracting, and opportunities therefor, of the members of the Local Aboriginal Groups and Local Aboriginal Businesses, including joint venture businesses between an incorporated association composed of members of Local Aboriginal Groups and another person, and, in particular, to give employment and contract preference, to such members or Businesses who or which are capable of carrying out in a satisfactory manner the particular work required.

8.4 The Exploration Company shall take all reasonable or practicable steps to ensure, and shall procure that its contractors and sub-contractors take all reasonable or practicable steps to ensure, that the working hours and conditions of employees who are members of the Local Aboriginal Groups are adjusted to suit the cultural needs of those Aboriginal employees, recognising that such employees will not be entitled to payment for time-off other than for normal public holidays, recreation leave and special leave as agreed.

## **9. Environmental Protection and Rehabilitation**

### **Environmental Protection**

- 9.1 The Exploration Company agrees, so far as reasonably practicable having regard, *inter alia*, to what is cost effective, to conduct the Project and a Mining Operation so as to –
- (a) minimise Environmental Impact and Pollution, including the risk of Environmental Impact and Pollution;
  - (b) ensure the maintenance of the biological diversity of aquatic and terrestrial ecosystems of the Application Area and the region generally, including ecological processes;
  - (c) give effect to the principle of Environmentally Sustainable Development and the Precautionary Principle; and
  - (d) subject to the foregoing, accord with the Best Practicable Technology.
- 9.2 Without limiting the generality of Clause 9.1 above, the Exploration Company agrees to –
- (a) give due consideration to areas of environmental sensitivity, including monsoonal rain forests;
  - (b) in accordance with the reasonable requests of the LAG Representative, undertake Exploration and Development so as to minimise interference with hunting or foraging areas used by members of the Local Aboriginal Groups;
  - (c) to the extent reasonably practicable, limit its use of vehicular traffic on the Application Area to roads existing at the date of this Agreement;
  - (d) take all reasonable precautions to prevent –
    - (i) the introduction of exotic fauna and noxious plants to the Application Area and adjoining areas, and take all reasonable action to remove exotic fauna and

- noxious plants introduced to the Application Area as a result of the Exploration or Development; and
- (ii) the occurrence of uncontrolled fires on the Application Area and adjoining areas as a result of the Exploration Company's activities.

9.3 The Exploration Company agrees to promptly comply with any reasonable request of the NLC for the purposes of Clauses 9.1 & 9.2 above and agrees to conduct its activities in accordance with the *Rio Tinto Environmental Procedures - August 2001*, as amended from time to time, an updated copy of which will be provided to the LAG Representative annually.

#### Rehabilitation

- 9.4 Without limiting the generality of Clause 9.1 above, the Exploration Company agrees to –
- (a) take all reasonably practical steps to rehabilitate those parts of the Application Area disturbed by Exploration or Development, and
- (b) progressively rehabilitate and, if necessary, re-vegetate those parts of the Application Area disturbed by Exploration or Development,
- in accordance with all appropriate environmental procedures and revegetation targets so that the disturbed areas will be returned as near as reasonably practicable to the state they were in prior to Exploration.
- 9.5 Without limiting the generality of Clause 9.4 above, the Exploration Company agrees to –
- (a) replace topsoil removed from disturbed areas and take all reasonable action including, if reasonably required, preparation of such areas to return self-sustaining plant stands;
- (b) carry out works to remedy erosion of disturbed areas with the objective of reducing erosion rates to natural levels;
- (c) leave the surface in a safe condition and in a reasonable and stable contour having regard to the state of the surface area and its contour prior to the activity;
- (d) ensure that all soil which is scraped and stockpiled from any areas is properly kept viable and, upon the cessation of activities in that area, re-spread evenly over the disturbed area for the purposes of aiding re-vegetation;
- (e) ensure that all retained vegetation cut or removed in the course of the activities is, upon the re-spreading of soil in a disturbed area, distributed over the re-spread soil for the purposes of aiding re-vegetation, reducing erosion and creating animal habitats; and
- (f) rehabilitate disturbed areas as soon as reasonably practicable after the Exploration Company no longer requires access to the area for the purposes of the Project or a Mining Operation and, if practicable, prior to the commencement of the wet season next following that time.
- 9.6 Unless the Exploration Company is earlier released in writing by the NLC from its obligations under Clauses 9.4 & 9.5, the Parties agree that the rights and obligations granted and imposed pursuant to those Clauses shall continue in respect of each area of the Application Area disturbed by the Exploration or Development until two (2) years after the date the Exploration Company terminates Exploration and Development on all parts of the Application Area or for so long as it is entitled, pursuant to any Mining Interest or otherwise, to enter upon or occupy any part of the Application Area, whichever is later.

#### Data Collection

9.7 The Exploration Company agrees, at the appropriate times, to establish programs to monitor biota, water, sediments, soils, air, climatic parameters, personal and environmental radiation and other aspects of the environment and such other or further programs as may be reasonably requested by the LAG Representative from time to time.

### **10. Community Benefits**

- 10.1 The Exploration Company agrees to provide the benefits specified in Annexure B [Community Benefits] in accordance with the reasonable requests of the members of the Local Aboriginal Groups as advised by the LAG Representative.
- 10.2 The Exploration Company agrees to consider providing community benefits to the Local Aboriginal Groups (additional to those referred to in Clause 10.1 above) during the course of the Project upon request. The Exploration Company will advise the LAG Representative of each benefit it agrees to provide or wishes to offer and agrees that, if it does provide the benefit, it will provide it in accordance with the reasonable requests of the members of the Local Aboriginal Groups as advised by the LAG Representative.
- 10.3 The Exploration Company agrees to give due consideration to any request from the LAG Representative to alter the route or proposed route of any roads, including access tracks, proposed in any Work Program to be used or established so as to accommodate or better accommodate the interests of the Local Aboriginal Groups or their members, in which case the Exploration Company agrees to amend the relevant Work Program to comply with such request unless the alteration will involve significantly greater cost or inconvenience to the Exploration Company.

## **11. Negotiation of a Mining Agreement**

- 11.1 The Parties agree that this Clause 11 only applies if, at the relevant times prior to the date the Exploration Company enters a Mining Agreement (as agreed or otherwise determined pursuant to this Agreement) in relation to the relevant Mineral Lease, the Local Aboriginal Groups (or any of them or any or their members) -
- (a) have been determined by a Court to be the native title holders, or
  - (b) have an application which has been accepted for registration on the Register of Native Title Claims held by the National Native Title Tribunal under the Native Title Act, in relation to the land the subject of an application by the Exploration Company for the grant of a Mineral Lease..
- 11.2 Unless established or commenced earlier by mutual consent of the Parties, promptly after the Exploration Company makes an application for the grant of a Mineral Lease, the Parties shall
- (a) establish a committee pursuant to Clause 11.3 (the "Development Review Committee");
  - (b) commence negotiations in good faith for the purpose of reaching a deed of agreement on the terms and conditions on which the Mineral Lease can be granted and the Exploration Company may undertake the relevant Mining Operation ("the Mining Agreement").

