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Cultural Heritage Management Plan Agreement

The Wiri People #2 People

Queensland Rail

Northern Missing Link Rail Corridor

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Date

2005

Parties

1. **Norman Johnson, Len Watson, Harry Johnson, Michael Watson, Eric Blay, Oswald Skeen, Effie Collins, Pansy Colonel, Marilyn Duncan, Christopher Dunrobin and Beryl Pegler** (the *Representatives*) who sign this Agreement on their own behalf and on behalf of the Traditional Owners.
2. **Queensland Rail** (ABN 47 564 947 264) a body corporate established pursuant to the Government Owned Corporations Act 1993 and having its principal office at Rail Centre 1, 305 Edward Street, Brisbane in the State of Queensland ("**QR**")

Recitals

- A QR wishes to construct the Project on the Project Area.
- B The Traditional Owners are Aboriginal Party in respect of the Project Area.
- C The construction of the Project may impact Cultural Heritage in the Project Area.
- D The parties have consulted about the Project and the management of its possible impact on Cultural Heritage pursuant to section 104 and 105 of the Cultural Heritage Act.
- E The parties have conducted the Initial Cultural Heritage Assessment in respect of the Project Area to assist them in preparing the CHMP.
- F QR and the Traditional Owners have agreed to enter into this Agreement for the purpose managing and minimising the impact on Cultural Heritage in the Project Area that may be impacted by the Project.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Aboriginal Party has the meaning given to that term in the Cultural Heritage Act.

Agreement means this agreement.

Ancillary Works means works which may be constructed or undertaken which are located outside the Project Area but which are ancillary to the Project, including without limitation access tracks, access roads and borrow pits.

Ancillary Works Area means the area of land over which Ancillary Works are to be located.

Approved CHMP means and "approved cultural heritage management plan" pursuant to the Cultural Heritage Act.

Business Day means a weekday on which banks are open for business in Brisbane.

Chief Executive means the person appointed to the position of "chief executive" for the purposes of the Cultural Heritage Act.

CHMP means the Cultural Heritage Management Plan for the Project contained in Schedule 1 to this Agreement.

CHRC means the Cultural Heritage Reference Committee established pursuant to the CHMP.

Cultural Heritage means a Significant Aboriginal Object or a Significant Aboriginal Area.

Cultural Heritage Act means the *Aboriginal Cultural Heritage Act 2003*.

Cultural Heritage Find means the specific location where a Significant Aboriginal Object or a Significant Aboriginal Area is found.

Cultural Heritage Survey and Recovery means a survey of an area to identify any Cultural Heritage in the area and the simultaneous collection of any items of Cultural Heritage that may be found.

Field Work means the performance of the Recovery Works, a Cultural Heritage Survey and Recovery or monitoring by TOFO's pursuant to the CHMP.

Force Majeure Event means an event or circumstance which is beyond the reasonable control of the party affected by the event or circumstance, including war, insurrection, civil disturbance, blockade, riot, embargo, epidemic, earthquake, storm, flood, explosion, fire or lightning, strikes and other labour conflict, and government action or inaction (including change of law).

Ground Breaking Activity means an activity which involves the use of machinery to break and disturb the topsoil or surface rock layer of the ground and includes use of a bulldozer, end loader, excavator, backhoe, rotary hoe, drill or ditch digger for such purpose.

Initial Cultural Heritage Assessment means the cultural heritage survey conducted by the Traditional Owners, with an archaeologist, prior to the date of this Agreement for the purpose of establishing what Cultural Heritage exists, or is likely to exist, in the Project Area.

Major Significance means, in respect of Cultural Heritage, a Significant Aboriginal Area or Significant Aboriginal Object of unusually high or unique archaeological significance.

Monitor Area means a part of the Project Area or an Ancillary Works Area nominated in a Work Area Clearance Report by the archaeologist as an area where, based on the results of the Initial Cultural Heritage Assessment, the Recovery Works or a Cultural Heritage Survey and Recovery (as the case may be), it is reasonably likely that further items of Cultural Heritage may be revealed in the course of Ground Breaking Activities and as such it is recommended that monitors are present to observe such activities.

Project means the construction and operation of rail infrastructure and ancillary or incidental works and activities in the Project Area.

Project Activities means any activity conducted on the Project Area or an Ancillary Works Area in respect of the Project (and includes Ancillary Works).

Project Area means the area shown/described on the plan in Schedule 2.

Project Liaison Officer means a person appointed pursuant to clause 12.1.

Recovery Works means the activities to be performed and measures taken by the parties pursuant to clause 3.1 of the CHMP.

Significant Aboriginal Area means an area of particular significance to Aboriginal people because of Aboriginal tradition and/or the history of the Traditional Owners.

Significant Aboriginal Object means an object of particular significance to Aboriginal people because of Aboriginal tradition and/or the history of the Traditional Owners.

