

Deed of Assumption

[insert name of existing explorer]

and

[insert name of proposed explorer]

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Date	
Parties	
1.	The party specified in item 1 of the annexure (<i>existing explorer</i>); and
2.	The party specified in item 2 of the annexure (<i>proposed explorer</i>).
Recitals	
A	The <i>existing explorer</i> is a party to the <i>accepted exploration contract</i> .
B	The <i>existing explorer</i> wishes to assign and transfer its rights and obligations under the <i>accepted exploration contract</i> in relation to the <i>assigned exploration tenements</i> .
C	The parties have agreed that the <i>proposed explorer</i> will take an assignment and transfer of the rights and obligations of the <i>existing explorer</i> in the <i>accepted exploration contract</i> in relation to the <i>assigned exploration tenements</i> .
D	The parties have also agreed that this deed will operate in favour, and for the benefit, of the <i>native title parties</i> and the <i>state</i> (as defined in the <i>accepted exploration contract</i>).

It is agreed as follows.

1. Preliminary

1.1 Definitions

In this deed, unless the context otherwise requires:

accepted exploration contract means the contract specified in item 3 of the annexure;

assigned exploration tenements means the *authorised exploration tenements* (as defined in the *accepted exploration contract*) specified in item 4 of the annexure;

business day means a day other than a Saturday, Sunday or public holiday in South Australia;

effective date means the date specified in item 5 of the annexure; and

other terms in italics which are defined in the *accepted exploration contract* bear their defined meanings when used in this deed.

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1.1 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause or annexure is a reference to a clause of, or an annexure to, this deed;
- (f) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any *communication* using electronic mail;
- (g) a reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (k) references to agree, approve or consent on the part of a party to this deed is a reference to agreement, approval or consent (as the case may be) on the part of that party in writing; and
- (l) nothing in this deed is to be interpreted against a party to this deed solely on the ground that the party put forward this deed or any part of it.

1.2 Headings

Headings in this deed do not affect interpretation.

1.3 Annexure

The annexure forms part of this deed.

2. Assignment

2.1 Assignment and Transfer

From the *effective date*, the *existing explorer* assigns and transfers to the *proposed explorer* all of its rights and obligations under the *accepted exploration contract* in relation to the *assigned exploration tenements*.

2.2 Proposed Explorer

The *proposed explorer* covenants in favour of the *existing explorer*, the *native title parties*, the *minister* and the *state* that, from the *effective date*, the *proposed explorer* will perform and observe the *existing explorer's* obligations under the *accepted exploration contract* in relation to the *assigned exploration tenements*, as if the *proposed explorer* were the *existing explorer* under the *accepted exploration contract*.

2.3 Existing Explorer

- (a) If the *assigned exploration tenements* are not all of the *authorised exploration tenements* (as defined in the *accepted exploration contract*), the *existing explorer* remains bound by the terms of the *accepted exploration contract* in relation to those *authorised exploration tenements* which are not *assigned exploration tenements*.
- (b) From the *effective date*, the *existing explorer* is released from its obligations under the *accepted exploration contract* to the extent that those obligations are transferred and assigned to the *proposed explorer* under this deed.

2.4 Indemnity by proposed explorer

The *proposed explorer* indemnifies the *existing explorer* from:

- (a) all claims, actions and proceedings (whether in contract, tort or otherwise and whether actual, present, future or contingent), brought or made by any person against the *existing explorer*, arising on or after the *effective date* under or in connection with the *accepted exploration contract*, including any act or omission (whether negligent or otherwise) of the *proposed explorer*, its officers, employees, agents and contractors; and
- (b) all costs, expenses, losses, damages and liability (including legal costs on a full indemnity basis) suffered or incurred by the *existing explorer* in relation to any such claim, action or proceedings,

to the extent that such claim, action, proceedings, costs, expenses, losses, damages or liability relate to the rights and/or obligations of the *existing explorer* assigned and transferred by the *existing explorer* to the *proposed explorer* pursuant to this deed.

2.5 Indemnity by existing explorer

The *existing explorer* indemnifies the *proposed explorer* from:

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- (a) all claims, actions and proceedings (whether in contract, tort or otherwise and whether actual, present, future or contingent), brought or made by any person against the *proposed explorer*, arising before the *effective date* under or in connection with the *accepted exploration contract*, including any act or omission (whether negligent or otherwise) of the *existing explorer*, its officers, employees, agents and contractors; and
- (b) all costs, expenses, losses, damages and liability (including legal costs on a full indemnity basis) suffered or incurred by the *proposed explorer* in relation to any such claim, action or proceedings.

2.6 Notice of Assignment

The *proposed explorer* must notify the *minister*, and the *native title parties* of the formation of this deed within 10 *business days* of formation and simultaneously provide a duplicate original of this deed to each of them.

3. Communications

3.1 Writing required

Any notice, direction, request, consent, approval, demand or other communication (**communication**) to be given under this deed will be in writing, be signed by the representative of the party giving the notice as set out in item 6 of the annexure and be addressed to the representative of the recipient party as set out in item 6 of the annexure.

3.2 Manner of giving

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

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

3.3 Change of details

Details specified in item 6 of the annexure in respect of a party may be changed by the party by not less than 5 *business days* notice to the other parties.

4. General

4.1 Entire agreement

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

4.2 Amendment

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

4.3 Severability

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

4.4 Assignment and transfer

- (a) The rights and obligations of each party under this deed are personal.
- (b) Those rights and obligations cannot be disposed of, *encumbered* or otherwise dealt with and no party may attempt, or purport, to do so without the prior consent of the other party.

4.5 No waiver

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

4.6 Costs and stamp duty

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the *proposed explorer*.

4.7 Governing law and jurisdiction

- (a) This deed is governed by the laws of South Australia.

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- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

4.8 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

4.9 Relationship

- (a) The relationship between the parties is that of independent contractors.
- (b) The parties are not partners, joint venturers or principal and agent.

4.10 Execution

The parties execute this deed unconditionally as a deed poll.

Executed by:

THE COMMON SEAL of)
[existing explorer])
the fixing of which was witnessed by:)

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director

.....
Name of director/secretary

or

SIGNED by)
[Insert name of individual])

.....

.....
Witness

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THE COMMON SEAL of)
[Proposed explorer])
the fixing of which was witnessed by:)

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director

.....
Name of director/secretary

ANNEXURE

Item 1 – Existing Explorer

Item 2 – Proposed Explorer

Item 3 – Accepted Exploration Contract

Item 4 – Assigned Exploration Tenements

Item 5 – Effective Date

Item 6 – Notice Details

Existing Explorer

Address:

Attention:

Facsimile No:

Proposed Explorer

Address:

Attention:

Facsimile No:

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Minister

Address: Department for Primary Industries
Level 5, 101 Grenfell Street
ADELAIDE SA 5000

Attention: Mining Registrar
Facsimile No: (08) 8463 3101

Native Title Parties

Address:

Attention:
Facsimile No:

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ANNEXURE E
Exploration Contract Return