

**MEMORANDUM OF SETTLEMENT**

- between -

**BHP BILLITON DIAMONDS INC.**  
(hereinafter referred to as the "Employer")

- and -

**PUBLIC SERVICE ALLIANCE OF CANADA**  
(hereinafter referred to as the "Union")

The parties agree the following terms and conditions shall form the basis of their Collective Agreement subject to ratification by their respective principals.

Amendments to the Collective Agreement expiring August 31, 2007 shall be made in accordance with the attached document titled "Collective Agreement Amendments". All other provisions of the Collective Agreement expiring August 31, 2007 are renewed.

Unless otherwise agreed, the provisions of this Memorandum of Settlement have force and effect upon date of ratification by the parties. The parties agree that the otherwise agreed to effective dates include the following provisions:

- |  |   |
|--|---|
| LOU - Performance-based Discretionary Incentive Plan | July 1, 2007                              |
| Appendix A, Paragraph E                              | September 1, 2007                         |
| Northern Social Justice Fund                         | each January of the Collective Agreement  |
| Appendix A, Paragraph I                              | each June 1st of the Collective Agreement |

Both parties agree to unanimously recommend these terms and conditions for ratification to their respective principals.

Signed at Yellowknife, Northwest Territories this 7th day of November 2007.

**FOR THE EMPLOYER**

**FOR THE UNION**

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## Collective Agreement Amendments

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### ***Identification of Parties on the Cover***

Describe Union as follows:

The Public Service Alliance of Canada  
(as represented by its Component, The Union of Northern Workers)  
Diamond Workers Local X3050  
("the Union")

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### ***Article 7 (Union Security)***

7.01 Amend to read:

All employees shall, as a condition of employment, become a member and maintain membership in the Union in good standing, except for those employees who elected to cease membership in the Union under the provisions of the collective agreement expiring August 31, 2007 and who have not subsequently joined the Union.

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### ***Article 9 (Union Representatives)***

9.03 Replace "name" with "names"

9.(new1) Append to Article:

The Employer shall provide the Union with a suitable, easily accessible, private room at the Ekati mine site for exclusive use as a Union office at no cost to the Union.

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### ***Article 10 (Information)***

10.01 Replace "three" with "three (3)"

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### ***Article 11 (Leave for Union Business)***

11.02(a) Replace "3" with "three (3)"

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***Article 12 (Management/Union Consultation Committee)***

Rename Article "Joint Union Management Committee"

Replace Article 12.01 with:

- (a) The Employer and the Union acknowledge the mutual benefits of joint consultation and agree to maintain a Joint Union Management Committee which will have as its objective meaningful consultation on matters of mutual interest, except issues that are the subject of a grievance.
- (b) The Committee shall consist of equal numbers of Union and Management Representatives and will meet at least every three (3) months, unless the Employer and the Union agree otherwise.
- (c) Minutes of every meeting will be prepared and distributed by Management prior to the next meeting, at which the minutes will be presented for review and adoption.
- (d) The Joint Union Management Committee has no authority to amend any terms of the Collective Agreement. This can only be accomplished by mutual agreement through a letter of understanding between the parties.

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***Article 13 (Grievance and Arbitration Procedure)***

13.(new1) Append to Article:

Alternate Dispute Resolution

- (a) The Employer and the Union recognize the benefits of resolving disputes in a cooperative manner with a minimum of formality.
- (b) Employees are encouraged to discuss areas of concern or complaint with their Team Leader or immediate supervisor on an informal basis prior to filing a grievance. An employee may be accompanied by a representative of the Union if he/she wishes.

