

## Deed of Company Arrangement – Abra Mining

Dated

20 May 2025

Abra Mining Pty Limited (Administrators Appointed) ACN 110 233 577 ("the  
**Company**")

Richard Scott Tucker and Robert William Hutson in their capacity as joint and  
several voluntary administrators of the Company ("**Administrators**") and as  
administrators of this Deed ("**Deed Administrators**")

Endurance Mining Pty Ltd ACN 686 341 471 ("**Proponent**")

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602-0056167

# Deed of Company Arrangement – Abra Mining

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# Deed of Company Arrangement – Abra Mining

## Details

| Parties                                |           |                                                                                                                                                                         |
|----------------------------------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Company                                | Name      | <b>Abra Mining Pty Limited (Administrators Appointed)</b>                                                                                                               |
|                                        | ACN       | 110 233 577                                                                                                                                                             |
|                                        | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000                                                                                                  |
|                                        | Email     | <a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a><br><a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                            |
|                                        | Attention | Richard Tucker and Robert Hutson                                                                                                                                        |
| Administrators and Deed Administrators | Name      | <b>Richard Scott Tucker and Robert William Hutson</b> in their capacity as joint and several voluntary administrators of the Company and as administrators of this Deed |
|                                        | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000                                                                                                  |
|                                        | Email     | <a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a><br><a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                            |
|                                        | Attention | Richard Tucker and Robert Hutson                                                                                                                                        |
|                                        |           |                                                                                                                                                                         |
| Proponent                              | Name      | <b>Endurance Mining Pty Limited</b>                                                                                                                                     |
|                                        | ACN       | 686 341 471                                                                                                                                                             |
|                                        | Address   | 'Gateway Building'<br>Suite 4101, Level 41,<br>1 Macquarie Place<br>Sydney NSW 2000                                                                                     |
|                                        | Email     | <a href="mailto:abeamond@taurusfunds.com.au">abeamond@taurusfunds.com.au</a><br><a href="mailto:cloxton@taurusfunds.com.au">cloxton@taurusfunds.com.au</a>              |
|                                        | Attention | Adam Beamond and Charles Loxton                                                                                                                                         |
| Recitals                               | <b>A</b>  | On 4 April 2024, the Administrators were appointed administrators of the Company pursuant to section 436A(1) of the Act.                                                |
|                                        | <b>B</b>  | The Proponent proposed a deed of company arrangement in respect of the Company.                                                                                         |

- C** At the duly convened second meeting of each Company's Creditors held on 14 May 2025, it was resolved pursuant to section 439C(a) of the Act (**Section 439C Resolution**) that the Company execute a deed of company arrangement on the terms set out in this Deed.
- D** This Deed is the instrument prepared by the Administrators setting out the terms of the deed of company arrangement pursuant to section 444A(3) of the Act. The matters specified for the purposes of section 444A(4) of the Act are addressed in the provisions noted in the table at Schedule 1.

# Deed of Company Arrangement – Abra Mining

## General terms

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### 1 Interpretation

#### 1.1 Definitions

In this Deed the following definitions apply unless the context requires otherwise:

**Act** means the *Corporations Act 2001* (Cth).

**Administration Debt** means any:

- (a) debt referred to in section 443A(1) of the Act which was incurred by the Administrators during the Administration Period;
- (b) liability to the Commissioner of Taxation referred to in section 443BA(1); and
- (c) other debts or liabilities referred to in section 443D(aa) of the Act,

in respect of which the Administrators are entitled to be indemnified under section 443D of the Act.

**Administration Loan Agreement** means the document titled 'Administration Loan Agreement' dated 11 June 2024 (as amended from time to time, including on [●] 2025, between the Company, the Administrators and Taurus.

**Administration Period** means the period commencing on the Relevant Date and ending at the Effective Time.

**Administrators' Liabilities** means any liabilities, debts, costs, fees, charges, disbursements, and expenses reasonably and properly incurred by the Administrators, including, without limitation, any Statutory Liabilities in respect of the administration of the Company pursuant to the Administrators' appointment as voluntary administrators of the Company.

**Administrators' Remuneration** means the Administrators' remuneration and fees for services for any work performed by them or their partners, employees, or agents in performing their powers, functions and duties as voluntary administrators of the Company and as a result of acting in their capacity as voluntary administrators, approved by resolution of the Company's creditors, a Committee of Inspection or, if necessary, the Court.

**Admitted Claim** means a Claim against the Company that is admitted in accordance with the Trust Deed.

**Admitted Priority Claim** means any Admitted Claim which, in a liquidation of the Company, would be entitled to priority of payment pursuant to sections 556(1)(e) to (h) (inclusive), 560 or 561 of the Act, with the winding up of the Company taken to have begun on the Relevant Date.

**Allowable Deductions** means:

- (a) Trustees' Fee;

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- (b) unpaid Administrators' Remuneration accrued to the Satisfaction Date;
- (c) unpaid Administrators' Liabilities accrued to the Satisfaction Date;
- (d) unpaid Deed Administrators' Remuneration accrued to the Satisfaction Date;
- (e) unpaid Deed Administrators' Liabilities accrued to the Satisfaction Date;; and
- (f) the Deed Administrators' reasonable estimate of future legal fees for the remainder of the Deed Period.

**Allowable Deduction Amount** means the total amount of the Allowable Deductions.

**Approved Budget** means a written report prepared by the Deed Administrators which:

- (a) provides a cashflow forecast for the Company for the Deed Period, in a form substantially the same as provided under the Administration Loan Agreement;
- (b) includes, for the avoidance of doubt, details of the Administrators' Remuneration, Deed Administrators' Remuneration and all forecast and accrued, legal fees, costs and expenses for the remainder of the Deed Period; and
- (c) specifies the estimated Proponent Contribution Shortfall (if any) for the purposes of clause 12.1(a)(ii).

**ASIC** means the Australian Securities and Investments Commission.

**Assets** means the Property, assets and undertaking of the Company, including:

- (a) Remaining Company Cash (if any);
- (b) actions, claims, suits, causes of action, arbitrations, debts, costs, demands, verdicts and judgments at law or in equity or under any statute (whether certain or contingent, present or future, ascertained or sounding only in damages) which any Company may have against any person;
- (c) real and other property, including intellectual property;
- (d) GST and other tax refunds or credits obtained by a Company; and
- (e) contracts of insurance or reinsurance, including any amounts (after deducting any expenses of or incidental to getting in those amounts) received under such contracts.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

**ByrneCut Claim** means the claim of ByrneCut Australia Pty Ltd ACN 129 142 516 in respect of the ByrneCut Agreement as at the Relevant Date.

**ByrneCut Agreement** means the Underground Mining Services Agreement between ByrneCut Australia Pty Ltd ACN 129 142 516 and the Company dated 1 December 2022.

**Break Fee** means the sum of \$500,000.

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**Claim** means all debts payable by and all claims against, the Company (arising at law, in equity or under any statute, present or future, certain or contingent, ascertained or sounding only in damages) and any fine or penalty to which the Company is subject or liable to be subject, the circumstances giving rise to which occurred on or before the Relevant Date, including all actions, claims, suits, causes of action, arbitrations, debts, costs, demands, verdicts and judgments, that would be admissible to proof against the Company in accordance with Division 6 of Part 5.6 of the Act, if the Company had been wound up and the winding up is taken to have commenced on the Relevant Date, in each case, other than a Non-Participating Claim.

**Committee of Inspection** means the committee of inspection formed:

- (a) in accordance with Divisions 75 and 80 of the IPS and Division 75 of the IPR; and
- (b) by resolution of creditors of the Company,

including those creditors of the Company who join or leave the committee from time to time.

**Company Cash** means the Company's cash at bank held by the Deed Administrators on the Satisfaction Date and for the avoidance of doubt excludes any Proponent Contribution Shortfall.

**Completion Conditions** means the conditions set out in clause 12.1 ("*Completion Conditions*").

**Completion Notice** means a notice substantially in the form at Schedule 1.

**Completion Steps** has the meaning given to that term in clause 13.1.

**Control** has the meaning given in section 50AA of the Act.

**Corporations Regulations** means the *Corporations Regulations 2001* (Cth).

**Costs** means:

- (a) all costs (including trading costs), legal fees, expenses and disbursements incurred by the Administrators from the Relevant Date to the Effective Time in connection with the administration of the Company, the implementation of this Deed and the performance of the Administrators' duties including, but not limited to, all legal costs incurred by the Administrators in respect of the foregoing plus any GST payable thereon;
- (a) all costs, expenses, legal fees, and disbursements incurred by the Deed Administrators in connection with the implementation or performance or administration of this Deed, or as a result of any actual or attempted execution or exercise, or failure to execute or exercise, any power or duty in relation to this Deed or arising from being the Administrators of this Deed, including liability for any GST or tax arising under any Income Tax Law or other tax legislation, any money borrowed for the purposes of this Deed, any interest on borrowed money, and any contracts adopted or otherwise agreed by the Deed Administrators, including, but not limited to, all legal costs incurred by the Deed Administrators in respect of the foregoing plus any GST payable thereon;
- (b) costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, contractors or delegates, incurred in connection with the preparation, approval and implementation of this Deed, and of the preparation and implementation of any documents

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necessary as prerequisites to the approval of this Deed and the performance of the Administrators' and Deed Administrators' duties, obligations and responsibilities under the Act and the Deed during the Administration Period and the Deed Period and includes any Administration Debt; and

- (c) all liabilities incurred by the Deed Administrators as a result of any action, suit, proceeding, account, claim or demand arising out of or relating to this Deed which may be commenced, incurred by or made on them by any person, including all liabilities incurred by them in defending any civil or criminal proceedings.

**Court** means the Western Australia registry of the Federal Court of Australia and any appellate court from those courts.

**Creditor** means a person who has a Claim against the Company, and for the avoidance of doubt, excludes a person in relation to any Non-Participating Claim.

**Deed** means the deed of company arrangement set out in this instrument, as varied from time to time.

**Deed Administrators' Account** means the following account:

|                |                                                              |
|----------------|--------------------------------------------------------------|
| Bank           | Commonwealth Bank of Australia                               |
| Account name   | Abra Mining Pty Ltd (Subject to Deed of Company Arrangement) |
| BSB            | 063 000                                                      |
| Account number | 14517216                                                     |
| Currency       | AUD                                                          |

**Deed Administrators' Liabilities** means any liabilities, debts, costs, fees, charges, disbursements, and expenses of the Deed Administrators (including any Statutory Liabilities) reasonably and properly incurred in respect of:

- (a) the administration of this Deed pursuant to the Deed Administrators' appointment as deed administrators of this Deed; and
- (b) the preparation, stamping, execution and performance of this Deed.

**Deed Administrators' Remuneration** means the Deed Administrators' remuneration and fees for services for any work performed by them or their partners, employees, or agents in performing their powers, functions and duties under this Deed and as a result of acting in their capacity as deed administrators of this Deed, approved by resolution of the Company's creditors, a Committee of Inspection or, if necessary, the Court.

**Deed Fund** has the meaning given in clause 10.1.

**Deed Period** means the period of time commencing immediately after the Effective Time and ending on the Termination Date.

**Details** means the section of this Deed entitled "Details".

**Director** means any person who, by reason of section 9 of the Act, is a "director" of the Company at the Effective Time.

**Dividend** means a distribution paid or to be paid by the Deed Administrators in accordance with clause 9.4(a).

**Effective Time** means the time that this Deed comes into operation under clause 2.1 ("*Conditions for Deed to come into operation*").

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**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement and any 'security interest' as defined in sections 12(1) or (2) of the PPSA;
- (a) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (b) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Enforcement Process** has the meaning given to that term in section 9 of the Act.

**Future Deposits Deed** means the deed to be entered into between the Proponent and the Deed Administrators in relation to payments made to an account in the names of the Deed Administrators after termination of this Deed pursuant to clause 12.1(l) of this Deed.

**Galena Sale Agreement** means the sale and purchase agreement between, amongst others Galena Mining Limited ACN 616 371 778 and the Proponent dated on or around the date of this Deed.

**GR Engineering Claim** means the claim of GR Engineering Services Pty Ltd ACN 121 542 738 in respect of the GR Engineering Agreement as at the Relevant Date.

**GR Engineering Agreement** means the agreement between GR Engineering Services Pty Ltd ACN 121 542 738 and the Company dated 9 November 2021.

**GST** means the goods and services tax as imposed by the GST Law, a consumption tax, value added tax, retail turnover tax or tax of a similar nature.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Corporations Act 1999* (Cth) or, if that Act does not exist for any reason, means any legislation imposing or relating to the imposition or administration of a goods and services tax in Australia.

**Hunan Royalty Deed** means the Minerals Royalty Deed between the Company and Hunan Nonferrous Metals Corp. Ltd. dated 1 December 2016.

**Income Tax Law** means any law relating to income tax including but not limited to the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth).

**Initial Trust Fund Amount** has the meaning given in the Trust Deed.

**Intertek Claim** means the claim of Intertek Testing Services (Australia) Pty Ltd ABN 56 001 722 854 in respect of the Intertek Agreement as at the Relevant Date.

**Intertek Agreement** means the agreement between Intertek Testing Services (Australia) Pty Ltd ABN 56 001 722 854 and the Company dated 22 March 2022.

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**IPS** means the *Insolvency Practice Schedule (Corporations)* at Schedule 2 to the Act.

**Key Counterparty Agreements** means:

- (a) GR Engineering Agreement;
- (b) Byrncut Agreement;
- (c) Intertek Agreement; and
- (d) Pacific Energy Agreement.

**Lessor** means any person who is the legal owner of property in the possession of any Company as at the Effective Time that is leased or hired by that Company.

**Member** means any person who, by reason of sections 9 and 231 of the Act, is a "member" of the Company as at the Effective Time.

**New Shareholder** means the Proponent.

**Non-Participating Claim** means each of the:

- (a) Taurus Claim;
- (b) Byrncut Claim;
- (c) GR Engineering Claim;
- (d) Intertek Claim; and
- (e) Pacific Energy Claim.

**Officer** means any person who, by reason of section 9 of the Act, is an "officer" of any Company.

**Off-take Agreements** means each of the following agreements:

- (a) the lead concentrate sales agreement between the Company and Toho Zinc Co., Ltd (ABN 60 935 118 683) dated 1 November 2019; and
- (b) the lead concentrate sales agreement between the Company and GML Marketing Pty Ltd (ACN 633 300 124) (Administrators Appointed) dated 1 November 2019.

**Off-take Claim** means any claim against the Company relating to any of the Off-take Agreements.

**Owner** means any person who is the legal owner of property used or occupied by, or in the possession of, any Company as at the Effective Time.

**Pacific Energy Claim** means the claim of Pacific Energy Pty Ltd ACN 081 538 258 in respect of the Pacific Energy Agreement as at the Relevant Date.

**Pacific Energy Agreement** means the agreement between Pacific Energy Pty Ltd ACN 081 538 258 and the Company dated about 16 February 2021.

**Pool A Creditors** means the Creditors described in Schedule 6 of this Deed, and any other trade creditors which do not otherwise meet the definition of Pool B Creditors or Pool C Creditors.

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**Pool B Creditors** means the Creditors described in Schedule 7 of this Deed.

**Pool C Creditors** means the Shareholders and the counterparties to the Off-take Agreements.

**Pool D Creditors** means all other Creditors, which are not Pool A Creditors, Pool B Creditors, or Pool C Creditors.

**Portbeam and Cornelius Royalty Agreement** means the Mining Information Acquisition Agreement between, among others Portbeam Holdings Pty Ltd ACN 066 934 147, Eamon Ian Cornelius and the Company originally dated 21 September 2004, as amended from time to time including on 31 May 2021 and any other ancillary documents.

**Post-Effectuation Indemnity Deed** means the indemnity deed to be executed between Taurus and the Deed Administrators pursuant to clause 12.1(k) of this Deed, to have effect after this Deed is terminated in accordance with clause 15.3, in relation to certain costs, expenses, liabilities or claims reasonably and properly incurred by the Deed Administrators in their roles as administrators or deed administrators of the Company.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Prescribed Provisions** means regulations 5.6.11 to 5.6.70A of the Corporations Regulations (inclusive), clauses 2 (*Powers of administrator*) and 8 (*Making claims*) of Schedule 8A of the Corporations Regulations and Subdivisions A to E of Division 6 of Part 5.6 of the Act.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description of the Company and includes a thing in action and "PPSA retention of title property" (as that term is defined in section 51F of the Act).

**Proponent Account** means a bank account established by the Proponent with no less than the total Proponent Contribution Shortfall and must be used to fund the Proponent Contribution Shortfall pursuant to clause 12.1(a)(ii).

**Proponent Contribution** means the amount of \$2,215,000.

**Proponent Contribution Shortfall** means the amount calculated by reference to the following formula:

$$\text{Proponent Contribution Shortfall} = (A + B) - C$$

where:

A = Proponent Contribution;

B = Allowable Deduction Amount; and

C = Company Cash,

provided that the Proponent Contribution Shortfall will be deemed to be zero if it is a negative amount.

**Records** means all financial records, financial reports, books of account, registers, supplier and counterparty lists and documents of a similar nature in relation to the Company and in the Company's possession as at the Relevant Date.

**Regulations** means the Corporations Regulations and the *Insolvency Practice Rules (Corporations) 2016* (Cth).

# Deed of Company Arrangement – Abra Mining

**Relevant Date** means 4 April 2024.

**Replacement Director** means any person as may be directed by the Proponent prior to the Satisfaction Date to be appointed as Director of the Company.

**Remaining Company Cash** means the amount calculated by reference to the following formula:

$$\text{Remaining Company Cash} = C - (A + B)$$

where:

A = Proponent Contribution;

B = Allowable Deduction Amount; and

C = Company Cash as at the Satisfaction Date,

provided that the Remaining Company Cash will be deemed to be zero if it is a negative amount.

**Representatives** means, in relation to the Deed Administrators or the Administrators, a trustee or executor appointed to them upon death, incapacity, insanity or any combination of them.

**Resolution** means a resolution passed at a meeting of Creditors or Committee of Inspection (whichever applies) convened in accordance with clause 22.1 ("*Meetings*") of this Deed and **Resolve** has a corresponding meaning.

**Retiring Director** means any person as may be directed by the Proponent prior to the Satisfaction Date to be removed as a Director of the Company.

**Satisfaction Date** means the date on which the Deed Administrators provide written notice to the Proponent that all of the Completion Conditions are satisfied or waived in accordance with clause 12.4 ("*Notice of satisfaction of Completion Conditions*"), or such later date as may be agreed in writing between the Deed Administrators and the Proponent.

**Section 439C Resolution** has the meaning given to it in Recital C of this Deed.

**Section 444GA Order** means an order of the Court granting leave to the Deed Administrators to effect the transfer of the Shares to the New Shareholder pursuant to section 444GA(1) of the Act.

**Secured Claim** means any Claim secured by a valid Security Interest.

**Secured Creditor** means any Creditor to the extent that their Claim is a Secured Claim.

**Security Interest** means:

- (a) a 'security interest' as defined in section 51A of the Act or sections 12(1) or (2) of the PPSA;
- (b) any mortgage, chattel mortgage, pledge, charge, encumbrance, lien, hypothecation, right of set-off (arising otherwise than by operation of law or as a result of a banker's right to combine accounts);
- (c) a bill of sale, assignment, title retention arrangement, trust or power held as security; or

# Deed of Company Arrangement – Abra Mining

- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

**Shareholders** means the Galena Mining Limited ACN 616 371 778 and CBH Western Australia Pty Ltd ACN 631 428 816, and any one of them is a **Shareholder**.

**Shares** means all of the fully paid ordinary shares in Abra.

**Share Transfer** means the transfer of all Shares to the New Shareholder.

**Statutory Liabilities** means any charge, tax, duty, impost or levy raised by, or by the authority of, any governmental instrumentality, including GST.

**Sunset Date** means 60 days after execution of this Deed, or such other date agreed in writing between the Deed Administrators and Proponent.

**Superannuation Contribution** has the same meaning as in section 556(2) of the Act.

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

**Taurus** means Taurus Mining Finance Fund No. 2 L.P. a limited partnership established under the laws of Delaware, United States of America with registered number 7333438, acting through its general partner Taurus Mining Finance Fund No. 2, GP LLC, a Delaware Limited Liability Company of Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, USA dated 12 November 2020.

**Taurus Claim** means any claim arising under or in connection with the royalty deed between the Company and Taurus.

**Termination Date** means the date on which this Deed terminates in accordance with clause 15.2, 15.3(a) or otherwise.

**Trust Account** means the bank account to be established by the Trustees to hold the cash which comprises part of the Trust Fund.

**Trust Deed** means the creditors' trust deed to be entered into between the Company and Richard Scott Tucker and Robert William Hutson of c/- KordaMentha, Level 44, 108 East Georges Terrace Perth WA 6000 in their capacity as joint and several trustees, pursuant to 9.1 of this Deed, in substantially the same form at Schedule 5.

