

***Pro forma* section 31 Deed for Exploration Licences**

pursuant to section 31 of the *Native Title Act* 1993 (Cth)

Version 2: December 2003

Foreword

1. This template or '*pro forma*' Deed has been negotiated between Native Title Services Victoria ('NTSV'), the State of Victoria ('the State'), and the Victorian Minerals & Energy Council ('VMEC'). NTSV, the State and VMEC consider that this Deed is an acceptable agreement under section 31(1)(b) of the *Native Title Act* 1993 (Cth) ('NTA'), for the grant, renewal, amalgamation or variation of an exploration licence, under the *Mineral Resources Development Act* (1990) (Vic), and which is subject to the right to negotiate process under the NTA. It is intended to assist parties to expedite and complete negotiations for particular exploration projects. Note that the State does not grant an exploration licence until a section 31 Deed has been signed by all parties under the NTA, or a valid ILUA has been registered, and all other statutory and regulatory requirements have been met in relation to the licence.
2. This document consists of a Deed, with attached Schedules. Attachments 1 and 2 to this Deed contain optional clauses for parties to consider in their negotiations, but *do not* form part of this Deed unless the parties agree otherwise. To assist parties to interpret this Deed, notes and optional clauses appear in red and blue text respectively.
3. Parties to particular negotiations may wish to vary this document, however NTSV, the State and VMEC reserve their positions regarding any variations.
4. NTSV, the State and VMEC have agreed to review this document at the request of NTSV, the State, or VMEC every 12 months or earlier if NTSV, the State and VMEC agree. This document is **Version 2** of the *pro forma* section 31 Deed for exploration licences. Only the current version of the *pro forma* should be used in negotiations.
5. It is standard practice for the Native Title Applicants and the proponent to also negotiate a project consent deed, which is separate to this document.
6. This *pro forma* Deed relates to mineral exploration. If a proponent wishes to apply to the State for a mining licence under the right to negotiate provisions in Subdivision P of Division 3 of Part 2 of the NTA, the proponent, Native Title Applicants and the State are required to negotiate in good faith towards the grant of a mining licence.
7. This document is not intended as legal advice, and NTSV, the State and VMEC make no representations, either express or implied, as to the suitability of this document for any particular purpose. No liability will be accepted by NTSV, the State or VMEC for any use of this document or reliance by any person on its contents. Negotiating parties should seek their own legal advice in respect of any agreements they are considering that concern their own interests.

***Pro forma* Section 31 Deed for Exploration Licences**

pursuant to section 31 of the *Native Title Act* 1993 (Cth)

Between

[insert names of Native Title Applicants]

on behalf of the **<ABC>** People Native Title Claim Group

and

The State of Victoria

and

XYZ Company [Pty Ltd] [ACN]

Table of Contents

1. Introduction	1
2. Commencement and Term.....	2
3. The Exploration Licence	2
4. Warranties	2
5. Acknowledgments	2
6. <i>Native Title Act 1993 (Cth)</i>	3
7. Public Relations	3
8. Resolving Disputes	4
9. Covenants	5
10. Assignment.....	6
11. Variation	7
12. Severance	7
13. Entire Agreement	7
14. Governing Law	7
15. Counterparts.....	8
16. Liability.....	8
17. Waiver	8
18. Independent Legal Advice.....	8
19. Further co-operation	9
20. Deed to benefit and bind successors	9
21. Costs	9
22. Notices	9

23.	State and NTSV not liable in relation to Project Consent Deed.....	10
24.	Deed and Project Consent Deed not conditions of grant.....	10
25.	Section 31 Deed prevails.....	10
26.	Definitions and Interpretation	10
	<i>Attachment 1: Sealing Clauses</i>	I
	<i>Option 1</i>	I
	<i>Option 2</i>	II
	<i>Option 3</i>	III
	<i>Option 4</i>	IV
	<i>Option 5</i>	V
	<i>Option 6</i>	VI
	<i>Option 7</i>	VII
	<i>Option 8</i>	VIII
	<i>Attachment 2: Additional Clauses for Optional Insertion</i>	IX
	Schedule 1: Notices.....	16
	Schedule 2: The Exploration Licence Application.....	17
	Schedule 3: The Licence Area	18

