NATIVE TITLE PROTECTION CONDITIONS

CONDITIONS TO SATISFY REQUIREMENTS OF EXPEDITED PROCEDURE
S.237 NATIVE TITLE ACT 1993

Version 6 – July 2019
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1. Interpretation

1.1 In these Conditions unless the context otherwise requires or the contrary intention appears, Schedule 1 contains certain terms that will have the meanings assigned to them.

1.2 A reference to a person includes a reference to corporations and other entities recognised by law.

1.3 A reference to a statute, regulation, ordinance or local law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.

1.4 In these Conditions the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Conditions.

1.5 The singular includes the plural and vice versa.

1.6 Words importing one gender will include a reference to all other genders.

1.7 A covenant or agreement on the part of two or more persons will be deemed to bind them jointly and severally.

1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to these Conditions and includes any amendments to them made in accordance with these Conditions.

1.9 Where under or pursuant to these Conditions the day on or by which any act, matter or thing is to be done is not a Business Day, such an act, matter or thing may be done on the next proceeding Business Day.

1.10 A reference in these Conditions to the Native Title Parties includes all persons comprising the Native Title Parties.

2. Conditions - General

2.1 The Explorer must not carry out Exploration Activities in the area of the Exploration Tenement:

(a) if the Exploration Activities are likely to interfere directly with the carrying on of the community or social activities of the persons who are holders (disregarding any trust created under Division 6 of Part 2 of the NTA) of Native Title in relation to the land or waters concerned; and

(b) if the Exploration Activities are likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2 of the NTA) of the Native Title in relation to the land or waters concerned; and

(c) if the Exploration Activities are likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned; and

(d) except in accordance with these Conditions.
3. Provision of Information by Explorer to Notified Native Title Parties

3.1 If the Explorer proposes to carry out Exploration Activities within a Notification Area, the Explorer must give a written notice (“Exploration Activity Notice”) in accordance with clauses 3.2, 3.3, 3.4 and 3.5 before commencing any Exploration Activities.

3.2 An Exploration Activity Notice may only relate to proposed Exploration Activities in relation to the Notification Area for the period contained in the Exploration Activity Notice, where the proposed Exploration Activities must not be for a period exceeding 1 Year.

3.3 An Exploration Activity Notice must be given to the Notified Native Title Parties.

3.4 An Exploration Activity Notice must contain the following information:

(a) the name of the Explorer, and if the Explorer is not a person, the name and position of a contact person nominated by the Explorer (“Explorer’s Representative”);

(b) the:

(i) street address;
(ii) postal address;
(iii) telephone number; and
(iv) facsimile number;

of the Explorer and the Explorer’s Representative (if any);

(c) a topographical map which clearly shows:

(i) the area of the Exploration Tenement; and
(ii) the areas of the proposed Exploration Activities within the Notification Area;

(d) details of any landmarks or features from which the Notification Area can be located on the ground;

(e) 2 copies of such number of maps (either A4 or A3 size) at a scale of 1:10,000, or a scale otherwise suitable, to clearly indicate:

(f) the Notification Area;

(ii) the location of any proposed Exploration Activities involving Ground Disturbance in the Notification Area; and

(iii) other areas likely to be disturbed as a result of the Exploration Activities in the Notification Area including the extent of such areas;

(g) aerial photographs (if any are held by the Explorer) clearly showing:

(i) the area of the Exploration Tenement; and
(ii) the Notification Area;
(h) a detailed description of the Explorer’s program of works for the Exploration Activities the Explorer intends to undertake in the Notification Area (“Program of Works”) including:

(i) a description of the proposed types of Exploration Activities and their expected impact on the land, and, if Exploration Activities involving Ground Disturbance are proposed, a description of the type of machinery proposed to be used;

(ii) the proposed dates upon which each of the Exploration Activities are intended to occur;

(iii) the expected maximum duration of the proposed Exploration Activities;

(iv) whether existing roads or tracks will be used and if not, the proposed location and method of construction of any new roads or tracks, and the proposed dates on which the construction is to occur; and

(v) any other information reasonably necessary to enable the Notified Native Title Parties to understand the impact of the proposed Exploration Activities on the land and waters within the Notification Area;

(i) state that the Notified Native Title Parties have 20 Business Days from the Receipt Date of the Exploration Activity Notice to respond to the Exploration Activity Notice in writing (“Response Notice”) by:

(i) requiring that a meeting be held between the Explorer and the Notified Native Title Parties to allow for a further exchange of information between the Explorer and the Notified Native Title Parties about the Program of Works; or

(ii) requiring the Explorer to arrange for a Field Inspection of all or part of the Notification Area the subject of a Native Title Claim, due to the nature of the proposed Exploration Activities in the Notification Area, and:

(A) nominating the members of the Field Inspection Team to conduct the Field Inspection as agents of the Notified Native Title Parties; and

(B) nominating whether an Anthropologist or Archaeologist is to be a member of the Field Inspection Team, and if so, nominating a reasonable hourly or daily rate for them to be paid for their services; or

(iii) requiring:

(A) that a meeting be held between the Explorer and the Notified Native Title Parties to allow for a further exchange of information between the Explorer and the Notified Native Title Parties about the Program of Works; and

(B) the Explorer to arrange for a Field Inspection of all or part of the Notification Area the subject of a Native Title Claim due to the nature of the proposed Exploration Activities in the Notification Area, and:
(1) nominating the members of the Field Inspection Team to conduct the Field Inspection as agents of the Notified Native Title Parties; and

(2) nominating whether an Anthropologist or Archaeologist is to be a member of the Field Inspection Team, and if so, nominating a reasonable hourly or daily rate for them to be paid for their services; or

(iv) advising that the Notified Native Title Parties have no requirements in relation to the Program of Works in the Exploration Activity Notice; and

(j) state that the Notified Native Title Parties may only issue 1 Response Notice for each Native Title Claim within a Notification Area.