### The Development Review Committee

- 11.3 (1) The Development Review Committee will be comprised of up to six (6) members (and alternative members), or such other number as may be agreed, of whom -
- (a) the LAG Representative shall appoint at least three (3) members, at least (1) of whom shall be a member of the Local Aboriginal Groups; and
  - (b) the Exploration Company shall appoint at least three (3) members;
- And one (1) of the members appointed by the LAG Representative and the members appointed by the Exploration Company shall have appropriate technical expertise to assist the Development Review Committee to discharge its functions.
- (2) The Development Review Committee may, from time to time, adopt such rules and procedures it deems appropriate to enable it to discharge its functions and the secretary and secretarial services shall be provided by the Exploration Company.

- (3) The functions of the Development Review Committee is to -
- (a) enable the Local Aboriginal Groups to have a direct involvement in the Development by providing a forum for discussion and the exchange of information between the Parties about, and the formulation of plans for, the relevant proposed Mining Operation and related Development;
  - (b) monitor and review the Development generally; and
  - (c) review the Recovery Documents, during their preparation and prior to their submission, and to consider and propose amendments or additions to the Recovery Documents;

But, except as may otherwise be agreed by the Parties, the Development Review Committee has no power to make decisions binding on any of the Parties.

- (3) Each member of the Development Review Committee may invite such advisers and observers as he or she reasonably requires to attend meetings of that Committee.
- (4) The Exploration Company agrees to provide the Development Review Committee with all such information as is reasonably required in order for that Committee to properly fulfill its functions, other than trade secrets or confidential and commercially sensitive intellectual property of the Exploration Company to which access will be provided subject to such conditions as the Exploration Company may reasonably impose.

11.4 (1) Unless the Parties otherwise agree, the Exploration Company agrees to undertake the Development and prepare the Recovery Documents in accordance with the Mining Principles.

(2) Any member of the Development Review Committee may propose that additional or alternative studies or investigations be conducted for the purposes of ensuring compliance with this Agreement generally and, in particular, the Mining Principles and, where only a general objective is specified in those Principles, to ensure that the studies and investigations undertaken enable a proper consideration of alternatives and the formulation of a proposal to mine which best satisfies that objective.

- (3) Any proposal made under Clause (2) above shall be discussed by the members of the Development Review Committee in good faith, and the Exploration Company agrees to undertake the studies or investigations unless -
- (a) they are not justified having regard to generally accepted engineering, environmental, mining, biological and geological principles; or
  - (b) they are not justified having regard to the costs of the studies or investigations relative to the potential benefit to the Local Aboriginal Groups or members thereof and the potential for minimising Environmental Impact; or
  - (c) they have already been properly carried out and the Exploration Company has provided reports to the LAG Representative demonstrating that to be the case.

11.5 (1) With respect to the preparation of the relevant Recovery Documents -

(a) if the LAG Representative so requests of the Exploration Company, the Exploration Company shall permit the LAG Representative to prepare the initial draft of so much of the Recovery Documents as relates to assessing the potential impact upon Aboriginals of the relevant Mining Operation and proposing safeguards or standards for minimizing such impact, which preparation shall be undertaken in a timely manner (and, for this purpose, shall from time to time nominate a competent person (or competent persons) who is (or are) acceptable to the Exploration Company to be responsible for undertaking such preparations and the Exploration Company shall pay or reimburse the LAG Representative the reasonable costs of such preparations); and

- (b) the Exploration Company may from time to time nominate a person to liaise with and assist the LAG Representative in its preparation of those aspects of the Recovery Documents which are referred to in Paragraph (a) above;
- 11.6 For the purposes of assisting with and promoting reliable, prompt and effective communication with respect to the Development and any proposed Mining Operation, the Exploration Company agrees that the LAG Representative may from time to time nominate a person acceptable to the Exploration Company to liaise with and, subject to the directions of the Exploration Company, assist the Exploration Company in the Development and other investigations and preparations with respect to the proposed Mining Operation (and the Exploration Company agrees to give due consideration to paying or reimbursing the LAG Representative the reasonable costs of such person).

#### The Mining Agreement

- 11.7 Without limiting the terms and conditions which may be included in a Mining Agreement, the Mining Agreement shall include, for the benefit of Traditional Owners, at least provisions giving effect to the Mining Principles.
- 11.8 So as to assist the LAG Representative and the Local Aboriginal Groups in the negotiation of a Mining Agreement, the Exploration Company shall provide the LAG Representative with a copy of the Feasibility Study, the Environmental Assessment and, to the extent such are available from time to time, the other Recovery Documents.
- 11.9 (1) The Parties shall use their best endeavours to agree upon the terms and conditions of the Mining Agreement but, in the event that –
- (a) in relation to the land the subject of an application by the Exploration Company for the grant of a Mineral Lease there is at the relevant time –
    - (i) a determination of Native Title by a Court in favour of the Local Aboriginal Groups (or any of them or any of their members), or
    - (ii) an outstanding application by or on behalf of the Local Aboriginal Groups or any of them or any of their members which has been accepted for registration on the Register of Native Title Claims held by the National Native Title Tribunal under the Native Title Act, and
  - (b) the Parties have not been able to agree on all of the terms and conditions of the Mining Agreement within twelve (12) months after the LAG Representative has received the Feasibility Study and the Environmental Assessment,
- Any Party may thereafter elect by notice to the other Parties to refer the matters in dispute for determination by arbitration in accordance with this Clause 11.9.
- (2) The arbitrator is to be appointed as follows –
- (a) if, within twenty-one (21) days after the date the notice is given under Clause (1) above, the Parties agree upon the person to be the arbitrator, that person is appointed as arbitrator; and
  - (b) otherwise, the arbitrator will be a person appointed by the President of the Law Society Northern Territory, being a person who–
    - (i) has relevant experience and is in a position to deal with the matter impartially; and
    - (ii) holds, or has held, office as a Judge of the Federal Court of Australia or is a legal practitioner of at least ten (10) years standing.
- (3) In performing his functions under this Clause 11.9, the arbitrator shall be assisted by two (2) persons, one appointed by the Exploration Company and the other by the LAG

Representative, and the Parties agree that they wish the arbitrator to complete the arbitration within six (6) months of the appointment of the arbitrator.