1. Introduction

- 1.1 The proponent* seeks the grant* by the State* of the Exploration Licence* pursuant to the *Mineral Resources Development Act 1990* ('MRDA'*), and has lodged Exploration Licence Application No.* <insert number> in respect of land and/or waters ('the Licence Area'*) covered by this Deed*.
- 1.2 The Native Title Applicants* for the <ABC> People Native Title Claim Group assert that they hold native title* over land and/or waters within the Licence Area, and that they have rights and obligations to speak for and protect these lands and/or waters in accordance with traditional laws and customs.
- 1.2.1 The Native Title Applicants have filed the native title determination application* in the Federal Court pursuant to section 13(1) of the *Native Title Act 1993* (Cth) ('NTA'*) over land and/or waters within the Licence Area. That native title determination application has the Federal Court matter number <insert number>.
- 1.2.2 The native title determination application was accepted for registration under section 190A of the NTA, on <insert date>.
- 1.2.3 The State is a respondent party to the native title determination application pursuant to section 84(4) of the NTA.
- 1.3 The State proposes to grant the proponent the Exploration Licence under the MRDA, subject to the parties* obtaining certainty as to the validity of the grant of the Exploration Licence in accordance with Division 3, Part 2 of the NTA.
- 1.4 The parties have negotiated in good faith under section 31 of the NTA. As a result of those negotiations, the parties agree to sign this Deed under which the Exploration Licence may be validly granted.
- 1.5 The Native Title Applicants have agreed that the proponent may exercise its rights under the Exploration Licence, and the proponent has agreed to exercise those rights (and undertake certain other actions) in accordance with the provisions of this Deed and any applicable laws*, and to accord respect for the rights and interests of the Native Title Claim Group*.

* Defined term – see 'Definitions and Interpretation' clause.

1.6 This Deed is made under section 31(1)(b) of the NTA.

2. Commencement and Term

2.1 This Deed takes effect from the day it is executed by all parties (in accordance with clause 15), and continues to operate until such time as all parties agree to release each other and every other party from their respective rights and obligations arising under this Deed.

3. The Exploration Licence

3.1 Subject to compliance by the parties with the provisions of this Deed, the Native Title Applicants agree to:

3.1.1 the grant by the State under the MRDA of the Exploration Licence to the proponent and to any consent* required by or on behalf of the proponent pursuant to the Exploration Licence; and

3.1.2 the use of the Exploration Licence and of any consent required pursuant to the Licence, by the proponent.

4. Warranties

4.1 The State and the proponent represent and warrant that they are authorised and have capacity to execute this Deed and to bind themselves.

4.2 The Native Title Applicants represent and warrant that they are authorised to execute this Deed for and on behalf of the Native Title Claim Group. The Native Title Applicants agree that this Deed binds them and the other members of the Native Title Claim Group.

5. Acknowledgments

5.1 The parties acknowledge that:

5.1.1 they have negotiated in good faith for the purposes of section 31(1)(b) of the NTA;

* Defined term – see 'Definitions and Interpretation' clause.

- 5.1.2 neither the execution of this Deed, nor the grant of the Exploration Licence within the Licence Area constitutes recognition by the proponent or the State that native title rights and interests* exist within the Licence Area, or are held by the Native Title Claim Group;
- 5.1.3 sections 41(1) and (2) of the NTA apply to this Deed; and
- 5.1.4 the non-extinguishment principle, as defined in section 238 of the NTA, applies to the grant of the Exploration Licence, and any work done pursuant to such Licence.

5.2 Each of the parties agrees that their or its respective rights or obligations under this Deed are not dependent upon or subject to any finding, declaration, determination, order or other form of decision made or to be made by the National Native Title Tribunal*, the Federal Court or any other judicial or administrative body regarding the existence, nature or scope of native title in respect of the Licence Area or any part of that Area, and that these rights and obligations will continue to have effect in accordance with their terms despite any such finding, declaration, determination, order or other form of decision so made or to be made.