- (c) At any time in the grievance procedure the parties may mutually agree to refer the grievance to an alternate dispute resolution ("ADR") process. If this is agreed to then the parties will agree on the terms of reference for the ADR process. ADR is intended to be expeditious, informal and cost-effective. The parties shall not be represented by legal counsel in ADR. Settlements achieved through the ADR process will be binding and recorded in minutes of settlement and on a without prejudice and without precedent basis. While ADR process is underway, the time limits set out for the grievance procedure are suspended; however, if the matter is not resolved within 28 days of it being referred to ADR, or such other time as is agreed to by the parties, then the matter will revert back to the normal grievance procedure at the point it was when first referred to ADR and the time limits set out therein will apply. At any time during the ADR process, either party can opt out of the ADR process and the matter will revert back to the normal grievance procedure at the point it was when first referred to ADR and the time limits set out therein will apply. Discussions within the context of ADR cannot be relied upon in the grievance procedure.

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***Article 19 (Vacation Leave)***

19.01(b) Delete

19.01(c) Delete

19.02 Amend to read:

Employees are entitled to take annual vacation without loss of pay after it has been earned in accordance with the following:

- (a) Employees with less than five years of service will earn vacation at the rate of fifteen (15) hours per month (180 hours per year);
- (b) Employees with five or more years of service will earn vacation at the rate of sixteen (16) hours per month (192 hours per year).

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***Article 21 (Bereavement Leave)***

21.01 Replace "clause" with "Article"

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**Article 25 (Severance, Layoff and Recall)**

- 25.03 Amend to read:
- (a) If a lay-off is necessary, the Employer will take into account the length of service of the employees involved.
  - (b) The Employer may take into account other factors such as:
    - (i) the necessary skills mix required by the business;
    - (ii) individual skills, proficiencies, and attitudes of employees;
    - (iii) individual employment records; and
    - (iv) prior job performance.
  - (c) The Employer will determine the weight to be accorded the factors taken into account, but will give the greatest weight to length of service.
  - (d) Notwithstanding the above, in all cases, the need to maintain the ratios of Northerners and Aboriginal employees mandated by the Agreements referred to above will take precedence over any other factor(s).

25.05 Replace "six months" with "twelve (12) months"

25.(new) Append to Article:

In the event the Employer is contemplating the layoff of one or more employees, the Employer will provide training for the affected employees where the Employer concludes that it is practical and meets the needs of its business.

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**Article 26 (Bargaining Unit Work)**

26.01 Append to clause:

As of the date of this Agreement it is not the intention of the Employer to contract out any work that directly results in the layoff of bargaining unit members.

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***Article 27 (Vacancies, Promotions, Job Postings, Transfers)***

27.01            Replace "Union Notice Board" with "Union notice board"

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***Article 31 (Sick Leave)***

The Employer's Short Term Disability policy of February 1, 2007 will be amended to reflect the following changes:

- employees to receive full (100%) salary and benefits from 1 – 30 calendar days
- employees to receive 85% of salary and benefits from 31 – 180 calendar days.

Note: The Employer will continue to administer the plan. A copy of the Employer's revised Short Term Disability policy is attached for reference.

31.01            Replace "August 1, 2005" with "November 7, 2007"

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***Article 34 (Pension)***

34.05            Amend to read:

The Joint Union Management Committee established under Article 12 will review and meaningfully consult on all information listed in Article 34.06 within the framework of existing contribution levels. The Joint Union Management Committee does not have the authority to make any changes to the pension plan.

34.06            Replace "Committee" with "Joint Union Management Committee"

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**Article (NEW – Northern Social Justice Fund)**

Insert new article titled

"Northern Social Justice Fund" before Article 37 as follows:

nsjf.01           The Employer will contribute \$10,000 in January of each calendar year of this Agreement to a Northern Social Justice Fund managed and administered jointly by the Employer and the Union through the Joint Union Management Committee. The Employer and Union will identify worthy social justice causes within the North and will work together in partnership to support and advance these causes to the joint credit of the parties.

The funds will be held in trust for the attainment of the objects of the Fund. The Union and Employer will each provide an equal number of representatives to serve as trustees of the Fund. The Joint Union Management Committee will strive to achieve consensus decision making on the use of the funds, but in the alternative decisions will be made by a majority of the trustees.