- (4) The arbitrator shall, by arbitration of the matters in dispute, determine terms and conditions of the Mining Agreement that –
  - (a) are fair and reasonable, having regard, *inter alia*, to the commercial risks and potential of the Project and the Mining Operation and to the nature and scope of agreements, deeds or arrangements in Australia between persons wishing to or undertaking mining and Aboriginals with interests according to Aboriginal tradition in the land affected by such mining,
  - (b) should, in his or her opinion, be acceptable to all Parties, and
  - (c) in his or her opinion, should have been negotiated by the Parties in commercial arms' length negotiations conducted in good faith.
- (5) Except as otherwise provided in this Clause 11.9, the arbitration is to be undertaken in accordance with Clause 17.3 & Clause 17.4 [Concerns & Disputes].
- (6) In making his determination, the arbitrator must take into account -
  - (a) the effect of the Project and the Mining Operation on -
    - (i) Native Title;
    - (ii) the way of life, culture and traditions of the Local Aboriginal Groups;
    - (iii) the development of the social, cultural and economic structures of the Local Aboriginal Groups and the members thereof;
    - (iv) the freedom of access by members of the Local Aboriginal Groups to the Application Area and their freedom to carry out rites, ceremonies or other activities of cultural significance on the Application Area in accordance with their traditions; and
    - (v) any Sacred Site or Sacred Object or area or site on the Application Area of particular significance to any member of the Local Aboriginal Groups in accordance with their traditions;
  - (b) the effect of the Project and the Mining Operation on the natural environment of the Application Area;
  - (c) the interests, proposals, opinions and wishes of the Local Aboriginal Groups in relation to the management, use or control of the Application Area and the Mining Operation;
  - (d) the commercial feasibility of the Mining Operation;
  - (e) the benefits provided under Clause 10 [Community Benefits], the affects, whether positive or negative, of the Project on the Local Aboriginal Groups, including the beneficial impacts of the Project and the Exploration Company's presence in the region; and
  - (f) any other matter which the arbitrator considers relevant.

11.10 The Exploration Company shall not commence a Mining Operation or any construction on the Application Area relating thereto

- (a) if a Suspension Notice has been served on the Exploration Company under Paragraph 17.5(1)(b) [Concerns & Disputes] and the LAG Representative has not agreed to ending the suspension referred to in that Clause and an arbitrator has not determined pursuant to Clause 17.5(3) [Concerns & Disputes] that it was unreasonable for the LAG Representative to give the Suspension Notice under Paragraph 17.5(1)(b) [Concerns &

- Disputes] or that it is unreasonable for the LAG Representative not to agree under that Paragraph that Exploration and Development can continue; or
- (b) if a notice has been served on the Exploration Company by the LAG Representative under Clause 17.1(1) [Concerns & Disputes] and -
    - (i) the matter the subject of the notice has not been resolved, or
    - (ii) if a determination (or order) has been made by an arbitrator (or a Court) in relation to the matter the subject of the notice, the Exploration Company has failed to comply with or is not promptly complying with such determination (or order); and
  - (c) until it has executed a Mining Agreement concerning that Mining Operation, which Agreement has been agreed or determined by arbitration in accordance with this Clause 11.

11.11 The Exploration Company shall, as they fall due or within a reasonable period thereafter, meet the reasonable costs incurred by the Local Aboriginal Groups in connection with the negotiations for and in the preparation of a Mining Agreement, including the costs of consulting the relevant Local Aboriginal Groups and of any consultants and advisers which the LAG Representative may reasonably require in order to properly consider and negotiate such an Agreement and the Budget and Payment Process (at Annexure C) shall apply.

11.12 Notwithstanding any other provision of this Agreement, the Parties agree that where, apart from this Agreement, the Exploration Company is required by statute to negotiate with a person before the Mineral Lease can be granted because the person has or claims to have Native Title in any part of the area the subject of the application for the Mineral Lease, the Mining Agreement will provide that -

- (i) amounts equivalent to approximately fifty percent (50%) of any cash payments to be provided to the LAG Representative under the Mining Agreement will be held in trust by the LAG Representative, and
- (ii) the provision of approximately half the other benefits to be provided for the benefit of Local Aboriginal Groups under the Mining Agreement will be suspended,

until negotiations with such person are completed or otherwise dealt with and, if such negotiations (or a related arbitration) result in an agreement between the Exploration Company and such person, the amounts and benefits referred to in sub-paragraphs (i) & (ii) above respectively, or such parts of them as that agreement provides, shall be dealt with in accordance with the terms and conditions of that agreement (and any of the amounts and benefits referred to in sub-paragraphs (i) & (ii) above respectively which are not dealt with in such agreement will be available and provided, as the case may be, to the LAG Representative and the Local Aboriginal Groups in accordance with the Mining Agreement).

## **12. Assignments & Encumbrances**

12.1 The Exploration Company may only assign its interest in or any part of its interest in the Exploration Licence after the proposed assignee executes a deed of assumption in a form reasonably acceptable to the LAG Representative by which the proposed assignee covenants to observe, perform, comply with and be bound by the provisions of this Agreement as if it had been expressly named as a party to this Agreement in the place of the Exploration Company.

12.2 The Exploration Company may encumber the Exploration Licence or part of the Exploration Licence provided that, before the encumbrance is created, the Exploration Company has -

- (a) advised the LAG Representative of the intended encumbrance, and
- (b) provided the proposed encumbrancee with a copy of this Agreement.

## **13. The LAG Representative**

- 13.1 (1) The Local Aboriginal Groups may appoint a person to be the LAG Representative for the purposes of this Agreement.
- (2) The LAG Representative is the agent of the Local Aboriginal Groups and is to exercise its functions and powers this Agreement for and on behalf of and in the interests of the Local Aboriginal Groups.
- (3) Subject to Clause (4) below, the LAG Representative shall, in addition to fulfilling the functions and exercising the powers expressly given to the LAG Representative under this Agreement, fulfil the functions and exercise the powers of the Local Aboriginal Groups under or incidental to this Agreement, including, without limiting the generality of the foregoing, the receipt of moneys and notices and the giving of notices and approvals; and the Exploration Company shall accept all communications from the LAG Representative which that Representative advises are made on behalf of the Local Aboriginal Groups, or any of them, as communications from the Local Aboriginal Groups, or such of them as the LAG Representative specifies.
- (4) The LAG Representative is not liable to the Exploration Company for damages or loss of any kind which the Exploration Company may incur under this Agreement.
- (5) The Local Aboriginal Groups hereby appoint the NLC as the LAG Representative.
- (6) The Local Aboriginal Groups may appoint a person other than the NLC to be the LAG Representative and, upon receiving an appropriate request from the Local Aboriginal Groups, the NLC shall notify the Exploration Company of the name, address and contact details of the person so appointed, but the NLC shall not provide such notice unless it is satisfied that –
- (a) all reasonable efforts have been made to ensure that the Local Aboriginal Groups have authorized the request –
- (i) where there is a process of decision-making that, under Aboriginal tradition, must be complied with in relation to authorizing such a request or things of that kind –in accordance with that process, or
- (ii) where there is no such process –in accordance with a process of decision-making agreed to and adopted by the members of the Local Aboriginal Groups in relation to authorizing such a request or things of that kind; and
- (b) the person proposed as the LAG Representative is competent to perform the functions of the LAG Representative under this Agreement;