TOFOs (Traditional Owners' Field Officers) means the personnel appointed by the Traditional Owners to assist with implementing aspects of the CHMP and more particularly to perform the Field Works.

Traditional Owners means the Wiri People #2 Native Title claim group who, on the 2nd April 1998, made a native title determination application (NNTT No.QC98/11).

Work Area Clearance Report means a report prepared in accordance with clause 4 of the CHMP.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (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 includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Agreement 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, 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, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument or document of any kind.
- (l) A reference to a right or obligation of any 2 or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each 2 or more of them jointly. A reference to that party is a reference to each of those people separately.
- (m) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (n) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

2. Term

This Agreement commences on the date it is executed by the last party to execute it and continues until the date [on which QR provides written notice to the Traditional Owners that construction and commissioning of the project is complete].

3. Agreement to Implement CHMP

3.1 QR will Implement CHMP

QR agrees with the Traditional Owners to perform all tasks and obligations of QR under the CHMP in accordance with its terms.

3.2 Traditional Owners will Implement CHMP

The Traditional Owners agree with QR:

- (a) to perform all tasks and obligations of the Traditional Owners under the CHMP in accordance with its terms;
- (b) to establish the CHRC; and
- (c) that the CHRC is authorised on behalf of the Traditional Owners to deal with QR in relation to all aspects of the performance of this Agreement.

4. Approval of Agreement

4.1 Approved CHMP

It is the intention of the parties that this Agreement will be an Approved CHMP and the parties agree that the Chief Executive may approve this Agreement pursuant to section 107 of the Cultural Heritage Act.

4.2 QR authorised to seek approval

The Traditional Owners authorise QR to apply for approval of this Agreement as an Approved CHMP pursuant to section 107 of the Cultural Heritage Act and to provide the Chief Executive with a copy of this Agreement for that purpose.

5. Responsibilities of QR

5.1 Funding for Recovery Works and Monitoring

- (a) QR will pay the Traditional Owners:
 - (i) \$400 per TOFO per day in which the TOFO performs Field Work for 8 hours or more; or
 - (ii) where Field Work is performed for less than 8 hours on any day by the TOFO, \$50 per hour for each hour during which the Field Works are performed by the TOFO.
- (b) QR will also pay each TOFO:
 - (i) in respect of accommodation, meals and other expenses:
 - (A) if accommodation is not provided by QR for the TOFO's, \$140 per TOFO per day that the TOFO is engaged in Field Work; or
 - (B) if accommodation is provided by QR for the TOFO's, \$30 per TOFO per day that the TOFO is engaged in Field Work; and
 - (ii) in respect of travel costs for travel to and from the Project Area by TOFO's to perform Field Work, an amount equal to the aggregate of:
 - (A) if the TOFO were to travel by car from the TOFO's residence to the Project Area, an amount equal to \$0.62 per kilometre travelled each way, up to (but in no case exceeding) a maximum amount of \$150 each way per TOFO; and
 - (B) \$150 each way per TOFO in recognition of time spent during travel.
- (c) The Traditional Owners acknowledge that the payments in clause 5.1(a) and 5.1(b) are total payments (subject to clause 5.2) by QR for the performance of the Field Work by the TOFO's and that the Traditional Owners are responsible for meeting all of the TOFO's expenses in performing the Field Works from these amounts, including without limitation:
 - (i) payment of fees to TOFOs;
 - (ii) accommodation expenses;
 - (iii) travel expenses;
 - (iv) meal expenses.
- (d) QR will also pay for reasonable vehicle hire costs and all necessary fuel to allow TOFOs to perform the Field Works.

5.2 Administration Fee

QR will pay the Traditional Owners an additional amount equal to 15% of the amounts payable by QR pursuant to clause 5.1 in recognition of the administration costs the Traditional Owners may incur in administering this contract and coordinating the TOFOs.

5.3 CHRC to nominate account for payment

QR will pay the moneys described in clause 5.1 and 5.2, and any other moneys payable under this Agreement to the Traditional Owners, to the account or body nominated by the CHRC from time to time, such written nominations to be signed by all current members of the CHRC.

5.4 Timing of payments for Field Works

The payments to be made by QR pursuant to clauses 5.1 and 5.2 shall be made within 10 Business Days of QR receiving a tax invoice from the CHRC or from a body nominated by the CHRC (provided not more regularly than weekly), specifying the amount of the payment and attaching daily work reports evidencing the work performed by the relevant TOFOs.

5.5 Delay costs for TOFOs

Where:

- (a) the TOFOs have presented at the Project Area on a particular day to assist in carrying out the Field Works in accordance with the CHMP; and
- (b) the TOFOs are prevented from assisting in carrying out any Field Works for the whole or a substantial part of that day due to a cause beyond their control (such as weather conditions which would make it unsafe to perform the Field Works),

QR will still pay the Traditional Owners an amount equivalent to what would have been paid pursuant to clause 5.1 had a full day's Field Work been performed for each day of the delay, up to a maximum of two consecutive days delay.

