

**Regional
Indigenous Land Use Agreement
(Area Agreement)
for
Exploration**

between

The Dja Dja Wurrung People

and

Minerals Council of Australia

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THIS INDIGENOUS LAND USE AGREEMENT is made

2005

PARTIES NATIVE TITLE SIGNATORIES* ON BEHALF OF THE DJA DJA WURRUNG PEOPLE BEING:

- GARY JOHN MURRAY, ROBERT HERBERT NICHOLLS, RODNEY JOHN CARTER, GRAHAM JOHN ATKINSON, CARMEL PRISCILLA BARRY and CONNIE HARRISON-EDWARDS for native title determination application Federal Court No. VID6001/00;
- GARY JOHN MURRAY, GEORGE NELSON, GRAHAM JOHN ATKINSON and FAY CARTER for native title determination application Federal Court No. VID6003/99;
- CARMEL PRISCILLA BARRY for native title determination application Federal Court No. VID6043/98

of C/- Native Title Services Victoria Ltd, Level 2, 642 Queensberry Street, North Melbourne, Victoria ("**Native Title Signatories**")*

AND MINERALS COUNCIL OF AUSTRALIA ABN 21 191 309 229 of
C/- Level 8, 51 Queen Street, Melbourne, Victoria ("**MCA**") *

It is agreed as follows:

1. Definitions and Interpretation

1.1 In the ILUA*:

"**Aboriginal object**" means an object (including Aboriginal remains*) that is of particular significance to Aborigines* according to Aboriginal tradition*, including an archaeological relic* and portable relic*, whether or not the object is registered or declared as being of significance according to Aboriginal tradition under applicable laws*;

"Aboriginal place" means an area or site that is of particular significance to Aborigines according to Aboriginal tradition, whether or not the area or site is registered or declared as being of significance according to Aboriginal tradition under applicable laws;

"Aboriginal remains" is included in the definition of **"Aboriginal object"** in the ILUA;

"Aboriginal tradition" means the body of traditions, observances, customs and beliefs of Aborigines generally or of a particular community or group of Aborigines, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships;

"Aborigines" means peoples of the Aboriginal race of Australia;

"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 low impact exploration* and exploration*, and without limiting the generality of the foregoing, includes any laws relating to native title*, low impact exploration, exploration, the environment*, or Aboriginal cultural heritage;

"Applicant" means an Exploration Licence* applicant that signs a Deed*. Once the Applicant signs a Deed, the Applicant becomes the Explorer*;

"archaeological relic" has the same meaning as in section 2 of the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic), being a relic pertaining to the past occupation by the Aboriginal people of any part of Australia, whether or not the relic existed prior to the occupation of that part of Australia by people of European descent, and without affecting the generality of the foregoing, includes any Aboriginal deposit, carving, drawing, skeletal remains and anything belonging to the total body of material relating to that past Aboriginal occupation of Australia, but does not include a body or the remains of a body interred in a cemetery, burial ground or place of burial after the year 1834, or a handiwork made for the purpose of sale;

"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 low impact exploration and exploration under the Exploration Licence;

"CPI" means the Consumer Price Index for Melbourne published from time to time by the Australian Statistician or if the Consumer Price Index for Melbourne is suspended or discontinued, the words **"CPI"** will mean the price index substituted by the Australian Statistician or if no price index is substituted, **"CPI"** will mean five percent (5%) per annum;

"Crown Land" means land that is, or that is by any statute deemed to be unalienated land of the Crown and includes:

- (a) land of the Crown that is reserved permanently or temporarily by or under any statute;
- (b) land of the Crown occupied by a person under a lease, licence or other right under the MRDA* or any other statute; and
- (c) waters;

"Cultural Heritage Co-ordinator" means the Chief Executive Officer of North West Nations Aboriginal Cultural Heritage Board or other nominee appointed from time to time by the Native Title Signatories under item 3 of Schedule* 3 (and identified to the Explorer by the Native Title Signatories), to conduct on their behalf, the cultural heritage management role described in that item;

"cultural heritage consultant" means an anthropologist, archaeologist or other heritage specialist appointed in accordance with item 4.2 in Schedule 3;

"Deed" means an executed deed of assumption in the form of the template deed of assumption in Schedule 5;

"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:

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

"Exploration Licence" means the exploration licence, that is applied for by the Explorer and may be granted* and registered by the State pursuant to the MRDA, which Exploration Licence is located wholly or partly within the ILUA area*, and includes any renewal, amalgamation or variation of the exploration licence by the State pursuant to the MRDA or any other applicable laws. **"Exploration Licence"** also includes any other application for and grant* of any other exploration licence to the Explorer during the term of the ILUA in respect of the ILUA area, that is included in a Deed;

"Explorer" means a person who:

- (a) seeks grant of an Exploration Licence; and
- (b) has executed a Deed;

"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, earthquake, storm,

flood, explosion, fire or lightning, ceremony or other cultural activity according to Aboriginal tradition, and government action or inaction (including change of law);

"Future Act" has the same meaning given to that term in section 233 of the NTA*;

"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 Exploration Licence boundary and/or term is extended or additional rights in the Exploration Licence are created;

"Guidelines" refers (at the date of execution of the ILUA) to *'The Guidelines for Environmental Management in Exploration and Mining'* as published by Minerals & Petroleum Division, Department of Primary Industries, Victoria, and amended from time to time; more specifically:

- (a) Part 1 - Exploration and Rehabilitation of Mineral Exploration Sites;
- (b) Part 2 - Abandonment of Mineral Drillholes; and
- (c) Part 3 - Rehabilitation and Environmental Aspects of Mining and Extractive Work Plans,

and includes other applicable guidelines or procedures published by the Department responsible for administering the MRDA from time to time;

"Heritage Acts" means the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);

"ILUA" means this indigenous land use agreement including its Schedules*;

"ILUA area" means the area to which the ILUA applies, being the area as described and shown on the map in Schedule 1;

"Land Use Conditions" means the conditions attached in Schedule 2 and 3;

"low impact exploration" has the same meaning given to that term in section 4 of the MRDA, being:

- (a) exploring for minerals on land:
 - (i) without using equipment (other than non-mechanical hand tools) to excavate on the land; and
 - (ii) without using explosives on the land; and
 - (iii) without removing or damaging any tree or shrub on the land; and
 - (iv) without disturbing any Aboriginal place* or Aboriginal object* on the land; and
 - (v) without disturbing any place or object on the Victorian Heritage Register, or any archaeological site or relic included on the Heritage Inventory, under the *Heritage Act 1995*; or
- (b) undertaking any other exploration activity that is declared to be low impact exploration under section 7B of the MRDA;

"Low Impact Exploration Plan" means a written description of the Explorer's proposed low impact exploration works that sets out:

- (a) details of the potential environmental* impacts of such works and the measures proposed for their control or mitigation; and
- (b) a map showing the general location of the proposed low impact exploration works, including proposed routes into and out of the works area;

"MCA" means the Minerals Council of Australia (ABN 21 191 309 229);

"Minister" means the Minister* responsible for the grant of the Exploration Licence pursuant to the MRDA;

"Monitor" means the person (1) nominated to the Explorer from time to time by the Cultural Heritage Co-ordinator* under item 3.2.1 of Schedule 3 to undertake the Monitor's role in Schedule 3;

"MRDA" means the *Mineral Resources Development Act 1990* (Vic) and *Mineral Resources Development Regulations 2002* (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 determination applications" means the native title determination applications Federal Court numbers VID6001/00, VID6003/99 and VID6043/98 made on behalf of the Native Title Group*;

"Native Title Group" is the Dja Dja Wurrung People, being the Native Title Signatories and those persons described in Schedule A of the native title determination applications*;

"Native Title Registrar" has the same meaning given to that term in section 253 of the NTA;

"native title rights and interests" has the same meaning given to that term in section 223 of the NTA;

"Native Title Signatories" refers to the persons who are registered native title claimants* who sign the ILUA for and on behalf of the members of the Native Title Group;

"non-ground disturbing activity" includes aerial surveys and ground based geophysical surveys, geological surveys and survey fieldwork that does not involve clearing* or the excavation of soil or rock to expose underlying strata. Within this definition, **"clearing"** means:

- (a) in the case of grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:

- (i) the flattening or compaction of vegetation by vehicles where the vegetation remains living;
 - (ii) the slashing or mowing of vegetation to facilitate access tracks (provided root systems remain in place and vegetation remains living); or
 - (iii) the clearing of noxious or introduced plant species;
- (b) in the case of trees, the cutting down, ringbarking or pushing over, of trees;

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

"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 or parties* to the ILUA and, where the context permits, the Explorer. **"Party"** or **"Parties"** includes that party or parties successors, permitted assignees, executors, administrators and substitutes;

"portable relic" has the same meaning as in section 2 of the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic), being a relic which because of its weight and size is capable of being lifted and removed by hand;

"Register of Indigenous Land Use Agreements" has the same meaning given to that term in section 253 of the NTA;

"registered native title body corporate" has the same meaning given to that term in section 253 of the NTA;

"registered native title claimants" has the same meaning given to that term in section 253 of the NTA;

"Report" means a cultural heritage report referred to in Schedule 3 that is prepared daily by the Monitor* during any inspection, monitoring and other on-site attendance

involving the Monitor under Schedule 3, the proforma format for which is attached at Schedule 4;

"Schedule" means the Schedules to the ILUA.