And the appointment of any person as the LAG Representative shall not be effective until the NLC has provided a notice to the Exploration Company pursuant to this Clause 13.1(6).

- 13.2 In consideration of the LAG Representative accepting the responsibilities of assisting in the administration of this Agreement, the Exploration Company agrees to pay to the LAG Representative, following grant of the Exploration Licence (or, if the Exploration Licence includes more than one (1) exploration licence, following grant of each such exploration licence) and annually in advance on the anniversary of such grant (or each such grant) the sum of one thousand dollars (\$1,000.00) Indexed (or, if the Exploration Licence includes more than one (1) exploration licence, one thousand dollars (\$1,000.00) Indexed for each such exploration licence).

## **14. Relationship of the Parties and Indemnity**

- 14.1 Except to the extent provided in Clause 13 [The LAG Representative], nothing in this Agreement constitutes a Party as the partner, agent or legal representative of another Party for any purpose or creates any partnership, agency or trust.
- 14.2 (1) Subject to Clause 14.2(2), Clause 15.5 [Native Title] and Clause 15.6 [Native Title] the Exploration Company hereby irrevocably and unconditionally undertakes and agrees to indemnify and forever keep indemnified and save harmless the LAG Representative and the Local Aboriginal Groups and the members thereof (all of whom are in this Clause 14 called "the Indemnified Parties") from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that any or all of them may suffer, incur or sustain as a result of -
- (a) any acts or omissions by or on behalf of the Exploration Company; or
  - (b) any actions, proceedings, claims and demands which may be brought or made against any of the Indemnified Parties and arising out of any acts or omissions by or on behalf of the Exploration Company;
- pursuant to this Agreement or relating to the Project, or arising out of the Exploration Company's occupation, use of or activities upon the Application Area.
- (2) This indemnity shall not apply to any liability, loss, harm, damage, cost or expense (including legal fees) to the extent that it is -
- (a) caused by an act or omission of an Indemnified Party or arises out of a breach of this Agreement by an Indemnified Party;
  - (b) caused by activities or actions carried out at the specific request of an Indemnified Party, except to the extent of any negligence by the Exploration Company; or
  - (c) authorized by the LAG Representative or, insofar as concerns advice given in relation to Sacred Sites or Sacred Objects, members of the Local Aboriginal Groups during the times they accompany the Exploration Company in the course of implementing a Work Program pursuant to Clause 5.3(2)(b) [Initial Consideration] or Clause 5.11 [Reconnaissance].

## **15. Native Title**

- 15.1 The Parties acknowledge and agree that it is their intention that –
- (a) no Native Title is extinguished by the grant of the Exploration Licence or the grant of any Mineral Lease or anything in this Agreement; and
  - (b) except to the extent expressly provided otherwise in this Agreement, including in Clauses 4.1 to 4.3 [The Parties' Obligations] and Clause 11 [Negotiation of a Mining Agreement], their respective rights and obligations in this Agreement are not dependent upon or subject to and will not be affected by any finding, declaration, determination, order or other form of decision made or to be made by the National Native Title Tribunal, the Federal Court or any other judicial body regarding the existence, nature or scope of Native Title on the Application Area or compensation for the loss or impairment of Native Title on the Application Area.
- 15.2 The Parties acknowledge and agree that the Local Aboriginal Groups, or any of them or any of the members thereof –
- (a) may apply for determinations of Native Title under the Native Title Act (or any other law) over the Application Area (or any part of it) and the Exploration Company shall not dispute that Native Title is held by the Local Aboriginal Groups, or any of them or any of the members thereof, over the Application Area (or any part of it); and
  - (b) subject to Clause 15.5 below and Clause 15.6 below, may apply for determinations of

compensation on just terms under the Native Title Act or under the *Minerals (Acquisition) Act* (Northern Territory) (or any other law) for any loss, diminution, impairment or other effect of the grant of the Exploration Licence on their Native Title in the land and waters in the Application Area; and

- (c) subject to Clause 15.5 below and Clause 15.6 below, may apply for determinations of compensation or just terms under the Native Title Act or under the *Minerals (Acquisition) Act* (Northern Territory) (or any other law) for any loss, diminution, impairment or other effect of the grant of Mineral Leases on their Native Title in the land and waters in the Application Area.

15.3 (1) The Parties acknowledge and agree that this Clause 15.3 will apply in the event that the grant of any Mineral Lease is subject to the “right to negotiate” provisions in Subdivision P of the Native Title Act.

(2) Provided a Mining Agreement relating to the relevant Mining Operation and Mineral Lease has been reached, the Local Aboriginal Groups agree -

- (a) not to seek a determination from an arbitral body under the Native Title Act that the Mineral Lease not be granted; and  
(b) to execute an agreement for the purposes of section 31(1)(b) of the Native Title Act at the same time as (or as soon as possible after) the execution of the Mining Agreement to enable the valid grant of the relevant Mineral Lease pursuant to section 28(1) of the Native Title Act.

(3) The Exploration Company agrees not to apply under sub-section 35(1) of the Native Title Act for a determination by an arbitral body under section 38 of that Act in relation to the grant of the Mineral Lease unless and until it has reached agreement on the terms and conditions of a Mining Agreement relating to the relevant Mining Operation and Mineral Lease.

15.4 Nothing in this Agreement -

- (a) constitutes an acknowledgment by the Exploration Company that Native Title exists over any part of the Application Area; or  
(b) is intended to derogate from the Local Aboriginal Groups’ claimed Native Title rights and interests.

