

# **Deed of Company Arrangement**

## **BETWEEN**

David Alexander Hardy in his capacity as Joint and Several Voluntary Administrator of the Parent and Australian Entities Listed in Schedule 1 and as administrator of this Deed

## **AND**

Gayle Louise Dickerson in her capacity as Joint and Several Voluntary Administrator of the Parent and Australian Entities Listed in Schedule 1 and as administrator of this Deed

## **AND**

Ian Phillip Sutherland as administrator of this Deed

## **AND**

Jervois Global Limited (Administrators Appointed)  
(ACN 007 626 575)

## **AND**

The Australian Entities Listed in Schedule 1

## **AND**

Millstreet Capital Management, LLC, as investment manager and/or sub-manager or advisor, on behalf of certain investment funds and managed accounts

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**DATED**

9 May 2025 AEST (May 9, 2025 New York Time)

**Parties**

**David Alexander Hardy in his capacity as Joint and Several Voluntary Administrator of the Parent and Australian Entities Listed in Schedule 1 and as administrator of this Deed**  
of KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

**Gayle Louise Dickerson in her capacity as Joint and Several Voluntary Administrator of the Parent and Australian Entities Listed in Schedule 1 and as administrator of this Deed**  
of KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

**Ian Phillip Sutherland as administrator of this Deed**  
of KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000  
*(together, the “Deed Administrators”)*

**Jervois Global Limited (Administrators Appointed) (ACN 007 626 575)**  
c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000  
*(“Parent” and “Deed Company”)*

**The Australian Entities Listed in Schedule 1**  
c/- KPMG Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000  
*(together with Parent, collectively, the “Deed Companies” and each a “Deed Company”)*

**Millstreet Capital Management, LLC, as investment manager and/or sub-manager or advisor, on behalf of certain investment funds and managed accounts**  
c/- Mills Oakley Lawyers, Level 7, 151 Clarence Street, Sydney NSW 2000  
*(“Deed Proponent”)*

**Recitals**

- (A) On the Appointment Date, David Alexander Hardy and Gayle Louise Dickerson of KPMG were appointed as joint and several voluntary administrators of the Deed Companies pursuant to section 436A of the Act.
- (B) On 14 March 2025, the Administrators received a proposal from the Deed Proponent in respect of a deed of company arrangement which gives effect to the transactions contemplated by the Plan, Restructuring Support Agreement and Confirmation Order.
- (C) At a meeting of creditors held on 30 April 2025 and convened pursuant to section 439A of the Act (**Second Meeting**), the Creditors of the Deed Companies resolved that the Deed Companies execute the deed of company arrangement proposed by the Deed Proponent under section 444B(2) of the Act (**Section 439C Resolution**).
- (D) The Deed Companies, Administrators and Deed Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- (E) The Administrators and Ian Phillip Sutherland of KPMG have consented to being the Deed Administrators of this Deed.
- (F) Subject to the terms of this Deed, this Deed:
  - (i) binds all Creditors of the Deed Companies, in accordance with section 444D of the Act; and

- (ii) binds the Deed Companies and its Officers and Members in accordance with section 444G of the Act.

## Operative Provisions

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Deed:

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

**Administration Cash** means all cash held by the Administrators in relation to the administration of each Deed Company from time to time and includes amounts received by the Administrators and each Deed Company respectively, in accordance with and subject to the terms of the DIP Loan Agreement and the Final DIP Order, it being acknowledged and understood that:

- (a) the fees and expenses of the Administrators (including in their capacities as Deed Administrators, Trustees and Liquidators) and their professionals incurred in the conduct of the Australian Proceedings (including the liquidation or wind-down of the non-Australian subsidiaries of the Deed Companies) shall be limited to US\$1.5 million;
- (b) payments to operate the Deed Companies shall be and were limited to any operational and working capital needs required in the ordinary course of business;
- (c) or as otherwise agreed in writing between the Administrators and the Deed Proponent, in the case of (a), (b), and (c) subject to the terms and conditions of the DIP Loan Agreement; and
- (d) no funding under the DIP Loan Agreement shall be made or otherwise used to fund distributions to Admitted Creditors.

**Administrators** means Gayle Louise Dickerson and David Alexander Hardy in their capacities as voluntary administrators of the Parent and the Australian Entities.

**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) of the Act; 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 Period** means in respect of the Deed Companies, the period of time commencing on the Appointment Date of the Deed Companies and concluding on the Commencement Date.

**Admitted Claim** means a claim against a Deed Company as adjudicated by the Trustees under the Jervois Creditors' Trust, excluding any Excluded Claims, Secured Claims and Residual Secured Claims.

**Admitted Creditor** means a Creditor who has (or who is entitled to have) an Admitted Claim.

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**Appointment Date** means 12 March 2025.

**Approved Australian VA Budget** has the meaning given to it in the DIP Loan Agreement.

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

**Asset Transfer Deed** means the asset transfer deed between the Parent, NewCo, New JRV Employer and Formation Holdings dated on or around the date of this Deed.

**Australian Entities** means the Australian Entities listed at Schedule 1 to this Deed.

**Australian Proceedings** has the meaning given to it under the Plan.

**Bankruptcy Code** means title 11 of the United States Code, 11 U.S.C. §§ 1011532, as amended.

**Business Day** means a day (other than a Saturday, Sunday, public holiday or bank holiday) in Melbourne or Sydney, Australia or New York, United States of America.

**Chapter 11 Cases** means the chapter 11 cases filed in the United States Bankruptcy Court in respect of the Debtors under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*, and identified by lead case number 25-90002.

**Claim** means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against each Deed Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the circumstances giving rise to which occurred or arose before the Appointment Date and includes without limitation:

- (a) any claim of any kind whatsoever under a contract or agreement including without limitation any claim for damages or loss in connection with each Deed Company's failure to comply with or perform or termination of a contract or agreement;
- (b) any claim that in a winding of each Deed Company, would be a subordinated claim for the purposes of section 563A of the Act; and
- (c) without limiting (a) above, any warranty, option or similar instrument issued by each Deed Company in respect of any of its shares.

**Commencement Date** means the date this Deed is executed by all Parties to it.

**Completion** means the time at which the Deed Proponent and Deed Administrators have exchanged Completion Notices as provided in clause 10.5(b).

**Completion Date** means the date on which Completion occurs.

**Completion Notice** has the meaning given to it in clause 10.5(b).

**Conditions Precedent** means each of the conditions precedent contained in clause 10.1 of this Deed.

**Confirmation Order** means the *Findings of Fact, Conclusions of Law, and Order (I) Approving Disclosure Statement on a Final Basis and (II) Confirming the Joint Prepackaged Chapter 11 Plan of Reorganization of Jervois Texas, LLC and its Debtor Affiliates* [Docket No. 169] entered by the United States Bankruptcy Court on the docket of the Chapter 11 Cases on 6 March 2025 (Houston time, GMT-6).

**Continuing Employee Contracts** means the employment contracts of the Continuing Employees which:

- (a) in the case of members of the senior management teams, as reflected in executed offer letters prior to the date of this Deed; and
- (b) in the case of other Continuing Employees, shall be on terms acceptable to the Deed Proponent and the applicable employee, provided that Claims of Eligible Employee Creditors who are not Continuing Employees will be paid in full.



**Continuing Employees** means the persons listed at Schedule 5 who are employees of the Deed Companies as at the Appointment Date.

**Convertible Notes** means the 6.5% convertible notes due 2028 issued by the Parent pursuant to the Prepetition Convertible Note Deed Poll dated as of 18 July 2023 (as defined in the Plan).

**Costs** includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers and performance of the Administrators', Deed Administrators', Trustees', and Liquidators' (as the case may be) duties, obligations and responsibilities under the Act and this Deed during the Administration Period, Deed Period, Trust Period and Liquidation Period respectively, and includes any Administration Debt.

**Court** has the meaning of "Court" in section 58AA of the Act.

**CP Satisfaction Time** means 5:00pm (New York City time) on [9] May 2025, or such other time as agreed between the Deed Proponent and the Deed Administrators.

**Creditor** means a person who has a Claim against a Deed Company.

**Creditor Indemnity** has the meaning given to it in clause 8.1(d)(i).

**Debtors** means the Parent and certain of its direct and indirect subsidiaries that commenced Chapter 11 Cases.

**Deed** means this deed of company arrangement between the Parties and includes any schedule.

**Deed Administrators** means the Administrators in their joint and several capacities as deed administrators of the Deed Companies and Ian Phillip Sutherland of KPMG.

**Deed Fund** means the cash fund to be funded from the Administration Cash in the amount of A\$1,000,000.

**Deed Period** means the period commencing on the Commencement Date and ending on the earlier of the Termination Date or Completion Date.

**Deed Proponent** means Millstreet Capital Management, LLC, as investment manager and/or sub-manager or advisor, on behalf of certain investment funds and managed accounts.

**DIP Facility** means the senior-secured superpriority priming post-petition debtor-in-possession facility set out in the DIP Loan Agreement and the Final DIP Order.

**DIP Loan Agreement** means the secured revolving credit facility agreement dated 28 October 2021 (as amended and restated by a supplemental deed, dated 30 January 2025, with respect thereto), among Jervois Suomi Holding Oy, Jervois Global Limited, the other guarantors party thereto, and Acquiom Agency Services Ltd, as agent and security agent, which sets forth, among other things, the terms of the DIP Facility.

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

**Dividend** means any amount paid to a Creditor in respect of the Creditor's Admitted Claim.

**Eligible Employee Creditors** has the meaning given to it under the Act.

**Enforcement Process** has the meaning given to it under section 9 of the Act.

**Excluded Claims** means:

- (a) Transferred JGL Claims;
- (b) Claims of Continuing Employees (unless the Continuing Employee resigns or has their employment terminated during the Deed Period, in which case the Continuing Employees will have a Claim against the relevant Deed Company to the extent of their Priority Claims);
- (c) Claims on account of the Convertible Notes;



- (d) Claims on account of the ICO Bonds;
- (e) Claims on account of the JFO Term Facility;
- (f) Claims arising under the Transferred JGL Contracts; and
- (g) Claims in respect of which the Creditor has agreed in writing with the Deed Administrators not to participate in distributions from the Deed Fund and the Jervois Creditors' Trust.

**Excluded Creditors** means Creditors with Excluded Claims.

**Final DIP Order** means the *Final Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing and (B) Use Cash Collateral; (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status; (III) Granting Adequate Protection to the Prepetition Secured Parties; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* [Docket No. 139], as entered by the United States Bankruptcy Court on 3 March 2025 (Houston time, GMT-6), approving the DIP Facility on a final basis.

**Formation Holdings** means Formation Holdings US, Inc.

**Formation Holdings Receivables** means all receivables owed by Formation Holdings to the Parent.

**Group Intellectual Property** means the intellectual property to be transferred to NewCo in accordance with the IP Assignment Deed.

**GST** has the same meaning as in the GST Act.

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

**Holding Company** means in relation to a person, any other person in respect of which it is a Subsidiary.

**ICO Bonds** means the 12.5% senior secured USD 100,000,000 bonds 2021/2026 issued by Jervois Mining USA Limited and guaranteed by, among others, the Parent, in accordance with the bond terms dated 6 July 2021 (as amended, supplemented, or otherwise modified from time to time).

**Insured Claim** means a Claim (as that term is defined, but for the exception of Excluded Claim) which a Creditor has against a Deed Company, which would have been entitled to priority in a liquidation of the Deed Company under section 562 of the Act, where:

- (a) the Claim is not otherwise an Excluded Claim;
- (b) that Deed Company is insured against that Claim under a contract of insurance entered into before the Appointment Date; and
- (c) an amount in respect of that Claim would be payable by the insurer to the Deed 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 8 in connection with such claim.

**Intermediate HoldCo** means New JRV Intermediate Holdings Limited, a company duly incorporated in Jersey with registered number 158734, which is a direct and wholly-owned subsidiary of the Parent.

**Intellectual Property** means the intellectual property contained at Schedule 2 to the IP Assignment Deed.

**IP Assignment Deed** means the intellectual property assignment deed between the Parent and NewCo dated on or around the date of this Deed.

**IPS** means Schedule 2 to the Act.

**Jersey Share Transfer Form** means the share transfer form related to the Parent's transfer of its shares in Intermediate HoldCo to NewCo, dated on or around the date of this Deed, in form and substance acceptable to Deed Proponent.

**Jervois Creditors' Trust** means the creditors' trust established pursuant to the Jervois Creditors' Trust Deed.

**Jervois Creditors' Trust Deed** means the creditors' trust deed to be entered into between the Deed Companies, the Deed Administrators, the Trustees and the Deed Proponent, substantially in the form contained in Schedule 7, which creates the Jervois Creditors' Trust.

**Jervois Creditors' Trust Fund** has the meaning given to that term in the Jervois Creditors' Trust Deed.

**JFO Term Loan Facility** means the dollar term loan facility described in the DIP Loan Agreement.

**JFO Revolving Loan Facility** means the revolving loan facility described in the DIP Loan Agreement.

**JGL Assets** means any property of the Parent (excluding any Shares of the Parent in its subsidiaries) that is being assigned or novated, in accordance with the Asset Transfer Deed, IP Assignment Deed, and deeds of novation in respect of the Transferred JGL Contracts and Retained Causes of Action listed at Schedule 3 to this Deed, to either of NewCo, Formation Holdings, Intermediate HoldCo or New JRV Employer (as the case may be).

**KERP Payments** means the payments pursuant to the terms of the key employee retention plan letters entered into on 11 or 12 November 2024 providing retention bonuses to be payable to key employees.

**Klassen Consultancy Agreement** means the consultancy agreement between the Parent and Klassen Legal dated July 2020 as amended, supplemented and restated from time to time.

**Liquidation Period** means the period commencing from the date on which the Deed Companies are placed in liquidation and ending on the date the on which the Deed Companies are deregistered in accordance with the Act.

**Liquidators** means the Deed Administrators in their role as liquidators of the Deed Companies following the commencement of their respective winding up proceedings.

