

**Peko Rehabilitation Project Pty Ltd ACN
076 018 776 Creditors' Trust Deed**

**Peko Rehabilitation Project Pty Ltd
ACN 076 018 776**

and

**Martin Bruce Jones, Matthew David Woods and
Clint Peter Joseph (in their capacity as joint and
several deed administrators of Peko
Rehabilitation Project Pty Ltd ACN 076 018 776
(Subject to Deed of Company Arrangement)**

and

**Oz Professionals 4 Pty Ltd in its own right
and in its capacity as trustee of the for the
Chambour Family Trust ABN 679 300 264**

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Peko Rehabilitation Creditors' Trust Deed

Date 12 December 2024

| | |
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| Parties | <p>Peko Rehabilitation Project Pty Ltd ACN 076 018 776 (Subject to Deed of Company Arrangement)</p> <p>of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000</p> <p>(Company)</p> |
| | <hr/> <p>Martin Bruce Jones, Matthew David Woods and Clint Peter Joseph, in their capacity as joint and several Deed Administrators of Peko Rehabilitation Project Pty Ltd ACN 076 018 776 (Subject to Deed of Company Arrangement)</p> <p>of c/- KPMG, Level 8, 225 St Georges Terrace, Perth WA 6000</p> <p>(Trustees)</p> |
| | <hr/> <p>Oz Professionals 4 Pty Ltd in its own right and in its capacity as trustee for the Chambour Family Trust ABN 679 300 264</p> <p>of c/o HWL Ebsworth, Level 20, 240 St Georges Terrace, Perth, WA 6000</p> <p>(Proponent)</p> |

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| Recitals | <p>A. The Administrators were appointed as the joint and several administrators of the Elmore Group on 6 February 2024 pursuant to section 436A of the Corporations Act.</p> <p>B. On 26 July 2024, at meetings of creditors of the Elmore Group convened concurrently and pursuant to section 439A of the Corporations Act, the creditors of the Elmore Group resolved that the Elmore Group execute a deed of company arrangement substantively in the form of the Original Deed of Company Arrangement.</p> <p>C. In accordance with section 444A(2) of the Corporations Act, on 16 August 2024 the Administrators were appointed as the joint and several administrators of the Original Deed of Company Arrangement.</p> <p>D. On 11 October 2024 the Original Deed of Company Arrangement was extended until 31 December 2024.</p> <p>E. On 29 November 2024, at a meeting of the Company's creditors, it was resolved that the Company enter into the DOCA to vary</p> |
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and replace the Original Deed (insofar as it concerned the Company and the Administrators (in their capacity as joint and several deed administrators of the Company).

- F. Pursuant to the DOCA, and in order for the Company to continue in existence without being subject to the DOCA, the DOCA will Effectuate and terminate on Completion being effected pursuant to the DOCA.
- G. The DOCA provides for the establishment of this Trust for the benefit of the Admitted Claims of the Admitted Creditors.
- H. The Company and the Trustees have agreed to enter into this Deed to comply with, and give effect to, the DOCA.

This Deed witnesses that in consideration of, among other things, the mutual promises contained in this Deed the parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this Deed, terms defined in the DOCA have the same meaning when used in this Deed unless otherwise defined in this Deed or otherwise required by the context or the subject matter. In addition, the following definitions apply in this Deed.

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| Appointment Date | means the date of appointment of the Administrators to the Company, being 6 February 2024. |
| Claimant | means a person who has a Claim, or claims to have a Claim, against the Trust Fund. |
| Deed | means this trust deed, as amended from time to time. |
| DOCA | means the varied deed of company arrangement that was approved by resolution of the Creditors on 29 November 2024 entered into between the Company, the Administrators and the Proponent on or about the date of this Deed. |
| Final | means the last distribution to Admitted Creditors made |