15.5 The Local Aboriginal Groups, the LAG Representative and the NLC acknowledge that the benefits provided by the Exploration Company under this Agreement and any Mining Agreement reached pursuant to Clause 11 are full and fair compensation and damages and final satisfaction of the following:

- (a) any and all compensation which the Exploration Company is obliged by any statute, by common law or equity, or by any Authorisation or the Exploration Licence to pay or provide, directly or indirectly, for the impairment of or other impact upon :
- (i) Native Title or any other rights according to Aboriginal tradition in the Application Area, and  
(ii) any other of the LAG Groups’ interests referred to in Clause 11.9(6) [The Mining Agreement] (for which compensation is to be or has been, as the case may be, provided in a Mining Agreement),

caused by the grant and enjoyment of the Exploration Licence and any Authorisation or by undertaking the Project, including compensation payable in accordance with the

*Native Title Act*, the *Minerals (Acquisition) Act* (Northern Territory) and the Mining Act;  
and

- (b) any claims that may be made by native title holders (if any) or any person on their behalf, against the Exploration Company, on the basis of any impairment of the rights according to Aboriginal tradition of such native title holders in the Application Area.

15.6 In pursuance of Clause 15.5 above, the Local Aboriginal Groups, LAG Representative and NLC release and forever discharge the Exploration Company from all claims and liability that might arise in relation to the matters referred to in that Clause 15.5 above.

## **16. Confidentiality**

16.1 Subject to Clause 16.2, the following shall be treated by the Parties as confidential:-

- (a) information provided to the Local Aboriginal Groups or the LAG Representative in respect of the Exploration and Development undertaken by the Exploration Company and any related Mining Operation on the Application Area which the Exploration Company requests the Local Aboriginal Groups or the LAG Representative to treat as confidential;
- (b) information concerning any Sacred Sites or Sacred Objects; and
- (c) information provided pursuant to this Agreement or in the course of negotiating this Agreement by or on behalf of the Local Aboriginal Groups to the Exploration Company which the Local Aboriginal Groups or the LAG Representative requests the Exploration Company to treat as confidential.

16.2 Notwithstanding the other provisions of this Clause 16, a Party may divulge information to a third party:-

- (a) with the prior written consent of the other Parties (which consent shall not be unreasonably withheld);
- (b) to the extent required by any Applicable Law or the rules of any recognised stock exchange;
- (c) to the extent required to enforce its rights under this Agreement, including disclosure to potential assignees of any part of the Exploration Company's interests, rights or obligations under this Agreement;
- (d) to the extent that such information is already or becomes in the public domain, otherwise than by breach of this Clause 16;
- (e) by or on behalf of the Local Aboriginal Groups for the purposes of prosecuting any applications under the *Native Title Act 1993* relating to the Application Area; or
- (f) as expressly permitted under this Agreement.

16.3 Notwithstanding termination of the rest of this Agreement but subject to Clause 16.2, the Exploration Company shall continue to treat as confidential all information obtained by it pursuant to this Agreement or in the course of carrying out the Project with respect to the locations of and traditions associated with Sacred Sites and Sacred Objects and, to the extent that it is capable of being delivered, shall deliver all of such information to the LAG Representative as soon as it is no longer required for the purposes of the Project.

## **17. Concerns and Disputes**

- 17.1 (1) The Exploration Company or the LAG Representative may at any time, by notice to the other Parties identifying the concern or default, request a meeting with the other Parties to discuss –
  - (a) any substantial matter of concern to any of the Parties concerning this Agreement, or

- (b) any default (or alleged default) of this Agreement, and the Parties agree to use their best endeavours to meet to discuss the matter of concern or default.
- (2) The LAG Representative agrees to use its best endeavours to arrange for such members of the Local Aboriginal Groups as the LAG Representative considers relevant to the matter of concern to attend the meetings referred to in Clause (1) above.
- 17.2 Unless otherwise provided in this Agreement and following the notice and meeting referred to in Clause 17.1(1) above, if a dispute arises between the Parties concerning this Agreement then the Exploration Company or the LAG Representative may serve notice upon the other requiring that it submit the dispute to arbitration whereupon the dispute shall be referred to arbitration in accordance with this Clause 17. The Parties agree that a notice under this Clause 17.2 can be served sixty (60) days after service of the notice referred to in Clause 17.1 above regardless of the status of the discussions under that Clause 17.1.
- 17.3 Arbitration shall be conducted in accordance with the *Commercial Arbitration Act* 1985 (Northern Territory) subject to the provisions in this Clause 17.
- 17.4 (1) Any matter referred to arbitration pursuant to this Clause 17 shall stand referred to an arbitrator or arbitrators agreed upon by the Parties or, if the Parties fail to agree, to a sole arbitrator appointed by the President of The Law Society of the Northern Territory, being a person who is of recognised high reputation and capacity and who has acknowledged familiarity with the matter referred to arbitration and whom the said President considers to be in a position to deal with the matter impartially.
- (2) The Parties shall provide the arbitrator(s) with all such facilities and shall grant free access to all such operations, sites, account books, records, documents data and other materials and information as may be necessary or desirable in order to enable it (or them) to determine the matter referred to it and for performing a fair settlement of that matter.
- (3) If any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by agreement of the Parties or, if the Parties fail to agree, by a person appointed by the President of The Law Society of the Northern Territory having the qualities required of a person appointed as arbitrator under Clause (1) above.
- (4) The arbitration shall be held at Darwin or such other place as the Parties agree.
- (5) Any question of law arising in the course of the arbitration or out of a determination may be referred to an appropriate court for determination at the request of the LAG Representative or the Exploration Company and, if required, the other Parties and the arbitrator shall each consent to such referral. Subject to such rights of appeal as are available under the *Commercial Arbitration Act* 1985 (Northern Territory), the determination of the arbitrator shall be final and binding on the Parties, and enforceable in any court of competent jurisdiction in the same manner as a judgment or order of the Supreme Court of the Northern Territory of Australia.
- (6) Subject to the determination of the arbitrator(s), the costs of the arbitration shall be shared equally by the Exploration Company, on the one hand, and the Local Aboriginal Groups, on the other.
- 17.5 (1) Notwithstanding any other provision of this Agreement and subject to Clause (2) below, where the Exploration Company has breached Clause 7.1 [Sacred Sites & Sacred Objects] and, as a result of such breach, a Sacred Site is damaged or interfered with then -

