

Elmore Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 057 140 922
Peko Iron Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 652
243 733
Peko Gold Lending Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 639
981 767
ICA Mining Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 629 874
246
Peko Bull Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 608 133 257
Peko Rehabilitation Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed)
ACN 076 018 776
Sitzler Savage Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 089 842
875
DHAAB Mining Pty Ltd (Administrators Appointed) ACN 640 269 709
Fratres Mining Pty Ltd (Administrators Appointed) ACN 639 981 507
(together, the **Companies**)

Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph in their capacity as joint and
several deed administrators of each of the Companies (the **Deed Administrators**)

Deed of Company Arrangement Elmore Group

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This Deed is made on 16 August 2024

Parties

- 1 Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph each of KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000, in their capacity as joint and several administrators of each of the Companies under this Deed (the **Deed Administrators**).
- 2 Elmore Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 3 Peko Iron Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 4 Peko Gold Lending Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 5 ICA Mining Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 6 Peko Bull Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 7 Peko Rehabilitation Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 8 Sitzler Savage Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 9 DHAAB Mining Pty Ltd (Administrators Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.
- 10 Fratres Mining Pty Ltd (Administrators Appointed) of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000.

(each a **Company**, and together, the **Companies**).

Recitals

- A On 6 February 2024, the Administrators were appointed pursuant to Part 5.3A of the Act.
- B The Administrators have formed the view that it would be in the interests of each of the Companies' creditors for the companies comprising the Elmore Group to execute a Deed of Company Arrangement so a more fulsome DOCA proposal can be developed by the Directors or an alternative proponent.
- C On 26 July 2024, at meetings of each of the Companies' creditors convened concurrently pursuant to section 439A of the Act, the creditors of each of the Companies resolved that each Company execute a deed of company arrangement on terms substantially in the form of this Deed.
- D The Deed Administrators have consented to be the administrators of this Deed.
- E Subject to the terms of this Deed, this Deed binds all Creditors of the Companies, in accordance with section 444D of the Act, and also binds the Companies, and its Officers and Members in accordance with section 444G of the Act.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

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

Administration Period means the period beginning on the Relevant Date and ending on the Commencement Date.

Administrators means Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph (or any of them), in their respective capacities as joint and several voluntary administrators of each of the Companies.

Business Day means any day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for normal banking business in Perth, excluding Saturdays and Sundays.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Claim means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Companies or by any agreement, circumstance or event, occurring on or before the Relevant Date.

Commencement Date means the date of this Deed, being the date on which the last of the Deed Administrators or the Companies executes this Deed.

Costs includes costs, charges, fees (including legal fees), government charges, taxes (including any stamp duty and taxes required to be paid by the Deed Administrators in accordance with clause 15.1 of this Deed) and expenses, including (without limitation) those incurred:

- (a) in connection with advisers;
- (b) in connection with the performance, or as a result of any actual or attempted execution or exercise or failure to execute or exercise of the Administrators' and Deed Administrators' duties, obligations and responsibilities under the Act and the Deed during the Administration Period and the Deed Period;
- (c) in the preparation, approval and/or implementation of this Deed; and
- (d) in the preparation and/or implementation of any documents necessary to or associated with approval of this Deed.

Court means any court having jurisdiction to hear and determine matters under the Act.

Creditor means any person who has a Claim against any one or more of the Companies.

Deed means this Deed of Company Arrangement as amended from time to time.

Deed Administrators means Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph (or any of them), in their respective capacities as administrators of this Deed of Company Arrangement of the Companies and any successor to that office appointed pursuant to the Act.

Deed Period means the period commencing on the Commencement Date and ending on the Deed Termination Date.

Deed Termination Date means the Fixed Date or any earlier date on which this Deed terminates.

Directors means each person that is, from time to time, a director of the Companies within the meaning of section 9 of the Act.

Employee means any person who was or is presently employed by any of the Companies.

Enforcement Process has the same meaning as in section 9 of the Act.