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| Distribution | under clause 3 which the Trustees determine to be the final such distribution, whether such determination is made before or after such distribution is made. |
| Net Income | means, unless the Trustee otherwise determines, the net income of the trust as defined in section 95(1) of the <i>Income Tax Assessment Act 1936</i> (Cth). |
| Power | means any right, power, function, authority, discretion and remedy available to the Trustees under this Deed, the DOCA or at law. |
| Settlement Sum | means the sum of ten dollars (\$10.00). |
| Trust Fund | means the Trust Fund set out in clause 2.2. |
| Trust Termination Date | means the date on which the Trust terminates pursuant to clause 11.1. |
| Trustees' Powers | means any right, power, authority, discretion and remedy available to the Trustees under this Deed, the DOCA or at law. |

1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);

- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Perth, Western Australia time;
- (k) in this Deed a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement other than this Deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (n) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (o) a provision of this Deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or the preparation or proposal of that provision;
- (p) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (r) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (s) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;

- (t) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (u) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

1.3 **Business Day**

If anything under this Deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1.4 **Inconsistency**

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Corporations Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any inconsistency between the provisions of this Deed and the constitution of the Company or any other obligation binding on the Company, the provisions of this Deed prevail to the extent of any 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 this Deed.

1.5 **Applied DOCA provision**

A provision of the DOCA that is applied or incorporated in this Deed is (as so applied or incorporated) is to be interpreted:

- (a) in accordance with the same definitions and interpretation principles that apply to the provision as it has effect in or under the DOCA unless a contrary intention appears in the application or incorporation provision in this Deed; and
- (b) with such modifications as are necessary or expedient to give effect to that application or incorporation (for example, as if a reference to the Company in the DOCA was a reference to the Trust or the Trustees (as the context may require), and reference to the Administrators in the DOCA was a reference to the Trustees).

2. **Creation of and declaration of trust**

2.1 **Creation of Trust**

- (a) The Proponent must pay the Settlement Sum to the Trustees on or prior to Completion, in accordance with the DOCA.

- (b) The Trust is created on receipt of the Settlement Sum by the Trustees.

2.2 Declaration of trust

The Trustees acknowledge and declare that:

- (a) the Settlement Sum;
- (b) the Deed Fund transferred to the Trustees under clause 7.1(a) of the DOCA;
- (c) the benefits of the covenants by the Company and the Proponent in this Deed and the DOCA in favour of the Trustees,

are or will be held on trust, upon the terms and conditions of this Deed, by the Trustees for the Admitted Creditors. The parties acknowledge and agree that the Trust is to be created under this Deed, not under the DOCA.

2.3 Condition for operation

The provisions of the Trust come into effect only upon the creation of the Trust pursuant to clause 2.1.

2.4 Name of Trust

The name of the Trust constituted by this Deed is the "Peko Rehabilitation Creditors' Trust".

2.5 Trustees' powers

- (a) Without limiting the Trustees' Powers under any law with respect to trustees or otherwise (including for the avoidance of doubt the *Trustees Act 1962 (WA)*), the Trustees may deal with the Trust Fund in any manner as if the Trustees were the legal and beneficial owners of the Trust Fund, and may also exercise any Power in respect of the Trust Fund and the Trustees' functions under this Deed as the Administrators are or were entitled to exercise, as deed administrators, under the terms of the DOCA.
- (b) Without limiting clause 2.5(a):
 - (i) the Trustees also have, with respect to the Trust Fund, all of the powers set out in paragraph 2 of Schedule 8A of the *Corporations Regulations* with all modifications as are necessary to give effect to this Deed as if:
 - (A) the Trust were a company subject to a deed of company arrangement; and
 - (B) the Trustees were the deed administrators of that deed of company arrangement,

save that the Trustees will not be required to comply with clause 10 of Schedule 8A; and