6. Native Title Act 1993 (Cth)

- 6.1 The proponent and the Native Title Applicants appoint the State as their agent for the purpose of:
 - 6.1.1 giving a copy of this Deed to the National Native Title Tribunal as soon as practicable after execution of this Deed by all parties, under section 41A(1)(a) of the NTA; and
 - 6.1.2 advising the Minister* in writing of the making of this Deed, under section 41A(1)(b) of the NTA.

7. Public Relations

- 7.1 Following execution of this Deed, the parties agree to work together to develop joint public and/or media statements regarding:

* Defined term – see 'Definitions and Interpretation' clause.

- 7.1.1 the fact that an agreement has been reached between the parties;
- 7.1.2 the fact that the 'right to negotiate' provisions of the NTA can be used successfully; and
- 7.1.3 the benefits of establishing a regime of co-existence between the parties.

7.2 The parties agree not to make any public and/or media statements in regard to this Deed, or the negotiation process or information discussed leading to its execution, except in accordance with this clause, or such other arrangements as may be agreed between all of the parties.

8. Resolving Disputes

8.1 The parties to any dispute will follow the processes set out in this clause 8 below.

Discussions

8.2 If a dispute arises, the relevant parties to a dispute agree to first meet and hold discussions in good faith in an effort to resolve the dispute, before seeking mediation under sub-clause 8.3.

- 8.2.1 The process in sub-clause 8.2 will be initiated by any party to the dispute serving a notice on any other party or parties requiring that the relevant parties meet within 14 days of the date of the notice to hold discussions under sub-clause 8.2.

Mediation

8.3 If the dispute is not resolved under sub-clause 8.2 within 28 days of the date of the notice under sub-clause 8.2.1 being served, any party to the dispute will give the other party or parties a notice requiring that an attempt be made to resolve the dispute with the assistance of a mediator to be appointed by the agreement of the parties. If the parties do not agree on a mediator within 7 days after the notice is given, a request will be made by either party to the Chairman of the Victorian Chapter of The Institute of Arbitrators and Mediators Australia to appoint a mediator suitably expert in the matters subject to dispute. The mediation will be conducted in accordance with sub-clause 8.4.

* Defined term – see 'Definitions and Interpretation' clause.

8.3.1 The parties to the dispute must co-operate fully with any reasonable requests of the mediator.

8.3.2 The parties to the dispute must pay an equal share of the mediator's fees and expenses, unless the mediator otherwise directs.

8.4 The mediator will decide how to enquire into the matter, and acting as an independent expert and not an arbitrator, the mediator will (for the purposes of assisting the parties to resolve the dispute) give the parties to the dispute a written report within 28 days of being appointed or within such further time as those parties may agree.

Arbitration

8.5 If the dispute is not resolved within 14 days of a report being given to the parties under sub-clause 8.4, any party to the dispute must give the other party or parties a notice requiring that the dispute be resolved by an arbitrator suitably expert in the matters subject to dispute, to be appointed by the Chairman of the Victorian Chapter of The Institute of Arbitrators and Mediators Australia. Each of the parties must co-operate fully with any reasonable requests of the arbitrator. The arbitration is to be conducted in accordance with the Institute's Rules for the Conduct of Commercial Arbitrations. Those rules and the arbitrator's decision are binding on the parties. The parties agree to accept and to comply in good faith with the arbitrator's decision.

8.5.1 The parties to the arbitration must pay an equal share of the arbitrator's fees and expenses, unless the arbitrator otherwise directs.

8.6 Except in circumstances where a binding arbitrated decision has been given under sub-clause 8.5, the parties agree that any dispute resolution process undertaken by them in accordance with this clause 8 shall be without prejudice to the parties' rights to apply for any other order, relief or remedy (including injunctive or declaratory relief) against each other and any other person that may be available to them at law or in equity.

9. Covenants

9.1 Without limiting any other express or implied obligation under this Deed, the Native Title Applicants covenant with the State and the proponent not to take any action which:

* Defined term – see 'Definitions and Interpretation' clause.