Fixed Date means sixty (60) days after the Commencement Date, or such other date as may be approved by Creditors as a variation to this Deed, or fixed by the Deed Administrators (with immediate effect and without the need for creditor approval or notice) but not beyond 31 December 2024.

GST means any tax imposed by or under the GST Act without regard to input tax credit.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

Insolvency Practice Schedule (Corporations) means Schedule 2 to the Act (titled the '*Insolvency Practice Schedule (Corporations)*').

Insured Claim means a Claim which a Creditor has against one or more of the Companies, which would have been entitled to priority in a liquidation of the Companies under section 562 of the Act, where:

- (a) that Company is insured against the Claim under a contract of insurance (not being a contract of reinsurance) entered into before the Relevant Date; and
- (b) an amount in respect of that Claim would be payable by the insurer to the Company under the contract of insurance,

but only to the extent of such part of the Claim as would be discharged by the payment from the insurer and provided that the Creditor complies with the requirements of clause 7 in relation to such a Claim.

Lessor means any person who is the legal or beneficial owner of Property, leased or hired by any of the Companies, in the possession of or occupied by any of the Companies at the date of execution of this Deed.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss of whatever description irrespective of when the acts, events or things giving rise to the liability or obligation accrued.

Loss includes any loss, damage, cost, Claim, liability or expense.

Meeting means the concurrent meetings of each of the Companies' creditors held on 26 July 2024, pursuant to s 439A(1) of the Act.

Member has the meaning given to it in section 9 of the Act.

Officer has the meaning given to it in section 9 of the Act.

Other Liabilities means all liabilities other than Costs (including claims, suits, actions and debts) incurred in the performance of the Deed Administrators' duties, obligations and responsibilities under the Act and this Deed during the Deed Period.

Owner means any person who is the legal or beneficial owner of property in the possession of any of the Companies at the Commencement Date.

Powers means the rights, powers, privileges, functions, authorities and discretions:

- (a) given to the Deed Administrators under this Deed;
- (b) stated in clause 2 of Schedule 8A of the Regulations;
- (c) conferred by a Company's constitution (if any) or otherwise by law on its Directors;
- (d) stated as being available to deed administrators in the Act or Regulations;
- (e) arising by operation of law.

PPSA means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.

Prescribed Provisions means the provisions prescribed by section 444A(5) of the Act and as contained in Schedule 8A of the Regulations (but excluding regulations 3(c)).

Property has the same meaning as in section 9 of the Act.

Receivers and Managers means Richard Scott Tucker and John Allan Bumbak in their capacity as joint and several Receivers and Managers of each of the Receivership Companies.

Receivership Companies means each of:

- (a) Elmore Ltd (Administrators Appointed) (Receivers and Managers Appointed);
- (b) Peko Iron Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed);
- (c) Peko Gold Lending Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed);
- (d) ICA Mining Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed);
- (e) Peko Bull Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed);
- (f) Peko Rehabilitation Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed); and
- (g) Sitzler Savage Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed).

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

Related Entity has the meaning given to it in section 9 of the Act.

Relevant Date means 6 February 2024, being the date of commencement of the voluntary administration of each of the Companies.

Remuneration means the remuneration payable to the Deed Administrators or Administrators (as applicable) for work performed by them, their partners, employees, contractors, advisers, delegates or agents, including with respect to acting as administrators of this Deed as determined in accordance with clause 11.1 and section 60-5 of the Insolvency Practice Schedule (Corporations).

Resolution means the resolutions of each of the Companies' creditors passed at the Meeting approving this Deed.

Secured Creditor means each of Royal Advance (H.K.) Investment Ltd and Oz Professionals NSW 4 Pty Ltd as trustee for the Chambour Family Trust.

Security means any arrangement relating to the Property of a Company which provides for and secures the payment of any Claim and includes any 'security interest' as defined in subsections 12(1) or 12(2) of the PPSA.

