

# Exploration Contract Conditions

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**The Honourable Michael John Atkinson, Attorney-General**

and

**Minister for Mineral Resources and Development**

and

**Andrew Dingaman, Howard Richards, Elliott McNamara  
and Ken Smith as registered native title claimants for and  
on behalf of the Gawler Ranges native title claim group**

and

**The *party* specified in the *acceptance document*, executed  
by that *party* in relation to the *authorised exploration  
tenements***

## Table of Contents

<b>1.</b>	<b>Preliminary</b>	<b>2</b>
1.1	Definitions	2
1.1	Interpretation	10
1.2	Headings	11
1.3	Schedules and annexures	11
1.4	Date of Framework ILUA	11
<b>2.</b>	<b>Term and Termination</b>	<b>11</b>
2.1	Term	11
2.2	Termination	12
2.3	Termination by Explorer	12
2.4	Non-Application to Excluded Tenements	13
<b>3.</b>	<b>Native Title Act Statements</b>	<b>13</b>
3.1	Consent to Future Acts	13
3.2	No right to negotiate procedures	13
3.3	When consent effective	14
3.4	Amendments to Accepted Exploration Contract	14
3.5	Effect of Removal from Register	14
3.6	Effect of Breach of Essential Term	15
<b>4.</b>	<b>Other Statements</b>	<b>15</b>
4.1	Non extinguishment principle	15
4.2	Application	15
4.3	Exploration only	15
4.4	Entry on Land	16
4.5	Conjunctive Agreements	16
4.6	Authorised Exploration Tenement Terms	16
4.7	Other Native Title Holders	16
4.8	No Acknowledgment of Native Title	16
<b>5.</b>	<b>Aboriginal Heritage</b>	<b>17</b>
5.1	Requirement	17

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

5.2	Compliance with Aboriginal Heritage Requirements	18
5.3	Discoveries During Operations	18
5.4	Instruction in Aboriginal Culture	19
5.5	Aboriginal Heritage	19
<b>6.</b>	<b>Consideration</b>	<b>20</b>
6.1	Acceptance fee	20
6.2	Amount of Acceptance fee	20
6.3	Individual Survey Payments	20
6.4	Manner of payment	21
6.5	Acknowledgment	21
6.6	Exception	21
6.7	Sharing	21
6.8	Application Survival	21
<b>7.</b>	<b>Covenants by Explorer</b>	<b>22</b>
7.1	Compliance with Laws	22
7.2	Rehabilitation	22
7.3	Exploration Contract Return	22
7.4	Limitations on Activities under Mineral Claim	23
<b>8.</b>	<b>Rights of Explorer</b>	<b>23</b>
8.1	Basis	23
8.2	Qualification	23
8.3	Emergency	23
<b>9.</b>	<b>Additional Covenants of Native Title Parties</b>	<b>23</b>
9.1	Non-Interference, Objections and Compliance	23
9.2	Nominated Body	24
<b>10.</b>	<b>Rights of Native Title Parties</b>	<b>25</b>
10.1	Right to Object to Grants	25
10.2	Right to Request Cancellation or Suspension	26
10.3	Recipient of Objection or Submission	26
10.4	Withdrawal of Objection or Submission	26

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

10.5	Notice of Withdrawal	26
10.6	Explorer's Acknowledgment	26
10.7	Use of Roads	27
<b>11.</b>	<b>Covenants by State</b>	<b>27</b>
11.1	Consideration by Minister	27
11.2	Records	28
11.3	Notification of Grants	28
11.4	Survival	28
<b>12.</b>	<b>Additional Tenements</b>	<b>28</b>
12.1	Notice	28
12.2	Application	28
12.3	No Previous Activities	29
12.4	No Notice to Initiate Negotiations	29
12.5	Prior Breach	29
12.6	Aboriginal Heritage Breaches	29
12.7	Effect	30
<b>13.</b>	<b>Employment</b>	<b>30</b>
13.1	Acknowledgment	30
13.2	Notification of vacancies	31
13.3	Notification by Native Title Parties	31
13.4	Employment preference	31
13.5	Training	31
13.6	Contractors	31
<b>14.</b>	<b>Warranties and Authority</b>	<b>32</b>
14.1	Preliminary	32
14.2	Warranties by Native Title Parties	32
14.3	Warranties by Explorer	32
14.4	No Acknowledgment	33
14.5	Registered native title body corporate	33
<b>15.</b>	<b>Breach of Essential Terms</b>	<b>34</b>

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

15.1	Non-Payment Breach	34
15.2	Other Breaches	35
15.3	Remedying of Breach	36
15.4	Examples of Breach Provisions	37
<b>16.</b>	<b>Representatives</b>	<b>39</b>
16.1	Right to Representative(s)	39
16.2	Continuity	39
16.3	Functions	40
16.4	Cooperation	40
16.5	Survival	40
<b>17.</b>	<b>Dispute Resolution</b>	<b>40</b>
17.1	Clause applies	40
17.2	Avoidance	41
17.3	Notification	41
17.4	Initial Meeting	41
17.5	Breach of Essential Term	41
17.6	Mediation	42
17.7	Expert	42
17.8	Capacity of Expert	42
17.9	Expert's Determination	42
17.10	Determination costs	42
17.11	Expert's Fees	42
17.12	Notification of Minister	43
17.13	Survival	43
<b>18.</b>	<b>Communications</b>	<b>43</b>
18.1	Writing required	43
18.2	Manner of giving	43
18.3	Change of details	43
<b>19.</b>	<b>GST</b>	<b>44</b>
<b>20.</b>	<b>General</b>	<b>44</b>

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

20.1	Entire agreement	44
20.2	Amendment	44
20.3	Severability	44
20.4	No announcements	44
20.5	Confidential Information	45
20.6	Assignment and transfer	45
20.7	Force Majeure	45
20.8	No waiver	46
20.9	Minister's Discretion	46
20.10	Further assurances	46
20.11	No merger	46
20.12	Costs and stamp duty	47
20.13	Governing law and jurisdiction	47
20.14	Relationship	47

This document sets out the exploration contract conditions which, upon the *explorer* complying with the provisions of clause 5.1 of the *framework ILUA* in relation to the *authorised exploration tenements*, apply pursuant to the *accepted exploration contract* then formed between the following *parties*:

## Parties

1. **The Honourable Michael John Atkinson, Attorney-General** for and on behalf of the Crown in right of the State of South Australia of Level 11, ING Building, 45 Pirie Street, Adelaide SA 5000 (*state*)
2. **Minister for Mineral Resources and Development** a corporation sole constituted by Section 11 of the Mining Act, 1971 and whose office is situated at 17<sup>th</sup> Floor, 25 Grenfell Street, Adelaide SA 5000 (*minister*)
3. **Andrew Dingaman, Howard Richards, Elliott McNamara and Ken Smith as registered native title claimants for and on behalf of the Gawler Ranges native title claim group** in application no SG6020/98 in the Federal Court of Australia, of c/- Aboriginal Legal Rights Movement Inc, Level 4, 345 King William Street, Adelaide SA 5000 (*native title parties*)
4. **The party specified in the acceptance document executed by that party in relation to the authorised exploration tenements (explorer)**

## Recitals

- A The *registered native title claimants* are (as at the date of execution of the *framework ILUA* by all of the *framework parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and *waters* in the *acceptance area* and made the *native title claim* on behalf of the *native title claim group*.
- B Prior to signing the *framework ILUA* the *registered native title claimants* consulted with the *native title claim group* and the *native title claim group* consented to and authorised the *registered native title claimants* to enter into the *accepted exploration contract* on behalf of the *native title parties*.
- C The *state*:
- (a) is the Crown in right of the State of South Australia;
  - (b) through the *minister*, its departments and agencies administers the *mining act* including:

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

	<ul style="list-style-type: none"><li>(i) the <i>granting</i> of all <i>mining tenements</i>; and</li><li>(ii) the management of Part 9B of the <i>mining act</i>, being the alternative <i>state right to negotiate procedure</i>; and</li><li>(c) is the first respondent to all <i>native title determination applications</i> in South Australia.</li></ul>
D	<p>Pursuant to the <i>framework ILUA</i> the <i>framework parties</i>:</p> <ul style="list-style-type: none"><li>(a) consented to the <i>grant</i> of the <i>authorised exploration tenements</i>;</li><li>(b) consented to the carrying out of <i>authorised exploration activities</i> under the <i>authorised exploration tenements</i>; and</li><li>(c) agreed that the <i>right to negotiate procedure</i> does not apply to the <i>grant</i> of the <i>authorised exploration tenements</i> or the carrying out of <i>authorised exploration activities</i> under them.</li></ul>
E	<p>The <i>parties</i> wish to set out in the <i>accepted exploration contract</i> the provisions that apply to the <i>grant</i> of the <i>authorised exploration tenements</i> and the carrying out of <i>authorised exploration activities</i> under them.</p>

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## 1. Preliminary

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### 1.1 Definitions

In this document (including the annexures and appendices to it), unless the context otherwise requires:

***Aboriginal heritage act*** means the Aboriginal Heritage Act No 12 of 1988 (SA);

***Aboriginal site, object or remains*** means any of:

- (a) an "Aboriginal site", an "Aboriginal object" or "Aboriginal remains" as defined in the *Aboriginal heritage act*; and
- (b) "Aboriginal remains", a "significant Aboriginal area" or a "significant Aboriginal object" as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act No 79 of 1984 (Cth);

***acceptance area*** means the geographical area (within the *ILUA area*) in relation to which the *accepted exploration contract* applies, being the area of *land* and/or *waters* the subject of those *authorised exploration tenements* details of which are specified in the *acceptance document* or in any notice given pursuant to clause 12.1;

***acceptance document*** means the deed forming part of the *framework ILUA* at schedule 3, as amended from time to time pursuant to the *framework ILUA*, by which the *explorer* agrees to enter into the *accepted exploration contract*;



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

**acceptance term** means the period, within the term of the *framework ILUA*, starting on the date of commencement of the *framework ILUA* and ending on the date determined in accordance with clause 2.2(d) of the *framework ILUA* during which the *explorer* is entitled to enter into the *accepted exploration contract* in accordance with the provisions of clause 5.1 of the *framework ILUA*;

**acceptance fee** means the fee payable by the *explorer* in consideration of the matters referred to in clause 6.1, determined in accordance with clause 6.2;

**accepted exploration contract** means the contract:

- (a) on the terms of this document and the *acceptance document* signed by the *explorer* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term; and
- (b) formed between the *parties* upon the *explorer* complying with the provisions of clause 5.1 of the *framework ILUA*;

