

Terms of Use – Mining Exploration Regulation System

1. Definitions

Application means an application, instrument, agreement, interest, determination or other document or dealing lodged by You through the System for the purposes of mining and exploration activities (including for the obtaining of Approvals) including under Legislation and any information, plans, certifications, guidelines and other Content relating to the exploration and mining activities the subject of the application.

Approval means any and all approvals and permits (including any terms and conditions of approval and renewals) and any and all supporting Content.

Associated Account means an account in the System held by your Related Body Corporate that is linked to your account in the System in accordance with the Form 43 Request to Link Associated Account within the MERS submitted to the Department.

Associated Account Holder means the user of the Associated Account.

Content means all information, reports, documents, data and datasets, databases, text, graphics, logos, software, design, photography, maps, video and other imaging, sound or other digital content, icons and illustrations contained within, submitted into, generated through or extracted from the System and includes any Application or other instrument, document or dealing registered on the Mining Register.

Credentials means the unique username and confidential password provided to You by the Department to allow Your Use of the System.

Department means the Department for Energy and Mining acting on behalf of the Minister for Energy and Mining.

Intellectual Property Rights includes all present and future intellectual property rights in respect of or in connection with any:

- (a) patents, copyright, registered designs, trademarks, know-how; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

but for the avoidance of doubt excludes moral rights and performers' rights.

Legislation means the laws in force in the State of South Australia and includes any legislation, regulation, by-law, ordinance or subordinate legislation in force from time to time in the State of South Australia.

Mining Register means the register kept by the Mining Registrar under section 15AA of the *Mining Act 1971*.

Personal Information means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Related Body Corporate has the meaning defined in the *Mining Act 1971*.

System means the Mining Exploratory Regulation System operated by the Department.

Terms of Use means these terms and conditions and any changed terms of use constituting the licence from the Department to You and the legally binding agreement between the Department and You.

Third-Party Representative means an individual or company (including their employees, representatives or agents) authorised by You to Use the System including an authorised agent, registered operator, consultant and any other person appointed to act on Your behalf in respect of the Use of System as approved by the Department.

Use means You accessing the System to:

- (a) view, generate, submit and search Content;
- (b) submit an Application, receive an Approval or undertake other transactions in relation to mining and exploration activities;
- (c) communicate to and receive communications from the Department; or
- (d) make payments.

You or Your means You as the user of the System.

2. Application of terms

These Terms of Use apply to Your Use of the System. You:

- (a) accept and agree to be bound by the Terms of Use;
- (b) acknowledge that You have read and understood the Terms of Use; and
- (c) certify that You are authorised and have the capacity to accept the Terms of Use, including on behalf of a third party where You are appointed as a Third Party Representative.

If You do not accept and agree to be bound by the Terms of Use, You must immediately stop Your Use of the System.

The Department may amend, delete, add to, or otherwise revise the Terms of Use at any time without notice. It is Your responsibility to monitor any such changes. Your continued Use of the System will constitute acceptance of any amendments to the Terms of Use.

3. Access to the System

The Department may require You to register to allow Your Use of the System.

If You are required to register, You must complete the nominated registration form. You agree to provide the Department with accurate and complete registration information.

If the Department accepts Your registration, You acknowledge that:

- (a) the Department will provide You with Credentials to allow Your Use of the System in accordance with these Terms of Use;
- (b) You must not share Your Credentials;
- (c) You are responsible for maintaining the confidentiality of the Credentials and also for all activities which take place on the System under Your account;
- (d) the Department is not, and will not be, responsible for any loss, claim or other liability that may arise from the authorised, unauthorised or fraudulent use of the Credentials; and
- (e) if the Credentials are lost or stolen or if You reasonably become aware of any unauthorised Use of the System, it is Your responsibility to immediately notify the Department so that the Credentials can be deactivated.

If more than one person within Your organisation is required to register to Use the System, each of those people will require unique Credentials.

4. Restrictions on Use

You must at all times act reasonably in Your Use of the System.

You must not without the Department's prior written consent, on-sell access to the System or Content obtained from the System.