Security Interest means any security interest arising out of or in consequence of any Security held in respect of a Company.

Superannuation Contribution means a contribution payable by a Company to a fund or scheme for the purposes of making provision for, or obtaining, superannuation benefits for an Employee, or for dependents of an Employee.

Superannuation Debt means a claim or debt (or part thereof) against a Company by way of Superannuation Contribution.

Superannuation Guarantee Charge means a charge imposed by the *Superannuation Guarantee Charge Act 1992* (Cth).

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to an entity is a reference to that entity in its own right and in its capacity as trustee of any trust;
- (b) words importing the singular will (where appropriate) include the plural and vice versa;
- (c) words importing any one gender will (where appropriate) include the other gender and vice versa;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) words importing natural persons will (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (f) words “written” and “in writing” include any means of visible reproduction of words in a tangible and permanently visible form;
- (g) headings are for convenience or ease of reference only and will not affect the meaning or interpretation of this Deed;
- (h) references to any statutory enactment or law will be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- (i) references to parts, clauses, paragraphs and schedules (whether those words are capitalised or not) will be construed as references to the parts, clauses, paragraphs and schedules of and to this Deed;
- (j) unless otherwise stated, references to Sections will be construed as references to Sections of the Act and references to Regulations will be construed as references to the Regulations;
- (k) a term of expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act;
- (l) references to an “agreement” include any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

- (m) references to an agreement or document (including a reference to this Deed) are to the agreement or document as amended, substituted, novated, supplemented, varied or replaced;
- (n) references to the rights or obligations of two or more persons under this Deed will be interpreted as entitling or obliging them jointly and severally;
- (o) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (p) a construction that would promote the purpose or object underlying this Deed (whether or not stated in this Deed) is to be preferred to a construction that would not promote that purpose or object;
- (q) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (r) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (s) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (t) a reference to time is to Australian Western Standard Time; and
- (u) no rule of construction applies to the disadvantage of a party to this Deed because that party was responsible for the preparation of this Deed or any part of it.

1.3 Inconsistency with Act or Regulations

- (a) If there is any inconsistency between the provisions of this Deed and the Act, the Regulations, the Insolvency Practice Schedule (Corporations), or the Insolvency Practice Rules (Corporations), this Deed prevails to the extent permitted by law.
- (b) The Prescribed Provisions are included in this Deed to the extent they are not inconsistent with the provisions of this Deed. In the event that a provision of this Deed is the same or substantially the same as a Prescribed Provision, the terms of this Deed prevail.

1.4 Other inconsistencies

If there is any inconsistency between the provisions of this Deed and the constitution of any of the Companies or any other obligation binding on any of the Companies, the provisions of this Deed prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things to remove such inconsistency, the costs of which will be paid out of the indemnity and/or lien provided under clause 11.2.

2 Objects of this Deed

The objects of this deed are:

- (a) to allow the Deed Administrators to continue the administration and investigation of the Companies' business, property and affairs;
- (b) to enable interested parties to formulate and submit a proposal to the Deed Administrators for the restructure or rearrangement of the Companies' business, property and affairs;

- (c) to enable the Deed Administrators to report to Creditors and allow Creditors to approve any proposal to restructure or rearrange the Companies' business, property and affairs; and
- (d) to thereby provide for potentially greater returns for Creditors than would result from an immediate winding up of each of the Companies.

3 Conditions precedent

- (a) The operation of this Deed is subject to and conditional upon its execution by each person named as a party to it on or before 16 August 2024 (or such further period as the Court allows).
- (b) If as a result of a failure by the parties to execute this Deed, this Deed has not come into full force and effect on or prior to the expiration of the period specified in clause 3(a), then this Deed will terminate automatically.

4 Commencement of this Deed

Subject to satisfaction of the condition precedent in clause 3(a), this Deed will commence and take effect on the Commencement Date.