**authorised exploration activities** means *exploration activities* under an *authorised exploration tenement*;

**authorised exploration tenement** means:

- (a) any *exploration tenement granted*, whether before or after the *commencement date* or the date of commencement of the *framework ILUA*, of which the *explorer* is the *tenement holder*:
  - (i) being an exploration tenement:
    - (A) details of which are specified in the *acceptance document* executed by the *explorer* in order to enter into the *accepted exploration contract*;
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*; and
    - (C) in relation to which the provisions of clause 5.1 of the *framework ILUA* have been complied with; or
  - (ii) being an exploration tenement:
    - (A) details of which are specified in a notice given by that *explorer* pursuant to clause 12.1;
    - (B) to the extent that the *land* and/or *waters* the subject of the *exploration tenement* are within the *ILUA area*;
- (b) any *exploration tenement to be granted*:
  - (i) upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (a) of which that *explorer* will, upon *grant*, be the *tenement holder*; and
  - (ii) in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of that *exploration tenement*;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (c) any *exploration tenement* of a different type to that referred to in paragraphs (a) and (b) to be *granted*:
  - (i) during the *acceptance term* of which that *explorer* will, upon *grant*, be the *tenement holder*; and
  - (ii) in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of any *exploration tenement* referred to in paragraph (a) or (b); and
- (d) any *exploration tenement* to be *granted*:
  - (i) during the *acceptance term* upon any renewal, regrant, remaking or extension of the term of any *exploration tenement* referred to in paragraph (c) of which that *explorer* will, upon *grant*, be the *tenement holder*; and
  - (ii) in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of that *exploration tenement*,

but excludes any *excluded tenement* and any *exploration* in respect of which (and to the extent that) an *accepted exploration contract* terminates or is terminated in accordance with clause 2.3(a), 2.3(b) or 4.5 of that *accepted exploration contract*;

***authority*** means any statutory, public, governmental, semi-governmental, or municipal authority, body or department;

***breached tenement*** means the *authorised exploration tenement* in relation to which the *explorer* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) of the *accepted exploration contract*;

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

***commencement date*** means the date upon which all of the following have occurred:

- (a) the *explorer* has duly completed and signed the *acceptance document* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term and, where applicable, has obtained the consent of the *native title parties* in accordance with clause 5.1(c) of the *framework ILUA*;
- (b) if required under the *mining act*, the *explorer* has registered the duly completed and signed *acceptance document* under the *mining act* or, if not so required, has provided a copy of the duly completed and signed *acceptance document* to the *minister*;
- (c) the *explorer* has notified the *native title parties* that the *explorer* has duly completed and signed the *acceptance document* and simultaneously has provided the *native title parties* with an original or duplicate original of the *acceptance document* and, if applicable, evidence that it has been duly stamped and registered under the *mining act*; and

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (d) if the *explorer* is the *mining operator* in respect of that *exploration tenement*, has provided the *native title parties* and the *minister* with evidence of that fact;

**communication** has, for the purposes of clause 18, the meaning given in clause 18.1;

**compensation entitlement** means any compensation, right or entitlement whether monetary or otherwise and whether under common law, equity, statute or otherwise in respect of *native title* with respect to:

- (a) the grant of any *authorised exploration tenement*; or  
(b) the carrying out of any *authorised exploration activities* under any *authorised exploration tenement*;

**cultural confidence** means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

**cultural mapping survey** means a survey for purposes of preserving, protecting, maintaining or enhancing the culture of the *native title parties* in relation to *Aboriginal sites, objects or remains*, carried out pursuant to clause 8 of the *framework ILUA* and the *mapping survey procedures*;

**determination** has, for the purposes of clause 17, the meaning given in clause 17.7;

**dispose** means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

**dispute** has the meaning given in clause 17.1;

**dispute parties** has the meaning given in clause 17.4;

**encumber** means to grant or create or permit or suffer the grant or creation of any interest or power:

- (a) reserved in, or over any interest in, any asset including any retention of title; or  
(b) granted, created or otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created;

**essential term** means the terms of each of clauses 5.1, 5.2, 5.3, 6.1, 6.3, 6.4(b), 7.1, 7.4, 8.3(c) and 8.3(d) of the *accepted exploration contract*;

**excluded tenement** means an *exploration tenement* to which the *accepted exploration contract* does not apply by reason of the provisions of clause 15.1 or 15.2 of the *accepted exploration contract*;

**expert** means the person appointed either:

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (a) by agreement between the *dispute parties* within 5 *business days* of any *dispute* not being resolved in accordance with the provisions of clause 17.6; or
- (b) failing such agreement, at the request of any *dispute party* by the President for the time being of the Law Society of South Australia Inc. (or the President's nominee), being a person who has an understanding of, and experience in, both Aboriginal heritage and minerals exploration matters;

**exploration activities** means, in relation to an *exploration tenement*, all *exploratory* operations and other activities permitted to be carried out pursuant to the conditions of that *exploration tenement* under the *mining act*;

**exploration contract return** means the form of return annexed to this document as annexure E or such other form of return as may be agreed from time to time between the *explorer* and the *native title parties*;

**exploration land** means, at any time, land which is both the subject of any *authorised exploration tenement granted* at that time and within the *acceptance area*;

**exploration mapping survey** means a survey, carried out pursuant to clause 8 of the *framework ILUA* and the *mapping survey procedures*, for purposes of preserving and protecting *Aboriginal sites, objects or remains* in relation to those *exploration activities* in respect of which the survey is undertaken;

**exploration tenement** means a *mineral claim*, an *exploration licence*, a *retention lease* (but only if the *mining* operations to which the *retention lease* relates are limited to *exploratory* operations) and a *miscellaneous purposes licence* (but only if the purposes for which the licence is *granted* are limited to purposes ancillary to the conduct of *exploratory* operations);

**explorer** means the *party* specified as the explorer in the *acceptance document* executed by that *party* in relation to the *authorised exploration tenements* referred to in paragraph (a)(i) of the definition of that term;

**force majeure** means any act, event or cause, which is beyond the reasonable control of a *party*, including such an event being:

- (a) an Act of God, war, sabotage, riot, civil commotion, national emergency (whether in fact or *law*), fire, lightning, flood, earthquake, landslide, drought, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of that *party*), epidemic, disease, pestilence, quarantine or radioactive contamination;
- (b) action or inaction of any competent *authority* (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order or decision;
- (c) religious or other ceremonial activities (carried out pursuant to obligations under *Aboriginal tradition*) of members of the *native title claim group* or other persons (if any) who hold *native title* in relation to any of the *land* or *waters* within the *exploration land*; or

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (d) breakdown of plant, machinery or equipment (including ships, trains, trucks or vehicles) or shortage of labour, transportation, fuel, power, plant, machinery, equipment or material;

**framework ILUA** means the deed (including the schedules, annexures and appendices to it) between the *framework parties* which provides, amongst other things, that the *framework parties*:

- (a) consent to the *grant* of the *authorised exploration tenements*;
- (b) consent to the carrying out of *authorised exploration activities* under the *authorised exploration tenements*; and
- (c) state that the *right to negotiate procedure* does not apply to the *grant* of the *authorised exploration tenements* or the carrying out of *authorised exploration activities* under them;

**framework parties** means the *state*, the *minister*, the *native title parties*, Aboriginal Legal Rights Movement Inc and South Australian Chamber of Mines and Energy Inc, being the parties to the *framework ILUA*;

**framework term** means the period for which the *framework ILUA* operates, as referred to in clause 2.1(a) of the *framework ILUA*;

**grant**, in relation to an *exploration tenement*, includes

- (a) any renewal, regrant, remaking or extension of the term of an *exploration tenement*; and
- (b) any registration of a *mineral claim*;

**gst** has, for the purposes of clause 19, the meaning given in that clause;

**gst legislation** has, for the purposes of clause 19, the meaning given in that clause;

**heritage clearance procedures** means the procedures annexed to this document as annexure A, as amended from time to time pursuant to the *framework ILUA*;

**heritage transition date** means the date upon which a provision in the *Aboriginal heritage act* of a kind referred to in clause 5.1(a)(i) commences to operate;

**ILUA area** means the geographical area in relation to which the *framework ILUA* applies;

**law** means any Act of Parliament (whether state or federal) and all regulations, by-laws, statutory instruments and orders made thereunder and any lawful requirement of any *authority* and includes the conditions of any *authorised exploration tenement*;

**mapping access procedures** means the procedures annexed to this document as annexure B;

**mapping survey** means either:

- (a) an *exploration mapping survey*; or
- (b) an *exploration mapping survey* and a *cultural mapping survey*;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

**mapping survey procedures** means the procedures for carrying out a *mapping survey* forming part of the *framework ILUA* at schedule 4, as amended from time to time pursuant to the *framework ILUA*;

**mining act** means the Mining Act No 109 of 1971 (SA);

**minister** means the Minister of the Crown in right of the State of South Australia for the time being administering the *mining act*, being the *party* referred to in item 2 under the heading "Parties", or that Minister's duly authorised delegate;

**native title** has the meaning given in the *native title act*;

**native title act** means the Native Title Act No 110 of 1993 (Cth);

**native title claim** means the *native title determination application* referred to in item 3 under the heading "Parties";

**native title claim group** means the native title claim group (as defined in the *native title act*) in respect of the *native title claim*;

**native title parties** means the *native title claim group* and includes the *registered native title claimants*, being the *party* referred to in item 3 under the heading "Parties";

**nominated body** means:

- (a) if nominated by the *native title parties* pursuant to clause 6.5(a), a body corporate:
  - (i) whose membership or shareholding by its constitution includes the members of the *native title claim group*;
  - (ii) which is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
  - (iii) which is incorporated by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*;
- (b) if nominated by the *native title parties* pursuant to clause 6.5(a), a trust:
  - (i) whose beneficiaries by the trust deed include the members of the *native title claim group*;
  - (ii) the trustee of which:
    - (A) if a natural person, is not an undischarged bankrupt;  
or
    - (B) if a body corporate, is not in administration, receivership or liquidation under any *laws* applicable to the body corporate; and
  - (iii) which is established by the *native title claim group* for purposes that include the purposes of the *accepted exploration contract*; or
- (c) if paragraphs (a) and (b) do not apply, the *native title parties*;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

***notified party*** has, for the purposes of clause 17, the meaning given in clause 17.3;

***notifying party*** has, for the purposes of clause 17, the meaning given in clause 17.3;

***objection period*** means the period:

- (a) commencing on the date upon which the *native title parties* have objected pursuant to clause 10.1(a) to the *grant* of any *exploration tenement*; and
- (b) expiring on the earlier of the date upon which:
  - (i) that objection is deemed to have been withdrawn pursuant to clause 10.4; and
  - (ii) the *accepted exploration contract* ceases to apply pursuant to clause 15, in respect of that *exploration tenement*;

***parties*** means the parties to the *accepted exploration contract*;

***payment*** has, for the purposes of clause 19, the meaning given in that clause;

***PIRSA report*** means a report prepared pursuant to clause 17.5;

***provision*** has, for the purposes of clause 20.3, the meaning given in that clause;

***recipient*** has, for the purposes of clause 19, the meaning given in that clause;

***register*** means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the *native title act*;

***registered native title claimants*** means the registered native title claimants (as defined in the *native title act*) from time to time in respect of the *native title claim*;

***representatives*** means the representative(s) of the *explorer* and the representative(s) of the *native title parties* from time to time appointed pursuant to clause 16.1;

***right to negotiate procedure*** means the procedures described in Part 9B of the *mining act* or Part 2, Division 3, Subdivision P of the *native title act*;

***state*** means the *party* referred to in item 1 under the heading "Parties";

***subsequent tenement*** has, for the purposes of clause 15, the meaning given in clause 15.2(b)(ii)(A);

***supplier*** has, for the purposes of clause 19, the meaning given in that clause;

***taxable supply*** has, for the purposes of clause 19, the meaning given in that clause; and

***term***, in relation to the *accepted exploration contract*, means the period referred to in clause 2.1;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

***tenement holder*** means in relation to an *exploration tenement* or an *authorised exploration tenement*, as the context requires, the *explorer* both where:

- (a) the *explorer* is the holder of the relevant *mining tenement*; and
- (b) a person other than the *explorer* is the registered holder of the relevant *mining tenement*; and

other terms in italics which are defined or used in the *Aboriginal heritage act*, the *native title act* or the *mining act* bear their defined meanings when used in this document.

