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| Cash Surety Deed  State of Queensland  and  Scheme Manager under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*  and  [Name of Holder]  [ABN/ACN/ARBN] | |
| Environmental Authority number [●] |  |
|  | |

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**THIS DEED** is made on

BETWEEN:

1. State of Queensland acting through Queensland Treasury (**State**)
2. Scheme Manager under the Financial Provisioning Act (**Scheme Manager**); and
3. **[Name of Party]** [ABN/ACN/ARBN] (**Holder**). ***[Details of the Holder to be inserted]***

RECITALS:

1. The Holder is the holder of the **Alt[**EA / Tenure**]**. It is a condition of the **Alt[**EA / Tenure**]** that the Holder gives a Surety under the Financial Provisioning Act. ***[To select applicable option depending on whether the Surety is given in respect of an EA or Small Scale Mining Tenure]***
2. The Holder has asked to provide a Surety in the form of a payment of a cash amount.
3. The Scheme Manager approves the Surety in respect of the **Alt[**EA / Tenure**]** being provided on the terms set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. definitions and INTERPRETATION
   1. Definitions

The following definitions apply in this document.

**ADI** means an ‘Authorised Deposit-taking Institution’ under the *Banking Act 1959* (Cth).

**Amendment Demand** has the same meaning as when used in the PPSA.

**Business Days** means any day other than a Saturday, Sunday or public holiday observed by businesses in Brisbane.

**Cash Surety Account** means a bank account held with an ADI in the name of the relevant department of the State Queensland and is the 'cash surety account' for the purposes of the Financial Provisioning Act.

**EA** means Environmental Authority number [**insert**]. ***[To be deleted if the Surety is given in respect of a Small Scale Mining Tenure]***

**EP Act** means the *Environmental Protection Act 1994* (Qld).

**Financial Provisioning Act** means the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld).

**Funds** means the sum of $[**insert**], being the amount of Surety required to be paid by the Holder [as at the date of this document] under Part 3, Subdivision 2 of the Financial Provisioning Act.

**PPSA** meansthe *Personal Property Securities Act 2009* (Cth).

**PPSR** meansthe Personal Property Securities Register established under the PPSA.

**Scheme Manager** means the scheme manager (from time to time) under the Financial Provisioning Act and any delegate of that person appointed under the Financial Provisioning Act.

**Security Interest** has the same meaning as when used in the PPSA.

**Surety** has the same meaning as when used in the Financial Provisioning Act.

**Tenure** means [**insert details of the relevant small scale mining tenure**]. ***[Drafting note: To be deleted if the Surety is given in respect of an environmental authority]***

* 1. Interpretation

In this document:

* + 1. headings and bold type are for convenience only and do not affect the interpretation of this document;
    2. the singular includes the plural and the plural includes the singular;
    3. an agreement, representation, or warranty by two or more persons binds them jointly and severally;
    4. words of any gender include all genders;
    5. other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
    6. an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
    7. a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(g) implies that performance of part of an obligation constitutes performance of the obligation;
    8. a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this document;
    9. a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
    10. a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
    11. a reference to a party to a document includes that party’s successors and permitted assignees;
    12. a reference to an agreement other than this document includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
    13. a reference to property or an asset includes any real or personal, present or future, tangible or intangible property, asset or undertaking and any right, benefit, interest or revenue in, under or derived from the property or asset;
    14. a reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind;
    15. no provision of this document will be construed adversely to a party because that party was responsible for the preparation of this document or that provision;
    16. a reference to any law or statute is a reference to any law or statute which replaces it or which substantially succeeds to its subject matter and content;
    17. to the fullest extent permitted by law, a reference to a body (including an institute, association or authority), whether statutory or not:
        1. which ceases to exist; or
        2. whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

* + 1. references to time are to the time in Brisbane, Queensland; and
    2. where this document confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
  1. Interpretation of inclusive expressions

Specifying anything in this document after the words ‘including’ or ‘for example’ or similar expressions does not limit what else is included unless there is express wording to the contrary.