9.1.1 challenges or disputes, or has the effect of challenging or disputing the validity of this Deed, or that this Deed constitutes an agreement under section 31(1)(b) of the NTA;

9.1.2 challenges or disputes, or has the effect of challenging or disputing the validity of any Exploration Licence validly granted in accordance with the MRDA, or any other action validly taken by the State in authorising the exploration* under this Deed; and/or

9.1.3 unlawfully affects any activity required or authorised by the Exploration Licence, the MRDA or any other applicable laws.

9.2 The Native Title Applicants shall not be liable for any unintentional breach of the covenants referred to in clause 9.1. The onus of proving that any such breach was unintentional shall rest on the Native Title Applicant who is alleged to have breached the covenant.

10. Assignment

10.1 Subject to sub-clause 10.2 and any applicable laws, the proponent may at its absolute discretion assign, transfer, or novate the whole or any part of its interests in or obligations under (as the case may be) the Exploration Licence, the exploration, or this Deed.

10.2 The proponent must not assign, transfer or novate any of its interests or obligations referred to in sub-clause 10.1, except to a person who agrees to execute a deed under which it is bound by this Deed, as if it were a party to it. Where such a deed is executed, the proponent will provide a copy of that deed to the Native Title Applicants.

10.3 In the event that:

10.3.1 the Federal Court makes a determination that native title exists over the Licence Area, and is held by the Native Title Claim Group or any of them; and

10.3.2 a registered native title body corporate* is created by an entry in the National Native Title Register* (under section 197 and section 193(2)(d)(iii) of the NTA) of

* Defined term – see 'Definitions and Interpretation' clause.

the details of any prescribed body corporate that holds the native title on trust or that is determined under section 57 in relation to the native title;

the Native Title Applicants shall use their best endeavours to assign this Deed to that registered native title body corporate, provided that the registered native title body corporate executes a deed under which it is bound by this Deed as if it were a party to it.

11. Variation

11.1 This Deed can only be varied by the agreement of the parties in writing.

12. Severance

12.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

13. Entire Agreement

13.1 This Deed supersedes any prior representation, understanding or arrangements made by the parties in relation to its subject matter, whether orally or in writing.

14. Governing Law

14.1 This Deed is governed by and is to be construed in accordance with the laws of the Commonwealth of Australia and the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any other courts competent to hear appeals from those courts. Any proceedings commenced will be issued in the State of Victoria.

* Defined term – see 'Definitions and Interpretation' clause.

15. Counterparts

15.1 This Deed is properly executed if each party executes either this Deed, or identical counterpart Deeds. In the latter case, this Deed takes effect when the separately executed Deeds are exchanged between the parties. All counterparts taken together will constitute one instrument.

16. Liability

16.1 The Native Title Applicants agree that all liabilities and obligations imposed upon them and other members of the Native Title Claim Group by this Deed are imposed upon them and each member of the Native Title Claim Group jointly and severally.

16.2 The proponent agrees that all liabilities and obligations imposed upon it by this Deed are imposed upon it jointly and severally.

17. Waiver

17.1 The failure of a party at any time to require performance of any obligation under this Deed is not a waiver of that party's right:

17.1.1 to insist on performance of, or to claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and

17.1.2 at any other time to require performance of that or any other obligation under this Deed.

18. Independent Legal Advice

18.1 The parties acknowledge that they have had the benefit of independent legal advice with respect to all aspects of this Deed.

* Defined term – see 'Definitions and Interpretation' clause.

19. Further co-operation

19.1 The parties must do anything (including executing any agreement) which another party reasonably requires of them in order to give full effect to this Deed and the transactions it contemplates.

20. Deed to benefit and bind successors

20.1 This Deed continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party's rights and obligations are assigned, transferred, or novated in accordance with this Deed.

21. Costs

21.1 Unless otherwise agreed by the parties, each party will pay their own legal costs and other expenses for and incidental to the preparation, negotiation and completion of this Deed.

22. Notices

22.1 Subject to this Deed, any notice, request, consent, proposal, or other communication ('notice, etc.') must be in writing and signed by the party giving it. A notice, etc. is only given or made if it is:

- delivered or posted to that party at the address in **Schedule 1**; or
- faxed to that party at the fax number in **Schedule 1**.

Parties must notify each other within 7 days of any change of address or fax details.