3.5 If the Explorer:

(a) does not receive a Response Notice from the Notified Native Title Parties within the time specified in clause 3.4(h), not due to a failure on the part of the Explorer; or

(b) receives a Response Notice within the time specified in clause 3.4(h) advising that the Notified Native Title Parties have no requirements in relation to the Program of Works in the Exploration Activity Notice;

the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice.

3.6 If:

(a) the Explorer receives more than 1 Response Notice from the Notified Native Title Parties within the time specified in clause 3.4(h); and

(b) the Notified Native Title Parties have not issued more than 1 Response Notice for each Native Title Claim within a Notification Area (“Multiple Response Notices”);

the Explorer must only comply with these Conditions in relation to each of the Multiple Response Notices.

4. Meeting with Notified Native Title Parties

4.1 If the Explorer receives a Response Notice from the Notified Native Title Parties within the time specified in clause 3.4(h) requiring a meeting between the Explorer and the Notified Native Title Parties, the Explorer must arrange for such meeting with the Notified Native Title Parties who issued the Response Notice to be held within 20 Business Days of the Receipt Date of the Response Notice:

(a) at a time agreed by the Explorer and the Notified Native Title Parties; and

(b) which may be conducted by telephone or video conferencing if agreed.

4.2 If the Explorer is unable to obtain the agreement of the Notified Native Title Parties to a time for a meeting in accordance with clause 4.1, the Explorer must give the Notified Native Title Parties a written notice (“Meeting Notice”) advising that the meeting will be held:

(a) on a specified date that is no earlier than 10 Business Days from the Receipt Date of the Meeting Notice; and
(b) at a specified place that is:

(i) in the town or city where the Mining Registrar is located; or

(ii) in the town or city in which there is an office of the representative Aboriginal body for the area that includes the Exploration Tenement; and

(c) at a specified time that is during the hours of 9:00am to 5:00pm on a Business Day.

4.3 If the Notified Native Title Parties:

(a) do not attend a meeting scheduled by the Explorer in accordance with clause 4.1; or

(b) do not attend a meeting scheduled by the Explorer in accordance with clause 4 not due to a failure on the part of the Explorer, the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice.

4.4 Following a meeting held between the Explorer and the Notified Native Title Parties under clause 4.1 or 4.2 the Explorer must give the Notified Native Title Parties a written notice (“Outcomes Notice”):

(a) stating that the Notified Native Title Parties have 5 Business Days from the Receipt Date of the Outcomes Notice to respond to the Outcomes Notice in writing (“Outcomes Response Notice”) by:

(i) requiring the Explorer to arrange for a Field Inspection of the Inspection Zone due to the nature of the proposed Program of Works in the Inspection Zone, and:

(A) nominating the members of the Field Inspection Team to conduct the Field Inspection as agents for the Notified Native Title Parties; and

(B) nominating whether an Anthropologist or Archaeologist is to be a member of the Field Inspection Team, and if so, nominating a reasonable hourly or daily rate for them to be paid for their services; or

(ii) advising that the Notified Native Title Parties have no requirements in relation to the Program of Works in the Exploration Activity Notice.

4.5 Clauses 4.4(a)(i) and (ii) do not apply where the Explorer receives a Response Notice from the Notified Native Title Parties within the time specified in clause 3.4(h) containing the requirements described in clause 3.4(iii).

Please note the following definition relevant to this clause:

“Field Inspection Team” means a team of people engaged to conduct a Field Inspection on behalf of the Native Title Parties which may include:

(a) up to 8 inspectors nominated by the Notified Native Title Parties; and

(b) an Anthropologist or an Archaeologist nominated by the Notified Native Title Parties.
4.6 If the **Explorer**:

(a) does not receive an **Outcomes Response Notice** within the time specified in clause 4.4, not due to a failure on the part of the **Explorer**; or

(b) receives an **Outcomes Response Notice** within the time specified in clause 4.4 advising that the **Notified Native Title Parties** have no requirements in relation to the **Exploration Activities** in the **Exploration Activity Notice**,

the **Explorer** may undertake the **Exploration Activities** in accordance with the **Program of Works** identified in the **Exploration Activity Notice**.

5. **Field Inspection**

Please note that amounts to be paid under this clause are to be adjusted under clause 19 each **Year**.

5.1 If:

(a) the **Explorer** receives a **Response Notice** from the **Notified Native Title Parties** within the time specified in clause 3.4(h) advising:

(i) that the **Notified Native Title Parties** require a **Field Inspection** to be undertaken for the **Inspection Zone**, and:

   (A) nominating the members of the **Field Inspection Team** to conduct the **Field Inspection** as agents of the **Notified Native Title Parties**; and

   (B) nominating whether an Anthropologist or Archaeologist is to be a member of the **Field Inspection Team**, and if so, nominating a reasonable hourly or daily rate for them to be paid for their services; or

(b) the **Explorer** receives an **Outcomes Response Notice** within the time specified in clause 4.4 advising that the **Notified Native Title Parties** require the **Explorer** to arrange for a **Field Inspection** of the **Inspection Zone**, and:

   (A) nominating the members of the **Field Inspection Team** to conduct the **Field Inspection** as agents of the **Notified Native Title Parties**; and

   (B) nominating whether an Anthropologist or Archaeologist is to be a member of the **Field Inspection Team**, and if so, nominating a reasonable hourly or daily rate for them to be paid for their services; and

(c) the Exploration Activity Notice identifies Exploration Activities that are not Agreed Exploration Activities the Explorer must arrange for a Field Inspection to be conducted by a Field Inspection Team in the Inspection Zone:

(d) in the circumstances described in 5.1(a) above, no later than 25 **Business Days** from the **Receipt Date** of the **Response Notice**; or

(e) in the circumstances described in 5.1(b) above, within 25 **Business Days** of the **Receipt Date** of the **Outcomes Response Notice** or such longer period as agreed by the **Explorer** and the **Notified Native Title Parties**.
5.2 The **Explorer** acknowledges that the objectives of a **Field Inspection** include:

(a) providing the **Field Inspection Team** with an opportunity to relate the details of the proposed **Program of Works** to their knowledge of the **Inspection Zone**;

(b) providing the **Explorer** with an opportunity to explain the proposed **Program of Works** in the **Inspection Zone** and physically identify any areas within the **Inspection Zone** that will be subject to **Exploration Activities**;

(c) providing the **Field Inspection Team** with an opportunity to identify the existence of any **Aboriginal Sites** or **Aboriginal Objects**; and

(d) in the case of areas of the **Inspection Zone** that will be subject to **Ground Disturbance**, providing the **Field Inspection Team** with an opportunity to identify, inspect and conduct a cultural heritage inspection of the proposed location of:

(i) access roads and tracks;

(ii) drilling sites;

(iii) trench sites;

(iv) shaft sinking and adit driving sites;

(v) camp sites; and

(vi) any other areas that will be subject to **Ground Disturbance**.

(a) fixing of GPS co-ordinates; and

(b) provision of information about the **Explorer’s** proposed **Exploration Activities** in the **Inspection Zone** and physically identify any areas within the **Inspection Zone** that will be subject to **Exploration Activities**.

5.3 The **Explorer** must arrange for the **Explorer’s Inspection Representative** to accompany the **Field Inspection Team** during any **Field Inspection** at the **Explorer’s** cost to provide assistance to the **Field Inspection Team** including:

5.4 Notwithstanding clause 5.3, the **Explorer’s Inspection Representative** must withdraw to allow the **Field Inspection Team** to have confidential discussions relating to the **Field Inspection** if the **Field Inspection Team** makes such a request of the **Explorer’s Inspection Representative**.

5.5 If:

(a) the **Explorer** receives a **Response Notice** or **Outcomes Response Notice** from the **Notified Native Title Parties** in accordance with clause 5.1 nominating an Anthropologist or Archaeologist to be a member of the **Field Inspection Team**; and

(b) the **Explorer** agrees to pay the Anthropologist or Archaeologist but the **Explorer** does not agree with the hourly or daily rate for them to be paid for their services on the basis of the reasonableness of the amount.

(“**Nomination Dispute**”) the **Explorer** must refer the **Nomination Dispute** to the **Land Court of Queensland** to decide the **Nomination Dispute**.
5.6 If the Explorer receives an invoice, or if a supply is a Taxable Supply, a Tax Invoice, the Explorer must pay the following costs (as relevant) in relation to a Field Inspection after the Field Inspection Conclusion to the Nominated Body for the Notified Native Title Parties within 20 Business Days of the date of the invoice or Tax Invoice:

(a) inspectors included in the Field Inspection Team:
   (i) $300 (including any GST) for each inspector (maximum of 4 inspectors) per Inspection Day; or
   (ii) $150 (including any GST) for each inspector (maximum of 4 inspectors) per Part Inspection Day;

(b) Anthropologist or Archaeologist included in the Field Inspection Team:
   (i) where the Explorer agreed to the amount nominated as a reasonable hourly or daily rate for them to be paid for their services in a Response Notice or Outcomes Response Notice; or
   (ii) where the Land Court of Queensland determines a Nomination Dispute:
      (A) a reasonable amount (including any GST) agreed by the Explorer and the Notified Native Title Party; or
      (B) the amount determined by the Land Court of Queensland when deciding a Nomination Dispute.

5.7 The Explorer must obtain and provide the following in relation to each Field Inspection at the Explorer’s cost:

(a) transportation for all members of the Field Inspection Team within the Claim Area for the Notified Native Title Parties during the period reasonably necessary to conduct and complete the Field Inspection; and

(b) meals and accommodation for all members of the Field Inspection Team during the period reasonably necessary to conduct and complete the Field Inspection; and

(c) all necessary permits, authorities and notices to landowners for the Field Inspection Team to conduct the Field Inspection.

5.8 If a Field Inspection Team does not conduct a Field Inspection within the time specified in clause 5.1, not due to a failure on the part of the Explorer, the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice.

6. Inspection Report

6.1 Within 5 Business Days of the Field Inspection Conclusion, the Explorer must give the Notified Native Title Parties a written notice (“Field Inspection Notice”):

(a) advising the Notified Native Title Parties that they must provide a written report to the Explorer (“Inspection Report”) in relation to the Field Inspection within:
   (i) 20 Business Days of the Field Inspection Conclusion; or
(ii) such longer period following the Field Inspection Conclusion as nominated by the Explorer;

(b) advising the Notified Native Title Parties that the Inspection Report must contain at least the following information (if relevant):

(i) recommendations indicating whether the Inspection Zone contains a proposed Exclusion Zone and maps and the GPS coordinates for the location and boundary of any Exclusion Zone;

(ii) recommendations for site protection measures and management of any proposed Exclusion Zone;

(iii) recommendations for conducting the Program of Works in a way that minimises impact on the Inspection Zone and avoids any proposed Exclusion Zone;

(iv) if the Exploration Activities are not Agreed Exploration Activities, recommendations for any Monitoring by Monitors of the Program of Works in the Inspection Zone;

(c) stating that the Explorer acknowledges that information contained in the Inspection Report may be confidential in nature; and

(d) advising the Notified Native Title Parties that the Inspection Report must contain a warranty from the author(s) of the Inspection Report in favour of the Explorer that all requisite:

(i) licences;

(ii) consents; and

(iii) other authorities

have been obtained in favour of the Explorer to allow the Explorer to lawfully:

(iv) use and copy the Inspection Report and the information contained in the Inspection Report for the purpose of these Conditions; and

(v) copy and distribute the Inspection Report to any assignee of the Explorer.

6.2 If the Explorer does not receive an Inspection Report from the Notified Native Title Parties within the time specified in the Field Inspection Notice, not due to a failure on the part of the Explorer, the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice.