**Member** has the meaning given to that term in sections 9 and 231 of the Act.

**New JRV Employer** means Jervois Services Australia Pty Ltd (ACN 686 403 663).

**NewCo** means New JRV Topco Holdings LLC registration number 7728.

**Novated JGL Contracts** means the contracts listed at Schedule 4 to this Deed.

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

**Owner** means any person who is the legal or beneficial owner (including a lessor) of property in the possession of a Deed Company as at the Appointment Date.

**Parent** means Jervois Global Limited (Administrators Appointed) (ACN 007 626 575).

**Party and Parties** means either or all of the Administrators, Deed Companies, Ian Phillip Sutherland and Deed Proponent.

**Plan** means the *Joint Prepackaged Chapter 11 Plan of Reorganization of Jervois Texas, LLC and its Debtor Affiliates* [Docket No. 15] (as may be amended, supplemented or otherwise modified in accordance with its terms and the Restructuring Support Agreement), as confirmed by the Confirmation Order, including the Plan Supplement (as defined in the Plan).

**Plan Effective Date** means the date the conditions to effectiveness of the Plan have been satisfied or waived in accordance with its terms.

**Post-DOCA Budget** means the budget agreed to in writing from time-to-time between the Deed Administrators and the Deed Proponent with respect to the allocation and application of all cash amounts held by the Deed Companies as at the date of the Second Meeting for the Deed Period and Liquidation Period.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**Prescribed Provisions** means the provisions set out in Schedule 8A of the Regulations.

**Priority Claim** means any 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 Appointment Date.

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

**Rejected Contract** is a contract or lease that is listed at Schedule 2 to this Deed and that was scheduled for rejection pursuant to section 365 of the Bankruptcy Code as at the Appointment Date under Exhibit E to the *Notice of Filing of First Amended Plan Supplement* filed in the United States Bankruptcy Court on 4 March 2025 [Docket No 153].

**Rejected Contract Claim** means a Claim in relation to a Rejected Contract.

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

**Remuneration** means the remuneration payable to the Administrators, Deed Administrators, Trustees and Liquidators as the case may be, acting as:

- (a) the Administrators of the Deed Companies under Part 5.3A of the Act;
- (b) the Deed Administrators of the Deed Companies under this Deed;
- (c) Trustees of the Jervois Creditors' Trust; and
- (d) Liquidators of the Deed Companies.

**Remaining Assets** means:

- (a) any property of the Parent, other than
  - (i) the JGL Assets; and
  - (ii) the Shares of JGL in Intermediate HoldCo and Formation Holdings, and
- (b) property of each of the Australian Entities.

For the avoidance of doubt, the Remaining Assets include the Shares in any Deed Company and any of a Deed Company's subsidiary, other than the Shares of the Parent in Intermediate HoldCo and Formation Holdings.

**Remaining Liabilities** means any liability in respect of:

- (a) the Remaining Assets; and
- (b) the Rejected Contract Claims.

**Residual Secured Claims** means claims arising under the JFO Revolving Loan Facility.

**Residual Secured Creditors** means the holders of Residual Secured Claims, which shall include, for the avoidance of doubt, Millstreet Credit Fund LP, Mercer QIF Fund PLC – Mercer Investment Fund 1, any lender under the JFO Revolving Loan Facility, and Acquiom Agency Services Ltd (as security agent and agent under the JFO Revolving Credit Facility).

**Resignation Letter** means the letter signed by the Administrators to effect their resignation from the DIP Loan Agreement, in accordance with the terms of the DIP Loan Agreement and VA Accession Deed dated on or around the date of this Deed.

**Restructuring Support Agreement** means the Amended and Restated Restructuring Support Agreement dated 31 December 2024, as amended and restated on 28 January 2025, between the Deed Companies and other direct and indirect subsidiaries of the Parent and the Consenting Lenders (as defined therein) party thereto, as amended, amended and restated, or supplemented from time to time.

**Restructuring Transactions** has the meaning given to it under the Plan.

**Retained Causes of Action** means all claims and causes of action of the Parent, which shall be transferred to NewCo, Intermediate HoldCo, or a subsidiary of Intermediate HoldCo, as set out in the Plan.

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

**Second Meeting** has the meaning given to that term in Recital (C).

**Section 439C Resolution** has the meaning given to that term in Recital (C).

**Secured Claims** means Claims arising under:

- (a) the JFO Term Loan Facility;
- (b) the ICO Bonds; and
- (c) the DIP Facility.

For the avoidance of doubt, Secured Claims excludes Residual Secured Claims.

**Secured Creditors** means Creditors who have Secured Claims, which include, for the avoidance of doubt, Millstreet Credit Fund LP, Mercer QIF Fund PLC – Mercer Investment Fund 1, any lender under the JFO Term Loan Facility or the DIP Facility, Acquiom Agency Services Ltd (as security agent and agent under the JFO Facility and the DIP Loan Agreement), any holder of the ICO Bonds, and Nordic Trustee AS (as trustee for the ICO Bonds).

**Security** means a mortgage, charge, pledge, lien, security interest, title retention, preferential right trust arrangement, contractual right of set-off, and any other encumbrance, security agreement or arrangement in favour of any person, including any security interest (as that term is defined in section 12 of the PPSA).

**Settlement Sum** means A\$10 on account of settlement of the Jervois Creditors' Trust.

**Shares** means, with respect to any entity, all of such entity's issued share capital of any kind whatsoever (and includes any preference shares, ordinary shares or otherwise).

**Stock Power** means the stock power related to the Parent's transfer of its shares in Formation Holdings to NewCo, dated on or around the date of this Deed.

**Stock Transfer Agreement** means the stock transfer agreement between the Parent and NewCo dated on or around the date of this Deed.

**Subordination Deed** means the subordination deed dated 3 November 2021 (as amended, amended and restated, supplemented, or otherwise modified from time to time) between among others, the Parent, the Australian Entities and Acquiom Agency Services Ltd (as security agent).

**Subsidiary** means any person (referred to as the "first person") in respect of which another person (referred to as the "second person"):

- (a) has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than 50 percent of the maximum number of votes that might be cast at a general meeting of the first person;

- (ii) appoint or remove the majority, of the directors or other equivalent officers of the first person; or
- (iii) give directions with respect to the operating and financial policies of the first person with which the directors or other equivalent officers of the first person are obliged to comply; or
- (b) holds beneficially more than 50 per cent. of the issued share capital of the first person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Tax Indemnity Deed** means the deed of indemnity made by NewCo in favour of the Deed Administrators (including in their capacities as Administrators, Trustees or Liquidators) in respect of the full amount of the tax liabilities which may arise as a result of the transactions contemplated under this Deed, as assessed by the ATO, which deed of indemnity shall be reasonably acceptable to both the Deed Administrators and the Deed Proponent.

**Termination Date** means the date that this Deed is terminated pursuant to clause 18.

**Transferred JGL Claims** means all General Unsecured Claims (as defined under the Plan), as against the Parent, other than Rejected Contract Claims.

**Transferred JGL Contracts** means all contracts to which the Parent is a party, other than the Rejected Contracts (unless agreement in writing is reached by the Deed Proponent and the counterparty to such Rejected Contract, in which case such contract, upon such agreed terms, shall become a Transferred JGL Contract).

**Transferred Liabilities** means:

- (a) all obligations of the Parent in connection with the JGL Assets on and from the Completion Date; and
- (b) all other liabilities and obligations in respect of JGL's business that the Deed Proponent, NewCo, Intermediate HoldCo, or a subsidiary of Intermediate HoldCo expressly agrees to assume or perform under this Deed,

but excluding, in every case, the Remaining Liabilities.

**Trustees** means the Deed Administrators in their capacities as trustees of the Jervois Creditors' Trust.

**Trust Period** means the period commencing on the Completion Date and ending on the date the Trustees cease to be appointed to the Jervois Creditors' Trust.

**United States Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, which is presiding over the Chapter 11 Cases.

**VA Accession Deed** means the accession deed entered into between among others, the Parent, the Australian Entities, and Acquiom Agency Services Ltd (in its capacity as agent and security agent) to enter into the DIP Loan Agreement and Subordination Deed.

## 1.2 Interpretation

In this Deed, the following rules of interpretation apply unless the context indicates a contrary intention or requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;



- (d) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (e) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (f) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (h) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (i) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (k) if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day;
- (l) a reference to '\$', 'AUS\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (m) a reference to any time is, unless otherwise indicated, a reference to that time in Melbourne, Australia;
- (n) a term defined in or for the purposes of the Act has the same meaning when used in this Deed;
- (o) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision;
- (p) 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; and
- (q) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) 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.

### **1.3 Inconsistency**

- (a) If there is any inconsistency between the provisions of this Deed, the Act, the Regulations, the IPS, or the Rules, this Deed prevails to the extent permitted by law.
- (b) For the avoidance of doubt, this Deed does not impact or derogate from the legal effect of the Plan, Confirmation Order and any other orders made in the Chapter 11 Cases.

**1.4 Business Days**

To the extent the timing of any act, matter or thing is to be done as required by this Deed is also by reference to a time period in the Act, then the reckoning of time is to be calculated solely by reference to Business Days in Melbourne, Victoria.

**1.5 Prescribed Provisions**

The Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.

**1.6 Required Provisions**

To the extent that the Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

**2 Commencement and Duration of this Deed**

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**2.1 Commencement Date**

For the purposes of section 444A(4)(e) of the Act, this Deed will commence and take effect on the Commencement Date.

**2.2 Interim Effect**

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of a Court.

**2.3 Termination**

For the purposes of section 444A(4)(g) of the Act, this Deed continues until it is terminated in accordance with clause 18.

**3 Objective and Effect**

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**3.1 Objectives**

The purpose and objective of the arrangements set out in this Deed, amongst other matters, are to:

- (a) provide a greater return to the Creditors of the Deed Companies than would result from an immediate winding-up of each of the Deed Companies;
- (b) establish the Jervois Creditors' Trust for the benefit of Creditors of the Deed Companies;
- (c) to give effect to the transactions contemplated by the Plan and Restructuring Support Agreement;
- (d) allow the operations of the Parent and certain of its subsidiaries to continue on a going concern basis;
- (e) provide for a continuation of the statutory moratorium which commenced on the Appointment Date; and
- (f) conclude the administration of the Deed Companies and this Deed as efficiently as practicable.

**3.2 Effect of the Deed on Officers of each Deed Company**

- (a) The Directors of the Deed Companies will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators.



- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Companies cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Companies.
- (c) While they remain Directors of the Deed Companies, the Directors of the Deed Companies will not be relieved of their statutory duties as Directors of the Deed Companies and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (d) During the Deed Period, the Directors of the Deed Companies must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iii) perform their obligations pursuant to the Deed.

### **3.3 Effect of this Deed on Members**

- (a) Until this Deed terminates, any Member, and any Creditor holding any Security over any Shares in a Deed Company, subject to section 440B(2) of the Act, must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any Shares or exercise shareholder rights over any Shares in a way that is contrary to this Deed or the purpose of this Deed.
- (b) The Deed Administrators must not and must not allow:
  - (i) the Shares of the Deed Companies to be transferred or otherwise dealt with other than in accordance with this Deed; or
  - (ii) further Shares of any class to be issued in the Deed Companies.

## **4 Pooling**

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### **4.1 Pooled Deed**

All persons bound by this Deed acknowledge that for the purposes of giving effect to this Deed and the Jervois Creditors' Trust:

- (a) the Deed Companies will be treated as one entity; and
- (b) the Claims of each Creditor will be a Claim against each of the Deed Companies.

### **4.2 Intercompany loan balance**

Immediately upon pooling taking place in accordance with clause 4.1 of this Deed:

- (a) each debt payable by a Deed Company to any Deed Company is satisfied or extinguished; and
- (b) each Claim that a Deed Company has against any Deed Company, is satisfied or extinguished.

## **5 Moratorium and Release**

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### **5.1 Binding Effect**

Without limiting sections 444D and 444G of the Act, this Deed binds:

- (a) each Creditor;
- (b) each Member and Officer of the Deed Companies; and

- (c) subject to clause 6.1, each Secured Creditor who voted in favour of the section 439C Resolution at the Second Meeting.

## 5.2 Moratorium

- (a) Subject to clause 5.2(b), and the rights of Secured Creditors and Residual Secured Creditors (including clauses 5.2(c) and 6.1(d)), during the Deed Period a Creditor may not, in relation to that Creditor's Claim:
- (i) make or concur in an application for an order to wind up the Deed Company;
  - (ii) proceed with such an application (referred to in (i) above) made before this Deed became binding on such person;
  - (iii) begin, revive or continue or take any further steps in any action, suit, mediation or proceeding against the Deed Company or in relation to any of its property (except with the leave of a Court and in accordance with such terms (if any) as a Court imposes);
  - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Company's property (except with the leave of a Court and in accordance with such terms (if any) as a Court imposes);
  - (v) commence, continue or take any additional step in any arbitration or court proceeding against the Deed Company or to which the Deed Company is a party;
  - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Company been wound up on the Appointment Date;
  - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Company; or
  - (viii) otherwise enforce any right it may have or acquire against the Deed Company.
- (b) For the purposes of this clause 5.2(a), 'property' includes property used or occupied by, or in the possession of, a Deed Company except if the Administrators have issued a notice under section 443B of the Act in relation to that property.
- (c) For the purposes of this clause 5.2, during the Deed Period, and subject to the rights of the Secured Creditors and Residual Secured Creditors, the moratoria in sections 440A, 440B, 440D, 440F and 444E of the Act will apply to all Creditors and Members of the Deed Companies.
- (d) During the Deed Period, Creditors may not take any of the actions listed at clause 5.2(a) as against the Deed Companies current and former Directors, Officers and managers.

## 5.3 Release upon Completion

- (a) Subject to clause 5.7 and, to the extent relevant, the treatment the Claim receives in accordance with the Confirmation Order, each Creditor (other than an Excluded Creditor) agrees that on Completion and occurrence of the Plan Effective Date, its Claims (other than any Excluded Claim) are extinguished and released in full, in consideration for Admitted Creditors (except Excluded Creditors and Secured Creditors) being entitled to distributions out of the Jervois Creditors' Trust as provided in this Deed.
- (b) Each Deed Company and the Deed Administrators release the Deed Proponent (and its affiliates and Related Entities), the Secured Creditors, the Residual Secured

Creditors and the Directors to the maximum extent permitted by the Act and other applicable law, from all claims.