22.2 A notice, etc. is to be treated as given or made at the following time:

- *If it is delivered*, when it is left at the relevant address.
- *If it is sent by post*, 2 business days after it is posted.

* Defined term – see 'Definitions and Interpretation' clause.

- *If it is sent by fax*, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

If a notice, etc. is delivered, or an error free transmission report in relation to it is received by a party after business hours*, it will be treated as having been given or made at the beginning of normal business hours on the next business day.

23. State and NTSV not liable in relation to Project Consent Deed

- 23.1 The Native Title Applicants and the proponent agree that neither the State nor NTSV* nor their officers, employees or agents have any obligation or liability whatsoever in connection with the rights and obligations of the Native Title Applicants and the proponent under any project consent deed*.

24. Deed and Project Consent Deed not conditions of grant

- 24.1 The parties agree that the provisions of this Deed and of any project consent deed are not conditions of the grant of any Exploration Licence under the MRDA or any other applicable laws.

25. Section 31 Deed prevails

- 25.1 The parties agree that the provisions of this Deed prevail over the provisions of any project consent deed to the extent of any inconsistency.

26. Definitions and Interpretation

- 26.1 In this Deed:

“applicable laws” means every law and regulation (whether of the Commonwealth or of the State) from time to time in operation in the State which is applicable to the exploration, and without limiting the generality of the foregoing, includes any laws relating to native title, mining, the environment*, or Aboriginal cultural heritage.

* Defined term – see ‘Definitions and Interpretation’ clause.

“**business hours**” means the hours between 9.00 a.m. and 5.00 p.m. Victorian time, excluding weekends and Victorian public holidays.

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

“**Deed**” means this Deed including its Schedules*. *<Note: the Attachments to this Deed are not binding and contain options that do not form part of this Deed unless agreed by the parties.>*

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

“**exploration**” has the same meaning given to that term in section 4 of the MRDA, being exploration for minerals and includes:

- conducting geological, geophysical and geochemical surveys;
- drilling;
- taking samples for the purposes of chemical or other analysis;
- extracting minerals from land, other than for the purpose of producing them commercially; and
- in relation to an exploration licence, anything else (except mining) that is specified in the Exploration Licence.

“**Exploration Licence**” means the Exploration Licence that is applied for by the proponent and is proposed to be granted and registered by the State pursuant to the MRDA, being the proposed licence designated by the State as Exploration Licence Application No. **<insert number>**. “**Exploration Licence**” also includes any renewal, amalgamation or variation of the Exploration Licence pursuant to the MRDA or any applicable laws.

* Defined term – see ‘Definitions and Interpretation’ clause.

“**Exploration Licence Application No.**” means the application by the proponent for an Exploration Licence under the MRDA being Exploration Licence Application No. <insert number> a copy of which is set out in **Schedule 2**.

“**grant**” or “**granted**” refers to the grant, renewal, amalgamation or variation of the Exploration Licence by the State pursuant to the MRDA. The definition is intended to cover a renewal, amalgamation or variation where the Licence Area and/or term is extended or additional rights in the Exploration Licence are created.

“**Licence Area**” means the area the subject of the Exploration Licence, a map of which is set out in **Schedule 3**.

“**Minister**” means the Minister responsible for the grant of the Exploration Licence pursuant to the MRDA.

“**MRDA**” means the *Mineral Resources Development Act 1990 (Vic)*.

“**National Native Title Register**” has the same meaning given to that term in section 253 of the NTA.

“**National Native Title Tribunal**” has the same meaning given to that term in section 253 of the NTA.

“**native title**” has the same meaning given to that term in section 223 of the NTA.

“**Native Title Applicants**” means the registered native title claimants (as defined in section 253 of the NTA) on behalf of the <ABC> People Native Title Claim Group being those persons so recorded at the date of this Deed on the Register of Native Title Claims kept by the Native Title Registrar* under the NTA.

“**Native Title Claim Group**” means those persons described in Schedule A of native title determination application and includes the Native Title Applicants.

“**native title determination application**” means native title determination application no. <insert number> on behalf of the <ABC> People Native Title Claim Group.

“**Native Title Registrar**” has the same meaning given to that term in section 253 of the NTA.