## 1.1 Interpretation

In this document (including the annexures and appendices to it), 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, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to this document;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) a reference to an agreement, deed or document (including this document and the *accepted exploration contract*) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this document, the *accepted exploration contract* or that other agreement, deed or document;
- (h) 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;
- (i) a reference to a *party* to the *accepted exploration contract* or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (m) a reference to a document includes an agreement (referred to in paragraph (l)) in writing and any certificate, notice, instrument and document of any kind;
- (n) a reference to dollars and \$ is to Australian currency;
- (o) 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;
- (p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (q) a reference to agree, approve or consent on the part of a *party* is a reference to agree, approve or consent (as the case may be) on the part of that *party* in writing; and
- (r) nothing in this document is to be interpreted against a *party* solely on the ground that the *party* put forward this document or any part of it.

## 1.2 Headings

Headings do not affect the interpretation of this document.

## 1.3 Schedules and annexures

Schedules, annexures and appendices form part of this document.

## 1.4 Date of Framework ILUA

Any reference in this document to the date of execution of the *framework ILUA* by all of the *framework parties* is a reference to the date inserted under the heading “Date” on page 1 of the *framework ILUA*.

## 2. Term and Termination

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### 2.1 Term

- (a) The *accepted exploration contract*:
  - (i) commences on the *commencement date*; and
  - (ii) continues until the earlier of:
    - (A) the date upon which all of the *authorised exploration tenements* have terminated or expired or been surrendered or cancelled for whatever reason; and
    - (B) the date upon which, pursuant to clause 15, there is no longer any *authorised exploration tenement* to which the *accepted exploration contract* applies.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) The *explorer* must notify the other *parties* of the end of the *term* promptly after it occurs.
- (c) The provisions of clause 2.1(b) survive the expiry or earlier termination for whatever reason of the *accepted exploration contract*.

## 2.2 Termination

- (a) Subject to clauses 2.3 and 4.5, no *party* is entitled to terminate the *accepted exploration contract* for any reason including by reason of any breach or repudiation of the *accepted exploration contract* by any other *party*.
- (b) Except as set out in clause 2.2(a), the rights and remedies of any *party*, whether under common law, equity, statute or otherwise, by reason of any breach of the *accepted exploration contract* by any other *party* are not limited in any way.
- (c) Subject to clause 2.2 of the *framework ILUA*, the *parties* (other than the *explorer*) must not (as *framework parties*) agree to terminate the *framework ILUA* for any reason.

## 2.3 Termination by Explorer

- (a) If the *registrar* removes, or is obliged under the *native title act* to remove, the entry on the *register of native title claims* that relates to the *native title claim* (other than where the removal or obligation to remove that entry relates to the finalisation of the *native title claim* by an *approved determination of native title*) then the *explorer* may terminate the *accepted exploration contract*.
- (b) If:
  - (i) the *registrar* amends, or is obliged under the *native title act* to amend, the entry on the *register of native title claims* that relates to the *native title claim*; and
  - (ii) that amendment extends to the exclusion of any *land* or *waters* from the area of *land* and/or *waters* covered by the *native title claim*,then the *explorer* may terminate the *accepted exploration contract* to the extent only that it applies in relation to the excluded *land* and/or *waters* (other than where that exclusion relates to the finalisation of the *native title claim* as regards that excluded *land* and/or *waters* by an *approved determination of native title*).
- (c) No *party* has any claim of whatever nature and however arising against any other *party* arising from or out of the termination of the *accepted exploration contract* pursuant to clause 2.3(a) or (b).
- (d) Any termination of the *accepted exploration contract* pursuant to clause 2.3(a) or (b) is without prejudice to the accrued rights and remedies of the *parties*.

## 2.4 Non-Application to Excluded Tenements

The *accepted exploration contract* does not apply to an *excluded tenement*.

## 3. Native Title Act Statements

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### 3.1 Consent to Future Acts

The *parties* record that under the *framework ILUA*, subject to clauses 3.3, 3.5(b), 3.6, 3.7, 3.8 and 3.9 of the *framework ILUA*, the *framework parties*:

- (a) consented to the grant of each *authorised exploration tenement*:
  - (i) in the case referred to in paragraph (a) of the definition of *authorised exploration tenement*, at any time, whether before or after the commencement date of the *framework ILUA*, but:
    - (A) in relation to an *authorised exploration tenement*, as referred to in paragraph (a)(i) of the definition of the term, which (as at the *commencement date*) has been applied for but has not been *granted*, before the end of the *framework term*; and
    - (B) in relation to any other *authorised exploration tenement*, before the end of the *acceptance term*;
  - (ii) in the case referred to in paragraph (b) of the definition of *authorised exploration tenement*, at any time after the commencement date of the *framework ILUA* but during the *framework term*; and
  - (iii) in the cases referred to in paragraphs (c) and (d) of the definition of *authorised exploration tenement*, at any time after the commencement date of the *framework ILUA* but during the *acceptance term*; and
- (b) consented to the carrying out at any time after the commencement date of the *framework ILUA* but during the *framework term* of *authorised exploration activities* under each *authorised exploration tenement* (whether *granted* before or after the commencement date of the *framework ILUA*) in respect of which consent was given under the *framework ILUA*, as referred to in this clause 3.1; and
- (ii) to the extent necessary, agreed to the validating of any *future act* constituted by the *grant* of any *authorised exploration tenement*, referred to in paragraph (a) of the definition of *authorised exploration tenement* at any time before the commencement date of the *framework ILUA*.

### 3.2 No right to negotiate procedures

- (a) The *parties* acknowledge and agree that the *framework ILUA* sets out procedures for:
  - (i) the grant of the *authorised exploration tenements*; and

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (ii) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.
- (b) The *parties* record that under the *framework ILUA* the *framework parties* agreed that the *right to negotiate procedure* is not intended to apply to either:
  - (i) the grant of the *authorised exploration tenements*; or
  - (ii) the carrying out of authorised exploration activities under the authorised exploration tenements.

### 3.3 When consent effective

To avoid doubt, the *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* are effective in relation to any *authorised exploration tenement* referred to in:

- (a) paragraph (a)(i) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of the formation of the *accepted exploration contract*, only upon that *authorised exploration tenement* being *granted*; and
- (b) paragraph (a)(ii) of the definition of *authorised exploration tenement* which has not been *granted* as at the date of notice given under clause 12.1 in relation to that *authorised exploration tenement*, only upon that *authorised exploration tenement* being *granted*.

### 3.4 Amendments to Accepted Exploration Contract

- (a) Subject to clause 3.4(b), the *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* apply to each *authorised exploration tenement* and any *authorised exploration activities* under it to which the *accepted exploration contract*, as amended from time to time, applies.
- (b) Clause 3.4(a) does not apply where the *accepted exploration contract* is amended in a manner which is inconsistent in any way with the *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to it).

### 3.5 Effect of Removal from Register

The *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA* and their agreement in clause 3.2 of the *framework ILUA* cease to apply to the *accepted exploration contract* with effect from the removal of the *framework ILUA* from the *register*, but the provisions of this clause 3.5 and of clause 3.6 of the *framework ILUA* do not affect any such consent or agreement in relation to:

- (a) any *authorised exploration tenement granted* prior to the removal of the *framework ILUA* from the *register*; or

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) any *authorised exploration activities* carried out or to be carried out under any such *authorised exploration tenement*.

### 3.6 Effect of Breach of Essential Term

- (a) The *parties* agree that the consent of the *framework parties* in clause 3.1 of the *framework ILUA*, their agreement in clause 3.2 of the *framework ILUA* and the *accepted exploration contract* do not apply in the circumstances set out in clause 15 (and, accordingly, subject to clause 3.6(b), the *right to negotiate procedure* will apply to an *excluded tenement*).
- (b) However, neither the *state* nor *SACOME* acknowledges that the *right to negotiate procedure* applies to any *miscellaneous purposes licence* which is an *excluded tenement*.

## 4. Other Statements

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### 4.1 Non extinguishment principle

The *parties* acknowledge and agree that the *non-extinguishment principle* applies to:

- (a) the *grant* of the *authorised exploration tenements*; and
- (b) the carrying out of *authorised exploration activities* under the *authorised exploration tenements*.

### 4.2 Application

The *parties* state that the *accepted exploration contract* applies to the *acceptance area*.

### 4.3 Exploration only

The *parties* acknowledge and agree that:

- (a) pursuant to the *framework ILUA* and the *accepted exploration contract* they do not agree to the validation of, or consent to, the grant to the *explorer* of any *production tenement* or the carrying out by the *explorer* of any *mining operations* under any *production tenement*; and
- (b) the *explorer* will, if legally obliged to do so, be required:
  - (i) to enter into an *indigenous land use agreement*; or
  - (ii) in accordance with the *right to negotiate procedure*, to negotiate and enter into a separate agreement or obtain a determination from a court or tribunal of competent jurisdiction,

to provide for the authorisation of the grant to the *explorer* of any *production tenement* or the carrying out of any *mining operations* under it.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

#### 4.4 Entry on Land

The *parties* acknowledge and agree that the *accepted exploration contract* constitutes an agreement between the *native title parties* and the *explorer* for the purposes of section 58 of the *mining act*.

#### 4.5 Conjunctive Agreements

- (a) The *native title parties* and the *explorer* may at any time during the *term* enter into an *indigenous land use agreement* or, if applicable, an agreement under the *right to negotiate procedure* which relates both:
- (i) to some or all of the *authorised exploration tenements*; and
  - (ii) to other *exploration authorities*, *production tenements* and/or *miscellaneous purposes licences* whether *granted* or to be *granted* and whether wholly or partially within the *acceptance area* or not.
- (b) If the circumstances referred to in clause 4.5(a) occur, the *accepted exploration contract* terminates as regards the *authorised exploration tenements* referred to in that clause immediately upon the relevant agreement being entered into.

#### 4.6 Authorised Exploration Tenement Terms

The *parties* acknowledge and agree that compliance with the terms and conditions of the *accepted exploration contract* is not a condition of any *authorised exploration tenement* (or any other *exploration tenement*).

#### 4.7 Other Native Title Holders

The parties acknowledge and agree that pursuant to section 24EA(1)(b) of the *native title act*, all persons holding *native title* in relation to any of the *land* and/or *waters* in the *ILUA area* who are not members of the *native title claim group*:

- (a) are bound by the *framework ILUA*; and
- (b) by reason of being bound by the *framework ILUA* are also bound by the *accepted exploration contract* in relation to the *land* and/or *waters* (within the *ILUA area*) to which the *accepted exploration contract* applies, in the same way as the *native title group* (as defined in section 24CD(2) or (3) of the *native title act*).

#### 4.8 No Acknowledgment of Native Title

By entering into the *accepted exploration contract* neither the *explorer* nor the *state* acknowledges the existence or otherwise of *native title* in relation to any *land* and/or *waters* within the whole or any part of the *acceptance area*.

