

# **(Native Title Claim Group) Outback Areas Indigenous Land Use Agreement Template**

---

The Honourable (insert name) Attorney-General  
and

Insert Claim Group name or if no Claim Group then  
Aboriginal Corporation on its own behalf and on behalf of  
the Traditional Owners

and  
Aboriginal Legal Rights Movement Inc  
and

The (Association) of (Town)



The intellectual property of this document rests with the Parties to the ILUA Main Table. Requests in writing will be considered for its use by those outside the Main Table.

# *Outback Areas Indigenous Land Use Agreement Template*

## **Table of Contents**

<b>1.</b>	<b>Preliminary</b>	<b>7</b>
1.1	Definitions	7
1.1	Interpretation	9
1.2	Headings	10
1.3	Schedules and annexures	10
<b>2.</b>	<b>Term</b>	<b>10</b>
2.1	Term	10
<b>3.</b>	<b>Native Title Act Statements</b>	<b>10</b>
3.1	Future Acts	10
3.2	Extinguishment of Native Title	10
3.3	Acknowledgment that Compensation is Final	10
3.4	Exception	11
3.5	Sharing	11
3.6	Benefits	11
3.7	Application Survival	11
<b>4.</b>	<b>Registration</b>	<b>11</b>
4.1	Application of ILUA	11
4.2	Application for Registration	11
4.3	Best endeavours	12
4.4	Removal from Register	12
<b>5.</b>	<b>Heritage Survey</b>	<b>12</b>
5.1	Aboriginal Heritage Act	12
5.2	Heritage Survey Procedure	12
5.3	Survey Budget	13
5.4	Payment	14
5.5	State 's Representative	14
5.6	Alternative Area	14

## *Outback Areas Indigenous Land Use Agreement Template*

5.7	Survey Team Report	14
5.7.1	Consequences of Report	15
5.8	Non disclosure	15
5.9	Failure by [claim group/incorporated body]	15
6	Reconciliation Statement	16
<b>7</b>	<b>Liaison Committee</b>	<b>16</b>
7.1	Establishment	16
7.2	Functions	16
7.3	Membership	17
7.4	Chairperson	17
7.5	Secretary	17
7.6	Proceedings of Committee	17
7.7	Invitees	18
<b>8</b>	<b>Warranties and Authority</b>	<b>18</b>
8.1	Native title warranties	18
8.2	Other Warranties	19
<b>9</b>	<b>Dispute Resolution</b>	<b>19</b>
9.1	Clause applies	19
9.2	Avoidance	19
9.3	Notification	19
9.4	Initial Meeting	20
9.5	Mediation	20
9.6	Expert	20
9.6.1	Capacity of Expert	20
9.6.2	Expert's Determination	20
9.6.3	Determination costs	20
9.6.4	Expert's Fees	21
9.6.5	Survival	21
<b>10</b>	<b>Communications</b>	<b>21</b>
10.1	Writing required	21

## *Outback Areas Indigenous Land Use Agreement Template*

10.2	Manner of giving	21
10.3	Change of details	21
<b>11</b>	<b>GST</b>	<b>21</b>
<b>12</b>	<b>General</b>	<b>22</b>
12.1	Entire agreement	22
12.2	Amendment	22
12.3	Severability	22
12.4	Force Majeure	22
12.5	No waiver	22
12.6	Minister's Discretion	23
12.7	Further assurances	23
12.8	No merger	23
12.9	Governing law and jurisdiction	23
12.10	Relationship	23
<b>Schedule 1 – ILUA Area</b>		
<b>Schedule 2 – Notice Details</b>		
<b>Schedule 3 – Reconciliation Statement</b>		

*Outback Areas Indigenous Land Use Agreement Template*

<b>Date</b>	This Agreement is entered into on the                      day of                      2004
<b>Parties</b>	<b>BETWEEN</b>
1.	The (insert name) Attorney-General for and on behalf of the Crown in right of the State of South Australia of (insert address ) (State)
	AND
2.	Aboriginal Legal Rights Movement Inc ABN 32 942 723 464, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of (insert address) (ALRM)
	AND
3.	Insert Claim Group name or if no Claim Group then Aboriginal Corporation on its own behalf and on behalf of the Traditional Owners
	AND
4.	The (Association) of (Town)
A	The [... people] assert traditional ownership in relation to the land in the ILUA area and surrounding areas.
B	(ALRM) is the representative Aboriginal/Torres Strait Islander body for the ILUA area pursuant to the Native Title Act.
C	Before signing this ILUA (ALRM) has, as far as practicable, consulted with and had regard to the interests of the ... people and other persons (if any) who hold or may hold native title in relation to land or waters in the ILUA area.