* Defined term – see ‘Definitions and Interpretation’ clause.

“**native title rights and interests**” has the same meaning given to that term in section 223 of the NTA.

“**NTA**” means the *Native Title Act* 1993 (Cth) as amended.

“**NTSV**” means Native Title Services Victoria Ltd, being the body performing functions of a representative Aboriginal/Torres Strait Islander body for Victoria, under section 203FE of the NTA, and its successor body or bodies, if any (including any body established under Part 11 of the NTA).

“**party**” or “**parties**” means a party to this Deed and that party’s successors, permitted assignees, executors, administrators and substitutes.

“**project consent deed**” means the deed of agreement between the proponent and the Native Title Applicants in relation to the grant of the Exploration Licence, dated **<insert date>**.

“**proponent**” means each person who, from time to time, holds a legal or beneficial interest in the Exploration Licence.

“**registered native title body corporate**” has the same meaning given to that term in section 253 of the NTA.

“**Schedule**” means the Schedules to this Deed.

“**State**” means the State of Victoria and all its instrumentalities.

26.2 In this Deed, unless the contrary intention appears:

- the definitions in contained in sub-clause 26.1 apply to this Deed and the Schedules; **<Note: the definitions also apply to the Attachments.>**
- a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- the meaning of general words is not to be limited by the meaning of accompanying specific words;

* Defined term – see ‘Definitions and Interpretation’ clause.

- the singular includes the plural and vice versa;
- a reference to an individual or person includes a company, corporation, partnership, firm, joint venture, association (whether incorporated or not), body, authority, trust, state or government and vice versa;
- a reference to a clause, sub-clause, or schedule, is to a clause, sub-clause, or schedule of or to this Deed;
- the Introduction forms part of this Deed;
- the Schedules form part of this Deed;
- a reference to any agreement, document or deed is to that agreement, document or deed (and, where applicable, any provisions) as amended, novated, supplemented or replaced from time to time;
- where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- the reference to 'business days' in the 'Notices' clause excludes a Saturday, Sunday or public holiday in Victoria;
- headings are for convenience or reference only, and do not affect the interpretation of this Deed;
- a reference to a Minister, department, authority, body or person includes the Minister, department, authority, body or person for the time being performing the functions of such Minister, department, authority, body or person;
- an agreement, representation or warranty on the part of or in favour of 2 or more persons binds or is for the benefit of them jointly and severally; and
- any monetary references are to Australian currency.

26.3 This Deed shall be governed by and construed in accordance with applicable laws and the terms and conditions of this Deed shall apply to the full extent that they are capable of operating concurrently with applicable laws.

* Defined term – see 'Definitions and Interpretation' clause.

Attachment 1: Sealing Clauses

<Note: the correct form of sealing clause for a corporate proponent in accordance with section 127 of the Corporations Act 2001 (Cth) is set out in options 1 – 7 below. For an individual, option 8 should be used. The type of corporate sealing clause to use will depend on the constitution of the relevant company, and who is proposing to sign the Deed – eg power of attorney, sole director, or signed under seal, etc. The proponent is advised to seek legal advice on this matter.>

Option 1

<Note: to be used if a company has a common seal and 2 directors who are present to witness the execution of the Deed (s127(2)(a) Corporations Act 2001 (Cth)).>

The common seal of **<[insert company name]**)
(ACN)> was affixed in accordance with)
its constitution in the presence of **<.....>** and)
<.....> <insert directors' names>:)

.....
(Signature of director)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 2

<Note: to be used if a company has a common seal and a director and a company secretary who are present to witness the execution of the Deed (s127(2)(b) Corporations Act 2001 (Cth)).>

The common seal of **<[insert company name]**)
(ACN) was affixed in accordance with)
its constitution in the presence of **<.....>** and)
<.....> <insert name of director and)
company secretary>:)

.....
(Signature of company secretary)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 3

<Note: to be used if a proprietary company has a common seal, and a sole director who is also the sole company secretary (s127(2)(c) Corporations Act 2001 (Cth)).>

The common seal of **<[insert company name]**)
(ACN)> was affixed in accordance with)
its constitution in the presence of <.....>)
<insert name of director >:)

.....
(Signature of sole director/secretary)

.....
(Full name in print)

Date:/...../.....