5 Moratorium

5.1 Deed binds all persons

- (a) This Deed binds:
 - (i) in accordance with section 444D of the Act, all Creditors in relation to all Claims; and
 - (ii) in accordance with section 444G of the Act, the Company, its Officers and Members and the Deed Administrators.
- (b) Notwithstanding clause 5.1(a), nothing in this Deed restricts or otherwise affects any right of a Secured Creditor to realise or otherwise deal with its Security to the extent permitted by section 444D(2) of the Act

5.2 Moratorium on Claims

During the Deed Period, subject to clause 5.1(b):

- (a) the provisions in sections 440A, 440B and 440D of the Act will continue to apply as if each of the Companies remained in voluntary administration; and
- (b) without limiting clause 5.2(a), a Creditor bound by this Deed cannot:
 - (i) make or concur in an application for an order to wind up any one or more of the Companies;
 - (ii) proceed with such an application made before this Deed became binding on such person;
 - (iii) begin, revive or continue or take any further steps:
 - (A) in any action, suit, mediation or proceeding against any one or more of the Companies or in relation to any of their property;
 - (B) in respect of any Enforcement Process in relation to any Company's property;

- (C) in any arbitration against any one or more of the Companies or to which any one or more of the Companies is a party;
 - (iv) take any action whatsoever to seek to recover any part of its Claim from any one or more of the Companies; or
 - (v) otherwise enforce any right it may have or acquire against any one or more of the Companies in respect of any Claim,
- except in the case only of clauses 5.2(b)(iii)(A) and 5.2(b)(iii)(B) and only to the extent concerning Property, with leave of a Court and in accordance with such terms (if any) as a Court imposes.

5.3 No limitation

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

- (a) to make an application under section 444F of the Act; or
- (b) to apply for orders or directions pursuant to the Act (including, without limitation, section 447A(1) of the Act or 90-15 of the Insolvency Practice Schedule).

6 Property available to pay Creditor claims

- (a) Unless this Deed is varied by a resolution of Creditors or otherwise, no Property of the Companies is available under this Deed to pay the Claims of Creditors.
- (b) In the event Property of a Company is available for distribution to Creditors, any monies distributed will be applied in accordance with the following priority provided in sections 556, 559, 560 and 561 of the Act, in relation to that Company. That is:
 - (i) first, to pay any liabilities properly incurred by the Administrators during the course of the Administration and/or the Deed Administrators during the Deed Period;
 - (ii) second, to pay the Administrators' and Deed Administrators Remuneration and any other Costs;
 - (iii) third, to pay any Employee entitlements of the Company in accordance with clause 8 of this Deed; and
 - (iv) fourth, to pay dividends to the ordinary unsecured Creditors of the Company.

7 Insured Claims

7.1 Rights of Creditors who have Claims covered by insurance

If insurance is held by or on behalf of any one or more of the Companies in respect of an Insured Claim:

- (a) the Creditor may, in relation to its Insured Claim and notwithstanding that the Commencement Date has occurred, take action to recover the amount due in respect of the Insured Claim against the relevant Company, but such action must not exceed what is necessary to obtain payment from the insurer;
- (b) to the extent that the Creditor is able, by settlement, arbitral award or judgment, to obtain payment from the insurer on account of the Insured Claim, the Creditor may retain that amount in full satisfaction of its Claim;

- (c) the Company is not required to provide assistance to a Creditor in relation to any Insured Claim under this clause or take any action in response to enforcement action taken by a Creditor in accordance with this clause; and
- (d) a Creditor in relation to any Insured Claim under this clause unconditionally and irrevocably indemnifies the relevant Company against any and all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Company in connection with such Insured Claim.

7.2 Release of Insured Claims where payment not obtained from insurer

To the extent that the Creditor is unable to seek or obtain payment on account of its Insured Claim from the insurer (including, without limitation, by reason of any excess or deductible applicable to the insurance policy, or failure by the Company to take action) this Deed operates as a complete release and bar to that part of the Creditor's Insured Claim which has not been met by the insurer.