6.3 If:

(a) the Explorer receives an Inspection Report from the Notified Native Title Parties within the time specified in the Field Inspection Notice; and

(b) there are no recommendations contained in the Inspection Report;

the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice.
6.4 If:

(a) the Explorer receives an Inspection Report from the Native Title Parties within the time specified in the Field Inspection Notice; and

(b) there are recommendations contained in the Inspection Report; and

(c) the Explorer intends to comply with all the recommendations contained in the Inspection Report; and

(d) the Explorer modifies the proposed Program of Works identified in the Exploration Activity Notice to comply with the recommendations in the Inspection Report; and

(e) the Explorer prepares a modified Program of Works for the Proposed Exploration Activities identified in the Exploration Activity Notice (“Modified Exploration Activities”) to comply with the recommendations in the Inspection Report; and

(f) the Explorer provides a copy of the modified Program of Works prepared in accordance with clause 6.4(e) to the Native Title Parties before commencing the Modified Exploration Activities;

the Explorer may undertake the Modified Exploration Activities identified in the modified Program of Works provided to the Notified Native Title Parties in accordance with clause 6.4(f).

6.5 If:

(a) the Explorer receives an Inspection Report from the Notified Native Title Parties within the time specified in the Field Inspection Notice; and

(b) there are recommendations contained in the Inspection Report; and

(c) the Explorer does not intend to comply with all the recommendations contained in the Inspection Report on the basis of the reasonableness of the recommendations (“Recommendations Dispute”);

then the Explorer must:

(d) within 5 Business Days after the Receipt Date of the Inspection Report give a written notice to the Notified Native Title Parties (“Recommendations Objection Notice”) providing full details of the Recommendations Dispute; and

(e) take reasonable steps within 10 Business Days after the Receipt Date of the Recommendations Objection Notice to attempt to resolve the Recommendations Dispute with the Notified Native Title Parties.

6.6 If the Explorer is unable to resolve a Recommendations Dispute in accordance with clause 6.5, not due to a failure on the part of the Explorer, the Explorer must refer the Recommendations Dispute to the Land Court of Queensland to decide the Recommendations Dispute.
6.7 If the **Land Court of Queensland** makes a decision in relation to the **Recommendations Dispute** following referral to the **Land Court of Queensland** under clause 6.6, the **Explorer** may undertake the **Exploration Activities** in accordance with the **Program of Works** as modified by the decision of the **Land Court of Queensland** in relation to the **Recommendations Dispute**.

6.8 If:

(a) the **Explorer** is able to resolve a **Recommendations Dispute** with the **Notified Native Title Parties** in accordance with clause 6.5(e); and

(b) the **Explorer** modifies the proposed **Exploration Activities** identified in the **Exploration Activity Notice** to comply with the agreed resolution of the **Recommendations Dispute**; and

(c) the **Explorer** prepares a modified **Program of Works** for the proposed **Exploration Activities** identified in the **Exploration Activity Notice** (“**Modified Exploration Activities**”) to comply with the agreed resolution of the **Recommendations Dispute**; and

(d) the **Explorer** provides a copy of the modified **Program of Works** prepared in accordance with clause 6.8(c) to the **Notified Native Title Parties** before commencing the **Modified Exploration Activities**;

The **Explorer** may undertake the **Modified Exploration Activities** identified in the modified **Program of Works** provided to the **Notified Native Title Parties** in accordance with clause (c).

7. Monitoring

Please note that amounts to be paid under this clause are to be adjusted under clause 19 each **Year**.

7.1 If:

(a) the **Explorer** receives an **Inspection Report** from the **Notified Native Title Parties** within the time specified in the notice given by the **Explorer** under clause 6.1(a); and

(b) the **Exploration Activities** in the **Inspection Zone** identified in the **Exploration Activity Notice**:

(i) are not **Agreed Exploration Activities**; and

(ii) involve **Ground Disturbance**; and

(c) the **Exploration Activities** in the **Inspection Zone** involve **Ground Disturbance** at:

(i) an **Aboriginal Site** identified in an **Inspection Report**; or

(ii) at the location of an **Aboriginal Object** identified in an **Inspection Report**; and

(d) the **Ground Disturbance** in the **Inspection Zone** is to a depth that might reasonably be anticipated to reveal an **Aboriginal Object**; and
(e) the Inspection Report contains recommendations for Monitoring by Monitors of the Exploration Activities in the Inspection Zone including proposals for the dates of the Monitoring of the Exploration Activities;

the Explorer must pay for the costs of Monitoring by Monitors in accordance with clause 7.4.

7.2 The Explorer must provide Monitors with access to the Inspection Zone during Exploration Activities:

(a) in accordance with the recommendations in the Inspection Report referred to in clause 7.1(e); and

(b) at other times in addition to the dates and times referred to in clause 7.1(e) subject to:

(i) a reasonable exclusion of Monitors due to occupational health and safety hazards as determined by the Explorer; and

(ii) subject to any Safety Rules.

7.3 The Explorer will not be responsible for the costs of Monitoring that are not contained in an Inspection Report.

7.4 If the Explorer receives an invoice, or if a supply is a Taxable Supply, a Tax Invoice, subject to clause 7.6 the Explorer must pay the following costs (as relevant) in relation to Monitoring after the Monitoring Conclusion to the Nominated Body for the Notified Native Title Parties within 20 Business Days of the date of the invoice or Tax Invoice:

(a) Monitors:

(i) $300 (including any GST) for each Monitor per Monitoring Day; and

(ii) $150 (including any GST) for each Monitor per Part Monitoring Day.

7.5 The Explorer must obtain and provide the following in relation to each instance of Monitoring at the Explorer’s cost:

(a) transportation for the Monitors within the Claim Area during the period reasonably necessary to conduct and complete the Monitoring in the Inspection Zone; and

(b) meals and accommodation for the Monitors during the period reasonably necessary to conduct and complete the Monitoring in the Inspection Zone.

