

## Nuheara Group Creditors' Trust Deed

between

**Martin Jones and Matthew Woods** as deed administrators of the Deed Companies  
(**Deed Administrators**)

and

**Martin Jones and Matthew Woods** as trustees of the Nuheara Group Creditors' Trust  
(**Trustees**)

and

**Nuheara Limited** (subject to a deed of company arrangement)  
ACN 125 167 133

**Nuheara IP Pty Ltd** (subject to a deed of company arrangement)  
ACN 605 704 096

**Terrace Gold Pty Ltd** (subject to a deed of company arrangement)  
ACN 072 608 952  
(**Deed Companies**)

**EXECUTION VERSION**

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**This deed** is made on the **19<sup>th</sup> day of June 2025**

- between **Martin Jones and Matthew Woods** in their capacities as joint and several deed administrators of each of the Deed Companies of c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000 (**Deed Administrators**)
- and **Martin Jones and Matthew Woods** in their capacities as joint and several trustees of the Nuheara Group Creditors' Trust of c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000 (**Trustees**)
- and **Nuheara Limited** (subject to a Deed of Company Arrangement) (ACN 125 167 133) and **Nuheara IP Pty Ltd** (subject to a Deed of Company Arrangement) (ACN 605 704 096) and **Terrace Gold Pty Ltd** (subject to a Deed of Company Arrangement) (ACN 072 608 952) of c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000 (each a **Deed Company** and collectively **Deed Companies**)

### **Recitals**

- A On the Appointment Date, the Deed Administrators were appointed as Administrators of each of the Deed Companies pursuant to Part 5.3A of the Act.
- B On 17 March 2025, the second meetings of Creditors of each of the Deed Companies were resumed and the Creditors passed a resolution pursuant to section 439C(a) of the Act that the Deed Companies execute the DOCAs.
- C On 20 March 2025, the Deed Administrators and the Deed Companies executed the DOCAs pursuant to section 444B(2)(b) of the Act.
- D On 20 March 2025, Orecchio, the Deed Administrators and the Trustees executed the Implementation Deed in anticipation of the commencement of this Trust Deed.
- E The Deed Companies and the Trustees enter into this Trust Deed pursuant to the DOCAs in order to facilitate a distribution by the Trustees to the Trust Creditors in their capacity as beneficiaries of the Trust Fund.

**Now it is covenanted and agreed** as follows:

## **1 Definitions and interpretation**

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### **1.1 Definitions in the Dictionary**

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (Dictionary), has the meaning given to it in the Dictionary;
- (b) which is defined in the Act, but is not defined in the Dictionary, has the meaning given to it in the Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Act, has the meaning given to it in the GST Law; and
- (d) which is defined in a DOCA, but is not defined in the Dictionary or the Act, has the meaning given to it in that DOCA.

### **1.2 Interpretation**

The interpretation clause in Schedule 1 (Dictionary) sets out rules of interpretation for this Trust Deed.

### 1.3 Inconsistency with the Act or Regulations

If there is any inconsistency between the provisions of this Trust Deed and the Act, Regulations, the IPS, or the Insolvency Practice Rules, this Trust Deed prevails to the extent permitted by law.

### 1.4 Other inconsistencies

If there is any inconsistency between the provisions of this Trust Deed and the constitution of a Deed Company and any other obligation binding on a Deed Company, the provisions of this Trust Deed prevail to the extent of the inconsistency, and all persons bound by this Trust Deed agree to sign all documents and do all things necessary to remove such inconsistency.

## 2 Appointment of Trustees

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- (a) This Trust Deed has effect immediately on the Trust Commencement Date and the Deed Administrators appoint the Trustees as trustees of the Trust on terms of this Trust Deed.
- (b) Subject to the terms of this Trust Deed, the appointment of the Trustees is irrevocable.
- (c) The Trustees accept and agree to their appointment as trustees of the Trust on the terms set out in this Trust Deed.

## 3 Declaration of Trust

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### 3.1 Declaration

The Trustees acknowledge and declare that the Trust Fund will be held by the Trustees on trust for the Trust Creditors on the terms of this Trust Deed.