## *Outback Areas Indigenous Land Use Agreement Template*

- D The State:
- (a) is the Crown in right of the State of South Australia;
  - (b) through the minister, its departments and agencies:
    - (i) administers the Crown Lands Act which provides, among other things, for the grant of interests in land capable of affecting native title;
    - (ii) administers the Development Act which provides, among other things, for planning and the regulation of development in South Australia; and
    - (iii) administers the Outback Areas Community Development Trust Act, which provides, among other things, the power to carry out works to improve or otherwise to promote or facilitate the improvement of communications in country districts.
  - (c) is the first respondent to all native title determination applications in South Australia.
- E Each party recognises the interests of each other party, and of land owners and occupiers, in relation to the ILUA area.

## *Outback Areas Indigenous Land Use Agreement Template*

- F In particular the parties recognise that:
- (a) the relationship of Aboriginal people to land and waters is central to their well being and to their continuing connection to the religious, emotional, spiritual and non-human world;
  - (b) the [... people] assert that native title may exist in relation to land and waters in the ILUA area and that the [... people] constitute the group that claims to hold native title in relation to land and waters in the ILUA area;
  - (c) the [... people] acknowledge that certain acts done and tenures granted prior to the 23rd of December 1996 extinguish native title. These include the construction or establishment of a public work and the grant of freehold and leasehold tenures described in section 23B of the Native Title Act (Cwth) and confirmed in Part 6 of the Native Title (South Australia) Act 1994. It is also acknowledged that tenures which fall into the definition of category A or B past acts (Part15 Division 2 of the NTA; Part 6 Division 3 of the Native Title (South Australia) Act 1994) extinguish native title either wholly or to the extent that such tenures are inconsistent with the continued existence, enjoyment or exercise of those rights.
  - (d) Aboriginal sites, objects and remains within the ILUA area are of significance to the [... people] and that it is in the interests of the general community within the ILUA area that those sites, objects and remains be preserved and protected.
- G The ALRM, the State and the ... people have negotiated with each other for this ILUA, which, amongst other things, provides for:
- (a) the parties to agree to the validation of all invalid acts done by the State or any of the [... people] in the ILUA area before the commencement date;
  - (b) a protocol for the preservation and protection of Aboriginal sites, objects and remains in the ILUA area;
  - (c) the establishment of a liaison committee to carry out functions relative to the common interests of the parties; and
  - (d) certain benefits to people as compensation for the purposes of the Native Title Act,
- on the terms of this ILUA.

## Outback Areas Indigenous Land Use Agreement Template

H	This ILUA is an area agreement pursuant to sections 24CA to 24CL of the Native Title Act and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth) and is intended to be registered on the register.
I	The parties enter into this ILUA for the purpose of improving relationships between each of them and to enhance development within the ILUA area for the social and economic well being of all people living and working on the

**It is agreed** as follows.

### 1. Preliminary

---

#### 1.1 Definitions

In this ILUA, unless the context otherwise requires:

**Aboriginal Heritage Act** means the Aboriginal Heritage Act 1988 (SA) or any other Act from time to time in force in South Australia in substitution for the Aboriginal Heritage Act 1988 (SA);

**Aboriginal site, object or remains** means any of:

- (a) an "Aboriginal site", an "Aboriginal object", or "Aboriginal remains" as defined in the Aboriginal Heritage Act; and
- (b) "Aboriginal remains", a "significant Aboriginal area" or a "significant Aboriginal object" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);

**cultural confidence** means any cultural information, including information held in an Aboriginal record, disclosure of which is by Aboriginal tradition restricted or forbidden;

**commencement date** means the date on which the parties to this ILUA execute it;

**compensation entitlement** means any compensation, right or entitlement whether monetary or otherwise and whether under common law, equity, statute or otherwise in respect of native title with respect to the doing of:

any invalid future act (or the validation of any such act); or

any future act,

by the State within the ILUA area;

**Crown Lands Act** means the Crown Lands Act 1929 (SA);

**Development Act** means the Development Act 1993 (SA);

**development authorisation** means an authorisation granted in respect of a proposed development pursuant to the Development Act 1993;



## Outback Areas Indigenous Land Use Agreement Template

**future act** has the meaning provided under the Native Title Act but excludes any such act that is the compulsory acquisition of the whole or any part of native title rights and interests;

**heritage survey** means a heritage survey as provided for in clause 5.2;

**ILUA** means this indigenous land use agreement;

**ILUA area** means the geographical area in relation to which this ILUA applies, as specified in schedule 1;

**indigenous parties** means ... and includes all ... people;

**native title** has the meaning given in the Native Title Act;

**Native Title Act** means the Native Title Act 1993 (Cth);

**[... people]** means the group of Aboriginal persons who assert traditional ownership and native title in relation to the land and waters within the ILUA area;

