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**CONFIDENTIALITY DEED**

**Between**  
**Cuevalley Proprietary Limited**

**and**

**2011**

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## CONFIDENTIALITY DEED

This confidentiality deed is made on \_\_\_\_\_ day of \_\_\_\_\_ 2011  
by:

**specified as "Recipient"**

in favour of, and for the benefit of:

**Cuevalley Proprietary Limited, ACN 005 356 678**  
**specified as "Cuevalley"**

### Recitals

- (a) Cuevalley has information relating to the Project.
- (b) The Recipient has requested Cuevalley to disclose information concerning the Project for the Specified Purpose.
- (c) Cuevalley has agreed to the request subject to the Recipient agreeing to keep secret and confidential the information disclosed by Cuevalley upon and subject to the terms of this deed.

### This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

## 1 Definitions and Interpretation

### 1.1 Definitions

In this deed unless the context otherwise requires:

**Confidential Information** means:

- (a) the following information, regardless of its form and whether the Recipient becomes aware of it before or after the date of this agreement:
  - (i) all information and know-how used by Cuevalley relating to its business, transactions, methods of operating and affairs and the provision of the Services; and
  - (ii) all other information treated by Cuevalley as confidential;
- (b) all notes and other records prepared by the Recipient based on or incorporating information referred to in paragraph (a); and
- (c) all copies of the information, notes and other records referred to in paragraphs (a) or (b),

except information:

- (a) the Recipient created prior to the date of this agreement; or
- (b) the Recipient creates (whether alone or jointly with any third person) independent from and unrelated to Cuevalley's activities; or
- (c) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any of its permitted disclosees); or
- (d) that was disclosed to the Recipient, other than under an obligation of confidentiality, by a third party who had no obligation to Cuevalley not to disclose such information to others.

**Document** includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced.

**Intellectual Property Rights** means all intellectual property rights including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks, documents, reports, photographs, video tapes, statements, diagrams, technical information, plans, drawings, calculations, tables, schedules and the right to have confidential information kept confidential;

- (b) all intellectual property rights without limitation created by the Recipient or any person engaged by the Recipient in the course of the Specified Purpose in accordance with this agreement;
- (c) all results, information and material brought into existence or obtained by or on behalf of Cuevalley or the Recipient as part of or for the purposes of performing the Specified Purpose; and
- (d) any application or right to apply for registration of any of the rights in clauses (a), (b) or (c).

**Officer** means any officer of a body corporate as defined in section 82A(1) of the Corporations Act.

**Party** means Cuevalley or the Recipient according to the context.

**Project** means the Coolung brown coal project contained within Exploration Licence 5173 within Victoria.

**Related Body** means any related body corporate of another body corporate as defined in section 50 of the Corporations Act.

**Specified Purpose** means review of the Project for the purpose of purchase.

## **2 Confidentiality**

Subject to clauses 3 and 4 hereof, the Recipient acknowledges that the Confidential Information is confidential and agrees with Cuevalley that it will:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of the Confidential Information to any third party (including, without limitation, any Related Body or Officer of the Recipient);
- (b) not disclose, or cause or permit the disclosure to any person (including, without limitation, any Related Body or Officer of the Recipient) of any opinion in respect of the Confidential Information or a Document created in accordance with clause 3(c); and
- (c) keep the Confidential Information and any Documents created in accordance with clause 3(c) secure and protected from any use or disclosure, except as permitted under this deed or with the prior written consent of Cuevalley.

## **3 Permitted use and disclosure**

The Recipient may:

- (a) only use the Confidential Information for the Coolung Project due diligence;
- (b) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of Cuevalley; and
- (c) create, or cause or permit to be created, a Document which reproduces, is based on, utilises or relates to Confidential Information only if that creation is solely for the Specified Purpose.

## **4 Access to Confidential Information**

The Recipient must limit access to the Confidential Information to only the Officers of the Recipient, and any employee, agent, contractor, consultant or adviser of the Recipient:

- (a) who carries out work for the Recipient for the Specified Purpose or on the Project;
- (b) who reasonably requires the Confidential Information for the Specified Purpose or the Project; and
- (c) who agrees to be bound by the same terms and restrictions as are imposed on the Recipient by this deed.

## **5 Intellectual Property Rights**

### **5.1 Ownership**

The Recipient acknowledges that:

- (a) all Intellectual Property Rights belongs to Cuevalley; and
- (d) all documents and materials provided by Cuevalley are and will remain the sole and exclusive property of Cuevalley.

## **5.2 Protection of ownership**

Whenever required by Cuevalley to do so (whether during or after the expiration or termination of this agreement), the Recipient shall do all things necessary or desirable to ensure all Intellectual Property Rights are owned by Cuevalley.

## **6 Return and destruction of information**

If requested by Cuevalley, the Recipient must immediately return to Cuevalley, or destroy or delete as Cuevalley directs, all original Documents and copies which:

- (a) are or contain Confidential Information; and
- (b) reproduce, are based on, utilise or relate to Confidential Information.

## **7 Operation of this deed**

- (a) This deed continues without limitation in time but does not apply to any Confidential Information that:
  - (1) subject to clause 7(b), the Recipient is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator; or
  - (2) is in the public domain other than as a result of a breach of this deed.
- (b) If the Recipient must make a disclosure referred to in clause 7(a)(1):
  - (1) the Recipient must disclose only the minimum Confidential Information required to comply with the applicable law or order; and
  - (2) before making such disclosure, the Recipient must:
    - A. give Cuevalley written notice of:
      - (i) the full circumstances of the required disclosure; and
      - (ii) the Confidential Information which it, proposes to disclose; and
    - B. consult with Cuevalley as to the form of the disclosure.

## **8 Recipient to ensure others comply**

The Recipient must ensure that no officer, employee, adviser or agent of the Recipient (including, without limitation, any Related Body or Officer of the Recipient) does anything which, if done by the Recipient, would be inconsistent with this deed.

## **9 Notices**

- (a) Any notice or other communication in connection with this deed must be in writing signed by the party giving it or its solicitor or agent and may be:
  - (1) delivered to or sent by prepaid ordinary post to the address of the addressee; or
  - (2) sent by facsimile to the facsimile number of the addressee; or
  - (3) to any other address which is notified by one party to the other in accordance with this deed.
- (b) Any notice or other communication takes effect from the time it is received and is taken to be received:
  - (1) if left at the address of the addressee, at the time it is left;
  - (2) sent by prepaid ordinary post to the address of the addressee, on the third day after posting; and
  - (3) sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee without error.

## **10 Severance**

The parties agree that a construction of this deed that results in all provisions being enforceable is to be preferred to a construction that does not so result. However, if despite this, any provision of this deed or the application of that provision to any person or circumstance is or becomes invalid or unenforceable, then the remaining provisions of this deed are not affected and are valid and enforceable to the fullest extent permitted by law.

**11 Waiver and variation**

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed must be in writing and signed by Cuevalley.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) Any variation of this deed must be in writing and signed by the Recipient and Cuevalley.

**12 Governing law**

This deed is governed and construed by the laws of Victoria, Australia and the parties agree to submit to the jurisdiction of the Courts of Victoria.

Executed as a deed:

**Cuevalley Proprietary Limited**  
is affixed to this document:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

**[insert Company Name]**  
is affixed to this document:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

Or if individual:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Recipient

\_\_\_\_\_  
Name (please print)