### 3.2 Trustees' duties

The Trustees must:

- (a) to the extent and in the manner the Trustees believe appropriate, collect, sell or otherwise realise the Trust Fund;
- (b) at such time(s) as the Trustees consider appropriate, call for formal proofs of debt from some or all Creditors and adjudicate the proofs of debt received and admit them to proof as Admitted Claims to the extent that they determine that they should be;
- (c) pay Admitted Claims in accordance with this Trust Deed;
- (d) otherwise distribute the Trust Fund in accordance with this Trust Deed; and
- (e) to the extent that the Trustees consider it reasonably necessary, receive, consider and report back to Trust Creditors on all issues in relation to the matters covered by this Trust Deed.

### 3.3 Trustees' powers

For the purposes of administering the Trust created by this Trust Deed, the Trustees have all the rights, powers, privileges, authorities and discretions conferred on a duly appointed trustee at law, including the following powers, to:

- (a) administer and distribute the Trust Fund in accordance with the provisions set out in the DOCAs and this Trust Deed;
- (b) fulfil and discharge the Trustees' obligations in accordance with the terms of this Trust Deed;

- (c) sell, re-invest or otherwise deal with the assets of the Trust Fund;
- (d) perfect title in any assets of the Trust Fund;
- (e) insure any assets of the Trust Fund;
- (f) at any time, call meetings of the Trust Creditors for the purpose of considering the variation or termination of this Trust Deed in accordance with the provisions of this Trust Deed;
- (g) admit Claims to proof in accordance with the provisions of the DOCAs and this Trust Deed;
- (h) determine Admitted Claims and then to pay Dividends in accordance with the terms of this Trust Deed;
- (i) act as attorney for the Deed Companies or any other person for any purpose associated with the Trust or this Trust Deed;
- (j) enforce compliance with the terms of this Trust Deed and the DOCAs;
- (k) 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 Trust;
- (l) enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (m) bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in either of any Deed Company's name or (if necessary, after assignment) in the Trustees' name, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
  - (i) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees think fit;
  - (ii) to appoint any solicitor and counsel to prosecute or defend in those proceedings as the occasion may require; and
  - (iii) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
- (n) convene and hold meetings of the Trust Creditors for any purpose as the Trustees consider fit;
- (o) permit any person authorised by the Trustees to operate any account in the name of the Trust;
- (p) do all acts and execute in the name and on behalf of the Trust all deeds, receipts and other documents;
- (q) draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Trust;
- (r) prove, subject to the Act in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;

- (s) bring or defend an application for the vesting or winding up of the Trust;
- (t) report to the Trust Creditors from time to time;
- (u) make interim Dividends or other distributions out of the Trust Fund;
- (v) appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
- (w) appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (x) compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which power includes the power to compromise any claim, action, suit or proceeding referred to in clause (m);
- (y) provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any tax, including income tax, capital gains tax or GST;
- (z) do anything incidental to exercising a power set out in this Trust Deed; and
- (aa) do anything else that is necessary or convenient for administering the Trust or the exercise of the Trustees' rights, powers or duties.

#### 3.4 Exercise of discretion and powers

- (a) The Trustees may exercise any discretion under this Trust 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.

#### 3.5 Objects of the Trust

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

### 4 Trust Fund

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#### 4.1 Establishment of the Trust Fund

As soon as possible after commencement of this Trust Deed, the Deed Administrators shall pay any funds comprising the Deed Fund Amount to the Trustees to establish the Trust Fund.

#### 4.2 Distribution of the Trust Fund

- (a) The Trust Fund will be available for distribution from time to time in the following order:
  - (i) first, in payment of the Administration Costs, and the Trustees' Remuneration and Costs under clause 9 (to the extent not paid by Orecchio);
  - (ii) second, in payment of the Eligible Employee Claims;
  - (iii) third, in payment of the Admitted Claims *pari passu*; and
  - (iv) fourth, the surplus (if any) to Orecchio.
- (b) For the avoidance of doubt, no distribution of Dividends will be made in respect of a Trust Claim unless that Trust Claim is an Admitted Claim.