**Outback Areas Community Development Trust Act** means the Outback Areas Community Development Trust Act 1978 (SA)

**register** means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act;

**registrar** has the meaning given in the Native Title Act;

**registration date** means the date upon which this ILUA is registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth);

**specialist** means an anthropologist or archaeologist appointed pursuant to clause 6.1(b)(ii) for purposes of carrying out any heritage survey;

**survey approval** means approval by a survey team pursuant to a heritage survey and a report under clause 5.1 for a proposed development to be undertaken;

**survey budget** means each budget for undertaking a heritage survey, established pursuant to clause 5.1;

**survey report** means the report described in clause 5.7;

**survey team** means the persons referred to in clause 6.1(b) organised from time to time for purposes of carrying out any heritage survey in accordance with clause 6;

**term** means the term of this ILUA set out in clause 2.1;

**terms** defined in the Native Title Act and Aboriginal Heritage Act and not otherwise defined in this ILUA bear their defined meanings when used in this ILUA; and

**other terms** which are defined elsewhere in this ILUA bear their defined meanings when used in this ILUA.

## *Outback Areas Indigenous Land Use Agreement Template*

### **1.1 Interpretation**

In this ILUA, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, ..., partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to, this ILUA;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this ILUA) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this ILUA or that other agreement, deed or document;
- (h) a reference to a party to this ILUA or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (k) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (l) a reference to a document includes an agreement (referred to in paragraph (..)) in writing and any certificate, notice, instrument and document of any kind;
- (m) a reference to dollars and \$ is to Australian currency;
- (n) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (o) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (p) a reference to agree, approve or consent on the part of a party is a reference to agree, approve or consent (as the case may be) on the part of that party in writing; and
- (q) nothing in this ILUA is to be interpreted against a party solely on the ground that the party put forward this ILUA or any part of it.

## *Outback Areas Indigenous Land Use Agreement Template*

### **1.2 Headings**

Headings do not affect the interpretation of this ILUA.

### **1.3 Schedules and annexures**

Schedules, annexures and appendices form part of this ILUA.

## **2. Term**

---

### **2.1 Term**

- (a) This ILUA commences on the commencement date and continues for an indefinite period thereafter subject to earlier termination pursuant to this agreement or by operation of law.
- (b) If this ILUA is not registered pursuant to clause 4 within 12 months of the commencement date then any party may terminate it by written notice given to the other parties.

## **3. Native Title Act Statements**

---

### **3.1 Future Acts**

The parties agree to the validation of all invalid past acts and future acts done by the State that have already been done invalidly within the ILUA area before the registration date.

### **3.2 Extinguishment of Native Title**

The [ ...people] surrender all of their native title rights and interests in relation to all land and / waters within the ILUA area. The surrender of native title rights and interests extinguishes the surrendered native title rights and interests.

### **3.3 Acknowledgment that Compensation is Final**

[ ... people ] acknowledges and agrees that:

- (a) any amounts payable and any benefits provided under this ILUA to ... (for the benefit of the [... people]) are in full and final satisfaction of any compensation entitlement of the [ ... people] under the Native Title Act [if applicable]; and
- (b) for the purposes of section 24EB of the Native Title Act, those amounts and benefits are compensation provided for by this ILUA; and
- (c) the [... people] do not have any compensation entitlement other than for the amounts payable and benefits provided under this ILUA [if applicable].

## *Outback Areas Indigenous Land Use Agreement Template*

### **3.4 Exception**

The provisions of clause 3.3 do not apply to any compensation entitlement of the [... people] against any other party to this ILUA arising by reason of any breach of this ILUA by that party.

### **3.5 Sharing**

[... people] agrees that the amounts payable and the benefits provided under this ILUA to ... are held on behalf of all members of the [... people] and all persons (if any) who hold native title in relation to the whole or any portion of the ILUA area.

### **3.6 Benefits**

Here describe the benefits negotiated which may take (by way of example) the form of a transfer of land, or the provision of a sum of money, or the provision of specialised training and education, or the provision of a building, or a combination of these benefits [It is intended that the benefits will be provided on registration of the ILUA, or at such other time as the parties may agree]

### **3.7 Application Survival**

The provisions of clauses 3.4, 3.5 and 3.6 survive the removal of the details of this ILUA from the register for whatever reason and the termination of this agreement and remain in those circumstances binding on:

- (a) all persons bound by this ILUA; and
- (b) all persons entitled to any of the benefits under this ILUA.