- (c) For the avoidance of doubt, all Transferred JGL Claims and all Claims under Transferred JGL Contracts will be paid by NewCo in the ordinary course of business in accordance with the Plan and the Confirmation Order, subject to the occurrence of Completion and the Plan Effective Date.

#### **5.4 Further Releases**

Subject to clause 6.1, upon and subject to the occurrence of Completion and Plan Effective Date, each Deed Company and the Deed Administrators (including in their capacities as Administrators) release:

- (a) the Deed Proponent;
- (b) the Secured Creditors;
- (c) the Residual Secured Creditors; and
- (d) the Directors, subject to the limitations provided for in the Plan,

from any or all claims that they have, may have had, or will have against them of any kind whatsoever, howsoever arising, from or in connection with any event that occurred prior to Completion, to the maximum extent permitted by the Act and other applicable law.

#### **5.5 Execution of all necessary documents**

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 5.3.

#### **5.6 Bar to Creditors' Claims**

- (a) Subject to section 444D of the Act and the Plan, this Deed may be pleaded by a Deed Company or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim to the extent that the Deed Company's liability has been released and discharged in relation to that Claim pursuant to clause 5.3.
- (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, other than the Deed Proponent, 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 Deed Company of the release and discharge of the Claims under this Deed.

#### **5.7 Conversion of Claims**

- (a) Subject to clause 5.7(b), upon all Claims being released pursuant to clause 5.3, each Creditor who had a Claim, will be entitled to make a claim against the Jervois Creditors' Trust, in accordance with the Jervois Creditors' Trust Deed, which is equal in amount to their released Claim.
- (b) A Creditor is not entitled to make a claim against, participate in or receive any distribution from, the Jervois Creditors' Trust in respect of an Excluded Claim.
- (c) Each Creditor accepts their right to prove under the Jervois Creditors' Trust Deed against the Jervois Creditors' Trust in full satisfaction and complete discharge of all Claims.

## **6 Secured Creditors**

### **6.1 Secured Creditors**

- (a) This Deed will not release:
  - (i) any Security held by the Secured Creditors in respect of any Secured Claims which shall remain in effect until the Completion Date;
  - (ii) any Security held by the Residual Secured Creditors in respect of any Residual Secured Claims, which shall remain in effect until the completion of the liquidations of the Deed Companies and their non-Australian subsidiaries; and
  - (iii) any Security validly and effectively held by an Owner or lessor in property of the Deed Companies.
- (b) Nothing in this Deed affects the liabilities of the Deed Companies to the Secured Creditors or Residual Secured Creditors or the contractual relations between them in respect of their Secured Claims or Residual Secured Claims (including the right of a Secured Creditor or Residual Secured Creditor to realise or otherwise deal with its Secured Claim or Residual Secured Claim to the extent permitted by section 444D(2) of the Act).
- (c) Subject to clause 6.1(d), each Secured Creditor and Residual Secured Creditor who voted in favour of the Section 439C Resolution will be subject to the restrictions in clause 5.2 and must not do anything to permit, procure or facilitate any security trustee for that Secured Creditor or Residual Secured Creditor to do anything inconsistent with the restrictions in clause 5.2.
- (d) The restrictions in clause 5.2 will cease to apply to a Secured Creditor or Residual Secured Creditor who voted in favour of the Section 439C Resolution if this Deed terminates prior to the Completion Date for any of the reasons set out in clause 18.2 of this Deed.

## **7 Owners of Property in the possession of the Deed Company**

Nothing in this Deed will restrict a right that an Owner has in relation to the property of that Owner under section 444D(3) of the Act.

## **8 Insured Claims**

### **8.1 Rights of Creditors who have Claims covered by insurance**

If insurance is held by or on behalf of the Deed Company in respect of an Insured Claim:

- (a) the Creditor may, in relation to its Insured Claim and notwithstanding that the Completion Date has occurred, take action to recover the amount due in respect of the Claim against the Deed 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 Claim, the Creditor may retain that amount in full satisfaction of its rights to receive a distribution from the Jervois Creditors' Trust in respect of that Claim;
- (c) the Deed Company is not required to provide assistance to a Creditor in relation to a Claim under this clause or take any action in response to enforcement action taken by a Creditor in accordance with this clause; and
- (d) where a Creditor intends to take enforcement action in relation to a Claim under this clause:

- (i) the Creditor must, prior to taking any enforcement action in relation to the Claim, provide the Deed Company with an indemnity in the form of Schedule 6 (**Creditor Indemnity**) prior to, or during, any enforcement action in relation to the Claim;
- (ii) if requested by the Deed Company, provide the Deed Company with evidence, to the reasonable satisfaction of the Deed Company, that the Creditor will be (and will continue to be) in a financial position, or have access to sufficient funds, to enable it to satisfy the Creditor Indemnity; and
- (iii) the Deed Company may plead this Deed as a bar to any enforcement action taken by a Creditor in relation to the Claim in circumstances where the Creditor has not, prior to commencing that enforcement action, given the Creditor Indemnity referred to in clause 8.1(d)(i) to the Deed Company.

## **8.2 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 Deed Company to take action) this Deed operates as a complete release and bar to that part of that Creditor's Claim which has not been met by the insurer.

## **9 Continuing Employee Contracts**

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Prior to the execution of this Deed, the Parties will take all reasonable steps to procure that the New JRV Employer will:

- (a) offer Continuing Employee Contracts to each of the Continuing Employees (to the extent it has not done so prior to this Deed being executed); and
- (b) provide the Deed Administrators with a copy of Continuing Employee Contracts offered to Continuing Employees as contemplated by clause 9(a) and, as to those offers that were accepted, written confirmation of all acceptances of Continuing Employee Contracts.

## **10 Conditions Precedent to Completion**

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### **10.1 Conditions Precedent**

Completion is conditional upon all of the following conditions being satisfied or waived in writing on or prior to the CP Satisfaction Time:

- (a) the Parent procuring the Debtors providing written confirmation to the Deed Administrators that:
  - (i) the Confirmation Order is entered in the Chapter 11 Cases, and such order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Deed Proponent;
  - (ii) the Restructuring Support Agreement shall be in full force and effect, and no default, event of default or termination event shall have occurred or be continuing thereunder; and
  - (iii) the DIP Loan Agreement shall be in full force and effect, and no default, event of default or termination event shall have occurred or be continuing thereunder.
- (b) the Deed Administrators confirming to the Deed Proponent that New JRV Employer has offered Continuing Employee Contracts to each of the Continuing Employees, along with the schedule of acceptances in accordance with clause 9(b);

- (c) the Deed Proponent providing written confirmation in a form agreed with the Deed Administrators of their approval of the Post-DOCA Budget;
- (d) the Deed Administrators and Deed Proponent confirming to each other, in writing, their respective solicitors are holding counterparts and signature pages of the following documents executed by the applicable parties:
  - (i) the Asset Transfer Deed;
  - (ii) the Stock Transfer Agreement;
  - (iii) the Stock Power;
  - (iv) the Jersey Share Transfer Form;
  - (v) the IP Assignment Deed;
  - (vi) deeds of novation in respect of:
    - (A) the Klassen Consultancy Agreement; and
    - (B) all Novated JGL Contracts;
  - (vii) the Resignation Letter;
  - (viii) the Tax Indemnity Deed; and
  - (ix) the Jervois Creditors' Trust Deed.

## **10.2 Satisfaction of Conditions Precedent and Completion Notice**

- (a) To the extent that it is within the relevant Party's obligation and control, that Party must (at its own cost) use reasonable endeavours to ensure that the Conditions Precedent are satisfied as soon as possible after the Commencement Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions Precedent.

## **10.3 Waiver of Conditions Precedent**

The Conditions Precedent in clause 10.1(a) is solely for the benefit of the Deed Proponent and may only be waived in writing by the Deed Proponent in its sole discretion. Any other Condition Precedent can also be waived, but only where the Deed Proponent and Deed Administrators agree to the waiver of that Condition Precedent in writing.

## **10.4 Consequence of non-satisfaction of Conditions Precedent**

- (a) Subject to clause 10.4(b), if:
  - (i) Completion has not occurred prior to the CP Satisfaction Time; or
  - (ii) the Deed Administrators and the Deed Proponent agree in writing that one or more of the Conditions Precedent is unsatisfied and incapable of being satisfied or waived by the CP Satisfaction Time,
 then this Deed will terminate in accordance with clause 18 of this Deed.
- (b) In circumstances where the Deed Proponent and the Deed Administrators agree in writing they will not be able to satisfy the Conditions Precedent before the CP Satisfaction Time, they may agree, in writing, to extend the CP Satisfaction Time.

## **10.5 Completion**

Completion occurs when:

- (a) the Conditions Precedent have each been satisfied or waived in accordance with this clause 10; and



- (b) each of the Deed Proponent and the Deed Administrators have issued written notice to each other of clause 10.5(a) being satisfied ("**Completion Notice**").

## **11 Deed Period**

### **11.1 Operation of the Deed Companies during the Deed Period**

- (a) During the Deed Period:
- (i) the Deed Administrators will have control of the Deed Companies and will continue to manage the operations (to the extent relevant) of the Deed Companies exercising the powers vested in them under this Deed and the Prescribed Provisions; and
  - (ii) the powers of the Directors will remain suspended pursuant to section 198G of the Act.
- (b) The Deed Administrators (including in their capacities as Trustees and Liquidators) will be entitled to retain copies of or access to the Deed Companies' respective records following Completion of the Deed, as is necessary or reasonably desirable for them to discharge their functions, perform their duties or exercise their powers as contemplated by this Deed, the Act and other applicable law.

## **12 Completion Steps**

### **12.1 Steps Prior to Completion Date**

Prior to the Completion Date, the Deed Administrators will cause Parent to apply and exercise reasonable efforts to be delisted from the ASX and any other stock exchange (as applicable) (it being understood that the actual delisting will not be a Condition Precedent to the Completion Date).

### **12.2 Releases of documents from escrow**

- (a) At Completion, and concurrently with the occurrence of the Plan Effective Date, the Parties' solicitors will release the signature pages for the following documents from escrow, as follows:
- (i) the Asset Transfer Deed;
  - (ii) the Stock Transfer Agreement;
  - (iii) the Stock Power;
  - (iv) the Jersey Share Transfer Form;
  - (v) the IP Assignment Deed;
  - (vi) deeds of novation in respect of:
    - (A) the Klassen Consultancy Agreement; and
    - (B) all Novated JGL Contracts; and
  - (vii) the Tax Indemnity Deed; and
  - (viii) the Jervois Creditors' Trust Deed.
- (b) For the avoidance of doubt, it is in the intent of the Parties that the transactions occurring at Completion will be sequenced (and shall be deemed to have been sequenced) in accordance with the Restructuring Steps Memorandum (as defined in the Chapter 11 Plan).



- (c) Following Completion, the Parties will procure that all necessary steps are taken to exchange, deliver or otherwise give effect to the transactions and documents in clause 12.2(a), including by dating them as at Completion.

### **12.3 Transfers to NewCo**

Upon Completion, as contemplated by this Deed:

- (a) the Asset Transfer Deed will take effect, which provides for, among other things:
- (i) the transfer and contribution of the Formation Holdings Receivable to Formation Holdings;
  - (ii) the transfer of the JGL Assets to NewCo or a Related Entity of NewCo; and
  - (iii) the transfer of the Transferred Liabilities to NewCo or a Related Entity of NewCo;
- (b) the Stock Transfer Agreement will take effect, which provides for, among other things, the transfer by the Parent to NewCo of all of the Shares in the following entities, and such transfers shall be consummated in accordance with the Stock Transfer Agreement, in accordance with the Plan and the Confirmation Order:
- (i) Formation Holdings; and
  - (ii) Intermediate HoldCo;
- (c) the IP Assignment Deed will take effect, which provides for, among other things, the transfer by the relevant Deed Companies to NewCo and its applicable Related Entities of the Group Intellectual Property;
- (d) the deeds of novation in relation to the Novated JGL Contracts will take effect, which provide for, among other things, NewCo or a Related Entity of NewCo to take on the Parent's rights and obligations in respect of such Novated JGL Contracts and the Claims thereunder.

### **12.4 Consideration**

The total consideration payable to Parent for the transfers in clause 12.3 (except for the contribution of the Formation Holdings Receivable under the Asset Transfer Deed) include, without limitation:

- (a) the funding of the Deed Fund;
- (b) the cancellation of the Convertible Notes in accordance with the terms of the Plan on the Completion Date;
- (c) the cancellation of the Secured Claims (i.e., the Claims arising under the ICO Bonds, the JFO Term Loan Facility, and the DIP Facility), in accordance with the terms of the Plan on the Completion Date but subject to the provisions in clause 6;
- (d) the cancellation of the Residual Secured Claims (i.e., the Claims arising under the JFO Revolving Loan Facility) at the completion of the liquidations and wind-down proceedings of the Deed Companies and their non-Australian subsidiaries.

### **12.5 Application of Cash**

At Completion, the Administration Cash will be applied as follows:

- (a) the sum of A\$1,000,000 will constitute the Deed Fund, which will be held by the Deed Administrators for application in accordance with the Jervois Creditors' Trust Deed;
- (b) the sum of A\$10 will be applied as the Settlement Sum for the purposes of clause 17.1(c); and

- (c) any balance will be held by the Deed Companies for application by the Liquidators in accordance with the Post-DOCA Budget, and any net proceeds from the liquidation of the Remaining Assets and any other funds remaining with the Deed Companies, after payment of all amounts entitled to be paid from the Deed Companies in accordance with this Deed and the Post-DOCA Budget, will be transferred to NewCo.

## **12.6 Effectiveness**

To the maximum extent possible under the Act and other applicable law, this Deed authorises and gives binding legal effect to:

- (a) the transfers in accordance with the terms of the documents to which the Deed Companies are a party to as referred to in clause 12.2(a); and
- (b) all other rights, obligations and other steps and provisions of the Plan, the Confirmation Order and any other order made in the Chapter 11 Cases.

## **12.7 Further Assurances**

- (a) On and from Completion, the Parties will take such steps reasonably required or requested to give effect to this Deed, including the execution of documents, the issuing of notices, consenting to orders in Court proceedings and generally assisting the other Parties as contemplated by this Deed.
- (b) The Deed Administrators will only be obliged to comply with clause 12.7(a) to the extent that they are required to act consistently with their functions and duties and within their powers under the Act and other applicable law.