- (a) the LAG Representative may give notice of the matter to the Exploration Company and the Parties shall use their best endeavours to meet to discuss the matter; and
  - (b) no sooner than ten (10) days after and no later than sixty (60) days after giving notice under paragraph (a) above, the LAG Representative may give notice (“Suspension Notice”) on the Exploration Company under this paragraph and, within seven (7) days of receipt of such notice, the Exploration Company shall immediately suspend its Exploration and Development on the Application Area until the LAG Representative otherwise agrees.
- (2) If –
- (a) the Exploration Company considers that the LAG Representative has acted unreasonably in giving a Suspension Notice then it may by notice given to the LAG Representative before the time at which it is required under Paragraph 17.5(1)(b) above to commence suspension of its Exploration and Development dispute the Suspension Notice by asserting that the LAG Representative has acted unreasonably in giving the Suspension Notice, or
  - (b) the Exploration Company considers that the LAG Representative has acted unreasonably by not agreeing pursuant to Paragraph 17.5(1)(b) above that Exploration and Development can proceed then the Exploration Company may by notice to the LAG Representative dispute the LAG Representative’s refusal to agree to Exploration and Development continuing by asserting that the LAG Representative has acted unreasonably in refusing to agree to a request by the Exploration Company to agree to Exploration and Development continuing;
- and, unless the Parties otherwise agree, the dispute will be referred to the arbitration of one (1) arbitrator agreed by the Exploration Company and the LAG Representative and, in default of such agreement, an arbitrator appointed by an Aboriginal Land Commissioner, being a person whom the Aboriginal Land Commissioner considers to be unbiased and of recognised high reputation and capacity and who has acknowledged familiarity with the matter referred to arbitration and the following provisions of this Clause 17.5 will apply to the arbitration.
- (3) The arbitrator is to determine whether the LAG Representative has acted unreasonably in giving the Suspension Notice under Paragraph 17.5(1)(b) above or in failing to agree under Paragraph 17.5(1)(b) above to Exploration and Development continuing having regard only to –
- (a) the provisions of this Agreement relating to the protection of Sacred Sites and, in particular, the Exploration Company’s obligations under those provisions,
  - (b) the circumstances of the relevant breach of Clause 7.1 by the Exploration Company,
  - (c) the compensation provided or remediation undertaken under Clause 7.5 in relation to the relevant breach,
  - (d) the possibility of the Exploration Company further breaching Clause 7.1.
- (4) If the arbitrator determines that it was unreasonable for the LAG Representative to give the Suspension Notice under Paragraph 17.5(1)(b) above or that it is unreasonable for the LAG Representative not to agree under Paragraph 17.5(1)(b) above that Exploration and Development can continue, as the case may be, then, subject to such conditions as the arbitrator may impose, the Exploration Company may continue its Exploration and Development on the Application Area.
- (5) The Exploration Company may give a notice of dispute under Clause 17.5(2) above no more often than once in each twelve (12) month period following the date of the LAG Representative’s notice under Paragraph 17.5(1)(b) above.

- (6) Where the Exploration Company gives notice of dispute under Paragraph 17.5(2)(a) above before the time at which it is required to commence suspension of its Exploration and Development then it may continue its Exploration and Development until the dispute has been determined by arbitration or agreement of the Parties.
- (7) The provisions of Clauses 17.3 & 17.4 shall apply to the arbitration except to the extent otherwise provided in this Clause 17.5.

## **18. Revision**

At any time during the Term the Parties shall, at the request of any Party, meet on a mutually agreeable date and at a mutually agreeable place, to review the operation of this Agreement; and the Parties shall use their best endeavours to agree to such changes of this Agreement as may be required to ensure that this Agreement operates fairly to each of the Parties. [*See Clause 1.5 [Definition, Interpretation & Other Matters] for effecting changes to the Agreement.*]

## **19. Communication**

- 19.1 Subject to this Agreement, any communication or document (referred to in this Clause 19 as a "Communication") to be given under this Agreement shall be in writing and shall be addressed as follows -

If to Exploration Company -  
Exploration Manager

37 Belmont Avenue BELMONT WA 6104  
Telephone: (08) 9270 9222  
Facsimile: (08) 9270 9223

If to the Local Aboriginal Groups or the NLC or the LAG Representative -  
The Chief Executive Officer

Northern Land Council  
9 Rowling Street  
PO Box 42921  
CASUARINA NT 0811  
Telephone: (08) 8920 5100  
Facsimile: (08) 8945 2633

or to such other address as a Party may nominate by notice to the other Parties.

- 19.2 Each communication shall be delivered by hand, sent by prepaid post or sent by telegram or facsimile transfer to the address of the Party to which it is being given and shall be deemed to have been received:-
- (a) if delivered by hand, then upon delivery;
  - (b) if sent by post, then five (5) days after posting; and
  - (c) if sent by facsimile transmission, then on receipt by the sender of a confirmation report.
- 19.3 Any payment to be made by a Party to another Party pursuant to this Agreement shall be made to the payee at the address for the payee for receipt of notices unless otherwise notified to the payer by the payee.

**EXECUTED** by the Parties as a deed -

THE COMMON SEAL of )

**RIO TINTO EXPLORATION PTY LIMITED )  
[OR THE COMPANY THAT IS THE )  
APPLICANT FOR THE EXPLORATION LICENCE])**

was hereunto )  
duly affixed by authority of its )  
Board of Directors in the presence of: )  
)

.....  
Director:  
.....  
Secretary:

The **COMMON SEAL** of the **NORTHERN )  
LAND COUNCIL** was hereunto affixed )  
in accordance with a resolution of the )  
Chief Executive Officer, the duly )  
authorised delegate of the Northern )  
Land Council (by Northern Land )  
Council Resolution No: C70/1432) in the )  
presence of: )

.....  
Chief Executive Officer: Norman Fry  
.....  
Member of NLC Staff:

**SIGNED SEALED AND DELIVERED  
by and on behalf of the LOCAL ABORIGINAL GROUPS by -**

**SIGNED SEALED AND DELIVERED )  
by ..... )  
in the presence of: )**

.....  
Witness:

**SIGNED SEALED AND DELIVERED )  
by ..... )  
in the presence of: )**

.....  
Witness:

**SIGNED SEALED AND DELIVERED )  
by ..... )  
in the presence of: )**

.....  
Witness:

## **Annexure A : Application**

## **Annexure B: Community Benefits**

Community benefits may take any form and may, for example, include employment, training or business opportunities; the provision of roadworks or earthmoving (when appropriate machinery is in use on the Project); or the provision of other goods or services (which the Exploration Company can provide because of its presence in the region).

### **Year 1 of the Project**

[Insert Benefits]

### **Year 2 of the Project**

[Insert Benefits]

### **Year 3 of the Project**

[Insert Benefits]

<etc>

### **Annexure C: Budget and Payment Process**

The following provisions apply where the Exploration Company is to pay or reimburse any costs to the LAG Representative for proposed Exploration Clearances as outlined in Clause 5 [Exploration Clearances].