## **4. Registration**

---

### **4.1 Application of ILUA**

The parties state that:

- (a) this ILUA applies to the ILUA area; and
- (b) this ILUA is intended Subject to be registered on the register as an area agreement under sections 24CA to 24CL of the Native Title Act and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).

### **4.2 Application for Registration**

- (a) The parties (other than the State) authorise and direct the State to apply to the registrar for this ILUA to be registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth).

## *Outback Areas Indigenous Land Use Agreement Template*

- (b) to clause 4.1(c) the State agrees to comply with the authorisation and direction in clause 4.1(a).
- (c) For the purposes of registering and entering this ILUA on the register as referred to in clause 4.1(a) ALRM will certify in accordance with the Native Title Act the application to the registrar referred to in clause 4.1(a).

### **4.3 Best endeavours**

Each of the parties agrees to use its best endeavours to obtain the registration of this ILUA as soon as practicable after the commencement date.

### **4.4 Removal from Register**

All of the parties may request the registrar pursuant to section 199C(1)(c)(ii) of the Native Title Act to remove the details of this ILUA from the register by advising the registrar in writing that they wish to terminate this ILUA.

## **5. Heritage Survey**

---

### **5.1 Aboriginal Heritage Act**

The parties must comply with the Aboriginal Heritage Act in undertaking any proposed development

### **5.2 Heritage Survey Procedure**

Within three calendar months of the execution of this ILUA the [ ... people] will conduct a heritage survey of all Crown land within the ILUA area on behalf of the State ( and any other land within the ILUA area with the consent of the owner/s) upon the following conditions:

- (a) subject to a survey budget, as referred to in clause 5.3, being agreed or determined, [ ... people] must :
  - (i) give the State notice not less than 30 days before the start of that heritage survey of the dates on which it will start and finish.
- (b) the survey team must comprise:
  - (i) not more than representatives of [ ... people]; and
  - (ii) if required for purposes of the survey team performing its functions, a specialist, approved by the State or [ ... people]
  - (iii) [ ... people] must ensure that the persons referred to in this clause 5.2.1(b) have the traditional knowledge and authority to discover whether there is any Aboriginal site, object or remains within the relevant notified area;
- (c) the functions of the survey team are to assess the relevant area for the purpose of : -

## *Outback Areas Indigenous Land Use Agreement Template*

- (i) determining whether in their opinion any proposed development will damage, disturb or interfere with any Aboriginal site, object or remains within the ILUA area; and
- (ii) nominating the conditions, if any, which are necessary, and which should accordingly apply in order to protect each Aboriginal site, object or remains within the ILUA area from damage, disturbance or interference by any proposed development ;
- (d) the survey team will discharge its functions by : -
  - (i) conducting an inspection and assessment of any Crown land (or other approved land) within the ILUA area in order to determine whether survey approval will be given or withheld in relation to it;
  - (ii) in conjunction with the specialist, providing a report detailing which parts of the ILUA area are given, and which parts are not given, survey approval;
  - (iii) in conjunction with the specialist, identifying in the report any conditions as referred to in clause 5.2.1(a); and
  - (iv) promptly providing the report to the State or ....

### **5.3 Survey Budget**

A heritage survey must be undertaken in accordance with a survey budget which must:

- (a) reflect daily rates (which must be pro-rated for any part day) for each survey team member (other than the specialist) for undertaking the heritage survey, of \$300 per day, or as otherwise agreed between the parties but in any event not more than the prevailing market rate;
- (b) reflect daily rates (which must be pro-rated for any part day) for the specialist for undertaking the heritage survey, as agreed between the specialist and the State or ...;
- (c) reflect the reasonable costs of travel for attending at any heritage survey of any survey team member; and
- (d) reflect that any reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the survey budget.

A survey budget must be agreed within 21 days of the date of the notice referred in sub-clause 5.2.1(a) or such other period as the parties agree, failing which the provisions of clause 12 will apply to the determination of that budget.

The State and [... people] may at any time agree to amend the survey budget.

The State is not responsible for any costs or expenses of carrying out the heritage survey which exceed the agreed survey budget.

## *Outback Areas Indigenous Land Use Agreement Template*

### **5.4 Payment**

[... people] may invoice the State the costs and expenses of carrying out a heritage survey (up to a maximum of the amount stated in the survey budget) as follows:

- (a) 30% not less than 21 days prior to the mobilisation of the survey team to undertake that heritage survey;
- (b) 40% upon completion of that heritage survey; and
- (c) 30% or the balance thereof within 14 days of receipt of the report and an invoice of all costs and expenditure incurred in carrying out that heritage survey.
- (d) Any payment by the State pursuant to clause 6.3(a) must be made within 14 days of receipt of an invoice from [... people]

#### **5.4.1 Evidence**

Any invoice provided to the State pursuant to clause 5.4 must be supported by evidence, reasonably satisfactory to the State, that the relevant costs and expenses have been incurred properly.