## 5. Aboriginal Heritage

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### 5.1 Requirement

The *explorer* may only carry out *authorised exploration activities* under an *authorised exploration tenement*:

- (a) if:
  - (i) the *Aboriginal heritage act* at any time makes provision for the grant by an independent statutory authority of a document which, if held by the *explorer*, would allow the *explorer*, subject to any conditions in the document, to carry on the *authorised exploration activities* on that part of the *exploration land* to which the document relates; and
  - (ii) the *explorer* is the holder of such a document under the *Aboriginal heritage act* in relation to the relevant *authorised exploration activities* to be carried out on that part of the *exploration land*;
- (b) if:
  - (i) 5.1(a) does not apply;
  - (ii) a *mapping survey* has been undertaken in relation to:
    - (A) that part of the *exploration land* upon which the explorer proposes to carry out *authorised exploration activities*; and
    - (B) *authorised exploration activities* of the nature which the *explorer* proposes to carry out on that *exploration land*; and
  - (iii) a mapping authorisation (as defined in the *mapping access procedures*) is issued to the *explorer* (subject to the conditions, if any, of the mapping authorisation) in respect of the relevant *authorised exploration activities* to be carried out on that part of the *exploration land*;
- (c) if:
  - (i) clause 5.1(a) does not apply;
  - (ii) the *authorised exploration activities* proposed to be carried out by the *explorer* are *authorised exploration activities* to which the provisions of clause 3 of the *heritage clearance procedures* apply;
  - (iii) clause 5.1(b)(ii) does not apply to those proposed *authorised exploration activities*; and
  - (iv) the *explorer* otherwise complies with the provisions of clause 3 of the *heritage clearance procedures* in relation to the carrying out of those *authorised exploration activities*; or
- (d) if:
  - (i) clause 5.1(a) does not apply;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (ii) clause 5.1(c) does not apply to the proposed *authorised exploration activities*;
- (iii) the *accepted exploration contract* is entered into prior to the *heritage transition date*;
- (iv) before the *heritage transition date*, the *explorer* complies with the *heritage clearance procedures* in relation to the relevant *authorised exploration activities*; and
- (v) at any time a clearance approval (as defined in the *heritage clearance procedures*) is given or is deemed to have been given to the *explorer* pursuant to the *heritage clearance procedures* (subject to the conditions, if any, of the clearance approval) in respect of the relevant *authorised exploration activities* to be carried out on that part of the *exploration land*.

## 5.2 Compliance with Aboriginal Heritage Requirements

The *explorer* must:

- (a) not carry out any *authorised exploration activities* under an *authorised exploration tenement* except within a part of the *exploration land* in respect of which:
  - (i) the *explorer* is the holder of a document of a kind referred to in clause 5.1(a);
  - (ii) the *explorer* has been issued a mapping authorisation (as defined in the *mapping access procedures*);
  - (iii) the *explorer* has complied with the provisions of clause 3 of the *heritage clearance procedures*; or
  - (iv) the *explorer* has complied with the provisions of the *heritage clearance procedures* and a clearance approval (as defined in the *heritage clearance procedures*) has been given or is deemed to have been given to the *explorer* pursuant to the *heritage clearance procedures*,in respect of those *authorised exploration activities*;
- (b) comply with the conditions of that document, mapping authorisation, clause or clearance approval; and
- (c) instruct its contractors, employees, agents and visitors accordingly in relation to its obligations under clauses 5.2(a) and (b).

## 5.3 Discoveries During Operations

If at any time during the carrying out of *authorised exploration activities* the *explorer* identifies any site, object or remains which the *explorer* suspects may be an *Aboriginal site, object or remains*, the *explorer* must, in addition to any other obligations under the *Aboriginal heritage act*:

- (a) promptly report the location of that site, object or those remains to the *native title parties*;



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) not carry on any *authorised exploration activities* on the relevant site or the location of the relevant object or remains; and
  - (c) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains,
- unless and until:
- (d) the relevant site, object or remains is determined not to be an *Aboriginal site, object or remains*; or
  - (e) if the relevant site, object or remains is determined to be an *Aboriginal site, object or remains*, the *explorer* is authorised under the *Aboriginal heritage act* to do otherwise.

#### 5.4 Instruction in Aboriginal Culture

- (a) The *explorer* must use reasonable endeavours to ensure that the *explorer's* employees, contractors and subcontractors who may be involved in the carrying out of *authorised exploration activities* are aware, and have an understanding, of:
  - (i) the significance of *land* and *waters* to Aboriginal people;
  - (ii) their customary and traditional activities;
  - (iii) *native title*; and
  - (iv) the obligations of the *explorer*, its employees, contractors and subcontractors under the *Aboriginal heritage act*, the Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 (Cth), the *native title act* and the *accepted exploration contract* in relation to avoiding disturbance, damage and interference to any *Aboriginal site, object or remains*.
- (b) The *explorer* must ensure, in consultation with the *native title parties*, that all such employees, contractors and subcontractors receive such training in the traditions, history and culture of the *native title parties* and such basic archaeological training as the *explorer* reasonably considers will facilitate such awareness and understanding and also the identification of any *Aboriginal site, object or remains* for the purposes of clause 5.3.
- (c) The provisions of clause 5.4(b) do not apply to *authorised exploration activities* to which the provisions of clause 3 of the *heritage clearance procedures* apply.

#### 5.5 Aboriginal Heritage

Nothing in the *accepted exploration contract* detracts from the *explorer's* obligations to comply with the *Aboriginal heritage act*.

## 6. Consideration

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### 6.1 Acceptance fee

In consideration of the *native title parties* agreeing to enter into the *accepted exploration contract* the *explorer* must pay the *acceptance fee* to the *nominated body*.

### 6.2 Amount of Acceptance fee

- (a) The *explorer* must pay the *nominated body* an *acceptance fee* of \$6,000.00 within 10 *business days* of any of the following events (***heritage events***) first occurring in relation to an *authorised exploration tenement*:
- (ii) the *explorer* applying for the grant to it of a document of a kind referred to in clause 5.1(a) other than in relation only to early exploration activities (as defined in the *heritage clearance procedures*), which document, if granted, would allow the *explorer* to carry out *authorised exploration activities* on the whole or any part of the *land* and/or *waters* the subject of that *authorised exploration tenement*;
  - (iii) the *explorer* applying for the issue to it of a mapping authorisation (as defined in the *mapping access procedures*) other than in relation only to early exploration activities (as defined in the *heritage clearance procedures*), which authorisation, if granted, would authorise the *explorer* to carry out *authorised exploration activities* on the whole or any part of the *land* and/or *waters* the subject of that *authorised exploration tenement*;  
or
  - (iv) the *explorer* notifying the *native title parties* under clause 4.1 of the *heritage clearance procedures* that it wishes a *heritage clearance survey* (as defined in the *heritage clearance procedures*) to be carried out in relation to the whole or any part of the *land* and/or *waters* the subject of that *authorised exploration tenement*.
- (c) The *explorer* must also pay the *nominated body* an *acceptance fee* of \$1,800.00 within 10 *business days* of any *heritage event* first occurring in relation to an *authorised exploration tenement* where that *authorised exploration tenement* is the fourth or subsequent *authorised exploration tenement* in relation to which a *heritage event* occurs.

### 6.3 Individual Survey Payments

- (a) If clause 5.1(b) applies, then the *explorer* must pay the mapping access application fee to the *state* (care of the mapping caretaker (as defined in the *mapping survey procedures*)) as set out in the *mapping access procedures* in respect of each mapping access application (as defined in the *mapping access procedures*) made by the *explorer*.
- (b) If clause 5.1(d) applies, then in consideration of the carrying out of each heritage clearance survey under the *heritage clearance procedures*, the *explorer* must pay the amounts specified in the *heritage clearance procedures* to the *nominated body* as set out in those procedures.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

**6.4 Manner of payment**

All amounts payable by the *explorer* to the *nominated body* pursuant to this clause 6 must be paid:

- (a) to the *nominated body* at its address for purposes of the *accepted exploration contract*; and
- (b) free of exchange and without any deduction, set off or withholding.

**6.5 Acknowledgment**

The *native title parties* acknowledge and agree that, subject to clause 6.6:

- (a) any amounts payable and any benefits provided under the *accepted exploration contract* and the *framework ILUA* to the *native title parties* or to any *nominated body* or any other agent on their behalf:
  - (i) are in full and final satisfaction of any *compensation entitlement* of the *native title parties*; and
  - (ii) for the purposes of section 24EB of the *native title act*, are compensation provided for by the *framework ILUA*; and
- (b) the *native title parties* do not have any *compensation entitlement* other than for the amounts payable and benefits provided under the *accepted exploration contract* and the *framework ILUA*.

**6.6 Exception**

The provisions of clause 6.5 do not apply to any *compensation entitlement* of the *native title parties* against another *party* to the *accepted exploration contract* or any *framework party* arising by reason of any breach of the *accepted exploration contract* by that *party* or the *framework ILUA* by that *framework party*, respectively.

**6.7 Sharing**

The *native title parties* agree that the amounts payable and the benefits provided under the *accepted exploration contract* and the *framework ILUA* to the *native title parties* or to any *nominated body* or any other agent on their behalf are held on behalf of all members of the *native title claim group* and all persons (if any) who hold *native title* in relation to the whole or any portion of the *acceptance area*.

**6.8 Application Survival**

The provisions of clauses 6.5, 6.6 and 6.7 survive the removal of the details of the *framework ILUA* from the *register* for whatever reason and remain in those circumstances binding on:

- (a) all persons bound by the *framework ILUA* and the *accepted exploration contract*; and
- (b) all persons entitled to any of the benefits under the *framework ILUA* and the *accepted exploration contract*.

## 7. Covenants by Explorer

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### 7.1 Compliance with Laws

The *explorer* must comply with all applicable *laws* and good minerals exploration industry practice in:

- (a) carrying out the *authorised exploration activities*, including in carrying out any conservation, protection and rehabilitation of the environment; and
- (b) performing its obligations under the *accepted exploration contract*.

### 7.2 Rehabilitation

- (a) The *native title parties* may notify the *explorer* of any proposals which they have in relation to the rehabilitation of *land* or *waters* within the *exploration land* to ensure, as far as is possible, that there will be no significant long term adverse effect, by reason of the carrying out of the *authorised exploration activities*, on that *land* and/or those *waters*, on the ability of the *native title parties* to pursue on that *land* and/or those *waters* customary and traditional activities notified to the *explorer*.
- (b) In complying with its obligations under clause 7.1(a) the *explorer* will give due consideration to any proposals notified to it by the *native title parties* pursuant to clause 7.2(a).

### 7.3 Exploration Contract Return

- (a) The *explorer* must furnish a duly completed and signed *exploration contract return* in respect of each *authorised exploration tenement*:
  - (i) to the Director of Mines;
  - (ii) in respect of *authorised exploration activities* carried out during each calendar year falling wholly or partially during the *term*; and
  - (iii) within 20 *business days* of each anniversary of the *grant*, or the expiry, of that *authorised exploration tenement*.
- (b) The *explorer* is not obliged to include any confidential information in any *exploration contract return*.
- (c) The *state* must ensure that the Director of Mines provides a copy of any *exploration contract return* to the *native title parties* as soon as practicable after it has been furnished to the Director of Mines.
- (d) The *explorer* consents to the Director of Mines providing a copy of each *exploration contract return* to the *native title parties*.
- (e) The *state* does not warrant the accuracy or completeness of any information contained in any *exploration contract return*.
- (f) Nothing in this clause 7.3 imposes a legal obligation on the *state* to do anything to ensure compliance by the *explorer* with the provisions of clause 7.3(a).