The costs include expenses, fees and disbursements.

#### **(1) Budget Preparation**

A budget will be prepared by the LAG Representative and forwarded to the Exploration Company prior to the relevant work being commenced.

The budget will be based on reasonable consultancy rates and on reasonable costs to be incurred in performing the Exploration Clearance, including travelling time at 75% of the relevant rate.

The rates are as follows:

Local Aboriginal Group Member / Interpreter	\$200 per day or \$25 per hour
LAG Representative Member	\$200 per day or \$25 per hour
Anthropologist (or Anthropologist/Archaeologist) hour	\$700 per day or \$140 per hour
Logistics Officer	\$500 per day or \$100 per hour

Where applicable, the GST will be added to the quoted price during invoicing (for payment by the Exploration Company).

Where a person performs a function normally performed by a person on a lower charge rate, the lower rate shall be charged for his or her services.

The budget will also include estimates of the other costs, including GST, having regard, as applicable, to—

- current commercial vehicle costs (including fuel) and air charter costs;
- reasonable travel (recognising that, under normal circumstances, travel time will be no more than one (1) day to or from Darwin), meal, accommodation and out-of-pocket expenses; and
- current commercial costs for meeting venue hire, meeting catering, equipment hire, etc.

#### **(2) Acceptance of Budget**

Acceptance by the Exploration Company of the budget (or an amended version) is to be in writing, prior to the relevant work or function being commenced by the LAG Representative. If the Exploration Company does not accept that the budget is fair and reasonable then the Exploration Company and the LAG Representative will use their best endeavours to reach agreement on the budget (or an amended version) and, until such agreement is reached, the LAG Representative is not obliged to fulfill its responsibilities under Clause 5 [Exploration Clearances].

#### **(3) Invoicing**

As soon as practicable after providing the advice under Clause 5.5(1) [Clearance Advice] of this Agreement the LAG Representative will provide an itemized Tax Invoice to the Exploration Company for all of the costs of performing the relevant work or function together with reasonable documentary evidence of the costs. Without limiting the generality of this provision, the LAG Representative must

provide the Exploration Company with all information necessary to enable it to claim an Input Tax Credit for GST incurred in respect of those costs.

**(4) Payment**

The Exploration Company shall pay each invoice as soon as reasonably practicable after receiving it.

**(5) GST (Definitions)**

- (a) "ABN" has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*;
  - (b) "Consideration" has the same meaning as in the GST Act but does not include the GST amount payable;
  - (c) "Input Tax Credit" has the meaning given to it in the GST Act;
  - (d) "GST" means a goods and services tax imposed by the GST Act;
  - (e) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999*;
  - (f) "Tax Invoice" means an invoice as prescribed in the GST legislation; and
  - (g) "Taxable Supply" is a Taxable Supply as defined in section 9-5 of the GST Act.
-

## **Annexure D: Mining Principles**

### **1. Introduction**

The Parties agree that, in addition to the other applicable provisions of this Agreement, the following provisions apply with respect to any Mining Operation, including during its developmental stages, and related Mining Agreement.

### **2. The Mining Agreement**

The Mining Agreement will include, but not be limited to, provisions relating to -

- (a) the protection and rehabilitation of the environment;
- (b) the protection of Sacred Sites and Sacred Objects;
- (c) the term, review and variation of the Mining Operation and the Mining Agreement;
- (d) employment, training and business opportunities for members of the Local Aboriginal Groups;
- (e) benefits for the relevant Local Aboriginal Groups, which benefits may take any form or any combination or formulation of forms, for example, the provision of goods or services or of payments;
- (f) the provision of information about the Mining Operation; and
- (g) an indemnity and release by the Local Aboriginal Groups and the NLC in the substantially same form, *mutatis mutandis*, as that contained in Clauses 4.3 & 4.6 [The Parties' Obligations] and Clauses 15.5 and 15.6 [Native Title] of this Agreement.

### **3. Environment Protection and Rehabilitation**

#### **General**

3.1 The Mining Operation is to be undertaken in such a way as to achieve the following objectives-

- (a) the related impact on human health is, in addition to meeting the requirements of Applicable Laws and Authorisations, to be kept as low as reasonably achievable;
- (b) no unreasonable Environmental Impact from the Mining Operation outside of the area of the Mining Operation;
- (c) Environmental Impacts within the area of the Mining Operation are to be as low as reasonably possible, during all stages of the Mining Operation;
- (d) the rehabilitation of the area of the Mining Operation as near as reasonably practicable to its natural state immediately prior to the grant of the original Exploration Licence and so that any restrictions or limitations on subsequent land use as a result of the Mining Operation are minimized and, so far as reasonably practicable, avoided or prevented.

#### **Recovery Method**

3.2 The Exploration Company may and, if the LAG Representative so requests, the Exploration Company agrees to investigate the feasibility of undertaking the Mining Operation so as to allow rapid, campaign, sequential or underground mining (or a combination of these methods) and the utilisation of each excavation as a tailings repository.

#### **Refineries**

3.3 The Exploration Company agrees not to carry out any secondary or tertiary processing on or in the region of the Application Area without first undertaking a full investigation of the feasibility and impact and unless proper consideration is given to meeting the objectives set out in Clause 3.1 (of these Mining Principles) and Clause 9 of the Agreement.

#### **Hazardous Substances**

3.4 The Exploration Company agrees to keep, use, store and dispose of all substances which are hazardous in any manner which minimizes the Environmental Impact (including the risk of such Impact) and to keep proper records of the locations of such substances.

### Tailings and Waste Rock

- 3.6 (1) All hazardous tailings and hazardous waste rock are to be contained-
- (a) in such a way as to ensure that the long-term environmental security is maximized and the Environmental Impact (including the risk of such Impact) is minimized; and
  - (b) in repositories which are designed, constructed and integrated to contain a flood which may be expected from the most severe combination of meteorological and hydrological conditions reasonably possible in the region of the Application Area.
- (2) All proposed excavations are to be evaluated by the Exploration Company with proper geohydrological, engineering, environmental studies and other appropriate studies to allow a full and proper assessment of the technical feasibility of returning the tailings and waste rock to the mine excavation (or excavations) and, alternatively, of utilising other repositories for the tailings and waste rock.
- (3) The Exploration Company agrees to investigate the feasibility of adopting such methods of tailings and waste rock deposition as the LAG Representative may reasonably suggest, possibly including, for example, cement paste, dry stacking and / or custom pits.
- 3.7 The Exploration Company agrees to return all tailings and waste rock to the original mine excavation (or excavations) except to the extent that geohydrological, engineering, environmental or other appropriate studies establish that the return of those materials to that excavation (or those excavations) would -
- (a) not accord with the Best Practicable Technology;
  - (b) give rise to substantially greater Environmental Impact than that which would or would be likely to arise if repositories other than the mine excavation or excavations were utilized; or
  - (c) be economically prohibitive.