### **5.5 State 's Representative**

The State may make a representative available for consultation by the survey team at reasonable times during a heritage survey, but the representative may not otherwise be present whilst that heritage survey is being undertaken, except when requested by the survey team.

### **5.6 Alternative Area**

During the undertaking of a heritage survey the survey team and the State's representative may agree upon any alternative area or location within the ILUA area at which the State may carry out any proposed development. The parties intend that only one Heritage survey will be required for the ILUA area. If the [... people] request another Heritage survey then the State shall be at liberty to agree or refuse as it sees fit.

### **5.7 Survey Team Report**

Within 21 days of completion of a heritage survey [... people] must provide to the State a written report in relation to that heritage survey.

The report must:

- (a) identify those parts of the notified area (if any) which are given survey approval;
- (b) specify any conditions as referred to in clause 5.2.1(c); and
- (c) be signed by the specialist.
- (d) The copyright in the report vests in ....

## *Outback Areas Indigenous Land Use Agreement Template*

### **5.7.1 Consequences of Report**

The State must consider a survey report in good faith and may, but is not obliged to, make changes to the proposed development to take account of the report.

### **5.8 Non disclosure**

- (a) Nothing in this ILUA requires ... or any member of any survey team to disclose the location and/or significance of any Aboriginal site, object or remains, if they consider the location and/or significance to be a matter of cultural confidence, but they must disclose sufficient information in accordance with clause 5.7 to enable the State, its employees, contractors and subcontractors to carry out any works on those parts of the ILUA area given survey approval, without damaging, disturbing or interfering with the relevant Aboriginal site, object or remains.
  
- (b) [... people] must not disclose to any person any information provided by the State to [... people] or any member of the survey team in connection with any heritage survey which is designated by the State as confidential information

### **5.9 Failure by [claim group/incorporated body]**

5.9.1 If within 30 days of the date by which:

- (a) a heritage survey is required to be carried out, it has not been carried out; or
- (b) [... people] is required to provide a report to the State pursuant to clause 5.7, it has failed to do so,

the State may give notice to [... people] requiring that:

- (a) the relevant heritage survey be carried out; or
- (b) a report be provided to the State or [... people] pursuant to clause 57, within 30 days of the State giving that notice.

5.9.2 A notice provided under clause 5.9.1 must state that, if ... does not comply with that notice within that period, the State intends to proceed with the relevant .development

5.9.3 If the State [... people] has given a notice pursuant to clause 5.7 and [ ... people] fail to comply with it, the State may carry out the proposed development but at all times taking into consideration its obligations under the Aboriginal Heritage Act.

### **5.9.4 Discoveries During Operations**

If at any time during the carrying out of any development the State identifies any site, object or remains which it suspects may be an Aboriginal site, object or remains, the State must, in addition to any other obligations under the Aboriginal Heritage Act:



## *Outback Areas Indigenous Land Use Agreement Template*

- (a) promptly report the location of that site, object or those remains to [... people]; and
- (b) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains,

unless and until it is lawful for the State to proceed

### **6 Reconciliation Statement**

**6.1** This statement is attached as Schedule 3. This statement is an aspirational document and does not create any legal obligations.

### **7 Liaison Committee**

#### **7.1 Establishment**

- (a) A liaison committee (***Committee***) shall be established within twelve months of the commencement date and will comprise the members and have the functions set out in this clause.
- (b) The liaison committee will continue in existence from the date of its establishment until the date of termination or expiry of this ILUA.

#### **7.2 Functions**

The functions of the Committee are to:

- (a) make recommendations or give advice to the parties concerning any matter under or relating to this ILUA;
- (b) help maintain liaison between the parties and between the parties and other persons;
- (c) make recommendations or give advice to the parties regarding mechanisms to achieve recognition within the general community in the ILUA area of the [... people] as the Aboriginal group that asserts traditional ownership of the ILUA area;
- (d) make recommendations or give advice to the parties regarding economic development opportunities within the ILUA area for the parties;
- (e) make recommendations or give advice to the parties regarding Aboriginal training, employment, contracting and business opportunities and strategies within the ILUA area;
- (f) make recommendations or give advice to the parties regarding street names within [... people] areas and signage on State and ... land, places and buildings, all within the ILUA area which adopt [... people] language and/or recognise the [... people's] asserted traditional ownership of the ILUA area;
- (g) make recommendations or give advice to the parties regarding service delivery by the State, the ...s and other persons to the [... people] and other Aboriginal people living within the ILUA area;