**Trust Fund** has the meaning given to it in the Trust Deed.

**Trustees** has the meaning given to it in the Trust Deed.

**Trustees Fee** means the amount of \$50,000.

**Trustees' Liabilities** has the meaning given in the Trust Deed.

**Trustees' Remuneration** has the meaning given in the Trust Deed.

**Unsecured Royalty Agreements** means:

- (a) Portbeam and Cornelius Royalty Agreement; and
- (b) Hunan Royalty Deed.

# Deed of Company Arrangement – Abra Mining

**Unsecured Royalty Claim** means any claim against the Company relating to any of the Unsecured Royalty Agreements.

## 1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) references to a person includes any body corporate, unincorporated body, a corporation, association, partnership, government authority, or other legal entity;
- (d) a reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (e) references to writing include any means of representing or reproducing words (in English), figures, drawings or symbols, in a visible, tangible form;
- (f) references to signature, signing or execution include due execution by a corporation or other relevant entity;
- (g) a reference to any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, in accordance with this Deed or that other agreement or document;
- (h) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;
- (i) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (j) references to clauses, schedules, or annexures refer to clauses, schedules or annexures of this Deed;
- (k) a reference to conduct includes, without limitation, any omission, statement or undertaking whether or not in writing;
- (l) headings, labels used for definitions and the table of contents are used for convenience only and do not affect interpretation;
- (m) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (n) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (o) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this Deed, the document or any relevant part of it;
- (p) when a day on or by which anything to be done is not a Business Day, that thing may be done on the next Business Day; and

# Deed of Company Arrangement – Abra Mining

- (q) the words "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

## 1.3 Application of the Act and Regulations

- (a) Subject to any contrary terms of this Deed, the Prescribed Provisions are incorporated in this Deed with all modifications as are necessary to give effect to Part 5.3A of the Act and this Deed, and as if references to the 'liquidator', 'provisional liquidator', 'administrator' or the like, were references to the 'Deed Administrators', references to the 'relevant date' were references to the 'Relevant Date', and references to 'winding up' were references to the arrangement effected by this Deed.
- (b) If there is any inconsistency between the provisions of this Deed and the Act or Regulations, this Deed will prevail to the extent permitted by law.

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## 2 Commencement and objects of this Deed

### 2.1 Conditions for Deed to come into operation

For the purposes of section 444A(4)(e) of the Act, this Deed will come into operation when the last of the Company, the Administrators or the Proponent executes this Deed.

### 2.2 Period of operation

For the purposes of section 444A(4)(f) of the Act, once this Deed has come into operation, it will continue in operation until the Termination Date.

### 2.3 Objectives of this Deed

The objectives of this Deed are:

- (a) to provide unsecured Creditors with a greater, and more certain and timely return than would result from an immediate winding up of the Company;
- (b) to provide trade Creditors with the opportunity for future work and supply prospects from the Company;
- (c) to provide Eligible Employees with a return on their priority entitlement in an amount not less, and in a more timely manner, than would result from an immediate winding up of the Company;
- (d) to provide Eligible Employees with continued employment with the Company; and
- (e) to maximise the chances of as much as possible of the business of the Company continuing in existence.

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## 3 Persons bound by this Deed

This Deed binds:

- (a) in accordance with its terms, the parties to this Deed; and
- (b) all other persons who, pursuant to the Act, are bound by the terms of this Deed, including but not limited to:

# Deed of Company Arrangement – Abra Mining

- (i) each Creditor in accordance with section 444D of the Act;
- (ii) the Officers and Members of the Company in accordance with section 444G of the Act;
- (iii) any Secured Creditor, Owner or Lessor that voted in favour of the Section 439C Resolution; and
- (iv) any person so ordered by the Court under section 444F of the Act or otherwise.

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## 4 Appointment of Deed Administrators

### 4.1 Appointment

- (a) For the purposes of section 444A(4)(a) of the Act, with effect on and from the Effective Time, the Administrators are appointed joint and several administrators of this Deed.
- (b) The Administrators each warrant that they:
  - (i) are registered liquidators and are not disqualified from acting as administrator of this Deed;
  - (ii) accept the appointment as administrators of this Deed; and
  - (iii) consent to act as administrators of this Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with this Deed or the Act.

### 4.2 Deed Administrator is agent

In exercising the powers and functions conferred by this Deed and carrying out the duties arising under this Deed, each Deed Administrator shall do so in their absolute discretion and is taken to act as agent for and on behalf of the Company.

### 4.3 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly or severally.

### 4.4 Deed Administrator's powers

- (a) Each Deed Administrator shall have all of the powers set out in this Deed, in clause 2 of Schedule 8A of the Regulations and as otherwise provided to deed administrators by the Act, Regulations or generally at law or in equity.
- (b) The rights, functions, powers, privileges, authorities and discretions of the Deed Administrators shall include:
  - (i) the power to execute this Deed and to take any and all steps necessary to give effect to the transactions contemplated by this Deed;
  - (ii) the power to the extent that the Deed Administrators consider necessary, to report to Creditors on any matters contemplated by this Deed or in connection with the Company's business, Property, affairs or financial circumstances, as the Deed Administrators see fit;

# Deed of Company Arrangement – Abra Mining

- (iii) all rights, powers, privileges, authorities and discretions which are conferred by the Company's constitution or otherwise by law on the Company's Directors and to perform any function and exercise any power that the Company or any of its Officers could perform or exercise if the Company was not subject to this Deed;
  - (iv) the power to administer the Deed Fund;
  - (v) the power to remove any Director from office;
  - (vi) the power to appoint a person as a director of the Company, whether to fill a casual vacancy or not;
  - (vii) the power to insure the Deed Administrators for actions taken to administer this Deed;
  - (viii) the power to take all necessary steps for the purposes of giving effect to the sale and recapitalisation of the business of the Company, including to novate, release, repudiate, terminate or disclaim in writing all contracts entered into by the Company;
  - (ix) the power to do anything that is necessary or convenient for the purpose of exercising the Deed Administrators' powers to administer this Deed;
  - (x) the power to access the books and Records of the Company for the purposes of administering this Deed, including to provide the Trustees with all reasonable access to the books and Records of the Company to enable the Trustees to adjudicate the Claims;
  - (xi) the power to delegate some or all of their powers as the Deed Administrators see fit, including appointing agents and authorising such agents to act on behalf of the Deed Administrators;
  - (xii) the power to engage the service of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants; and
  - (xiii) retain sole power and control over the Assets and the incurring of any liabilities of the Company.
- (c) Where a right, power, privilege, authority or discretion is conferred on the Deed Administrators (whether by this Deed, the Act, the Regulations or otherwise), the Deed Administrators may exercise that right, power, privilege, authority or discretion in such manner as they, in their absolute discretion, consider fit.
- (d) The Deed Administrators may do anything that is incidental to the exercise of a power described in clause 4.4 to effectively carry out the terms of this Deed.

## 4.5 Committee of Inspection

- (a) For the avoidance of doubt, the Committee of Inspection may approve the remuneration of the Deed Administrators (and the Administrators) in accordance with Division 60 of the IPS.
- (b) Paragraph 11 of Schedule 8A of the Regulations, excluding paragraph 11(a), applies to the Committee of Inspection. For the avoidance of doubt, the Committee of Inspection may comprise more than five (5) members.

# Deed of Company Arrangement – Abra Mining

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## 5 Moratorium

- (a) For the purposes of section 444A(4)(c) of the Act, the nature and duration of the moratorium period provided by this Deed is set out in this clause 5.
- (b) During the Deed Period, except for the purpose of enforcing its rights under this Deed, a Creditor must not in connection with a Claim:
  - (i) make an application for an order to or take or concur in the taking of any step to wind up the Company or to proceed with an application for an order to wind up the Company made before this Deed became binding on that person;
  - (ii) commence or take any further step in any proceeding or arbitration against the Company or in relation to any of its Property, except with leave of the Court or the Deed Administrators' written consent and in accordance with such terms (if any) as the Court or Deed Administrators impose;
  - (iii) begin or proceed with an Enforcement Process in relation to Property (including any property used or occupied by, or in the possession of the Company) except with the leave of the Court or the Deed Administrators' written consent and in accordance with such terms (if any) as the Court or Deed Administrators impose;
  - (iv) exercise or purport to exercise any right of counterclaim, set-off, cross-demand or cross-action to which the Creditor would not have been entitled had the Company been wound up (with the winding up taken to have begun on the Relevant Date);
  - (v) make or proceed with an application for a Court appointed receiver, receiver and manager, or a provisional liquidator to the Company or any of its Property; or
  - (vi) institute, proceed or take any action whatsoever against the Company or its Property to recover or enforce any part of its Claim.
- (c) During the Deed Period the Company, its Officers and Directors must not act inconsistently with the terms and objects of this Deed and must not make, proceed or take any action in connection with any application to wind up the Company or pass any resolution pursuant to section 491 of the Act.
- (d) For the purposes of the moratorium, "property" will include property used by, or in the possession of the Company except if the Administrators have issued a notice under section 443B(3) of the Act in relation to that property.
- (e) This clause has effect in addition to, and not in derogation of, sections 444D, 444E, 444F and 444G of the Act.

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## 6 Owners and Lessors

### 6.1 No adoption

To the extent permitted by law, and unless expressly agreed in writing by the Deed Administrators, each Owner and Lessor bound by this Deed acknowledges and agrees that the Deed Administrators have not adopted, ratified or in any manner become personally bound under any arrangement between the Company and any Owner or Lessor as a result of:

# Deed of Company Arrangement – Abra Mining

- (a) any discussions or correspondence between the Administrators or Deed Administrators and any Owner or Lessor;
- (b) the use, occupation or possession of the property of the Owner or Lessor by the Company during:
  - (i) the Administration Period; or
  - (ii) the Deed Period; and
- (c) any other act, matter or thing done or omitted to be done by the Deed Administrators or the Company.

## 6.2 Continued and uninterrupted use, occupation and possession

Each Owner and Lessor bound by this Deed acknowledges and agrees that they:

- (a) will not, without the prior written consent of the Deed Administrators or the leave of the Court, bring or proceed with any Enforcement Process in relation to any Property; and
- (b) will permit the Company to have continued and uninterrupted use, occupation and possession of the relevant Property until the earlier of:
  - (i) the surrender of the Property by the Company to the Owner or Lessor (as applicable); and
  - (ii) the termination of the arrangement between the Company and the Owner or Lessor (as applicable) relating to the Property.

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## 7 Control and Cooperation

### 7.1 Control

- (a) During the Deed Period, the Deed Administrators will be responsible for the day to day management and administration of the Company's business, Assets and affairs to the exclusion of the Directors and Officers.
- (b) To the extent permitted by law, the Deed Administrators shall not be responsible for such statutory obligations that may continue to be imposed on any Officers of the Company during the Deed Period.

### 7.2 Cooperation of Directors and Officers

The Directors and Officers must:

- (a) use all reasonable endeavours to cooperate with and assist the Deed Administrators in carrying out their duties and exercising their duties under this Deed; and
- (b) as soon as reasonably practical, comply with all reasonable requests of the Deed Administrators in connection with the Company's business and affairs and this Deed.

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## 8 Reporting

The Deed Administrators will procure that the Proponent receives an updated Approved Budget each Friday before 5:00pm (AWST) during the Deed Period.

# Deed of Company Arrangement – Abra Mining

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## 9 Trust Deed

### 9.1 Commencement

As soon as practicable after execution of this Deed, the Deed Administrators and the Company must execute the Trust Deed.

### 9.2 Satisfaction Date

On the Satisfaction Date, the Deed Administrators will assign and transfer the Deed Fund to the Trust Fund in accordance with clause 13.1.

### 9.3 Property of the Company

- (a) For the purposes of section 444A(4)(b) of the Act, the property of the Company that will be available to pay the Admitted Claims will be the Deed Fund, which will form the Trust Fund under the Trust Deed.
- (b) For the purposes of section 444A(4)(i) of the Act, the day on or before which Claims must have arisen if they are to be admissible under the Trust Deed is the Relevant Date.
- (c) Interest does not accrue on, and is not payable in respect of, any Admitted Claim.

### 9.4 Trust Deed Entitlements

- (a) For the purposes of section 444A(4)(h) of the Act, the Trust Deed will provide that the Trust Fund will be distributed by the Trustees as follows:
  - (i) first, in payment of the:
    - (A) Administrators' Remuneration and Administrators' Liabilities;
    - (B) Deed Administrators' Remuneration and Deed Administrators' Liabilities; and
    - (C) Trustees' Remunerations and Trustees' Liabilities;
  - (ii) secondly, in payment of the Admitted Priority Claims;
  - (iii) thirdly, the maximum amount of \$1,000,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool A Creditors;
  - (iv) fourthly, in payment of the Admitted Claims of each of the Pool B Creditors, the amount which is the lesser of:
    - (A) \$1,150,000 (including any GST) to be applied on a pari passu basis; and
    - (B) in respect of each Pool B Creditor, the amount representing 4% of that Pool B Creditor's Admitted Claim; and
  - (v) fifthly, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool C Creditors; and

## Deed of Company Arrangement – Abra Mining

- (vi) finally, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool D Creditors; and
  - (vii) any surplus to the Company.
- (b) Subject to compliance with the priorities in clause (a) above:
  - (i) payments out of the Trust Fund to pay Admitted Claims will be on a pari passu basis; and
  - (ii) the Trust Fund will be distributed in accordance with the order of priority specified in sections 556, 560 and 561 of the Act.

### 9.5 Distribution

In the event that the Deed Fund, or any part of it, is distributed by the Deed Administrators pursuant to this Deed and not pursuant to the Trust Deed, the distribution shall be in the order of priority set out in clause 9.4(a) above.

### 9.6 Admitted Priority Claims

In accordance with section 444DA(1) of the Act, the Deed Administrators are to apply the Deed Fund so that an Admitted Creditor with an Admitted Priority Claim will be entitled to a priority at least equal to what they would have been entitled if the Deed Fund were applied in accordance with sections 556, 558, 560 and 561 of the Act.

### 9.7 Superannuation Contribution Debts

- (a) For the purposes of section 444DB of the Act, the Deed Administrators must determine that a debt (or a particular part of a debt) by way of a Superannuation Contribution is not admissible to proof against the Company if:
  - (i) a debt (or particular part of a debt) by way of a Superannuation Guarantee Charge:
    - (A) has been paid; or
    - (B) is, or is to be admissible to proof against the Company; and
  - (ii) the Deed Administrators are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.
- (b) If the Deed Administrators make a determination in accordance with this clause 9.7, such debt is to be treated as extinguished as against the Company

### 9.8 Adjudication of proofs

The Deed Administrators are to adjudicate the proofs of each Creditor's Claim in accordance with the Prescribed Provisions.

### 9.9 Subject to Trust Deed

This clause 9 is subject to the terms of the Trust Deed and to the extent of any inconsistency, the terms of the Trust Deed prevail.

# Deed of Company Arrangement – Abra Mining

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## 10 Deed Fund

### 10.1 Deed Fund

The Deed Fund comprises the Company Cash and any accrued interest on such funds.

### 10.2 Company Cash

The Deed Administrators will provide written notice to the Proponent certifying the amount of Company Cash they hold in the first Approved Budget submitted after the Effective Time.

### 10.3 Application of the Deed Fund

The Deed Administrators will apply the Deed Fund:

- (a) during the Deed Period, in payment of the Deed Administrators' Liabilities, the Administrators' Liabilities, the Deed Administrators' Remuneration and the Administrators' Remuneration in accordance with clause 16.1 (*"Remuneration and costs"*);
- (b) on the Satisfaction Date:
  - (i) in respect of the Proponent Contribution and the Allowable Deduction Amount, in accordance with clause 13.1(a); and
  - (ii) in respect of the Remaining Company Cash (if any), in accordance with clause 13.1(c); and
- (c) if this Deed is terminated for whatever reason other than in accordance with clause 15.3 (*Termination on effectuation of deed*) and liquidators are appointed to the Company, in accordance with the Act and other applicable law.

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## 11 Share Transfer

### 11.1 444GA consent

- (a) As soon as practicable after the Effective Time, the Deed Administrators will:
  - (i) request the unconditional written consent of the Shareholders to the Share Transfer under section 444GA(1)(a) of the Act; and
  - (ii) if that consent is not obtained within 15 Business Days, apply to the Court for the Section 444GA Order.
- (b) As soon as practicable after receiving either the Shareholders' consent under clause 11.1(a)(i) or the Section 444GA Order under clause 11.1(a)(ii), the Deed Administrators will take all necessary steps, including executing all necessary documents, to effect the transfer of Shares to the New Shareholder pursuant to clause 13.1(e).
- (c) The Proponent will pay the Deed Administrators' reasonable and properly incurred Costs associated with the matters described in clauses 11.1(a) and 11.1(b) above.

# Deed of Company Arrangement – Abra Mining

## 11.2 No dealing

During the Deed Period, the Shareholders and any Creditor holding any Security Interest over any Shares must not deal with any Shares or exercise any rights over any Shares in a way that is contrary to this Deed or the purpose of this Deed except with the prior written consent of the Deed Administrators.

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## 12 Completion Conditions

### 12.1 Completion Conditions

Completion is conditional upon the following conditions being satisfied or waived in accordance with this clause 12 on or prior to the Sunset Date:

- (a) **(Proponent Contribution Shortfall)** if an Approved Budget indicates that there will be a Proponent Contribution Shortfall, then:
  - (i) **(Proponent Account)** by no later than 2 Business Days after the date on which the Deed Administrators provide a written request to the Proponent, the Proponent must provide evidence, to the satisfaction of the Deed Administrators (acting reasonably) that the Proponent Account contains at least the sum of the estimated Proponent Contribution Shortfall; and
  - (ii) **(Proponent Contribution Shortfall)** the Proponent must transfer the Proponent Contribution Shortfall, in cleared funds, from the Proponent Account to the Deed Administrators' Account, within 3 Business Days of the receipt of written request from the Deed Administrators in accordance with clause 12.1(a)(i) above, and by no later than the Satisfaction Date;
- (b) **(Trust Deed)** the Trust Deed has been duly executed by all parties to it;
- (c) **(Initial Trust Fund Amount)** the Proponent has paid, and the Deed Administrators have received, the Initial Trust Fund Amount, to be held by the Deed Administrators in escrow pending the Satisfaction Date;
- (d) **(444GA consent or order)** the Deed Administrators have obtained:
  - (i) the unconditional written consent of the Shareholders pursuant to section 444GA(1)(a) of the Act; or
  - (ii) the Section 444GA Order;
- (e) **(Replacement Directors)** the Proponent has confirmed in writing to the Deed Administrators the full names, residential addresses and director identification numbers of each Replacement Director;
- (f) **(Galena Sale Agreement)** the Galena Sale Agreement has been duly executed by all parties to it on terms acceptable to the Proponent in writing;
- (g) **(Key Counterparty Agreements)** settlement agreements in respect of the Claims arising in relation to each of the Key Counterparty Agreements have been duly executed by the relevant parties to them on terms acceptable to the Proponent in writing;
- (h) **(Unsecured Royalty Agreements)** for each Unsecured Royalty Agreement either:

# Deed of Company Arrangement – Abra Mining

- (i) the Deed Administrators provide evidence in writing (in the form set out in Schedule 3) that the Unsecured Royalty Agreement has been terminated, or otherwise that the counterparty to the Unsecured Royalty Agreements has been notified that the Company will cease to comply with, and will not perform its obligations under the relevant Unsecured Royalty Agreement, and will treat the Unsecured Royalty Agreement at an end; or
  - (ii) the Proponent has reached a binding settlement agreement with the Unsecured Royalty Holder in relation to the relevant Unsecured Royalty Agreement;
- (i) **(Off-take Agreements)**
- (i) the Deed Administrators have provided the Proponent with evidence in writing (in the form set out in Schedule 4) that each Off-take Agreement has been terminated, or otherwise that counterparties to each Off-take Agreements have been notified that the Company will cease to comply with, and will not perform its obligations under the relevant Off-Take Agreement, and will treat the Off-take Agreements at an end; or
  - (ii) the Proponent has entered into a binding settlement agreement with each counterparty to an Off-take Agreement in relation to the relevant Off-take Agreement;
- (j) **(Company Cash)** the Deed Administrators having issued a notice to the Proponent in accordance with clause 10.2 of this Deed;
- (k) **(Post-Effectuation Indemnity Deed)** the Deed Administrators have received a duly executed copy of the Post-Effectuation Indemnity Deed;
- (l) **(Future Deposits Deed)** the Deed Administrators and the Proponent have executed the Future Deposits Deed; and
- (m) **(No litigation)** no notice of any application to set aside, terminate or vary the DOCA pursuant to the Act has been given to or filed or served on the Deed Administrators.