## **12.8 Remaining Assets**

- (a) The Remaining Assets will not be transferred on Completion and shall remain with the applicable Deed Company and be part of the winding-up of each applicable Deed Company, with any proceeds realised from them being dealt with in accordance with the Post-DOCA Budget, and otherwise in accordance with the Act and other applicable law.
- (b) For the avoidance of doubt, any net proceeds from the liquidation of the Remaining Assets and any other funds remaining with the Deed Companies, after payment of all amounts entitled to be paid from the Deed Companies in accordance with this Deed and the Post-DOCA Budget, will be transferred to NewCo.

## **12.9 Property Available for Creditor Claims**

- (a) The only property that is available to pay Admitted Claims of Creditors are the assets of the Jervois Creditors' Trust Fund in accordance with clause 17.
- (b) Rejected Contract Claims shall only be entitled to receive a distribution of A\$1 each on account of such Rejected Contract Claims, notwithstanding the quantum of the Rejected Contract Claim as adjudicated by the Deed Administrators or the Trustees (as the case may be).

## **12.10 Superannuation Contribution Debts**

- (a) For the purposes of section 444DB of the Act, the Deed Administrators and Trustees (as the case may be) must determine that a debt (or part thereof) by way of superannuation contribution (**Superannuation Debt**) is not admissible to proof as a Claim against a Deed Company or a Claim against the Jervois Creditors' Trust Fund if:
  - (i) that debt (or that part of the debt) by way of superannuation guarantee charge:
    - (A) has been paid; or

- (B) is, or is to be, admissible against the Deed Company; and
- (ii) the Deed Administrators or the Trustees (as the case may be) are satisfied that the superannuation guarantee charge is attributable to the Superannuation Debt.
- (b) If the Deed Administrators or Trustees (as the case may be) make a determination in accordance with clause 12.10(a), the Superannuation Debt is to be treated as extinguished as against the Deed Company.

### **12.11 Continuing Employee entitlements**

On and from Completion, the New JRV Employer will recognise, honour and pay the entitlements of any Continuing Employee who has signed a Continuing Employee Contract including any entitlements (including the KERP Payments) or Priority Claims which accrued up to and including the Completion Date, which are not otherwise paid or satisfied out of the Jervois Creditors' Trust Fund.

### **12.12 Other post-Completion obligations**

- (a) The Deed Administrators will release the Resignation Letter from escrow.
- (b) The Deed Administrators will take the appropriate steps to commence voluntary winding up proceedings of the Deed Companies pursuant to section 446AA of the Act (and any costs or expenses of such proceedings shall be paid solely from the Liquidation Fund).
- (c) In addition, as soon as practicable after Completion, the Deed Administrators, in their capacities as Liquidators, will, acting reasonably:
  - (i) cause each of TZ Nico (1) Pty Limited (ACN 626 231 267) (Subject to Deed of Company Arrangement) and TZ Nico (2) Pty Limited (ACN 626 231 276) (Subject to Deed of Company Arrangement) to undertake the requisite steps for the commencement of a winding up (or equivalent process) and subsequent deregistration of Tanzania Nickel Cobalt Limited (registered number 136697072), in accordance with the laws of Tanzania; and
  - (ii) cause Parent to undertake the requisite steps for the commencement of a winding up (or equivalent process) and subsequent deregistration (as applicable) of:
    - (A) Coronation Mines Limited (C0560904);
    - (B) Millennial Holdings Corp (120233272); and
    - (C) 1126302 BC Limited,
 in each case in accordance with the laws of Canada; and
  - (iii) continue to cause the Parent to exercise efforts to be delisted from the ASX.
- (d) On and from the Completion Date, except as to the obligations (if any) directly and expressly set out in this Deed or any of the documents set out in clause 12.2(a) above, none of Deed Proponent, NewCo or any Subsidiary, Affiliate, Officer, Director, Member, employee, agent or advisor of Deed Proponent or NewCo shall have any further duties, responsibilities or liabilities arising under, in connection with or related to this DOCA, the Deed Administrators, or the Deed Companies.

### **12.13 Wrong Pockets**

After Completion, the Deed Administrators (including in their capacities as Trustees and Liquidators) and the Parent must comply with clause 6(b) of the Asset Transfer Deed in relation

to any amounts the Parent or the Deed Administrators (including in their capacities as Trustees and Liquidators) receive in respect of the JGL Assets.

## **13 Deed Administrators' Appointment**

### **13.1 Appointment**

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

### **13.2 Acceptance of appointment**

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period until the Deed Administrators retire or are removed from office in accordance with the Deed or the Act.

### **13.3 Deed Administrators are agents**

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

### **13.4 Joint and several**

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

### **13.5 Deed Administrators' resignation**

Any Deed Administrator may resign at any time by giving not less than 7 days' prior written notice to each of the Parties unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Companies in accordance with clause 14.4 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 13.5(b).

## **14 Powers of the Deed Administrators**

### **14.1 Powers**

For the purposes of administering this Deed, the Deed Administrators have the following powers:

- (a) all of the powers set out in paragraph 2 of Schedule 8A of the Regulations, provided that the Deed Administrators must not, without the prior written consent of the Deed Proponent:
  - (i) bring an application for the winding up of a Deed Company or any of its non-Australian subsidiaries;
  - (ii) exercise any of the powers set out in items (za), (zb), (zc) or (ze) of paragraph 2 of Schedule 8A of the Regulations; or
  - (iii) except in the ordinary course of business of a Deed Company, exercise any of the powers set out in items (h) or (s) of paragraph 2 of Schedule 8A of the Regulations;

- (b) to remove from office a Director or company secretary;
- (c) to appoint a person as a Director of a Deed Company, whether to fill a casual vacancy or not;
- (d) to perform any function and exercise any power that a Deed Company or any of their Officers could perform or exercise if the Deed Company was not subject to this Deed;
- (e) to do anything that is incidental to exercising a power set out in this clause 14.1; and
- (f) to do anything else that is necessary or convenient for the purpose of administering this Deed.

#### **14.2 Calling for proofs of debt**

The Deed Administrators may exercise any of the powers conferred on the Trustees under the Jervois Creditors' Trust Deed for the purpose of commencing the process for the adjudication of Claims under the Jervois Creditors' Trust Deed, which exercise will be treated for all purposes under the Jervois Creditors' Trust Deed as if those powers had been exercised by the Trustees after the commencement of the Jervois Creditors' Trust Deed.

#### **14.3 Solicitors, advisers and consultants**

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed, and the Deed Company will pay all of the Costs of the Deed Administrators.
- (b) The Deed Administrators may delegate their powers under this clause 14 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Company.

#### **14.4 Creditors' meetings**

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Rules 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.

#### **14.5 Reporting to Creditors**

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate.

#### **14.6 Books and Records**

The Deed Administrators (including in their capacities as Administrators, Trustees and Liquidators) will be entitled to retain copies of or access to the Deed Companies' books and records following completion of the DOCA, as is necessary or reasonably desirable for them to properly perform their roles under this Deed.

### **15 Remuneration and Indemnity**

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#### **15.1 Remuneration**

- (a) The Deed Administrators (including in their capacities as Administrators and Liquidators) are entitled to:
  - (i) payment of all of their Costs; and

- (ii) receive their Remuneration in accordance with Division 60 of the IPS provided all fees and expenses (including professional fees) on the basis of the time spent by the Deed Administrators (including in their capacities as Administrators and Liquidators), themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates are in the performance of services in connection with or in relation to the administrations of the Deed Companies, and such time will be charged at the Deed Administrators' (including in their capacities as Administrators and Liquidators) standard rates, from time to time, for work of that nature by the firm of which the Deed Administrators (including in their capacities as Administrators and Liquidators) are partners or employees.
- (b) For the purposes of clause 15.1, the Deed Administrators (including in their capacities as Administrators and Liquidators) acknowledge that their Remuneration and Costs (including all fees and expenses in connection with the liquidation or wind-down of the non-Australian subsidiaries of the Deed Companies) will only be reimbursed and/or paid out from the Administration Cash held by the Deed Companies following Completion, and will not exceed the amounts specified in the Post-DOCA Budget, in accordance with clause 12.5(c).

## **15.2 No Personal 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 during the Deed Period, the Deed Administrators will not be personally liable for:

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

## **15.3 Indemnity**

The Deed Administrators (including in their capacities as Administrators and Liquidators) are entitled to be indemnified by the Deed Companies up to and following Completion, in respect of:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Deed Companies or their role as Deed Administrators, (including in their capacities as Administrators and Liquidators) and incurred or sustained in good faith and without negligence;
- (b) any amount which the Deed Administrators (including in their capacities as Administrators and Liquidators) are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Deed Companies for, in accordance with the Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Act;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the Act applies;



- (d) any amount for which the Deed Administrators (including in their capacities as Administrators and Liquidators) are entitled to exercise a lien at law or in equity on the property of the Deed Companies;
- (e) the Deed Administrators' (including in their capacities as Administrators and Liquidators) Remuneration and Costs; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of the Deed and incurred or sustained in good faith and without negligence.

#### **15.4 Indemnity not to be affected or prejudiced**

The indemnities under clause 15.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators (including in their capacities as 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 (including in their capacities as Administrators) or defect in the approval or execution of the Deed or otherwise; or
- (b) affect or prejudice all or any rights that the Deed Administrators (including in their capacities as Administrators) may have against the Deed Company or any other person to be indemnified against the Costs and liabilities incurred by the Deed Administrators (including in their capacities as Administrators) in the performance of, or incidental to, any of the powers or authorities conferred on the Deed Administrators (including in their capacities as Administrators) by this Deed or otherwise.

#### **15.5 Satisfaction of Claims**

The Deed Administrators (including in their capacities as Administrators) are entitled to exercise the Deed Administrators' (including in their capacities as Administrators') right of indemnity conferred by clause 15.3 whether or not the Deed Administrators (including in their capacities as Administrators) have paid or satisfied the Claims.

#### **15.6 Administrators' and Deed Administrators' lien**

Until Completion, the Deed Administrators (including in their capacities as Administrators) are entitled to exercise a lien over the Deed Companies' assets, including the Deed Fund and Administration Cash, for all amounts in respect of which they are entitled to an indemnity from the Deed Companies under clause 15.3 of this Deed and otherwise at law and equity subject to the amounts specified in the Approved Australian VA Budget.

#### **15.7 Priority**

The Deed Administrators' (including in their capacities as Administrators) right of indemnity under clause 15.3 and their lien under clause 15.6 have priority over the claims of any Creditor or all Creditors generally.

#### **15.8 Statutory liability and indemnity**

Subject to clause 15.6, nothing in this Deed will affect or limit the operation of Subdivision B of Division 9 of Part 5.3A of the Act, which is to apply with all necessary modifications to the Administrators' voluntary administration of the Deed Companies and the Deed Administrators' subsequent administration of this Deed.

### **16 Deed Fund**

#### **16.1 Establishment of the Deed Fund**

- (a) The Deed Fund will be held on trust for the benefit of persons entitled to the funds in the Deed Fund in accordance with this Deed.



- (b) Except for the cash which will be retained by the Deed Companies in accordance with the Post DOCA Budget, the Deed Administrators will apply the Deed Fund in accordance with clause 17.2 of this Deed.

## **17 Jervois Creditors' Trust Deed and Jervois Creditors' Trust**

### **17.1 Establishment of the Jervois Creditors' Trust**

- (a) Prior to Completion, the relevant Parties will execute the Jervois Creditors' Trust Deed.
- (b) The Jervois Creditors' Trust Deed will establish:
  - (i) for the purposes of section 444A(4)(b) of the Act, the property that forms part of the Jervois Creditors' Trust Fund and is available to pay Admitted Claims;
  - (ii) for the purposes of section 444A(4)(h) of the Act, the order in which the Jervois Creditors' Trust Fund is to be distributed among Creditors, which distributions (which shall be made solely from the Jervois Creditors' Trust Deed) shall include:
    - (A) a Dividend of up to 100 cents in the dollar to participating Admitted Creditors of each Deed Company (other than Eligible Employee Creditors and Rejected Contract Claims), on a pari passu basis to the extent such Claim is not assumed by NewCo in accordance with the Plan; and
    - (B) a Dividend in the amount of one (1) dollar to each holder of a Rejected Contract Claim which is an Admitted Claim;
  - (iii) for the purposes of section 444A(4)(i) of the Act, the day on or before which Claims must have arisen to be admissible under the Jervois Creditors' Trust Deed;
  - (iv) for the purposes of section 444DA(1) of the Act, the requirement for Eligible Employee Creditors to receive priority at least equal to what they would have been entitled if the Property was applied in accordance with sections 556, 560 and 561 of the Act;
  - (v) for the purposes of section 444DB of the Act, the requirement for no admissibility of superannuation contribution to proof in whole or in part;
  - (vi) that interest does not accrue on, and is not payable in respect of, any Admitted Claim; and
  - (vii) that each Creditor will not seek to prove under, or participate in any Dividends.
- (c) The Deed Companies authorise the Deed Administrators to execute the Jervois Creditors' Trust Deed and to pay the Settlement Sum to the Jervois Creditors' Trust.
- (d) The trustees of the Jervois Creditors' Trust will be the Deed Administrators.
- (e) The Jervois Creditors' Trust Deed will create the Jervois Creditors' Trust Fund for the benefit of the Admitted Creditors of the Deed Companies.

### **17.2 Jervois Creditors' Trust Fund**

- (a) The Jervois Creditors' Trust Fund will consist of the Deed Fund.
- (b) For the purposes of section 444A(4)(b) of the Act, the Jervois' Creditors Trust Fund is the only property of the Deed Companies available to pay Admitted Claims.