7.6 Notwithstanding clause 7.4, the Explorer must only pay for the cost of:

(a) 1 Monitor per Ground Breaking Machine engaged in Exploration Activities involving Ground Disturbance in the Inspection Zone except where a Ground Breaking Machine is following directly in the path of another Ground Breaking Machine engaged in the Exploration Activities involving Ground Disturbance; and

(b) Monitoring while the Ground Disturbance in the Inspection Zone is to a depth that might reasonably be anticipated to reveal an Aboriginal Object.
8. Administrative Payment to Nominated Body

Please note that amounts to be paid under this clause are to be adjusted under clause 19 each Year.

8.1 If the Explorer receives an invoice, or if a supply is a Taxable Supply, a Tax Invoice, the Explorer must pay the sum of $850 each (including any GST) Exploration Tenement Year to be distributed equally between each Nominated Body for each Native Title Claim ("Administrative Payment").

8.2 Where more than 1 Nominated Body exists for the Exploration Tenement, the $850 to be paid under clause 8.1 must be distributed equally by the Explorer between each Nominated Body.

8.3 The first Administrative Payment under clause 8.1 must be made no later than 10 Business Days after the Receipt Date of:

(a) the Nominated Body Response Notice; or

(b) the invoice or Tax Invoice;

whichever is later.

8.4 The second and subsequent Administrative Payments under clause 8.1 must be paid on the anniversary of:

(a) the date of the first Administrative Payment; or

(b) the invoice or Tax Invoice;

whichever is later, in each subsequent Year

9. Cultural Heritage Finds

9.1 If the Explorer finds a Cultural Heritage Find while conducting Exploration Activities the Explorer must:

(a) subject to clause 9 take all reasonable steps to preserve and protect the Cultural Heritage Find from further damage when undertaking Exploration Activities in the vicinity of the Cultural Heritage Find; and

(b) no later than 2 Business Days after finding the Cultural Heritage Find give written notice of the Cultural Heritage Find ("Cultural Heritage Notice") to the Native Title Parties.

9.2 A Cultural Heritage Notice must:

(a) contain a description of the Cultural Heritage Find; and

(b) state that the Native Title Parties have 5 Business Days from the Receipt Date of the Cultural Heritage Notice to advise the Explorer in writing ("Cultural Heritage Response Notice") of:

(i) the name; and

(ii) the contact details;
of 1 representative of the Native Title Parties that will inspect the Cultural Heritage Find with the Explorer (“Cultural Heritage Find Representative”).

9.3 If the Explorer does not receive a Cultural Heritage Response Notice within the time specified in clause 9.2(b), not due to a failure on the part of the Explorer, the Explorer may proceed to undertake Exploration Activities in the vicinity of the Cultural Heritage Find:

(a) subject to the Aboriginal Cultural Heritage Act 2003 (Qld) or the Torres Strait Islander Cultural Heritage Act 2003 (Qld), as appropriate; and

(b) subject to these Conditions.

9.4 If the Explorer receives a Cultural Heritage Response Notice within the time specified in clause 9.2(b) the Explorer must meet with the Cultural Heritage Find Representative within 5 Business Days of the Receipt Date of the Cultural Heritage Response Notice and attempt to agree upon a mutually acceptable way of dealing with the Cultural Heritage Find.

9.5 If the Cultural Heritage Find Representative does not meet with the Explorer within the time specified in clause 9.4, not due to a failure on the part of the Explorer, the Explorer may proceed to undertake Exploration Activities in the vicinity of the Cultural Heritage Find:

(a) subject to the Aboriginal Cultural Heritage Act 2003 (Qld) or the Torres Strait Islander Cultural Heritage Act 2003 (Qld), as appropriate; and

(b) subject to these Conditions.

9.6 If:

(a) the Explorer and the Cultural Heritage Find Representative meet within the time specified in clause 9.4; and

(b) the Explorer and the Cultural Heritage Find Representative are able to agree upon a mutually acceptable way of dealing with the Cultural Heritage Find; and

(c) the Explorer modifies the proposed Exploration Activities identified in the Exploration Activity Notice to comply with the agreed resolution to deal with the Cultural Heritage Find; and

(d) the Explorer prepares a modified Program of Works for the proposed Exploration Activities in the Exploration Activity Notice (“Modified Exploration Activities”) to comply with the agreed resolution to deal with the Cultural Heritage Find; and

(e) the Explorer provides a copy of the modified Program of Works prepared in accordance with clause 9.6(d) to the Native Title Parties before commencing the Modified Exploration Activities;

the Explorer may undertake the Modified Exploration Activities identified in the modified Program of Works provided to the Native Title Parties in accordance with clause 9.6(e).

9.7 If the Explorer and the Cultural Heritage Find Representative are unable to agree upon a mutually acceptable way to deal with the Cultural Heritage Find in accordance with clause 9.4 (“Cultural Heritage Find Dispute”), not due to a failure on the part of the Explorer, the Explorer must refer the Cultural Heritage Find Dispute to the Land Court of Queensland to decide the Cultural Heritage Find Dispute.
9.8 If the Land Court of Queensland makes a decision in relation to a Cultural Heritage Find Dispute following referral to the Land Court of Queensland under clause 9.7 where the Land Court of Queensland makes a decision in relation to the way to deal with the Cultural Heritage Find, the Explorer may undertake the Exploration Activities in accordance with the Program of Works identified in the Exploration Activity Notice as modified by the decision of the Land Court of Queensland.

9.9 If the Land Court of Queensland makes a decision in relation to a Cultural Heritage Find Dispute following referral to the Land Court of Queensland under clause 9.7 where the Land Court of Queensland decides that the Exploration Activities cannot occur, the Explorer must not undertake the Exploration Activities.