"State" means the State of Victoria and all its instrumentalities.

"Work Plan" has the same meaning given to that term in the MRDA.

1.2 In the ILUA, unless the contrary intention appears:

- 1.2.1 the definitions contained in clause 1 apply to the ILUA, the Schedules and a Deed;
- 1.2.2 an asterisk following a word in the ILUA signifies that it is a defined term listed in the "Definitions and Interpretation" clause;
- 1.2.3 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;
- 1.2.4 the meaning of general words is not to be limited by the meaning of accompanying specific words;
- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 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;
- 1.2.7 a reference to a clause, sub-clause or schedule is to a clause, sub-clause or schedule of or to the ILUA;
- 1.2.8 the Introduction forms part of the ILUA;
- 1.2.9 the Schedules form part of the ILUA;

- 1.2.10 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;
 - 1.2.11 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - 1.2.12 headings are for convenience or reference only and do not affect the interpretation of the ILUA;
 - 1.2.13 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; and
 - 1.2.14 monetary references are to Australian currency.
- 1.3 The ILUA shall be governed by and construed in accordance with applicable laws and the terms and conditions of the ILUA shall apply to the full extent that they are capable of operating concurrently with applicable laws.

2. Introduction

- 2.1 The Native Title Signatories are the registered native title claimants in relation to Crown Land* in the ILUA area.
- 2.2 The Native Title Group assert that they hold native title over Crown Land in the ILUA area, and that they have rights and obligations to speak for and protect lands and waters in accordance with traditional laws and customs.
- 2.2.1 The Native Title Group has filed the native title determination applications in the Federal Court pursuant to section 13(1) of the NTA over Crown Land within the ILUA area. The native title determination applications have the Federal Court matter numbers: VID6001/00, VID6003/99 and VID6043/98.
- 2.2.2 The native title determination applications were accepted for registration under section 190A of the NTA, on the following dates:

- 15 August 2000 for VID6001/00; and
- 27 May 1999 for VID6003/99;

2.2.3 Native title determination application VID6043/98 was not accepted for registration.

- 2.3 The Native Title Signatories agree that the Applicant*, upon becoming the Explorer, may exercise its rights and obligations under the Exploration Licence subject to the Land Use Conditions* and the Native Title Signatories agree that a breach of the ILUA by any Party does not nullify the consent of the Native Title Signatories to the grant and use of the Exploration Licence.
- 2.4 MCA* is a national organisation representing resources industry members and is represented in Victoria by the Executive Director of its Victorian division.
- 2.5 MCA, upon behalf of the Explorer, seeks the grant by the State of the Exploration Licence pursuant to the MRDA to the Explorer, in respect of Crown Land and other land and waters in the ILUA area.
- 2.6 The Parties understand that the State may grant the Explorer the Exploration Licence under the MRDA and other applicable laws.
- 2.7 The Parties agree that the Exploration Licence may be validly granted subject to the Applicant signing a Deed.
- 2.8 The ILUA is made under Subdivision C of Division 3 of Part 2 of the NTA.
- 2.9 The ILUA sets out the terms and conditions of the agreement which has been reached between the Parties and that bind the Explorer as a Party to the ILUA upon execution of a Deed by the Applicant.

3. Scope of this ILUA

- 3.1 The ILUA relates, among other things, to the terms for grant and use of the Exploration Licence by the Explorer.

3.2 Subject to the ILUA, and the rights and obligations of the Explorer under the Exploration Licence, the Explorer may gain access to and conduct low impact exploration and exploration in the ILUA area.

3.3 The Parties acknowledge that an Applicant seeking a new Exploration Licence after the dismissal or withdrawal of the native title determination applications is not obliged to sign a Deed that relates to that new Exploration Licence.

4. Benefits

4.1 In consideration for entering into the ILUA, and as full compensation to the Native Title Group from the Explorer for any impact of the grant or use of the Exploration Licence upon any native title rights and interests* of the Native Title Group, the Explorer agrees to provide the benefits to the Native Title Group that are set out in item 1 of the Land Use Conditions attached in Schedule 2.

4.2 The Native Title Signatories agree that the benefits provided to the Native Title Group under item 1 of the Land Use Conditions attached in Schedule 2 are in full and final satisfaction of any liability upon the Explorer to pay compensation to any member of the Native Title Group for the effect of low impact exploration and exploration in the ILUA area on native title rights and interests. To avoid doubt, this means that no further compensation (if any) is payable in cash or kind by the Explorer to the Native Title Group for the effect of the grant and use of the Exploration Licence on any native title rights and interests under any applicable laws, including the MRDA and the NTA.

4.3 The Explorer is not obliged to provide the benefits referred to in this clause until the Exploration Licence has been granted and, with respect to benefits in item 1.1.2 to 1.1.5 of Schedule 2, any required consent* provided.

5. Area of ILUA

The ILUA area is the area defined as "ILUA area" in clause 1.

6. Commencement, Term and Review

- 6.1 The ILUA takes effect from the day it is executed by all Parties (in accordance with clause 21).
- 6.2 The ILUA is terminated:
- 6.2.1 subject to sub-clause 6.2.2, by the agreement in writing of the Native Title Signatories and MCA; or
 - 6.2.2 by the removal of the ILUA from the Register of Indigenous Land Use Agreements* under section 199C of the NTA; or
 - 6.2.3 5 years from the anniversary date of the expiry of the last Exploration Licence granted subject to the provisions of the ILUA.
- 6.3 Within 7 days of any termination of this ILUA under sub-clause 6.2, the Native Title Signatories and MCA will advise the Native Title Registrar* in writing of the termination, in accordance with section 199C(1)(c)(ii) of the NTA.
- 6.4 Immediately upon the termination of the ILUA, the Native Title Signatories and MCA will meet to discuss the ongoing operation of the cultural heritage management procedures referred to in Schedule 3 of the Land Use Conditions.
- 6.5 Any outstanding liability and obligations which accrue up to the date of termination of the ILUA will survive any termination of the ILUA.
- 6.6 Commencing on or before the 5th anniversary of registration of the ILUA, the Native Title Signatories and MCA shall meet to determine the need for a review of the ILUA (and such meeting shall not be subject to clause 12). The purpose of any agreed review will be to ascertain whether or not the ILUA needs to be amended.

7. Replacement of Future Act Procedure

- 7.1 The Parties agree that the right to negotiate provisions in Part 2, Division 3, Subdivision P of the NTA are not intended to apply to the grant and use of the Exploration Licence.

7.2 Subject to compliance by the Parties with the provisions of the ILUA and compliance by the Explorer with a Deed, the Parties agree to the doing of certain Future Acts* in respect of the ILUA area, being:

7.2.1 the grant by the State of the Exploration Licence to the Explorer and to any consent required by or on behalf of the Explorer pursuant to the Exploration Licence; and

7.2.2 the use of the Exploration Licence and of any consent required pursuant to the Exploration Licence, by the Explorer.

8. Commencement and Registration as an Indigenous Land Use Agreement

8.1 Upon execution, the ILUA becomes an Indigenous Land Use Agreement (area agreement) under Subdivision C of Division 3 of Part 2 of the NTA.

8.2 As soon as is reasonably practicable after execution of the ILUA:

8.2.1 the Native Title Signatories, through NTSV*, agree to make written application under section 24CG of the NTA to the Native Title Registrar for registration of the ILUA on the Register of Indigenous Land Use Agreements; and

8.2.2 the Parties agree to do all things necessary to help the expeditious completion of the registration process and to ensure that the application by the Native Title Signatories, through NTSV, meets the requirements of the NTA and of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

9. Warranty of the Native Title Signatories and MCA

9.1 The Native Title Signatories warrant that they are authorised to execute the ILUA for and on behalf of the Native Title Group in accordance with section 251A of the NTA. The Native Title Signatories agree that the ILUA binds them and the other members of the Native Title Group.