- (ii) the Trustees may appoint any person to manage the Trust Fund on terms determined by the Trustees;
- (iii) the Trustees also have the Power to:
 - (A) 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, at any time, call meetings of the Admitted Creditors for the purpose of considering the variation or termination of this Deed;
 - (D) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
 - (E) to determine Admitted Claims and then to pay dividends in accordance with the terms of this Deed;
 - (F) to enforce compliance with the terms of this Deed;
 - (G) to 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;
 - (H) to convene and hold meetings of the Admitted Creditors for any purpose as the Trustees consider fit;
 - (I) to permit any person authorised by the Trustees to operate any account in the name of the Trust;
 - (J) to do all acts and execute in the name and on behalf of the Trust all deeds, receipts and other documents;
 - (K) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Trust;
 - (L) subject to the Corporations 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 Trust;
 - (M) to bring or defend an application for the vesting or winding up of the Trust;
 - (N) to report to the Admitted Creditors from time to time;
 - (O) to make interim or other distributions of the Trust Fund;

- (P) to appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
 - (Q) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
 - (R) 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 tax, including income tax, capital gains tax or GST;
 - (S) to do anything incidental to exercising a power set out in this Deed; and
 - (T) to do anything else that is necessary or convenient for administering the Trust.
- (c) The Trustees may exercise any discretion under this Deed in the Trustees' absolute and unfettered discretion.
 - (d) The Trustees shall not be required to assign or give any reason for the exercise of, or failure to exercise, any Power.
 - (e) No one Power (or limitation on one Power) shall limit the generality of any other Power, and the Trustees shall have the power to do anything the Trustees consider incidental to any Power.
 - (f) Subject to the terms of this Deed, the Trustees must perform the duties of that office to the standards imposed under the Corporations Act, law and equity as if:
 - (i) the Trust was a company subject to a deed of company arrangement; and
 - (ii) the Trustees were the deed administrators of that deed of company arrangement.

3. Distribution of Trust Fund

3.1 Distribution of Trust Fund

- (a) The Trustees shall distribute the Trust Fund in the following priority:
subject to clause 3.2:
 - (i) first, up to \$30,000 to the Administrators to pay the Administrators' Expenses and Remuneration in accordance with the DOCA;

- (ii) second, to any Priority Creditors for their Priority Creditor Claims that are Admitted Claims;
 - (iii) third, to Admitted Creditors pro-rata for the full value of their Admitted Claim; and
 - (iv) finally, the remaining available balance of the Trust Fund, if any, is to be returned to the Proponent.
- (b) For the avoidance of doubt and for the purposes of clause 3.1(a), the Trustees will give effect to:
- (i) sections 556, 560, 561 and 563A of the Corporations Act; and
 - (ii) section 444DB of the Corporations Act.
- (c) For the avoidance of doubt and for the purposes of section 444DA of the Corporations Act, a Participating Employee Creditor with an Admitted Claim is entitled to a priority at least equal to the priority which they would have been entitled if the Trust Fund had been applied in accordance with sections 556(1)(e), (g) or (h), 560 and 561 of the Act.
- (d) Payments out of the Trust Fund to pay Admitted Claims will be made in the manner and at the time determined by the Trustees (as the case may be) in their absolute discretion.
- (e) Interest does not accrue on, and is not payable in respect of, any Admitted Claims unless all Admitted Claims are paid in full. Any interest that does accrue on an Admitted Claim accrues at the rate prescribed in regulation 5.6.70A of the Corporations Regulations, in respect of the period starting on the Relevant Date.
- (f) The Trustees may make interim or final or other distributions of the Trust Fund for the payment of Admitted Claims in accordance with this Deed and the DOCA.
- (g) Notwithstanding clause 3.1(f) of this Deed the Trustee may, at its discretion, distribute the Net Income of the Trust Fund at the end of each financial year but is not required to do so.

3.2 Subsequent Admitted Claims

- (a) Any person who does not have an Admitted Claim (for any reason whatsoever) at the time immediately prior to a distribution made by the Trustees under clause 3.1 is excluded in participating in such distribution.
- (b) Subject to clause 3.4, if a Claim is not an Admitted Claim at the time immediately prior to a distribution made by the Trustees under clause 3.1, but subsequently becomes an Admitted Claim, the Creditor is entitled to be paid such *pari passu* dividends that such Creditor has failed to receive for that Admitted Claim solely out the Trust Fund (if any) for the time being in the hands

of the Trustees, before such Trust Fund is applied to any further distributions to be made by the Trustees under clauses 3.1(a).