10. Cultural Heritage Awareness

10.1 Before the Explorer undertakes Exploration Activities in accordance with these Conditions, the Explorer must use best endeavours to ensure that all persons who perform Exploration Activities on behalf of the Explorer are given appropriate information for the purposes of:

(a) promoting knowledge, understanding of and respect for the traditions and culture of the Native Title Parties;

(b) creating familiarity with the obligations of the Explorer under these Conditions;

(c) creating familiarity with the obligations of the Explorer under relevant State or Commonwealth Law regarding cultural heritage; and

(d) fostering good relations with the Native Title Parties.

10.2 The Explorer must consult with the Native Title Parties about the nature and content of the information referred to in clause 10.1 and invite the Native Title Parties to formulate and direct the presentation of the information.

10.3 If the Explorer does not comply with clauses 10.1, 10.1(d) or 10.2 it will not constitute a breach of these Conditions.

11. Nominated Body

11.1 Within 7 Business Days from the grant of the Exploration Tenement the Explorer must give the Native Title Parties a written notice (“Nominated Body Notice”) stating:

(a) that the Native Title Parties must give the Explorer a written notice (“Nominated Body Response Notice”):

   (i) signed by each of the Native Title Parties;

   (ii) identifying the Nominated Body for each Native Title Claim; and

   (iii) providing a contact address for that Nominated Body; and

(b) that if the Native Title Parties do not give the Explorer a Nominated Body Response Notice the Explorer is not required to pay any amount under these Conditions to the Nominated Body for that Native Title Claim until a Nominated Body Response Notice is given to the Explorer.
11.2 Notwithstanding any other provision in these Conditions an Explorer is not required to pay any amount under these Conditions to a Nominated Body unless the Explorer has received:

(a) a Nominated Body Response Notice:
   (i) signed by each Native Title Parties;
   (ii) identifying the Nominated Body; and
   (iii) providing a contact address for the Nominated Body; and
(b) an invoice, or if a supply is a Taxable Supply, a Tax Invoice.

11.3 If any time during the Exploration Tenement the Explorer receives a written notice (“Change of Nominated Body Notice”):

(a) after the Explorer has received a Nominated Body Response Notice;
(b) signed by each Native Title Parties;
(c) identifying the Nominated Body; and
(d) providing a contact address for the Nominated Body;

the Nominated Body identified in the Change of Nominated Body Notice last received by the Explorer becomes the Nominated Body for the purpose of these Conditions.

11.4 For the purpose of clauses 11.1(a)(i), 11.2(a) and 11.3(b) if the Explorer receives a Nominated Body Response Notice signed by a person with the apparent authority to sign on behalf of a Native Title Party, the Explorer will be entitled to treat that signature as the signature of the Native Title Party for the purpose of these Conditions.

12. Change of Exploration Activities

12.1 If the Explorer proposes to make an application to the State for an amendment of an Environmental Authority the Explorer must give the Native Title Parties a written notice (“Amendment Notice”) at least 5 Business Days before lodging such application with the State.

12.2 An Amendment Notice must contain a detailed description of the proposed amendment of:

(a) the Exploration Activities; and
(b) the Environmental Authority.

13. Assignment of Exploration Tenement

13.1 If the Explorer makes an application to the State to assign the Exploration Tenement, the Explorer must give the Native Title Parties a written notice (“Assignment Notice”) at the time of lodging such application with the State.

13.2 An Assignment Notice must contain:

(a) the name of the proposed assignee; and
(b) the address of the proposed assignee.
14. **Change of Native Title Parties**

If a person becomes a Registered Native Title Claimant because the person replaces a Native Title Party as a Registered Native Title Claimant for a Native Title Claim, that person also replaces that Native Title Party as a Native Title Party under these Conditions.

15. **Severability**

If anything in these Conditions is unenforceable, illegal or void, then it is severed and the rest of these Conditions remain in force.

16. **Notices**

16.1 Notices under these Conditions may be delivered by hand, by registered mail, or by facsimile to the addresses specified in clause 16.4 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Subject to clause 16.3, for the purpose of these Conditions, notice will be deemed to be received:

   (a) 2 Business Days after deposit in the mail by the sender with correct postage prepaid;

   (b) when delivered by hand from the sender; or

   (c) if sent by facsimile transmission, upon an apparently successful complete transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day;

   as the case may be (“Receipt Date”).

16.3 For the purpose of these Conditions, a notice will be deemed to be received by the Explorer:

   (a) 2 Business Days after deposit in the mail by the sender with correct postage prepaid;

   (b) when delivered to the Explorer by hand from the sender; or

   (c) if sent by facsimile transmission, upon an apparently successful complete transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day;

   as the case may be (“Receipt Date”)

17. **Payments by Explorer Under Conditions**

17.1 If the Explorer makes any payment to any person under these Conditions, the Explorer must provide a copy of any invoice, or if a supply is a Taxable Supply, any Tax Invoice in relation to such payment to the State to accompany the exploration reports lodged by the Explorer under s.141(1)(f) of the MRA.
18. **Inability Notice**

18.1 If an Explorer receives a written notice from the Notified Native Title Parties stating that the Notified Native Title Parties are unable to meet their obligations contained in a notice given by the Explorer due to:

(a) a condition or occurrence of weather (for example, storm, cyclone, flood, fire); or

(b) a ceremonial or cultural activity according to Aboriginal tradition;

which inhibits their ability to meet those obligations (“Inability Notice”) the Explorer may give the Notified Native Title Parties a written notice (“Inability Response Notice”) stating a reasonable alternative date for the Notified Native Title Parties to meet those obligations.

18.2 If the Explorer does not give the Notified Native Title Parties an Inability Response Notice on the basis of the reasonableness of the inability to meet their obligations contained in a notice (“Inability Dispute”) the Explorer must refer the Inability Dispute to the Land Court of Queensland to decide the Inability Dispute.