5.6 Workplace Health and Safety

QR will provide inductions required for the TOFOs to meet all necessary workplace health and safety requirements and other site specific requirements

6. Responsibilities of Traditional Owners

The Traditional Owners will:

- (a) select and make available for the performance of the Field Works suitable TOFOs and oversee their tasks;
- (b) provide at their expense all necessary equipment and vehicles required by the TOFOs to perform their tasks under the CHMP;
- (c) to meet schedules and timetables, ensure that TOFOs will be selected and available to perform their tasks in accordance with the timing set out in this Agreement;
- (d) provide such information as is required by TOFOs and QR to implement any element of this Agreement;

- (e) comply with provisions of relevant legislation governing Cultural Heritage management;
- (f) assist QR and its contractors in carrying out Project Activities where QR is acting in accordance with the Agreement;
- (g) ensure all TOFOs have and wear appropriate safety footwear and clothing for performing their tasks under the CHMP and ensure all TOFOs wear all necessary safety equipment and clothing while in any parts of the Project Area or on areas associated with the Project where this is a requirement of entry;
- (h) take out all appropriate workers' compensation insurance policies, as required under any applicable legislation, in respect of all TOFOs, or other members or agents of the Traditional Owners, who may perform any work in accordance with this Agreement; and
- (i) ensure all TOFOs comply with all site policies, protocols and the reasonable directions of QR in relation to health, safety, environmental and other statutory requirements established or applicable from time to time for the Project Area.

Where the obligations above relate to the performance of Field Works, the Traditional Owners will use their best endeavors to meet their obligations but understand that non-performance by individual TOFOs may result in removal from the Project Area.

7. Suspension of Agreement

7.1 QR may suspend Agreement and CHMP

QR may by written notice to the CHRC at any time, and on more than one occasion, suspend the operation of this Agreement and the implementation of the CHMP if the Project is suspended at any time. Such suspension will commence on the date the written notice is given and will cease if, and when, QR gives notice to the CHRC that it intends to recommence the Project.

7.2 Effect of suspension

Where QR suspends the operation of this Agreement and the implementation of the CHMP, then the rights and obligations of the parties under this Agreement shall be suspended for the period of the suspension and the time for performance of any obligations of the parties under this Agreement shall be extended by the period of such suspension.

8. No acknowledgement of Native Title Rights and Interests

The execution of this Agreement by QR does not constitute an acknowledgement of the existence, or otherwise, of any native title rights and interests.

9. Warranty of Authority

The Representatives represent and warrant that:

- (a) they are each separately authorised, in accordance with their traditional laws and customs, to enter this Agreement on behalf of the Traditional Owners;
- (b) they enter into this Agreement pursuant to that authority; and

- (c) they are personally bound by this Agreement and purport to bind all members of the Traditional Owners having traditional links to the Project Area to this Agreement.

10. Overlapping interests

10.1 Acknowledgement

The Traditional Owners acknowledge that other Aboriginal groups may from time to time claim a traditional connection with some or all of the Project Area, and that in order to conduct the Project Activities QR may wish to, or be obliged to, consult with such other groups. The Traditional Owners agree that QR may negotiate and reach agreements with such other Aboriginal groups as QR may deem necessary in order to perform the Project Activities.

10.2 Notice

If QR does negotiate with another Aboriginal group in respect of the Project, QR will provide the Traditional Owners with a written notice advising them of this fact as soon as practicable after it has commenced any negotiations with the Aboriginal group.

11. Dispute Resolution

11.1 Dispute Notice

If QR or the Traditional Owners claim that a dispute has arisen under this Agreement, the party claiming the dispute must give a notice to the other party setting out full details of the dispute (the *Dispute Notice*).

11.2 Meeting to resolve dispute

QR and the CHRC must meet as soon as reasonably practical after the receipt of the Dispute Notice by a party. The parties must attempt to resolve the dispute within 14 days of a party receiving a Dispute Notice.

11.3 Reference to mediator

If a dispute is not resolved within 14 days of a party receiving a Dispute Notice, any party may request that the matter is referred to mediation. If both parties agree to participate in mediation, the dispute will be referred to a mediator. The mediator will be a person agreed upon by the parties, or failing agreement, appointed by the President of the Queensland Law Society. QR will bear the costs of the mediator for a maximum period of 2 days. Each party will be responsible for their own costs.

11.4 Determination by a Court or Tribunal

If both parties do not agree to refer the dispute to mediation, or the dispute is not resolved within 28 days of a party receiving a Dispute Notice, either party may seek to have the dispute determined by a court or tribunal of competent jurisdiction.

11.5 No premature legal action

Subject to clause 11.6, no party will commence any legal action until the dispute resolution procedures outlined above have been exhausted.