- (c) No Creditor is entitled to disturb any distributions made by the Trustees under this Deed before that Creditor's Claim became an Admitted Claim.

3.3 **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 this Trust would otherwise terminate, then:

- (a) the Trustees shall stop payment of such cheque;
- (b) the monies represented by such stopped cheque or held by the Trustees on behalf of the Admitted Creditor may be paid to: any government agency which has jurisdiction to receive and deal with unclaimed money; and
- (c) upon payment of money to such government agency under clause 3.3(b), the Trustees are released from any liability in respect of the money.

3.4 **Discharge**

With effect on and from the time of the Final Distribution:

- (a) all payments made by the Trustees in accordance with this Deed will constitute a full and final discharge of the obligations of the Trustees to each Admitted Creditor under the Trust and all claims which each Admitted Creditor has or claim to have against the Trust Fund, and each of them will, if called upon to do so, execute and deliver to the Trustees such forms of release of any such claim as the Trustees require;
- (b) all Claims of each Claimant, including any Claimant who has not submitted a sworn proof of debt before that time, are absolutely barred and extinguished against the Trust, and each of them will, if called upon to do so, execute and deliver to the Trustees such forms of release of any such claim as the Trustees require; and
- (c) the Trustees may plead this Deed as an absolute bar and defence to any legal proceeding brought or made at any time by a Claimant in respect of any Claim or asserted Claim.

3.5 **Non-Participating Creditors**

No Creditors other than Participating Creditors are entitled to participate in or receive any distribution from, and will not prove to recover any Claim for the purposes of, and in relation to, the Trust Fund.

3.6 **Minimum dividend**

Where the amount due to an Admitted Creditor in respect of a dividend (interim or otherwise) would be less than \$25, the Trustees need not pay that dividend to the Admitted Creditor.

3.7 **Payments under this Deed**

Any payments made by the Trustees under this Deed to a person or a party can be made via cheque or, where the Trustees hold relevant account details, electronic funds transfer.

4. **Perpetuity Period**

Subject to 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 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. **Claims**

5.1 **Admissibility of Claims by Admitted Creditors**

- (a) Unless Claims by Admitted Creditors have already been admitted or rejected by the Administrators, the Trustees shall consider those Claims for the purposes of deciding whether to admit them under this Deed.
- (b) Only Claims by Admitted Creditors are admissible under this Deed.
- (c) Interest from the Relevant Date shall not accrue or be payable on any Admitted Claim unless all Admitted Claims are paid in full.
- (d) The Trustees may, in the Trustees' absolute discretion and subject to clause 5.1(b):
 - (i) admit all or part of any Claim;
 - (ii) reject all or part of any Claim; and

(iii) pay any Admitted Claim,

in accordance with the provisions of this Deed.

5.2 Determination of Claims

- (a) Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the Act (other than sections 554A(3) to 554A(8) and section 556 of the Act (other than to the extent expressly incorporated)) and Regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.7.72 (inclusive) apply to this Deed with such modifications as may be necessary, including:
- (i) references to the '*liquidator*' to be read as references to the Trustees; and
 - (ii) references to '*winding up*' to be read as references to the operation and performance of this Deed.
- (b) Any notice given by the Trustees requiring a Trust Creditor to submit particulars of his or her debt or claim, or to formally prove his or her debt or claim, will be treated for the purpose of this Deed as sufficient to comply with Regulations 5.6.39 and 5.6.49 respectively as applied by this clause 5.2
- (c) The Trustees may make interim distributions and dividends of the Trust Fund under this Deed.
- (d) The Trustees must declare and distribute Trust Fund under this Deed as soon as practicable after the Trust comes into effect under clause 2.1. However, subject to clause 5.2(a), the Trustees have an absolute and unfettered discretion as to the admission of the Claims of Admitted Creditors, and the amount and timing of the distribution of the Trust Fund in payment of the Admitted Creditors.
- (e) Within 7 days after the Trustees have rejected all or part of a formal proof of debt or claim, the Trustees must:
- (i) notify the Claimant of the grounds for that rejection; and
 - (ii) give notice to the Claimant at the same time:
 - (A) that the Claimant may make application to the Court (including but not limited to under the *Trustees Act 1962 (WA)*) challenging the decision of the Trustees to reject the proof of debt within the time specified in the notice, being not less than 14 days after service of the notice, or such further period as the Court allows; and
 - (B) that unless the Claimant makes application to the Court in accordance with clause 5.2(e)(ii)(A), the amount of his or her