## 12.2 Obligations to satisfy Completion Conditions

- (a) Subject to clause 12.2(d) below, each party must use reasonable endeavours to seek to procure that the Completion Conditions are satisfied as soon as reasonably practicable following the Effective Time.
- (b) In the event that the Proponent becomes aware that a Completion Condition will not be satisfied or waived by the Sunset Date, or at all, the Proponent must immediately notify the Deed Administrators in writing.
- (c) If the Deed Administrators receive a notification from the Proponent in accordance with clause 12.2(b), the Deed Administrators may, in their absolute discretion, convene a meeting of Creditors or Committee of Inspection.
- (d) To avoid doubt, the Deed Administrators will not be required to:
  - (i) sign-off or otherwise approve in any way any opinion provided by the Company, or require or cause the Directors to sign-off or approve in any way an opinion provided by the auditors of the Company;

# Deed of Company Arrangement – Abra Mining

- (ii) provide any assistance to the extent it would constitute giving financial assistance for the purposes of section 240A of the Act; or
- (iii) incur any cost or expense above \$5,000 unless otherwise agreed in writing between the parties.

## 12.3 Benefit and waiver of Completion Conditions

- (a) The Completion Conditions in clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.1(m), are for the benefit of the Proponent and the Deed Administrators, and non-satisfaction of them may only be waived with the written consent of both the Proponent and the Deed Administrators.
- (b) The Completion Conditions in clause 12.1(k) is for the sole benefit of the Company and Deed Administrators and non-satisfaction of it may only be waived by the Deed Administrators in writing.
- (c) The Completion Condition in clauses 12.1(e), 12.1(f), 12.1(g), 12.1(h), 12.1(i), 12.1(j) and 12.1(l) are for the sole benefit of the Proponent and non-satisfaction of it may only be waived by the Proponent in writing.

## 12.4 Notice of satisfaction of Completion Conditions

The Deed Administrators will notify the Proponent in writing once all of the Completion Conditions are satisfied or waived in accordance with this clause 12.

## 12.5 Dispute notification

The Deed Administrators will notify the Proponent in writing if clause 12.1(m) cannot be satisfied, and this Deed will automatically terminate, unless, within 5 Business Days of such notification the Deed Administrators and the Proponent reach written agreement regarding:

- (a) further funding for the Deed Administrators for an extended Deed Period; and
- (b) an extension to the Sunset Date,

in each case, if reasonably required.

## 12.6 Consequences of non-satisfaction

If the Satisfaction Date has not occurred by the Sunset Date,

- (a) the Deed Administrators will convene a meeting of Creditors or the Committee of Inspection to determine the future of the Company provided their reasonable remuneration, costs and expenses are fully funded to do so, and in the absence of receipt of funding within 2 Business Days of the Deed Administrators' request, this Deed will automatically terminate; and
- (b) the Deed Administrators will pay the Proponent Contribution Shortfall (if paid into the Deed Administrators' Account in accordance with clause 12.1(a) of this Deed) (and any accrued interest) to the Proponent as soon as reasonably practicable and in any event within 5 Business Days.

# Deed of Company Arrangement – Abra Mining

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## 13 Satisfaction Date steps

### 13.1 Completion Steps

On the Satisfaction Date, the following steps (**Completion Steps**) will occur in the following order:

- (a) first, the Deed Administrators will transfer an amount equal to:
  - (i) the Proponent Contribution (inclusive of the Proponent Contribution Shortfall received pursuant to clause 12.1(a)(ii), if applicable); and
  - (ii) the Allowable Deduction Amount,to the Trust Account,
- (b) second, the Deed Administrators will settle the Trust Fund by transferring the Initial Trust Amount to the Trust Account;
- (c) third, the Deed Administrators transfer the Remaining Company Cash (if any) by electronic deposit in cleared funds to an account nominated by the Proponent to the Deed Administrators in writing;
- (d) fourth, immediately following the transfer in clause 13.1(c), the releases in clause 14.2 ("*Release of Claims*") become effective;
- (e) fifth, as soon as practicable following the transfer in clause 13.1(c), the Deed Administrators will, pursuant to the written consent of the Shareholders to the Share Transfer under section 444GA(1)(a) of the Act or the Section 444GA Order (as applicable), transfer the Shares to the New Shareholder free from any Encumbrance or Security Interest, by:
  - (i) delivering to the New Shareholder a duly completed share transfer form, executed on behalf of the Shareholders by the Deed Administrators, for registration;
  - (ii) the New Shareholder duly executing the share transfer form and delivering the share transfer form to the Deed Administrators for registration; and
  - (iii) immediately following receipt of the executed share transfer form from the New Shareholder, entering or procuring the entry of, the name of the New Shareholder in the share register of the Company in respect of all of the Shares transferred to the New Shareholder in accordance with this Deed;
- (f) sixth, the Deed Administrators will:
  - (i) remove each Retiring Director; and
  - (ii) appoint each Replacement Director; and
- (g) seventh, the Deed Administrators will issue the Completion Notice to the Proponent.

### 13.2 Obligation to satisfy Completion Steps

- (a) Subject to clause 12.2(d) of this Deed, to the extent that it is within the relevant party's control, that party must use reasonable endeavours to

# Deed of Company Arrangement – Abra Mining

ensure that the Completion Steps are satisfied as soon as possible on the Satisfaction Date.

- (b) For the avoidance of doubt, none of the Completion Steps in clause 13.1 can be waived by any party to this Deed.

## 13.3 Break Fee

If the Completion Steps are not satisfied in accordance with clause 13.1 on the Satisfaction Date (or such later date as agreed by the Proponent and the Deed Administrators in writing) by reason of the Proponent's sole default, then:

- (a) the Proponent must, within 2 Business Days, pay the Break Fee by electronic deposit to the Company's bank account (without deduction or set off); and
- (b) upon the Deed Administrators' written confirmation of receipt of the Break Fee, this Deed will terminate.

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## 14 Release of Creditors' Claims

### 14.1 Operation of this clause

For the purposes of section 444A(4)(d) of the Act, this clause 14 sets out the extent to which the Company is to be released from all Claims.

### 14.2 Release of Claims

On and from the Satisfaction Date and in accordance with clause 13 ("*Satisfaction Date*"):

- (a) each Creditor's Claims (including any Unsecured Royalty Claims and Off-take Claims) against the Company are irrevocably extinguished, released and discharged;
- (b) each Creditor will accept their entitlements under the Trust Deed in full and final satisfaction and complete discharge of all Claims which they have or claim to have against the Company; and
- (c) each Creditor will, if called upon to do so by the Deed Administrators or the Company, execute and deliver to each Company any necessary documents as the Deed Administrators may reasonably require, including such form of release, discharge or other form of confirmation of that Creditor's Claims to give effect to the releases in this Deed.

### 14.3 Claims under Trust Deed

Subject to clause 14.7, upon all Claims being released pursuant to clause 14.2 ("*Release of Claims*"), each Creditor who had a Claim:

- (a) will be entitled to make a claim against the Trust Fund equal to their released Claim in accordance with the Trust Deed; and
- (b) must accept such entitlements as they may have under the Trust Deed in substitution for any rights that they may have had against the relevant Company, including under this Deed, and in all matters relating to those entitlements will be bound by the provisions of the Trust Deed.

# Deed of Company Arrangement – Abra Mining

## 14.4 Bar to Creditors' Claims and discharge of debts

- (a) Subject to the terms of this Deed and section 444D of the Act, this Deed may be pleaded by the Company against any Creditor in absolute bar to the Creditor's Claims (irrespective of whether the Creditor has lodged a proof of debt or received a Dividend under this Deed), including any legal proceeding brought or made at any time in respect of such Claim.
- (b) This Deed may be pleaded in set-off or in answer to any Claim, as fully and effectively as if the Creditor had executed a binding covenant under seal not to sue.
- (c) Each Creditor irrevocably appoints each Deed Administrator as its attorney of the Creditor with full power for and on behalf of and in the name of the Creditor to do all acts and things and sign and execute all deeds, notices and other documents as may be necessary or convenient for the purposes of the execution and delivery to each Company of the release and discharge of the Claims under this Deed.

## 14.5 Claims of Owners and Lessors

- (a) An Owner or Lessor who votes in favour of the Section 439C Resolution:
  - (i) waives any event of default or breach by the relevant Company of any agreement to which the Company or any Company and the Owner or Lessor is a party which occurred on or prior to the Effective Time or which may occur during the Deed Period, insofar as the relevant event of default or breach would entitle the Owner or Lessor to terminate the agreement or take possession of or otherwise recover the property the subject of the agreement; and
  - (ii) consents to the change in Control of the Company that will occur on the Satisfaction Date.
- (b) Subject to clause 14.5(a), nothing in this clause 14 has the effect of releasing or compromising the Claims of an Owner or Lessor.
- (c) An Owner or Lessor is not entitled to make a claim against, participate in or receive any distribution from, the Trust Fund in respect of a Claim.

## 14.6 No interest

Interest does not accrue, and is not payable, in respect of any Creditor's Claims and Admitted Claims.

## 14.7 Non-Participating Claims

For the avoidance of doubt, Non-Participating Claims are not compromised, extinguished, released or discharged under this Deed and clauses 14.2, 14.3 and 14.4 of this Deed do not apply to the Non-Participating Claims.

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## 15 Termination

### 15.1 Termination

For the purposes of section 444A(4)(g) of the Act, this Deed will terminate in accordance with clause 15.2 or 15.3(a).

# Deed of Company Arrangement – Abra Mining

## 15.2 Automatic termination

- (a) This Deed automatically terminates upon the occurrence of any one of the following events:
  - (i) upon a relevant event occurring under section 445C of the Act;
  - (ii) by an order of the Court under section 445D of the Act;
  - (iii) by a resolution of the Creditors at a meeting convened by the Deed Administrators in accordance with clause 15.4; or
  - (iv) this Deed is terminated in accordance with clause 12.5, 12.6 or clause 13.3(b).
- (b) Upon termination of this Deed in accordance with this clause 15.2, the Deed Administrators will certify to that effect in writing by lodging with ASIC a notice of termination of this Deed in accordance with ASIC form 509G (or such other relevant form as required by ASIC).

## 15.3 Termination on effectuation of deed

- (a) This Deed will terminate immediately upon the issue of the Completion Notice referred to in clause 13.1(g).
- (b) On the termination of this deed in accordance with clause 15.3(a);
  - (i) control of the Company will immediately revert to the Replacement Directors;
  - (ii) the Deed Administrators will return to the Company all of the Company's Records within their possession as soon as reasonably practicable (though the Deed Administrators reserve the right to retain copies of such Records as reasonably required to enable them to perform their functions and discharge their duties under this Deed and any applicable laws);
  - (iii) the Company will provide the Trustees with free and unrestricted access to the Company's Records, at Trustees' own cost, as and when requested by the Trustees on reasonable notice, to enable the Trustees to determine the Claims of the Creditors, or such other purpose as may be required pursuant to the Trust Deed;
  - (iv) the Deed Administrators will provide the Proponent with the ASIC corporate keys to the Company within their possession as soon as reasonably practicable; and
  - (v) within 28 days, the Deed Administrators must certify to that effect in writing by lodging with ASIC a notice of termination of this Deed in accordance with ASIC form 5056 (or such other relevant form as required by ASIC).

## 15.4 Meetings to consider termination of Deed

The Deed Administrators will convene a meeting of Creditors to consider a Resolution to terminate this Deed (and any other Resolutions requested or ordered), if:

- (a) a Court so orders, and in accordance with the Court's orders;

# Deed of Company Arrangement – Abra Mining

- (b) a Court declares a provision of this Deed (but not the Deed in its entirety) to be void pursuant to section 445G(2) of the Act in which case, unless the Court makes orders varying this Deed, within 14 days of such a declaration;
- (c) requested in writing in accordance with sections 75-15 or 75-20 of the IPS; or
- (d) if the Deed Administrators determine it is no longer practicable or desirable to implement this Deed,

but for the avoidance of doubt this clause does not prevent the Deed Administrators from otherwise convening a meeting of Creditors or Committee of Inspection at such times as they see fit.

## 15.5 Previous operation of this Deed preserved

Subject to any orders of the Court and the terms of this Deed, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation, or the accrued rights, duties and obligations of the Company and the Deed Administrators under this Deed.

## 15.6 Transition to liquidation

Where at any meeting, Creditors resolve to terminate the Deed and that the Company be wound up then:

- (a) this Deed is terminated as at the date of the resolution; and
- (b) sub-sections 446A(3) and (5) to (7) of the Act shall apply as if the Company were being wound up under section 446A of the Act.

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## 16 Remuneration, costs, charges and expenses

### 16.1 Remuneration and costs

From the Deed Fund, the Deed Administrators and Administrators will receive payment for the Approved Deed Administrators' Remuneration, Deed Administrators' Liabilities, Approved Administrators' Remuneration and Administrators' Liabilities, including for:

- (a) the administration of the Company, pursuant to the Administrators' appointment under section 436A of the Act; and
- (b) the preparation, negotiation, execution and administration of this Deed.

### 16.2 Calculation of remuneration

- (a) The Deed Administrators' Remuneration and Administrators' Remuneration will be calculated on a time basis at the hourly rates usually charged by the Deed Administrators and Administrators (as applicable), their partners and staff for insolvency related matters, together with rates charged by their firm in accordance with the hourly rates charged for such service lines.
- (b) The Deed Administrators' Remuneration and Administrators' Remuneration will not, without approval by the Court, a Committee of Inspection or of the Creditors at a meeting of creditors, exceed the amounts approved by the Court or Creditors from time to time (exclusive of GST and disbursements).

# Deed of Company Arrangement – Abra Mining

## 16.3 Payment

A payment required to be made under this clause shall be paid to the Deed Administrators or Administrators or at their direction.

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## 17 Indemnity

### 17.1 Indemnity

- (a) Subject to paragraph (b), in addition to any rights the Deed Administrators and Administrators may have under the Act or at law, the Deed Administrators and Administrators are entitled to be indemnified out of the Deed Fund for:
  - (i) payment for the Deed Administrators' Liabilities and Administrators' Liabilities;
  - (ii) the Approved Deed Administrators' Remuneration;
  - (iii) the Approved Administrators' Remuneration;
  - (iv) all reasonably and properly incurred:
    - (A) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with this Deed against the Deed Administrators;
    - (B) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with the voluntary administration of the Company or the role as Administrators;
    - (C) amounts for which the Administrators, or the Deed Administrators, are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Company, or in accordance with the Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 4443BA of the Act;
    - (D) debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D or 4443E of the Act applies;
    - (E) amounts for which the Administrators and Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Company; and
  - (v) any liability referred to in clause 18 ("*Liabilities of the Deed Administrators and Administrators*").
- (b) The Deed Administrators and Administrators are not entitled to an indemnity in respect of any Claims arising out of any fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Deed Administrator, Administrator or any of their partners, employees, agents or delegates.

# Deed of Company Arrangement – Abra Mining

## 17.2 Nature of indemnity

- (a) The indemnity under clause 17.1 (*"Indemnity"*) will take effect on and from the Effective Time and be without limitation as to time and shall endure for the benefit of the Deed Administrators, Administrators and their Representatives notwithstanding the removal of the Deed Administrators or Administrators or the appointment of a replacement deed administrator or the termination of this Deed for any reason.
- (b) The Deed Administrators' and Administrators' right of indemnity conferred by clause 17.1 and their lien conferred by clause 17.4 has priority over the Claims of any Creditor or Creditors generally (including, to the extent permitted by law, any Admitted Priority Claim).
- (c) The Deed Administrators and Administrators are entitled to exercise their right of indemnity conferred by this clause at any time whether or not they have paid or satisfied the Admitted Claims.

## 17.3 Indemnity not to be affected or prejudiced

The indemnity under clause 17.1 (*"Indemnity"*) will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators or Administrators (as applicable) and shall extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators or Administrators, the approval and execution of this Deed or otherwise; or
- (b) affect or prejudice all or any rights that the Deed Administrators or Administrators (as applicable) may have in respect of the Assets or against the Company or any other person, to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators or Administrators in, or incidental to, the exercise or performance of any of the powers or authorities conferred on the Deed Administrators by this Deed or as voluntary administrators of the Company or otherwise.

## 17.4 Deed Administrators' lien

The Deed Administrators and Administrators have, and are entitled to exercise, a lien over the Deed Fund to secure the Deed Administrators' and Administrators' (as applicable) indemnity conferred by clause 17.1.

## 17.5 Insufficient funds

Notwithstanding any other provision of this Deed and subject to applicable law, the Deed Administrators are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Remuneration, Administrators' Liabilities, Deed Administrators' Remuneration and Deed Administrators' Liabilities.

## 17.6 Proponent

The Proponent will, at the Deed Administrators' cost, do all things reasonably required to assist the Deed Administrators to obtain relief required from the Court to limit their or the Trustees' liability in a manner consistent with clause 18.

## 17.7 No limitation

Nothing in this Deed limits the rights in law or equity of the Deed Administrators to:

- (a) make an application under section 444F of the Act; or

# Deed of Company Arrangement – Abra Mining

- (b) to apply for orders or directions pursuant to the Act, including section 447A of the Act and section 90-15 of the IPS.

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## 18 Liabilities of the Deed Administrators and Administrators

### 18.1 Limitation of liability

To the maximum extent permitted by law, the Deed Administrators and Administrators are not personally liable for:

- (a) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators or the Administrators or their Representatives in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Company whether before, during or after the period of the operation of this Deed; or
- (c) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any Directors, Officers or Creditors,

except any loss or damage occasioned by the fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Deed Administrator, Administrator or any of their partners, employees, agents or delegates.

### 18.2 Release

Upon termination of this Deed, the Administrators, the Deed Administrators and their representatives are released from any and all claims of any nature whatsoever concerning or arising out of the administration of the Company under Part 5.3A of the Act and the implementation, administration and enforcement of this Deed, except where that claim arises out of any fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Deed Administrator, Administrator or any of their partners, employees, agents or delegates.

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## 19 Resignation and removal of Deed Administrator

### 19.1 Deed Administrator's termination or death

- (a) The appointment of a Deed Administrator may be terminated by a Resolution at a meeting of Creditors held in accordance with this Deed.
- (b) In the event of the death of a Deed Administrator or in the event of their appointment being terminated in accordance with this Deed, the Creditors shall have the power by Resolution to appoint a substitute administrator or administrators to carry out their duties.
- (c) Nothing in this clause affects the Deed Administrators' accrued right to:

# Deed of Company Arrangement – Abra Mining

- (i) the Deed Administrators' Remuneration or payment of the Deed Administrators' Liabilities and any indemnity pursuant to this Deed or at law; or
- (ii) the Deed Administrators' supporting lien whether arising pursuant to this Deed or at law.

## 19.2 Deed Administrator's resignation

- (a) Subject to clause 19.2(b), a Deed Administrator may resign at any time by giving not less than 28 days' prior written notice tendered to Company.
- (b) If following the proposed resignation of a Deed Administrator there would be no remaining Deed Administrator, the Deed Administrator must prior to resigning:
  - (i) convene a meeting of Creditors or Committee of Inspection of the Company in accordance with clause 22.1 ("*Meetings*"), or alternatively approach the Court, for the purpose of appointing a replacement administrator or administrators of this Deed;
  - (ii) assign to a replacement administrator or administrators of this Deed approved by the meeting of Creditors or Committee of Inspection or the Court (as applicable) the Deed Administrator's right, title and benefit under this Deed; and
  - (iii) do all things reasonably necessary to give effect to the replacement of the Deed Administrator in accordance with the outcome of the meeting or order of the Court (as applicable).

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## 20 Goods and Services Tax

### 20.1 GST Exclusive Amounts

- (a) If GST is or will be payable on a supply made under or in connection with this Deed, to the extent that the consideration otherwise provided for that supply under this Deed is not stated to include an amount in respect of GST on the supply:
  - (i) the consideration otherwise provided for that supply under this Deed is increased by the amount of that GST; and
  - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (b) The right of the supplier to recover any amount in respect of GST under this Deed on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant input tax credit.

### 20.2 Reimbursements

If a payment to a person is a reimbursement or indemnification that is calculated by reference to a loss, cost or expense incurred by that person, the payment will be reduced by the amount of any input tax credit to which that person is entitled for the acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, clause 20.1 will apply.

# Deed of Company Arrangement – Abra Mining

## 20.3 Interpretation

For the purposes of clauses concerning GST, all terms defined in the GST Law have the meanings given to those terms in the GST Law unless the context requires otherwise.

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## 21 Notices

### 21.1 How to give a notice

A notice, consent or other communication under this Deed is only effective if it is:

- (a) in writing and addressed to the person to whom it is to be given; and
- (b) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) sent in electronic form (such as email).

### 21.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by email:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if it is sent by mail:
  - (i) within Australia – 3 Business Days after posting; or
  - (ii) to or from a place outside Australia – 7 Business Days after posting.