8 Employee Claims

8.1 Priority Employee Claims

For the purposes of s 444DA of the Act, any Employee will retain a priority until the Deed Termination Date in respect of the Property under the Deed Administrators' control at least equal to what they would have been entitled to if the property of the Company which employed that Employee had been applied in accordance with sections 556, 559, 560 and 561 of the Act.

8.2 Superannuation contribution

For the purposes of section 444DB of the Act, the Deed Administrators must determine that a Superannuation Debt is not admissible to proof against the Companies if:

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

9 Deed Administrators

9.1 Appointment

- (a) The Deed Administrators are appointed to administer this Deed.
- (b) The Deed Administrators consent to and accept their appointment to administer the Deed.

9.2 Joint and Several Appointment

- (a) The appointment of the Deed Administrators is a joint and several appointment.
- (b) The rights, privileges, functions and Powers may be exercised by the Deed Administrators jointly or severally.

9.3 Management after Commencement Date

- (a) The Deed Administrators shall be responsible for the management, operation and control of the business and affairs of the Companies throughout the Deed Period or until the

Deed Administrators retire or are removed from office in accordance with this Deed or the Act.

- (b) The above clause 9.3(a) is subject to, and without prejudice to, the Receivers and Managers' appointment over the Receivership Companies.

9.4 Agent of the Companies

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators will act as agent for and on behalf of each of the Companies.

9.5 Powers of Deed Administrators

The Deed Administrators have the Powers.

9.6 Solicitors and consultants

- (a) The Deed Administrators may engage solicitors and consultants.
- (b) The Deed Administrators may delegate their Powers including by way of appointing agents and may authorise such agents to act on behalf of the Deed Administrators or the Companies.

9.7 Reasonable care and diligence

The Deed Administrators agree to:

- (a) act honestly in exercising their Powers and performing their functions and duties under this Deed; and
- (b) exercise the degree of care and diligence that a reasonable person would exercise in the circumstances of each of the Companies.

9.8 Adjudication on proofs of debts

The Deed Administrators may call for an adjudication on proofs of debts from Creditors to enable the Deed Administrators to determine the size of the creditor pool.

9.9 Insufficient Property

Except as required by law, and notwithstanding anything else in this Deed, the Deed Administrators are not required to administer the Deed if there is insufficient Property to pay the Deed Administrators' Remuneration, Administrators' Remuneration, and Costs.

9.10 Limitation of Deed Administrators' liability

Subject to the Act and to the extent permitted by law, in the performance or exercise, or purported performance or exercise, of any of the Deed Administrators' functions, Powers and duties under this Deed, except in the case of fraud, unlawful or dishonest conduct, the Deed Administrators will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators may incur on behalf of any of the Companies pursuant to this Deed;
- (b) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators in the performance of the Deed Administrators' powers, functions and duties under this Deed; or
- (c) any debt payable or liabilities incurred by the Companies after the Commencement Date including any amounts payable by the Deed Administrators for services rendered, goods

bought or property hired, leased, used or occupied by or on behalf of any of the Companies.

9.11 Deed Administrator's resignation

Any Deed Administrator may resign at any time by giving not less than 10 Business Days' prior written notice to each of the Companies, unless that resignation would result in there being no remaining Deed Administrators in which event the Deed Administrator must:

- (a) convene meetings of Creditors of each of the Companies in accordance with clause 12.2 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 9.11(b) above.

10 Powers of Directors other than Deed Administrators suspended

10.1 Directors remain in office

The Directors of each of the Companies remain in office throughout the Deed Period unless they resign or are otherwise removed by the Deed Administrators.