11.6 Urgent injunctive relief

Where the Traditional Owners believe, on reasonable grounds, that there is a serious risk of damage to Cultural Heritage deemed, on reasonable grounds, by the Traditional Owners to require protection and such serious risk is a consequence of a breach by QR of this Agreement, then clause 11.5 shall not prevent the Traditional Owners seeking urgent injunctive relief against QR.

11.7 QR may continue with Project Activities

Notwithstanding the existence of any dispute, QR may continue with its Project Activities and shall continue the implementation of the CHMP until the dispute is determined or agreed provided that QR complies with any order or direction made by a tribunal or court which determines the dispute or any agreement made in relation to the dispute.

12. Communications and Notices

12.1 Appointment of Project Liaison Officers

QR and the Traditional Owners will each appoint a representative to act as a liaison officer (each a *Project Liaison Officer*) between QR and the Traditional Owners for the purposes of this Agreement and may from time to time by written notice to the other party appoint a substitute representative as the Project Liaison Officer.

12.2 Project Liaison Officers

The initial Project Liaison Officer for each party, and the contact details of the parties' initial Project Liaison Officers, are as follows:

QR

Name: Mohammed Sharif, Senior Property Officer

Address: GPO Box 1429, Brisbane, Q, 4001

Telephone: 07 32351359

Fax: 07 32352429

Traditional Owners

Name: Norman Johnson

Address: C/- Eungella Post Office, Eungella Q 4757

Telephone: 0439527850

Fax: 07 49584761

12.3 Notices to Project Liaison Officers

All communications for the purpose of this Agreement will be directed through the respective Project Liaison Officers.

12.4 When Notice Given

Any notice or other communication given in connection with this Agreement will be taken to have been duly given when made in writing and delivered or sent by post or facsimile to the Project Liaison Officer at the notified address.

12.5 When Notice Delivered

If a notice or communication is sent by post to the correct nominated address for the Project Liaison Officer for the recipient party, then that notice will be deemed to have been delivered on the day on which is 3 Business Days after the notice or communication was posted by the sender.

12.6 Notice During Business Hours

A notice or other communication will also have been deemed to have been received by a party if it is delivered between the hours of 9am and 4pm on a business day (at the place of receipt) at the nominated address for the Project Liaison Officer for that party.

12.7 Notice by Facsimile

Any notice or communication sent by facsimile transmission is taken to have been received upon receipt by the sender of a confirmation of successful transmission report. However, if a facsimile is transmitted on a business day after 4pm (at the place of receipt) or on a day which is not a business day, it shall be deemed to have been received on the next business day.

13. Failure to Implement CHMP

If the Traditional Owners:

- (a) do not participate in the implementation of an aspect of the CHMP in accordance with the requirements of the CHMP; and
 - (b) the failure to participate is not due to the fault of QR; and
 - (c) the failure to participate is not due to a Force Majeure Event to which clause 14 applies,
- then QR may continue to implement the relevant aspect of the CHMP as far as is practical without further reference to the Traditional Owners and proceed with the Project Activities.

14. Force Majeure

14.1 Suspension of obligation

If a party is unable, as a result of a Force Majeure Event, to wholly or in part perform any obligation under this Agreement, that party must give notice to the other party of that Force Majeure Event outlining reasonably full particulars of the Force Majeure Event, in which case the obligation is suspended for the duration of the Force Majeure Event.

14.2 Remedy or abatement of Force Majeure Event

A party claiming to be affected by a Force Majeure Event must use reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible.

15. Traditional Owners' Consent to Permits

The Traditional Owners hereby consent to QR applying for and obtaining any necessary permits or authorisations under the Cultural Heritage Act or any other legislation which are necessary in order for the CHMP to be lawfully implemented and the Project Activities lawfully conducted.

16. Access

QR will make all necessary arrangements to ensure the parties can legally access the Project Area for the purpose of implementing the CHMP. If any access protocols exist in respect of the Project Area which are relevant to the tasks to be performed pursuant to the CHMP, QR will provide a copy of those access protocols to the CHRC and the Traditional Owners will comply with the access protocols.

17. Archaeologist

If required under the CHMP, QR will engage:

- (a) a qualified archaeologist; or
- (b) another professional as agreed between the parties,

to perform the functions and role of the archaeologist and/or professional person under the CHMP. QR will be responsible for meeting all costs associated with the engagement of the archaeologist.

18. Default

Neither party may terminate this Agreement for substantial breach by the other party without first giving written notice of that breach to the other party and allowing the other party a reasonable period to remedy such breach or offer reasonable compensation in lieu.

19. Intellectual Property in Cultural Heritage Reports

19.1 QR to retain intellectual property

QR shall ensure that the terms on which it engages any archaeologist, anthropologist or other consultant in relation to Cultural Heritage for the Project will provide that the intellectual property in any report or document is owned by QR, but the Traditional Owners are entitled to deal with it as provided for in clause 19.2.