### 4.3 Uplift Amount

If any Uplift Amount is received by the Trustees:

- (a) the Trustees shall pay any funds comprising the Uplift Amount into the Trust Fund; and
- (b) such funds will be available for distribution in further payment of the Admitted Claims *pari passu*.

## 5 Perpetuity Period

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Notwithstanding any other provision in this Trust Deed, each:

- (a) interest in property; and
- (b) the Trustees' power over or in connection with property, created or granted by this Trust Deed that, but for this provision, might vest, take effect, or be exercisable after the expiry of eighty (80) years commencing on the date of this Trust 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.

## 6 Trust Claims

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### 6.1 Deed Claims become Trust Claims

- (a) On the Trust Commencement Date:
  - (i) each Deed Creditor becomes a Trust Creditor and receives the right to claim for the amount of its extinguished Deed Claim against the Trust Fund ("Trust Claim") which is its only right to receive or recover any amount which was until then, a Deed Claim; and
  - (ii) and each Deed Claim is forever and irrevocably extinguished and the Deed Company against which that Deed Claim existed is released and discharged from the Deed Claim.
- (b) Interest will not accrue or be payable on any Trust Claim.

### 6.2 Making and ascertaining Trust Claims

- (a) Subdivisions A, B, C and D of division 6 of Part 5.6 of the Act and the Regulations apply to Claims under this deed as if the references wherever appearing to "Liquidator", "Creditor" and the "Fixed Date" were references to "Trustees", "Trust Creditor" and the "Appointment Date" respectively of this deed.
- (b) Section 563B of the Act and regulation 5.6.70A of the Regulations do not apply and are expressly excluded from the operation of or application of this Trust Deed.
- (c) In adjudicating the Trust Claims, the Trustees are entitled (but not required) to adopt the conclusions and findings of the Administrators or the Deed Administrators, such that if a Deed Claim has been previously rejected, the corresponding Trust Claim is to be treated as rejected and if a Deed Claim has been previously admitted, the corresponding Trust Claim is to be treated as having been admitted on the same basis.



### **6.3 Appeal against determination**

Where the Trustees propose to reject a Trust Claim (whether in part or in full) including by adopting the conclusions and findings of the Administrators or Deed Administrators pursuant to clause 6.2(c), the Trustees shall send a notice to the Trust Creditor informing the Trust Creditor of the proposed rejection and giving the Trust Creditor 14 Business Days within which to make an application to the Supreme Court of Western Australia to determine the questions relating to the Trust Claim.

## **7 Payment of Trust Claims**

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### **7.1 When payments will be made**

7.2 The Trustees shall distribute the Trust Fund in accordance with the terms of this Trust Deed at such times as the Trustees consider appropriate and feasible.

### **7.3 How payments will be made**

The Trustees will pay the amounts which they are required to make under this Trust Deed by:

- (a) cheque, by sending such payment by ordinary prepaid post to the last address of the Payee known to the Trustees; or
- (b) electronic funds transfer, to the bank account of the Payee in accordance with any instruction from the payee to the Trustees.

### **7.4 When payments will be received**

A Payee is deemed to have received payment of its entitlement once the Trustees send the cheque payable to that Payee by prepaid post, or upon the Trustees making the relevant electronic funds transfer, as the case may be.

### **7.5 Interim distributions**

The Trustees may make interim distributions of Dividends from the Trust Fund under this Trust Deed.

### **7.6 Unclaimed monies**

In the event that the Trustees, for any reason, are unable to locate a Trust Creditor, or if any cheque sent by the Trustees to a Trust Creditor has not been presented within 12 months, then:

- (a) the Trustees shall stop payment of such cheque;
- (b) the moneys represented by such stopped cheque or held by the Trustees on behalf of the Trust 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'.

### **7.7 Trust Creditors' costs and expenses**

Any costs and expenses incurred by a Trust Creditor in asserting a Trust Claim will be borne by that Trust Creditor and will not form part of that Trust Claim.

### **7.8 Abandonment of Claims**

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

- (a) which are not the subject of a proof lodged with the Trustees in the form required by the Trustees prior to the 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 the Court within the time allowed under clause 6.3.