## *Outback Areas Indigenous Land Use Agreement Template*

- (h) make recommendations or give advice to the parties regarding the dedication by the Crown and the placing under the care, control and management of [... people] (either alone or jointly with any of the ...s) of Crown land situated within the ILUA area
- (i) make recommendations about the application of planning principles within the ILUA area and draw these recommendations to the attention of the Outback Areas Community Development Trust;
- (j) establish such sub-committees as considered necessary to pursue any matter to advance this ILUA; and
- (k) such other functions as may be agreed upon by the parties.

### **7.3 Membership [*indicative only*]**

- (a) The Committee will be comprised of the following persons be:
  - (i) 2 persons nominated by [... people];
  - (ii) 1 person nominated by each of the [...people]s;
  - (iii) [1 person nominated by the ALRM]; and
  - (iv) 1 person nominated by the State,for purposes of each meeting of the Committee.
- (b) Two weeks' notice of nomination of a person as a member of the Committee is required to be given.

### **7.4 Chairperson**

- (a) The members of the Committee will appoint a chairperson of the Committee at each meeting of the Committee.
- (b) The chairperson must be a member of the Committee.
- (c) The chairperson holds office for the meeting at which he or she is appointed.
- (d) The chairperson does not have a casting vote.

### **7.5 Secretary**

- (a) A person nominated by the ...s from time to time will act as the secretary of the Committee.

### **7.6 Proceedings of Committee**

- (a) Subject to the provisions of this clause, the Committee may:
  - (i) meet together either in person, by telephone, by other means of instantaneous communication or in such other manner as the members of the Committee may approve from time to time; and

## *Outback Areas Indigenous Land Use Agreement Template*

- (ii) adjourn and otherwise regulate its meetings and proceedings as the members think fit .
- (b) The committee must meet:
  - (i) at intervals of not more than 6 months, the first Committee meeting to be held within 3 months of the commencement date; and
  - (ii) in any event within 28 days of a request for a meeting from 2 or more parties entitled to nominate a member or members to the Committee.
- (c) The venue for each meeting of the Committee will be determined by the Committee.
- (d) Regard being had to the provisions of clause 9.6(e), there are no quorum requirements for any meeting of the Committee.
- (e) Decisions of the Committee will be made as follows (and, if so made, bind the Committee):
  - (i) the members will use their best endeavours to make decisions on an unanimous basis; or
  - (ii) if a decision is not able to be made on an unanimous basis, but only affects some of the parties, the members appointed by the parties which will be affected by the decision will use their best endeavours to make a decision on an unanimous basis.

### **7.7 Invitees**

Each member of the Committee has the right to invite a reasonable number of non-members to attend and speak (but not vote) at any Committee meeting as observers or spokespersons having regard to the matters on the agenda for the relevant meeting.

## **8 Warranties and Authority**

---

### **8.1 Native title warranties**

[... people] represents and warrants to the other parties to this ILUA that:

- (a) the ... people have established [... people] and have authorised ... to manage all matters relating to their asserted traditional ownership, native title and heritage in relation to the land and waters in the ILUA area, on behalf of the [... people];
- (b) [... people] has consulted with the ... people and the [... people] have consented to and authorised [... people] to enter into this ILUA on behalf of the [... people];
  - (i) enters into this ILUA in the performance of its functions of managing the asserted traditional ownership, native title and

## Outback Areas Indigenous Land Use Agreement Template

heritage in relation to the land and waters in the ILUA area and all matters relating to them; and

- (ii) by signing this ILUA confirms that ... has been authorised by the [... people] to enter into this ILUA on behalf of the [... people]; and
- (c) it represents and, in accordance with Aboriginal tradition, has the authority to speak for, and is authorised to enter into this ILUA on behalf of, the traditional owners and other Aboriginal people who, in accordance with Aboriginal tradition, have the authority to speak for land and waters in the ILUA area.

### 8.2 Other Warranties

Each party represents and warrants to the other parties to this ILUA that:  
it has the power to enter into this ILUA and perform its obligations under it; and  
the persons who have executed this ILUA on its behalf have the necessary authority to do so.

## 9 Dispute Resolution

---

### 9.1 Clause applies

All disputes or differences between any of the parties in connection with the interpretation, effect or any other matter in any way relating to this ILUA, other than in relation to what constitutes an Aboriginal site, object or remains, (dispute) will be dealt with in accordance with this clause 9 whether the dispute is first raised before, during or after the term.