- (c) The Deed Administrators will hold the Jervois Creditors' Trust Fund on trust for the benefit of the persons entitled to those funds in accordance with the Jervois Creditors' Trust Deed.
- (d) The Deed Administrators will apply the Jervois Creditors' Trust Fund in accordance with the Jervois Creditors' Trust Deed in their capacity as Trustees.
- (e) As soon as practicable after the passing of any deadline by which Creditors were to submit proofs of debt, the Trustees will:
  - (i) subject to receipt of written notice from New JRV Employer confirming that:
    - (A) the Continuing Employee has signed a Continuing Employee Contract; and
    - (B) clause 12.11 has been complied with,
 promptly transfer the portion of the Jervois Creditors' Trust Fund held on account of any Priority Claims of a particular Continuing Employee, to NewCo; and
- (f) Subject to clause 17.2(e), any surplus from the Jervois Creditors' Trust Fund is to be distributed to the Parent to be applied in accordance with the Post-DOCA Budget.

## **18 Termination of this Deed**

### **18.1 Termination on effectuation of Deed**

This Deed will terminate immediately after Completion.

### **18.2 Termination on failure of Deed**

This Deed will continue in operation until the earliest of:

- (a) the date it is terminated by an order of a Court under section 445D of the Act;
- (b) the date it is terminated by a resolution of the Creditors passed at a meeting convened under Division 75 of the IPS;
- (c) the date on which the Confirmation Order is successfully appealed, overturned, set aside or otherwise no longer of any force or effect;
- (d) the CP Satisfaction Time (subject to any extension agreed pursuant to clause 10.4(b)), if a Condition Precedent is not satisfied (or becomes incapable of being satisfied) or waived by the Deed Proponent by that date;
- (e) notification by the Deed Proponent to the Deed Administrators of the occurrence of an event of default under the DIP Loan Agreement or a termination event under the Restructuring Support Agreement, with such an event of default not being remedied in accordance with the terms of the Restructuring Support Agreement; or
- (f) the Deed is not effectuated by 5.00pm 9 May 2025 (US eastern time) (being 7am on 10 May 2025 AEST), unless the Deed Proponent, in its sole direction and in writing, agrees to extend the Plan Effective Date.

### **18.3 Notice of Effectuation of Deed**

Upon termination in accordance with the provisions of clause 18.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of each of the Deed Companies:

"We, [***name of deed administrators***] of [***address***] as deed administrators of the deed of company arrangement executed on [date], CERTIFY that the deed has been wholly effectuated in respect to [***insert relevant Deed Company***]."

and the execution of each of the notices (in respect of each Deed Company) terminates, in respect of that Deed Company, this Deed and all Claims of Creditors of the relevant Deed Companies other than Excluded Claims of that Deed Company will be extinguished, discharged and released if not extinguished or released earlier under the Deed.

#### **18.4 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.

#### **18.5 Severance**

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

#### **18.6 Consequences of Termination of the Deed for non-performance**

Upon termination of the Deed under clause 18.2 unless the Deed Administrators consider it appropriate to convene a further meeting of Creditors pursuant to Division 75 of the IPS to consider a variation of the Deed:

- (a) each Deed Company will be taken to have passed a special resolution under section 491 of the Act that the Deed Company be voluntarily wound up and that the Deed Administrators be the Deed Company's liquidators; and
- (b) each Deed Company will be wound up.

#### **18.7 Survival of clauses**

Despite any other provision of this Deed, clauses 1 (*Definitions and Interpretation*), 5 (*Moratorium and Release*), 12.4 to 12.12 (*Completion Steps*), 15 (*Remuneration and Indemnity*), 18 (*Termination of this Deed*), 19 (*Taxation*), 20 (*Notices*), and 21 (*General*) survive the termination of this Deed.

#### **18.8 Liquidations of Deed Companies**

In accordance with section 446AA of the Act, upon Completion of this Deed in accordance with clauses 18.1 and 18.3, the Deed Companies will be wound up with the Deed Administrators appointed as liquidators.

### **19 Taxation**

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#### **19.1 Interpretation**

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 19 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 19;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 19;
- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts; and

- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 19 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

## **19.2 Reimbursements and similar payments**

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 19.3 where applicable.

## **19.3 GST payable**

If GST is payable in relation to a supply made by a party (**Supplier**) under or in connection with this Deed then the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable in relation to the supply at the same time as the other consideration is to be provided for that supply.

## **19.4 Tax Invoice**

The Supplier must issue a valid tax invoice to the Recipient for any taxable supply it makes under this Deed, except where the Recipient is required to issue the tax invoice.

## **19.5 Variation to GST payable**

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 19.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 19.3.

# **20 Notices**

## **20.1 How to give notices**

- (a) Any notice to a Party under the provisions of this Deed is valid and effective if delivered personally, by courier or e-mail, to or, if given by registered mail, postage prepaid, addressed to, the details for that Party specified in the 'Parties' section of this Deed and clause 20.3 and is deemed to have been given on the date of delivery personally or by courier or e-mail if so delivered prior to 5:00 pm (Melbourne time) and otherwise on the next calendar day, or on the third Business Day after such letter has been mailed, as the case may be.
- (b) Any notice provided for in this Deed may be waived in writing by the Party entitled to receive such notice, either before or after the event.
- (c) A notice in connection with this Deed must be:
- (i) in writing in English; and
  - (ii) signed by the Party or its agent.
- (d) Where two or more persons comprise a Party, notice to or by one is effective notice to and by all.

## **20.2 Change of details**

- (a) A Party may at any time change its contact details by notice to each other Party.

- (b) If details are so changed, this clause applies as if those changed details were set out in the 'Parties' section and clause 20.3 of this Deed.

## 20.3 Notice details

### Administrators and Deed Administrators

Name: Gayle Dickerson and David Hardy in their capacities as joint and several voluntary administrators of the Deed Companies or Gayle Dickerson, David Hardy and Ian Phillip Sutherland in their capacities as deed administrators of the Deed Companies (as the context requires)

Address: KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

Email: [gdickerson@kpmg.com.au](mailto:gdickerson@kpmg.com.au); [dhardy@kpmg.com.au](mailto:dhardy@kpmg.com.au); [isutherland@kpmg.com.au](mailto:isutherland@kpmg.com.au)

Attention: Gayle Dickerson, David Hardy and Ian Phillip Sutherland

### Deed Companies

Name: Jervois Global Limited (Administrators Appointed) (ACN 007 626 575)  
 Goldpride Pty Ltd (Administrators Appointed) (ACN 061 269 109)  
 Hardrock Exploration Pty. Ltd. (Administrators Appointed) (ACN 004 800 319)  
 Nico Young Pty. Ltd. (Administrators Appointed) (ACN 132 050 205)  
 TZ Nico (1) Pty Ltd (Administrators Appointed) (ACN 626 231 267)  
 TZ Nico (2) Pty Ltd (Administrators Appointed) (ACN 626 231 276)

Address: KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

Email: [gdickerson@kpmg.com.au](mailto:gdickerson@kpmg.com.au); [dhardy@kpmg.com.au](mailto:dhardy@kpmg.com.au); [isutherland@kpmg.com.au](mailto:isutherland@kpmg.com.au)

Attention: Gayle Dickerson, David Hardy and Ian Phillip Sutherland

### Deed Proponent

Name: Millstreet Capital Management, LLC

Address: c/- Mills Oakley Lawyers, Level 7, 151 Clarence Street, Sydney NSW 2000

Email: [tchater@millsoakley.com.au](mailto:tchater@millsoakley.com.au); [jkerr@millsoakley.com.au](mailto:jkerr@millsoakley.com.au)

Attention: Taline Chater

## 21 General

### 21.1 Variation

- (a) Subject to the provisions of the Act, this Deed may only be varied by:
- (i) a resolution passed at a meeting of the Creditors convened in accordance with Division 75 of the IPS, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and
  - (ii) with written agreement of the Parties.
- (b) Nothing in any variation of this Deed shall limit the operation of sections 445D and 445E of the Act.

**21.2 Assignment**

Rights arising out of or under this Deed are not assignable by a Party, except if the assignor is required to make the assignment pursuant to Clause 13.5 or makes the assignment with the prior written consent of the other Parties.

**21.3 Further assurances**

Each Party and each person bound by this Deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

**21.4 Governing law and jurisdiction**

This Deed is governed by the law in force in Victoria. The Parties submit to the non-exclusive jurisdiction of the Courts in and of the State of Victoria and any Court which may hear appeals from those Courts.

**21.5 Waiver**

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

**21.6 Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one and the same instrument.
- (c) A Party may execute this Deed by signing any counterpart.
- (d) Without limitation, the Parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences each Parties' execution of this Deed.

**21.7 Creditors' Power of Attorney**

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 5.3.

**21.8 Costs**

- (a) Each Party must pay its own costs of negotiating, preparing and executing this Deed (subject to any reimbursement agreements in place between Deed Proponent and the Debtors).
- (b) The costs of the Administrators that are incidental to the preparation and execution of this Deed are taken to be cost, charges and expenses incurred by the Deed Administrators in connection with or incidental to the administration of this Deed.

**21.9 Accumulative Rights**

The rights, power and remedies provided by this Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

**21.10 Time**

Time is of the essence of this Deed in all respects.

**21.11 Entire Agreement**

This Deed, the documents referred to in clause 12.2(a), 12.12(a), the Plan, the Plan Supplement and the Confirmation Order contains everything that the Parties have agreed on in relation to the matters that they deal with. No Party can rely on an earlier document, or anything said or done by another Party before this Deed was executed.

**21.12 Relationship of the Parties**

This Deed does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties.

**21.13 Post-DOCA Budget and reporting**

The Deed Administrators (including in their subsequent capacity as Liquidators) will provide a reasonably detailed weekly update to the Deed Proponent regarding the Post-DOCA Budget.




## Signatories

**EXECUTED as a DEED**


### Deed Administrators

**SIGNED, SEALED AND DELIVERED** by **Gayle)**  
**Louise Dickerson** in her capacity as joint and  
several Administrator of the Parent and the  
Australian Entities in the presence of: )

Signature of Witness

DocuSigned by:  
  
12FDF3ED51804E2...

James O'Connell

DocuSigned by:  
  
24C491FEF2AF423...

Signature of **Gayle Dickerson**

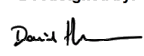
Name of Witness The requirements for witnessing by audio-visual link under  
(Please print) section 12 of the Electronic Transactions Act 2000 (Vic) have been met.

**SIGNED, SEALED AND DELIVERED** by **David)**  
**Alexander Hardy** in his capacity as joint and  
several Administrator of the Parent and the  
Australian Entities in the presence of: )

Signature of Witness

Signed by:  
  
43EA6F518BF54CD...

Ingrid Olbrei

DocuSigned by:  
  
2936A9D1F0364F7...

Signature of **David Hardy**

Name of Witness The requirements for witnessing by audio-visual link under  
(Please print) section 12 of the Electronic Transactions Act 2000 (Vic) have  
been met.

**SIGNED, SEALED AND DELIVERED** by **Ian)**  
**Phillip Sutherland** in the presence of: )

Signature of Witness

Signed by:  
  
43EA6F518BF54CD...

Ingrid Olbrei

Signed by:  
  
8FE3CF08AC0C406...

Signature of **Ian Phillip Sutherland**

Name of Witness The requirements for witnessing by audio-visual link  
(Please print) under section 12 of the Electronic Transactions Act  
2000 (Vic) have been met.

**Parent and Australian Entities**

**EXECUTED** by **Jervois Global Limited**  
**(Administrators Appointed) (ACN 007 626 575))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

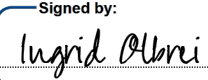
Signed by:  
  
Signature of Witness  
Ingrid Olbrei

Name of Witness (Please print) The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions Act 2000 (Vic) have been met.

DocuSigned by:  
  
Signature of Administrator  
David Hardy

Name of Administrator (Please print)

**EXECUTED** by **Goldpride Pty Ltd**  
**(Administrators Appointed) (ACN 061 269 109))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

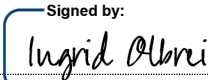
Signed by:  
  
Signature of Witness  
Ingrid Olbrei

Name of Witness (Please print) The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions Act 2000 (Vic) have been met.


DocuSigned by:  
  
Signature of Administrator  
David Hardy

Name of Administrator (Please print)

**EXECUTED** by **Hardrock Exploration Pty. Ltd.)**  
**(Administrators Appointed) (ACN 004 800 319))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

Signed by:  
  
Signature of Witness  
Ingrid Olbrei

Name of Witness (Please print) The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions Act 2000 (Vic) have been met.

DocuSigned by:  
  
Signature of Administrator  
David Hardy

Name of Administrator (Please print)

**EXECUTED** by **TZ Nico (1) Pty Ltd**  
**(Administrators Appointed) (ACN 626 231 267))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

Signed by:  
  
43EA6F518BF54CD...

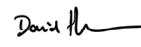
Signature of Witness

Ingrid Olbrei

Name of Witness  
(Please print)

The requirements for witnessing by  
audio-visual link under section 12 of  
the Electronic Transactions Act  
2000 (Vic) have been met.

DocuSigned by:

  
2936A9D1F0364F7...

Signature of Administrator

David Hardy

Name of Administrator  
(Please print)

**EXECUTED** by **TZ Nico (2) Pty Ltd**  
**(Administrators Appointed) (ACN 626 231 276))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

Signed by:  
  
43EA6F518BF54CD...


Signature of Witness

Ingrid Olbrei

Name of Witness  
(Please print)

The requirements for witnessing by  
audio-visual link under section 12 of  
the Electronic Transactions Act 2000  
(Vic) have been met.

DocuSigned by:

  
2936A9D1F0364F7...

Signature of Administrator

David Hardy

Name of Administrator  
(Please print)

**EXECUTED** by **Nico Young Pty. Ltd.)**  
**(Administrators Appointed) (ACN 132 050 205))**  
by being signed sealed and delivered on its behalf)  
by one of its duly appointed joint and several)  
Administrators in the presence of: )

Signed by:  
  
43EA6F518BF54CD...


Signature of Witness

Ingrid Olbrei

Name of Witness  
(Please print)

The requirements for witnessing by  
audio-visual link under section 12 of the  
Electronic Transactions Act 2000 (Vic)  
have been met.

DocuSigned by:

  
2936A9D1F0364F7...