### 21.3 Address for notices

A person's address and fax number are those set out in the Details, or as the person notifies to the sender.

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## 22 General

### 22.1 Meetings

Meetings of Creditors or the Committee of Inspection may be convened by the Deed Administrators from time to time, or as and when required, in accordance with the Prescribed Provisions, the Act and the Regulations. Meetings of Creditors or the Committee of Inspection subject to the rules set out in Division 75 of Part 3 of the IPR applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the external administrator or chairperson, as the case may be, were references to the Deed Administrators as required.

# Deed of Company Arrangement – Abra Mining

## 22.2 Costs

Subject to clause 12.2(d) of this Deed, the Deed Administrators' and Administrators' costs, charges and expenses of and incidental to the preparation, execution and any variation of this Deed payable are taken to be costs, charges and expenses incurred by, and payable by, the Deed Administrators in connection with or incidental to the administration of this Deed but only to the extent that the Deed Administrators' right of indemnity out of the Deed Fund is sufficient to meet those costs, charges and expenses.

## 22.3 Variation of this Deed by Creditors

This Deed may be varied, with the consent of the Deed Administrators, by a Resolution passed at a meeting of Creditors convened in accordance with the Regulations, but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

## 22.4 Governing law

This Deed is governed by the law in force in Western Australia.

## 22.5 Forum

Any proceedings in relation to or arising out of this Deed, including appeals against rejections of Claims must be commenced in the Courts.

## 22.6 This Deed prevails over memorandum, articles, contracts etc.

If there is any inconsistency between the provisions of this Deed and the constitution, memorandum of association or articles of association of the Company or any other obligations binding on the Company, then the provisions of this Deed will prevail to the extent of the inconsistency.

## 22.7 No waiver

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 22.8 Counterparts

This Deed may be executed in counterparts with the same effect as if the signatures to each counterpart were upon the same instrument.

## 22.9 Entire agreement

This Deed contains the entire agreement of the parties with respect to its subject matter and supersedes all earlier conduct by the parties with respect to its subject matter.

# Deed of Company Arrangement – Abra Mining

## 22.10 Further assurances

Subject to clause 12.2(d) of this Deed:

- (a) each of the parties to this Deed will do all acts, matters and things as may be reasonably necessary or expedient to implement and give full effect to the provisions of this Deed; and
- (b) all persons bound by this Deed will do (at their own expense, unless otherwise agreed by the Deed Administrators, acting reasonably) all acts, matters and things as may reasonably be requested by the Deed Administrators to give effect to this Deed and the transactions contemplated by it (including signing any documents).

## 22.11 Survival

This clause and clauses 10.3(c), 12.6(b), 15.3(b), 15.5, 15.6, 16, 17, 18, 22.2 and this clause survive termination of this Deed.

# Deed of Company Arrangement – Abra Mining

## Schedule 1 What this instrument specifies

| Section of Act | Item                                                                                                                                                                                          | Clause(s) of Deed |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 444A(4)(a)     | the administrator of the deed                                                                                                                                                                 | 4.1(a)            |
| 444A(4)(b)     | the property of the company (whether or not already owned by the company when it executes the deed) that is to be available to pay creditors' claims                                          | 9.3(a)            |
| 444A(4)(c)     | the nature and duration of any moratorium period for which the deed provides                                                                                                                  | 5                 |
| 444A(4)(d)     | to what extent the company is to be released from its debts                                                                                                                                   | 8                 |
| 444A(4)(e)     | the conditions (if any) for the deed to come into operation                                                                                                                                   | 2.1               |
| 444A(4)(f)     | the conditions (if any) for the deed to continue in operation                                                                                                                                 | 2.2               |
| 444A(4)(g)     | the circumstances in which the deed terminates                                                                                                                                                | 15.1              |
| 444A(4)(h)     | the order in which proceeds of realising the property referred to in paragraph (b) are to be distributed among creditors bound by the deed                                                    | 9.4(a)            |
| 444A(4)(i)     | the day (not later than the day when the administration began) on or before which claims must have arisen if they are to be admissible under the deed                                         | 9.3(b)            |
| 444DA(1)       | requirement for eligible employee creditor priority at least equal to what they would have been entitled if the property were applied in accordance with sections 556, 560 and 561 of the Act | 9.6               |
| 444DB          | requirement for no admissibility of superannuation contribution to proof in whole or in part                                                                                                  | 9.7               |

**Deed of Company Arrangement – Abra Mining**

# **Deed of Company Arrangement – Abra Mining**

## **Schedule 2 Notice from Deed Administrators**

1. This notice is given for the purposes of the Deed of Company Agreement made in relation to Abra Mining Pty Ltd (subject to deed of company arrangement) (DOCA). Terms defined in this notice have the meanings set out in the DOCA.

2. This notice concerns the Unsecured Royalty Agreements under the DOCA.

3. By this notice, we as Deed Administrators confirm to the Proponent for the purposes of the DOCA that all Unsecured Royalty Agreements have been terminated, or otherwise that counterparties to those Unsecured Royalty Agreements have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Unsecured Royalty Agreements at an end.

# Deed of Company Arrangement – Abra Mining

## Schedule 3 Notice from Deed Administrators

1. This notice is given for the purposes of the Deed of Company Agreement made in relation to Abra Mining Pty Ltd (subject to deed of company arrangement) (DOCA). Terms defined in this notice have the meanings set out in the DOCA.

2. This notice concerns the Off-take Agreements under the DOCA.

3. By this notice, we as Deed Administrators confirm to the Proponent for the purposes of the DOCA that all Off-take Agreements have been terminated, or otherwise that counterparties to those Off-take Agreements have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Off-take Agreements at an end.

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# Deed of Company Arrangement – Abra Mining

## Schedule 4 Completion Notice

[date]

To:

Endurance Mining Pty Limited ACN 686 341 471 (**Proponent**)

'Gateway Building' Suite 4101, Level 41, 1 Macquarie Place Sydney NSW 2000

**Deed of Company Arrangement dated [ ] between Abra Mining Pty Limited (administrators appointed) ACN 110 23 577, Richard Scott Tucker and Robert William Hutson in their capacity as joint and several voluntary administrators of the Company, and the Proponent (Abra DOCA)**

### Completion Notice

We refer to the Abra DOCA. Capitalised terms not defined have the same meanings given in the Abra DOCA.

This is a Completion Notice for the purposes of the Abra DOCA.

We confirm:

- (a) the Satisfaction Date has occurred; and
- (b) with effect from the issue of this Completion Notice the Abra DOCA will terminate in accordance with clause 15.3(a) of the Abra DOCA.

This document is governed by the law in force in Western Australia.

Yours sincerely

[signature of Richard Scott Tucker or Robert William Hutson]

For and behalf of the Deed Administrators

# **Deed of Company Arrangement – Abra Mining**

## **Schedule 5    Trust Deed**

# Creditors' Trust Deed

Dated 2025

Abra Mining Pty Limited (Administrators Appointed) ACN 110 23 577 ("the **Company**")

Richard Scott Tucker and Robert William Hutson in their capacity as joint and several voluntary administrators of the Company ("**Deed Administrators**")

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# Creditors' Trust Deed

## Details

| Parties             |           |                                                                                                                                                                                                                                            |
|---------------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Company             | Name      | <b>Abra Mining Pty Limited (Administrators Appointed)</b>                                                                                                                                                                                  |
|                     | ACN       | 110 233 577                                                                                                                                                                                                                                |
|                     | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000<br><a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a>                                                                                             |
|                     | Email     | <a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                                                                                                                                                                       |
|                     | Attention | Richard Tucker and Robert Hutson                                                                                                                                                                                                           |
| Deed Administrators | Name      | <b>Richard Scott Tucker and Robert William Hutson</b> in their capacity as joint and several voluntary administrators of the Company                                                                                                       |
|                     | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000<br><a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a>                                                                                             |
|                     | Email     | <a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                                                                                                                                                                       |
|                     | Attention | Richard Tucker and Robert Hutson                                                                                                                                                                                                           |
| Recitals            | A         | On 4 April 2024, the Administrators were appointed voluntary administrators of the Company pursuant to section 436A(1) of the Act.                                                                                                         |
|                     | B         | At the duly convened second meetings of the Company's creditors held on 14 May 2025, it was resolved pursuant to section 439C(a) of the Act that the Company execute the DOCA and the DOCA was executed on or about the date of this Deed. |
|                     | C         | The Company and the Deed Administrators enter into this deed as contemplated by the DOCA in order to facilitate the distribution by the Trustees to the Admitted Creditors in their capacity as beneficiaries of the Trust Fund.           |
|                     | D         | The Deed Administrators have agreed to act as Trustees.                                                                                                                                                                                    |

# Creditors' Trust Deed

## General terms

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### 1 Interpretation

#### 1.1 Definitions

In this Deed the following definitions apply unless the context requires otherwise.

**Act** means the *Corporations Act 2001* (Cth).

**Administrators** means Mr Richard Scott Tucker and Mr Robert William Hutson in their capacity as joint and several voluntary administrators of the Company.

**Administrators' Liabilities** has the meaning given in the DOCA.

**Administrators' Remuneration** has the meaning given in the DOCA.

**Admitted Claim** means a Claim against the Company that is admitted by the Trustees in accordance with the terms of this Deed.

**Admitted Creditor** means any Creditor who has an Admitted Claim, including for the avoidance of doubt, an Admitted Priority Claim.

**Admitted Priority Claim** means any Admitted Claim which, in a liquidation of the Company, would be entitled to priority of payment pursuant to sections 556(1)(e) to (h) (inclusive), 560 or 561 of the Act, with the winding up of the Company taken to have begun on the Relevant Date.

**ASIC** means the Australian Securities and Investments Commission.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

**Claim** means any "Claim" as defined in the DOCA, which for the avoidance of doubt, does not include a Non-Participating Claim.

**Commencement Date** means the "Satisfaction Date" as defined in the DOCA, provided the DOCA effectuates on such date.

**Court** means the Western Australia registry of the Federal Court of Australia and any appellate court from those courts.

**Creditor** means a person who has a Claim against the Company, and for the avoidance of doubt, excludes a person in relation to any Non-Participating Claim.

**Creditors' Trust** means the trust established by this Deed.

**Deed** means this deed, as varied from time to time.

**Deed Fund** has the meaning given in the DOCA.

**Deed Administrators' Liabilities** has the meaning given in the DOCA.

**Deed Administrators' Remuneration** has the meaning given in the DOCA.

**Dividend** means a distribution paid or to be paid by the Trustees to a Creditor in respect of that Creditor's Entitlement in accordance with clause 6.1.

**DOCA** means the deed of company arrangement executed by the Company, the Deed Administrators and the Proponent, on or around the same date as this Deed.

**Entitlement** means an Admitted Creditor's right to receive Dividend(s) under this Deed with respect to an Admitted Claim.

**Final Dividend** means the last Dividend payment to be made by the Trustees to any Creditor under this Deed.

**GST** means the goods and services tax as imposed by the GST Law, a consumption tax, value added tax, retail turnover tax or tax of a similar nature.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Corporations Act 1999* (Cth) or, if that Act does not exist for any reason, means any legislation imposing or relating to the imposition or administration of a goods and services tax in Australia.

**Initial Trust Fund Amount** means the sum of ten dollars (\$10).

**Non-Participating Claim** means each of the:

- (i) Taurus Claim;
- (ii) Byrnegut Claim;
- (iii) GR Engineering Claim;
- (iv) Intertek Claim; and
- (v) Pacific Energy Claim.

**Officer** means any person who, by reason of section 9 of the Act, is an "officer" of any Company.

**Pool A Creditors** means the Creditors described in Schedule 1 of this Deed, and any other trade creditors which do not otherwise meet the definition of Pool B Creditors or Pool C Creditors.

**Pool B Creditors** means the Creditors described in Schedule 2 of this Deed.

**Pool C Creditors** means the Shareholders and the counterparties to the Off-take Agreements.

**Pool D Creditors** means all other Creditors, which are not Pool A Creditors, Pool B Creditors, or Pool C Creditors.

**Prescribed Provisions** means regulations 5.6.11 to 5.6.70A of the Corporations Regulations (inclusive), clauses 2 (*Powers of administrator*) and 8 (*Making claims*) of Schedule 8A of the Corporations Regulations and Subdivisions A to E of Division 6 of Part 5.6 of the Act.

**Proponent** means Endurance Mining Pty Ltd ACN 686 341 471.

**Regulations** means the *Corporations Regulations 2001* (Cth).

**Relevant Date** means 4 April 2024.

**Representatives** means, in relation to the Administrators, Deed Administrators or the Trustees (as the context requires), their firm, partners, employees, agents, advisers and consultants.

**Resolution** means a resolution passed at a meeting of Creditors convened in accordance with clause 9 ("*Meetings of Admitted Creditors*") of this Deed and **Resolve** has a corresponding meaning.

**Statutory Liabilities** means any charge, tax, duty, impost or levy raised by, or by the authority of, any governmental instrumentality, including GST.

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

**Trust Fund** means the fund established under clause 2.3 ("*Declaration*") of this Deed.

**Trustees** means Mr Richard Scott Tucker and Mr Robert William Hutson in their capacity as joint and several trustees of the Creditors' Trust appointed in accordance with this Deed.

**Trustees Act** means the *Trustees Act 1962 (WA)* (as amended).

**Trustees' Liabilities** means any liabilities, debts, costs, fees, charges, disbursements, and expenses of the Trustees, including any Statutory Liabilities, professional fees and expenses and legal fees, incurred in respect of:

- (a) the administration and performance of this Deed pursuant to the Trustees' appointment as trustees of this Deed; and/or
- (b) the preparation, stamping, execution and performance of this Deed.

**Trustees' Remuneration** means the amount calculated in accordance with clause 11.2.

## 1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) terms not defined in this Deed have the meaning given in the DOCA;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes all genders;
- (d) references to a person includes any body corporate, unincorporated body, a corporation, association, partnership, government authority, or other legal entity;
- (e) a reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (f) references to writing include any means of representing or reproducing words (in English), figures, drawings or symbols, in a visible, tangible form;
- (g) references to signature, signing or execution include due execution by a corporation or other relevant entity;
- (h) a reference to any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or

replaced from time to time, in accordance with this Deed or that other agreement or document;

- (i) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;
- (j) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (k) references to clauses, schedules, or annexures refer to clauses, schedules or annexures of this Deed;
- (l) a reference to conduct includes, without limitation, any omission, statement or undertaking whether or not in writing;
- (m) headings, labels used for definitions and the table of contents are used for convenience only and do not affect interpretation;
- (n) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (o) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (p) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this Deed, the document or any relevant part of it;
- (q) when a day on or by which anything to be done is not a Business Day, that thing may be done on the next Business Day; and
- (r) the words "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

### **1.3 Application of the Act and Regulations**

- (a) Subject to any contrary terms of this Deed, the Prescribed Provisions are incorporated in this Deed with all modifications as are necessary to give effect to Part 5.3A of the Act and this Deed, and as if references to the 'liquidator', 'provisional liquidator', 'administrator' or the like, were references to the 'Trustees', references to the 'relevant date' were references to the 'Relevant Date', and references to 'winding up' were references to the arrangement effected by this Deed.
- (b) If there is any inconsistency between the provisions of this Deed and the Act or Regulations, this Deed will prevail to the extent permitted by law.

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## **2 Declaration of Trust**

### **2.1 Commencement Date**

This Deed has effect on and from the Commencement Date following execution of this document by the Company and the Deed Administrators.

## **2.2 Appointment**

- (a) On the Commencement Date, the Creditors and the Deed Administrators appoint the Trustees as trustees of the Creditors' Trust on the terms and conditions contained in this Deed.
- (b) Subject to the terms of this Deed, the appointment of the Trustees is irrevocable.
- (c) The Trustees accept and agree to their appointment as trustees of the Creditors' Trust.

## **2.3 Declaration**

On the Commencement Date the Trustees acknowledge and declare that, once settled in accordance with the DOCA:

- (a) the Initial Trust Fund Amount;
- (b) the Proponent Contribution (inclusive of the Proponent Contribution Shortfall (if applicable)) (and any accrued interest); and
- (c) the Allowable Deduction Amount (and any accrued interest),

will be held on trust by the Trustees for the parties entitled to those funds in accordance with this Deed.

## **2.4 Name of Creditors' Trust**

The trust constituted by this Deed will be called the "Abra Creditors' Trust".

## **2.5 Trustees' Duties**

The Trustees must:

- (a) to the extent and in the manner the Trustees believe appropriate, collect, sell or otherwise realise the property held on trust (including, for the avoidance of doubt, any choses in action forming part of the Trust Fund);
- (b) at such time(s) as the Trustees consider appropriate, call for formal proofs of debt from some or all Creditors and adjudicate proofs of debt received;
- (c) pay Admitted Claims in accordance with this Deed, including by paying interim distributions;
- (d) otherwise distribute the Trust Fund in accordance with this Deed; and
- (e) to the extent that the Trustees consider it reasonably necessary, receive, consider and report back to Creditors on all issues in relation to the matters covered by this Deed.

## **2.6 Access to records**

The Company will provide the Trustees with free and unrestricted access to the Company's books and records, as and when requested by the Trustees, to enable the Trustees to determine the Claims of the Creditors, or such other purpose as may be required pursuant to this Deed.

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### **3 Trust Fund**

#### **3.1 Trust Fund**

The Trust Fund shall be comprised of the assets set out in clause **Error! Reference source not found.** ("*Declaration*").

#### **3.2 Trust Deed**

The Trust Fund is to be held by the Trustees for the benefit of the Creditors, the Trustees, the Deed Administrators and the Administrators on the terms of this Deed.

#### **3.3 Postponement**

If proceedings are brought, or threatened to be brought, by any person in respect of the distribution of the Trust Fund, then the Trustees shall be entitled at their sole discretion to postpone the payment of any Entitlement until determined by the Trustees.

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### **4 Perpetuity Period**

Notwithstanding any other provision in this Deed, each

- (a) interest in property; and
- (b) Trustees' power over or in connection with property,

created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable after the expiry of eighty (80) years commencing on the date of this Deed, but which has not vested or taken effect by that date,

- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

---

### **5 Entitlements of Creditors**

#### **5.1 Entitlement of Admitted Creditors**

- (a) Each Admitted Creditor is entitled to its Entitlement as determined in accordance with the terms of this Deed.
- (b) The Trust Fund is the property that is to be available to pay Admitted Creditors.
- (c) Admitted Creditors will only be entitled to receive a Dividend from the Trust Fund in accordance with this Deed.
- (d) The day on or before which the Claims must have arisen if they are to be admissible under this Deed is the Relevant Date.
- (e) Interest does not accrue on, and is not payable in respect of, any Admitted Claim.
- (f) Each Creditor with a Non-Participating Claim will not seek to prove under, or participate in any dividends declared under, this Deed.

- (g) The Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of distributions of the Trust Fund in payment of Entitlements.

## **5.2 Admissibility of Claims**

Upon the Commencement Date, all Claims shall, in accordance with the DOCA, be treated as Claims under this Deed which may, if admitted by the Trustees, give rise to Entitlements.

## **5.3 Adjudication of proofs**

- (a) Creditors are entitled to submit a proof of debt in respect of their Claim for adjudication by the Trustees in accordance with this Deed.
- (b) Those Creditors entitled to submit a proof of debt to the Trustees are required to lodge their proof of debt on or before the time fixed in accordance with Regulation 5.6.39, or such later date as the Trustees may specify in their absolute discretion.
- (c) The Trustees are to adjudicate the proofs of debt of each Creditor's Claim in accordance with the Prescribed Provisions, the DOCA and this Deed.
- (d) The Trustees may, in their absolute discretion, adjudicate Claims and determine whether to admit (in whole or in part), reject (in whole or in part), or pay Claims under this Deed.
- (e) For the purpose of determining a Creditor's Claim, Regulations 5.6.39 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed (where applicable and with necessary modifications and subject to the terms of this Deed), however the Trustees have absolute discretion to determine and pay any Creditors' Claim at any time without the need for strict compliance with regulations 5.6.39 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations.
- (f) Where a Claim is in a foreign currency, the amount of the Claim that is admissible to proof is the equivalent in Australian currency of the amount of the foreign currency, worked out by reference to the relevant rate published by the Reserve Bank of Australia on or about the date of adjudication.
- (g) Any notice given by the Deed Administrators or Trustees requiring a Creditor to submit particulars of their Claim or formally prove their Claim will be treated as sufficient to comply with regulations 5.6.39 to 5.6.50 (inclusive) of the Corporations Regulations.

## **5.4 Ascertaining Creditors**

- (a) In adjudicating the Creditor's Claims, the Trustees are entitled to adopt the conclusions and findings of the Administrators or Deed Administrators, such that if a Creditor's Claim has been previously rejected, it is to be treated as rejected under this Deed and if a Creditor's Claim has been previously admitted to prove, it is to be treated as having been admitted to prove under this Deed.
- (b) Any power exercised by the Deed Administrators will be done so in accordance with Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act as if references to the liquidator were references to the Deed Administrators, and with such other adaptations as are necessary.