claim will be assessed in accordance with the Trustees' endorsement on the Claimant's proof.

- (f) Subject to clause 5.2(g), where there have been mutual credits, mutual debts or other mutual dealings between the Company and an Admitted Creditor:
 - (i) an account must be taken of what is due from the one party to the other in respect of those mutual dealings;
 - (ii) the sum due from one party is to be set off against any sum due from the other party;
 - (iii) only the balance of the account (if any) in favour of the Admitted Claim as against the Company is to be admissible to proof pursuant to this Deed.
- (g) An Admitted Creditor is not entitled under clause 5.2(f) to claim the benefit of any set-off if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, it had notice of the fact that the Company was insolvent.
- (h) The Trustees are entitled to rely upon any steps and determinations made by the Administrators for the purposes of this clause in respect of whether a claim asserted for the purposes of claiming under this Deed is an Admitted Claim, together with any information, and proofs or particulars of debt provided to the Administrators.

5.3 **Abandonment of Claims**

A Claimant will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) to the Trust Fund:

- (a) which are not the subject of a proof lodged with the Trustees in the form required by the Trustees prior to the Final Distribution; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within 14 days after the date of notification of the rejection to the Claimant.

5.4 **Register of Admitted Creditors**

The Trustees shall maintain a register of Admitted Creditors pursuant to this Deed including, but not limited to, the Admitted Creditor's name, address, any email address, details of each Admitted Claim and distributions made by the Trustees to the relevant Admitted Creditor.

5.5 **Superannuation Claims**

- (a) The Trustees must determine that the whole of a debt by way of a superannuation contribution is not an Admitted Claim pursuant to this Deed if:

- (i) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim pursuant to this Deed; and
 - (ii) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.
- (b) The Trustees must determine that a particular part of a debt by way of a Superannuation Contribution is not an Admitted Claim if:
- (i) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
 - (ii) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

5.6 Creditors' costs and expenses

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 under this Deed,

5.7 Creditors' costs and expenses

The Excluded Creditors are not entitled to participate in, or receive any distribution from, the Trust Fund.

6. Meetings of Admitted Creditors

The Trustees may at any time convene a meeting of Admitted Creditors and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 (excluding sections 75-40, 75-145(1)(c) and 75-145(6)(b) and Subdivisions E, F and G) of the *Insolvency Practice Rules (Corporations) 2016* (Cth) applies, with such modifications as are necessary, to meetings of the Admitted Creditors as if the references to the external administrator or the person presiding at the meeting, as the case may be, were references to the Trustees.

7. Retention of and access to records

The Trustees may at any time inspect the books and records of the Company and the Company authorises the Trustees and their employees to enter the Company's premises on any Business Day between the hours of 9:00am and 5:00pm with no less than 24 hours prior notice for the purpose of conducting such an inspection and for the purpose of doing anything reasonably necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Trustees under this Deed.