## **8 Release and extinguishment of Trust Claims**

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### **8.1 Release and discharge of Trust Claims**

The Trust Creditors must accept their entitlements under this Trust Deed in full satisfaction and complete discharge of all Trust Claims that they have or claim to have against the Trustees or the Trust Fund and each of them will, if called upon to do so, execute and deliver to, and in favour of the Trustees and the Trust such forms of release of any such Trust Claim as the Trustees require.

### **8.2 Trust Claims extinguished**

Upon the Trustees making payment of the Final Dividend to the Trust Creditors, all debts or Trust Claims, demands, proceedings, causes of action in relation to or in connection with the debts or Trust Claims of Trust Creditors whether present or future, actual or contingent, due or which may become due by the Trust Fund or Trustees are extinguished and fully discharged.

### **8.3 Bar**

After:

- (a) the payment of a Dividend to a Trust Creditor, the Trustees may plead this Trust Deed in bar to any Trust Claim or other claim by that Trust Creditor, to that extent; and
- (b) distribution of the Final Dividend from the Trust Fund, the Trustees may plead this Trust Deed in bar to any Trust Claim or other claim by any Trust Creditor.

## **9 Remuneration, indemnity and lien**

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### **9.1 Remuneration**

- (a) The Trustees shall be entitled to payment of reasonable Remuneration (at the rates charged by the Deed Administrators) and Costs, which is payable by Orecchio pursuant to and in accordance with the Implementation Deed, in respect of:
  - (i) performing their duties and obligations under and in relation to this Trust Deed including without limitation adjudicating upon and paying Trust Claims; and
  - (ii) all actions, suits, proceedings, accounts, claims and demands arising out of or relating to the administration of the Deed Companies, the DOCAs or this Trust Deed which may be commenced, incurred by or made on the Trustees, Administrators or the Deed Administrators by any person and against all costs (including under an order to pay another party's costs), charges and expenses incurred in respect of same, including without limitation:
    - (A) Federal Court of Australia proceedings WAD41/2025 and WAD 104/2025; and
    - (B) any proceeding commenced by a Trust Creditor under clause 6.3 of this Trust Deed.
- (b) Orecchio shall pay the Remuneration and Costs within 28 days of the Trustees notifying such amounts from time to time.

## 9.2 Indemnity

- (a) Subject to clause 9.2(b), the Trustees are entitled to be indemnified of the Trust Fund for:

- (i) the Trustees' Remuneration and Costs (to the extent not paid by Orecchio);
- (ii) the Administrators' and Deed Administrators' Remuneration and Costs (to the extent not paid out of the Deed Fund),

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, or is otherwise contrary to the provisions of the Trustee Act.

- (b) The Trustees shall only be entitled to indemnification under clause 9.2(a) to the extent that the Remuneration and Costs are approved:

- (i) in accordance with Division 60 of the IPS, in respect of the Administrators' and Deed Administrators' Remuneration and Costs;
- (ii) in accordance with Division 60 of the IPS applied with necessary modifications at a meeting of Trust Creditors convened under clause 10, in respect of the Trustees' Remuneration or costs; or
- (iii) by a Court.

## 9.3 Lien

The Trustees, Administrators and Deed Administrators are entitled to a lien on the Trust Fund to secure the payment of the amounts specified in clause 9.2.

## 10 Meetings of Trust Creditors

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- 10.1 The Trustees may convene a meeting of Trust Creditors at any time.
- 10.2 The Insolvency Practice Rules, the IPS and the Regulations applicable to creditors meetings in liquidation will apply to any such meeting with such modifications as are necessary as if the references to the "external administrator" or "chairperson" were references to the Trustees.
- 10.3 Trust Creditors who have been paid the full amount of their entitlement under this Trust Deed in respect of their Admitted Claim will no longer be entitled to attend and participate in any meetings of Trust Creditors.

## 11 Trustees' Resignation

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Any Trustee may resign at any time by giving not less than 14 Business Days' prior written notice to the Deed Companies unless that resignation would result in there being no remaining Trustees in which event the Trustees must:

- (a) convene a meeting of Trust Creditors in accordance with clause 10 of this Trust Deed for the purpose of approving the appointment of a replacement trustee;
- (b) assign to a replacement trustee nominated by the Trust Creditors the Trustees' rights, title and benefit under this Trust Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11(b).