9.2 MCA warrants that it is authorised to execute the ILUA for and on behalf of its members.

10. Warranty of the Explorer

10.1 The Explorer warrants that it is authorised and has capacity to execute a Deed and to bind itself.

10.2 The Explorer warrants that immediately upon signing a Deed, it shall provide a signed copy of the Deed to the following:

10.2.1 the Native Title Signatories;

10.2.2 MCA;

10.2.3 NTSV; and

10.2.4 the State.

10.3 The Explorer agrees to immediately advise MCA, the Native Title Signatories and NTSV when the Exploration Licence has been granted and any required consent provided.

10.4 The Explorer warrants that it will carry out low impact exploration and exploration as the case may be in accordance with:

10.4.1 the ILUA and all applicable laws; and

10.4.2 the terms and conditions of the Exploration Licence.

11. Acknowledgments

11.1 The Parties acknowledge that:

11.1.1 neither the execution of the ILUA, nor the grant of the Exploration Licence constitutes recognition by the Explorer and MCA that native title rights and interests exist within the ILUA area or are held by the Native Title Group;

11.1.2 the non-extinguishment principle, as defined in section 238 of the NTA, applies to the grant of the Exploration Licence, and to any work done pursuant to such Exploration Licence.

- 11.2 Subject to clause 3.3 and 6.2 of the ILUA, each of the Parties agrees that their or its respective rights or obligations under the ILUA 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 ILUA area or any part of the ILUA 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.
- 11.3 The Native Title Signatories acknowledge that MCA and the Explorer may be or may become a party (or in MCA's case, an agent for a party) to the native title determination applications but MCA and the Explorer agree that they will not oppose the native title determination applications.

12. Resolving Disputes

- 12.1 Where any Party has a dispute, the Parties will follow the processes set out in this clause 12 below.
- 12.2 This clause 12 also applies where the Native Title Signatories or the Explorer consider that any of the Land Use Conditions have been breached.

Discussions

- 12.3 If a dispute arises, the Parties to the dispute agree to first meet and hold discussions in good faith in an effort to resolve the dispute, before seeking mediation under sub-clause 12.4.
- 12.3.1 The process in sub-clause 12.3 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 12.3.

Mediation

- 12.4 If the dispute is not resolved under sub-clause 12.3 within 28 days of the date of the notice under sub-clause 12.3.1 being served, any Party to the dispute may 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 may 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 12.5 to 12.7
- 12.5 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 14 days of being appointed or within such further time as those Parties may agree.
- 12.6 The Parties to the dispute must co-operate fully with any reasonable requests of the mediator.
- 12.7 The Parties to the dispute must pay an equal share of the mediator's fees and expenses, unless the mediator otherwise directs.

Arbitration

- 12.8 If the dispute is not resolved within 14 days of a report being given to the Parties under sub-clause 12.5, any Party to the dispute may give the other Party or Parties to the dispute 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.
- 12.9 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 to the dispute.

- 12.10 Each of the Parties to the dispute must co-operate fully with any reasonable requests of the arbitrator.
- 12.11 The Parties to the dispute must pay an equal share of the arbitrator's fees and expenses, unless the arbitrator directs otherwise.
- 12.12 The Parties to the dispute agree that the arbitrator's decision is binding upon them and to accept and to comply in good faith with the arbitrator's decision.

Rights to other relief

- 12.13 Except in circumstances where a binding arbitrated decision has been given under sub-clause 12.12, the Parties agree that any dispute resolution process undertaken by them in accordance with this clause 12 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.

13. Confidentiality

- 13.1 The following information is confidential information:
- 13.1.1 information provided by a Party to the other Party, which the first mentioned Party requests be treated as confidential; and
- 13.1.2 information that has been given to the Explorer concerning any Aboriginal place, Aboriginal object or Aboriginal remains that is expressly specified by a Monitor as confidential information;
- 13.2 The Parties agree not to disclose any of the confidential information referred to in sub-clause 13.1 except:
- 13.2.1 to the officers, employees, members, directors, servants, agents, contractors and sub-contractors of the Parties whose duties require such disclosure;
- 13.2.2 to the Parties accountants, legal advisers, auditors or other professional advisers;

- 13.2.3 to the extent necessary to comply with any applicable laws and the Rules of the Australian Stock Exchange;
 - 13.2.4 where disclosure is necessary in performing obligations or enforcing rights under the ILUA;
 - 13.2.5 to the extent that such information is already part of the public domain otherwise than by breach of this clause;
 - 13.2.6 with the prior written approval of the other Parties.
- 13.3 Each Party shall take all steps reasonably necessary to ensure that the confidential information referred to in sub-clause 13.1 is known only to such persons as may reasonably require knowledge thereof in the course of their duties or functions and, notwithstanding the provisions of sub-clause 13.2, each Party shall, to the extent permitted by law, require any person to whom it intends to disclose such information (who is not under a statutory, professional or contractual duty to keep such information or data confidential) to give an undertaking to keep such information confidential.
- 13.4 If the rest of the ILUA is terminated:
- 13.4.1 the Native Title Signatories and the other members of the Native Title Group shall, (subject to sub-clause 13.2) continue to treat as confidential all categories of information obtained by them under the ILUA or in the course of low impact exploration and exploration that are requested to be kept confidential by the Explorer; and
 - 13.4.2 the Explorer shall continue to treat as confidential information obtained by it under the ILUA or in the course of carrying out low impact exploration and exploration with respect to the locations of, and traditions associated with, Aboriginal places and Aboriginal objects that have been specified as confidential under sub-clause 13.1.2. If requested by the Native Title Signatories, the Explorer shall deliver all such information to the Native Title Signatories (to the extent it is capable of delivery) as soon as it is no longer required for the purposes of low impact exploration and exploration.

14. Covenants

- 14.1 Without limiting any other express or implied obligation under the ILUA, the Native Title Signatories covenant with the other Parties not to take any action which:
- 14.1.1 challenges or disputes, or has the effect of challenging or disputing the validity of the ILUA, or that the ILUA constitutes an Indigenous Land Use Agreement under section 24CA of the NTA;
 - 14.1.2 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 consent or other action validly taken by the State in authorising the low impact exploration and exploration under the ILUA; and/or
 - 14.1.3 unlawfully affects any activity or consent required or authorised by the Exploration Licence, the MRDA or any other applicable laws.
- 14.2 The Native Title Signatories shall not be liable for any unintentional breach of the covenants referred to in sub-clause 14.1. The onus of proving that any such breach was unintentional shall rest on the Native Title Signatory who is alleged to have breached the covenant.

15. Assignment

- 15.1 Subject to sub-clause 15.2 and any applicable laws, the Explorer may at its absolute discretion, assign, transfer or novate the whole or any part of its rights and obligations under the Exploration Licence or the ILUA.
- 15.2 The Explorer must not assign, transfer, or novate any of its rights and obligations referred to in sub-clause 15.1, except to a person who agrees to execute a deed under which it is bound by the ILUA, as if it were a Party to it. Where such a deed is executed, the Explorer will provide a copy of that deed to the Native Title Signatories and MCA.

15.3 In the event that:

15.3.1 the Federal Court makes a determination that native title exists over the ILUA area, and is held by the Native Title Group; and

15.3.2 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 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 Signatories shall use their best endeavours to assign their rights and obligations under the ILUA to that registered native title body corporate, provided that the registered native title body corporate executes a deed under which it is bound by the ILUA as if it were a Party to it.

15.4 Subject to sub-clause 15.5 and any applicable laws, MCA may at its absolute discretion, assign, transfer or novate all of its rights and obligations under the ILUA.

15.5 MCA must not assign, transfer, or novate any of its rights and obligations referred to in sub-clause 15.4, except to a person who agrees to execute a deed under which it is bound by the ILUA, as if it were a Party to it. Where such a deed is executed, MCA will provide a copy of that deed to the Native Title Signatories.

16. Force Majeure

If a Party is unable, as a result of a Force Majeure Event*, to wholly or in part perform any obligation under this ILUA for a period of greater than 12 months, that Party must give notice to the other Parties 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.

17. Variation

The ILUA can only be varied by the written agreement of the Native Title Signatories and MCA.

18. Severance

- 18.1 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.
- 18.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the ILUA, but the rest of the ILUA is not affected.

19. Entire Agreement

The ILUA supersedes any prior representation, understanding or arrangements made by the Parties in relation to its subject matter, whether orally or in writing.