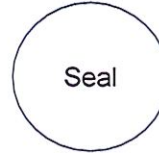
Signature of Administrator

David Hardy

Name of Administrator  
(Please print)

**Deed Proponent**

**SIGNED, SEALED AND DELIVERED** by)  
**Millstreet Capital Management LLC, as)**  
**investment manager and/or sub-manager or)**  
**advisor, on behalf of certain investment funds)**  
**and managed accounts, by being signed sealed)**  
and delivered by its authorised signatory in the)  
presence of:



*Janet Y. Kastrod*  
\_\_\_\_\_  
Signature of Witness

*Janet Y. Kastrod*  
\_\_\_\_\_  
Name of Witness  
(Please print)

*Craig Kelleher*  
\_\_\_\_\_  
Signature of Authorised Signatory

*Craig Kelleher*  
\_\_\_\_\_  
Name of Authorised Signatory  
(Please print)

## **Schedule 1      Australian Entities**

---

1. Nico Young Pty. Ltd. (Administrators Appointed) (ACN 132 050 205)
2. Goldpride Pty Ltd. (Administrators Appointed) (ACN 061 269 109)
3. TZ Nico (1) Pty Ltd. (Administrators Appointed) (ACN 626 231 267)
4. TZ Nico (2) Pty Ltd. (Administrators Appointed) (ACN 626 231 276)
5. Hardrock Exploration Pty. Ltd. (Administrators Appointed) (ACN 004 800 319)

## **Schedule 2      Rejected Contracts Schedule**

---

1. "BMO Capital Markets Engagement by the Company" with BMO Capital Markets Limited.
2. "Purchase Agreement" with Companhia Brasileira de Aluminio.
3. "Engagement Letter – Debt Advisory Services" with Magma Capital Advisory Pty Ltd.
4. "Engagement of Cormark Securities Inc. as financial advisor" with Cormark Securities Inc.



## **Schedule 3      JGL Assets**

---

- Receivable of Formation Holdings.
- Receivable of Jervois Suomi Holdings Oy.
- Retained Causes of Action as defined under the Plan.
- Transferred JGL Contracts.
- Intellectual Property.

## **Schedule 4      Novated JGL Contracts**

---

- The following contracts are Novated JGL Contracts:
  - Pivot2 Solutions Unit Trust
  - MARQ 1 GSC Pty Ltd
  - Ian Woolsey
  - Oppenheimer Resources Pty Ltd
  - Aon Risk Services Australia Limited
  - Kenneth Klassen
  - Karen Walsh



## **Schedule 5      Continuing Employees**

---

1. James May
2. Alwyn Davey
3. Craig Morrison
4. Mellissa Mercer
5. Rohail Aziz
6. Alicia Brown
7. Daniel McGrath
8. Sanja Van Huet



Schedule 6      Creditor Indemnity

To: [insert name of Deed Company] (Company)

INDEMNITY IN RELATION TO INSURED CLAIM

I/We [insert creditor name] refer to the deed of company arrangement in respect of the Company (DOCA) dated [insert date].

I/We wish to take legal proceedings to enforce a Claim under clause 8 of the DOCA (Insured Claim) against the Company. The Insured Claim is [insert full description].

I/We irrevocably and unconditionally indemnify the Company against any costs, expenses, judgments (including but not limited to any judgment or order obtained by me/us against the Company, or any amounts required to be paid by the Company in connection with any judgment or order), suits or actions incurred directly or indirectly as a consequence of commencing legal proceedings in relation to the Insured Claim (Costs) to the extent that the Company is not indemnified for such costs pursuant to a contract of insurance entered into before 12 March 2025 or such Costs are not otherwise paid by the Company's insurer.

I/We confirm our agreement to be bound by the terms of clause 8 of the DOCA in respect of the Insured Claim.

Dated: [insert date]

Executed as a deed poll in favour of [insert name of Deed Company].

Signed sealed and delivered for and on behalf of

[Creditor name]

by its duly authorised representative in the presence of:

Signature of Witness

Signature of authorised representative

Name of Witness  
(Please print)

Name of authorised representative  
(Please print)



## **Schedule 7      Creditors' Trust Deed**

---

# **Jervois      Creditors' Trust Deed**

## **BETWEEN**

David Alexander Hardy, Gayle Louise Dickerson and Ian Phillip Sutherland in their capacities as Joint and Several Deed Administrators of the Parent and Australian Entities Listed in Schedule 1

## **AND**

David Alexander Hardy, Gayle Louise Dickerson and Ian Phillip Sutherland in their capacities as Joint and Several Trustees of the Parent and Australian Entities Listed in Schedule 1

## **AND**

Jervois Global Limited (Subject to Deed of Company Arrangement) (ACN 007 626 575)

## **AND**

The Australian Entities Listed in Schedule 1

## **AND**

Millstreet Capital Management, LLC, as investment manager and/or sub-manager or advisor, on behalf of certain investment funds and managed accounts

## **MILLS OAKLEY**

Level 7, 151 Clarence Street  
SYDNEY NSW 2000  
Telephone: +61 2 8035 7877  
Facsimile: +61 2 9247 1315  
[www.millsoakley.com.au](http://www.millsoakley.com.au)  
Ref: TYCS/3792203



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**Dated** **May 2025**

## **Parties**

**David Alexander Hardy, Gayle Louise Dickerson and Ian Phillip Sutherland in their capacities as Joint and Several Deed Administrators of the Parent and Australian Entities Listed in Schedule 1**

of c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

**(“Deed Administrators”)**

**David Alexander Hardy, Gayle Louise Dickerson and Ian Phillip Sutherland in their capacities as Joint and Several Trustees of the Parent and Australian Entities Listed in Schedule 1**

of c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

**(“Trustees”)**

**Jervois Global Limited (Subject to Deed of Company Arrangement) (ACN 007 626 575)**

of c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

**(“Parent” and “Deed Company”)**

**Each of the Australian Entities Listed in Schedule 1**

of c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

(together with the **Parent**, collectively, the **“Deed Companies”** and each a **“Deed Company”**)

**Millstreet Capital Management, LLC, as investment manager and/or sub-manager or advisor, on behalf of certain investment funds and managed accounts**

c/- Mills Oakley Lawyers, Level 7, 151 Clarence Street, Sydney NSW 2000

**(“Deed Proponent”)**

## **Background**

- A. On the Appointment Date, David Hardy and Gayle Dickerson were appointed as Administrators of the Deed Companies pursuant to Part 5.3A of the Act.
- B. At a meeting held on 30 April 2025 and convened pursuant to section 439A of the Act, the Creditors resolved pursuant to section 439C(a) that the Deed Companies execute the DOCA proposed by the Deed Proponent.
- C. On 9 May 2025, the Deed Administrators, the Deed Companies and the Deed Proponent executed the DOCA pursuant to section 444B(2)(b) of the Act.
- D. The DOCA provides for the establishment of the Jervois Creditors' Trust for the benefit of Admitted Creditors. The Deed Fund will be applied by the Deed Administrators and transferred to the Trustees to settle the Jervois Creditors' Trust in accordance with the DOCA.
- E. The Deed Companies and the Trustees enter into this Deed as contemplated by the DOCA in order to facilitate a distribution by the Trustees to the Admitted Creditors in their capacity as beneficiaries of the Jervois Creditors' Trust.

## Operative provisions

### 1 Interpretation

#### 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, and:

**Costs** means costs, charges and expenses, including those incurred in connection with advisers, and the performance of the Trustee's duties, obligations and responsibilities under the Act and this Deed during the Administration Period and Deed Period.

**Deed** means this Jervois Creditors' Trust Deed, as amended from time to time.

**DOCA** means the deed of company arrangement executed on 9 May 2025 by the Deed Companies, the Deed Proponent, and the Administrators in accordance with the resolution referred to in Recital C of this Deed.

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

**Jervois Creditors' Trust Fund** means the fund contemplated by clause 3 of this Deed.

**Parties** means the Deed Administrators, Trustees, Deed Proponent, Parent and the Australian Entities.

**Remuneration** means the remuneration payable to the Trustees under this Deed.

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

**Trustee Act** means the *Trustee Act 1958* (Vic).

**Trustees' Costs** means the costs, charges and expenses, incurred by the Trustees in connection with the performance of their duties, obligations and responsibilities as Trustees of the Trust, including those incurred in connection with advisers.

**Trustees' Remuneration** means the remuneration of the Trustee as provided for in clause 14.1.

**Trust Termination Date** means the date the Jervois Creditors' Trust is terminated pursuant to clause 16.

#### 1.2 Interpretation

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

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) terms defined in or for the purposes of the Act have the same meaning when used in this Deed;
- (c) words importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:

- (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- (iii) a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a Party to this Deed;
- (iv) a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure to this Deed;
- (vi) this Deed includes all schedules and annexures to it;
- (vii) a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (viii) a body, other than a Party to this Deed (including an institute, association or authority), whether statutory or not:
  - (A) which ceases to exist; or
  - (B) 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.
- (ix) '\$', 'AU\$' or 'dollar' is to Australian currency unless denominated otherwise; and
- (x) any time is, unless otherwise indicated, a reference to that time in Melbourne, Australia.
- (g) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (h) if the day on which any act is to be done under this Deed is a day other than a Business Day, that act must be done on or by the immediately succeeding Business Day except where this Deed expressly specifies otherwise.
- (i) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed or any part of it; and
- (j) if there is any conflict between the body of this Deed and its schedules and annexures the terms of the main body of this Deed will prevail.

### 1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed, the Act, the Regulations, the IPS, or the IPR, or the DOCA, this Deed prevails to the extent permitted by law.
- (b) For the avoidance of doubt, this Deed does not impact or derogate from the legal effect of the Plan, Confirmation Order and any other order made in the Chapter 11 Cases.



**1.4 Business Days**

To the extent the timing of any act, matter or thing is to be done as required by this Deed is also by reference to a time period in the Act, then the reckoning of time is to be calculated by reference to Business Days in Melbourne, Victoria, or Sydney, New South Wales.

**2 Commencement of this Deed**

---

The Jervois Creditors' Trust will come into effect and the Deed Administrators will act as Trustees pursuant to the terms of this Deed immediately upon Completion occurring.

**3 The Jervois Creditors' Trust**

---

**3.1 Jervois Creditors' Trust Fund**

The Jervois Creditors' Trust Fund will comprise:

- (a) the following property which is to be applied by the Deed Administrators and transferred to the Trustees at Completion, in accordance with the DOCA:
  - (i) the Settlement Sum; and
  - (ii) the Deed Fund; and
- (b) such interest as may be earned on the Jervois Creditors' Trust Fund.

**3.2 Property Available for Creditor Claims**

For the avoidance of doubt, the property forming part of the Jervois Creditors' Trust Fund under clause 3.1 is the sole property available to pay Admitted Claims of Creditors.

**4 Declaration of Jervois Creditors' Trust**

---

**4.1 Appointment**

- (a) On and from Completion, the Creditors and the Deed Administrators appoint the Trustees as trustees of the Jervois 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 Jervois Creditors' Trust.

**4.2 Declaration**

The Trustees acknowledge and declare that they will hold the Jervois Creditors' Trust Fund on trust for the Creditors on the terms of this Deed.

**4.3 Name of the Trust**

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

**4.4 Objects of the Trust**

The Trustees shall receive and hold the Jervois Creditors' Trust Fund on trust for the benefit of the Creditors and will distribute the Jervois Creditors' Trust Fund in accordance with the terms of this Deed.

**5 Distribution of the Jervois Creditors' Trust Fund**

---

**5.1 Distribution**

- (a) Provided that each Creditor has an Admitted Claim, the Jervois Creditors' Trust Fund will be available for distribution to the Creditors as follows:

- (i) First, to the Trustees, for their Remuneration and Trustees' Costs.
  - (ii) Second, to Eligible Employee Creditors, to the extent they are not Continuing Employees, will be paid in full, in respect of their Priority Claims.
  - (iii) Third, a Dividend in the amount of (1) dollar to each holder of a Rejected Contract Claim which is an Admitted Claim.
  - (iv) Fourth, a Dividend of up to 100 cents in the dollar for Admitted Creditors (excluding Rejected Contract Claims), on a pari passu basis to the extent they are not assumed by NewCo, otherwise paid by NewCo, the Deed Proponent or any Related Party of NewCo for and on behalf of the relevant Deed Company.
  - (v) Fifth, any surplus remaining in the Jervois Creditors' Trust Fund is to be distributed to the Parent to be applied in accordance with the Post-DOCA Budget and clause 12.8(b) of the DOCA.
- (b) No distributions will be made in respect of a Claim unless it is an Admitted Claim as adjudicated in accordance with the terms of this Deed.
  - (c) The Trustees may distribute the Jervois Creditors' Trust Fund in one or more instalments at such times as determined by the Trustees in their absolute discretion, including making distributions (whether interim or final) under any subclause of this clause 5.1 on the basis that the Trustees have retained sufficient funds to ensure that any payments to be made under a subclause of this clause 5.1 with a higher priority may be made when the time comes to do so.
  - (d) Subject to clause 5.1(e) as soon as practicable after the passing of any deadline by which Creditors were to submit proofs of debt, any portion of the Jervois Creditors' Trust Fund held on account of any Priority Claims of a particular Continuing Employee, will be promptly transferred to NewCo.
  - (e) Clause 5.1(d) is subject to:
    - (i) clause 5.1(c); and
    - (ii) receipt of written notice from the New JRV Employer confirming that:
      - (A) the Continuing Employee has signed a Continuing Employee Contract; and
      - (B) clause 12.11 of the DOCA has been complied with.

## **5.2 Postponement**

Should legal proceedings be brought by any person in respect of the distribution of the Jervois Creditors' Trust Fund, the Trustees may, upon consultation with the Deed Proponent postpone the payment of any distribution until determined by the Trustees.

## **5.3 Unclaimed Moneys**

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 within 6 months, then:

- (a) the Trustees shall stop payment of that cheque;
- (b) the moneys represented by that stopped cheque or held by the Trustees on behalf of the Admitted Creditor shall be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Act will apply, with such modifications as are necessary to such payment, as if references in those sections to 'liquidator' were references to the 'Trustees'.

**5.4 Surplus of Jervois Creditors' Trust Fund**

Following the Final Dividend to Admitted Creditors, any surplus remaining in the Jervois Creditors' Trust Fund is to be transferred to NewCo.