You are prohibited from using any web scraping, web harvesting or web data extraction technology when using the System or to establish, maintain, reproduce or copy (in whole or in part) Content obtained from the System without the prior written consent of Department.

5. Use of the System

Subject to the Terms of Use, the Department agrees to grant You a limited, non-transferable, non-exclusive, revocable, royalty free licence for Your Use of the System.

6. Third-Party Representative

If You nominate a Third-Party Representative to Use the System, You agree that:

- (a) the Third-Party Representative has Your explicit authority to undertake all Applications, Approvals and any other transactions within the System and to exercise any other rights on Your behalf;
- (b) the Third-Party Representative will be provided with access to all Content relevant to You in the System (including confidential Content);
- (c) the actions of the Third-Party Representative in the System (including any Applications, Approvals or other transactions) will be deemed to be Your actions, and You will be bound by such actions as if undertaken directly by You;
- (d) it is Your responsibility to be informed of any actions undertaken by the Third-Party Representative and to inform the Third-Party Representative of any actions undertaken by You;
- (e) the Department is entitled to rely on Your representations in this clause 6 that the Third-Party Representative is appropriately authorised and is not required to assess the scope of any authority granted to the Third-Party Representative; and
- (f) You are responsible for updating the System to reflect any changes to the authorisation of Your Third-Party Representative;
- (g) any requirement to notify You in relation to any Applications or Approval, may be met by notifying Your Third Party Representative.

If You are a Third-Party Representative, You warrant that You have the authority to bind the authorising party by agreeing to these Terms of Use and in respect of any Applications, Approvals or any other transactions undertaken through Your Use of the System.

7. Associated Account

To link an Associated Account, You must complete the *Form 43 Request to Link Associated Account within the MERS Form* and submit it to the Department.

By linking an Associated Account, you agree:

- (a) to comply with the requirements described in *Form 43 Request to Link Associated Account within the MERS*;
- (b) the Associated Account Holder has Your explicit authority to undertake all Applications, Approvals and any other transactions within the System and to exercise any other rights on Your behalf in the System (other than those transactions identified as excluded in the *Form 43*);
- (c) the Associated Account Holder will be provided with access to all Content relevant to You in the System (including confidential Content);
- (d) the actions of the Associated Account Holder in the System (including any Applications, Approvals or other transactions) will be deemed to be Your actions, and You will be bound by such actions as if undertaken directly by You;
- (e) it is Your responsibility to be informed of any actions undertaken by the Associated Account Holder and to inform the Associated Account Holder of any actions undertaken by You;
- (f) any requirement to notify You in relation to an Application, Approval or other transaction may be met by notifying the Associated Account Holder;
- (g) the Department is entitled to rely on Your representations in this clause 7 and *Form 43* that the Associated Account Holder is appropriately authorised and is not required to assess the scope of any authority or the relationship between you and the Associated Account Holder; and
- (h) you must notify the Department of any changes to your Related Body Corporate that necessitate changes to your Associated Accounts and unless and until such notification is received, the Department is entitled to rely on your authority.

8. Legislative specific terms

(a) Compliance with legislation

If You are lodging an Application or Approval in the System or undertaking some other transaction pursuant to the Legislation, You must also comply with that Legislation.

(b) Official receipt of Applications and Approvals

Applications and Approvals can be made through the System at any time. Any Application or Approval (and any other notice, document, transaction or other electronic information) will only be formally and officially received by the Department at the time You receive confirmation by email that the notice or document has been received by the Department.

Your agreement is deemed to satisfy sections 13(1) and 13A(1) of the *Electronic Communications Act 2000* (SA).

(c) Service of documents

The Department uses internally built mail distribution software within the System to provide electronic communication services to users and to issue notices or other documents to users. You will also receive an email notification to the email address You have provided to notify You when You have new communications in the System.

You agree to receive correspondence (including notices and other documents) via the System and that a corresponding notification to Your email address with a link to access the

correspondence within the System will satisfy any applicable service requirements, including under the *Mining Act 1971* and the *Mining Regulations 2020*.