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**Article 36 (Employment Equity)**

36.04           Replace "Management/Union Consultation Committee" with "Joint Union Management Committee"

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**Article 37 (Duration)**

37.01           Amend to read:

The term of this agreement shall be from September 1, 2007 to August 31, 2011. The provisions of this agreement shall take effect on the date of ratification, unless another date is otherwise agreed to by the parties.

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**Appendix A (Salaries) Including Salary Range Table**

Para A           Amend to read:

For employees hired into the Bargaining Unit, the employee will be paid an annual salary within the range established for the appropriate classification in the attached table.

Para E Amend to read:

The Employer retains the discretion to adjust some or all salary ranges based upon prevailing market conditions, provided the minimum salary range is equal to eighty percent (80%) of the maximum for the classification. Employees under the minimum of a range as a result of a salary range adjustment shall have their salary increased into the adjusted salary range. No employee will have their salary reduced as a result of salary range adjustments.

Effective September 1, 2007 all employees below 80% of the maximum for their classification will have their salary increased to 80% of the maximum for their classification, and such salary increases will result in any retroactive adjustments to overtime, pension or other benefits.

*Note: The Employer intends to undertake further review of the salary ranges set out in Appendix A. It will consult with the Union in connection with this review.*

Para H Append to paragraph:

The Employer agrees to meaningfully consult with the Union on the application of any incentive compensation plans, and any changes to or discontinuance of such plans.

Para I Append to read:

Annual salaries will be adjusted on each June 1st of the collective agreement. No member of the bargaining unit will receive an annual salary increase less than the percentage change for the previous twelve month period of the Canadian Consumer Price Index (CPI) for the Northwest Territories plus one and one-quarter percent (1.25%) as determined by Statistics Canada (i.e. NWT CPI +1.25%). The Employer will advise the Union in writing each year of the percentage used in the annual salary increases.

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***(Letter of Agreement - Discretionary Incentive Programs)***

LOU - Discretionary Incentive Programs      Delete

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***(Return to Work Bonus)***

Return to Work Bonus      Delete

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*(NEW) Letter of Understanding – Performance-based Discretionary Incentive Plan*

The Employer is committed to meeting the challenge of ensuring a safe, long term, sustainable operation at predicted ore values of approximately \$70 per tonne. The Employer will implement an incentive plan to reward employees for performance that contributes to the achievement and surpassing of performance objectives.

The Employer will implement an incentive plan to be effective for each fiscal year of the collective agreement commencing July 1, 2007.

The Employer will identify Key Performance Indicators (KPI) (e.g. safety, unit production costs) which it will use to measure achievement during any period to which the incentive plan applies. The Employer will determine what Key Performance Indicators it will use to measure performance and the weight it will give to individual Key Performance Indicators. Key Performance Indicators shall be in the category of public domain information, which will be publicly released at the end of each fiscal quarter and concurrently provided to the Union.

For each Key Performance Indicator the Employer will establish three levels of achievement, referred to as the threshold level, the budget level, and the stretch level.

Prior to identifying the Key Performance Indicators, determining the weight to be given to them, and establishing the threshold, budget and stretch achievement levels, the Employer will meet with the Union to meaningfully consult on the application of this Discretionary Incentive Plan. The Employer will also meet with the Union at least once every six months to review the Key Performance Indicators and whether to add or delete from the list of Key Performance Indicators, revise the target levels, or to revise their respective weightings.

If, during any period to which the incentive plan applies the mine achieves the threshold level of performance for a Key Performance Indicator, then eligible employees will receive an incentive payment equal to five percent (5%) of the employee's base salary earned during the period, as determined below, multiplied by the weighted value of that Key Performance Indicator. If the mine achieves the budget level of performance, then the amount increases to seven and one-half percent (7.5%) of base salary earned during the period multiplied by the weighted value; and if the mine achieves stretch level of performance, the amount increases to twelve and one-half (12.5%) of base salary earned during this period multiplied by the weighted value.