## **12 Termination**

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### **12.1 Termination of the Trust for having achieved purpose**

The Trust will terminate and the Trustees will resign as soon as reasonably practicable on the earlier of:

- (a) after distribution of the Final Dividend is made in accordance with clause 4.2; or
- (b) upon the expiry of the perpetuity period referred to in clause 5.

### **12.2 Meeting of Trust Creditors**

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

- (a) at any time prior to the Termination Date, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Trust Deed (including because they have insufficient funds to perform their functions or duties); or
- (b) a Court so orders.

### **12.3 Termination of the Trust by Court order and Trust Creditors' resolution**

- (a) This Trust will terminate if:
  - (i) a Court so orders; or
  - (ii) the Trust Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 12.2.
- (b) if the Creditors' Trust is terminated for any of the reasons set out in clause 12.3, the extinguishment of Claims provided for by clause 8.2 will not apply.

### **12.4 Reporting to Trust Creditors**

Upon a meeting being convened pursuant to clause 12.2, the Trustees must send each Trust Creditor prior to the meeting a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees think fit. The report must include:

- (a) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 12.2; and
- (b) a statement that this Creditors' Trust will be terminated if the Trust Creditors so resolve.

### **12.5 Previous operation of this Trust Deed preserved**

The termination or avoidance, in whole or in part, of this Trust and this Trust Deed does not affect the efficacy of any act done by or on behalf of the Trustees prior to the termination or avoidance.

### **12.6 Variation of Deed**

This Trust Deed may be varied:

- (a) with the consent of the Trustees by resolution passed at a meeting of Trust Creditors by a majority of Trust Creditors in number and in value, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that the variation does not materially prejudice the interests of any class of Trust Creditors without the approval of a majority of that class of Trust Creditors in number and value and does not prejudice the interests of the Trustees; or

- (i) if delivered in person, on the day of delivery;
  - (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting; and
  - (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting; and
  - (iv) if transmitted by email, on the day of transmission, provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.
- (d) A party may change its address for service by giving notice of that change to each other party.
- (e) The provisions of this clause 14.1 are in addition to any other mode of service permitted by law.
- (f) If a notice is sent by any method other than pre-paid mail, and that notice is received:
- (i) on a day which is not a Business Day; or
  - (ii) after 5pm on a Business Day,
- that notice is deemed to be received at 9am on the next Business Day.
- (g) A notice sent or delivered in a manner provided by clause 14.1 must be treated as validly given to and received by the party to which it is addressed even if the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent.
- (h) If the party to which a notice is intended to be given consists of more than one person then the notice must be treated as given to that party if given to any of those persons

#### 14.2 Deed Administrators' address

Name: Martin Jones and Matthew Woods as deed administrators of deed administrators of the Deed Companies

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

#### 14.3 Trustees' address

Name: Martin Jones and Matthew Woods as trustees of the Nuheara Group Creditors' Trust

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

## Schedule 1

### Dictionary

#### 1 Definitions

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In this Trust Deed:

**Administration Costs** has the meaning defined in the DOCAs.

**Administration Period** means the period commencing on the Appointment Date and ending on the 20 March 2025 upon execution of the DOCAs.

**Administrators** means Martin Jones, Matthew Woods and Clint Joseph of KPMG in their capacities as joint and several voluntary administrators of the Deed Companies during the Administration Period.

**Admitted Claim** means any Trust Claim admitted to proof by the Trustees in accordance with this Trust Deed.

**Appointment Date** means 7 August 2024.

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

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Western Australia.

**Costs** means and includes costs, charges, fees, government charges, taxes and expenses (including those incurred in connection with advisers) incurred in connection with the performance of:

- (a) the Administrators' and the Deed Administrators' powers, duties, obligations and responsibilities under the Act and under or in connection with this Trust Deed during the Administration Period and the Deed Period; and
- (b) the Trustees' powers, duties, obligations and responsibilities under the Trustee Act and under or in connection with the Trust Deed.

**Deed Administrators** means Martin Jones and Matthew Woods of KPMG (and any successors appointed under the Act) in their capacity as deed administrators of the Deed Companies.