19.2 Licence to Traditional Owners

QR will grant the Traditional Owners a non-exclusive unconditional royalty free licence to use and exploit the intellectual property which relates to Cultural Heritage referred to in clause 19.1.

20. Confidentiality

20.1 Traditional Owners not to Disclose Confidential Information

Subject to clause 20.2, the Traditional Owners will keep confidential and shall not disclose to anyone without QR's prior written approval, any information relating to QR or its operations or activities which is identified as confidential by QR and which is made available by QR for the purpose of this Agreement.

20.2 Exceptions to Confidentiality Obligation

The Traditional Owners may disclose information it is otherwise required to keep confidential under this Agreement where:

- (a) required by law or by government authorities;
- (b) the information is already in the public domain; or
- (c) disclosure is to solicitors, barristers or other professional advisers or consultants under a duty of confidentiality.

20.3 QR Not to Disclose

Subject to clause 20.4, QR will keep confidential and shall not disclose to anyone without the Traditional Owner's prior written approval, any information provided by the Traditional Owners which is identified as confidential by the Traditional Owners and which is made available by the Traditional Owners for the purpose of this Agreement.

20.4 Exceptions to Confidentiality Obligation QR

Clause 20.3 shall not apply in the following circumstances:

- (a) any disclosure required by law or by government authorities;
- (b) if the information is already in the public domain;
- (c) any disclosure required by any applicable stock exchange listing rules;
- (d) disclosure to solicitors, barristers or other professional advisers or consultants under a duty of confidentiality;
- (e) disclosure to a related body corporate of QR where such disclosure is required to enable QR to properly perform its obligations under this Agreement or the CHMP;
- (f) disclosure to a bona fide purchaser or potential purchaser of QR's interest in the Project (whether all or part of the Project) or of all or part of the issued share capital in QR; and
- (g) disclosure of this CHMP to any relevant government authority for the purposes of the Project.

21. Assignment

QR may assign or novate its rights and obligations under this Agreement (in whole or in part) to any party who acquires an interest in the Project and on such assignment the assignee and the Traditional Owners shall enter into a mutual covenant agreeing to be bound by the terms of this Agreement.

22. Independent Legal Advice

The Traditional Owners acknowledge that they have received independent legal advice in respect of this Agreement.

23. Goods and Services Tax

23.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

23.2 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

23.3 Timing of the payment of the GST Amount

The GST Amount is payable on the date 10 Business Days after the date on which a Tax Invoice is issued in relation to the Taxable Supply.

23.4 Cost exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (*Cost*), is a reference to that Cost exclusive of GST.

23.5 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this Agreement.

23.6 Meaning of terms

In this clause:

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

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

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

24. Costs

24.1 Each party pays own costs

Subject to clause 24.2 and 24.3, each party shall bear its own costs of and incidental to the preparation, negotiation and signing of this Agreement.

24.2 Stamp duty

QR shall be responsible for any stamp duty assessed on this Agreement.

24.3 Legal Costs

QR shall pay, upon receipt of an appropriate, itemised tax invoice, the reasonable legal fees incurred by the Traditional Owners in respect of the negotiation of this Agreement, up to a maximum amount of \$5,000 (plus GST).

25. General

25.1 Entire Agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

25.2 Amendment

This Agreement may be amended only by another agreement executed by all the parties.

25.3 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

25.4 Further Assurances

Each party must do anything (including executing agreements and documents) necessary or desirable to give full effect to this Agreement and the transactions contemplated by it.

25.5 Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

25.6 Governing Law and Jurisdiction

This Agreement is governed by the laws of Queensland. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

25.7 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.



Schedule 1

CHMP

1. Cultural Heritage Reference Committee

1.1 Establishment of CHRC

Within 14 days of the date of this Agreement, the Traditional Owners will:

- (a) establish a committee to be known as the CHRC; and
- (b) the Project Liaison Officer for the Traditional Owners will notify QR in writing of the initial members of the CHRC.

1.2 Role of CHRC

It is intended that the CHRC will act as the representative of the Traditional Owners for the purposes of the Project and more particularly the implementation of this CHMP. The CHRC will be responsible for making necessary arrangements for the Traditional Owners to perform their functions and obligations under this CHMP.

1.3 Changes to CHRC Membership

If at any time the Traditional Owners change the members of the CHRC, they will notify QR in writing of the changed membership of the CHRC as soon as reasonably practicable after the decision to make the change has been made.

1.4 Number of Members of CHRC

At no time will there be more than two (2) members of the CHRC.

2. Initial Cultural Heritage Assessment

2.1 Acknowledgement

- (a) The parties acknowledge that an Initial Cultural Heritage Assessment for the purpose of identifying the existence, or likely existence, of any Cultural Heritage within the Project Area has already been conducted by the parties.
- (b) The Initial Cultural Heritage Assessment formed the basis upon which the Recovery Works are performed.