**6 Trustees' duties and powers**

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**6.1 Trustees' duties**

The Trustees must:

- (a) collect, sell or otherwise realise the property held on trust (including, to avoid doubt, any causes of action forming part of the Jervois Creditors' Trust Fund), to the extent and in a manner the Trustees believe is appropriate; and
- (b) distribute the Jervois Creditors' Trust Fund in accordance with clause 5.1 of this Deed.

**6.2 Trustees' powers**

- (a) Without limiting the Trustees' powers under the Trustee Act or under any law with respect to trustees, for the purpose of performing their duties under this Deed, the Trustees have all of the rights, powers, discretions and remedies granted by law to the Trustees including the power to:
  - (i) to the extent that they have not done so already in their capacity as Deed Administrators, determine the Claims of Creditors and admit or reject Claims to proof in accordance with the terms of this Deed;
  - (ii) administer and distribute the Jervois Creditors' Trust Fund in accordance with the terms of this Deed;
  - (iii) sell, reinvest or otherwise deal with the assets of the Jervois Creditors' Trust Fund;
  - (iv) perfect title in any assets of the Jervois Creditors' Trust Fund;
  - (v) insure any assets of the Jervois Creditors' Trust Fund;
  - (vi) ensure that the obligations of the Deed Company and the Deed Proponent under the DOCA and this Deed are fulfilled, and to take such legal proceedings or other steps as the Trustees think fit to enforce those obligations;
  - (vii) to convene and hold meetings of the Admitted Creditors for any purpose as the Trustees see fit;
  - (viii) fulfil the Trustees' obligations under this Deed;
  - (ix) enforce compliance with the terms of this Deed;
  - (x) make interim or other distributions of the Jervois Creditors' Trust Fund;
  - (xi) appoint agents to do any business or attend to any matter or affairs of the Jervois Creditors' Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
  - (xii) appoint solicitors, accountants or other professionally qualified persons to assist the Trustees;
  - (xiii) 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 the Trustees;
  - (xiv) to enter upon or take possession of the Jervois Creditors' Trust Fund and to collect and distribute revenue or income from or interest on the Jervois

- Creditors' Trust Fund and exercise any rights or powers to any part of the Jervois Creditors' Trust Fund;
- (xv) 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, to enforce any right, claim or cause of action that forms part of the Jervois Creditors' Trust Fund, and to that end:
    - (A) 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 Jervois Creditors' Trust Fund and any claim, proceeding or action forming part of the Jervois Creditors' Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees see fit;
    - (B) to appoint any solicitor and/or counsel to prosecute or defend in those proceedings as the Trustees see fit; and
    - (C) to take any other lawful ways and means for the recovery or getting in any of the Jervois Creditors' Trust Fund;
  - (xvi) to permit any person authorised by the Trustees to operate any account in the name of the Jervois Creditors' Trust;
  - (xvii) to do all acts and execute in the name of and on behalf of the Jervois Creditors' Trust all deeds, receipts and other documents;
  - (xviii) to draw, accept, make or endorse any bill of exchange or promissory note in the name of or on behalf of the Jervois Creditors' Trust;
  - (xix) subject to the Act, prove in the bankruptcy, 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 Jervois Creditors' Trust;
  - (xx) to bring or defend an application for the vesting or winding up of the Jervois Creditors' Trust;
  - (xxi) to report to the Admitted Creditors from time to time;
  - (xxii) do anything that is incidental to exercising a power set out in this clause 6.2 of this Deed;
  - (xxiii) pay amounts from the Jervois Creditors' Trust Fund for which an indemnity exists under clause 15 of this Deed; and
  - (xxiv) do anything else that is necessary or convenient for administering the Trust.
  - (b) Without limiting the Trustees' powers under any law with respect to trustees or otherwise, the Trustees may deal with the property comprising the Jervois Creditors' 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 Jervois Creditors' Trust Fund and the Trustees' functions under this Deed as the Deed Administrators are or were entitled to exercise under the terms of the DOCA.
  - (c) Without limiting subclauses 6.2(a) and 6.2(b):
    - (i) the Trustees also have, with respect to the property comprising the Trust Fund, all of the powers set out in paragraph 2 of Schedule 8A of the Regulations, with all modifications as are necessary to give effect to this Deed as if:

- (A) the Jervois Creditors' Trust were a company subject to a deed of company arrangement; and
- (B) the Trustees were the deed administrators of that deed;
- (ii) save to say that the Trustees will not be required to comply with clause 10 of Schedule 8A of the Regulations; and
- (iii) the Trustees may appoint any person to manage the property comprising the Jervois Creditors' Trust Fund on terms determined by the Trustees.

### **6.3 Exercise of discretion and powers**

- (a) The Trustees may exercise any discretion under this Deed in the Trustees' absolute and unfettered discretion.
- (b) The Trustees shall not be required to give any reason for the exercise of, or failure to exercise, any of the Trustees' powers.
- (c) None of the Trustees' powers shall limit the generality of any other of the Trustees' powers, and the Trustees shall have the power to do anything the Trustees consider incidental to any of the Trustees' powers.

## **7 Perpetuity Period**

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Notwithstanding any other provision of this Deed, each:

- (a) interest in property; and
- (b) Trustee's 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 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.

## **8 Claims, Entitlements and Payments**

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### **8.1 Admissibility of Claims**

- (a) Upon this Deed being settled, and in accordance with clause 5.7 of the DOCA, each Claim against any Deed Company will convert to, and become, a claim against the Jervois Creditors' Trust Fund under this Deed, equal in amount to the Admitted Creditor's entitlement to a distribution in respect of the Admitted Creditor's released Claim in accordance with clause 5.1 of this Deed.
- (b) Interest will not accrue or be payable on any Admitted Claim.

### **8.2 Trustees' discretion**

The Trustees may, in their absolute discretion:

- (a) call for proofs of debt or Claim;
- (b) admit all or part of a Claim;
- (c) reject all or part of a Claim; or
- (d) pay any Admitted Claim,

in accordance with and subject to the provisions of this Deed and the treatment the Claim receives under the Confirmation Order.

**8.3 Determination of Claims**

- (a) Any costs or expenses incurred by a Creditor in asserting a Claim under this Deed (including any application under clause 8.3(g)) will be borne by that Creditor and will not form part of that Creditor's Claim under this Deed.
- (b) Section 544 and Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Act apply to the admission of Claims under this Deed as if references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (c) Regulations 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed and to the Trustee as if the references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (d) The Trustees may make interim distributions of trust property under this Deed.
- (e) The Trustees may make any distribution by cheque or by electronic funds transfer to a bank account nominated by the relevant Admitted Creditor.
- (f) The Trustees must declare and distribute trust property under this Deed as soon as practicable after the Jervois Creditors' Trust comes into effect under clause 4.1. However, subject to clauses 8.3(b) and 8.3(c), the terms of this Deed and the Confirmation Order, the Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of trust property in payment of Admitted Claims.
- (g) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Creditor informing the Creditor of the proposed rejection and giving the party 14 days within which to make an application to a Court to determine the questions relating to the Claim.
- (h) The Trustees are entitled to rely upon any steps and determinations made by the Deed 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 or Deed Administrators.

**8.4 Abandonment of Claims**

Subject to the DOCA, and the Confirmation Order, 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 Jervois Creditors' Trust Fund:

- (a) which are not the subject of a proof lodged with the Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to a Court within the time allowed under clause 8.3(g).

**8.5 Discharge of Claims**

- (a) All persons having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all debts, liabilities or claims which they have or claim to have against the Trustees or the Jervois Creditors' 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) Subject to clause 8.5(c), the Trustee must take all steps reasonably required by the Deed Proponent to obtain such releases from any Creditors nominated by the Deed Proponent.
- (c) Clause 8.5(b), does not apply if there are insufficient funds in the Jervois Creditors' Trust Fund.

#### **8.6 Extinguishment of Admitted Claims**

Payment by the Trustees to an Admitted Creditor of an amount declared by the Trustees, in accordance with this Deed, to be a Final Dividend under the Jervois Creditors' Trust (even if the amount of the payment is nil) shall:

- (a) constitute a full and final discharge of the obligations of the Trustees to the Admitted Creditor under the Jervois Creditors' Trust; and
- (b) extinguish all claims which the Admitted Creditor has, or might have, against the Trustees and the Jervois Creditors' Trust Fund.

#### **8.7 Bar**

After distribution of the Final Dividend from the Jervois Creditors' Trust Fund, the Trustees may plead this Deed in bar to any Claim.

#### **8.8 Excluded Claims**

No Creditor is entitled to participate in or receive any distribution from the Jervois Creditors' Trust Fund in respect of an Excluded Claim, nor shall any Excluded Claims be determined or adjudicated by the Trustees.

#### **8.9 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 Jervois Creditors' Trust 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.

#### **8.10 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 Jervois Creditors' Trust 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.

**8.11 Determination of Trustees**

If the Trustees make a determination in accordance with clauses 8.9 and 8.10, such debt is to be treated as extinguished as against the Company.

**9 Register**

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**9.1 Register**

The Trustees must maintain in Melbourne, Victoria, 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.

**9.2 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.

**9.3 Register conclusive**

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

**10 GST on Claims**

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**10.1 Definitions**

Words and expressions used in this clause 10 which are defined in the GST Act have the same meaning in this clause 10.

**10.2 GST credits on Claims which have been or will be claimed by the Deed Company**

To the extent that input tax credits on Admitted Claims have been or will be claimed by the Deed Company, the Parties agree and acknowledge that following the payment of distributions to those Admitted Creditors by the Trustees from the Jervois Creditors' Trust Fund, the Deed Company by its Trustees will be responsible for making any adjustment required by the provisions of the GST Act insofar as those adjustments relate to those Admitted Claims and Practice Statement PS LA 2012/1 (GA) will be applied by the Deed Company to calculate the impact of those adjustments.

**10.3 GST credits for Administration Debts and Deed Administrators' Costs**

To the extent that:

- (a) an input tax credit is available in respect of an Administration Debt or a Deed Administrators' Cost; and
- (b) neither the Administrators nor the Deed Administrators are able to claim that input tax credit because it is attributable to a tax period that arises after the date on which the GST registration of the Administrators or the Deed Administrators ends,

then, the Parties agree and acknowledge that the Deed Company is responsible for claiming that input tax credit.

**10.4 GST credits during operation of Jervois Creditors' Trust**

The Parties agree and acknowledge that to the extent that an input tax credit is available in respect of any Trustees' Costs which is incurred and paid for by the Trustees during the operation of the Jervois Creditors' Trust, the Trustees (acting in their capacity as Trustees of the Jervois Creditors' Trust) will be responsible for claiming that input tax credit.

## **11 Books and Records**

### **11.1 Access by Trustees**

The Trustees will be entitled to retain copies of or access to the Deed Companies' books and records following completion of the DOCA, as is necessary or reasonably desirable for them to properly perform their roles under this Deed.

## **12 Meetings of Admitted Creditors**

### **12.1 Convening meetings by Trustees**

The Trustees may at any time convene a meeting of 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 of Part 3 of the Rules applies, with such modifications as are necessary, to meetings of the Creditors as if references to the 'external administrator' or chairperson, as the case may be, were references to one or more of the Trustees.

### **12.2 Convening meetings at the request of Creditors**

The Trustees must convene a meeting of Creditors if so requested in writing by a Creditor or Creditors the value of whose Admitted Claims is not less than 25% of the value of the total of the Admitted Claims.

### **12.3 Manner of convening meetings**

- (a) The Trustees may convene a meeting of Creditors at any time in accordance with paragraph 75-10 of the IPS and will be required to convene such a meeting when required to do so under paragraph 75-15 of the IPS, in each case as incorporated into this Deed by reference under clause 12.1 above.
- (b) The Rules, IPS and the Regulations applicable to creditors meetings in a liquidation will apply to any meeting of the Creditors of the Deed Company with such modifications as are necessary.

### **12.4 Right of Creditors to attend meetings**

Creditors who have been paid the full amount of their entitlements and Admitted Claims under this Deed will no longer be entitled to attend and participate in meetings of Creditors.

### **12.5 Instructions from Creditors**

In the exercise of the Trustees' powers, the Trustees:

- (a) may (if they see fit), but are not obliged to, seek from the Creditors at a meeting convened in accordance with this clause 12 of this Deed, instructions, including (without limitation) approval in respect of variations to the terms of this Deed;
- (b) may, but shall not be obliged to, have regard to the instructions (if any) given by the Creditors at a meeting so convened; and
- (c) in the absence of instructions given by the Creditors at a meeting so convened, do what is, in the Trustees' opinion, in the best interests of the Creditors.

### **12.6 Variation of Deed**

- (a) This Deed may be varied: with the consent of the Trustees by a resolution passed at a meeting of Creditors by a majority of Creditors (in value) attending the meeting, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that:
  - (i) the variation does not materially prejudice the interests of any class of Creditors without the approval of a majority (in value) of that class of Creditors attending the meeting; and

- (ii) the variation does not adversely affect the Deed Proponent's interests, in which case the Deed Proponent's consent is required; or
- (b) by a Court upon application of any of the Creditors or the Trustees pursuant to the Trustee Act.

## **13 Limitation of Liability**

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### **13.1 Exclusion of liability**

- (a) Each Trustee, including his or her partners and employees, is not personally liable for any loss, damages, costs or expenses which may be occasioned to any trust property under this Deed (including the Jervois Creditors' Trust Fund) or to any person by:
  - (i) the exercise of any discretion or power conferred by this Deed or by law on the Trustees, or any delay or failure to exercise any of those discretions or powers;
  - (ii) any breach of duty or trust, unless it is proved to have been committed, made or omitted in fraudulent bad faith by the Trustees, partner or employee; or
  - (iii) any disclosure by the Trustees of any document, matter or thing relating to the Jervois Creditors' Trust, the Jervois Creditors' Trust Fund or any Admitted Creditor.
- (b) The recourse of any person against the Trustees in their capacity as trustees of the Jervois Creditors' Trust, insofar as it is not excluded by subclause 13.1(a) above, shall be limited to, and may only be satisfied from, the balance of the Jervois Creditors' Trust Fund from time to time.
- (c) All persons claiming any interest in the Jervois Creditors' Trust Fund must be treated as taking it with and subject to notice of the protection conferred by this clause 13.