#### 7.4 Limitations on Activities under Mineral Claim

If:

- (a) the *native title parties* have objected pursuant to clause 10.1(a) to the *grant* of any *authorised exploration tenement*;
- (b) that objection extends to the *grant* of a *mineral claim*; and
- (c) that *mineral claim* is *granted* and the *explorer* is the *tenement holder* of that *mineral claim*,

then the *explorer* must not carry out any *authorised exploration activities* under that *mineral claim* during the *objection period*.

## 8. Rights of Explorer

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### 8.1 Basis

The *native title parties* acknowledge and agree that the *explorer's* right to carry out *authorised exploration activities* on the *exploration land* is determined under the *mining act* and by the terms of each *authorised exploration tenement* under which the *authorised exploration activities* are carried out.

### 8.2 Qualification

In the exercise of those rights the *explorer* must perform its obligations under the *accepted exploration contract*.

### 8.3 Emergency

If any emergency situation occurs anywhere on the *exploration land*:

- (a) the *explorer* may take such measures as it considers necessary in the circumstances;
- (b) the provisions of clause 5 do not apply to prevent or impair the taking of those measures;
- (c) the *explorer* must as soon as reasonably practicable notify the *native title parties* of the emergency situation; and
- (d) after the emergency, the *explorer* and the *native title parties* must consult with each other in relation to any further measures to be taken.

## 9. Additional Covenants of Native Title Parties

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### 9.1 Non-Interference, Objections and Compliance

The *native title parties* must:

- (a) not interfere with:
  - (i) the exercise by the *explorer* of its rights under the *mining act* or under the terms of any *authorised exploration tenement*; or

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (ii) the carrying out of *authorised exploration activities* under any *authorised exploration tenement*;
- (b) not make any objection to any *grant* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying, except where entitled to do so pursuant to clause 10.1;
- (c) not make any submission that any *authorised exploration tenement* be cancelled or suspended, except where entitled to do so pursuant to clause 10.2;
- (d) use their best endeavours to ensure that neither *ALRM* nor any member, agent or representative of, or other person associated with *ALRM*, the *native title claim group* or the *native title parties*:
  - (i) makes any objection to the *grant* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying; or
  - (ii) makes any submission that any *authorised exploration tenement* be cancelled or suspended,except where the *native title parties* are entitled to make an objection or submission pursuant to clause 10.1 or 10.2, respectively; and
- (e) comply with all applicable *laws* in performing their obligations under the *accepted exploration contract*.

## 9.2 Nominated Body

- (a) The *native title parties* must notify the *state*, the *minister* and the *explorer* of:
  - (i) the nomination of any body corporate or trust as the *nominated body* and of the address of that *nominated body* for purposes of the *accepted exploration contract*;
  - (ii) the rights and obligations of the *native title parties* which the *nominated body* is appointed to exercise and perform on behalf of the *native title parties*; and
  - (iii) any change of the particulars referred to in clause 9.2(a)(i) or (ii) of that *nominated body*.
- (b) The *nominated body* is the agent of the *native title parties* in relation to the exercise of any rights and the performed of any obligations on behalf of the *native title parties* in accordance with the *nominated body's* nomination pursuant to clause 9.2(a)(ii).
- (c) The *native title parties* are liable to the *explorer* for the acts, defaults and omissions of the *nominated body* as if they were those of the *native title parties*.
- (d) Any payment to the *nominated body* is a good and sufficient discharge of that payment as regards the *native title parties*.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (e) The *nominated body* is responsible for the administration of the *accepted exploration contract* on behalf of the *native title parties*.

## 10. Rights of Native Title Parties

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### 10.1 Right to Object to Grants

- (a) The *native title parties* may make an objection to the *grant* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying, if:
  - (i) the *explorer* has allegedly breached:
    - (A) an *essential term* in clause 6.1, 6.3 or 6.4(b); or
    - (B) an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to any *breached tenement*;
  - (ii) that *exploration tenement* is an *exploration tenement* to which the provisions of clause 15.1 or 15.2 are capable of applying as an *excluded tenement*; and
  - (iii) either:
    - (A) notice has been given by the *native title parties* under clause 15.1 or 15.2 of such alleged breach by the *explorer*; or
    - (B) otherwise than pursuant to clause 17 it has been agreed between the *native title parties* and the *explorer* or finally determined that the *explorer* has committed such breach.
- (b) The *native title parties* may also make an objection to the *grant* of any *exploration tenement* wholly or partially within the *acceptance area* to which the *accepted exploration contract* applies or is capable of applying (other than an *exploration tenement* referred to in clause 10.1(a) or a mineral claim), if:
  - (i) that *exploration tenement* may be *granted* at any time after the alleged breach of the *breached tenement* referred to in clause 10.1(a)(i)(B);
  - (ii) that alleged breach is of an *essential term* in clause 5.1, 5.2 or 5.3; and
  - (iii) the *native title parties* have made or are entitled to make an objection to the *grant* of an *exploration tenement* referred to in clause 10.1(a), pursuant to that clause.
- (c) The *native title parties* may make an objection pursuant to clause 10.1(a) or (b) whether or not an application has been made to the *minister* for the *grant* of the relevant *exploration tenement*.

## 10.2 Right to Request Cancellation or Suspension

The *native title parties* may make a submission that any *authorised exploration tenement* be cancelled or suspended if:

- (a) the *native title parties* have made or are entitled to make an objection to the *grant* of an *exploration tenement* referred to in clause 10.1(a), pursuant to that clause;
- (b) that *authorised exploration tenement* in respect of which the *native title parties* may make a submission is the *breached tenement* referred to in clause 10.1(a)(i)(B);
- (c) the alleged breach by the explorer of an *essential term* in relation to that *breached tenement* is of clause 5.1, 5.2 or 5.3 of the *accepted exploration contract*; and
- (d) that alleged breach or any consequences of it constitute grounds under the *mining act* and that *breached tenement* for the cancellation or suspension of that *breached tenement* by reason of that breach or those consequences constituting non-compliance by the *explorer* with any provision of the *Aboriginal heritage act*.

## 10.3 Recipient of Objection or Submission

- (a) Any objection pursuant to clause 10.1 must be made in writing to the *minister* setting out the reasons for that objection together with any supporting information, with a copy of that objection promptly provided to the *explorer*.
- (b) Any submission pursuant to clause 10.2 must be made in writing to the *minister* setting out the reasons for that submission together with any supporting information, with a copy of that submission promptly provided to the *explorer*.

## 10.4 Withdrawal of Objection or Submission

The *native title parties* are deemed to have withdrawn an objection made in relation to any *exploration tenement* pursuant to clause 10.1 or a submission made pursuant to clause 10.2, respectively if the *exploration tenement* referred to in clause 10.1(a)(ii) is no longer capable of being an *excluded tenement*.

## 10.5 Notice of Withdrawal

Each of the *native title parties* and the *explorer* must notify the *minister* of the deemed withdrawal pursuant to clause 10.4 of an objection or submission pursuant to clause 10.1 or 10.2, respectively within 10 *business days* of that deemed withdrawal.

## 10.6 Explorer's Acknowledgment

As between the *explorer* and the *native title parties* the *explorer* acknowledges that members of the *native title claim group* have the following rights:

- (a) to pursue customary and traditional activities on the *exploration land*, including, where applicable, the rights conferred under section 47 of



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

the Pastoral Land Management and Conservation Act 1989 (SA);  
and

- (b) to have access to the *exploration land* for the purposes of pursuing the rights referred to in clause 10.6(a).

except where and to the extent that their presence will or is likely to:

- (c) cause danger to health and safety of the *explorer* or any of its officers, employees, contractors, agents or invitees; or
- (d) interfere with the carrying out of *authorised exploration activities*.

## 10.7 Use of Roads

The *native title parties* acknowledge and agree that the use pursuant to clause 10.6 by members of the *native title claim group* of any roads and tracks constructed for the purposes of carrying out *authorised exploration activities* is subject to:

- (a) reasonable control by the *explorer* for the purposes of safety; and
- (b) priority of use by the *explorer* for the purpose of carrying out *authorised exploration activities*,

without the *explorer* undertaking any liability for that use.

## 11. Covenants by State

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### 11.1 Consideration by Minister

- (a) Where the *native title parties* have made an objection pursuant to clause 10.1 to the *grant* of an *exploration tenement* (other than a *mineral claim*) not less than 5 *business days* before the *grant* of that *exploration tenement* and that objection is not deemed withdrawn, in relation to that *exploration tenement* pursuant to clause 10.4, at the time when the *minister* is considering whether or not to *grant* that *exploration tenement*, the *state* must ensure that the *minister* takes into account:
  - (i) that objection and any supporting information provided pursuant to clause 10.3(a);
  - (ii) any relevant notice of the alleged breach given pursuant to clause 15.1(b) or (d) or clause 15.2(a)(iii) or (v);
  - (iii) any relevant notice of *dispute* given pursuant to clause 17.3;
  - (iv) any relevant *PIRSA report*; and
  - (v) any relevant notice given pursuant to clause 17.12,in exercising the *minister's* discretion as to:
  - (vi) whether to *grant* or refuse to *grant* the relevant *exploration tenement*; and
  - (vii) the conditions upon which the relevant *exploration tenement* is *granted*, if the *minister* decides to *grant* it.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) Where the *native title parties* have made a submission pursuant to clause 10.2 that an *authorised exploration tenement* be cancelled or suspended and that submission is not deemed withdrawn, in relation to that *authorised exploration tenement* pursuant to clause 10.4, at the time the *minister* considers whether or not to cancel or suspend that *authorised exploration tenement*, the *state* must ensure that the *minister* takes into account such submission and any supporting information provided pursuant to clause 10.3(b) in exercising the *minister's* discretion as to whether or not to cancel or suspend that *authorised exploration tenement*.
- (c) The provisions of clauses 11.1(a) and (b) do not prevent the *minister* from taking into account other relevant matters in exercising any discretion of the *minister* under the *mining act*.

## 11.2 Records

For the purposes only of clause 11.1, the *state* must ensure that records are kept and maintained during the *term*, and for a period of 6 years after the end of the *term*, of any objection, submission, notices and *PIRSA* report referred to in clause 11.1.

## 11.3 Notification of Grants

The *minister* must notify the *native title parties* of the *grant* of any *exploration tenement* within the *acceptance area* to the *explorer* or a person other than the *explorer*, in respect of which the *minister* is aware the *explorer* is the tenement holder, within 10 *business days* of that *grant*.

## 11.4 Survival

The provisions of clauses 11.1 and 11.2 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

## 12. Additional Tenements

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### 12.1 Notice

Subject to clauses 12.2, 12.3, 12.4 12.5 and 12.6 the *explorer* may at any time during the *term* by notice given to the *native title parties*, with a copy provided to the *minister*, specify any *exploration tenement* (other than an *excluded tenement*) *granted* or to be *granted* of which the *explorer* is or will, upon *grant*, be the *tenement holder*(the *land* and/or *waters* the subject of which are wholly or partly within the *ILUA area*) as an *authorised exploration tenement*.