20. Governing Law

- 20.1 The ILUA is governed by and is to be construed in accordance with the laws of the Commonwealth of Australia and the State of Victoria.
- 20.2 The Parties submit to the non-exclusive jurisdiction of the courts of Victoria and any other courts competent to hear appeals from those courts.
- 20.3 Any proceedings commenced relating to the ILUA will be issued in the State of Victoria.

21. Counterparts

The ILUA is properly executed if each Party executes either the ILUA, or identical counterpart ILUAs. In the latter case, the ILUA takes effect when the separately executed ILUAs are exchanged between the Parties. All counterparts taken together will constitute one instrument.

22. Liability

- 22.1 The Native Title Signatories agree that all liabilities and obligations imposed upon them and other members of the Native Title Group by the ILUA are imposed upon them and each member of the Native Title Group jointly and severally.

22.2 The Explorer agrees that all liabilities and obligations imposed upon it by the ILUA are imposed upon it jointly and severally.

22.3 MCA will comply with all liabilities and obligations imposed upon it by the ILUA.

23. Waiver

23.1 The failure of a Party at any time to require performance of any obligation under the ILUA is not a waiver of that Party's right:

23.1.1 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

23.1.2 at any other time to require performance of that or any other obligation under the ILUA.

24. Independent Legal Advice

The Parties acknowledge that they have had the benefit of independent legal advice with respect to all aspects of the ILUA.

25. Relationship

The ILUA does not create a relationship of employment, agency or partnership between the Parties.

26. Further co-operation

The Parties must do anything (including executing any agreement) which another Party reasonably requires of them in order to give full effect to the ILUA and the transactions it contemplates.

27. Agreement to benefit and bind successors

The ILUA 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 the ILUA.

28. Costs

Unless otherwise agreed by the Parties, each Party will pay their own legal costs and other expenses for and incidental to the preparation, negotiation, completion and registration of the ILUA.

29. GST

GST Definitions

29.1 For the purposes of this clause 29:

"GST" has the same meaning given to that term in the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended;

"GST Law" means the GST Law as defined in the GST Act and includes any statute of the Commonwealth of Australia and/or the State that imposes or deals with GST;

In addition to the above, expressions set out in italics in this clause 29 have the same meaning as those expressions in the GST Act.

Liability for GST

29.2 Where a Party makes a *taxable supply* under this ILUA for *consideration*:

29.2.1 the *consideration* for that supply represents the *value* of the *taxable supply* and does not include GST; and

29.2.2 the Party liable to pay the *consideration* for the *taxable supply* will also pay the Party making the supply, at the same time and in the same manner as the *consideration* payable by that Party, the amount of any GST payable in respect of the *taxable supply*.

29.3 If either Party (the 'first Party') has a right under the ILUA to be reimbursed or indemnified by the other Party (the 'second Party') for any cost or expense incurred by the first Party under the ILUA, the first Party will not be entitled to be reimbursed

or indemnified by the second Party for that component of a cost or expense for which the first Party can claim an *input tax credit*.

Tax Invoices

29.4 To the extent that a member of the Native Title Group makes a *taxable supply* under the ILUA, the Parties agree that:

29.4.1 to the extent permitted by the *GST Law*, or as otherwise previously agreed in writing between the Explorer and the Native Title Group, the Explorer will issue a *Recipient Created Tax Invoice* in respect of each *taxable supply* made by the Native Title Group;

29.4.2 the Native Title Group will not issue *tax invoices* in respect of the *taxable supplies* made by the Native Title Group;

29.4.3 the Native Title Group acknowledges that it is not registered for *GST* when it enters into the ILUA but that it will notify the Explorer if it becomes registered in the future; and

29.4.4 the Explorer acknowledges that it is registered for *GST* when it enters into the ILUA and that it will notify the Native Title Group if it ceases to be registered or if it ceases to satisfy any of the requirements to create *Recipient Created Tax Invoices*.

30. Notices

30.1 Subject to the ILUA, 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:

30.1.1 delivered or posted to that Party at the address in Schedule 6 (or such other address as notified and set out in Schedule 6 from time to time); or

30.1.2 faxed to that Party at the fax number in Schedule 6 (or such other address as notified and set out in Schedule 6 from time to time).

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

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

30.3.1 *If it is delivered*, when it is left at the relevant address;

30.3.2 *If it is sent by post*, 2 business days after it is posted;

30.3.3 *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.

31. Provisions of ILUA not conditions of grant

The Parties agree that the provisions of the ILUA (including the Land Use Conditions) are not conditions of the grant of the Exploration Licence under the MRDA or any other applicable laws.

Executed by the Parties as an Agreement

Signed, sealed and delivered by
Gary John Murray
for and on behalf of the **Native Title Group** in the
presence of:

Guangzhou

Paul Simmons

Signature of Witness

PAUL SIMMONS

Print full name of Witness

5/8/05

Signed, sealed and delivered by
Robert Herbert Nicholls
for and on behalf of the **Native Title Group** in the
presence of:

R. H. Nielsen

Paul Simmons

Signature of Witness

PAUL SIMMONS

Print full name of Witness

5/8/05

Signed, sealed and delivered by
Rodney John Carter
for and on behalf of the **Native Title Group** in the
presence of:

)
)
)
)
)
)


.....


.....

Signature of Witness


.....

Print full name of Witness

22/7/05

Signed, sealed and delivered by
Graham John Atkinson
for and on behalf of the **Native Title Group** in the
presence of:

)
)
)
)
)
)


.....


.....

Signature of Witness


.....

Print full name of Witness

27/7/05

Signed, sealed and delivered by
Carmel Priscilla Barry
for and on behalf of the **Native Title Group** in the
presence of:

)
)
) *Carmel Barry*
)
)

Paul Simmons

Signature of Witness

PAUL SIMMONS

Print full name of Witness

21/7/05

Signed, sealed and delivered by
Connie Harrison-Edwards
for and on behalf of the **Native Title Group** in the
presence of:

)
)
) *C. Harrison-Edwards*
)
)

Paul Simmons

Signature of Witness

PAUL SIMMONS

Print full name of Witness

12/8/05

Signed, sealed and delivered by
Fay Carter
for and on behalf of the **Native Title Group** in the
presence of:

F. Carter

Paul Simmons

Signature of Witness

Paul Simmons

Print full name of Witness

Signed, sealed and delivered by
George Nelson
for and on behalf of the **Native Title Group** in the
presence of:

G. Nelson

Paul Simmons

Signature of Witness

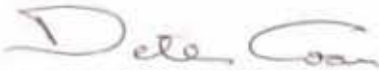
Paul Simmons

Print full name of Witness

~~22/8/05~~ 13
22/7/05

Signed, for and on behalf of

the Minerals Council of Australia
ABN 21 191 309 229 by:



Signature of Director

PETER COATES

Name of Director (print)



Signature of Executive Director, Victorian Division,
MCA

C.J. FRASER

Name of Executive Director (print)

)
)
)
)
)
)



Signature of Director/Company Secretary
(please delete as applicable).

MITCHELL H. HOOKE

Name of Director/Company Secretary (print)

Schedule 1: The ILUA area

Area of ILUA (geographic extent)
= 16,832.5 sq km

Topographic image data is © Commonwealth of Australia and is used under licence from Geoscience Australia.

NOTE: Topographic images should be used as a guide only.

Map created by: Geospatial Analysis & Mapping Branch, National Native Title Tribunal (16/06/2004)

The Registrar, the National Native Title Tribunal and its staff and officers and the Commonwealth, accept no liability and/or give no undertakings, guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the map.