18.3 If the Land Court of Queensland makes a decision in relation to an Inability Dispute following referral to the Land Court of Queensland under clause 18.2 where the Land Court of Queensland decides upon an alternative date for the Notified Native Title Parties to meet their obligations, the Explorer must give the Notified Native Title Parties time until that alternative date to meet those obligations.

19. **Adjustment of Payments**

The amounts payable by the Explorer under:

(a) clause 5; and

(b) clause 7; and

(c) clause 8;

will be adjusted on 1 July each Year in accordance with the following formula:

\[
\text{New Amount} = \frac{A \times C2}{C1}
\]

where:

A: is the amount payable on 30 June for the Year for which it is being calculated;

C1: is the CPI index number on 30 June for the Year under review;

C2: is the CPI on 30 June for the Year last concluded before the Year under review.
SCHEDULE 1
DEFINITIONS

In these Conditions, unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings assigned to them -

"Aboriginal Site" means a site or area of land (whether above or below the earth’s surface, underwater or otherwise) or of water that is of cultural significance to the Native Title Parties according to their traditional law and custom, including an Aboriginal archaeological or historical site that is registered or declared as being significant to Aboriginal people or of significance to Aboriginal tradition under a law of the Commonwealth or State.

"Aboriginal Object" means an object (including human skeletal remains or any Aboriginal archaeological or historical object) of significance to the Native Title Parties in accordance with their traditional laws and customs.

“Administrative Payment” has the meaning in clause 8.1.

“Agreed Exploration Activities” means activities that are not subject to a Field Inspection or Monitoring in accordance with these Conditions, and includes:

(a) aerial surveys;
Examples –
geological, geophysical, photogrammetric and topographic aerial surveys.

(b) geological and surveying field work that does not involve clearing;
Examples –
• flagging of sites and sample locations
• geological reconnaissance and field mapping
• surveying.

(c) sampling by hand methods;
Examples –
• grab sampling
• mine tailings and mine mullock sampling
• panning and sieving
• rock chip sampling
• stream sediment sampling (disturbed and undisturbed samples)
• soil sampling (disturbed and undisturbed samples)
• water sampling.

(d) ground-based geophysical surveys that do not involve clearing;
Examples –
• potential-field methods of surveying, including, for example, gravity, magnetic and radiometric surveys
• electrical methods of surveying, including, for example, electromagnetic, ground
penetrating radar, induced polarization and resistivity surveys

- seismic methods of surveying, including, for example, hammer', refraction and vibration-sourced surveys.

(e) drilling and activities associated with drilling that occur on land that has previously been the subject of clearing;

(f) environmental field work that does not involve clearing

Examples –

- cultural heritage, environmental and geobotanical surveys
- environmental monitoring.

For the purpose of this definition:

“clearing” means:

(i) The removal of vegetation by disturbing the root systems and exposing underlying soil, including broad acre clearing for cultivation paddocks, crops, plantations or improved pasture; or

(ii) Disturbance by machinery to dig below the topsoil horizon, including for the preparation of a drill site or the making of access roads.

“Amendment Notice” has the meaning in clause 12.1.

“Business Day” means a day other than a Saturday, Sunday or a public holiday for the State.

“Change of Nominated Body Notice” has the meaning in clause 11.3.

“Claim Area” means the area of non-exclusive land and waters claimed under a Native Title Claim.

“Conditions” means the conditions contained in this document and any schedules to this document made under s.141AA and s.194AAA of the MRA.

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

“Cultural Heritage Find” means an Aboriginal Object or an artefact or other evidence of indigenous occupation that is likely to be an Aboriginal Object.

“Cultural Heritage Find Dispute” has the meaning in clause 9.7.

“Cultural Heritage Find Representative” has the meaning in clause 9.2(b).
“Cultural Heritage Notice” has the meaning in clause 9.1(b).

“Cultural Heritage Response Notice” has the meaning in clause 9.2(b).

“Environmental Authority” has the meaning in the Environmental Protection Act 1994.

“Exclusion Zone” means:

(a) an area that is registered or declared as being significant to Aboriginal people or of significance to Aboriginal tradition under a Law of the Commonwealth or State; or

(b) an area identified in an Inspection Report in which an Aboriginal Object or an Aboriginal Site is located and where it is agreed or otherwise determined under these Conditions that no Exploration Activities are to occur.

“Exploration Activities” means activities that may be conducted under the Exploration Tenement.

“Exploration Activity Notice” has the meaning in clause 3.

“Exploration Permit” has the meaning in the MRA.

“Exploration Tenement” means an Exploration Permit or Mineral Development Licence.

“Exploration Tenement Year” means the Year commencing on the date of the grant of the Exploration Tenement in each Year.

“Explorer” means the holder of the Exploration Tenement.

“Explorer’s Inspection Representative” means a person nominated by the Explorer to assist a Field Inspection Team in the conduct of a Field Inspection.

“Explorer’s Representative” has the meaning in clause 3.4(a).

“Field Inspection” means a visual inspection to identify any Aboriginal Sites or Aboriginal Objects conducted in accordance with clause 5.

“Field Inspection Conclusion” means the date the Field Inspection Team ceases to undertake activities in relation to a Field Inspection in an Inspection Zone.

“Field Inspection Notice” has the meaning in clause 6.1.

“Field Inspection Team” means a team of people engaged to conduct a Field Inspection on behalf of the Nominated Native Title Parties which may include:

(a) up to 8 inspectors nominated by the Notified Native Title Parties; and

(b) an Anthropologist or an Archaeologist nominated by the Notified Native Title Parties.
“**Ground Breaking Machine**” means a machine that breaks the topsoil or surface rock including but not limited to a bulldozer, end loader, excavator, backhoe, rotary hoe, drill or ditch digger.

“**Ground Disturbance**” means disturbance by machinery of the topsoil or surface rock layer of the ground.

“**GST**” has the meaning given in the **GST Law**.