The bonus payment will be a percentage of each eligible-employee's base salary earned in the period to which the incentive plan applied. Base salary earned includes vacation, sick leave / short term disability benefits received for the first thirty (30) calendar days of absence, but excludes pay for things such as allowances, premiums, overtime, sick leave / short term disability benefits received after the first thirty (30) calendar days of absence and long term disability benefits. Any required deductions will be withheld at source.

The threshold, budget and stretch level targets will be universally and uniformly applied (the same for union and non-union personnel, including managerial employees, of the mine).

Assessment of mine performance will be determined by reference to the executive summary of monthly performance that is generated by the Employer and forwarded to its head office. The Employer will provide the Union with Key Performance Indicators excerpts of these records to a degree sufficient to demonstrate the application of the KPIs to the incentive plan, after the end of each fiscal quarter when such information has been released into the public domain by the Employer. The data on which the Key Performance Indicators are based are not subject to review through the grievance procedure.

Notwithstanding Appendix "A" – Salaries, paragraph H, this incentive plan shall continue throughout the life of this Collective Agreement.

Incentive periods will always start and end on a date that coincides with a fiscal quarter and may extend over one, two, three or four consecutive quarters.

In order to be eligible for receipt of the incentive bonus payment for any incentive period, an employee must be employed on the last day of the applicable incentive period. However, employees who, prior to the end of the incentive period, are laid off or whose employment is terminated by the employer other than for just cause will also be eligible. Employees who resign from their employment prior to the end of the incentive period are not eligible.

**Examples of how the incentive plan may work:**

Assume that there are two Key Performance Indicators chosen and they are Safety and Production Costs. Both have equal weight (that is the weighting for each is 50%). The incentive plan is to operate over an entire fiscal year.

The performance levels for Safety are set at:

Threshold:	TRIFR of 10.2	
Budget:	TRIFR of 8.2	<b>EXAMPLES</b>
Stretch:	TRIFR of 6.2	

The performance levels for Production Costs are set at:

Threshold:	\$90/tonne	
Budget:	\$80/tonne	<b>ONLY</b>
Stretch:	\$70/tonne	

For an employee who earned \$70,000 in regular salary in the fiscal year, the following are examples of the incentive payments made based on various performance situations.

- A. The mine makes stretch levels for both KPI's:
  - the incentive payment for safety is 12.5% of the annual earnings, or \$8,750, multiplied by 50%, which equals \$4,375
  - the incentive payment for production costs is also 12.5% of annual earnings, multiplied by 50%, which also equals \$4,375
  - the total incentive payment is \$8,750 (\$4,375 plus \$4,375)
  
- B. The mine makes stretch level for Safety and budget level for Production Costs:
  - the incentive payment for safety is the same as above, \$4,375
  - the incentive payment for ore processed is 7.5% of annual earnings, multiplied by 50%, which is \$2,625
  - the total incentive payment is \$7,000 (\$4,375 plus \$2,625)
  
- C. The mine makes threshold level for both Safety and Production Costs:
  - the incentive payment for safety is 5% of earnings, multiplied by 50%, which equals \$1,750
  - the incentive payment for ore processed is the same, \$1,750
  - the total incentive payment is \$3,500



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## Short Term Disability

**Owner:** Human Resources Department

**Approver:** VP of Human Resources

**Creation Date:**

**Revision Date:**

November 7, 2007

### Scope

All Permanent Full-Time and Fixed-Term employees are eligible to take reasonable paid sick leave when they are unable to attend work because of non work-related illness or injury. Employees are eligible for sick leave from the start of their employment. Employees who meet the criteria will continue to receive full base salary and benefits, including any applicable Site and Northern Travel Allowance for a period of up to 30 calendar days. Employees who are unable to return to work after 30 calendar days and continue to meet the criteria for sick leave will receive 85% of base salary and benefits for 31 to 180 calendar days. Sick leave is intended to cover employee's personal illness only. Employees have the option of using any accrued Vacation accrual should they require time away from work to care for a sick child or other family member.