### 12.2 Application

The *explorer* may only give a notice pursuant to clause 12.1 in relation to an *exploration tenement* which has not been *granted* to the *explorer* as at the date of that notice, if prior to that date:

- (a) the *explorer* has applied for the *grant* to it of that *exploration tenement* or

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) another person has applied for the *grant* to it of that *exploration tenement* and has appointed the *explorer* as *mining operator* in respect of that *exploration tenement*

### 12.3 No Previous Activities

The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement granted* before or after the commencement date of the *framework ILUA* if the *explorer* has previously carried out any *exploration activities* under that *exploration tenement* more than 12 months after the *commencement date*.

### 12.4 No Notice to Initiate Negotiations

- (a) The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if notice has previously been given to initiate negotiations under the *right to negotiate procedure* in respect of that *exploration tenement* or any *exploration activities* under it except where the *explorer* and the *native title claim group* have not previously entered into an agreement pursuant to the *right to negotiate procedure* in relation to that *exploration tenement* and either:
  - (i) that notice was given prior to, or not more than 12 months after, the *commencement date*; or
  - (ii) that notice was given more than 12 months after the *commencement date* and the *native title parties* consent to that person entering into that *accepted exploration contract* in relation to that *exploration tenement* and *exploration activities* under it by endorsing that on the *acceptance document*.
- (b) For the purposes of clause 12.4(a) the legal representative of, or any other person authorised in writing by, the *native title parties* may provide consent on behalf of the *native title parties*.

### 12.5 Prior Breach

The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if:

- (a) the *explorer* or a related body corporate (within the meaning of the Corporations Act) of the *explorer* has previously entered into another *accepted exploration contract* with the *native title parties* in relation to that *exploration tenement*; and
- (b) the provisions of the *accepted exploration contract* referred to in clause 12.5(a) have ceased to apply, pursuant to clause 15.1 or 15.2 of that *accepted exploration contract*, to that *exploration tenement*.

### 12.6 Aboriginal Heritage Breaches

- (a) The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if the *explorer* has previously committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 which (or the

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

consequences of which) also constitutes non-compliance by that person with the provisions of the *Aboriginal heritage act*.

- (b) The *explorer* may not give a notice pursuant to clause 12.1 in relation to an *exploration tenement* if:
- (i) the *explorer* or a related body corporate (within the meaning of the Corporations Act) of the *explorer* has previously entered into another *accepted exploration contract* with the *native title parties*; and
  - (ii) the *explorer* or that related body corporate has committed a breach of an *essential term* in clause 5.1, 5.2 or 5.3 of that *accepted exploration contract* which (or the consequences of which) also constitute non-compliance by that person with the provisions of the *Aboriginal heritage act*.

## 12.7 Effect

- (a) Where the *explorer* gives any notice pursuant to clause 12.1 in relation to an *exploration tenement* which has been *granted* and of which the *explorer* is the *tenement holder*, the *accepted exploration contract* applies to the relevant *exploration tenement* as an *authorised exploration tenement*:
- (i) upon the giving of that notice; and
  - (ii) to the extent that the *land* and/or *waters* the subject of that *exploration tenement* are within the *ILUA area*.
- (b) Where the *explorer* gives any notice pursuant to clause 12.1 in relation to an *exploration tenement* to be *granted* and of which the *explorer* will, upon *grant*, be the *tenement holder*, the *accepted exploration contract* applies to the relevant *exploration tenement* as an *authorised exploration tenement*:
- (i) upon the *grant* of that *exploration tenement*; and
  - (ii) to the extent that the *land* and/or *waters* the subject of that *exploration tenement* are within the *ILUA area*.

## 13. Employment

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### 13.1 Acknowledgment

The *parties* acknowledge that:

- (a) there are limited opportunities for the *explorer* and its contractors to employ persons during the carrying out of the *authorised exploration activities*, including for the employment of members of the *native title claim group*; and
- (b) those employment opportunities that do exist during the carrying out of the *authorised exploration activities* are primarily for people with specialist skills and training.

### 13.2 Notification of vacancies

- (a) The *explorer* must notify the *native title parties* of the particulars of any job vacancy in relation to the carrying out of the *authorised exploration activities* that arises in the *explorer's* work force:
  - (i) if the vacancy is one which is advertised in any printed media, not less than 15 *business days* before applications for that vacancy must be made to the *explorer*; or
  - (ii) otherwise, not less than 2 *business days* before *authorised exploration activities* are carried out in relation to which the vacancy exists.
- (b) For the purposes of clause 13.2(a)(ii) notice includes informing the *native title parties* personally or by e-mail, telephone or other form of instantaneous communication.

### 13.3 Notification by Native Title Parties

The *native title parties* may notify the *explorer* of the particulars of any person who is a member of the *native title claim group* who, in the reasonable opinion of the *native title parties*, has skills or qualifications that may enable that person to be employed within the *explorer's* work force in relation to the *authorised exploration activities*.

### 13.4 Employment preference

Where it is both lawful and practical to do so, the *explorer* must give preference to the employment of a member of the *native title claim group* in relation to the carrying out of the *authorised exploration activities* if:

- (a) the relevant member has, through training in skills required for employment in the resources industry provided pursuant to clause 4.7 of the *framework ILUA*, acquired the necessary skills and ability to carry out the relevant duties in a satisfactory manner;
- (b) both that member and another person (who is not a member of the *native title claim group*) apply for employment by the *explorer*; and
- (c) the skills, ability and experience, relevant to the particular position applied for, of that other person are no greater than those of that member.

### 13.5 Training

To the extent that the *explorer* provides any on-job training to any employee employed by it in any capacity similar to that in which any member of the *native title claim group* is employed by the *explorer*, the *explorer* must, insofar as is practicable and on a basis consistent with that applied in respect of that other employee, provide on-job training to that member of the *native title claim group*.

### 13.6 Contractors

The *explorer* must use its best endeavours to ensure that:

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (a) each of its contractors complies with the provisions of clause 13.2, 13.4 and 13.5 as if each contractor were the *explorer*; and
- (b) any particulars provided by the *native title parties* to the *explorer* pursuant to clause 13.3 are, where appropriate, provided by the *explorer* to its relevant contractors.

## 14. Warranties and Authority

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### 14.1 Preliminary

The *native title parties* record that:

- (a) the *registered native title claimants* were (as at the date of the execution of *framework ILUA* by all of the *framework parties*) the registered native title claimants (as defined in the *native title act*) in relation to *land* and/or *waters* in the *acceptance area* and made the *native title claim* on behalf of the *native title claim group*;
- (b) prior to signing the *framework ILUA* the *registered native title claimants* consulted with the *native title claim group* and the *native title claim group* consented to and *authorised* the *registered native title claimants* to enter into the *accepted exploration contract* on behalf of the *native title parties*; and
- (c) the *native title parties* by signing the *framework ILUA* confirmed that the *registered native title claimants* were *authorised* by the *native title claim group* to enter into the *accepted exploration contract* on behalf of the *native title parties*.

### 14.2 Warranties by Native Title Parties

Regard being had to the provisions of clause 14.1, the *native title parties* represent and warrant to the other *parties* to the *accepted exploration contract* that the matters set out in clauses 14.1 (a) to (d) are true and correct.

### 14.3 Warranties by Explorer

The *explorer* represents and warrants to the *native title parties*:

- (a) where any *authorised exploration tenement*, details of which are specified in the *acceptance document* or in any notice given by the *explorer* under clause 12.1, was *granted* before the commencement date of the *framework ILUA*, that any *exploration activities* carried out by the *explorer* under that *authorised exploration tenement* prior to the *explorer's* execution of the *acceptance document* were carried out in compliance with all applicable *laws* and good minerals exploration industry practice;
- (b) where any *authorised exploration tenement*, details of which are specified in the *acceptance document*, was *granted* after the commencement date of the *framework ILUA*, that as at the date of the *acceptance document*, the *explorer* had not previously carried out any *exploration activities* under

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

that *authorised exploration tenement* at any time more than 12 months after the commencement date of the *framework term*;

- (c) where any *authorised exploration tenement*, details of which are specified in a notice given by the *explorer* under clause 12.1, was *granted* before the commencement date of the *framework ILUA* that, as at the date of that notice, the *explorer* had not carried out any *exploration activities* under that *authorised exploration tenement* to which that notice relates, more than 12 months after the *commencement date* ;
- (d) where any *authorised exploration tenement*, details of which are specified in a notice given by the *explorer* under clause 12.1, was *granted* after the commencement date of the *framework ILUA* that, as at the date of that notice, the *explorer* had not carried out any *exploration activities* under the *authorised exploration tenement* to which that notice relates at any time after the *commencement date*; and
- (e) that, as at the date of the *acceptance document* or the relevant notice under clause 12.1, as appropriate, the *explorer* had not given any notice to initiate negotiations under the *right to negotiate procedure* in respect of that *authorised exploration tenement* or any *authorised exploration activities* under it except where the *explorer* and the *native title claim group* have not previously entered into an agreement pursuant to the right to negotiate procedure in relation to that *authorised exploration tenement* and either:
  - (i) that notice was given prior to, or not more than 12 months after, the commencement of the *framework term*; or
  - (ii) that notice was given more than 12 months after the commencement of the *framework term* and the *native title parties* consent to the *explorer* entering into the *accepted exploration contract* in relation to that *exploration tenement* and *exploration activities* under it.

#### 14.4 No Acknowledgment

By entering into the *accepted exploration contract* in relation to an *exploration tenement* the *native title parties* do not acknowledge, where the *acceptance document* is executed by the *explorer* before the *heritage transition date* and any *authorised exploration tenement*, details of which are specified in the *acceptance document*, was *granted* before the commencement date of the *framework ILUA*, that any *exploration activities* previously carried out by the *explorer* under that *exploration tenement* wholly or partially within the *acceptance area* will not have *affected* any *native title* in relation to *land* and/or *waters* within the *acceptance area* for purposes of section 63F(1)(a) of the *mining act*.

#### 14.5 Registered native title body corporate

If an *approved determination of native title* is made in respect of the whole or any part of the *exploration land* and a *registered native title body corporate* is determined to hold the rights and interests from time to time comprising the *native title* in trust for the *native title holders*:

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (a) the *native title parties* must use their best endeavours to ensure that the *registered native title body corporate* becomes a *party* to the *accepted exploration contract* in place of the *native title parties* in relation to the whole or relevant part of the *exploration land* and assumes the rights and obligations of the *native title parties* under the *accepted exploration contract* in relation to the whole or that part of the *exploration land*;
- (b) the *parties* (other than the *native title parties*) to the *accepted exploration contract* consent to the *registered native title body corporate* becoming a *party* to the *accepted exploration contract* and assuming the rights and obligations of the *native title parties* in accordance with clause 14.5(a); and
- (c) each of the *parties* to the *accepted exploration contract* must sign such documents as are necessary to give effect to the provisions of this clause 14.5.

## 15. Breach of Essential Terms

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### 15.1 Non-Payment Breach

The *accepted exploration contract* does not apply to an *exploration tenement* (nor to the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* of a kind referred to in paragraph (b), (c) or (d) of the definition of *authorised exploration tenement, granted* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*), in the following circumstances:

- (a) the *explorer* has allegedly breached an *essential term* in clause 6.1, 6.3 or 6.4(b);
- (b) within 20 *business days* of the *representatives* of the *native title parties* becoming aware of that alleged breach, the *native title parties* have given notice of that alleged breach to the *explorer* (with a copy to the *minister*) setting out:
  - (i) details of that alleged breach; and
  - (ii) that the *explorer* is required to remedy that alleged breach within a period of 20 *business days* of the date of that notice;
- (c) the *explorer* has not remedied that alleged breach within the 20 *business days* period notified by the *native title parties* under clause 15.1(b)(ii) and that 20 *business days* period expires prior to the *grant* of that *exploration tenement*;
- (d) the *minister* is given a notice by the *explorer* or the *native title parties* not less than 5 *business days* before the *grant* of that *exploration tenement* that it has been agreed, resolved or determined pursuant to clause 17 or otherwise that the *explorer* has breached that *essential term*; ; and
- (e) prior to the *grant* of that *exploration tenement*, the *explorer* has not remedied that breach.