- (c) To avoid doubt, any exercise of power by the Administrators or Deed Administrators to adjudicate the Creditor's Claims prior to the establishment of the Abra Creditors' Trust will be treated as if those powers had been exercised by the Trustees pursuant to this Deed.
- (d) Where the Trustees propose to reject a Claim (whether in full or in part) the Trustees shall send a notice to the relevant Creditor informing them of the proposed rejection and giving them 14 days within which to make an application to the Court to determine any questions relating to that Claim.

## **5.5 Determining Entitlements and Priority**

Subject to any contrary terms of this Deed, in accordance with clause 1.3 (*"Application of the Act and Regulations"*), the Prescribed Provisions apply to the adjudication of Creditor's Claims by the Trustees.

## **5.6 Admitted Priority Claims**

In accordance with section 444DA of the Act, the Trustees are to apply the Trust Fund so that an Admitted Creditor with an Admitted Priority Claim will be entitled to a priority at least equal to what they would have been entitled if the Trust Fund were applied in accordance with sections 556, 560 and 561 of the Act.

## **5.7 Whole of superannuation contribution debt**

In accordance with sections 444DB(1) and 444DB(2) of the Act (with such modifications as necessary), the Trustees must determine that the whole of a debt by way of a superannuation contribution is not admissible to proof against the Company if:

- (a) a debt by way of Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to prove;
 and,
- (b) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.

## **5.8 Part of superannuation contribution debt**

In accordance with sections 444DB(3) and 444DB(4) of the Act (with such modifications as necessary), the Trustees must determine that a particular part of a debt by way of a superannuation contribution is not admissible to proof against the Company if:

- (a) a debt by way of Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to prove;
 and,
- (b) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

## **5.9 Determination of Trustees**

If the Trustees make a determination in accordance with clauses 5.7 and 5.8, such debt is to be treated as extinguished as against the Company.

---

# **6 Distribution of Trust Fund**

## **6.1 Manner of distribution**

- (a) The order in which the Trustees are to distribute the Trust Fund is as follows:
  - (i) first, in payment of the:
    - (A) Administrators' Remuneration and Administrators' Liabilities;
    - (B) Deed Administrators' Remuneration and Deed Administrators' Liabilities; and
    - (C) Trustees' Remunerations and Trustees' Liabilities;
  - (ii) secondly, in payment of the Admitted Priority Claims;
  - (iii) thirdly, the maximum amount of \$1,000,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool A Creditors;
  - (iv) fourthly, in payment of the Admitted Claims of each of the Pool B Creditors, the amount which is the lesser of:
    - (A) \$1,150,000 (including any GST) to be applied on a pari passu basis; and
    - (B) in respect of each Pool B Creditor, the amount representing 4% of that Pool B Creditor's Admitted Claim; and
  - (v) fifthly, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool C Creditors; and
  - (vi) finally, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool D Creditors; and
  - (vii) any surplus to the Company.
- (b) Subject to clause 6.1, the Trust Fund will be distributed in accordance with the order of priority specified in sections 556, 560 and 561 of the Act.
- (c) The Trustees may pay Admitted Creditors (if any) by electronic funds transfer.
- (d) The Trustees need not pay a Dividend to an Admitted Creditor if the amount due to them in respect of a Dividend would be less than \$25.
- (e) Payments made out of the Trust Fund in accordance with clause 6.1(a), will be made in the manner (including by way of interim Dividends) and

at the time determined by the Trustees in their absolute discretion after the Commencement Date.

## **6.2 Treatment of Non-Participating Claims**

Notwithstanding any contrary term of this Deed, a Creditor is not entitled to participate in, nor receive any distribution from, and will not prove to recover any distributions from the Trust Fund in respect of any Non-Participating Claim.

## **6.3 Payments not made**

In the event that the Trustees, for any reason, are unable to locate an Admitted Creditor, or if any cheque sent by the Trustees to an Admitted Creditor has not been presented by the time the Creditors' Trust would otherwise terminate, then:

- (a) the Trustees will stop payment of such cheque;
- (b) the moneys represented by such stopped cheque or held by the Trustees on behalf of the Admitted Creditor must be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Act apply, with such modifications as are necessary, to such payment as if references in those sections to "liquidator" were references to the "Trustees" and references to "company" were references to the "Trust" (however, the terms of this Deed and the DOCA prevail to the extent of any inconsistency).

## **6.4 Costs**

Any costs and expenses incurred by a Creditor in asserting a Claim under this Deed will be borne by that Creditor and will not form part of that Creditor's Claim.

## **6.5 No enforcement**

A Creditor shall not take actions or steps to enforce the Creditor's rights to recover the whole or part of the Claim or Entitlement owed to the Creditor whilst the Trustees remain the Trustees.

## **6.6 Postponement**

If proceedings are brought by any person in respect of the distribution of the Trust Fund and the Trustees have made, or apprehend that they will make, a claim on any indemnity which they may have under this Deed, the DOCA or otherwise at law or in equity, then the Trustees are entitled, at their sole discretion, to postpone the payment of any distribution until the proceedings are resolved or otherwise determined by the Trustees.

---

# **7 Further action**

## **7.1 Bar to Creditor's Claims and discharge of debts**

- (a) Subject to the terms of this Deed, this Deed may be pleaded by the Company, the Administrators, the Deed Administrators and Trustees against, in set-off or in answer to any Creditor in bar to the Creditor's Claims (irrespective of whether the Creditor has lodged a proof of debt or received a Dividend), as fully and effectively as if the Creditor had executed a binding covenant under seal not to sue.
- (b) Each Creditor must accept its Entitlements under this Deed (even if the amount of any Final Dividend is nil) in full and final satisfaction and

complete discharge of all Claims or Entitlements which the Creditor has, or claims to have, against the Company, the Administrators, the Deed Administrators or the Trustees (irrespective of whether the Creditor has lodged a proof of debt or received a Dividend under this Deed).

## **7.2 Release of Creditor's Claims**

If the Trustees have paid a Creditor its full Dividend(s) under this Deed in relation to the Creditor's Claims and Entitlements, then the Company, the Administrators, the Deed Administrators and the Trustees are forever released and discharged by the Creditor and the Creditor's Claims are extinguished and each Creditor must, if called upon to do so by the Trustees, execute and deliver to the Company, the Administrators, the Deed Administrators and the Trustees such form of release of the Creditor's Claims and Entitlements as the Trustees may require.

## **7.3 Abandonment by Creditors who do not prove**

- (a) A Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:
  - (i) which are not the subject of a proof lodged with the Administrators, Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
  - (ii) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed for appeals under the Regulations.
- (b) In the event that the Deed Administrators declare an interim Dividend pursuant to this Deed, regulation 5.6.65 of the Regulations (with any necessary modifications) will apply to the Claims of any Creditors who fail to submit a proof of debt before the date on which the interim Dividend is paid.

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# **8 Register**

## **8.1 Register**

The Trustees must maintain in Perth, Western Australia, or elsewhere as the Trustees determine, an up-to-date register and must enter in the register in respect of each Admitted Creditor:

- (a) the Admitted Creditor's name and address;
- (b) details of each Admitted Claim; and
- (c) Dividend(s) paid to the Admitted Creditor pursuant to this Deed.

## **8.2 Inspection of register**

The Trustees must keep the register open at all reasonable times during business hours for the inspection of Admitted Creditors or any person authorised in writing by an Admitted Creditor.

### **8.3 Register conclusive**

The register is conclusive evidence of the matters entered on the register.

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## **9 Meetings of Admitted Creditors**

- (a) The Trustees may at any time convene a meeting of Creditors.
- (b) In accordance with clause 1.3, the Prescribed Provisions apply to meetings of Creditors convened for the purposes of this Deed.
- (c) Creditors who have been paid the full amount of their Entitlements under this Deed, will no longer be entitled to attend and participate in meetings of Creditors.

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## **10 Trustees' Powers**

### **10.1 Powers**

Without limiting the powers that the Trustees have by operation of the Trustees Act or otherwise at law or in equity, the Trustees may deal with the property comprising the Trust Fund in any manner as if the Trustees were the legal and beneficial owners of that property, and may also exercise any power in respect of the property comprising the Trust Fund.

### **10.2 Express powers**

Without limiting clause 10.1, for the purposes of administering the Creditors' Trust, the Trustees have the following powers:

- (a) to administer the Trust Fund in accordance with the provisions set out in the DOCA and this Deed;
- (b) to fulfil the Trustees' obligations in accordance with the terms of this Deed;
- (c) to sell, re-invest or otherwise deal with the assets of the Trust Fund;
- (d) to perfect title in any assets of the Trust Fund;
- (e) to insure any assets of the Trust Fund;
- (f) to, at any time, call meetings of Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
- (g) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
- (h) to determine Admitted Claims, and Entitlements, and then to pay Dividends in accordance with the terms of this Deed;
- (i) to act as attorney for the Company or any other person for any purpose associated with the Creditors' Trust or this Deed;
- (j) to enforce compliance with the terms of this Deed;

- (k) to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to it;
- (l) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (m) to convene and hold meetings of Creditors for any purpose as the Trustees consider fit;
- (n) to permit any person authorised by the Trustees to operate any account in the name of the Trustees;
- (o) to do all acts and execute in the name and on behalf of the Creditors' Trust all deeds, receipts and other documents;
- (p) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Creditors' Trust;
- (q) subject to the Trustees Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Creditors' Trust;
- (r) to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in the Company's names or (after assignment) in the Trustees' name, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
  - (i) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
  - (ii) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasion may require; and
  - (iii) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
- (s) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees think fit;
- (t) to bring or defend an application for the vesting or winding up of the Creditors' Trust;
- (u) to report to Creditors from time to time;
- (v) to make interim or other distributions of the Trust Fund;
- (w) to appoint agents to do any business or attend to any matter or affairs of the Creditors' Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;

- (x) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (y) to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which power includes the power to compromise any claim, action, suit or proceeding;
- (z) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Creditors' Trust;
- (aa) subject to the Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Creditors' Trust;
- (bb) to convene and hold meetings of the Creditors for any purpose as the Trustees consider fit;
- (cc) to permit any person authorised by the Trustees to operate any account in the name of the Creditors' Trust;
- (dd) to do all acts and execute in the name and on behalf of the Creditors' Trust all deeds, receipts and other documents;
- (ee) to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any Statutory Liability, including income tax, capital gains tax or GST;
- (ff) to do anything incidental to exercising a power set out in this Deed; and
- (gg) to do anything else that is necessary or convenient for administering the Creditors' Trust.

The Trustees may exercise any discretion under this Deed in the Trustee's absolute and unfettered discretion.

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## 11 Remuneration

### 11.1 Remuneration and costs

From the Trust Fund, the Trustees, Deed Administrators and Administrators will receive:

- (a) payment of the Administrators' Remuneration, the Deed Administrators' Remuneration and the Trustees' Remuneration;
- (b) payment of the Administrators' Liabilities, Deed Administrators' Liabilities and Trustees' Liabilities;
- (c) all reasonably and properly incurred:
  - (i) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with this Deed against the Trustees;
  - (ii) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with the voluntary administration of the Company or the role as Administrators;

- (iii) amounts for which the Administrators, or the Deed Administrators, are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Company, or in accordance with the Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 4443BA of the Act;
- (iv) debts, liabilities, damages, losses and to which the statutory indemnity under section 443D or 4443E of the Act applies;
- (v) amounts for which the Administrators and Deed Administrators and Trustees are entitled to exercise a lien at law or in equity on the property of the Company.

## 11.2 Calculation of remuneration

- (a) The Trustees' Remuneration will be calculated on a time basis at the hourly rates usually charged by the Trustees, their partners and staff for insolvency related matters, together with rates charged by their firm in accordance with the hourly rates charged for such service lines; and
- (b) The Administrators' Remuneration and Deed Administrators' Remuneration will not, without approval by the Court, a committee of creditors or of the Creditors at a meeting of creditors, exceed the amounts approved by the Court or Creditors from time to time (exclusive of GST and disbursements).

## 11.3 Payment

Subject to clause 11.2 (*Calculation of remuneration*), the Trustees, Deed Administrators and Administrators are entitled, at their discretion, to draw from the Trust Fund funds to pay the Administrators' Remuneration, Deed Administrators' Remuneration and the Trustees' Remuneration.

## 11.4 Costs and outlays

- (a) The costs and outlays connected with the negotiation, preparation and execution of the DOCA and this Deed are taken to be costs, charges and expenses incurred by the Trustees in connection with or incidental to its administration of this Deed.
- (b) All Statutory Liabilities, including any stamp duty or GST, payable in connection with the DOCA and this Deed, the Administrators', Deed Administrators', or Trustees' Remuneration and/or the other documents and matters referred to in this Deed, may be treated as costs and expenses of the administration of this Deed
- (c) The Trustees (including their Representatives ) are not liable for any Statutory Liabilities, liabilities, losses, damages, costs or expenses which may result to the Trust Fund, or any person, from the exercise or attempted exercise of the Trustees' Powers, excluding any Statutory Liabilities, liabilities, losses, damages, costs or expenses arising from the dishonesty, fraud, wilful misconduct, gross negligence, breach of duty or criminal act of the Trustees (including their Representatives).

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## 12 Indemnity

### 12.1 Indemnity

- (a) In addition to any rights the Trustees, Deed Administrators and Administrators may have under the Act or at law, the Trustees, Deed Administrators and Administrators are entitled to be indemnified out of the Trust Fund for:
  - (i) payment for the Trustees' Liabilities, Deed Administrators' Liabilities and Administrators' Liabilities;
  - (ii) payment for the Trustees' Remuneration, the Deed Administrators' Remuneration and the Administrators' Remuneration;
  - (iii) all actions, suits, proceedings, accounts, claims and demands arising out of or in connection with this Deed or the DOCA which may be commenced, incurred by or made on the Trustee by any person and against all reasonably and properly incurred costs, charges and expenses incurred by the Trustees in relation to them; and
  - (iv) any liability referred to in clause 13 ("*Liability*").
- (b) The Trustees, Deed Administrators and Administrators are not entitled to an indemnity in respect of any Claims arising out of any fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Trustee, Deed Administrator, Administrator or any of their employees, agents or delegates.

### 12.2 Nature of indemnity

- (a) The indemnity under clause 12.1 ("*Indemnity*") will take effect on and from the Commencement Date and be without limitation as to time and shall endure for the benefit of the Trustees, Deed Administrators, Administrators and their Representatives notwithstanding the removal of the Trustees, Deed Administrators or Administrators, the appointment of a replacement trustee or deed administrator, the determination of the Creditors' Trust for any reason or the termination of this Deed for any reason.
- (b) The Trustees', Deed Administrators' and Administrators' right of indemnity conferred by this clause has priority over the Claims and Entitlements of any Creditor or Creditors generally (including, to the extent permitted by law, any Admitted Claim of an Admitted Priority Creditor).
- (c) The Trustees, Deed Administrators and Administrators are entitled to exercise their right of indemnity conferred by this clause at any time whether or not they have paid or satisfied the Admitted Claims.

### 12.3 Indemnity not affected or prejudiced

The indemnity under clause 12.1 ("*Indemnity*") will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees, Deed Administrators or Administrators (as applicable), or the removal of the Trustees, Deed Administrators or Administrators (as applicable), or the termination of the DOCA or the Trust for any reason, and shall extend to all actions, suits,

proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, Deed Administrators or Administrators, the approval and execution of this Deed or otherwise; or

- (b) affect or prejudice all or any rights that the Trustees, Deed Administrators or Administrators (as applicable) may have in respect of the Trust Fund or against the Company or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees, Deed Administrators or Administrators in, or incidental to, the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or the Deed Administrators by the DOCA or as voluntary administrators of the Company, or otherwise.

#### **12.4 Lien**

The Trustees, Deed Administrators and Administrators each have a lien over the Trust Fund to secure the rights of indemnity under this Deed.

#### **12.5 Insufficient funds**

Notwithstanding any other provision of this Deed and subject to applicable law, the Trustees are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Remuneration, Administrators' Liabilities, Deed Administrators' Remuneration, Deed Administrators' Liabilities, Trustees' Remuneration and Trustees' Liabilities.

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### **13 Liability**

To the maximum extent permitted by law, the Trustees, Deed Administrators and Administrators shall not be personally liable for:

- (a) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Trustees, Deed Administrators, Administrators or their Representatives in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Company whether before, during or after the period of the operation of this Deed; or
- (c) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any Directors, Officers or Creditors,

except any loss or damage occasioned by the fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Deed Administrator, Administrator, Trustee or any of their partners, employees, agents or delegates.

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## **14 Resignation and removal**

### **14.1 Trustee's death**

- (a) In the event of the death of a Trustee, the Creditors shall have the power by Resolution to appoint a substitute trustee or trustees to carry out their duties.
- (b) Nothing in this clause affects the Trustees' accrued right to:
  - (i) the Trustees' Remuneration or payment of the Trustees' Liabilities and any indemnity pursuant to this Deed or at law; or
  - (ii) the Trustees' supporting lien whether arising pursuant to this Deed or at law.

### **14.2 Trustee's resignation**

- (a) Subject to clause 14.2(b), a Trustee may resign at any time by giving not less than 14 days' prior written notice tendered to Creditors.
- (b) If following the proposed resignation of a Trustee there would be no remaining Trustee, the Trustee must prior to resigning:
  - (i) convene a meeting of Creditors of the Company in accordance with clause 9 ("*Meetings of Admitted Creditors*"), alternatively approach the Court, for the purpose of appointing a replacement trustee of this Deed; and
  - (ii) do all things reasonably necessary to give effect to the replacement of the trustee in accordance with the outcome of the meeting or order of the Court (as applicable).
- (c) Any replacement Trustee must be a registered liquidator.

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## **15 Termination**

### **15.1 Termination of the Creditors' Trust**

The Creditors' Trust will terminate and the Trustees will resign as soon as reasonably practicable upon:

- (a) application of the entirety of the Trust Fund in accordance with this Deed; or
- (b) the expiry of the perpetuity period referred to in clause 4 ("*Perpetuity Period*"),

whichever occurs first.

### **15.2 Previous operation of this deed preserved**

The termination or avoidance, in whole or in part, of this Deed does not affect the efficacy of any act done prior to the termination or avoidance.

### **15.3 Variation of Deed**

This Deed may be varied with the consent of the Trustees by Resolution but only if the variation is not materially different from the proposed variation set out in the notice of that meeting.

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## **16 General**

### **16.1 Invalidity/severance**

If any provision of this Deed is invalid for any reason whatsoever, it will be deemed to have been deleted which will not affect the validity or operation of the remainder of this Deed.

### **16.2 Further assurances**

Each of the parties to this Deed will do, execute, provide, acknowledge and deliver all further acts, deeds, assignments, charges, guarantees, covenants, assurances, documents and things reasonably required to most expeditiously fulfil the purposes and intentions of this Deed.

### **16.3 Notices**

#### **Address of Notice**

- (a) Any notice or document required to be given to or served upon any of the parties pursuant to or in connection with this Deed shall be in writing and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of the transmission has been received) to the party to which such notice is given or served by:
  - (i) any means permitted by the law or the regulations; or
  - (ii) pre-paid post to the person's address last known to the Deed Administrators or Trustees.

#### **Notice by Post**

- (b) Any notice sent by pre-paid post shall be taken to have been received by the addressee at the time at which it would have been delivered in the ordinary course of post.

#### **Notice by Facsimile**

- (c) Any notice given by facsimile on a day which is not a Business Day shall be deemed dispatched on the next succeeding Business Day.

#### **Notice by Email**

- (d) Any notice transmitted by email on a day which is not a Business Day shall be deemed dispatched on the next succeeding Business Day.

#### **Signing of Notice**

- (e) Any notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

#### **16.4 Waivers**

A failure to exercise or a delay in exercising any rights, power or remedy of a party under this Deed will not operate or be construed to operate as a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

#### **16.5 Counterparts**

This Deed may be executed in any number of counterparts and all those counterparts taken together constitute one and the same instrument.

#### **16.6 Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws from time to time being enforced in the state of Western Australia and the parties hereby irrevocably submit to the jurisdiction of the Court including any Courts having appellant jurisdiction there from.

#### **16.7 Stamp duty**

Any stamp duty assessed on this Deed is to be paid out of the Trust Fund.

#### **16.8 GST**

- (a) Words used in this clause 16.8 ("GST") which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context otherwise indicates.
- (b) Unless expressly included, the consideration for any supply under or in connection with the DOCA is exclusive of GST.
- (c) To the extent that any supply made by the Company under or in connection with the DOCA is a taxable supply, the consideration for that supply is increased by an amount determined by the Company, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply (**Additional Amount**).
- (d) The Additional Amount must be paid to the Company by the Trustees within 14 days of it being determined that the supply is a taxable supply.
- (e) the Company must issue a Tax Invoice to the Trustees with respect to the supply to which clause 16.8(c) applies no later than 7 days following payment of the GST inclusive consideration determined under that clause.