10.2 Assistance

The Directors of the Companies must:

- (a) provide to the Deed Administrators such assistance and co-operation as may be reasonably required by the Deed Administrators in the exercise of the powers, functions and duties conferred on the Deed Administrators by this Deed and under the Act;
- (b) carry out and perform such functions and powers as may be delegated to them by the Deed Administrators; and
- (c) perform their obligations pursuant to this Deed.

10.3 No exercise of power without consent

Subject to clause 10.4, while the Companies are subject to this Deed, a person (other than the Deed Administrators) cannot perform or exercise and must not purport to perform or exercise a function or power as a Director or Officer of a Company except with the prior written approval of the Deed Administrators.

10.4 Statutory duties

While they remain Directors, the Directors of each of the Companies will not be relieved of their statutory duties as Directors and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.

10.5 Receivers unaffected

Nothing in this clause 10 affects or suspends the rights and powers of the Receivers and Managers appointed over any or all of the Companies.

11 Deed Administrators' remuneration, costs and other liabilities

11.1 Remuneration, costs and other liabilities

Subject to section 60-5 of the Insolvency Practice Schedule (Corporations), the Deed Administrators, their partners and employees will be:

- (a) remunerated and reimbursed by each of the Companies in respect of any work done by them as Deed Administrators with respect to each Company, at the hourly rates charged from time to time by the Deed Administrators, as the case may be; and
- (b) reimbursed by each of the Companies for all Costs and Other Liabilities incurred with respect to each Company, except in the instance of fraud or any unlawful or dishonest conduct on the part of the Deed Administrators.

11.2 Indemnity and lien

To the maximum extent permitted by law, the Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified out of the property of each of the Companies for:

- (a) as to the Deed Administrators in their administration of this Deed:
 - (i) the Deed Administrators' right to Remuneration and reimbursement under this Deed, and otherwise at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Act;
 - (ii) all Costs and Other Liabilities incurred by them;
 - (iii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to any debts incurred by any one or more of the Companies, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
 - (iv) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, or in connection with or incidental to the Deed Administrators' administration of this Deed; and
- (b) as to the Deed Administrators in their former capacity as Administrators of the Companies:
 - (i) the Administrators' right of Remuneration and reimbursement as voluntary administrators of each of the Companies pursuant to Part 5.3A of the Act as is approved from time to time under the Insolvency Practice Schedule;
 - (ii) all Costs and Other Liabilities incurred by them;
 - (iii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, or in connection with or incidental to any debts incurred by any of the Companies, the Administrators or the Administrators' partners or employees in the course of the administration of each of the Companies; and

- (iv) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Administrators or the Administrators' partners or employees, arising out of, or in connection with or incidental to the Administrators' administration of the Companies.
- (c) The Deed Administrators and Administrators are not entitled to an indemnity out of the property of any of the Companies against any claims arising out of fraud, unlawful or dishonest conduct by the Deed Administrators or the Administrators, and in each case, their partners or employees.
- (d) The indemnity shall not:
 - (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators or the Administrators, and extends 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 the Administrators, the approval and execution of this Deed or otherwise; or
 - (ii) affect or prejudice any or all rights that the Deed Administrators or the Administrators may have against any one or more of the Companies or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators or the Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators or the Administrators by this Deed or otherwise.
- (e) For the avoidance of doubt, the limitation of the Deed Administrators' indemnity and lien pursuant to clause 11.2(b) does not otherwise limit their rights to a statutory, legal or equitable indemnity.

11.3 Continuing Indemnity

The indemnity in clause 11.2 of this Deed is a continuing indemnity and will endure despite the removal of the Deed Administrators or the appointment of new Deed Administrators or the termination of this Deed for any reason whatsoever.

11.4 Indemnity not affected or prejudiced

The indemnity under clauses 11.2 and 11.3:

- (a) extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or Deed Administrators, the approval and execution of this Deed;
- (b) will not be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators and extends to cover any actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators or defect in the approval or execution of the Deed or otherwise;
- (c) will not affect or prejudice all or any rights that the Deed Administrators may have against the Companies or any other person to be indemnified against Costs and Other Liabilities incurred by the Deed Administrators in the performance of, or incidental to, any of the powers or authorities conferred on the Deed Administrators by this Deed or otherwise.