1. Approval of surety

The Scheme Manager approves a Surety in respect of the **Alt[**EA / Tenure**]** being provided in the form of a payment of the Funds by the Holder, subject to the Scheme Manager being satisfied that it has received each of the following:

* + 1. evidence that all Security Interests registered on the PPSR over property of the Holder in so far as those Security Interests relate to the Funds and the Cash Surety Account has been released, on terms satisfactory to the Scheme Manager in its absolute discretion;
    2. a counterpart of this document duly executed by the Holder;
    3. evidence that a PPSR registration has been made naming the State as secured party in respect of the Funds and the Cash Surety Account effective to perfect any Security Interest arising under this document; and
    4. written confirmation and agreement from the ADI with whom the Cash Surety Account is held, on terms satisfactory to the Scheme Manager in its absolute discretion, that the ADI will not exercise set-off rights or assert a Security Interest in relation to the Funds or the Cash Surety Account in priority to the State’s interest or Security Interest in the Funds or Cash Surety Account.

The Scheme Manager will notify the Holder following satisfaction of the conditions set out in this paragraph 2.

1. The State and THE Scheme Manager's rights
   1. Dealing with the Funds by the Scheme Manager

The Scheme Manager will:

* + 1. deposit the Funds on receipt in a Cash Surety Account;
    2. retain the Funds as Surety in accordance with the Financial Provisioning Act;
    3. not make any claims on or realisations of the Funds, except in accordance with section 25 of the Financial Provisioning Act; and
    4. release part or all of the Funds from time to time in accordance with section 58 of the Financial Provisioning Act, and subject to the rights, considerations and discretions it contains.
  1. No obligation to invest the Funds

Notwithstanding clause 3.1, the Scheme Manager may:

* + 1. in its absolute discretion, but is not obliged to, invest part or all of the Funds with an ADI from time to time, or otherwise in accordance with section 25(5) of the Financial Provisioning Act; and
    2. recover all costs, charges and expenses incurred by it or the State in connection with the administering of this document and the holding of the Surety out of the Funds, whether from capital or income as the Scheme Manager may determine.

For the avoidance of doubt, this clause does not limit the Holder's obligations under section 61 of the Financial Provisioning Act (if applicable).

* 1. Preservation of other rights and powers

The rights and powers of the State and the Scheme Manager under this document:

* + 1. are in addition to, and do not prejudice, any rights and powers the State or the Scheme Manager has in respect of Sureties under any applicable law, including the Financial Provisioning Act and the EP Act;
    2. are not prejudiced by any other rights and powers the State or the Scheme Manager has in respect of the Funds or the Cash Surety Account; and
    3. continue and remain in full force and effect unless and until the whole of the Funds are released in accordance with clause 3.1(d) despite:
       1. any claims or realisations in respect of the Funds or the Cash Surety Account;
       2. any partial release or realisation of the Funds as Surety; or
       3. anything else.
  1. Consent of the State or the Scheme Manager
     1. Whenever the doing of any thing by the Holder is dependent on the consent of the State or the Scheme Manager, the State or the Scheme Manager may withhold its consent or give it conditionally or unconditionally in its absolute discretion, unless otherwise provided for in an applicable law.
     2. Any conditions imposed by the State or the Scheme Manager in relation to the giving of its consent must be complied with by the Holder.
  2. Limitation of liability

The State and the Scheme Manager:

* + 1. are not subject to any duties, liabilities or obligations in respect of the Funds or the Cash Surety Account, except as expressly provided for in this document, the Financial Provisioning Act and the EP Act; and
    2. are not liable to the Holder or any other person on any basis whatsoever for acting in accordance with this document, the Financial Provisioning Act and the EP Act.
  1. Increase or decrease in the Funds

If the amount of the Surety is increased or decreased in accordance with the Financial Provisioning Act, the parties acknowledge and agree that:

* + 1. a reference in this document to the Funds will be a reference to:
       1. the Funds as increased or decreased; and
       2. the increased or decreased Funds in the Cash Surety Account;
    2. any Security Interest in the Funds and the Cash Surety Account granted in favour of the State will extend to and include the Funds and the Cash Surety Account as increased or decreased; and
    3. a reference in this document to the rights and powers of the State or the Scheme Manager in respect of the Funds and the Cash Surety Account will be a reference to the Funds and the Cash Surety Account as increased or decreased.
  1. Interest on Cash Surety Account

The Holder acknowledges and agrees that:

* + 1. the State is solely entitled to all amounts earned as interest on the Cash Surety Account, and that the Holder is not entitled to any such amounts; and
    2. the Scheme Manager may deposit any amounts earned as interest on the Cash Surety Account into the scheme fund (as defined in the Financial Provisioning Act), in accordance with section 25(4) of the Financial Provisioning Act.

1. Holder warranties, representations and obligations
   1. Warranties and representations by the Holder
      1. The Holder irrevocably warrants and represents that:
         1. the Holder is the sole legal and beneficial owner of the Funds paid as Surety in respect of the **Alt[**EA / Tenure**]**;
         2. the Holder will hold the **Alt[**EA / Tenure**]** as the sole legal and beneficial holder of the **Alt[**EA / Tenure**]**;
         3. no person other than the State has the benefit of any right, interest or Security Interest in the Funds;
         4. any Security Interest arising in favour of the State in respect of the Funds and the Cash Surety Account will have first priority subject to the Scheme Manager making and maintaining all necessary registrations of that Security Interest and otherwise taking all steps to ensure that the Security Interest has attached, is enforceable and continuously perfected; and
         5. except for the approval provided for in this document, the Holder has obtained all consents and authorisations necessary to permit the Holder to:
            1. provide the Funds as Surety in respect of the **Alt[**EA / Tenure**]**;
            2. grant a Security Interest in respect of the Funds and the Cash Surety Account; and
            3. enter into this document.
      2. The Holder agrees and acknowledges that the State and the Scheme Manager have relied on the warranties and representations contained in this clause 4.1 in entering into this document and giving the approval contained in clause 2.
   2. Purported dealings with the Funds by the Holder
      1. For the avoidance of doubt, the rights of the Holder in respect of the Funds and the Cash Surety Account are limited to the rights of a Holder under this document, the Financial Provisioning Act and the EP Act in respect of the Surety it has provided.
      2. Without limiting clause 4.2(a), the Holder must not:
         1. assert any rights of a fiduciary nature against the State in respect of the Funds or the Cash Surety Account; or
         2. otherwise assert any rights against the State or the Scheme Manager, except to the extent that those rights are provided for by this document, the Financial Provisioning Act or the EP Act.
      3. The Holder must not do, or agree to do, any of the following:
         1. purport to create or allow any interest or Security Interest in the Funds or the Cash Surety Account in favour of any third party (other than the State, a permitted assignee of the State or the ADI at which the Cash Surety Account is held); or
         2. purport to dispose, assign, transfer, charge, grant a Security Interest, encumber or part with any purported rights of the Holder in the Funds or the Cash Surety Account, except as expressly permitted under this document, other than with the prior written consent of the State.
   3. Assistance in claims and realisation

If the Scheme Manager seeks to make any claims on or realisations of the Funds in accordance with section 25 of the Financial Provisioning Act, then the Holder must take all action required by the Scheme Manager to assist in those claims and realisations, including:

* + 1. executing all transfers, conveyances, assignments, consents, approvals and assurances required by the Scheme Manager;
    2. doing anything necessary or desirable under the law in force in respect of the Funds and the Cash Surety Account; and
    3. giving all notices, orders, directions and consents which the Scheme Manager considers prudent or expedient.
  1. Irrevocable authority of Holder

The Holder irrevocably authorises the State and the Scheme Manager to deal with the Funds and the Cash Surety Account in accordance with this document, the Financial Provisioning Act and the EP Act.