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

15.2 Other Breaches

- (a) The *accepted exploration contract* also does not apply to an *exploration tenement* (nor the carrying out of *exploration activities* under that *exploration tenement*), where it is an *exploration tenement* referred to in clause 15.2(b), in the following circumstances:
- (i) the *explorer* has allegedly breached an *essential term* in clause 5.1, 5.2, 5.3, 7.1, 7.4, 8.3(c) or 8.3(d) in relation to the *breached tenement*;
  - (ii) that alleged breach is committed wilfully, recklessly or negligently;
  - (iii) within 20 *business days* of the *representatives* of the *native title parties* becoming aware of that alleged breach, the *native title parties* have given notice of that alleged breach to the *explorer* (with a copy to the *minister*) setting out:
    - (A) details of that alleged breach; and
    - (B) where that alleged breach is capable of being remedied, that the *explorer* is required to remedy that alleged breach within a period of 20 *business days* of the date of that notice;
  - (iv) where that alleged breach is capable of being remedied, the *explorer* has not remedied that alleged breach within the 20 *business days* period notified by the *native title parties* under clause 15.2(a)(iii)(B) or (if that alleged breach is not capable of being remedied within that 20 *business days* period) such longer period as is reasonable in the circumstances;
  - (v) the *minister* is given a notice by the *explorer* or the *native title parties* that it has been agreed, resolved or determined pursuant to clause 17 or otherwise that the *explorer* has breached the relevant *essential term* in relation to the *breached tenement*; and
  - (vi) prior to the *grant* of the *exploration tenement* to which the *accepted exploration contract* will not apply if all of the circumstances in this clause 15.2(a) are met, the *explorer* has, where that breach is capable of being remedied, not remedied that breach.
- (b) If all of the circumstances referred to in clause 15.2(a) are met, the *accepted exploration contract* does not apply to an *exploration tenement* (nor the carrying out of *exploration activities* under that *exploration tenement*), being an *exploration tenement* which is:
- (i) where:
    - (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) not less than 5 *business days* before the *grant* of that *exploration tenement* ; and

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement*:
  - (1) is not capable of being remedied; or
  - (2) is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) has expired before the *grant* of that *exploration tenement*,

an *exploration tenement* of a kind referred to in:

- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement*, granted upon the renewal, regrant, remaking or extension of the term of the *breached tenement*; or
  - (D) paragraph (c) of the definition of *authorised exploration tenement*, granted after the *breached tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of the *breached tenement*; or
- (ii) where either:
- (A) the *minister* has been given a notice pursuant to clause 15.2(a)(v) less than 5 *business days* before, or after, the *grant* of an *exploration tenement* referred to in clause 15.2(b)(i)(C) or (D) (***subsequent tenement***); or
  - (B) the alleged breach of the relevant *essential term* in relation to the *breached tenement* is capable of being remedied and the period for remedying that breach pursuant to clause 15.2(a)(iii)(B) has not expired before the *grant* of the *subsequent tenement*,

an *exploration tenement* of a kind referred to in:

- (C) paragraph (b) or (d) of the definition of *authorised exploration tenement*, granted upon the renewal, regrant, remaking or extension of the term of the *subsequent tenement*; or
- (D) an *exploration tenement* of a kind referred to in paragraph (c) of the definition of *authorised exploration tenement*, granted after the *subsequent tenement* in respect of the whole or any portion of the *land* and/or *waters* (within the *acceptance area*) the subject of the *breached tenement*.

### 15.3 Remedying of Breach

- (a) Subject to the provisions of clause 15.3(b), for purposes of clauses 15.2(a)(iii),(iv) and (vi) a breach is deemed to be capable of being remedied by the *explorer* and the *explorer* is deemed to have remedied that breach if:

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (i) that breach has arisen by reason of the *explorer* having failed to do, or failed to cause or permit to be done, something; and
  - (ii) within the relevant period referred to in clause 15.2(a)(iv) or prior to the grant of the relevant *exploration tenement* referred to in clause 15.2(a)(vi) (as the case requires) the *explorer* has done, or has caused or permitted to be done, that thing.
- (b) The provisions of clause 15.3(a) do not apply to the breach of an *essential term* in clause 5.1, 5.2 or 5.3 in relation to any *authorised exploration tenement*.

#### 15.4 Examples of Breach Provisions

- (a) This clause 15.4(a) sets out an example of the application of clause 15.1 (where the breach of the relevant *essential term* is not remedied by the *explorer*):
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) a heritage clearance survey is undertaken pursuant to the *heritage clearance procedures* in relation to EL1;
  - (iv) a payment for that heritage clearance survey is due on 1 January 2005;
  - (v) the *explorer* does not make the payment by that date;
  - (vi) this failure to pay is a breach of clause 6.3 of the *accepted exploration contract*;
  - (vii) clause 6.3 is an *essential term* of the *accepted exploration contract*;
  - (viii) the *native title parties* become aware on 3 January 2005 of the failure of the *explorer* to make the required payment for the heritage clearance survey;
  - (ix) the *native title parties* give the *explorer* notice of the breach on 6 January 2005. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2005);
  - (x) EL1, EL2 and EL3 expire on 1 January 2006, 1 January 2007 and 1 January 2008, respectively;
  - (xi) The *minister* is thus notified of the breach more than 5 *business days* before any renewal or regrant of EL1, EL2 or EL3;
  - (xii) The *explorer* has not remedied the breach by 1 January 2008;
  - (xiii) the *accepted exploration contract*:
    - (A) will continue to apply to EL1, EL2 and EL3; and

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (B) will not apply to the renewal or regrant of EL1, EL2 or EL3.
- (b) This clause 15.4(b) sets out an example of the application of clause 15.1 (where the breach of the relevant *essential term* is remedied by the *explorer*):
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) a heritage clearance survey is undertaken pursuant to the *heritage clearance procedures* in relation to EL1;
  - (iv) payment for that heritage clearance survey is due on 1 January 2008;
  - (v) the *explorer* does not make payment by that date;
  - (vi) this failure to pay is a breach of clause 6.3 of the *accepted exploration contract*;
  - (vii) clause 6.3 is an *essential term* of the *accepted exploration contract*;
  - (viii) the *native title parties* become aware on 3 January 2008 of the failure of the *explorer* to make the required payment for the heritage clearance survey;
  - (ix) the *native title parties* give the *explorer* notice of the breach on 6 January 2008. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2008);
  - (x) the *explorer* makes the required payment on 8 January 2008;
  - (xi) the *accepted exploration contract* will continue to apply to EL1, EL2 and EL3 and any regrant or renewal of those ELs.
- (c) This clause sets out an example of the application of clauses 15.2 and 15.3:
- (i) the *explorer* enters into the *accepted exploration contract* in accordance with clause 5.1 of the *framework ILUA*;
  - (ii) the *accepted exploration contract* applies to *authorised exploration tenements* EL1, EL2 and EL3;
  - (iii) the *explorer* holds a required environment protection licence under the *Environment Protection Act 1993* in relation to its *authorised exploration activities* on EL1;
  - (iv) the *explorer* fails to renew its environment protection licence by the due date;
  - (v) this failure is a contravention of the *Environment Protection Act 1993*;

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (vi) this failure is also a breach of clause 7.1 of the *accepted exploration contract*;
- (vii) clause 7.1 is an *essential term* of the *accepted exploration contract*;
- (viii) the *native title parties* become aware of the failure to hold an environment protection licence on 3 January 2008;
- (ix) the *native title parties* give the *explorer* notice of the breach on 6 January 2008. A copy of this notice is also provided to the *minister* on the same day. This notice provides details of the alleged breach and the requirement to remedy it within 20 *business days* (ie by 4 February 2008);
- (x) EL1 expires on 10 March 2008 and is to be renewed or regranted on 11 March 2008;
- (xi) assume the following two scenarios:
  - (A) the *explorer* obtains an environment protection licence on 8 March 2008 and thereby remedies the breach of clause 7.1 of the *accepted exploration contract*; and
  - (B) the *explorer* does not obtain an environment protection licence by 11 March 2008; and
- (xii) the *accepted exploration contract* will apply to:
  - (A) EL1 until 10 March 2008 and also to EL2 and EL3 and to any regrant or renewal of EL1, EL2 or EL3 (in the scenario referred to in 14.4(c)(xi)(A)); and
  - (B) EL1 until 10 March 2008, EL2 and EL3 (and any renewal or regrant of those ELs), but not to any regrant or renewal of EL1 (in the scenario referred to in clause 14.4(c)(xi)(B)).

## 16. Representatives

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### 16.1 Right to Representative(s)

- (a) The *native title parties* and the *explorer* may from time to time during the *term* appoint, remove and replace *representative(s)* by notice given to the other.
- (b) The maximum number of *representatives* entitled to be appointed by each of the *native title parties* and the *explorer* is 4.

### 16.2 Continuity

Each of the *native title parties* and the *explorer* must ensure that:

- (a) its first *representative(s)* are appointed within 20 *business days* of the *commencement date*; and
- (b) at all times thereafter *representative(s)* remain appointed by it or them.

### 16.3 Functions

The function of the *representatives* is to act as the primary point of contact between the *native title parties* and the *explorer* for all purposes in connection with the *accepted exploration contract* including:

- (a) ensuring compliance by the *explorer* and by the *native title parties* with their respective obligations under the *accepted exploration contract*;
- (b) establishing and developing a positive relationship and understanding between the *explorer* and the *native title parties* in relation to the *accepted exploration contract* and the carrying out of the *authorised exploration activities* pursuant to it;
- (c) for purposes of consultation with the *native title parties* pursuant to clause 5.4(b);
- (d) for purposes of any consultation pursuant to clause 8.3(d);
- (e) for purposes of any matters relating to administration as referred to in clause 9.2;
- (f) for purposes of liaising with the *explorer* in relation to clause 13 (including in respect of matters relating to Aboriginal culture relevant to the employment of any member of the *native title claim group* employed by the *explorer*);
- (g) for purposes of resolving any potential *dispute* before clause 17 is invoked and of resolving any *dispute* pursuant to clause 17.4(a); and
- (h) to be the *representatives* of the *native title parties* and of the *explorer* for whose attention any notice is to be addressed, pursuant to the provisions of clause 18.

### 16.4 Cooperation

The *native title parties* and the *explorer* must:

- (a) use their best endeavours to ensure that their *representatives* are able to perform their functions pursuant to clause 16.3; and
- (b) co-operate with each other for that purpose.