### 9.2 Avoidance

The parties agree that:

- (a) they will make every effort to ensure that disputes do not arise;
- (b) if a dispute does arise, they must make every reasonable effort to resolve the dispute in accordance with this clause 9 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 9.1 and 9.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

### 9.3 Notification

A party (**notifying party**) will, within 30 days after the dispute arises, give a notice to the other party or parties with which it has the dispute (**notified party**) and a copy of that notice to the other parties setting out details of the dispute and any other matter that may, in the reasonable opinion of the notifying party, be relevant to the resolution of the dispute.

## *Outback Areas Indigenous Land Use Agreement Template*

### **9.4 Initial Meeting**

Within 7 days of the date of the notice the notifying party and notified party (**dispute parties**) will meet and use their respective reasonable endeavours to resolve the dispute within a further period of 14 business days.

### **9.5 Mediation**

If a dispute is not resolved in accordance with the provisions of clause 9.4 :

- (a) any dispute party may request the President for the time being of the President of the Law Society of South Australia Inc (or his or her nominee) to appoint a mediator to mediate that dispute;
- (b) within 7 days of a mediator being appointed, the mediator will convene an initial meeting of the dispute parties in an attempt to resolve that dispute; and
- (c) if that dispute is not resolved at that initial meeting, the mediator will convene such further meetings of the dispute parties during the subsequent 14 days as the mediator reasonably considers necessary for the purpose of resolving that dispute.

### **9.6 Expert**

- (a) If a dispute is not resolved in accordance with the provisions of clause 9.3 then within 7 days, the parties may agree to appoint a person who has an understanding of or experience in the subject matter of the dispute (**Expert**) to determine the dispute.
- (b) If the parties fail to agree a mutually acceptable expert, then within 7 days any dispute party may request the President for the time being of the President of the Law Society of South Australia Inc (or his or her nominee) to appoint an Expert to determine the dispute.

#### **9.6.1 Capacity of Expert**

The Expert is an expert and not an arbitrator.

#### **9.6.2 Expert's Determination**

The Expert's determination is final and binding on the dispute parties.

#### **9.6.3 Determination costs**

- (a) The Expert may determine that any dispute party must pay the whole or a specified portion of the costs and expenses of the other dispute party in relation to the Expert's determination.
- (b) Unless clause 9.6.4(a) applies, each dispute party will bear its own costs and expenses in relation to the Expert's determination.

## *Outback Areas Indigenous Land Use Agreement Template*

### **9.6.4 Expert's Fees**

- (a) The Expert may determine that any dispute party must pay all, or that the dispute parties must pay in specified portions, the Expert's fees and expenses and the cost of the Expert's determination.
- (b) Unless clause 9.6.4(a) applies, the dispute parties will pay in equal shares the Expert's fees and expenses and the cost of the Expert's determination.

### **9.6.5 Survival**

The provisions of this clause 9 survive the expiry or termination for whatever reason of this ILUA.

## **10 Communications**

---

### **10.1 Writing required**

Subject to this ILUA, any notice, direction, request, response, consent, approval, demand, report or other communication (**communication**) to be given under this ILUA will be in writing and be addressed for the attention of the representative(s) of the party or parties as set out in Schedule 2.

### **10.2 Manner of giving**

A communication may be delivered by hand, sent by prepaid post or sent by facsimile or other electronic transmission to the address of the party or parties to which it is being given and is deemed to have been received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, 3 days after posting; and
- (c) if sent by facsimile or other electronic transmission, on receipt by the sender of a confirmation report.

### **10.3 Change of details**

Details specified in Schedule 2 in respect of a party may be changed by the party by not less than 7 days notice to the other parties

## **11 GST**

---

The parties agree that, if a goods and services, value-added or a comparable tax (**gst**) applies under the "A New Tax System (Goods and Services Tax) Act 1999" or associated legislation (**gst legislation**) in relation to any taxable supply (within the **gst legislation**) (**taxable supply**) made by a party (**supplier**) to another party (**recipient**) under or pursuant to this ILUA:

- (a) the amount payable by the recipient to the supplier in respect of the taxable supply (**payment**) does not include **gst**;

## *Outback Areas Indigenous Land Use Agreement Template*

- (b) the supplier may, in addition to the payment, recover from the recipient (and the recipient will pay to the supplier) an additional amount on account of the gst, such additional amount to be calculated in accordance with the gst legislation; and
- (c) the supplier will provide to the recipient a tax invoice (within the meaning of the gst legislation) in respect of the taxable supply as required by the gst legislation.