8. Liability

8.1 Exclusion of liability

- (a) To the maximum extent permitted by law, the Trustees are not liable for any loss, damages, costs or expenses which may result or be occasioned to the Trust Fund or any person, including (without limitation) by:
- (i) the exercise of any Power of the Trustees, or any delay or failure to exercise any such Power;
 - (ii) any breach of duty or trust, unless it is proved to have been committed or made in personal, conscious and fraudulent bad faith by a Trustee;
 - (iii) any disclosure by the Trustees or any of their Representatives of any document, matter or thing related to the Trust or any Admitted Creditor,
- in each case, except to the extent that such loss, damage, cost or expense is a direct consequence of a Trustee or his or her Representative having acted fraudulently, dishonestly or with gross negligence.
- (b) The recourse of a Claimant against the Trustees in their capacity as trustees of the Trust shall be limited to the Trust Fund.
- (c) All persons claiming any interest in the Trust Fund must be treated as taking it with and subject to notice of the provisions of, and the protection conferred by, this clause 8.

8.2 Trustees' indemnity

- (c) The Trustees are entitled to be indemnified out of the Trust Fund for the Administrators' Expenses and Remuneration.
- (d) The Trustees are not entitled to an indemnity out of the property of the Company or the Trust Fund against any claims arising out of any fraudulent or grossly negligent act or omission by the Trustees or the Trustees' partners or employees.
- (e) The indemnity under this clause shall not:
- (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees, 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 Trustees, the approval and execution of this Deed or otherwise; or
 - (ii) affect or prejudice any or all rights that the Trustees may have against the Company or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees by or incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or otherwise.

- (f) The Trustees' right of indemnity conferred by this clause has priority over the Claims of any Creditor or all Creditors generally (including, to the extent permitted by law, any Priority Creditor's Claims).
- (g) The Trustees are entitled to exercise the Trustees' right of indemnity conferred by this Deed whether or not the Trustees have paid or satisfied the Admitted Claims.
- (h) The Trustees are entitled to exercise a lien on the Trust Fund to secure the Trustees' right of indemnity under this Deed and otherwise at law and in equity.

8.3 **Reliance on advice**

Where the Trustees act in reliance upon the advice of any solicitor instructed on behalf of the Trust or the Trustees obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with or in reliance on the advice.

9. **Trust account**

9.1 **Opening bank account**

The Trustees must open at least one new bank account with an authorised deposit-taking institution (as that term is defined in the *Banking Act 1959* (Cth)).

9.2 **Bank account**

All financial transactions under this Deed must be effected through such bank accounts.

10. **Trustees' resignation**

Any Trustee may resign at any time by giving not less than fourteen (14) days prior written notice to the Company, unless that retirement would result in there being no remaining Trustee, in which case the Trustee must:

- (a) convene a meeting of Admitted Creditors in accordance with clause 6 for the purposes of approving the appointment of one or more replacement trustees, who must be a registered liquidator;
- (b) assign to or vest in such replacement trustees approved by the Admitted Creditors the Trustee's rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment or vesting referred to in clause 10(b).

11. Termination

11.1 Termination of the Trust

This Trust will terminate and the Trustees shall resign on the earlier of:

- (a) as soon as reasonably practicable after distribution of the Final Distribution from the Trust Fund; or
- (b) the expiry of the perpetuity period referred to in clause 4 above.

11.2 Variation of Trust

The Trustees must convene a meeting of the Admitted Creditors to consider a resolution to vary this Deed or terminate this Trust if at any time prior to the termination of this Trust:

- (a) the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed;
- (b) the Trustees are requested in writing to convene such a meeting by a simple majority of Admitted Creditors in number and whose Admitted Claims also together constitute more than 50% of all Admitted Claims; or
- (c) the Court so orders.

11.3 Termination of the Trust by Court order or Beneficiaries' resolution

This Trust will terminate if:

- (a) a Court so orders; or
- (b) the Admitted Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 6 or 11.2.

11.4 Report to Admitted Creditors

Upon a meeting being convened pursuant to clause 6 or 11.2, the Trustees must send to each Admitted Creditor under this Deed, prior to the meeting, a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees think fit. The report must include:

- (a) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 11.2; and
- (b) a statement that, this Trust will be terminated if the meeting so resolves.