### **13.2 Proceedings against co-trustee**

The Trustees are not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

### **13.3 Reliance on advice**

Where the Trustees act in reliance upon the advice of any solicitor or barrister instructed on behalf of the Jervois Creditors' Trust 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 Jervois Creditors' 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 the advice.

### **13.4 Conflicts**

All powers and discretions of the Trustee may be exercised notwithstanding that any person being a partner, employee or related party of the Trustee is a beneficiary or may have been a beneficiary or has a direct, indirect or personal interest (in whatever capacity) in the manner of, or as a result of exercising such power or discretion or may benefit directly or indirectly as a result of any such power or discretion.

## **14 Remuneration**

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### **14.1 Remuneration of Trustees**

The Trustees:

- (a) are to be remunerated at the usual rates charged by KPMG (Turnaround and Restructuring) from time to time in respect of any work done by the Trustees, and any partner or employee of the Trustees, in connection with:

- (i) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Trustees under this Deed;
  - (ii) the calling for and adjudicating upon proofs of Claims; and
  - (iii) the distribution of the Jervois Creditors' Trust Fund.
- (b) acknowledge that the Trustees' Costs referred to in this clause 14.1 and all other costs, charges and expenses (including those incurred in connection with advisers) incurred in connection with the foregoing, including any stamp duty payable by them in respect of this Deed, will be payable from the Jervois Creditors' Trust Fund.
- (c) The Trustees' Remuneration and the Trustees' Costs referred to in this clause 14.1 and all other costs shall be reimbursed and/or paid out of the Jervois Creditors' Trust Fund subject to the limits provided for under the Post-DOCA Budget.
- (d) The Trustees shall be entitled to draw such amounts from the Jervois Creditors' Trust Fund from time to time, subject to clause 14.1(c). For the avoidance of doubt, where the Trustees are liable to pay GST in respect of any taxable supply (within the meaning of the GST Act) they make under this Deed, the Trustees are entitled to recover an additional amount equal to the amount of that GST liability from the Jervois Creditors' Trust Fund.

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## **15 Indemnity**

### **15.1 Scope of indemnity**

The Trustees are entitled to be indemnified out of the Jervois Creditors' Trust Fund for all actions, suits, proceedings, accounts, claims and demands arising out of or relating to this Deed which may be commenced, incurred by or made on the Trustees by any person and against all costs, charges and expenses incurred by the Trustees in respect of them, provided that the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent that the indemnification contravenes the Act or the Trustee Act.

### **15.2 Continuing indemnity**

This indemnity will take effect on and from the date of this Deed and will be without limitation as to time and will operate notwithstanding the removal of the Trustees (or any of them) and the appointment of any new trustee or the termination of the Jervois Creditors' Trust for any reason.

### **15.3 Indemnity not to be affected or prejudiced**

The indemnity under this clause will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and will 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, the approval, execution or amendment of this Deed, or otherwise; and
- (b) affect or prejudice all or any rights that the Trustees may have against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or otherwise.

### **15.4 Trustees' lien**

The Trustees will be entitled to exercise a lien over the Jervois Creditors' Trust Fund for all amounts in respect of which they are entitled to an indemnity from the Jervois Creditors' Trust Fund.

**15.5 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 Trustees' Remuneration and Trustees' Costs.

**16 Termination**

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**16.1 Termination of the Jervois Creditors' Trust**

This Jervois Creditors' Trust will terminate and the Trustees will resign as soon as reasonably practicable, on the earlier of:

- (a) distribution of the Final Dividend from the Jervois Creditors' Trust Fund; and
- (b) upon the expiry of the perpetuity period referred to in clause 7 of this Deed.

**16.2 Meeting to consider variation or termination of the Jervois Creditors' Trust**

The Trustees must convene a meeting of Creditors to consider a resolution to vary this Deed or terminate this Jervois Creditors' Trust if:

- (a) at any time prior to the termination of this Jervois Creditors' Trust, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed; or
- (b) a Court so orders.

**16.3 Termination of the Jervois Creditors' Trust by court order or resolution of Creditors**

- (a) This Trust will terminate if:
  - (i) a Court so orders; or
  - (ii) the Trust Creditors pass a resolution terminating this Jervois Creditors' Trust at a meeting duly convened pursuant to clause 12 or clause 16.2 of this Deed.
- (b) In the event the Jervois Creditors' Trust terminates under this clause, the Trustees will apply to the Court for directions to be formulated in their sole discretion, depending on the relevant circumstances that have arisen at the time.

**16.4 Previous operation of this Deed preserved**

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

**17 Resignation**

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A Trustee may resign at any time by giving not less than five (5) Business Days' prior written notice to the Deed Company, unless the resignation would result in there being no remaining Trustees, in which event the Trustees must convene a meeting of Creditors in accordance with clause 12 for the purpose of nominating a replacement trustee.

**18 Notices**

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**18.1 Notices**

- (a) Any notice to a Party under the provisions of this Deed is valid and effective if delivered personally by courier or email, to or, if given by registered mail, postage prepaid, addressed to, the details for that Party specified in the 'Parties' section of this Deed and clause 18.3, and is deemed to have been given on the date of delivery personally or by courier or email if so delivered prior to 5pm (Melbourne time) and otherwise on the next calendar day, or on the third Business Day after such letter has been mailed, as the case may be.



- (b) Any notice provided for in this Deed may be waived in writing by the Party entitled to receive such notice, either before or after the event.
- (c) A notice in connection with this Deed must be:
  - (i) in writing in English; and
  - (ii) signed by the Party or its agent.
- (d) Where two or more persons comprise a Party, notice to or by one is effective notice to and by all.

## **18.2 Change of details**

- (a) A Party may at any time change its contact details by notice to each other Party.
- (b) If details are so changed, this clause applies as if those changed details were set out in the 'Parties' section and clause 18.3 of this Deed.

## **18.3 Notice Details**

### **Deed Administrators & Creditors Trustees**

Address: KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

Email: [gdickerson@kpmg.com.au](mailto:gdickerson@kpmg.com.au); [dhardy@kpmg.com.au](mailto:dhardy@kpmg.com.au);  
[isutherland@kpmg.com.au](mailto:isutherland@kpmg.com.au)

Attention: Gayle Dickerson, David Hardy and Ian Sutherland

### **Deed Companies**

Address: c/- KPMG, Tower 2, Collins Square, 727 Collins Street, Melbourne VIC 3000

Email: [gdickerson@kpmg.com.au](mailto:gdickerson@kpmg.com.au); [dhardy@kpmg.com.au](mailto:dhardy@kpmg.com.au);  
[isutherland@kpmg.com.au](mailto:isutherland@kpmg.com.au)

Attention: Gayle Dickerson, David Hardy and Ian Sutherland

### **Deed Proponent**

Address: c/- Mills Oakley Lawyers, Level 7, 151 Clarence Street, Sydney NSW 2000

Email: [tchater@millsoakley.com.au](mailto:tchater@millsoakley.com.au); [jkerr@millsoakley.com.au](mailto:jkerr@millsoakley.com.au)

Attention: Taline Chater

## **19 General**

### **19.1 Waiver**

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will 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. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

### **19.2 Severability**

If any provision in this Deed is invalid under the law of any jurisdiction:

- (a) it is to be read down, if possible, such that it is enforceable to the extent that it is not invalid; or
- (b) failing that, it is to be severed from this Deed to the extent of the invalidity, without affecting the remaining provisions of this Deed; and
- (c) it should not affect the validity or enforceability of that provision or the other provisions of this Deed in any other jurisdiction.



### **19.3 Stamp duty and GST**

All stamp duty and GST payable on or in respect of this Deed or the transactions contained in this Deed may be paid out of the Jervois Creditors' Trust Fund.

### **19.4 Costs**

Each Party must pay its own costs of negotiating, preparing and executing this Deed.

### **19.5 Survival**

Despite any other provision of this Deed, clauses 1 (*Interpretation*), 9 (*GST on Claims*), 12 (*Limitation of Liability*), 14 (*Indemnity*), and 18 (*General*), survive the termination of this Deed.

### **19.6 Entire agreement**

Save that this Deed should be read together with the DOCA, this Deed is the sole and entire memorandum and agreement between the Parties to this Deed regarding the matters the subject of it. It supersedes any prior understandings, deeds, agreements, conditions and representations relating to those matters whether oral or written, express or implied.

### **19.7 Further assurances**

Each Party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

### **19.8 Creditor's Power of Attorney**

Each Creditor irrevocably appoints each of the Trustees jointly and severally as its attorney to execute any document to give effect to the releases in clause 8.5.

### **19.9 Relationship of the Parties**

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no Party has authority to bind any other Party.

### **19.10 Assignment**

Unless expressed otherwise, rights arising out of or under this Deed are not assignable by a Party without the prior written consent of the other Parties.

### **19.11 Counterparts**

- (a) This Deed may be signed in any number of counterparts and exchanged by email or other electronic means, and all those counterparts taken together constitute one and the same instrument.
- (b) An executed counterpart sent by email or other electronic means to a Party is deemed to be a validly executed and exchanged counterpart as if it were the original.

### **19.12 Governing law and jurisdiction**

- (a) This Deed is governed by the laws in force in Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Courts in and of Victoria, Australia and the Courts competent to determine appeals from those Courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) above.



## Signatories

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**EXECUTED as a DEED**

### Deed Administrators

**SIGNED, SEALED AND DELIVERED** by **Gayle Louise Dickerson** in her capacity as joint and several Deed Administrator of the Deed) Companies in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **Gayle Louise Dickerson**

\_\_\_\_\_  
Name of Witness  
(Please print)

**SIGNED, SEALED AND DELIVERED** by **David Alexander Hardy** in his capacity as joint and several Deed Administrator of the Deed) Companies in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **David Alexander Hardy**

\_\_\_\_\_  
Name of Witness  
(Please print)

**SIGNED, SEALED AND DELIVERED** by **Ian Phillip Sutherland** in his capacity as joint and several Deed Administrator of the Deed) Companies in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **Ian Phillip Sutherland**

\_\_\_\_\_  
Name of Witness  
(Please print)

**Trustees**

**SIGNED, SEALED AND DELIVERED** by **Gayle)**  
**Louise Dickerson** in the capacity as trustee of)  
this Deed in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **Gayle Louise Dickerson**

\_\_\_\_\_  
Name of Witness  
(Please print)

**SIGNED, SEALED AND DELIVERED** by **David)**  
**Alexander Hardy** in the capacity as trustee of this)  
Deed in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **David Alexander Hardy**

\_\_\_\_\_  
Name of Witness  
(Please print)

**SIGNED, SEALED AND DELIVERED** by **Ian)**  
**Phillip Sutherland** in the capacity as trustee of)  
this Deed in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **Ian Phillip Sutherland**

\_\_\_\_\_  
Name of Witness  
(Please print)

---

**Deed Companies**

**EXECUTED** by **Jervois Global Limited (Subject to Deed of Company Arrangement) (ACN 007 626 575)** by being signed sealed and delivered on) its behalf by one of its duly appointed joint and) several Deed Administrators in the presence of: )

---

Signature of Witness

---

Signature of Deed Administrator

---

Name of Witness  
(Please print)

---

Name of Deed Administrator  
(Please print)

---

**EXECUTED** by **Goldpride Pty Ltd (Subject to Deed of Company Arrangement) (ACN 061 269 109)** by being signed sealed and delivered on its) behalf by one of its duly appointed joint and) several Deed Administrators in the presence of: )

---

Signature of Witness

---

Signature of Deed Administrator

---

Name of Witness  
(Please print)

---

Name of Deed Administrator  
(Please print)

---

**EXECUTED** by **Hardrock Exploration Pty. Ltd.) (Subject to Deed of Company Arrangement)) (ACN 004 800 319)** by being signed sealed and) delivered on its behalf by one of its duly appointed) joint and several Deed Administrators in the) presence of:

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Signature of Witness

---

Signature of Deed Administrator

---

Name of Witness  
(Please print)

---

Name of Deed Administrator  
(Please print)

**EXECUTED by TZ Nico (1) Pty Limited (Subject to Deed of Company Arrangement) (ACN 626 231 267)** by being signed sealed and delivered on) its behalf by one of its duly appointed joint and) several Deed Administrators in the presence of: )

Signature of Witness

Signature of Deed Administrator

Name of Witness  
(Please print)

Name of Deed Administrator  
(Please print)

**EXECUTED by TZ Nico (2) Pty Limited (Subject to Deed of Company Arrangement) (ACN 626 231 276)** by being signed sealed and delivered on) its behalf by one of its duly appointed joint and) several Deed Administrators in the presence of: )

Signature of Witness

Signature of Deed Administrator

Name of Witness  
(Please print)

Name of Deed Administrator  
(Please print)

**EXECUTED by Nico Young Pty Ltd (Subject to Deed of Company Arrangement) (ACN 132 050 205)** by being signed sealed and delivered on its) behalf by one of its duly appointed joint and) several Administrators in the presence of: )

Signature of Witness

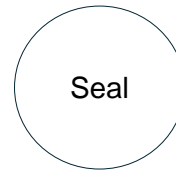
Signature of Deed Administrator

Name of Witness  
(Please print)

Name of Deed Administrator  
(Please print)

**Deed Proponent**

**SIGNED, SEALED AND DELIVERED** by)  
**Millstreet Capital Management LLC, as)**  
**investment manager and/or sub-manager or)**  
**advisor, on behalf of certain investment funds)**  
**and managed accounts,** by being signed sealed)  
and delivered by its authorised signatory in the)  
presence of:



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Signature of Witness

---

Signature of Authorised Signatory

---

Name of Witness  
(Please print)

---

Name of Authorised Signatory  
(Please print)



## **Schedule 1      Australian Entities**

1. Nico Young Pty. Ltd. (Subject to Deed of Company Arrangement) (ACN 132 050 205)
2. Goldpride Pty Ltd. (Subject to Deed of Company Arrangement) (ACN 061 269 109)
3. TZ Nico (1) Pty Ltd. (Subject to Deed of Company Arrangement) (ACN 626 231 267)
4. TZ Nico (2) Pty Ltd. (Subject to Deed of Company Arrangement) (ACN 626 231 276)
5. Hardrock Exploration Pty. Ltd. (Subject to Deed of Company Arrangement) (ACN 004 800 319)