## **12 General**

---

### **12.1 Entire agreement**

This ILUA contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

### **12.2 Amendment**

No amendment or variation of this ILUA is valid or binding on a party unless made in writing executed by all parties to it.

### **12.3 Severability**

Each word, phrase, sentence, paragraph and clause (**provision**) of this ILUA is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of this ILUA.

### **12.4 Force Majeure**

If any party becomes wholly or partly unable because of force majeure to perform any of its obligations under this ILUA, then the party affected by the force majeure must give the other parties notice of the force majeure specifying:

- (a) details of the force majeure;
- (b) insofar as it is known, the probable scope of the force majeure; and
- (c) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,

and the relevant obligation shall be deemed to be suspended, but:

- (d) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of force majeure; and
- (e) the party affected by the force majeure must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.

### **12.5 No waiver**

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.

## *Outback Areas Indigenous Land Use Agreement Template*

- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **12.6 Minister's Discretion**

Nothing in this ILUA fetters the discretion of any Minister of the Crown in the right of South Australia.

### **12.7 Further assurances**

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this ILUA and the transactions contemplated by it.

### **12.8 No merger**

- (a) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this ILUA.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **12.9 Governing law and jurisdiction**

- (a) This ILUA is governed by the laws of South Australia.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning this ILUA.

### **12.10 Relationship**

- (a) The relationship between the parties is that of independent contractors.
- (b) The parties are not partners, joint venturers nor, subject to clause 15.11(c), principal and agent.
- (c) ... is an agent of the[ ... people].

**THE COMMON SEAL** of the )  
**ATTORNEY-GENERAL** )  
was hereunto affixed in the presence of:)

.....  
Witness



*Outback Areas Indigenous Land Use Agreement Template*

.....  
Name of Witness

**THE COMMON SEAL** of the )  
was hereunto affixed )  
in accordance with its constitution )  
in the presence of:

..... )  
Chairperson Member

..... )  
Name Name

..... )  
Member Member

..... )  
Name Name

**THE COMMON SEAL** of the )  
**ABORIGINAL LEGAL RIGHTS** )  
**MOVEMENT INC** was hereunto affixed )  
in the presence of:

..... )  
Chairperson

..... )  
Executive Member

*Outback Areas Indigenous Land Use Agreement Template*

**Schedule 1 – ILUA Area**

# *Outback Areas Indigenous Land Use Agreement Template*

## **Schedule 2 - Notice Details**

### **State**

Address:

Attention:

Facsimile No.: (08)

### **... people**

Address:

Attention:

Facsimile No.: (08)

...

Address:

Attention:

Facsimile No.: (08)

### **ALRM**

Address: Aboriginal Legal Rights Movement Inc  
4<sup>th</sup> Floor, 345 King William Street  
Adelaide SA 5000

Attention: Executive Officer, Native Title Unit

Facsimile No.: (08) 8211 7424

*Outback Areas Indigenous Land Use Agreement Template*

Address

Attention:

Facsimile No: (08)

Address

Attention:

Facsimile No: (08)

...

Address

Attention:

Facsimile No: (08)

Address

Attention:

Facsimile No: (08)

## *Outback Areas Indigenous Land Use Agreement Template*

### **Schedule 3 – Reconciliation Statement**

#### **[Example]**

The State of South Australia and (town) which are parties to this Indigenous Land Use Agreement (ILUA) acknowledge that the ... People are the traditional owners of the land and waters defined in this ILUA (referred to herein as ... Country) and those parties further acknowledge the ... People's connection to it.

They acknowledge that the ... People's laws, customs and culture originate from their Country and that since European settlement the ... People have suffered displacement and marginalisation as a result of that settlement.

In recognising the ... People's history all the Parties commit to work co-operatively to assist in the preservation and protection of ... Country and heritage. The Parties acknowledge the importance to the whole community in recognising and assisting the ... People to preserve their culture which thereby enriches the heritage of all people who inhabit the area. Consequently the Parties will act to redress past inequities suffered by the ... People and through the provision of services and other assistance, work to enhance the ... People's physical and spiritual well being.

The Parties will commit to work towards identifying increasing economic opportunities for the ... People and the elimination of racism where it exists within the community.

The Parties will assist the ... People in their aspirations for self management and independence, so that their heritage can continue to be maintained and supported and be

## *Outback Areas Indigenous Land Use Agreement Template*

a source of pride for the whole community and their place as the traditional owners be recognised.

In recognising the ... People's aspirations for self management the Parties to this ILUA will support and participate where relevant in the decision making processes of the State and (town), to raise the quality of the health, education and employment of the ... People. Through the implementation of this ILUA, benefits will pass to the whole community.