Employees will maintain their extended health, insurance, and pension while receiving full or partial base salary and benefits through Short Term Disability.

The Ekati incentive plan pay-out and any other current and future bonus programs may be impacted when an employee is on Short Term Disability. See program details for further information.

### Any sick leave is subject to the following conditions:

1. Sick leave taken by an employee that exceeds three consecutive days will require a note from a physician, community nurse, or nurse practitioner certifying that the employee was unable to work due to illness or injury. A note may be required after one day at the discretion of the supervisor.
2. An employee who is unable to provide timely medical proof of illness or injury will be placed on unpaid leave for the duration of the absence and may be subject to corrective action up to and including termination of employment if the leave is not justified. Unpaid leave will be reversed upon receipt of satisfactory medical documentation.
3. Employees must submit a completed Return to Work form after they have missed 3 or more days due to injury or illness. Employees may be required to submit a completed Return to Work form for absences less than 3 days due to injury or illness at the discretion of the Physician Assistant.
4. At the BHP Billiton Diamonds Inc.'s (BBDI) discretion it may, at anytime, require proof of illness or medical restrictions including a full medical assessment from any employee who is absent due to injury or illness.
5. At the discretion of BBDI, the employee must provide the Physician Assistant with written evidence from a physician, community nurse, or nurse practitioner certifying that the employee suffers from a medical condition that excludes the employee from attending

work, and the period for which the absence is expected; as well as detailing any work restrictions or modifications that may be appropriate.

6. Employees will also be required to provide information related to the progress of the medical condition and an estimate of when it can be anticipated that they will return to work and perform modified or resume full duties.
7. An employee receiving WCB compensation is not eligible for STD for the same period.

### **Accountabilities**

1. **Employees are responsible for maintaining regular contact with their supervisor** and the Physician Assistant and must provide appropriate medical updates, documentation and anticipated return to work date to the Physician Assistant as required.
2. When requested, employees are required to provide return to work documentation prior to returning to work.
3. Employees must participate in any appropriate early return to work or modified return to work programs consistent with their medical condition.
4. Supervisors will inform the Time Administrators when an employee is on Short Term Disability (STD).
5. Supervisors are to maintain contact with employees on STD leave to ensure that the company has up to date information on progress and an anticipated return to work date.
6. Supervisors are responsible for working with the Physician Assistant to keep informed of employee status and the possibility for modified work, and ensuring the employee has supplied the appropriate medical information.
7. Supervisors are responsible for ensuring the Time Administrators and Human Resources are kept up to date on the employee STD status.
8. The Physician Assistant is responsible for providing direction and advice to employees and supervisors on medical issues. The Physician assistant will work with supervisors and HR to explore modified work options where appropriate.

### **Application for Short Term Disability**

1. Employees must inform their supervisor and the Physician Assistant as soon as they know they are unable to attend work due to illness or injury, the expected date of return, and forward any relevant information and documentation to the Physician Assistant.
2. The Physician Assistant must receive appropriate medical information from the employee.
3. The Physician Assistant will assess whether there is sufficient medical documentation from the employee and will contact the employee if additional information is required.
4. Employees must submit a completed Return to Work form after they have missed 3 or more days due to injury or illness. Employees may be required to submit a completed Return to Work form for absences less than 3 days due to injury or illness at the discretion of the Physician Assistant.
5. In circumstances where an employee is off work on an approved STD leave and returns for a period of time less than 90 calendar days and then must take additional sick leave, the original date at which they commenced STD leave will be the effective date for the start of STD, provided the absence is due to the original illness or injury.
6. In the event that an employee's medical condition prevents them from returning to work for 180 calendar days or more, the employee should refer to the Long Term Disability benefit which addresses sick leave that exceeds 180 calendar days.