11.5 Previous operation of this Deed preserved

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

12. Variation of Deed

This Deed may be varied with the consent of the Trustees by resolution passed at a meeting of Admitted Creditors but:

- (a) only if the variation is not materially different from the proposed variation set out in the notice of that meeting; and
- (b) where, in the opinion of the Trustees, the proposed variation materially prejudices the interests of any class of Admitted Creditors (including in respect of the priority of distribution of Trust Funds under clause 3.1), only if a majority of that class of Admitted Creditors present and voting at that meeting also approve such proposed variation.

13. Further assurances

Each of the parties to this Deed must do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

14. Notice

14.1 Notice to be in writing

Any notice or document required to be given to or served upon any of the parties pursuant to or in connection with the Deed must be in writing.

14.2 Signing of Notice

Any notice or document 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.

14.3 How notice must be given and when notice is received

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

However, if this means the notice or document would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the notice or document 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 | When it would have been delivered in the ordinary course of post |
| By email to the nominated email address (set out in the details for each party to this Deed) | 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). |

14.4 **Notice must not be given by electronic communication**

A notice or document must not be given by electronic communication (other than email in accordance with clause 15.3).

15. **Governing law**

This Deed is to be governed and construed in accordance with the laws of Western Australia.

16. **Severance**

Despite anything contained in any provision of this Deed, if any such provision is held or found to be void, invalid or otherwise unenforceable, such provision is deemed to be severed from this Deed to the extent only that it is void, invalid or unenforceable but the remainder of any such provision and this Deed remains in force and effect.

17. **Waivers**

A failure to exercise or a delay in exercising any rights, power or remedy of a party under this Deed will not operate nor 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.

18. Counterparts

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

19. Company may execute this Deed

The Company is authorised by the Administrators to execute this Deed.

20. Stamp duty

The Trustees shall pay, out of the Trust Fund, any stamp duty payable with respect to this Deed.

21. GST

- (a) Words used in this clause 21 which have a defined meaning in the GST Act have the same meaning as in the GST Act unless the context indicates otherwise.
- (b) Unless expressly included, the consideration for any supply under or in connection with this Deed does not include GST.
- (c) To the extent that any supply made under or in connection with this Deed is a taxable supply, the recipient must pay, in addition to the consideration provided under this Deed for that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (d) The supplier must issue a Tax Invoice to the recipient of a taxable supply to which clause 21(c) applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.
- (e) If any party is entitled under this Deed to be reimbursed or indemnified by any other party for a cost or expense incurred in connection with this Deed, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or by its representative member.

Signing page

Executed as a deed

Signed, sealed and delivered by Martin Bruce Jones as Deed Administrator of Peko Rehabilitation Project Pty Ltd ACN 076 018 776 (Subject to Deed of Company Arrangement) in the presence of:




Signature of witness

PIERCE DAVIS

Full name of witness (print)

77 HENSMAN RD, SUBIACO, 6008

Address of witness (print)



Signature of Martin Bruce Jones

12 December 2024

Date

Signed, sealed and delivered by Martin Bruce Jones:




Signature of witness

PIERCE DAVIS

Full name of witness (print)

77 HENSMAN RD, SUBIACO, 6008

Address of witness (print)

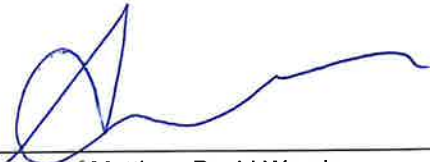


Signature of Martin Bruce Jones

**Signed, sealed and delivered by
Matthew David Woods:**



Signature of witness



Signature of Matthew David Woods


PIERCE DAVIS

Full name of witness (print)

77 HENSMAN RD, SUBIACO, 6008

Address of witness (print)

**Signed, sealed and delivered by Clint
Peter Joseph:**



Signature of witness



Signature of Clint Peter Joseph

PIERCE DAVIS

Full name of witness (print)

77 HENSMAN RD, SUBIACO, 6008

Address of witness (print)