ILUA area



NORTH

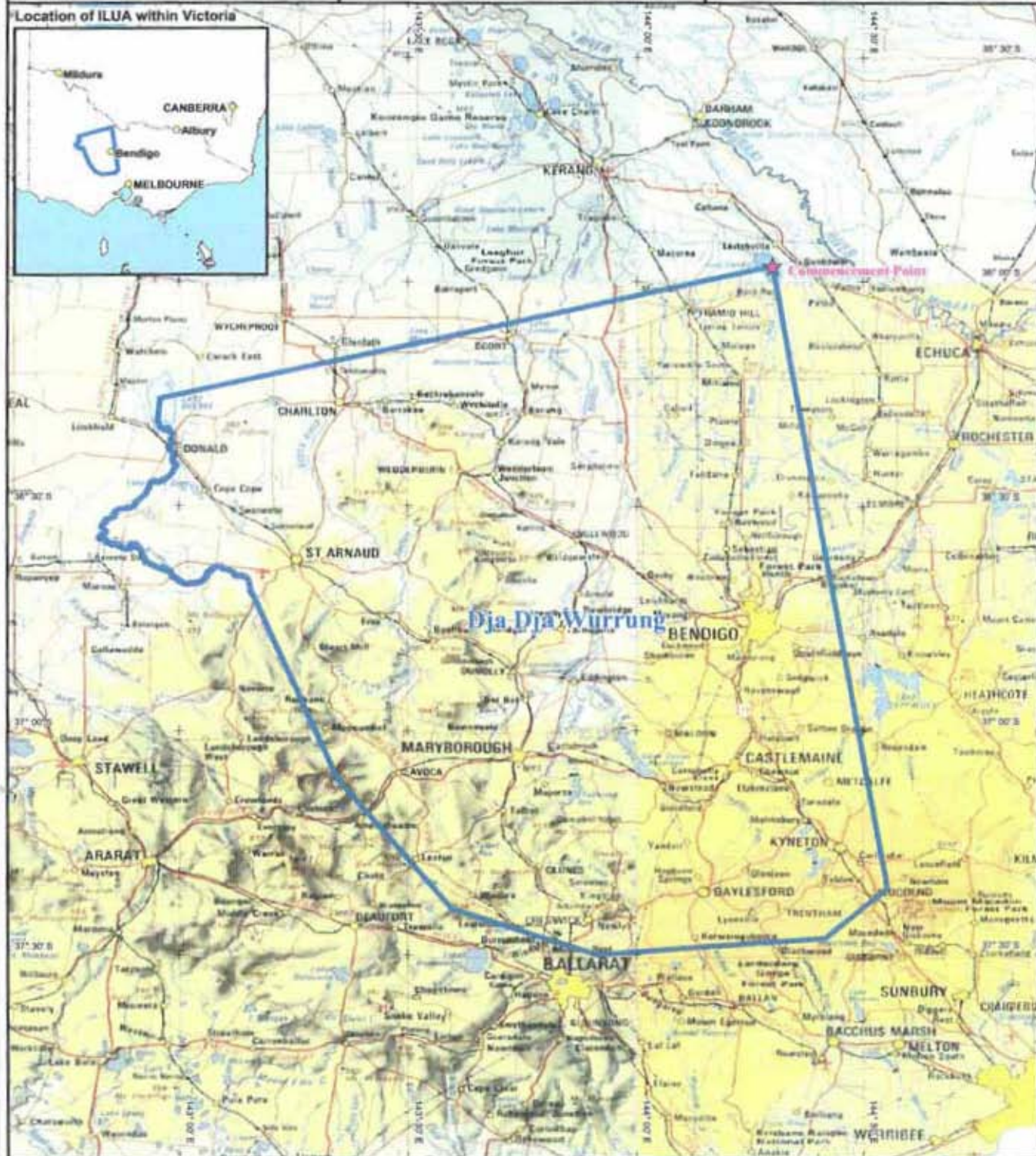
0 20 40 60

Kilometres

Latitude and Longitude based on Geocentric Datum of Australia 1984
Map Projection

File: P:\Geospatial\Projects\ILUA\Map\Proposed
DjaDjaWurrung\VI2004_005_DjaDjaWurrung_AAP.wor

Location of ILUA within Victoria



**Regional Indigenous Land Use Agreement
(Area Agreement) for Exploration:
Dja Dja Wurrung People and Minerals Council of Australia**

Description of ILUA area

The boundaries of this agreement follow the external boundaries of native title determination application VID6001/00 – *Dja Dja Wurrung Peoples (VC00/1) as accepted for registration on 15 August 2000.*

The external boundaries of the agreement commence at 144.298996° East Longitude, 35.964845° South Latitude then extend southeasterly, generally southwesterly and generally northwesterly through the following coordinate points:

Longitude	Latitude
144.552673° E	37.352421° S
144.416373° E	37.463817° S
143.912922° E	37.500121° S
143.595647° E	37.395754° S
143.346951° E	37.107181° S

to a point on the high water mark on the southern bank of the Avon River at 36.696931° S Latitude; then generally northwesterly along that high water mark to the junction with the Richardson River at 142.822275° E Longitude then generally northerly along the high water mark of the western bank of the Richardson River to 36.311636° S Latitude; then northerly to 142.957088° E Longitude, 36.260624° S Latitude then northeasterly back to the commencement point.

The ILUA area **excludes** the lands and waters of VID6006/98 - *Dja Dja Wrung/Whurung People (VC99/9) as accepted for registration on 17 September 1999* and VID6001/99 – *Dja Dja Wurrung (VC99/6) as accepted for registration on 19 August 1999.*

Area of Application (geographic extent) – 16,773.400 sq km

Reference datum.

Geographic coordinates are in decimal degrees referenced to the Australia Geodetic Datum 1984 (AGD84).

References and Sources.

River banks referenced to cadastral data sourced from Sinclair Knight Merz Pty Ltd under license from Dept of Sustainability & Environment, VIC (July, 2003).

The state of Victoria does not warrant the accuracy or completeness of the information in this publication and any person using and relying on such information does so on the basis that the State of Victoria shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.

Prepared by Geospatial Services
National Native Title Tribunal (11 May 2005)

Schedule 2: Land Use Conditions

Schedule 2: Land Use Conditions

1. Crown Land Access Benefits

1.1 Subject to item 1.2 of this Schedule, the Explorer shall pay the following benefits to a trust account (nominated to the Explorer by the Native Title Signatories) that is established on behalf of all of the members of the Native Title Group:

1.1.1 an annual exploration access fee of \$1500.00 (plus GST) for access to Crown Land in each Exploration Licence within the ILUA area, first paid 30 days after the initial grant of the Exploration Licence and annually thereafter on the anniversary date of the initial grant for the term of the Exploration Licence;

1.1.2 an exploration (diamond) drilling fee, for drilling done by or on behalf of the Explorer, at \$100.00 (plus GST) per drill hole on Crown Land in the ILUA area;

1.1.3 an exploration (reverse circulation) drilling fee, for drilling done by or on behalf of the Explorer, at \$50.00 (plus GST) per drill hole on Crown Land in the ILUA area;

1.1.4 an exploration (mechanical and hand operated) drilling fee, for drilling done by or on behalf of the Explorer, at \$20.00 (plus GST) per drill hole on Crown Land in the ILUA area; and

1.1.5 an exploration (costeering, trenching and channelling) fee, for such work done by or on behalf of the Explorer, at \$1.00 (plus GST) per square-metre on Crown Land in the ILUA area.

1.2 The benefits shall be increased by CPI* annually on the anniversary date of the signing of the relevant Deed (at the CPI rate that exists at that anniversary date).

2. Access to the ILUA area

Subject to the Explorer's:

- Work Plan*;
- safety and security obligations;
- access requirements to the Exploration Licence area; and
- rights of low impact exploration and exploration under the Exploration Licence, any required consent, and applicable laws;

the Explorer shall not hinder and will minimise interference with the entry, occupation and use of any part of the Exploration Licence area by members of the Native Title Group.

3. Environmental Management

The Explorer agrees to conduct low impact exploration and exploration within the ILUA area in accordance with the Guidelines* and applicable laws.

4. Information and Communication

The Explorer shall promptly provide to the Native Title Signatories:

- a copy of each Exploration Licence following its grant;
- copies of any consent in relation to low impact exploration and exploration;
- a copy of any Work Plan or Low Impact Exploration Plan*, or any variation of either; and/or
- information reasonably requested by the Native Title Signatories which relates to low impact exploration and exploration and to the Explorer's obligations under the ILUA (save that the Explorer may withhold

commercially sensitive information), with such information to include the drill hole information that is annually provided to the State under the MRDA.

5. Liaison Committee

- 5.1 Where the Explorer and Native Title Signatories agree, a liaison committee ('the Committee') will be established to operate under the following provisions (or as otherwise agreed).
- 5.2 The Explorer and the Native Title Signatories will appoint an agreed number of members to the Committee.
- 5.3 Each party will provide notice to the other party of the appointment of its members and any alternate members.
- 5.4 The Committee's functions are recommendatory or advisory only and include but are not limited to:
 - 5.4.1 establishing meeting procedures and timeframes;
 - 5.4.2 reviewing the working of the Land Use Conditions and the progress of the low impact exploration and exploration;
 - 5.4.3 making recommendations or giving advice about the working and/or variation of the Land Use Conditions;
 - 5.4.4 making recommendations or giving advice to the Parties to the ILUA about any variations of the ILUA; and
 - 5.4.5 maintaining liaison between the parties.
- 5.5 A quorum for each Committee meeting will consist of an agreed number of members of the Committee.
- 5.6 At the beginning of each meeting, the Committee members present will nominate by simple majority a member to act as Chairperson of that meeting.