**Deed Claim** means a claim that a Deed Creditor had the right to make under a DOCA as at the Trust Commencement Date.

**Deed Creditor** means any person who was a Participating Creditor as defined in a DOCA as at the Trust Commencement Date.

**Deed Fund Amount** means the total of each Deed Fund under the DOCAs.

**Deed Period** means the period from the date that the last of the DOCAs commences to the date that the last of the DOCAs is fully effectuated.

**Dividend** means any amount paid by way of distribution from the Trust Fund to a Trust Creditor in respect of that Trust Creditor's Admitted Claim.

**DOCAs** means the Deeds of Company Arrangement executed by the Deed Companies, Orecchio and the Deed Administrators and **DOCA** means each Deed of Company Arrangement.

**Eligible Employee Claims** has the meaning defined in the DOCAs.

- (b) by the Court upon application of any of the Trust Creditors or the Trustees in accordance with the Trustee Act.

## **13 General Provisions**

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### **13.1 Survival of clauses**

If this Trust Deed terminates pursuant to clause 12.1 or clause 12.3, despite any other provision of this Trust Deed clauses 1, 8.3, 9, 12.5, 13.5, 13.7 and survive the termination.

### **13.2 Severance**

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

### **13.3 Waiver**

No party to this Trust Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. The meanings of the terms used in this clause are below:

- (a) conduct includes delay in the exercise of a right;
- (b) right means any right arising under or in connection with this Trust Deed and includes the right to rely on this clause; and
- (c) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### **13.4 Counterparts**

- (a) This Trust Deed may be executed and exchanged in counterparts.
- (b) This Trust Deed is not binding upon a party until all executed counterparts have been exchanged.
- (c) Executed counterparts may be exchanged by email or other electronic means.
- (d) Delivery of a counterpart of this Trust Deed by email attachment or other electronic means constitutes an effective mode of delivery.

### **13.5 Governing Law and Jurisdiction**

- (a) This Trust Deed is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Federal Court of Australia and the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **13.6 Further assurances**

All persons bound by this Trust Deed will exercise all such powers as are available to them, do all such acts and things and sign, execute and deliver all such documents and instruments and provide assistance and co-operation as may be necessary or reasonably required to give full effect to the provisions of this Trust Deed.

**13.7 Entire Deed**

This Trust Deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings, undertakings and agreements in respect of its subject matter and all summaries or outlines of its intended contents issued to Creditors.

**13.8 No reliance**

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

**13.9 Exercise of rights**

- (a) Unless expressly required by the terms of this Trust Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Trust Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Trust Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

**13.10 Stamp duty**

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

**13.11 Creditor's Power of Attorney**

Each Trust 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 8.1.

**13.12 Costs**

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

**14 Notices and other communications**

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**14.1 Notices**

- (a) In this Deed, a **Notice** means:
  - (i) a notice; or
  - (ii) a consent, approval or other communication required to be in writing, under this Deed.
- (b) A notice under this Deed must be in writing and signed by or on behalf of the sender addressed to the recipient and:
  - (i) delivered by personal service;
  - (ii) sent by pre-paid mail; or
  - (iii) transmitted by email,
 to the recipient's address set out in this agreement.
- (c) A notice given to a person in accordance with this clause is treated as having been given and received:



**Final Dividend** means the last Dividend amount paid by the Trustees to any Trust Creditor under this Trust Deed.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Implementation Deed** means the Nuheara Group Implementation Deed executed on 20 March 2025.

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

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

**Orecchio** means Orecchio Pty Ltd (ACN 684 518 723).

**Participating Creditor** has the meaning defined in the DOCAs.

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

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

**Remuneration** means the remuneration payable to:

- (a) the Administrators for acting in that capacity in accordance with Part 5.3A of the Act; and
- (b) the Deed Administrators for acting in that capacity under this Trust Deed; and
- (c) the Trustees referred to in clause 9.1 of this Trust Deed.

**Second Creditors' Meeting** means, for each of the Deed Companies, the meeting of Creditors of the Deed Company convened pursuant to section 439A of the Act and held on 17 March 2025.