Option 4

<Note: to be used if the company does not want to affix its common seal (or does not have one) and 2 directors are present to execute the Deed (s127(1)(a) Corporations Act 2001 (Cth)).>

Executed by <[insert company name] (ACN ...)
... ..> in accordance with section 127(1)(a) of)
the Corporations Act 2001 (Cth) in the presence)
of <.....> and <.....> <insert directors')
names>:)

.....
(Signature of director)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 5

<Note: to be used if the company does not want to affix its common seal (or does not have one), and a director and company secretary are present to witness the execution of the Deed (s127(1)(b) Corporations Act 2001 (Cth)).>

Executed by **<[insert company name]**)
(ACN) in accordance with section)
127(1)(b) of the *Corporations Act 2001 (Cth)* in)
the presence of **<.....>** and **<.....>** **<insert**)
name of director and company secretary>:)

.....
(Signature of company secretary)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 6

<Note: to be used if a proprietary company does not want to affix its common seal (or does not have one), and the company has a sole director who is also the sole company secretary (s127(1)(c) Corporations Act 2001 (Cth)).>

Executed by **<[insert company name]**)
(ACN) in accordance with section)
127(1)(c) of the *Corporations Act 2001* (Cth) in)
the presence of **<.....>** **<insert name of**)
director>:)
(Signature of sole director/secretary)

.....
(Full name in print)

Date:/...../.....

Option 7

<Note: to be used if the Deed is to be executed by a person to whom the company has granted a power of attorney to execute this class of document. [NB. the person executing the document must provide a copy of the relevant power of attorney.]>

Executed by <[insert company name])
(ACN)> by its attorney <insert)
**attorney's nameattorney dated <.....> who certifies)
that at the date of signing he/she has not)
received a notice of revocation by the grantor,)
in the presence of <insert name of witness>:)**

.....
(Signature of witness)

.....
(Signature of attorney)

.....
(Name of witness in print)

.....
(Attorney's position within
company/Occupation)

Date:/...../.....

.....
(Full name in print)

Date:/...../.....

Option 8

<Note: to be used when an individual executes the Deed.>

Signed by **<insert name of individual>** in the)
presence of:)

.....
(Signature of Witness)

.....
(Signature)

.....
(Print full name & address of Witness)

.....
(Full name in print)

.....
.....
.....

Date:/...../.....

.....
(Occupation of Witness)

Date:/...../.....

Attachment 2: Additional Clauses for Optional Insertion

The Native Title Application

<Note: *for use in situations where the Native Title Applicants wish to discontinue their native title application, after the section 31 Deed has been executed. The parties may choose where to insert the clause in this Deed, remembering that the table of contents, subsequent clause numbering, and cross-referencing within the Deed will also need to be amended.>*

- X.1 The Native Title Applicants agree to discontinue their native title determination application no. **<insert number>** in accordance with the *Federal Court Rules* within 28 days of being advised by the State or the proponent (whichever is the later) that it has executed this Deed.
- X.2 No other party to this Deed shall be liable for any costs incurred by the Native Title Applicants in relation to the discontinuance of their application.

Schedule 1: Notices

Native Title Applicants/Native Title Claim Group

<insert names of Native Title Applicants>

c/- Native Title Services Victoria Ltd
Attention: CEO
75-79 Chetwynd Street
North Melbourne Vic 3051

Phone number: (03) 9321 5300
Facsimile number: (03) 9326 4075

<Note: or such other address, phone and facsimile numbers nominated by the Native Title Applicants.>

The State

Department of Primary Industries
Attention: Manager Minerals and Petroleum Policy
7th Floor, 250 Victoria Parade
East Melbourne Vic 3002

Phone number: (03) 9412-5121
Facsimile number: (03) 9412-5156

The proponent

<XYZ> Company
<insert address, phone and facsimile numbers>

Schedule 2: The Exploration Licence Application

<Note: attach the Exploration Licence Application.>

Schedule 3: The Licence Area

<Note: attach map showing the area of the proposed Exploration Licence.>