#### **16.9 Survival**

This clause and clauses 7.1, 7.2, 10, 12, 13 and 15.2 survive termination of this Deed.

#### **16.10 Further cooperation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Deed.

#### **16.11 Acts and omissions**

No party is liable for an act or omission of another party, except to the extent set out in this Deed.

#### **16.12 Governing Law**

- (a) This Deed, and the powers and duties of the Trustees, are governed by the laws of Western Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the Courts.

# Creditors' Trust Deed

## Signing page

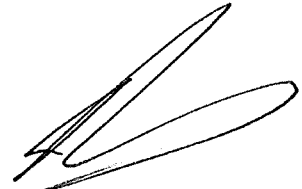
EXECUTED as a deed

ABRA

SIGNED, SEALED AND DELIVERED )  
for and on behalf of ABRA MINING )  
PTY LIMITED (ADMINISTRATORS )  
APPOINTED) ACN 110 23 577 by its )  
joint and several voluntary )  
administrator RICHARD SCOTT )  
TUCKER, in the presence of: )

  
..... )  
Signature of witness )

  
..... )  
Name of witness (block letters) )

  
..... )  
Signature of RICHARD SCOTT )  
TUCKER )

**EXECUTED** as a deed

**DEED ADMINISTRATOR**

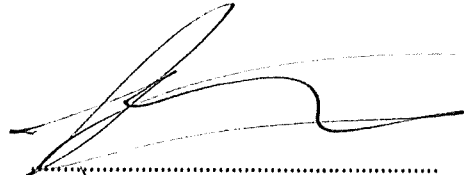
**SIGNED, SEALED AND DELIVERED**  
by **RICHARD SCOTT TUCKER** in his  
capacity as joint and several deed  
administrator of the Company in the  
presence of:



Signature of witness



Name of witness (block letters)



Signature of **RICHARD SCOTT  
TUCKER**

# Creditors' Trust Deed

EXECUTED as a deed

## DEED ADMINISTRATOR

SIGNED, SEALED AND DELIVERED  
by ROBERT WILLIAM HUTSON in his  
capacity as joint and several voluntary  
administrator of the Company in the  
presence of:

Signature of witness

FRASER PAUL HEATH MACKAY

Name of witness (block letters)

Signature of ROBERT WILLIAM  
HUTSON

# Schedule 1

28 Villages Pty Ltd  
Centrecare Inc (Access Welbeing)  
Advanced Electrical Equipment Pty Ltd  
Advanced Mining Production Systems Pty Ltd  
Aerodrome Management Services Pty Ltd  
ALS Metallurgy Pty Ltd  
AmSpec CR Cox Pty Ltd  
Applied Satellite Technology Pty Ltd  
Aran Plant Pty Ltd  
Arch Engineering Pty Ltd  
Argonaut PCF Limited  
Asset Management Engineers  
Atlas Copco  
ATOM Supply  
Auspan Building Systems Pty Ltd  
Australian Laboratory Services Pty Ltd  
Backfill Pipeline Solutions Pty Ltd  
J.Blackwoods & Son Pty Ltd  
Bluescope Distribution  
Boon Solutions Pty Ltd  
Bradken Resources Pty Limited  
Bring Transport Industries Pty Ltd (Bring Couriers)  
Bullivants Pty Ltd  
Bunnings Group Limited  
C.R Kennedy and Co Pty Ltd  
Cafe Corporate (Aust) Pty Ltd  
CCR Commercial Pty Ltd  
Challenge Pumps Pty Ltd  
ChoiceOne Pty Ltd  
Coates Hire Operations Pty Ltd  
Cockburn Cement Limited  
Corewise Pty Ltd  
Cytec Australia Holdings Pty. Limited  
Department of Energy, Mines, Industry Regulation and Safety  
Dependable Laundry Soutions  
Department of Primary Industries and Resources  
Digital Document Solutions Pty Ltd  
Direct Trades Supply Pty Ltd  
Dynamics G-EX Pty Ltd  
EDL LNG Fuel to Power Pty Ltd  
Emerson Automation Solutions Final  
Environmental Essentials  
Fenner Dunlop Australia Pty Ltd  
Festo Pty. Limited  
Fields Contracting Engineers  
Fire Rescue Safety Aust Pty Ltd  
Floral Image Perth  
FLSmidth Pty Ltd  
Fluid Line Services Pty Ltd

Freo Group Pty Ltd  
 The Trustee for Aivish Family Trust (Fruit Break)  
 Fuchs Lubricants Pty Ltd  
 Galena Mining Limited (Administrators Appointed)  
 Global Communication Services  
 Global Pumps Group Pty Ltd  
 WA Asset Group Pty Ltd  
 Goldfields Holst and Crane Pty Ltd  
 Hansteel Industries Australia Pty Ltd  
 Hartac Sales & Distribution Pty Ltd  
 Iconic Water Solutions Pty Ltd  
 Impact Protective Solutions Pty Ltd  
 Jellor Pty Ltd  
 Instrowest Pty Ltd  
 Integrated Industrial Pty Ltd  
 INX Software Pty Ltd  
 Iron Mountain Australia Group Services Pty Ltd  
 Ishigaki Oceania Pty Ltd  
 John Valves Pty Ltd  
 JP Pallets  
 Kelbush Pty Ltd  
 Leeuwin Capital Partners Pty Ltd  
 LinkForce  
 Magotteaux Australia Pty Ltd  
 Maxem Aviation Pty Ltd  
 Maxwell Geoservices Pty Ltd  
 McMahon Burnett Transport (Hoylake Nominees Pty Ltd)  
 Mid West Ports Authority  
 Mills Recruitment (Mills Corporation Pty Ltd)  
 Paydirt Technical Services Pty Ltd  
 The Trustee for the Black Lake Family Trust (Minerp Consulting)  
 Mining Access Legal Pty Ltd  
 Mining Corporate Pty Ltd  
 Mining Employment Services (MES)  
 Mintrex Pty Ltd  
 Mitchell River Group Pty Ltd  
 MM Electrical Merchandising (Metal Manufacturers Ltd t/a MM Electrical)  
 Envirolab Services (WA) Pty Ltd  
 Ecolab Pty Ltd t/a Nalco  
 National Pump & Energy  
 Office Solutions IT Pty Ltd  
 Officeworks  
 Onsite Rental Group Operations Pty Ltd  
 Operational Geotechs Pty Ltd  
 Plant Wash Australia  
 Polymer Technologies Pty Ltd  
 Procure Logistics Pty Ltd  
 Pump and Abrasion Aus Pty Ltd  
 Quattro Project Engineering Pty Ltd  
 Giacci Bros Pty Ltd  
 Quremed Pty Ltd  
 Radiation Services WA  
 Red Dust Enterprises Pty Ltd  
 Rockwater Pty Ltd  
 Rotech Water (The Trustee for Rotech Trust)  
 Rowe Scientific Pty Ltd

S.E.A. Maritime Services Pty Ltd  
 Sanax Medical & First Aid Supplies  
 Sanwest Pty Ltd  
 SETS Enterprises Pty Ltd  
 SG Controls Pty Ltd (The Trustee for S & D Gee Family Trust)  
 SMS Operations Pty Ltd  
 Sonic Health Plus Pty Ltd  
 SRG Global Asset Care Pty Ltd  
 Statewide Bearings Pty Ltd  
 Supagas Pty Limited  
 Technical Maintenance Support  
 Telstra Limited  
 The trustee for Jacobs Family Trust - Geraldton Rubber and Conveyor  
 The Trustee for Jake Barrett Investment Trust - Elite Management Australia  
 The trustee for Splinter Trust  
 The Trustee for The C & T Jones Family Trust  
 ARI (AUST) Pty Ltd (The Workers Shop)  
 Tiger Tek Pty Ltd  
 Toll North Pty Ltd  
 The Trustee for TT Joondalup Unit Trust (Total Tools Joondalup)  
 Trelleborg Perth Pty Ltd  
 Trustee For The Ryem Discretionary Trust & Waterbay Investments Pty Ltd  
 Twomeys Mining & Engineering Pty Ltd  
 Ugland Engineering Pty Ltd  
 Upside Group Pty Ltd  
 Valmet Pty Ltd  
 VLI Conveyors Pty Ltd  
 WA Fuel Supplies Pty Ltd  
 Workplace Consulting Australia Pty Ltd (WCA Solutions)  
 The Weather Company Pty Limited  
 Web-Tech Australia Pty Ltd  
 Weir Minerals Aust Ltd  
 Westauz Mining Pty Ltd  
 Western Diagnostic Pathology Pty Ltd  
 Woodside Energy (LNG FUELS AND POWER) Pty Ltd  
 XP Relines Pty Ltd

## Schedule 2

|                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Eamon Ian Cornelius in respect of any and all Claims in connection with the Portbeam and Cornelius Royalty Agreement.                         |
| Hunan Nonferrous Metals Corp. Ltd. In respect of any and all Claims in connection with the Hunan Royalty Deed.                                |
| Portbeam Holdings Pty Ltd (ACN 066 934 147) in respect of any and all Claims in connection with the Portbeam and Cornelius Royalty Agreement. |

# Deed of Company Arrangement – Abra Mining

## Schedule 6 Pool A Creditors

28 Villages Pty Ltd  
Centrecare Inc (Access Welbeing)  
Advanced Electrical Equipment Pty Ltd  
Advanced Mining Production Systems Pty Ltd  
Aerodrome Management Services Pty Ltd  
ALS Metallurgy Pty Ltd  
AmSpec CR Cox Pty Ltd  
Applied Satellite Technology Pty Ltd  
Aran Plant Pty Ltd  
Arch Engineering Pty Ltd  
Argonaut PCF Limited  
Asset Management Engineers  
Atlas Copco  
ATOM Supply  
Auspan Building Systems Pty Ltd  
Australian Laboratory Services Pty Ltd  
Backfill Pipeline Solutions Pty Ltd  
J.Blackwoods & Son Pty Ltd  
Bluescope Distribution  
Boon Solutions Pty Ltd  
Bradken Resources Pty Limited  
Bring Transport Industries Pty Ltd (Bring Couriers)  
Bullivants Pty Ltd  
Bunnings Group Limited  
C.R Kennedy and Co Pty Ltd  
Cafe Corporate (Aust) Pty Ltd  
CCR Commercial Pty Ltd  
Challenge Pumps Pty Ltd  
ChoiceOne Pty Ltd  
Coates Hire Operations Pty Ltd  
Cockburn Cement Limited  
Corewise Pty Ltd  
Cytec Australia Holdings Pty. Limited  
Department of Energy, Mines, Industry Regulation and Safety  
Dependable Laundry Soutions  
Department of Primary Industries and Resources  
Digital Document Solutions Pty Ltd  
Direct Trades Supply Pty Ltd  
Dynamics G-EX Pty Ltd  
EDL LNG Fuel to Power Pty Ltd  
Emerson Automation Solutions Final  
Environmental Essentials  
Fenner Dunlop Australia Pty Ltd  
Festo Pty. Limited

# Deed of Company Arrangement – Abra Mining

Fields Contracting Engineers  
Fire Rescue Safety Aust Pty Ltd  
Floral Image Perth  
FLSmith Pty Ltd  
Fluid Line Services Pty Ltd  
Freo Group Pty Ltd  
The Trustee for Aivish Family Trust (Fruit Break)  
Fuchs Lubricants Pty Ltd  
Galena Mining Limited (Administrators Appointed)  
Global Communication Services  
Global Pumps Group Pty Ltd  
WA Asset Group Pty Ltd  
Goldfields Hoist and Crane Pty Ltd  
Hansteel Industries Australia Pty Ltd  
Hartac Sales & Distribution Pty Ltd  
Iconic Water Solutions Pty Ltd  
Impact Protective Solutions Pty Ltd  
Jellor Pty Ltd  
Instrowest Pty Ltd  
Integrated Industrial Pty Ltd  
INX Software Pty Ltd  
Iron Mountain Australia Group Services Pty Ltd  
Ishigaki Oceania Pty Ltd  
John Valves Pty Ltd  
JP Pallets  
Kelbush Pty Ltd  
Leeuwin Capital Partners Pty Ltd  
LinkForce  
Maggoteaux Australia Pty Ltd  
Maxem Aviation Pty Ltd  
Maxwell Geoservices Pty Ltd  
McMahon Burnett Transport (Hoylake Nominees Pty Ltd)  
Mid West Ports Authority  
Mills Recruitment (Mills Corporation Pty Ltd)  
Paydirt Technical Services Pty Ltd  
The Trustee for the Black Lake Family Trust (Minerp Consulting)  
Mining Access Legal Pty Ltd  
Mining Corporate Pty Ltd  
Mining Employment Services (MES)  
Mintrex Pty Ltd  
Mitchell River Group Pty Ltd  
MM Electrical Merchandising (Metal Manufacturers Ltd t/a MM Electrical)  
EnviroLab Services (WA) Pty Ltd  
Ecolab Pty Ltd t/a Nalco  
National Pump & Energy  
Office Solutions IT Pty Ltd  
Officeworks  
Onsite Rental Group Operations Pty Ltd  
Operational Geotechs Pty Ltd  
Plant Wash Australia  
Polymer Technologies Pty Ltd  
Procure Logistics Pty Ltd  
Pump and Abrasion Aus Pty Ltd  
Quattro Project Engineering Pty Ltd  
Giacci Bros Pty Ltd  
Quremed Pty Ltd

# Deed of Company Arrangement – Abra Mining

Radiation Services WA  
Red Dust Enterprises Pty Ltd  
Rockwater Pty Ltd  
Rotech Water (The Trustee for Rotech Trust)  
Rowe Scientific Pty Ltd  
S.E.A. Maritime Services Pty Ltd  
Sanax Medical & First Aid Supplies  
Sanwest Pty Ltd  
SETS Enterprises Pty Ltd  
SG Controls Pty Ltd (The Trustee for S & D Gee Family Trust)  
SMS Operations Pty Ltd  
Sonic Health Plus Pty Ltd  
SRG Global Asset Care Pty Ltd  
Statewide Bearings Pty Ltd  
Supagas Pty Limited  
Technical Maintenance Support  
Telstra Limited  
The trustee for Jacobs Family Trust - Geraldton Rubber and Conveyor  
The Trustee for Jake Barrett Investment Trust - Elite Management Australia  
The trustee for Splinter Trust  
The Trustee for The C & T Jones Family Trust  
ARI (AUST) Pty Ltd (The Workers Shop)  
Tiger Tek Pty Ltd  
Toll North Pty Ltd  
The Trustee for TT Joondalup Unit Trust (Total Tools Joondalup)  
Trelleborg Perth Pty Ltd  
Trustee For The Ryem Discretionary Trust & Waterbay Investments Pty Ltd  
Twomeys Mining & Engineering Pty Ltd  
Ugland Engineering Pty Ltd  
Upside Group Pty Ltd  
Valmet Pty Ltd  
VLI Conveyors Pty Ltd  
WA Fuel Supplies Pty Ltd  
Workplace Consulting Australia Pty Ltd (WCA Solutions)  
The Weather Company Pty Limited  
Web-Tech Australia Pty Ltd  
Weir Minerals Aust Ltd  
Westauz Mining Pty Ltd  
Western Diagnostic Pathology Pty Ltd  
Woodside Energy (LNG FUELS AND POWER) Pty Ltd  
XP Relines Pty Ltd

# Deed of Company Arrangement – Abra Mining

## Schedule 7 Pool B Creditors

|                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Eamon Ian Cornelius in respect of any and all Claims in connection with the Portbeam and Cornelius Royalty Agreement.                         |
| Hunan Nonferrous Metals Corp. Ltd. In respect of any and all Claims in connection with the Hunan Royalty Deed.                                |
| Portbeam Holdings Pty Ltd (ACN 066 934 147) in respect of any and all Claims in connection with the Portbeam and Cornelius Royalty Agreement. |

# Deed of Company Arrangement – Abra Mining

## Signing page

EXECUTED as a deed

ABRA

SIGNED, SEALED AND DELIVERED  
for and on behalf of ABRA MINING  
PTY LIMITED (ADMINISTRATORS  
APPOINTED) ACN 110 23 577 by its  
joint and several voluntary  
administrator RICHARD SCOTT  
TUCKER, in the presence of:



Signature of witness



Name of witness (block letters)



Signature of RICHARD SCOTT  
TUCKER

# Deed of Company Arrangement – Abra Mining

EXECUTED as a deed

ADMINISTRATOR

SIGNED, SEALED AND DELIVERED  
by RICHARD SCOTT TUCKER in his  
capacity as joint and several voluntary  
administrator of the Company in the  
presence of:



Signature of witness



Name of witness (block letters)



Signature of RICHARD SCOTT  
TUCKER

# Deed of Company Arrangement – Abra Mining

EXECUTED as a deed

ADMINISTRATOR

SIGNED, SEALED AND DELIVERED  
by ROBERT WILLIAM HUTSON in his  
capacity as joint and several voluntary  
administrator of the Company in the  
presence of:

.....  
Signature of witness

FRASER PAUL HEATH MACRAY  
.....  
Name of witness (block letters)

.....  
Signature of ROBERT WILLIAM  
HUTSON

# Deed of Company Arrangement – Abra Mining

EXECUTED as a deed

## PROPONENT

SIGNED, SEALED AND DELIVERED )  
for and on behalf of ENDURANCE )  
MINING PTY LIMITED ACN 686 341 )  
471 in accordance with section 127(1) )  
of the Corporations Act 2001 (Cth): )



Signature of director

DAVID ADAM BEAMOND

Name of director (block letters)



Signature of director/company  
secretary

RICHARD JAMES CLAYTON

Name of director (block letters)



# Creditors' Trust Deed

Dated

20 May 2025

Abra Mining Pty Limited (Administrators Appointed) ACN 110 233 577 ("the **Company**")

Richard Scott Tucker and Robert William Hutson in their capacity as joint and several voluntary administrators of the Company ("**Deed Administrators**")

**King & Wood Mallesons**

Level 61, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9269 2000  
F +61 2 9269 3999  
DX 113 Sydney  
www.kwm.com  
602-0056167

|                                                     |           |
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# Creditors' Trust Deed

## Details

| Parties             |           |                                                                                                                                                                                                                                            |
|---------------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Company             | Name      | <b>Abra Mining Pty Limited (Administrators Appointed)</b>                                                                                                                                                                                  |
|                     | ACN       | 110 233 577                                                                                                                                                                                                                                |
|                     | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000<br><a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a>                                                                                             |
|                     | Email     | <a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                                                                                                                                                                       |
|                     | Attention | Richard Tucker and Robert Hutson                                                                                                                                                                                                           |
| Deed Administrators | Name      | <b>Richard Scott Tucker and Robert William Hutson</b> in their capacity as joint and several voluntary administrators of the Company                                                                                                       |
|                     | Address   | c/- KordaMentha<br>Level 44, 108 East Georges Terrace<br>Perth WA 6000<br><a href="mailto:rtucker@kordamentha.com">rtucker@kordamentha.com</a>                                                                                             |
|                     | Email     | <a href="mailto:rhutson@kordamentha.com">rhutson@kordamentha.com</a>                                                                                                                                                                       |
|                     | Attention | Richard Tucker and Robert Hutson                                                                                                                                                                                                           |
| Recitals            | <b>A</b>  | On 4 April 2024, the Administrators were appointed voluntary administrators of the Company pursuant to section 436A(1) of the Act.                                                                                                         |
|                     | <b>B</b>  | At the duly convened second meetings of the Company's creditors held on 14 May 2025, it was resolved pursuant to section 439C(a) of the Act that the Company execute the DOCA and the DOCA was executed on or about the date of this Deed. |
|                     | <b>C</b>  | The Company and the Deed Administrators enter into this deed as contemplated by the DOCA in order to facilitate the distribution by the Trustees to the Admitted Creditors in their capacity as beneficiaries of the Trust Fund.           |
|                     | <b>D</b>  | The Deed Administrators have agreed to act as Trustees.                                                                                                                                                                                    |

# Creditors' Trust Deed

## General terms

---

### 1 Interpretation

#### 1.1 Definitions

In this Deed the following definitions apply unless the context requires otherwise.

**Act** means the *Corporations Act 2001* (Cth).

**Administrators** means Mr Richard Scott Tucker and Mr Robert William Hutson in their capacity as joint and several voluntary administrators of the Company.

**Administrators' Liabilities** has the meaning given in the DOCA.

**Administrators' Remuneration** has the meaning given in the DOCA.

**Admitted Claim** means a Claim against the Company that is admitted by the Trustees in accordance with the terms of this Deed.

**Admitted Creditor** means any Creditor who has an Admitted Claim, including for the avoidance of doubt, an Admitted Priority Claim.