2.2 Report

The Initial Cultural Heritage Assessment report is attached to this CHMP as Annexure 1.

3. Cultural Heritage Recovery

3.1 Recovery of Cultural Heritage

- (a) In order to minimise the impact of the Project on Cultural Heritage, QR and the Traditional Owners will recover items of Cultural Heritage from the Project Area in accordance with this clause 3.
- (b) The recovery activities performed under this clause 3 will involve:
 - (i) a systematic collection of all Cultural Heritage from the entire Project Area;
 - (ii) recording the location at which any item of Cultural Heritage is found and details of the Cultural Heritage find before it is collected from the Project Area; and
 - (iii) at the Traditional Owners' election, either:
 - (A) the retention of the collected item of Cultural Heritage by the Traditional Owners for safe keeping by the Traditional Owners; or
 - (B) the relocation of the collected item of Cultural Heritage by the Traditional Owners to a location in the vicinity of, but outside, the Project Area.
- (c) During the performance of the works described in clause 3.1(b), any known locations of items of Cultural Heritage within the Project Area, based on the Initial Cultural Heritage Assessment, will be investigated and the items of Cultural Heritage will be recovered.

3.2 Cultural Heritage Recovery Team

To perform the Recovery Works, QR will engage a team (the *Recovery Team*) consisting of:

- (a) two (2) TOFOs nominated by the CHRC; and
- (b) an archaeologist (if reasonably requested by the Traditional Owners) or an additional TOFO as agreed between the Parties, acting reasonably, whose engagement shall be subject to the same terms as those in clause 5.1.

In addition, a representative of QR may be present during the performance of the Recovery Works if QR wishes.

3.3 Timing of Recovery Works

- (a) The Traditional Owners will commence the Recovery Works on the date nominated by QR, provided that QR gives the Traditional Owners at least 14 days prior written notice of the date on which QR requires the Recovery Works to commence.
- (b) The Recovery Works are to be completed by the Traditional Owners within a maximum of period of 1 (one) day of the Recovery Works commencing.
- (c) The Recovery Works will be performed over a single day unless the parties otherwise agree.

3.4 Commencement of Project Activities

QR may commence Project Activities in any part of the Project Area where the Recovery Works have been completed, provided QR has first received a Work Area Clearance report pursuant to clause 5.

4. Ancillary Works

4.1 QR may request Survey and Recovery

During construction of the Project, QR may need to construct Ancillary Works. QR may elect to engage the Traditional Owners to conduct a Cultural Heritage Survey and Recovery in respect of Ancillary Works Areas.

4.2 Notice by QR

If QR elects to conduct a Cultural Heritage Survey and Recovery in respect of an Ancillary Works Area, QR must give the Traditional Owners at least 7 days prior written notice. The notice (an *Ancillary Works Notice*) must set out in reasonable detail a description of the Ancillary Works, the location of the Ancillary Works Area, and the time when QR requires the Cultural Heritage Survey and Recovery to commence.

4.3 Response by Traditional Owners

The Traditional Owners will advise QR within 7 days of receiving an Ancillary Works Notice if they require a Cultural Heritage Survey and Recovery to be performed in respect of the Ancillary Works Area. If the Traditional Owners:

- (a) respond that they do not require a Cultural Heritage Survey and Recovery to be performed; or
- (b) do not respond within 7 days,

QR may proceed to perform the Ancillary Works without a Cultural Heritage Survey and Recovery being performed in respect of the Ancillary Works Area.

4.4 Performance of Cultural Heritage Survey and Recovery

If the Traditional Owners advise QR that they wish to perform a Cultural Heritage Survey and Recovery in respect of the Ancillary Works Area:

- (a) the Traditional Owners will provide two (2) TOFOs to conduct a Cultural Heritage Survey and Recovery of the Ancillary Works Area;
- (b) If reasonably requested by the Traditional Owners, QR will engage an archaeologist to assist the Traditional Owners to carry out the Cultural Heritage Survey and Recovery;
- (c) the Cultural Heritage Survey and Recovery will commence on the date nominated by QR in the Ancillary Works Notice; and
- (d) the TOFOs will carry out the Cultural Heritage Survey and Recovery expeditiously and within a time period agreed by the Parties, acting reasonably.

4.5 Performance of Ancillary Works

Once the Traditional Owners have carried out the Cultural Heritage Survey and Recovery of the Ancillary Works Area pursuant to this clause 4, QR may undertake the Ancillary Works, provided QR has first received a Work Area Clearance report pursuant to clause 5.

5. Work Area Clearance Reports

5.1 Provision of Reports

QR will arrange for the archaeologist or the TOFO, subject to their engagement as provided for in clause 3.2(b) and clause 4.4(b), to provide QR and the Traditional Owners with a Work Area Clearance Report in respect of each of:

- (a) the Recovery Works; and
- (b) any Cultural Heritage Survey and Recovery of an Ancillary Works Area.