(d) Public register

The Department may collect information that You enter into the System, including Content and any other information collected through an Application, Approval or other transaction undertaken in the System, for the purposes of assessing the suitability of Your Application, maintaining public searchable registers and undertaking other activities consistent with its legislative obligations under the:

Mining Act 1971 (SA)
Mining Regulations 2020 (SA)
Offshore Minerals Act 2000 (SA)
Offshore Minerals Act 1994 (Cth)

You acknowledge that Legislation mandates that the Department must make public, or otherwise share, certain Content, including Content You enter into the System. The Department will only use that Content for the purposes of undertaking activities consistent with its obligations under Legislation.

9. Disclaimer

While the Department endeavours to ensure that all Content and any other information on the System is accurate, complete, up-to-date, reliable and error-free, You acknowledge that this may not always be the case and that the Department does not represent or warrant that this will be the case.

You agree that:

- (a) You exercise Your independent judgment in and have not relied on any representation made by the Minister which has not been stated expressly in these Terms of Use in respect of Your Use of the System;
- (b) any reliance on or Use of the System or the Content is entirely at Your own risk; and
- (c) it is Your responsibility to verify any Content and otherwise seek Your own independent advice.

10. Liability

To the full extent permitted by applicable law, in no event will the Department and the State of South Australia be liable for any loss or damage whatsoever, including (without limitation):

- (a) loss of production or operation time, loss, damage or corruption of data or records;
- (b) loss of anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss;
- (c) loss as a result of suspension, alteration, divestment or diminution of any rights of access to land to undertake mining and exploration activities;
- (d) any special, incidental, indirect, consequential, punitive or exemplary damages arising out of or in connection with Your Use of the System;
- (e) any loss incurred by You, a Third Party Representative, Associated Account Holder or any other third parties in connection with the Use of the System; or
- (f) losses arising out of the Use of the System or reliance on any Content (including incomplete, out-of-date, wrong, inaccurate or misleading information, data or advice) expressed or implied in the System by any person;

11. No warranties

To the fullest extent permitted by law and subject to any liabilities and obligations which cannot be excluded by law, the Department and the State of South Australia does not guarantee or warrant:

- (a) that the functions contained in the System will meet Your requirements;

- (b) the accuracy, quality, completeness, reliability, adequacy, integrity, utility or currency of the System or the Content;
- (c) that the System will be accessible at all times or that Your Use of the System or any part of the System will be uninterrupted or error free; or
- (d) that defects will be corrected or that the System or the server that makes the System available are free of viruses, bugs or malicious code or other forms of interference which may damage Your device.

12. Indemnity from users

You agree to release, indemnify, defend and hold the Department and the State of South Australia and its officers, employees, contractors and agents harmless from and against all claims, expenses, damages and costs (including legal costs) of any nature and howsoever arising whether direct, indirect, incidental, special, consequential or exemplary loss or damages (including any damages calculated by reference to loss of profit, revenue, data, goodwill or business opportunities and damage to reputation or personal computer system, including its hardware, software or data) which may be suffered or incurred by You or any third party as a result of:

- (a) any breach of these Terms of Use by You;
- (b) any negligent or unlawful or wilful act or omission by You in connection with Your Use of the System;
- (c) Your use of any intellectual property arising from Your Use of the System including the use of any third party intellectual property; or
- (d) where the Department is subject to a third party claim arising out of Your breach of any of these Terms of Use (except to the extent that any negligent act or omission by the Department directly causes or contributed to the claim).

13. Licences

You agree that the State owns all Intellectual Property Rights in the System excluding:

- (a) Content provided by You; and
- (b) Content provided by a third party that is owned by the third party and licensed to the Department and the State of South Australia.

You grant the Department and the State of South Australia a licence to use any Content that You provide through Your Use of the System for the purposes of the Department and the State of South Australia:

- (a) supplying the System; and
- (b) carrying out, performing or exercising any of its rights, functions, obligations or powers under Legislation.

14. Confidentiality

Legislation mandates that the State must make public, or otherwise release, certain Content, including Content that You provide to the Department as part of Your Use of the System.