- 5.7 Each Committee member has the right to invite a reasonable number of non-members to attend Committee meetings as observers or spokespersons having regard to the matters under discussion.
- 5.8 All recommendations at a Committee meeting shall be made by a simple majority vote of the votes cast at the meeting. Each attending Committee member will have 1 vote. In the event that there is an equality of votes on any question, the Chairperson is entitled to a second or casting vote.
- 5.9 Unless the parties otherwise agree:
- 5.9.1 the Committee will meet at the request of any party, but no less than 2 times per year; and
- 5.9.2 the Committee will meet on or near to the ILUA area.
- 5.10 Committee meetings will be open to any member of the Native Title Group, who shall be entitled to raise matters of concern to him or her.

Schedule 3: Land Use Conditions (Cultural Heritage Management Procedures)

Schedule 3: Land Use Conditions (Cultural Heritage Management Procedures)

1. Interpretation

- 1.1 Nothing in this Schedule 3 replaces or modifies or is intended to replace or modify any of the Parties obligations, rights or procedures under the Heritage Acts*.
- 1.2 The provisions of the Heritage Acts prevail over this Schedule 3 to the extent of any inconsistency.

2. Notification

In the event that the Explorer is required to take any action under either of the Heritage Acts, the Explorer will notify the Cultural Heritage Co-ordinator and the Monitor before taking that action.

3. Cultural Heritage Co-ordinator

- 3.1 The Native Title Signatories have appointed the Cultural Heritage Co-ordinator to act on their behalf with respect to cultural heritage management in the ILUA area and to liaise with any other relevant body or person under the Heritage Acts.
- 3.2 The Native Title Signatories have arranged for the Cultural Heritage Co-ordinator to:
 - 3.2.1 nominate the Monitor and provide the Explorer with the address and contact details of the Monitor;
 - 3.2.2 organise and co-ordinate the activities of the Monitor; and
 - 3.2.3 process and invoice to the Explorer any payments to be made to the Monitor under item 12 of this Schedule.

4. Monitor and Cultural Heritage Consultant

- 4.1 The Native Title Signatories agree that the Monitor nominated by the Cultural Heritage Co-ordinator is the appropriate Aboriginal person for the Explorer to deal with, with respect to the procedures in this Schedule 3.

4.2 If the Monitor and the Explorer agree, the Explorer will engage an appropriately qualified cultural heritage consultant*, approved by the Monitor, the Native Title Signatories through the Cultural Heritage Co-ordinator and the Explorer, to assist the Monitor and the Explorer to meet their obligations under the Heritage Acts and this Schedule 3.

4.3 In the event that the Monitor or the cultural heritage consultant are not available when required, then the Native Title Signatories, through the Cultural Heritage Co-ordinator, will nominate appropriate replacements (with the replacement cultural heritage consultant to be agreed between the Explorer and the Cultural Heritage Co-ordinator).

5. Consultation about the Work Plan/Low Impact Exploration Plan

5.1 Subject to item 5.2, the Explorer will provide the Monitor with duplicate copies of either the Work Plan proposed to be lodged under section 40 of the MRDA ('the draft Work Plan') or, the Low Impact Exploration Plan, as the case may be.

5.2 The Explorer is not obliged to provide the Monitor with either a draft Work Plan or a Low Impact Exploration Plan:

5.2.1 if the works to be done pursuant to the Exploration Licence in the ILUA area ("**Exploration Licence Works**") will only involve non-ground disturbing activity*; or

5.2.2 if the draft Work Plan or a Low Impact Exploration Plan do not contain areas of Crown Land.

In this event, items 5.3 to 5.8 inclusive, do not apply.

5.3 Within 28 days of the draft Work Plan, or the Low Impact Exploration Plan, as the case may be, being provided to the Monitor, or such other timeframe as may be agreed by the Parties, the Monitor will conduct the required inspections of the Exploration Licence Works proposed on areas of Crown Land under the draft Work Plan, or Low Impact Exploration Plan, as the case may be.

- 5.4 The Monitor may ask (giving no less than 7 days notice to the Explorer of the time and place of the inspections) that an appropriately qualified and authorised representative of the Explorer attend the item 5.3 inspections to:
- 5.4.1 explain and clarify the details of the draft Work Plan, or Low Impact Exploration Plan, as the case may be; and
 - 5.4.2 if required, precisely locate (e.g., by pegging) the sites of Exploration Licence Works proposed under the draft Work Plan, or Low Impact Exploration Plan, as the case may be.
- 5.5 If the item 5.3 inspections determine that proposed Exploration Licence Works under the draft Work Plan, or Low Impact Exploration Plan, as the case may be will affect any Aboriginal place, Aboriginal object or Aboriginal remains, the Monitor will immediately notify the Explorer, who will communicate with the Monitor with a view to reaching agreement within 14 days of being so notified, as to the alteration of the proposed Exploration Licence Works to the reasonable satisfaction of the Monitor.
- 5.5.1 If agreement is reached under item 5.5, then a new draft Work Plan, or Low Impact Exploration Plan, as the case may be, incorporating any alterations that have been made as a result of agreement, will be provided to the Monitor and, subject to the Heritage Acts, the obtaining of a work authority under the MRDA, and to any other applicable laws, the Exploration Licence Works may then proceed.
 - 5.5.2 If the Explorer cannot agree to the requested alteration in its entirety or at all (because of significantly greater cost or inconvenience) then, subject to the Heritage Acts, the obtaining of a work authority under the MRDA, and to any other applicable laws, the Explorer will conduct its Exploration Licence Works, where practicable taking into consideration the Monitor's requests for alterations.
- 5.6 The Parties agree that to the extent that the item 5.3 inspections involve the engagement of a cultural heritage consultant to assist the Monitor by undertaking an archaeological survey, the cultural heritage consultant shall, in accordance with section 22(5) of the *Archaeological and Aboriginal Relics Preservation Act 1972*

(Vic), notify Aboriginal Affairs Victoria ("AAV") of any proposal to undertake a survey prior to the commencement of the survey, and provide all archaeological site information collected in the survey to AAV, in the report format prescribed by AAV, and provide a copy of any such report to the Monitor and the Explorer.

5.7 The Parties acknowledge that in order to comply with the Heritage Acts, the Explorer may need to consult with other people or bodies (including AAV) who are not members of the Native Title Group.

5.8 If the Explorer proposes to make a variation to the Work Plan, or Low Impact Exploration Plan, as the case may be (whether by formal variation under the MRDA or otherwise) which would substantially or materially vary an activity which has been approved by the Monitor under this Schedule:

5.8.1 the Explorer will provide a new draft Work Plan, or Low Impact Exploration Plan, as the case may be to the Monitor under item 5.1; and

5.8.2 the provisions of this item 5 shall then be applied to the new draft Work Plan, or Low Impact Exploration Plan, as the case may be.

6. Monitoring of Exploration Licence Works

6.1 The Explorer will notify the Cultural Heritage Co-ordinator at least 7 days prior to commencement of Exploration Licence Works, except:

6.1.1 where those works only involve non-ground disturbing activity; or

6.1.2 where those works are not conducted on Crown Land.

6.2 The Cultural Heritage Co-ordinator shall appoint the Monitor if required to monitor Exploration Licence Works.

6.3 If the Monitor is required to monitor the Exploration Licence Works, the Explorer will induct the Monitor as to its safety procedures. Subject to item 6.4, the Monitor will then be entitled to be present at the Exploration Licence Works.

6.4 Any Monitor present during the Exploration Licence Works will at all times comply with the work practices and safety requirements of the Explorer and the MRDA (and

other applicable laws) and follow all instructions of the Explorer, its employees and contractors.

- 6.5 The Parties acknowledge that, while the Monitor may monitor Exploration Licence Works, the Monitor is not entitled to any payments for monitoring of non-ground disturbing activity.