**Admitted Priority Claim** means any Admitted Claim which, in a liquidation of the Company, would be entitled to priority of payment pursuant to sections 556(1)(e) to (h) (inclusive), 560 or 561 of the Act, with the winding up of the Company taken to have begun on the Relevant Date.

**ASIC** means the Australian Securities and Investments Commission.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

**Claim** means any "Claim" as defined in the DOCA, which for the avoidance of doubt, does not include a Non-Participating Claim.

**Commencement Date** means the "Satisfaction Date" as defined in the DOCA, provided the DOCA effectuates on such date.

**Court** means the Western Australia registry of the Federal Court of Australia and any appellate court from those courts.

**Creditor** means a person who has a Claim against the Company, and for the avoidance of doubt, excludes a person in relation to any Non-Participating Claim.

**Creditors' Trust** means the trust established by this Deed.

**Deed** means this deed, as varied from time to time.

**Deed Fund** has the meaning given in the DOCA.

**Deed Administrators' Liabilities** has the meaning given in the DOCA.

**Deed Administrators' Remuneration** has the meaning given in the DOCA.

**Dividend** means a distribution paid or to be paid by the Trustees to a Creditor in respect of that Creditor's Entitlement in accordance with clause 6.1.

**DOCA** means the deed of company arrangement executed by the Company, the Deed Administrators and the Proponent, on or around the same date as this Deed.

**Entitlement** means an Admitted Creditor's right to receive Dividend(s) under this Deed with respect to an Admitted Claim.

**Final Dividend** means the last Dividend payment to be made by the Trustees to any Creditor under this Deed.

**GST** means the goods and services tax as imposed by the GST Law, a consumption tax, value added tax, retail turnover tax or tax of a similar nature.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Corporations Act 1999* (Cth) or, if that Act does not exist for any reason, means any legislation imposing or relating to the imposition or administration of a goods and services tax in Australia.

**Initial Trust Fund Amount** means the sum of ten dollars (\$10).

**Non-Participating Claim** means each of the:

- (i) Taurus Claim;
- (ii) Byrncut Claim;
- (iii) GR Engineering Claim;
- (iv) Intertek Claim; and
- (v) Pacific Energy Claim.

**Officer** means any person who, by reason of section 9 of the Act, is an "officer" of any Company.

**Pool A Creditors** means the Creditors described in Schedule 1 of this Deed, and any other trade creditors which do not otherwise meet the definition of Pool B Creditors or Pool C Creditors.

**Pool B Creditors** means the Creditors described in Schedule 2 of this Deed.

**Pool C Creditors** means the Shareholders and the counterparties to the Off-take Agreements.

**Pool D Creditors** means all other Creditors, which are not Pool A Creditors, Pool B Creditors, or Pool C Creditors.

**Prescribed Provisions** means regulations 5.6.11 to 5.6.70A of the Corporations Regulations (inclusive), clauses 2 (*Powers of administrator*) and 8 (*Making claims*) of Schedule 8A of the Corporations Regulations and Subdivisions A to E of Division 6 of Part 5.6 of the Act.

**Proponent** means Endurance Mining Pty Ltd ACN 686 341 471.

**Regulations** means the *Corporations Regulations 2001* (Cth).

**Relevant Date** means 4 April 2024.

**Representatives** means, in relation to the Administrators, Deed Administrators or the Trustees (as the context requires), their firm, partners, employees, agents, advisers and consultants.

**Resolution** means a resolution passed at a meeting of Creditors convened in accordance with clause 9 ("*Meetings of Admitted Creditors*") of this Deed and **Resolve** has a corresponding meaning.

**Statutory Liabilities** means any charge, tax, duty, impost or levy raised by, or by the authority of, any governmental instrumentality, including GST.

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

**Trust Fund** means the fund established under clause 2.3 ("*Declaration*") of this Deed.

**Trustees** means Mr Richard Scott Tucker and Mr Robert William Hutson in their capacity as joint and several trustees of the Creditors' Trust appointed in accordance with this Deed.

**Trustees Act** means the *Trustees Act 1962 (WA)* (as amended).

**Trustees' Liabilities** means any liabilities, debts, costs, fees, charges, disbursements, and expenses of the Trustees, including any Statutory Liabilities, professional fees and expenses and legal fees, incurred in respect of:

- (a) the administration and performance of this Deed pursuant to the Trustees' appointment as trustees of this Deed; and/or
- (b) the preparation, stamping, execution and performance of this Deed.

**Trustees' Remuneration** means the amount calculated in accordance with clause 11.2.

## 1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) terms not defined in this Deed have the meaning given in the DOCA;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes all genders;
- (d) references to a person includes any body corporate, unincorporated body, a corporation, association, partnership, government authority, or other legal entity;
- (e) a reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (f) references to writing include any means of representing or reproducing words (in English), figures, drawings or symbols, in a visible, tangible form;
- (g) references to signature, signing or execution include due execution by a corporation or other relevant entity;
- (h) a reference to any agreement or document is a reference to the agreement or document as amended, novated, supplemented, varied or

replaced from time to time, in accordance with this Deed or that other agreement or document;

- (i) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes;
- (j) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (k) references to clauses, schedules, or annexures refer to clauses, schedules or annexures of this Deed;
- (l) a reference to conduct includes, without limitation, any omission, statement or undertaking whether or not in writing;
- (m) headings, labels used for definitions and the table of contents are used for convenience only and do not affect interpretation;
- (n) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (o) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (p) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this Deed, the document or any relevant part of it;
- (q) when a day on or by which anything to be done is not a Business Day, that thing may be done on the next Business Day; and
- (r) the words "including", "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

### **1.3 Application of the Act and Regulations**

- (a) Subject to any contrary terms of this Deed, the Prescribed Provisions are incorporated in this Deed with all modifications as are necessary to give effect to Part 5.3A of the Act and this Deed, and as if references to the 'liquidator', 'provisional liquidator', 'administrator' or the like, were references to the 'Trustees', references to the 'relevant date' were references to the 'Relevant Date', and references to 'winding up' were references to the arrangement effected by this Deed.
- (b) If there is any inconsistency between the provisions of this Deed and the Act or Regulations, this Deed will prevail to the extent permitted by law.

---

## **2 Declaration of Trust**

### **2.1 Commencement Date**

This Deed has effect on and from the Commencement Date following execution of this document by the Company and the Deed Administrators.

## **2.2 Appointment**

- (a) On the Commencement Date, the Creditors and the Deed Administrators appoint the Trustees as trustees of the Creditors' Trust on the terms and conditions contained in this Deed.
- (b) Subject to the terms of this Deed, the appointment of the Trustees is irrevocable.
- (c) The Trustees accept and agree to their appointment as trustees of the Creditors' Trust.

## **2.3 Declaration**

On the Commencement Date the Trustees acknowledge and declare that, once settled in accordance with the DOCA:

- (a) the Initial Trust Fund Amount;
- (b) the Proponent Contribution (inclusive of the Proponent Contribution Shortfall (if applicable)) (and any accrued interest); and
- (c) the Allowable Deduction Amount (and any accrued interest),

will be held on trust by the Trustees for the parties entitled to those funds in accordance with this Deed.

## **2.4 Name of Creditors' Trust**

The trust constituted by this Deed will be called the "Abra Creditors' Trust".

## **2.5 Trustees' Duties**

The Trustees must:

- (a) to the extent and in the manner the Trustees believe appropriate, collect, sell or otherwise realise the property held on trust (including, for the avoidance of doubt, any choses in action forming part of the Trust Fund);
- (b) at such time(s) as the Trustees consider appropriate, call for formal proofs of debt from some or all Creditors and adjudicate proofs of debt received;
- (c) pay Admitted Claims in accordance with this Deed, including by paying interim distributions;
- (d) otherwise distribute the Trust Fund in accordance with this Deed; and
- (e) to the extent that the Trustees consider it reasonably necessary, receive, consider and report back to Creditors on all issues in relation to the matters covered by this Deed.

## **2.6 Access to records**

The Company will provide the Trustees with free and unrestricted access to the Company's books and records, as and when requested by the Trustees, to enable the Trustees to determine the Claims of the Creditors, or such other purpose as may be required pursuant to this Deed.

---

### **3 Trust Fund**

#### **3.1 Trust Fund**

The Trust Fund shall be comprised of the assets set out in clause **Error! Reference source not found.** ("*Declaration*").

#### **3.2 Trust Deed**

The Trust Fund is to be held by the Trustees for the benefit of the Creditors, the Trustees, the Deed Administrators and the Administrators on the terms of this Deed.

#### **3.3 Postponement**

If proceedings are brought, or threatened to be brought, by any person in respect of the distribution of the Trust Fund, then the Trustees shall be entitled at their sole discretion to postpone the payment of any Entitlement until determined by the Trustees.

---

### **4 Perpetuity Period**

Notwithstanding any other provision in this Deed, each

- (a) interest in property; and
- (b) Trustees' power over or in connection with property,

created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable after the expiry of eighty (80) years commencing on the date of this Deed, but which has not vested or taken effect by that date,

- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

---

### **5 Entitlements of Creditors**

#### **5.1 Entitlement of Admitted Creditors**

- (a) Each Admitted Creditor is entitled to its Entitlement as determined in accordance with the terms of this Deed.
- (b) The Trust Fund is the property that is to be available to pay Admitted Creditors.
- (c) Admitted Creditors will only be entitled to receive a Dividend from the Trust Fund in accordance with this Deed.
- (d) The day on or before which the Claims must have arisen if they are to be admissible under this Deed is the Relevant Date.
- (e) Interest does not accrue on, and is not payable in respect of, any Admitted Claim.
- (f) Each Creditor with a Non-Participating Claim will not seek to prove under, or participate in any dividends declared under, this Deed.

- (g) The Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of distributions of the Trust Fund in payment of Entitlements.

## **5.2 Admissibility of Claims**

Upon the Commencement Date, all Claims shall, in accordance with the DOCA, be treated as Claims under this Deed which may, if admitted by the Trustees, give rise to Entitlements.

## **5.3 Adjudication of proofs**

- (a) Creditors are entitled to submit a proof of debt in respect of their Claim for adjudication by the Trustees in accordance with this Deed.
- (b) Those Creditors entitled to submit a proof of debt to the Trustees are required to lodge their proof of debt on or before the time fixed in accordance with Regulation 5.6.39, or such later date as the Trustees may specify in their absolute discretion.
- (c) The Trustees are to adjudicate the proofs of debt of each Creditor's Claim in accordance with the Prescribed Provisions, the DOCA and this Deed.
- (d) The Trustees may, in their absolute discretion, adjudicate Claims and determine whether to admit (in whole or in part), reject (in whole or in part), or pay Claims under this Deed.
- (e) For the purpose of determining a Creditor's Claim, Regulations 5.6.39 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed (where applicable and with necessary modifications and subject to the terms of this Deed), however the Trustees have absolute discretion to determine and pay any Creditors' Claim at any time without the need for strict compliance with regulations 5.6.39 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations.
- (f) Where a Claim is in a foreign currency, the amount of the Claim that is admissible to proof is the equivalent in Australian currency of the amount of the foreign currency, worked out by reference to the relevant rate published by the Reserve Bank of Australia on or about the date of adjudication.
- (g) Any notice given by the Deed Administrators or Trustees requiring a Creditor to submit particulars of their Claim or formally prove their Claim will be treated as sufficient to comply with regulations 5.6.39 to 5.6.50 (inclusive) of the Corporations Regulations.

## **5.4 Ascertaining Creditors**

- (a) In adjudicating the Creditor's Claims, the Trustees are entitled to adopt the conclusions and findings of the Administrators or Deed Administrators, such that if a Creditor's Claim has been previously rejected, it is to be treated as rejected under this Deed and if a Creditor's Claim has been previously admitted to prove, it is to be treated as having been admitted to prove under this Deed.
- (b) Any power exercised by the Deed Administrators will be done so in accordance with Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act as if references to the liquidator were references to the Deed Administrators, and with such other adaptations as are necessary.

- (c) To avoid doubt, any exercise of power by the Administrators or Deed Administrators to adjudicate the Creditor's Claims prior to the establishment of the Abra Creditors' Trust will be treated as if those powers had been exercised by the Trustees pursuant to this Deed.
- (d) Where the Trustees propose to reject a Claim (whether in full or in part) the Trustees shall send a notice to the relevant Creditor informing them of the proposed rejection and giving them 14 days within which to make an application to the Court to determine any questions relating to that Claim.

## **5.5 Determining Entitlements and Priority**

Subject to any contrary terms of this Deed, in accordance with clause 1.3 (*"Application of the Act and Regulations"*), the Prescribed Provisions apply to the adjudication of Creditor's Claims by the Trustees.

## **5.6 Admitted Priority Claims**

In accordance with section 444DA of the Act, the Trustees are to apply the Trust Fund so that an Admitted Creditor with an Admitted Priority Claim will be entitled to a priority at least equal to what they would have been entitled if the Trust Fund were applied in accordance with sections 556, 560 and 561 of the Act.

## **5.7 Whole of superannuation contribution debt**

In accordance with sections 444DB(1) and 444DB(2) of the Act (with such modifications as necessary), the Trustees must determine that the whole of a debt by way of a superannuation contribution is not admissible to proof against the Company if:

- (a) a debt by way of Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to prove;
 and,
- (b) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.

## **5.8 Part of superannuation contribution debt**

In accordance with sections 444DB(3) and 444DB(4) of the Act (with such modifications as necessary), the Trustees must determine that a particular part of a debt by way of a superannuation contribution is not admissible to proof against the Company if:

- (a) a debt by way of Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to prove;
 and,
- (b) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

## **5.9 Determination of Trustees**

If the Trustees make a determination in accordance with clauses 5.7 and 5.8, such debt is to be treated as extinguished as against the Company.

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# **6 Distribution of Trust Fund**

## **6.1 Manner of distribution**

- (a) The order in which the Trustees are to distribute the Trust Fund is as follows:
  - (i) first, in payment of the:
    - (A) Administrators' Remuneration and Administrators' Liabilities;
    - (B) Deed Administrators' Remuneration and Deed Administrators' Liabilities; and
    - (C) Trustees' Remunerations and Trustees' Liabilities;
  - (ii) secondly, in payment of the Admitted Priority Claims;
  - (iii) thirdly, the maximum amount of \$1,000,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool A Creditors;
  - (iv) fourthly, in payment of the Admitted Claims of each of the Pool B Creditors, the amount which is the lesser of:
    - (A) \$1,150,000 (including any GST) to be applied on a pari passu basis; and
    - (B) in respect of each Pool B Creditor, the amount representing 4% of that Pool B Creditor's Admitted Claim; and
  - (v) fifthly, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool C Creditors; and
  - (vi) finally, the maximum amount of \$5,000 (including any GST) to be applied on a pari passu basis in payment of the Admitted Claims of Pool D Creditors; and
  - (vii) any surplus to the Company.
- (b) Subject to clause 6.1, the Trust Fund will be distributed in accordance with the order of priority specified in sections 556, 560 and 561 of the Act.
- (c) The Trustees may pay Admitted Creditors (if any) by electronic funds transfer.
- (d) The Trustees need not pay a Dividend to an Admitted Creditor if the amount due to them in respect of a Dividend would be less than \$25.
- (e) Payments made out of the Trust Fund in accordance with clause 6.1(a), will be made in the manner (including by way of interim Dividends) and

at the time determined by the Trustees in their absolute discretion after the Commencement Date.

## **6.2 Treatment of Non-Participating Claims**

Notwithstanding any contrary term of this Deed, a Creditor is not entitled to participate in, nor receive any distribution from, and will not prove to recover any distributions from the Trust Fund in respect of any Non-Participating Claim.

## **6.3 Payments not made**

In the event that the Trustees, for any reason, are unable to locate an Admitted Creditor, or if any cheque sent by the Trustees to an Admitted Creditor has not been presented by the time the Creditors' Trust would otherwise terminate, then:

- (a) the Trustees will stop payment of such cheque;
- (b) the moneys represented by such stopped cheque or held by the Trustees on behalf of the Admitted Creditor must be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Act apply, with such modifications as are necessary, to such payment as if references in those sections to "liquidator" were references to the "Trustees" and references to "company" were references to the "Trust" (however, the terms of this Deed and the DOCA prevail to the extent of any inconsistency).

## **6.4 Costs**

Any costs and expenses incurred by a Creditor in asserting a Claim under this Deed will be borne by that Creditor and will not form part of that Creditor's Claim.

## **6.5 No enforcement**

A Creditor shall not take actions or steps to enforce the Creditor's rights to recover the whole or part of the Claim or Entitlement owed to the Creditor whilst the Trustees remain the Trustees.

## **6.6 Postponement**

If proceedings are brought by any person in respect of the distribution of the Trust Fund and the Trustees have made, or apprehend that they will make, a claim on any indemnity which they may have under this Deed, the DOCA or otherwise at law or in equity, then the Trustees are entitled, at their sole discretion, to postpone the payment of any distribution until the proceedings are resolved or otherwise determined by the Trustees.

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# **7 Further action**

## **7.1 Bar to Creditor's Claims and discharge of debts**

- (a) Subject to the terms of this Deed, this Deed may be pleaded by the Company, the Administrators, the Deed Administrators and Trustees against, in set-off or in answer to any Creditor in bar to the Creditor's Claims (irrespective of whether the Creditor has lodged a proof of debt or received a Dividend), as fully and effectively as if the Creditor had executed a binding covenant under seal not to sue.
- (b) Each Creditor must accept its Entitlements under this Deed (even if the amount of any Final Dividend is nil) in full and final satisfaction and

complete discharge of all Claims or Entitlements which the Creditor has, or claims to have, against the Company, the Administrators, the Deed Administrators or the Trustees (irrespective of whether the Creditor has lodged a proof of debt or received a Dividend under this Deed).

## **7.2 Release of Creditor's Claims**

If the Trustees have paid a Creditor its full Dividend(s) under this Deed in relation to the Creditor's Claims and Entitlements, then the Company, the Administrators, the Deed Administrators and the Trustees are forever released and discharged by the Creditor and the Creditor's Claims are extinguished and each Creditor must, if called upon to do so by the Trustees, execute and deliver to the Company, the Administrators, the Deed Administrators and the Trustees such form of release of the Creditor's Claims and Entitlements as the Trustees may require.

## **7.3 Abandonment by Creditors who do not prove**

- (a) A Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:
  - (i) which are not the subject of a proof lodged with the Administrators, Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
  - (ii) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed for appeals under the Regulations.
- (b) In the event that the Deed Administrators declare an interim Dividend pursuant to this Deed, regulation 5.6.65 of the Regulations (with any necessary modifications) will apply to the Claims of any Creditors who fail to submit a proof of debt before the date on which the interim Dividend is paid.

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# **8 Register**

## **8.1 Register**

The Trustees must maintain in Perth, Western Australia, or elsewhere as the Trustees determine, an up-to-date register and must enter in the register in respect of each Admitted Creditor:

- (a) the Admitted Creditor's name and address;
- (b) details of each Admitted Claim; and
- (c) Dividend(s) paid to the Admitted Creditor pursuant to this Deed.

## **8.2 Inspection of register**

The Trustees must keep the register open at all reasonable times during business hours for the inspection of Admitted Creditors or any person authorised in writing by an Admitted Creditor.

### **8.3 Register conclusive**

The register is conclusive evidence of the matters entered on the register.

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## **9 Meetings of Admitted Creditors**

- (a) The Trustees may at any time convene a meeting of Creditors.
- (b) In accordance with clause 1.3, the Prescribed Provisions apply to meetings of Creditors convened for the purposes of this Deed.
- (c) Creditors who have been paid the full amount of their Entitlements under this Deed, will no longer be entitled to attend and participate in meetings of Creditors.

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## **10 Trustees' Powers**

### **10.1 Powers**

Without limiting the powers that the Trustees have by operation of the Trustees Act or otherwise at law or in equity, the Trustees may deal with the property comprising the Trust Fund in any manner as if the Trustees were the legal and beneficial owners of that property, and may also exercise any power in respect of the property comprising the Trust Fund.