1. Further assurances
   1. General

The Holder must do anything (including obtaining consents, signing and producing documents, and getting any documents completed and signed by third parties) requested by the Scheme Manager from time to time to:

* + 1. ensure that the State’s rights in respect of the Funds and the Cash Surety Account are enforceable, perfected, and otherwise effective with first priority;
    2. provide more effective rights to the State in respect of the Funds as Surety and the Cash Surety Account, including granting any legal security or further rights over the Funds and the Cash Surety Account to the State;
    3. enable the State to apply for any registration, or give any notification in connection with its rights in relation to the Funds and the Cash Surety Account; and/or
    4. enable the State or the Scheme Manager to exercise its rights in respect of the Funds and the Cash Surety Account.
  1. PPSA
     1. Without limiting clause 5.1, the Holder:
        1. agrees and acknowledges that the State may, but is not obliged to, apply for any registration or give any notification it considers appropriate in respect of the Funds, the Cash Surety Account and this document, including to register and perfect any Security Interest arising under or in respect of the same on the PPSR;
        2. consents to any such applications, registrations and notifications and, without limiting the foregoing, may not make any Amendment Demand in respect of the same;
        3. must promptly do all things and sign all such documents as may be required by the Scheme Manager from time to time to perfect, register and file any Security Interest in respect of the Funds, the Cash Surety Account and this document asserted by the State, and to ensure the State’s enforceability, validity, perfection and first priority against all other persons; and
        4. must promptly:
           1. disclose to the Scheme Manager any Security Interests granted by the Holder in respect of the Funds or the Cash Surety Account; and
           2. upon request provide to the Scheme Manager a copy of any document in respect of such Security Interest granted by the Holder.
     2. Whenever the State requires that any Security Interest in respect of the Funds or the Cash Surety Account that it asserts to be perfected in a particular way, the Holder must ensure that the Security Interest is perfected in that way.

1. PPSA Exclusions

To the extent that any right, power or interest of the State in respect of the Funds constitutes a Security Interest, and to the fullest extent permitted by law:

* + 1. for the purposes of sections 115(1) of the PPSA:
       1. the State need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
       2. sections 142 and 143 are excluded;
    2. for the purposes of section 115(7) of the PPSA, the State need not comply with sections 132 and 137(3);
    3. the Holder waives the right to receive any notice under the PPSA (including notice of a verification statement) unless, but subject to clause 6(d), the notice is required by the PPSA and cannot be excluded;
    4. if the PPSA is amended after the date of this document to permit the Holder and the State to agree to not comply with or to exclude other provisions of the PPSA:
       1. the Scheme Manager may notify the Holder that any of those provisions are excluded or that the State need not comply with any of those provisions as notified to the Holder by the Scheme Manager; and
       2. the parties agree that such notification takes effect as an agreement between the Holder and the State in respect of those provisions; and
    5. the Holder agrees not to exercise its rights to:
       1. make any request of the State under section 275 of the PPSA;
       2. authorise the disclosure of any information relating to this document under that section (except as otherwise permitted under the terms of this document); or
       3. waive any duty of confidence that would otherwise permit non-disclosure of this document under that section.

1. Costs

On demand by the Scheme Manager, the Holder must reimburse the State for all costs and expenses in relation to the preparation, execution and completion of this document, including legal costs and expenses (including in-house lawyers charged at their usual rates, and registration of any financing statements on the PPSR) on a full indemnity basis.

1. General
   1. Continuation of warranties, representations and restrictions

Each of the following continue in full force and effect unless and until the whole of the Funds are released in accordance with clause 3.1(d):

* + 1. the warranties and representations given by the Holder under this document; and
    2. each of the Holder’s obligations under clauses 4.2(b), 4.2(c), 4.3, 5.1, 5.2 and 8.2 of this document.
  1. Confidential information

The Holder must not disclose any information in respect of this document except:

* + 1. for the purpose of enforcing this document;
    2. for the purpose of obtaining financial, accounting, legal or tax advice in relation to this document;
    3. as required by law;
    4. where the information to be disclosed is already in the public domain;
    5. to any of its related bodies corporate;
    6. (on a confidential basis) to any potential purchaser, or to any actual or potential financier, of the Holder; or
    7. with the prior written consent of the Scheme Manager, which may be given or withheld in the Scheme Manager's absolute discretion.
  1. Governing law and jurisdiction
     1. This document is governed by the laws of Queensland.
     2. Without limiting clause 8.3(a), for the purposes of section 237 of the PPSA where applicable, the law of the Commonwealth of Australia as that law applies in the jurisdiction specified in clause 8.3(a) governs all Security Interests arising under this document to the extent it is permitted to apply under that section.
     3. The Holder irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
  2. Prohibition and enforceability
     1. Any provision of, or the application of any provision of, this document which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
     2. Any provision of, or the application of any provision of, this document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
     3. Where any right, power, authority, discretion or remedy conferred on the State or the Scheme Manager by this document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negatived or varied to the extent of the inconsistency.
  3. Waivers
     1. Waiver of any right arising from a breach of this document or of any power arising under this document must be in writing and signed by the party granting the waiver.
     2. A failure or delay in exercise, or partial exercise, of any right or power in respect of this document does not result in a waiver of that right or power.
     3. A party is not entitled to rely on:
        1. a delay in the exercise or non-exercise of a right or power in respect of this document as constituting a waiver of that right or power; or
        2. any conduct of another party as a defence to exercise of a right or power in respect of this document by that other party.
     4. This clause may not itself be waived except by writing.
  4. Variation

A variation of any term of this document must be in writing and signed by the parties.

* 1. Survival of representations and warranties

The representations and warranties in clause 4:

* + 1. survive the execution of this document; and
    2. are repeated on the last day of each month with respect of the facts and circumstances then subsisting.
  1. Notices
     1. A notice must be in writing. It may be served on a party by:
        1. giving it to the party personally;
        2. delivering it to the party’s last known registered office or business address;
        3. posting it to the party’s postal address; or
        4. emailing it to the party's last known email address.
     2. A notice may be executed under seal by the party or signed on behalf of the party, by the duly appointed attorney or attorneys of the party or by the delegate, manager, managing agent, secretary or solicitor of the party.
  2. Time of delivery

A notice is taken to be served:

* + 1. if delivered, at the time of delivery;
    2. if posted, on the third Business Day after posting; or
    3. if emailed, when the sender receives a delivery confirmation report recording the time the email was delivered, unless the sender receives a delivery failure notification,

but if a notice is given after 5pm in the circumstances in paragraph (a) or (c);

* + 1. it will be treated as served at 9am on the next Business Day; and
    2. if two notices are deemed under paragraph (d) to have been served at the same time, they are deemed to have been served in the order in which they were actually received.
  1. Assignment
     1. The State may assign its rights under this document, the Funds, the Cash Surety Account and the State’s Security Interest to any permitted assignee without the consent of any other party to this document.
     2. The Holder may not assign any of their respective rights under this document without the consent of the State which may be given or withheld in the absolute discretion of the State.
     3. The Holder may not assign its rights in the Funds without the consent of the State which may be given or withheld in the absolute discretion of the State.
  2. Counterparts
     1. This document may be executed in any number of counterparts and all counterparts taken together, constitute one instrument.
     2. A party may execute this document by signing any counterpart and may exchange a counterpart of this document by email.

**EXECUTED** as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**State**

**EXECUTED for and on behalf of the State of Queensland**

**acting through Queensland Treasury**

|  |
| --- |
|  |
| Signature |
|  |
| Name and Position |

**Scheme Manager**

**EXECUTED by the Scheme Manager**

|  |
| --- |
|  |
| Signature |
|  |
| Name |

**Holder**

|  |  |  |
| --- | --- | --- |
| executed by [NAME OF HOLDER]: |  |  |
|  |  |  |
| Signature of director |  | Signature of director/secretary |
|  |  |  |
| Name |  | Name |