7. Discovery of Aboriginal Objects

- 7.1 If an object suspected to be an Aboriginal object is discovered by the Explorer, its employees or contractors (except material suspected to be human remains – see item 8 below), the following provisions will apply:

7.1.1 as required under the Heritage Acts, the discovery will be promptly reported or otherwise notified to AAV and/or any other relevant government authority;

7.1.2 all Exploration Licence Works at the place where the object was discovered and within that immediate area will stop immediately and:

(a) the Monitor and the Cultural Heritage Co-ordinator will be promptly notified;

(b) the procedures set out in item 7.1.3 will be followed;

7.1.3 Subject to any applicable laws, any Aboriginal Cultural Heritage Agreement under section 21K of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), and any lawful direction by AAV and/or any other relevant government authority:

(a) the Monitor shall take immediate steps to determine whether the object is an Aboriginal object, and its significance, and immediately inform the Explorer, AAV, and/or any other relevant government authority as to his or her opinion;

(b) if the Monitor's opinion is that the object may be or is an Aboriginal object, then unless there is a material risk that the object may be damaged, the Exploration Licence Works may recommence and

continue 100 metres distant from the object (or less than 100 metres if agreed by the Monitor). If objects which may be Aboriginal objects are also encountered at the site proposed for the relocated Exploration Licence Works, this recommencement procedure will be repeated until no such objects are encountered;

- (c) if the Monitor's opinion is that the object may be or is an Aboriginal object, the appropriate course of action will be determined by the Monitor in consultation with the Explorer, and/or any other relevant government body as appropriate under the Heritage Acts. This may consist of recording the location of the object or removal of the object, or protection of the object as appropriate;
- (d) subject to the Heritage Acts and other applicable laws, where agreement as to an appropriate course of action cannot be reached between the Monitor and the Explorer within 3 days of the time of discovery, or such longer period as the Monitor and the Explorer may agree, the dispute shall be resolved in accordance with the terms of clause 12 of the ILUA [Resolving Disputes].

8. Discovery of Human Remains

8.1 If during Exploration Licence Works, an object suspected to be human remains is discovered:

- 8.1.1 the Explorer will promptly report the discovery to Victoria Police;
- 8.1.2 all Exploration Licence Works at the place where the object was discovered and within that immediate area will stop immediately and:
 - (a) the Monitor and the Cultural Heritage Co-ordinator will be promptly notified;
 - (b) the procedures set out in item 8.1.3 and 8.1.4 will be followed;
- 8.1.3 Victoria Police will be permitted to examine the object to determine whether the object is human remains and, if so, whether the remains may be Aboriginal remains; and

- 8.1.4 subject to the consent of Victoria Police, the Monitor may also be permitted to examine the object.
- 8.2 If:
- 8.2.1 Victoria Police consider that the object is not human remains; and
- 8.2.2 the object is not an Aboriginal object;
- then Exploration Licence Works may immediately recommence. If however, the object is not human remains but is or is suspected to be an Aboriginal object, then the procedures set out in item 7 of this Schedule 3 will be followed.
- 8.3 If Victoria Police consider that the object is human remains which are or are suspected to be Aboriginal remains, the Explorer will immediately:
- 8.3.1 report the discovery to the Executive Director of AAV. The Explorer shall suspend all Exploration Licence Works to the extent necessary to protect the remains, pending a direction from the Minister for Aboriginal Affairs as to any action to be taken in relation to the remains under section 21P(2) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- 8.3.2 notify the Monitor (if not already notified) as to the Explorer's report in item 8.3.1.
- 8.4 The Explorer will:
- 8.4.1 comply with its obligations under the Heritage Acts; and
- 8.4.2 if the Monitor reasonably requests, and where no significantly greater cost or inconvenience is likely, cease Exploration Licence Works at the location of the remains and within such area around the remains as the Monitor reasonably considers should not, according to Aboriginal tradition, be disturbed by the Exploration Licence Works.

9. Report from Monitor

Immediately following any inspection, monitoring or site attendances under item 5, 6, 7 or 8 of this Schedule 3, the Monitor shall complete a Report that shall be jointly signed in duplicate by the Monitor and the Explorer, with a signed copy of the Report then given to the Cultural Heritage Co-ordinator by the Monitor.

10. Cultural Instruction

10.1 During the term of the Exploration Licence, the Explorer will ensure that its employees and contractors, who are likely to encounter cultural heritage sites, are given appropriate instruction from time to time to help ensure compliance with the Heritage Acts and to foster good relationships with members of the Native Title Group.

10.2 As soon as reasonably practicable, the Explorer will commission an initial one-off cultural heritage induction program by a person nominated by the Cultural Heritage Co-ordinator for the Explorer and relevant contractor personnel.

11. Proceeding with the Exploration Licence Works

11.1 Subject to the Heritage Acts and other applicable laws, where the Monitor, the Cultural Heritage Co-ordinator, the Native Title Signatories and/or the Native Title Group fail to comply with any timeframes referred to in this Schedule 3 or such other timeframes as agreed by the Monitor, the Cultural Heritage Co-ordinator and the Explorer, then the Explorer may immediately proceed at its own risk with the Exploration Licence Works.

11.2 The Explorer shall notify the Monitor, the Cultural Heritage Co-ordinator and the Native Title Signatories in writing, that it has proceeded with the Exploration Licence Works.

12. Cultural Heritage Payments

- 12.1 Subject to receipt by the Explorer of an invoice from the Cultural Heritage Co-ordinator, the Explorer shall make payments to the Cultural Heritage Co-ordinator for the Monitor's activities under this Schedule 3 as follows:

12.1.1 Inspection:

an inspection by a Monitor under item 5 of this Schedule 3 of a draft Work Plan area, or Low Impact Exploration Plan, as the case may be, at \$300.00 (plus GST) per day for a period of more than 4 hours or \$100.00 (plus GST) per day where the Monitor is in attendance on site for a period of less than 4 hours, and \$150.00 (plus GST) per day for a Report;

12.1.2 Monitoring of Exploration Licence Works:

Attendance on site of a Monitor during Exploration Licence Works under item 6 of this Schedule 3 which involve clearing or the excavation of soil or rock to expose underlying strata up to a depth of 10 metres or until bedrock is encountered, whichever occurs first, at \$300.00 (plus GST) per day for a period of more than 4 hours or \$100.00 (plus GST) per day where the Monitor is in attendance on site for a period of less than 4 hours, and \$150.00 (plus GST) per day for a Report;

12.1.3 Stop Work Consultation:

attendance by a Monitor on site under item 7 or 8 of this Schedule 3 to inspect and advise on any Aboriginal objects or suspected Aboriginal remains that may be encountered by the Explorer, at \$300.00 (plus GST) per day for a period of more than 4 hours or \$100.00 (plus GST) per day where the Monitor is in attendance on site for a period of less than 4 hours, and \$150.00 (plus GST) per day for a Report;

12.1.4

Cultural Induction:

an initial one-off cultural heritage induction program by a person nominated by the Cultural Heritage Co-ordinator for the Explorer and relevant contractor personnel under item 10.2 of this Schedule 3 at \$450.00 (plus GST).

- 12.2 The Explorer shall pay all reasonable travel and accommodation expenses associated with the Monitor's paid activities listed in this item 12.
- 12.3 The cultural heritage payments shall be increased annually by CPI on the anniversary date of the signing of the relevant Deed (at the CPI rate that exists at that anniversary date).

Schedule 4: Template Monitor's Report

Schedule 4

TEMPLATE MONITOR'S REPORT

[Monitor to complete this page and relevant Annexure. Complete a new Report for each day/part day]

- MONITOR'S NAME _____
- MONITOR'S START AND FINISH TIMES/DATES _____

- LOCATION _____
- GPS COORDINATES OF LOCATION (IF AVAILABLE) _____
- EXPLORER'S NAME _____
- EXPLORATION LICENCE NUMBER _____
- DESCRIPTION OF EXPLORER'S WORKS/PROPOSED WORKS RELEVANT TO THIS REPORT

- MONITOR'S DUTIES (tick relevant box)
 1. Inspection of Crown land areas detailed in the Explorer's draft Work Plans/Low Impact Exploration Plans: (complete Annexure A) ☐
 2. Monitoring of Exploration Licence Works on Crown land areas: (complete Annexure B) ☐
 3. Site attendance: Aboriginal object/place: (complete Annexure C) ☐
 4. Site attendance: suspected Aboriginal remains: (complete Annexure D) ☐

- ADDITIONAL COMMENTS BY MONITOR _____

- ADDITIONAL COMMENTS BY EXPLORER _____

SIGNED BY MONITOR _____

SIGNED BY EXPLORER (CONFIRMATION OF MONITOR'S START AND FINISH TIMES/DATES)

DATE _____

HAS THE REPORT BEEN SIGNED IN DUPLICATE BY MONITOR AND EXPLORER (INCLUDING RELEVANT ANNEXURE BY MONITOR)?