### **10.2 Express powers**

Without limiting clause 10.1, for the purposes of administering the Creditors' Trust, the Trustees have the following powers:

- (a) to administer the Trust Fund in accordance with the provisions set out in the DOCA and this Deed;
- (b) to fulfil the Trustees' obligations in accordance with the terms of this Deed;
- (c) to sell, re-invest or otherwise deal with the assets of the Trust Fund;
- (d) to perfect title in any assets of the Trust Fund;
- (e) to insure any assets of the Trust Fund;
- (f) to, at any time, call meetings of Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
- (g) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
- (h) to determine Admitted Claims, and Entitlements, and then to pay Dividends in accordance with the terms of this Deed;
- (i) to act as attorney for the Company or any other person for any purpose associated with the Creditors' Trust or this Deed;
- (j) to enforce compliance with the terms of this Deed;

- (k) to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to it;
- (l) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (m) to convene and hold meetings of Creditors for any purpose as the Trustees consider fit;
- (n) to permit any person authorised by the Trustees to operate any account in the name of the Trustees;
- (o) to do all acts and execute in the name and on behalf of the Creditors' Trust all deeds, receipts and other documents;
- (p) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Creditors' Trust;
- (q) subject to the Trustees Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Creditors' Trust;
- (r) to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in the Company's names or (after assignment) in the Trustees' name, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
  - (i) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
  - (ii) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasion may require; and
  - (iii) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
- (s) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees think fit;
- (t) to bring or defend an application for the vesting or winding up of the Creditors' Trust;
- (u) to report to Creditors from time to time;
- (v) to make interim or other distributions of the Trust Fund;
- (w) to appoint agents to do any business or attend to any matter or affairs of the Creditors' Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;

- (x) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (y) to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which power includes the power to compromise any claim, action, suit or proceeding;
- (z) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Creditors' Trust;
- (aa) subject to the Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Creditors' Trust;
- (bb) to convene and hold meetings of the Creditors for any purpose as the Trustees consider fit;
- (cc) to permit any person authorised by the Trustees to operate any account in the name of the Creditors' Trust;
- (dd) to do all acts and execute in the name and on behalf of the Creditors' Trust all deeds, receipts and other documents;
- (ee) to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any Statutory Liability, including income tax, capital gains tax or GST;
- (ff) to do anything incidental to exercising a power set out in this Deed; and
- (gg) to do anything else that is necessary or convenient for administering the Creditors' Trust.

The Trustees may exercise any discretion under this Deed in the Trustee's absolute and unfettered discretion.

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## 11 Remuneration

### 11.1 Remuneration and costs

From the Trust Fund, the Trustees, Deed Administrators and Administrators will receive:

- (a) payment of the Administrators' Remuneration, the Deed Administrators' Remuneration and the Trustees' Remuneration;
- (b) payment of the Administrators' Liabilities, Deed Administrators' Liabilities and Trustees' Liabilities;
- (c) all reasonably and properly incurred:
  - (i) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with this Deed against the Trustees;
  - (ii) debts, liabilities, actions, suits, proceedings, accounts claims, damages, awards, demands and judgments whatsoever arising out of or in any way connected with the voluntary administration of the Company or the role as Administrators;

- (iii) amounts for which the Administrators, or the Deed Administrators, are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Company, or in accordance with the Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 4443BA of the Act;
- (iv) debts, liabilities, damages, losses and to which the statutory indemnity under section 443D or 4443E of the Act applies;
- (v) amounts for which the Administrators and Deed Administrators and Trustees are entitled to exercise a lien at law or in equity on the property of the Company.

## 11.2 Calculation of remuneration

- (a) The Trustees' Remuneration will be calculated on a time basis at the hourly rates usually charged by the Trustees, their partners and staff for insolvency related matters, together with rates charged by their firm in accordance with the hourly rates charged for such service lines; and
- (b) The Administrators' Remuneration and Deed Administrators' Remuneration will not, without approval by the Court, a committee of creditors or of the Creditors at a meeting of creditors, exceed the amounts approved by the Court or Creditors from time to time (exclusive of GST and disbursements).

## 11.3 Payment

Subject to clause 11.2 (*Calculation of remuneration*), the Trustees, Deed Administrators and Administrators are entitled, at their discretion, to draw from the Trust Fund funds to pay the Administrators' Remuneration, Deed Administrators' Remuneration and the Trustees' Remuneration.

## 11.4 Costs and outlays

- (a) The costs and outlays connected with the negotiation, preparation and execution of the DOCA and this Deed are taken to be costs, charges and expenses incurred by the Trustees in connection with or incidental to its administration of this Deed.
- (b) All Statutory Liabilities, including any stamp duty or GST, payable in connection with the DOCA and this Deed, the Administrators', Deed Administrators', or Trustees' Remuneration and/or the other documents and matters referred to in this Deed, may be treated as costs and expenses of the administration of this Deed
- (c) The Trustees (including their Representatives ) are not liable for any Statutory Liabilities, liabilities, losses, damages, costs or expenses which may result to the Trust Fund, or any person, from the exercise or attempted exercise of the Trustees' Powers, excluding any Statutory Liabilities, liabilities, losses, damages, costs or expenses arising from the dishonesty, fraud, wilful misconduct, gross negligence, breach of duty or criminal act of the Trustees (including their Representatives).

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## **12 Indemnity**

### **12.1 Indemnity**

- (a) In addition to any rights the Trustees, Deed Administrators and Administrators may have under the Act or at law, the Trustees, Deed Administrators and Administrators are entitled to be indemnified out of the Trust Fund for:
  - (i) payment for the Trustees' Liabilities, Deed Administrators' Liabilities and Administrators' Liabilities;
  - (ii) payment for the Trustees' Remuneration, the Deed Administrators' Remuneration and the Administrators' Remuneration;
  - (iii) all actions, suits, proceedings, accounts, claims and demands arising out of or in connection with this Deed or the DOCA which may be commenced, incurred by or made on the Trustee by any person and against all reasonably and properly incurred costs, charges and expenses incurred by the Trustees in relation to them; and
  - (iv) any liability referred to in clause 13 ("*Liability*").
- (b) The Trustees, Deed Administrators and Administrators are not entitled to an indemnity in respect of any Claims arising out of any fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Trustee, Deed Administrator, Administrator or any of their employees, agents or delegates.

### **12.2 Nature of indemnity**

- (a) The indemnity under clause 12.1 ("*Indemnity*") will take effect on and from the Commencement Date and be without limitation as to time and shall endure for the benefit of the Trustees, Deed Administrators, Administrators and their Representatives notwithstanding the removal of the Trustees, Deed Administrators or Administrators, the appointment of a replacement trustee or deed administrator, the determination of the Creditors' Trust for any reason or the termination of this Deed for any reason.
- (b) The Trustees', Deed Administrators' and Administrators' right of indemnity conferred by this clause has priority over the Claims and Entitlements of any Creditor or Creditors generally (including, to the extent permitted by law, any Admitted Claim of an Admitted Priority Creditor).
- (c) The Trustees, Deed Administrators and Administrators are entitled to exercise their right of indemnity conferred by this clause at any time whether or not they have paid or satisfied the Admitted Claims.

### **12.3 Indemnity not affected or prejudiced**

The indemnity under clause 12.1 ("*Indemnity*") will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees, Deed Administrators or Administrators (as applicable), or the removal of the Trustees, Deed Administrators or Administrators (as applicable), or the termination of the DOCA or the Trust for any reason, and shall extend to all actions, suits,

proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, Deed Administrators or Administrators, the approval and execution of this Deed or otherwise; or

- (b) affect or prejudice all or any rights that the Trustees, Deed Administrators or Administrators (as applicable) may have in respect of the Trust Fund or against the Company or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees, Deed Administrators or Administrators in, or incidental to, the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or the Deed Administrators by the DOCA or as voluntary administrators of the Company, or otherwise.

#### **12.4 Lien**

The Trustees, Deed Administrators and Administrators each have a lien over the Trust Fund to secure the rights of indemnity under this Deed.

#### **12.5 Insufficient funds**

Notwithstanding any other provision of this Deed and subject to applicable law, the Trustees are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Remuneration, Administrators' Liabilities, Deed Administrators' Remuneration, Deed Administrators' Liabilities, Trustees' Remuneration and Trustees' Liabilities.

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### **13 Liability**

To the maximum extent permitted by law, the Trustees, Deed Administrators and Administrators shall not be personally liable for:

- (a) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Trustees, Deed Administrators, Administrators or their Representatives in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Company whether before, during or after the period of the operation of this Deed; or
- (c) any debts incurred or any claims, obligations, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any Directors, Officers or Creditors,

except any loss or damage occasioned by the fraudulent or grossly negligent act or omission, wilful default, dishonesty, breach of duty or breach of trust by any Deed Administrator, Administrator, Trustee or any of their partners, employees, agents or delegates.

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## **14 Resignation and removal**

### **14.1 Trustee's death**

- (a) In the event of the death of a Trustee, the Creditors shall have the power by Resolution to appoint a substitute trustee or trustees to carry out their duties.
- (b) Nothing in this clause affects the Trustees' accrued right to:
  - (i) the Trustees' Remuneration or payment of the Trustees' Liabilities and any indemnity pursuant to this Deed or at law; or
  - (ii) the Trustees' supporting lien whether arising pursuant to this Deed or at law.

### **14.2 Trustee's resignation**

- (a) Subject to clause 14.2(b), a Trustee may resign at any time by giving not less than 14 days' prior written notice tendered to Creditors.
- (b) If following the proposed resignation of a Trustee there would be no remaining Trustee, the Trustee must prior to resigning:
  - (i) convene a meeting of Creditors of the Company in accordance with clause 9 ("*Meetings of Admitted Creditors*"), alternatively approach the Court, for the purpose of appointing a replacement trustee of this Deed; and
  - (ii) do all things reasonably necessary to give effect to the replacement of the trustee in accordance with the outcome of the meeting or order of the Court (as applicable).
- (c) Any replacement Trustee must be a registered liquidator.

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## **15 Termination**

### **15.1 Termination of the Creditors' Trust**

The Creditors' Trust will terminate and the Trustees will resign as soon as reasonably practicable upon:

- (a) application of the entirety of the Trust Fund in accordance with this Deed; or
- (b) the expiry of the perpetuity period referred to in clause 4 ("*Perpetuity Period*"),

whichever occurs first.

### **15.2 Previous operation of this deed preserved**

The termination or avoidance, in whole or in part, of this Deed does not affect the efficacy of any act done prior to the termination or avoidance.

### **15.3 Variation of Deed**

This Deed may be varied with the consent of the Trustees by Resolution but only if the variation is not materially different from the proposed variation set out in the notice of that meeting.

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## **16 General**

### **16.1 Invalidity/severance**

If any provision of this Deed is invalid for any reason whatsoever, it will be deemed to have been deleted which will not affect the validity or operation of the remainder of this Deed.

### **16.2 Further assurances**

Each of the parties to this Deed will do, execute, provide, acknowledge and deliver all further acts, deeds, assignments, charges, guarantees, covenants, assurances, documents and things reasonably required to most expeditiously fulfil the purposes and intentions of this Deed.

### **16.3 Notices**

#### **Address of Notice**

- (a) Any notice or document required to be given to or served upon any of the parties pursuant to or in connection with this Deed shall be in writing and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of the transmission has been received) to the party to which such notice is given or served by:
  - (i) any means permitted by the law or the regulations; or
  - (ii) pre-paid post to the person's address last known to the Deed Administrators or Trustees.

#### **Notice by Post**

- (b) Any notice sent by pre-paid post shall be taken to have been received by the addressee at the time at which it would have been delivered in the ordinary course of post.

#### **Notice by Facsimile**

- (c) Any notice given by facsimile on a day which is not a Business Day shall be deemed dispatched on the next succeeding Business Day.

#### **Notice by Email**

- (d) Any notice transmitted by email on a day which is not a Business Day shall be deemed dispatched on the next succeeding Business Day.

#### **Signing of Notice**

- (e) Any notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

#### **16.4 Waivers**

A failure to exercise or a delay in exercising any rights, power or remedy of a party under this Deed will not operate or be construed to operate as a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

#### **16.5 Counterparts**

This Deed may be executed in any number of counterparts and all those counterparts taken together constitute one and the same instrument.

#### **16.6 Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws from time to time being enforced in the state of Western Australia and the parties hereby irrevocably submit to the jurisdiction of the Court including any Courts having appellant jurisdiction there from.

#### **16.7 Stamp duty**

Any stamp duty assessed on this Deed is to be paid out of the Trust Fund.

#### **16.8 GST**

- (a) Words used in this clause 16.8 ("GST") which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context otherwise indicates.
- (b) Unless expressly included, the consideration for any supply under or in connection with the DOCA is exclusive of GST.
- (c) To the extent that any supply made by the Company under or in connection with the DOCA is a taxable supply, the consideration for that supply is increased by an amount determined by the Company, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply (**Additional Amount**).
- (d) The Additional Amount must be paid to the Company by the Trustees within 14 days of it being determined that the supply is a taxable supply.
- (e) the Company must issue a Tax Invoice to the Trustees with respect to the supply to which clause 16.8(c) applies no later than 7 days following payment of the GST inclusive consideration determined under that clause.

#### **16.9 Survival**

This clause and clauses 7.1, 7.2, 10, 12, 13 and 15.2 survive termination of this Deed.

#### **16.10 Further cooperation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Deed.

#### **16.11 Acts and omissions**

No party is liable for an act or omission of another party, except to the extent set out in this Deed.

#### **16.12 Governing Law**

- (a) This Deed, and the powers and duties of the Trustees, are governed by the laws of Western Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the Courts.

# Creditors' Trust Deed

## Signing page

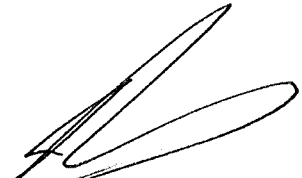
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ABRA

SIGNED, SEALED AND DELIVERED )  
for and on behalf of ABRA MINING )  
PTY LIMITED (ADMINISTRATORS )  
APPOINTED) ACN 110 23 577 by its )  
joint and several voluntary )  
administrator RICHARD SCOTT )  
TUCKER, in the presence of: )

  
..... )  
Signature of witness )

  
..... )  
Name of witness (block letters) )

  
..... )  
Signature of RICHARD SCOTT )  
TUCKER )

**EXECUTED** as a deed

**DEED ADMINISTRATOR**

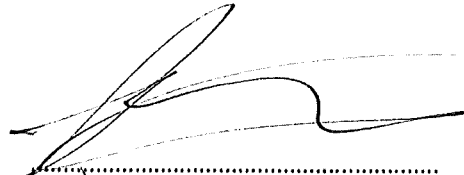
**SIGNED, SEALED AND DELIVERED**  
by **RICHARD SCOTT TUCKER** in his  
capacity as joint and several deed  
administrator of the Company in the  
presence of:



Signature of witness



Name of witness (block letters)



Signature of **RICHARD SCOTT  
TUCKER**

# Creditors' Trust Deed

EXECUTED as a deed

## DEED ADMINISTRATOR

SIGNED, SEALED AND DELIVERED  
by **ROBERT WILLIAM HUTSON** in his  
capacity as joint and several voluntary  
administrator of the Company in the  
presence of:

Signature of witness

FRASER PAUL HEATH MACKAY

Name of witness (block letters)

Signature of ROBERT WILLIAM  
HUTSON

# Schedule 1

28 Villages Pty Ltd  
Centrecare Inc (Access Welbeing)  
Advanced Electrical Equipment Pty Ltd  
Advanced Mining Production Systems Pty Ltd  
Aerodrome Management Services Pty Ltd  
ALS Metallurgy Pty Ltd  
AmSpec CR Cox Pty Ltd  
Applied Satellite Technology Pty Ltd  
Aran Plant Pty Ltd  
Arch Engineering Pty Ltd  
Argonaut PCF Limited  
Asset Management Engineers  
Atlas Copco  
ATOM Supply  
Auspan Building Systems Pty Ltd  
Australian Laboratory Services Pty Ltd  
Backfill Pipeline Solutions Pty Ltd  
J.Blackwoods & Son Pty Ltd  
Bluescope Distribution  
Boon Solutions Pty Ltd  
Bradken Resources Pty Limited  
Bring Transport Industries Pty Ltd (Bring Couriers)  
Bullivants Pty Ltd  
Bunnings Group Limited  
C.R Kennedy and Co Pty Ltd  
Cafe Corporate (Aust) Pty Ltd  
CCR Commercial Pty Ltd  
Challenge Pumps Pty Ltd  
ChoiceOne Pty Ltd  
Coates Hire Operations Pty Ltd  
Cockburn Cement Limited  
Corewise Pty Ltd  
Cytec Australia Holdings Pty. Limited  
Department of Energy, Mines, Industry Regulation and Safety  
Dependable Laundry Soutions  
Department of Primary Industries and Resources  
Digital Document Solutions Pty Ltd  
Direct Trades Supply Pty Ltd  
Dynamics G-EX Pty Ltd  
EDL LNG Fuel to Power Pty Ltd  
Emerson Automation Solutions Final  
Environmental Essentials  
Fenner Dunlop Australia Pty Ltd  
Festo Pty. Limited  
Fields Contracting Engineers  
Fire Rescue Safety Aust Pty Ltd  
Floral Image Perth  
FLSmidth Pty Ltd  
Fluid Line Services Pty Ltd

Freo Group Pty Ltd  
 The Trustee for Aivish Family Trust (Fruit Break)  
 Fuchs Lubricants Pty Ltd  
 Galena Mining Limited (Administrators Appointed)  
 Global Communication Services  
 Global Pumps Group Pty Ltd  
 WA Asset Group Pty Ltd  
 Goldfields Holst and Crane Pty Ltd  
 Hansteel Industries Australia Pty Ltd  
 Hartac Sales & Distribution Pty Ltd  
 Iconic Water Solutions Pty Ltd  
 Impact Protective Solutions Pty Ltd  
 Jellor Pty Ltd  
 Instrowest Pty Ltd  
 Integrated Industrial Pty Ltd  
 INX Software Pty Ltd  
 Iron Mountain Australia Group Services Pty Ltd  
 Ishigaki Oceania Pty Ltd  
 John Valves Pty Ltd  
 JP Pallets  
 Kelbush Pty Ltd  
 Leeuwin Capital Partners Pty Ltd  
 LinkForce  
 Magotteaux Australia Pty Ltd  
 Maxem Aviation Pty Ltd  
 Maxwell Geoservices Pty Ltd  
 McMahon Burnett Transport (Hoylake Nominees Pty Ltd)  
 Mid West Ports Authority  
 Mills Recruitment (Mills Corporation Pty Ltd)  
 Paydirt Technical Services Pty Ltd  
 The Trustee for the Black Lake Family Trust (Minerp Consulting)  
 Mining Access Legal Pty Ltd  
 Mining Corporate Pty Ltd  
 Mining Employment Services (MES)  
 Mintrex Pty Ltd  
 Mitchell River Group Pty Ltd  
 MM Electrical Merchandising (Metal Manufacturers Ltd t/a MM Electrical)  
 Envirolab Services (WA) Pty Ltd  
 Ecolab Pty Ltd t/a Nalco  
 National Pump & Energy  
 Office Solutions IT Pty Ltd  
 Officeworks  
 Onsite Rental Group Operations Pty Ltd  
 Operational Geotechs Pty Ltd  
 Plant Wash Australia  
 Polymer Technologies Pty Ltd  
 Procure Logistics Pty Ltd  
 Pump and Abrasion Aus Pty Ltd  
 Quattro Project Engineering Pty Ltd  
 Giacci Bros Pty Ltd  
 Quremed Pty Ltd  
 Radiation Services WA  
 Red Dust Enterprises Pty Ltd  
 Rockwater Pty Ltd  
 Rotech Water (The Trustee for Rotech Trust)  
 Rowe Scientific Pty Ltd

S.E.A. Maritime Services Pty Ltd  
 Sanax Medical & First Aid Supplies  
 Sanwest Pty Ltd  
 SETS Enterprises Pty Ltd  
 SG Controls Pty Ltd (The Trustee for S & D Gee Family Trust)  
 SMS Operations Pty Ltd  
 Sonic Health Plus Pty Ltd  
 SRG Global Asset Care Pty Ltd  
 Statewide Bearings Pty Ltd  
 Supagas Pty Limited  
 Technical Maintenance Support  
 Telstra Limited  
 The trustee for Jacobs Family Trust - Geraldton Rubber and Conveyor  
 The Trustee for Jake Barrett Investment Trust - Elite Management Australia  
 The trustee for Splinter Trust  
 The Trustee for The C & T Jones Family Trust  
 ARI (AUST) Pty Ltd (The Workers Shop)  
 Tiger Tek Pty Ltd  
 Toll North Pty Ltd  
 The Trustee for TT Joondalup Unit Trust (Total Tools Joondalup)  
 Trelleborg Perth Pty Ltd  
 Trustee For The Ryem Discretionary Trust & Waterbay Investments Pty Ltd  
 Twomeys Mining & Engineering Pty Ltd  
 Ugland Engineering Pty Ltd  
 Upside Group Pty Ltd  
 Valmet Pty Ltd  
 VLI Conveyors Pty Ltd  
 WA Fuel Supplies Pty Ltd  
 Workplace Consulting Australia Pty Ltd (WCA Solutions)  
 The Weather Company Pty Limited  
 Web-Tech Australia Pty Ltd  
 Weir Minerals Aust Ltd  
 Westauz Mining Pty Ltd  
 Western Diagnostic Pathology Pty Ltd  
 Woodside Energy (LNG FUELS AND POWER) Pty Ltd  
 XP Relines Pty Ltd