QR will use its reasonable endeavours to have the archaeologist or TOFO provide the Work Area Clearance Report within 7 days of the completion of the relevant works.

5.2 Contents of Work Area Clearance Report

The Work Area Clearance Report will:

- (a) certify that all activities required by the Recovery Works or Cultural Heritage Survey and Recovery (as the case may be) have been substantially carried out and describe the activities;
- (b) specify the dates when the relevant Recovery Works or Cultural Heritage Survey and Recovery (as the case may be) were performed;
- (c) specify the details of who performed the relevant Recovery Works or Cultural Heritage Survey and Recovery (as the case may be);
- (d) describe the methodology used in carrying out the Recovery Works or Cultural Heritage Survey and Recovery (as the case may be);
- (e) describe the findings or results of the relevant Recovery Works or Cultural Heritage Survey and Recovery (as the case may be); and
- (f) identify any Monitor Areas and the basis for nominating the area as such.

6. Monitoring of Project Activities

6.1 Notification by QR

If QR intends to undertake Ground Breaking Activities in a Monitor Area, QR must first give the Traditional Owners 14 days prior written notice of its intention to undertake such Ground Breaking Activities and invite the Traditional Owners to provide TOFOs to monitor the Ground Breaking Activities. The notice (a *Monitor Notice*) must give a reasonable description of the Ground Breaking Activities and specify the date when QR intends to commence the activities.

6.2 Number of Monitors

The Traditional Owners will be entitled to provide one TOFO per work team to monitor the Ground Breaking Activities of QR in a Monitor Area.

6.3 Timing

The TOFO's must present themselves to QR at the Project Area on the date nominated by QR in the Monitor Notice for the commencement of the Ground Breaking Activities. The TOFO's may continue to monitor the Ground Breaking Activities for the duration of the activities or for so long as the activities are occurring in a Monitor Area (whichever is earlier).

6.4 Senior TOFO Support

- (a) At the preliminary stages of Field Works for the Monitor Area the CHRC may elect to invite a senior TOFO to assist TOFOs in preparing TOFOs for the Field Works. The senior TOFO will familiarise TOFOs with the area; coordinate TOFOs; make TOFOs aware of their duties; be available to liaise with Project Liaison Officers; and provide advice on the identification and recovery techniques necessary for the TOFOs to efficiently carry out the Field Works.
- (b) If, after Field Works have commenced in the Monitor Area, the TOFOs, acting reasonably, require the assistance of a senior TOFO to assist in the identification or recovery of Cultural Heritage then a senior TOFO may be invited to participate in the Field Works for this purpose.
- (c) The services of a senior TOFO shall not exceed 3 days in total during the Term of the Agreement, unless otherwise agreed between the parties.
- (d) Payment terms for the senior TOFO shall be \$650 per day or, where Field Work is performed for less than 8 hours on any day, \$80 per hour.
- (e) Travel and accommodation rates shall be consistent with those specified in clause 5.1 of the Agreement.

6.4 Discovery of Cultural Heritage during Monitoring

If a TOFO in the course of monitoring QR's Ground Breaking Activities discovers an item of Cultural Heritage, QR will cease its Project Activities within the reasonable vicinity of the Cultural Heritage find (being an area not greater than 25 metres in radius from the Cultural Heritage Find) to allow the TOFO a reasonable opportunity to collect the item of Cultural Heritage and, at the TOFO's election, either:

- (a) retain the collected item of Cultural Heritage for safe keeping by the Traditional Owners; or
- (b) relocate the collected item of Cultural Heritage to a location in the vicinity of, but outside, the Project Area.

7. Cultural Heritage found after Field Works

- (a) This clause 7 applies if Cultural Heritage is found within the Project Area after the Field Works have been completed.
- (b) QR must:
 - (i) give notice to the Traditional Owners as soon as possible after finding the Cultural Heritage (*Cultural Heritage Notice*); and