12 Reporting and Meetings of Creditors

12.1 Reporting

- (a) During the Deed Period, the Deed Administrators will:
 - (i) conduct further investigations into the affairs of the Companies, for the purposes of maximising funds available for distribution to Creditors;
 - (ii) seek proposals for the restructure or rearrangement of the Companies' business, property and affairs; and
 - (iii) report to Creditors, including by providing a report within 60 days of the Commencement Date and every second month thereafter for the duration of the Deed Period.
- (b) A report prepared under the above clause 12.1(a)(iii) will include:
 - (i) a summary of significant changes and work undertaken since the previous report to Creditors;
 - (ii) the investigations conducted by the Deed Administrator since the previous report to Creditors;
 - (iii) fees charged and disbursements paid by the Deed Administrator since the previous report to Creditors;
 - (iv) a summary of the receipts and payments during the operation of this Deed;
 - (v) the receipt of proposals by prospective proponents made to the Deed Administrator which may, in the Deed Administrators' view, feasibly result in a variation to this Deed;
 - (vi) if possible, an estimated Deed Termination Date or an estimated date of when a proposal to vary the Deed will be made to Creditors.
- (c) The reporting requirements set out in this clause 12.1 are subject to any obligation of confidentiality or privilege, arising by way of agreement or otherwise, to which the Deed Administrator is subject. In addition, if the Deed Administrators consider that the disclosure of a proposal may adversely affect the implementation or completion of such a proposal, the Deed Administrator is not required to include it in the report to Creditors.

12.2 Meetings of Creditors

- (a) The Deed Administrators may convene a meeting or meetings of Creditors at any time in accordance with Division 75 of the Insolvency Practice Schedule and must convene such a meeting or meetings when required to do so under Division 75 of the Insolvency Practice Schedule.
- (b) The provisions of this Deed may be varied by resolution of Creditors passed at a meeting of Creditors convened in accordance with clause 12.2(a), but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

12.3 Meeting if Deed if no longer practicable

If the Deed Administrators reasonably determine that it is no longer practicable to continue to implement the administration under this Deed and it is not (in the Deed Administrators' reasonable opinion) commercially justifiable to vary this Deed to achieve a satisfactory outcome for Creditors, the Deed Administrators may:

- (a) convene a meeting of Creditors for the purpose of passing a resolution under section 445C(b) of the Act;
- (b) forward to each Creditor not less than five (5) Business Days before the meeting an up-to-date report about the position of the Companies accompanied by any financial statements as the Deed Administrators think fit, together with a statement that they do not think it practicable or desirable to continue the administration of this Deed, and that the administration of this Deed will be terminated if the Creditors so resolve; and
- (c) for the avoidance of doubt, a report provided to Creditors under clause 12.3(b) will satisfy the Deed Administrators' obligation to provide a report pursuant to clause 12.1(a)(iii).

13 Termination

13.1 Automatic termination of this Deed

This Deed automatically terminates on the earlier of the following:

- (a) the Fixed Date;
- (b) the Deed Administrators giving written notice to Creditors that the Deed has terminated;
- (c) Creditors passing a resolution terminating this Deed in accordance with sections 445C(b) and 445CA of the Act;
- (d) the Court making an order terminating this Deed under section 445D of the Act; or
- (e) the date the Deed otherwise terminates in accordance with the Act.