### Mine and Other Excavations : Capping

- 3.8 The Exploration Company agrees that, where capping of the original mine excavation (or excavations) or other excavations is to be undertaken, only materials which are not hazardous will be used for such capping.

### Underground Excavations

- 3.9 In the case of an underground Mining Operation where it is proposed that any underground excavations to be left unfilled or open after the cessation of production, the Exploration Company agrees not to implement such a proposal until it has carried out adequate geomechanical investigations which establish that any collapse of such excavations will have no noticeable effect on any land surface.

### Water Management

- 3.10 (1) The Exploration Company agrees to design, propose and implement a water management system for the Mining Operation which accords with the Best Practicable Technology.
- (2) All water retention structures are to be designed, constructed and integrated to contain a flood which may be expected from the most severe combination of meteorological and hydrological conditions reasonably possible in the region of the Application Area.

- (3) All water retention structures are to be lined with one or more layers of impermeable material, unless it is established that no unacceptable contaminant escape of any substance which is hazardous will occur without such lining.
- (4) The requirements to contain waters in Clause (1) above does not apply to -
  - (a) losses of water through natural or enhanced evaporation;
  - (b) seepage of a quality and quantity of water which will cause no material Environmental Impact outside the area of the relevant Mineral Lease; and
  - (c) the discharge of water which has, or has been treated to have, a quality which can be demonstrated to be comparable to the water outside the area of the Mining Operation to which it is to be discharged, having regard, *inter alia*, to the median values for conductivity, pH, chemicals and uranium and other metals in the waters.

#### Air Quality

3.11 Pollution of the atmosphere, whether in the form of particulate matter or gaseous emissions, are to be minimised and the Exploration Company also agrees to incorporate the reasonable suggestions of the LAG Representative in the design and application of technology to minimise Pollution of the atmosphere.

#### Rehabilitation

3.12 The Exploration Company agrees to undertake rehabilitation of all disturbed areas within the Application Area progressively and in a timely manner and so as to achieve the objectives set out in Clause 3.1 (of these Mining Principles) and Clause 9 [Environmental Protection and Rehabilitation] of the Agreement.

- 3.13 (1) The Exploration Company agrees to rehabilitate the Application Area in accordance with a detailed rehabilitation plan which accords with the “Strategic Framework for Mine Closure” published by the Australian and New Zealand Minerals and Energy Council, as amended from time to time.
- (2) The Exploration Company agrees -
  - (a) no later than six (6) months prior to commencement of construction of the Mining Operation, to prepare a detailed rehabilitation plan; and
  - (b) to, annually, to review and amend the rehabilitation plan.
- (3) The Exploration Company agrees to annually consult with the LAG Representative, providing relevant information and permitting reasonable time and opportunity for it to consult with the relevant Local Aboriginal Groups, and to give due consideration to the suggestions of the LAG Representative with respect to the preparation and content of the rehabilitation plan.

#### **4. Cultural and Social Impact**

The Exploration Company agrees that all information to be collected for the purposes of assessing the potential or actual impact of a Mining Operation upon the Local Aboriginal Groups and their members, are to be collected in accordance with the reasonable recommendations of the LAG Representative.

#### **5. Aboriginal Employment, Training and Business Opportunities**

5.1 In the course of any Development, the Exploration Company agrees to liaise with the LAG Representative from time to time for the purpose of establishing training programs to assist members of the Local Aboriginal Groups who show a capacity, interest and a desire for such training, to undertake training to improve their skills so as to better enhance themselves for employment, contracts, promotions and better job placements in the work which may arise in the course of the Development and the Mining Operation.

- 5.2 (1) The Mining Agreement is to include both in-principle and specific commitments from the Exploration Company with respect to promoting and maximizing employment, training and business opportunities for members of the Local Aboriginal Groups and Local Aboriginal Businesses in all areas and levels of employment and work relevant to the Mining Operation as well as in-principle and specific employment and contract preferences for members of the Local Aboriginal Groups and for Local Aboriginal Businesses.
- (2) The Exploration Company agrees-
- (a) by the inclusion of appropriate binding terms in the relevant contracts, to require its contractors and their sub-contractors, promote and maximise the employment, training and business opportunities of members of the Local Aboriginal Groups and Local Aboriginal Businesses in connection with the Mining Operation; and
  - (b) to diligently monitor and enforce the terms of contracts referred to in paragraph (a) above.
-



# ***Mining***



## ***Exploration Licence Agreement***



### **Process Summary**

#### **Exploration Licence Application**

The mining company applies to the Northern Territory Department of Mines and Energy (DME) for a licence or permit.

#### **Consent to negotiate**

The Minister for Mines and Energy grants the mining company 'consent to negotiate' with the land council.

#### **Application for consent**

The mining company must submit its application including exploration proposal and mining details to the land council within three months, otherwise the application is deemed to have been withdrawn. The exploration proposal must describe all aspects of the exploration activity including possible impact on the environment and the social impacts.

#### **Consultation**

Having ensured that the proposal provides adequate information for traditional landowners to make a decision, the land council informs traditional owners and affected groups and communities within 30 days, and organises a meeting at which the applicant presents its proposal. A representative of the Federal Minister for Aboriginal Affairs may also attend the meeting.

The traditional landowners have the right to instruct the land council to refuse consent to an exploration proposal that affects their land. Refusal freezes the application for five years after which the same company may re-apply. Alternatively, traditional landowners may instruct the land council to negotiate an agreement with the company.

#### **Negotiation of Agreement**

Negotiations must be concluded within 12 months. The land council provides the company with a draft exploration agreement containing fundamental clauses, and the company is invited to use this document as a basis for negotiations. A liaison committee of traditional landowners can be involved in negotiations. The negotiated agreement is then presented at a meeting of traditional landowners for their consideration.

#### **Agreement**

Once the traditional landowners have instructed the Northern Land Council to enter into the Agreement, their decision must be considered by the NLC Full Council to ensure that due process has been adhered to. The NLC must then seek the approval of the Federal Minister for Aboriginal and Torres Strait Islander Affairs to enter into the Agreement. Once the Agreement has been executed by all parties, the NLC then notifies the Northern Territory Minister for Mines and Energy who subsequently issues the exploration licence for a period of six years, with an ability to extend for a further four years.