“**GST Law**” includes the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), order, regulation or ruling which imposes or purports to impose or otherwise deals with the administration or imposition of GST on a supply of goods or services in Australia.

“**Inability Dispute**” has the meaning in clause 18.2.

“**Inability Notice**” has the meaning in clause 18.1.

“**Inability Response Notice**” has the meaning in clause 18.1.

“**Inspection Day**” means a day where a *Field Inspection Team* work to carry out *Field Inspection* activities for more than 3 hours (including travel within the **Claim Area**).

“**Inspection Report**” means the written report produced following a *Field Inspection* complying with the requirements of clause 6.

“**Inspection Zone**” means that part of the **Notification Area** that is within the **Claim Area**.

“**Land Court**” means the **Land Court of Queensland**.

“**Law**” includes all statutes, regulations and local laws.

“**Meeting Notice**” has the meaning in clause 4.2.

“**Mineral Development Licence**” has the meaning in the **MRA**.

“**Mining Registrar**” has the meaning in the **MRA**.

“**Modified Exploration Activities**” has the meaning in clause 6.4(e) and 6.8(c) and 9.6(d).

“**Monitor**” means a person engaged by a *Nominated Body* to undertake **Monitoring**.

“**Monitoring**” means the observation of **Ground Disturbance** to identify a potential Cultural Heritage Find.

“**Monitoring Conclusion**” means the date that **Monitors** cease to undertake activities in relation to **Monitoring** in an **Inspection Zone**.

“**Monitoring Day**” means a day where a Monitor works to carry out **Monitoring** activities for more than 3 hours (including travel within the **Claim Area**).
"MRA" means the *Mineral Resources Act 1989 (Qld)*.

“Multiple Response Notices” has the meaning in clause 3.6.

“Native Title” has the meaning in the NTA.

“Native Title Claim” means

(a) native title determination application *registered claims at 4 months after the notification day (see s.29(4) of the NTA) in relation to the tenement)* or;

(b) native title determination [native title determinations at 4 months after the notification day (see s.29(4) of the NTA) in relation to the tenement]

“Native Title Parties” means:

(a) registered native title body corporate; or

(b) registered native title claimant; or

(c) person being a determined holder of native title

for the Native Title Claim 4 months after the notification day (see s.29(4) of the NTA) in relation to the tenement].

“Nominated Body” means:

(a) a person; or

(b) an association incorporated in accordance with the *Associations Incorporation Act 1981 (Qld)*; or

(c) a corporation incorporated in accordance with the *Corporations Act 2001 (Cth)*; or

(d) an Aboriginal corporation incorporated in accordance with the *Aboriginal Councils and Associations Act 1976 (Cth)*; or

(e) the trustee of a trust;

nominated by the Native Title Parties and identified to the Explorer in accordance with clause 11.1(a) or clause 11.3.

“Nominated Body Notice” has the meaning in clause 11.1.

“Nominated Body Response Notice” has the meaning in clause 11.1.

“Notification Area” in relation to a particular Exploration Activity Notice, means the area(s) of the proposed Exploration Activities within the Exploration Tenement.

“Notified Native Title Parties” means each Native Title Party for each Native Title Claim within a Notification Area.
"NTA" means the *Native Title Act 1993 (Cth).*

“Outcomes Notice” has the meaning in clause 4.4.

“Outcomes Response Notice” has the meaning in clause 4.4.

“Part Inspection Day” means a day where a Field Inspection Team work to carry out Field Inspection activities for up to 3 hours (including travel within the Claim Area).

“Part Monitoring Day” means a day where a Monitor works to carry out Monitoring activities for up to 3 hours (including travel within the Claim Area).

“Program of Works” has the meaning in clause 3.4(g).

“Receipt Date” has the meaning in clauses 16.2 and 16.3.

“Recommendations Dispute” has the meaning in clause 6.5.

“Recommendations Objection Notice” has the meaning in clause 6.5.

“Registered Native Title Claimant” has the meaning in the NTA.

“Response Notice” has the meaning in clause 3.4(i).

"Safety Rules" means –

(a) any rules that are reasonably specified from time to time by the Explorer; and

(b) any requirements under any Law

for the purpose of establishing and maintaining safe operating conditions in connection with the Exploration Tenement.

“State” means the State of Queensland.

“Taxable Supply” has the meaning given in the GST Law.

“Tax Invoice” means a document that constitutes a tax invoice under the GST Law.

“Year” means a calendar Year.
SCHEDULE 2
DRAFT/SAMPLE FORMS
Adjustment of Payments under the Native Title Protection Conditions

Clause 19 – Adjustment of Payments

Payments are adjusted on 1 July each year

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<th>Clause</th>
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<th>C2</th>
<th>Amount as at 1 July</th>
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<tr>
<td>2004/2005</td>
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<td>CPI on 30 June 2003 141.8</td>
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<tr>
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### Annual Administration Fee

<table>
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<tr>
<th>Financial Year</th>
<th>Clause</th>
<th>A</th>
<th>C1</th>
<th>C2</th>
<th>Amount as at 1 July</th>
</tr>
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<tr>
<td>2019/2020</td>
<td>8.1</td>
<td>$1388.00</td>
<td>Indexation on 1 July 2019 – 2.25%</td>
<td>Indexation on 1 July 2018 – 3.5%</td>
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<td>2015/2016</td>
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</tbody>
</table>

Formula is: \[ \text{New Amount} = \frac{A \times C1}{C2} \]

A: is the amount payable on 30 June for the Year for which it is being calculated
C1: is the CPI index number or Indexation on 30 June for the Year under review
C2: is the CPI or Indexation on 30 June for the Year last concluded before the Year under review

“CPI” means the all groups consumer price index for the City of Brisbane as determined by the Bureau of Statistics or other authority or instrumentality which publishes the index, or any replacement measure.
“Year” means a calendar year
“Indexation” means the increase directed by Queensland Treasury and Trade.

Version 16 – July 2019