- (ii) subject to this clause 7 take all reasonable steps to preserve and protect the Cultural Heritage Find from further damage when undertaking the Project Activities in the vicinity of the Cultural Heritage.
- (c) A Cultural Heritage Notice must:
 - (i) contain a description of the Cultural Heritage Find; and
 - (ii) state that the Traditional Owners have 5 Business Days from the receipt date of the Cultural Heritage Notice to advise QR in writing (***Cultural Heritage Response Notice***) of whether a representative of the Traditional Owners (the ***TO Representative***) will inspect the Cultural Heritage Find with QR.
- (d) If requested by either QR or the Traditional Owners, an archaeologist may accompany QR and the TO Representative, to inspect the Cultural Heritage Find.
- (e) If QR does not receive a Cultural Heritage Response Notice within the time specified in clause 7(c)(ii), not due to a failure on the part of QR, QR may proceed to undertake Project Activities in the vicinity of the Cultural Heritage Find, subject to QR taking reasonable steps to preserve, protect or salvage the Cultural Heritage Find.
- (f) If QR receives a Cultural Heritage Response Notice within the time specified in clause 7(c)(ii), QR must meet with the TO Representative within 5 Business Days of receiving the Cultural Heritage Response Notice and inspect the Cultural Heritage Find .
- (g) If the TO Representative does not meet with QR within the time specified in clause 7(f), not due to a failure on the part of QR, QR may proceed to undertake Project Activities in the vicinity of the Cultural Heritage Find, subject to QR taking reasonable steps to preserve, protect or salvage the Cultural Heritage.
- (h) If QR and the TO Representative meet within the time specified in clause 7(f) and the TO Representative advises that the Traditional Owners wish to recover the Cultural Heritage to the extent that they are able to, QR will provide the Traditional Owners a reasonable opportunity to undertake such recovery works. However, any such recovery works need to be completed as soon as possible and in any event within 10 Business Days of the Traditional Owners receiving the notice pursuant to clause 7(b), unless QR agrees to a longer period in writing.
 - (i) If QR and the TO Representative meet within the time specified in clause 7(f) and TO Representative does not advise QR that the Traditional Owners wish to recover the Cultural Heritage, QR may proceed to undertake Project Activities in the vicinity of the Cultural Heritage Find, subject to QR taking reasonable steps to preserve, protect or salvage the Cultural Heritage.

8. Cultural Heritage of Major Significance

- (a) This clause 8 applies if Cultural Heritage of Major Significance is found in the Project Area or an Ancillary Works Area during the Field Works.
- (b) If the Traditional Owners consider, acting reasonably, a TOFO has found Cultural Heritage of Major Significance, they will notify QR immediately of the find.

- (c) If, after consulting with the Inspection Team, QR (acting reasonably) agrees that the find is Cultural Heritage of Major Significance, QR will pay the archaeologist an additional amount, to be agreed between the parties (acting reasonably) but not exceeding a maximum amount of \$2,000, to conduct further research into the Cultural Heritage of Major Significance. If necessary, QR will also extend the date for completion of the relevant Field Works to enable the archaeologist to complete the research of the Cultural Heritage of Major Significance.
- (d) The Traditional Owners acknowledge that the Project Area and the Ancillary Works Areas will be heavily impacted by the Project Activities, and that any Cultural Heritage not removed from the Project Area or Ancillary Works Area is likely to be damaged. Therefore, when the archaeologist has completed the research on the Cultural Heritage of Major Significance, the Inspection Team will recover the Cultural Heritage to the extent they wish to or are able to.
- (e) QR will instruct the archaeologist to include in the Work Area Clearance Report a report on the outcomes of the archaeologist's research on the Cultural Heritage of Major Significance.

9. Burial Remains

If any burial remains are encountered within the Project Area or an Ancillary Works Area, QR will comply with all relevant legal obligations in respect of those burial remains. Where QR stops any Project Activities in accordance with such legal obligations, to the extent they are legally able to, the parties will co-operate so that the remains may be recovered from the site to allow the Project Activities to recommence at the earliest opportunity.

10. Cultural Awareness

QR must use best endeavours to ensure that all of its employees and contractors performing Project Activities have been given appropriate information for the purpose of:

- (a) promoting knowledge, understanding of respect for the traditions and culture of the Traditional Owners;
- (b) creating familiarity with the obligations of QR under this Agreement;
- (c) creating familiarity with the obligations of QR under relevant State and Commonwealth legislation regarding cultural heritage; and
- (d) fostering good relations with the Traditional Owners.

QR must consult with the Traditional Owners about the nature and content of the information and any engagement of Traditional Owners for this purpose are subject to the funding terms contained within clause 6.4(d).

Schedule 2

Project Area

[insert plan and/or description of Project Area – being that part of the rail corridor which falls in the Traditional Owners native title claim area]



Executed in Queensland

Executed by Queensland Rail :

Director Signature

Director/Secretary Signature

Print Name

Print Name

Signed by [_____] for and on
behalf of himself/herself
and the Traditional Owners in the presence of:

Witness Signature

Signature

Print Name

Signed by [_____] for and on
behalf of himself/herself
and the Traditional Owners in the presence of:

Witness Signature

Signature

Print Name

Signed by [_____] for and on
behalf of himself/herself
and the Traditional Owners in the presence of:

Witness Signature

Signature

Print Name

Signed by [] for and
on behalf of himself/herself
and the Traditional Owners in the presence of:

Witness Signature

Signature

Print Name

Signed by [] for and on
behalf of himself/herself
and the Traditional Owners in the presence of:

Witness Signature

Signature

Print Name



Annexure A

Initial Cultural Heritage Assessment Report

[attach copy of survey report]