☐

YES

☐

NO

MONITOR TO SEND SIGNED COPY OF REPORT TO CULTURAL HERITAGE CO-ORDINATOR

CULTURAL HERITAGE CO-ORDINATOR TO PROCESS REPORTED START AND FINISH TIMES/DATES AND PREPARE AND FORWARD AN INVOICE TO THE EXPLORER

ANNEXURE A

[to be completed by Monitor for inspections of area of Crown land detailed in the Explorer's draft Work Plans/Low Impact Exploration Plans: see item 5 of the Cultural Heritage Management Procedures]

- Has the Monitor received a copy of draft Work Plan/Low Impact Exploration Plan (delete whichever is inappropriate)? ☐ YES ☐ NO
- Has inspection of areas of Crown land detailed in the draft Work Plan/Low Impact Exploration Plan been completed? ☐ YES ☐ NO
- Will the proposed Exploration Licence Works associated with draft Work Plan/Low Impact Exploration Plan affect an:
 - (1) Aboriginal object/place? ☐ YES ☐ NO
 - (2) Aboriginal remains? ☐ YES ☐ NO
- Has agreement been reached between Monitor and Explorer regarding alteration of proposed Exploration Licence Works so that Aboriginal object/place and/or remains not disturbed? ☐ YES ☐ NO
- If YES, Explorer to provide Monitor with agreed new draft Work Plan/Low Impact Exploration Plan provided to Monitor.
- Did a Cultural Heritage Consultant also participate in inspection? ☐ YES ☐ NO
- If YES, insert name of Cultural Heritage Consultant _____
- Has the Cultural Heritage Consultant's report been provided to Monitor and Explorer? ☐ YES ☐ NO

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

ANNEXURE B

[to be completed by Monitor where there has been monitoring of Exploration Licence Works on Crown land by the Monitor: see item 6 of the Cultural Heritage Management Procedures]

- Has the Monitor been inducted by Explorer as to safety procedures? ☐ YES ☐ NO
- What is the location of the Monitoring (written description and GPS coordinates, if available)?

- Will the Exploration Licence Works affect an:
 - (1) Aboriginal object/place? ☐ YES ☐ NO
 - (2) Aboriginal remains? ☐ YES ☐ NO

If YES, go to Annexure C if Aboriginal object/place or Annexure D if suspected Aboriginal remains/Aboriginal remains

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

ANNEXURE C

[to be completed by Monitor if Exploration Licence Works will affect an Aboriginal object/place: see item 7 of the Cultural Heritage Management Procedures]

- What is the description of the Aboriginal object/place? _____

- What is the significance of Aboriginal object/place? ☐ ☐ ☐
High Moderate Low
- What is the location of Aboriginal object/place (written description and GPS coordinates, if available) _____

- Has the Monitor informed AAV about Aboriginal place/object? ☐ ☐
YES NO
- Have the Exploration Licence Works been altered so that they can continue without affecting the Aboriginal object/place? ☐ ☐
YES NO
- If NO, do the Explorer and Monitor agree to use dispute resolution process (clause 12 of ILUA)? ☐ ☐
YES NO

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

ANNEXURE D

[to be completed by Monitor if Exploration Licence Works will or may affect suspected Aboriginal remains: see item 8 of the Cultural Heritage Management Procedures]

- Has the Explorer notified Victoria Police of the discovery? ☐ YES ☐ NO
- Have Exploration Licence Works stopped in the vicinity? ☐ YES ☐ NO
- Monitor to await consent of Victoria Police to inspect.
- Have Victoria Police inspected the suspected remains? ☐ YES ☐ NO
- Do Victoria Police consider that they are not human remains? ☐ YES ☐ NO
- Do Victoria Police consider that they are, or are suspected to be, Aboriginal object/remains ☐ YES ☐ NO
- Has the Monitor inspected the suspected remains? ☐ YES ☐ NO
- Does the Monitor believe that the object/remains are Aboriginal object/remains or not? ☐ YES ☐ NO
- Has the Explorer reported the discovery to AAV? ☐ YES ☐ NO
- Has direction been received from Minister for Aboriginal Affairs regarding action in relation to the remains? ☐ YES ☐ NO

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

Schedule 5: Template Deed of Assumption by Applicant

Schedule 5

TEMPLATE DEED OF ASSUMPTION BY APPLICANT

Name and Address of Exploration Licence applicant: _____

(“the Applicant”)

RECITALS

- A The Applicant has applied for an Exploration Licence.
- B The ILUA allows for the grant of Exploration Licences on certain conditions including that the Exploration Licence is subject to the Land Use Conditions.
- C The ILUA provides that the Land Use Conditions are enforceable as if they were a contract between the Explorer and the Native Title Signatories.
- D By signing this Deed, the Applicant assumes the rights and obligations of the Explorer under the ILUA as if the Applicant were the Explorer referred to in the ILUA.

1. INTERPRETATION

Unless otherwise provided, words and expressions used in this Deed have the same meaning as provided for in the ILUA.

2. DEFINITIONS

In this Deed:

Exploration Licence means the Exploration Licence < *insert ELA number or numbers* > that is applied for by the Applicant and may be granted and registered by the State pursuant to the MRDA, which Exploration Licence is located wholly or partly within the ILUA area, and includes any renewal, amalgamation or variation of the exploration licence by the State pursuant to the MRDA or any other applicable laws;

Exploration Licence Area means the area the subject of the Exploration Licence, a map of which is attached to this Deed;

<Note: the Applicant should provide maps of any Exploration Licence to the Native Title Signatories>

ILUA means the indigenous land use agreement between the Native Title Signatories, on their own behalf and on behalf of the Native Title Group, and MCA signed on *[insert date]*;

3. APPLICATION FOR GRANT OF EXPLORATION LICENCE

- 3.1 The Applicant has applied for the grant of the Exploration Licence within the ILUA area.
- 3.2 By signing this Deed, in relation to the Exploration Licence, the Applicant:
- 3.2.1 assumes the rights and obligations of the Explorer under the ILUA as if the Applicant were the Explorer referred to in the ILUA;
 - 3.2.2 acknowledges that the ILUA is enforceable as between the Native Title Signatories and the Applicant as if the Applicant were the Explorer referred to in the ILUA; and
 - 3.2.3 acknowledges that it is legally bound by the ILUA as if it were a contract between the Native Title Signatories and the Applicant.

4. TERM OF DEED AND EFFECT OF WITHDRAWAL OR DISMISSAL OF NATIVE TITLE DETERMINATION APPLICATIONS

- 4.1 The Applicant agrees that it is bound by this Deed for the term of the Exploration Licence.
- 4.2 The Applicant for a new Exploration Licence, that is applied for after the withdrawal or dismissal of the native title determination applications, is not obliged to sign a Deed that relates to that new Exploration Licence.

5. INDEPENDENT LEGAL ADVICE

The Applicant acknowledges that he or she has had an opportunity to seek independent legal advice with respect to all aspects of this Deed and the ILUA.

6. NOTICES

- 6.1 For the purposes of clause 30 and Schedule 6 of the ILUA, the address for service of the Applicant is:
- Name:
Contact:
Address:
Telephone number:
Facsimile number:
- 6.2 Immediately upon signing this Deed, the Applicant shall provide a signed copy of the Deed, with a copy of any Exploration Licence application and map, to the following:
- 6.2.1 the Native Title Signatories;
 - 6.2.2 MCA;
 - 6.2.3 NTSV; and
 - 6.2.4 the State.

Executed by the Applicant as a Deed this _____ day of _____ 20

Attachment 1: Sealing Clauses

<Note: the correct form of sealing clause for a corporate Applicant 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.

<Note: the Applicant 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 name> pursuant to a power)
of attorney 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:/...../.....

Schedule 6: Address for Notices

Schedule 6: Address for Notices

Native Title Signatories

for and on behalf of
the Dja Dja Wurrung People
c/- Native Title Services Victoria Ltd
Attention: CEO
Level 2, 642 Queensberry Street
North Melbourne Victoria 3051

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

MCA

Minerals Council of Australia
Attention: Executive Director, Victorian Division
8/51 Queen Street
Melbourne, Victoria 3000

Phone number: (03) 9629 1851
Facsimile number: (03) 9629 8603

The State

Department of Primary Industries
Attention: Manager Minerals and Petroleum Tenements
1 Spring Street
Melbourne Victoria 3000

Phone number: (03) 9412 4778
Facsimile number: (03) 9412 5150

Native Title Services Victoria Ltd

Attention: CEO
Level 2, 642 Queensberry Street
North Melbourne Victoria 3051

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