### 16.5 Survival

The provisions of this clause 16 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

## 17. Dispute Resolution

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### 17.1 Clause applies

All *disputes* or differences between any of the *parties* in connection with the interpretation, effect or any other matter in any way relating to the *accepted exploration contract* (***dispute***) will be dealt with in accordance with this clause 17 whether the *dispute* is first raised before, during or after the *term*.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

## 17.2 Avoidance

The *parties* agree that:

- (a) they will make every effort to ensure that *disputes* do not arise;
- (b) if a *dispute* does arise, they must make every reasonable effort to resolve the *dispute* in accordance with this clause 17 and without recourse to litigation or arbitration proceedings; and
- (c) the provisions of clauses 17.1 and 17.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.

## 17.3 Notification

A party (***notifying party***) will, within 20 *business days* after the *dispute* arises, give a notice to the other *party* or *parties* with which it has the *dispute* (***notified party***) and a copy of that notice to the other *parties* setting out details of the *dispute* and any other matter that may, in the reasonable opinion of the *notifying party*, be relevant to the resolution of the *dispute*.

## 17.4 Initial Meeting

- (a) Within 5 *business days* of the date of the notice the *notifying party* and *notified party* (***dispute parties***) will use their respective reasonable endeavours to meet and resolve the *dispute* within a further period of 10 *business days*.
- (b) The *dispute parties* will use their reasonable endeavours to ensure that at least their respective *representatives* attend that meeting.

## 17.5 Breach of Essential Term

- (a) If a *dispute* relates to an alleged breach of an *essential term* by the *explorer* (other than an *essential term* in clause 6.1, 6.3 or 6.4(b)) and is not resolved by a meeting held in accordance with clause 17.4, either the *explorer* or the *native title parties* may within 10 *business days* of that meeting by notice to the *minister* and the other *party* refer that *dispute* to the *minister* for purposes of the preparation of a *PIRSA report*.
- (b) If a *dispute* is referred to the *minister* pursuant to clause 17.5(a) the *minister* must at its cost ensure that:
  - (i) Primary Industries and Resources South Australia, Minerals, Petroleum and Energy Division, or its successor, prepares a *PIRSA report* in relation to the facts surrounding the alleged breach of the relevant *essential term* by the *explorer*;
  - (ii) the *PIRSA report* is prepared and completed as soon as practicable in the circumstances; and
  - (iii) copies of the *PIRSA report* are provided to each *dispute party* promptly after it has been completed.
- (c) Each of the *dispute parties* must co-operate with the *minister* for purposes of the preparation of a *PIRSA report* in relation to that *dispute*.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (d) A *PIRSA report* prepared in relation to a *dispute* must be taken into account for purposes of resolving that dispute pursuant to this clause 17.
- (e) Within 10 *business days* of copies of a *PIRSA report* prepared in relation to a *dispute* being provided to the *dispute parties*, the *dispute parties* will use their respective reasonable endeavours to meet and resolve the *dispute* within a further period of 10 *business days*.

#### 17.6 Mediation

If a *dispute* is not resolved in accordance with the provisions of clause 17.4 or 17.5(e) (as the case requires):

- (a) any *dispute party* may request the President for the time being of the Law Society of South Australia, or his or her nominee, to appoint a mediator to mediate that *dispute*;
- (b) within 5 *business days* of a mediator being appointed, the mediator will convene an initial meeting of the *dispute parties* in an attempt to resolve that *dispute*; and
- (c) if that *dispute* is not resolved at that initial meeting, the mediator will convene such further meetings of the *dispute parties* during the subsequent 10 *business days* as the mediator reasonably considers necessary for the purpose of resolving that *dispute*.

#### 17.7 Expert

If a *dispute* is not resolved in accordance with the provisions of clause 17.6, any *dispute party* may refer the determination of that *dispute* (**determination**) to the *expert*.

#### 17.8 Capacity of Expert

The *expert* is an expert and not an arbitrator.

#### 17.9 Expert's Determination

The *expert's determination* is final and binding on the *dispute parties*.

#### 17.10 Determination costs

- (a) The *expert* may determine that any *dispute party* must pay the whole or a specified portion of the costs and expenses of the other *dispute party* in relation to the *expert's determination*.
- (b) Unless clause 17.10(a) applies, each *dispute party* will bear its own costs and expenses in relation to the *expert's determination*.

#### 17.11 Expert's Fees

- (a) The *expert* may determine that any *dispute party* must pay all, or that the *dispute parties* must pay in specified portions, the *expert's* fees and expenses and the cost of the *expert's determination*.



Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) Unless clause 17.11(a) applies, the *dispute parties* will pay in equal shares the *expert's* fees and expenses and the cost of the *expert's* determination.

**17.12 Notification of Minister**

- (a) Subject to clause 17.12(b), where a *dispute* relates to an alleged breach of an *essential term* by the *explorer*, the *dispute parties* must notify the *minister* within 10 *business days* of the resolution or determination of that *dispute* of the terms and conditions upon which that *dispute* has been resolved or determined.
- (b) Clause 17.12(a) does not apply if clause 10.4 requires notice to be given in relation to the resolution or determination of that *dispute*.

**17.13 Survival**

The provisions of this clause 17 survive the expiry or termination for whatever reason of the *accepted exploration contract*.

**18. Communications**

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**18.1 Writing required**

Subject to the *accepted exploration contract*, any notice, direction, request, consent, approval, demand, report or other communication (**communication**) to be given under the *accepted exploration contract* will be in writing, be signed by the representative(s) of the *party* giving the *communication* as set out in annexure C and be addressed for the attention of the representative(s) of the *party* or *parties* as set out in annexure C.

**18.2 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* or *parties* 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.

**18.3 Change of details**

Details specified in annexure C in respect of a *party* may, subject to clause 16.3(h), be changed by the *party* by not less than 5 *business days* notice to the other *parties*.

## 19. GST

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The *parties* agree that, if a goods and services, value-added or a comparable tax (*gst*) applies under the “A New Tax System (Goods and Services Tax) Act 1999” or associated legislation (*gst legislation*) in relation to any taxable supply (within the *gst legislation*) (*taxable supply*) made by a party (*supplier*) to another party (*recipient*) under or pursuant to the *accepted exploration contract* :

- (a) the amount payable by the *recipient* to the *supplier* in respect of the *taxable supply* (*payment*) does not include *gst*;
- (b) the *supplier* may, in addition to the *payment*, recover from the *recipient* (and the *recipient* will pay to the *supplier*) an additional amount on account of the *gst*, such additional amount to be calculated in accordance with the *gst legislation*; and
- (c) the *supplier* will provide to the *recipient* a tax invoice (within the meaning of the *gst legislation*) in respect of the *taxable supply* as required by the *gst legislation*.

## 20. General

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### 20.1 Entire agreement

The *accepted exploration contract* 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.

### 20.2 Amendment

No amendment or variation of the *accepted exploration contract*:

- (a) is valid or binding on a *party* unless made in writing executed by all *parties* to it; or
- (b) may be made if the amendment or variation is inconsistent in any way with the provisions of the *framework ILUA* (excluding, for this purpose, all schedules, annexures and appendices to it).

### 20.3 Severability

Each word, phrase, sentence, paragraph and clause (a *provision*) of the *accepted exploration contract* 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 the *accepted exploration contract*.

### 20.4 No announcements

No *party* may make, issue, permit or suffer to be made, or issued, any statement or announcement concerning any of the matters the subject of the *accepted exploration contract* unless such statement or announcement is first

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

approved as to the timing and content by each other *party* or is required by *law*.

## 20.5 Confidential Information

- (a) Without detracting from any obligations which either the *state* or the *explorer* has in relation to confidentiality under the *Aboriginal heritage act*, each of the *state* and the *explorer* must keep confidential each and every *cultural confidence* of which it becomes aware.
- (b) Each of the *native title parties* and the *state* must keep confidential all information pertaining to the *authorised exploration tenements* and the *authorised exploration activities* which is disclosed to any of them and which is either designated as confidential by the person who discloses it or is by its nature confidential.

## 20.6 Assignment and transfer

- (a) The *explorer* may assign and transfer any or all of its rights and/or obligations under the *accepted exploration contract* in relation to any or all of the *authorised exploration tenements* to a transferee of the relevant *authorised exploration tenements*, if:
  - (i) any required consent of the *minister* is obtained under the *mining act* to the transfer of the relevant *authorised exploration tenements*; and
  - (ii) the transferee executes in favour of the *parties* to the *accepted exploration contract* a deed of assumption in substantially the form attached to this document as annexure D, under which the transferee assumes the *explorer's* rights and obligations under the *accepted exploration contract* in relation to the relevant *authorised exploration tenements*.
- (b) Any assignment and transfer pursuant to clause 20.6(a) releases the *explorer* from its obligations under the *accepted exploration contract* in relation to the relevant *authorised exploration tenements* with effect from the date of that assignment and transfer, but without prejudice to the accrued rights and remedies of the *parties* for any antecedent breach of the *accepted exploration contract*.
- (c) Except as set out in clause 20.6(a):
  - (i) the rights and obligations of each *party* to the *accepted exploration contract* are personal; and
  - (ii) those rights and obligations cannot be *encumbered* or *disposed* of, or otherwise dealt with and no *party* may attempt, or purport, to do so without the prior consent of the other *parties*.

## 20.7 Force Majeure

- (a) If any *party* becomes wholly or partly unable because of *force majeure* to perform any of its obligations under the *accepted exploration contract*,

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

then the *party* affected by the *force majeure* must give the other *parties* notice of the *force majeure* specifying:

- (i) details of the *force majeure*;
- (ii) insofar as it is known, the probable scope of the *force majeure*; and
- (iii) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,

and the relevant obligation shall be deemed to be suspended, but:

- (iv) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of *force majeure*; and
- (v) the *party* affected by the *force majeure* must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.

(b) Nothing in clause 20.7(a)(v) requires a *party* to:

- (i) settle any strike or other labour dispute otherwise than on terms acceptable to it; or
- (ii) contest the validity or enforceability of any *law*, regulation or order, or determination of any *authority*, by way of legal proceedings.

## 20.8 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.

## 20.9 Minister's Discretion

Nothing in the *accepted exploration contract* fetters the discretion of any Minister of the Crown in right of the State of South Australia

## 20.10 Further assurances

Each *party* agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of the *accepted exploration contract* and the transactions contemplated by it.

## 20.11 No merger

- (a) The rights and obligations of the *parties* will not merge on the completion of any transaction contemplated by the *accepted exploration contract*.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

**20.12 Costs and stamp duty**

- (a) Unless and to the extent otherwise agreed, each *party* must bear its own costs arising out of the negotiation, preparation and entering into of the *accepted exploration contract*.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with the *accepted exploration contract* and any instrument executed under the *accepted exploration contract* must be borne by the *explorer*.

**20.13 Governing law and jurisdiction**

- (a) The *accepted exploration contract* is governed by the *laws* of South Australia.
- (b) Each *party* submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning the *accepted exploration contract*.

**20.14 Relationship**

- (a) The relationship between the *parties* is that of independent contractors.
- (b) The *parties* are not partners, joint venturers or, subject to clause 20.14(c), principal and agent.
- (c) The *nominated body* is an agent of the *native title parties*.
- (d) Any *registered native title body corporate* which becomes a *party* to the *accepted exploration contract* pursuant to clause 14.5 holds the rights and interests from time to time comprising the *native title* in the whole or relevant part of the *exploration land* in trust for the *native title holders*.

Gawler Ranges Mineral Exploration ILUA  
Schedule 2 to Framework ILUA:  
Exploration Contract Conditions

**ANNEXURE A**  
**Heritage Clearance Procedures**