13.2 Consequences of Termination

If this Deed terminates:

- (a) pursuant to clause 13.1, then within 14 days so much of the Companies' Property as remains and is not needed to satisfy any claim by the Deed Administrators under the indemnity and/or lien in clause 11.2 shall be returned to the Companies. For the avoidance of doubt, the Deed Administrators' Remuneration and Costs include any such Remuneration and Costs arising in connection with any application to a Court to terminate, void or validate this Deed pursuant to sections 445D, 445G, 447A of the Act or Division 90 Subdivision B of the Insolvency Practice Schedule (Corporations);
- (b) the Powers, functions, duties, obligations and responsibilities of the Deed Administrators under this Deed will end;
- (c) the Deed Administrators will be released and discharged from the office of Deed Administrators of this Deed and from all obligations, duties and responsibilities imposed upon the Deed Administrators by virtue of their appointment under this Deed; and
- (d) if the Creditors resolve that the Companies be wound up, each of the Companies will, as provided in section 446A of the Act, be taken to have passed a special resolution that the Companies be wound up and the Deed Administrators be appointed as joint and several liquidators of the Companies.

13.3 Effect of Termination

In accordance with section 445H of the Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

13.4 Survival of clauses

Despite any other provision of this Deed, clauses 9.10, 11, 13.2 and 14 survive the termination of this Deed.

14 Notices**14.1 Form of Notice**

A notice or other communication to a party under this Deed (**Notice**) must be:

- (a) in writing, in English, and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in the recitals under 'Parties' (or any alternative details nominated to the sending party by Notice).

14.2 Methods of service and when receipt of Notice occurs

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day, then the Notice will instead be regarded as given and received at the start of the following Business Hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By email to the nominated email address	When the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been addressed to the addressee).

15 General Provisions**15.1 GST**

Any GST payable by the Deed Administrators in respect of a Taxable Supply made under this Deed or contemplated by this Deed to another person (including any person bound by this Deed), must be borne by that other person, and will be paid by that person, subject to the prior receipt of a valid tax invoice, in addition to the other consideration given by that person to the Deed Administrators or the Companies (as the case may be) for the Taxable Supply.

15.2 Severance

- (a) Subject to clause 15.2(b) if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) Clause 15.2(a) does not apply if severing the provision:
 - (i) materially alters the scope and nature of this Deed; or
 - (ii) would be contrary to public policy.

15.3 Entire agreement

This Deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

15.4 No reliance

No party has relied on any statement by any other party not expressly included in this Deed.

15.5 Jurisdiction

This Deed will be governed by and construed in accordance with the laws for the time being in force in the State of Western Australia and all persons bound by this Deed submit to the exclusive jurisdiction of the Courts of that State, including any Courts having appellate jurisdiction.

15.6 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. Transmission by email of an executed counterpart of this Deed and all documents required to be executed and delivered pursuant to this Deed will be deemed to constitute due and sufficient delivery of such counterpart.

Executed and delivered as a Deed

Signed sealed and delivered by Martin Bruce Jones in the presence of:

Michael Flower
Witness signature
Michael Travis Flower
Print Name

Signature

Signed sealed and delivered by Matthew David Woods in the presence of:

Michael Flower
Witness signature
Michael Travis Flower
Print Name

Signature

Signed sealed and delivered by Clint Peter Joseph in the presence of:

Michael Flower
Witness signature
Michael Travis Flower
Print Name

Signature

Signed sealed and delivered by Elmore Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 057 140 922 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Peko Iron Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 652 243 733 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Peko Gold Lending Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 639 981 767 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by ICA Mining Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 629 874 246 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name

Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Peko Bull Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 608 133 257 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name

Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Peko Rehabilitation Project Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 076 018 776 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name

Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Sitzler Savage Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 089 842 875 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by DHAAB Mining Pty Ltd (Administrators Appointed) ACN 640 269 709 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name

Signed sealed and delivered by Fratres Mining Pty Ltd (Administrators Appointed) ACN 639 981 507 by its joint and several administrators in accordance with Section 442A of the *Corporations Act 2001* (Cth) in the presence of:

Michael Flower

Witness signature

Michael Travis Flower

Print Name



Administrator

Martin Bruce Jones

Print Name