**Termination Date** means the date on which the Trust terminates in accordance with clause 12 of this Trust Deed.

**Trust** means the "Nuheara Group Creditors' Trust" established by this Trust Deed.

**Trust Commencement Date** means the date that this Trust Deed is executed by all of the parties to it.

**Trust Creditor** means any Deed Creditor whose Deed Claim became a Trust Claim on the Trust Commencement Date by operation of clause 6.1 of this Trust Deed.

**Trust Claim** has the meaning given in clause 6.1 of this Trust Deed.

**Trust Deed** means this instrument as amended from time to time.

**Trust Fund** means the Deed Fund Amount which is paid or to be paid into the Creditors' Trust Account.

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

**Trustees** means the trustees of the Trust established under this Trust Deed, being Martin Jones and Matthew Woods (and their successors appointed under this Trust Deed) in their capacities as joint and several trustees of the Trust.

**Uplift Amount** has the meaning defined in the Implementation Deed.

## 2 Interpretation

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In this Trust Deed, unless the context otherwise requires:

- (a) reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Trust Deed and references to this Trust Deed include any recital, schedule or annexure;
  - (iv) any contract (including this Trust Deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
  - (ix) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged, and a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body;
  - (x) time is a reference to the time in Perth, Western Australia;
  - (xi) a reference to a day or a month means a calendar day or calendar month;
  - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency; and
  - (xiii) any thing (including any amount or any provision of this Trust Deed) is a reference to the whole and each part of it;
- (b) no party enters into this Trust Deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (f) headings and the table of contents are for convenience only and do not form part of this Trust Deed or affect its interpretation;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (h) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (i) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day; and
- (j) a provision of this Trust Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

## Schedule 2

### Notice Details

#### Deed Administrators' and Trustees' address

Name: Martin Jones and Matthew Woods

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

#### Deed Companies' addresses

Name: Nuheara Limited (subject to a deed of company arrangement) (ACN 125 167 133)

Attention: Martin Jones and Matthew Woods

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

Name: Nuheara IP Pty Ltd (subject to a deed of company arrangement) (ACN 605 704 096)

Attention: Martin Jones and Matthew Woods

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

Name: Terrace Gold Pty Ltd (subject to a deed of company arrangement) (ACN 072 608 952)

Attention: Martin Jones and Matthew Woods

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

Executed as a deed

Signed sealed and delivered by  
**Martin Jones in his capacity as Deed  
 Administrator and in his capacity as Trustee**  
 in the presence of:

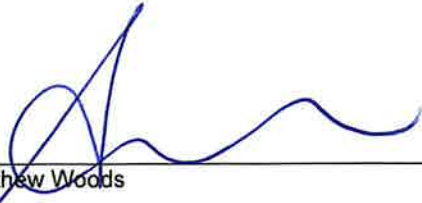
  
 \_\_\_\_\_  
 Martin Jones

Witness signature

  
 \_\_\_\_\_  
 KIERAN CHU

Name of witness  
 BLOCK LETTERS

Signed sealed and delivered by  
**Matthew Woods in his capacity as Deed  
 Administrator and in his capacity as Trustee**  
 in the presence of:

  
 \_\_\_\_\_  
 Matthew Woods

Witness signature

  
 \_\_\_\_\_  
 KIERAN CHU

Name of witness  
 BLOCK LETTERS

Executed by Nuheara Limited (subject to a  
 deed of company arrangement) ACN 125 167  
 133 by its joint and several deed administrator:

  
 \_\_\_\_\_  
 Name of Deed Administrator  
 BLOCK LETTERS

  
 \_\_\_\_\_  
 Signature of Deed Administrator

Executed by Nuheara IP Pty Ltd (subject to a  
 deed of company arrangement) ACN 605 704  
 096 by its joint and several deed administrator:

  
 \_\_\_\_\_  
 Name of Deed Administrator  
 BLOCK LETTERS

  
 \_\_\_\_\_  
 Signature of Deed Administrator

Executed by Terrace Gold Pty Ltd (subject to  
 a deed of company arrangement) ACN 072 608  
 952 by its joint and several deed administrator:

  
 \_\_\_\_\_  
 Name of Deed Administrator  
 BLOCK LETTERS

  
 \_\_\_\_\_  
 Signature of Deed Administrator