The Department will only publicly release confidential Content for the purpose of undertaking activities consistent with its obligations under Legislation.

15. Collection and use of Personal Information

You consent to the Department collecting Your Personal Information for the purposes of providing You with Your Use of the System and if required issuing You Credentials, or assessing an Application, Approval or other functions as required by Legislation.

Any Personal Information disclosed to the Department as part of Your Use of the System will be governed by the South Australian Government's Information Privacy Principles found at

<https://www.dpc.sa.gov.au/documents/rendition/DPC-Circular-Information-Privacy-Principles-IPPS->

The Department will ensure Personal Information is stored securely and is kept and disposed of in accordance with the Information Privacy Principles, the *State Records Act 1997* (SA) or otherwise under Legislation.

You must ensure that You and Your personnel comply with any applicable Legislation in respect of any Personal Information used, disclosed, stored or received in connection with these Terms of Use.

16. Cookies

The Department may collect information relating to Your Use of the System, such as the domain name, IP address from which the System is visited, the date and time of the visit to the site, the pages accessed and documents downloaded, the previous website visited and the type of browser used and use that data to, among other things, analyse trends and statistics.

The Department also may use "cookies" on the System which is a small text file that the System may place on Your computer. You can disable cookies via Your internet browser, however, then You may not be able to access the System to its full functionality.

17. Suspension and termination

You agree that the Department has the right, at its sole discretion, to terminate or suspend Your access to the System at any time, without notice, for any reason, including, without limitation:

- (a) any breach of these Terms of Use;
- (b) the Department reasonably believes that you are not authorised to act as a Third Party Representative or as an Associated Account Holder;
- (c) the Department reasonably believes that such suspension or termination is necessary to protect the System or security of the Content;
- (d) the Department reasonably believes that Your usage pattern of the System is excessive or unreasonable in that it will, or could, impact on other users of the System any other public register maintained by the Department or any of the State's other systems; or
- (e) there is any event of degradation or instability in the System, any other of the State's systems whether caused by You, Your personnel or otherwise.

The Department may reinstate Your access to the System as soon as reasonably practicable once the matters giving rise to a suspension or termination have been reviewed, remediated or rectified (having regard to the circumstances underlying the reason for the suspension or termination).

The Department may also at any time, at its sole discretion, discontinue the System or any part without prior notice and You agree that the Department is not liable to You or any third party for any termination or suspension of Your access to the System.

18. Third party services

There may be information, technology and software products and services of third party providers in the System which are subject to separate additional terms and conditions.

You must abide by any such third party terms and conditions of which we have notified You by posting them on the System. To the extent of any inconsistency between these Terms of Use and the third party terms and conditions governing their intellectual property, the third party terms and conditions apply.

19. Linked websites

The System may contain links to other websites owned and operated by third parties. The Department is not responsible for the linked websites and makes no representation as to the accuracy of any material on the linked websites or the security of the linked websites.

The Department, to the maximum extent possible, does not accept any liability for any loss suffered as a result of use of those third party websites or reliance on the information contained on those third party websites.

20. Fees

You acknowledge that accessing the System and undertaking individual transactions in the System may give rise to a fee. These fees may be prescribed by Legislation.

21. Governing law

The laws of South Australia, Australia, apply to these Terms of Use and all matters relating to the Use of the System.

You agree to submit to the exclusive jurisdiction of the courts of South Australia with respect to any claim or dispute regarding the System or these Terms of Use.

22. General

- (a) You may not assign or transfer any rights or obligations under these Terms of Use to any third party. The Department may assign or transfer any rights or obligations under these Terms to any third party in our absolute discretion.
- (b) Any waiver of the Department's rights under these Terms of Use is not effective unless in writing signed by an approved representative of the Department. Any failure or delay by the Department in exercising a right under these Terms does not constitute a waiver of our rights.
- (c) Any indemnity under these Terms of Use is independent and survives termination or expiry of these Terms of Use, and any other term which, by its nature, is intended to survive termination or expiry of these Terms of Use also survives that termination, including clauses 6 to 13.