

Creditors' Trust Deed

Dated

Piper Preston Pty. Ltd. (subject to deed of company arrangement)
(receivers and managers appointed) (ACN 142 962 409) ("**Piper
Preston**")

Australia Salt Lake Potash Pty Ltd (subject to deed of company
arrangement) (receivers and managers appointed) (ACN 164 369 420)
 ("**Australia Salt Lake**")

Martin Bruce Jones and Matthew Woods in their capacity as trustees of
the Creditors' Trust ("**Trustees**")

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Creditors' Trust Deed

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Creditors' Trust Deed

Details

Parties	Piper Preston, Australia Salt Lake and the Trustees	
Piper Preston	Name	Piper Preston Pty. Ltd. (subject to deed of company arrangement) (receivers and managers appointed)
	ACN	142 962 409
	Address	c/- KPMG Level 7, 235 St Georges Terrace PERTH WA 6000
	Email	saltlakepotash@kpmg.com.au
	Attention	Mr Martin Jones and Mr Matthew Woods
Australia Salt Lake	Name	Australia Salt Lake Potash Pty Ltd (subject to deed of company arrangement) (receivers and managers appointed)
	ACN	164 369 420
	Address	c/- KPMG Level 7, 235 St Georges Terrace PERTH WA 6000
	Email	saltlakepotash@kpmg.com.au
	Attention	Mr Martin Jones and Mr Matthew Woods
Trustees	Name	Martin Bruce Jones and Matthew Woods in their capacity as trustees of the Creditors' Trust
	Address	c/- KPMG Level 7, 235 St Georges Terrace PERTH WA 6000
	Email	saltlakepotash@kpmg.com.au
	Attention	Mr Martin Jones and Mr Matthew Woods
Recitals	A	On 20 October 2021 (Relevant Date), the Administrators were appointed administrators of the Companies pursuant to section 436A(1) of the Act.
	B	At the duly convened meetings of the Companies' creditors held on [] (Second Meetings), it was resolved pursuant to section 439C(a) of the Act (Section 439C)

Resolution) that the Companies execute a deed of company arrangement, and the deed of company arrangement was executed on [●].

- C** The Companies and the Trustees enter into this deed as contemplated by the DOCA in order to facilitate distribution by the Trustees to the Creditors in their capacity as beneficiaries of the Trust Fund.
- D** The Deed Administrators have agreed to act as Trustees.

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Creditors' Trust Deed

General terms

1 Interpretation

1.1 Definitions

In this Deed unless the subject or context otherwise requires:

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

Administrators means Martin Bruce Jones and Hayden Leigh White in their capacity as joint and several voluntary administrators of the Companies.

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

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

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

ASIC means the Australian Securities and Investments Commission.

Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Claim means all debts payable by and all claims against, the Companies (arising at law, in equity or under any statute, present or future, certain or contingent, ascertained or sounding only in damages) the circumstances giving rise to which occurred on or before the Relevant Date, including all actions, claims, suits, causes of action, arbitrations, debts, costs, demands, verdicts and judgments,

but does not include an Excluded Claim.

Commencement Date means the day on which the last of the Conditions Precedent are satisfied or waived in accordance with the DOCA.

Companies mean Piper Preston and Australia Salt Lake and **Company** means any one of them.

Conditions Precedent has the meaning given to it in the DOCA.

Court means the Supreme Court of Western Australia or the Western Australian Registry of the Federal Court of Australia or any court having jurisdiction to hear and determine matters under the Act and the Trustees Act.

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

Creditors' Trust means the trust established by this Deed.

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

Deed Administrators means Martin Bruce Jones and Matthew Woods in their capacity as joint and several deed administrators of the DOCA.

Deed Administrators' Liabilities has the meaning given to it in the DOCA.

Deed Administrators' Remuneration has the meaning given to it in the DOCA.

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

DOCA means the deed of company arrangement executed by the Companies and the Deed Administrators, among others, on or around the same date as this Deed.

Entitlement means the entitlement of an Admitted Creditor to be paid a Dividend in respect of an Admitted Claim in accordance with this Deed.

Excluded Claim has the meaning given to it in the DOCA.

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

Fund Amount has the meaning given to it in the DOCA.

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

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

Maximum Amount has the meaning given to it in the DOCA.

Pool A Creditor has the meaning given to it in the DOCA.

Pool B Creditor has the meaning given to it in the DOCA.

Prescribed Provisions has the meaning given to it in the DOCA.

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

Relevant Date means 20 October 2021.

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

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

Special Purpose Administrator has the meaning given to it in the DOCA.

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

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

Trust Fund has the meaning provided by clause 3.1.

Trustees means Martin Bruce Jones and Matthew Woods in their capacity as joint and several trustees of the Creditors' Trust and includes any replacement trustee of the Creditors' Trust appointed in accordance with this Deed.

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

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

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

Trustees' Remuneration means the remuneration and fees for services rendered by Martin Bruce Jones and Matthew Woods in their capacity as Trustees as calculated in accordance with clause 10.2.

1.2 Interpretation

In this Deed, unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any one gender include the other gender and vice versa;
- (c) words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (d) words "written" and "in writing" includes any means of visible reproduction of words in a tangible and permanently viable form;
- (e) if a word or phrase is defined, other clauses of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) reference to clauses and schedules are references to clauses and schedules of this Deed;
- (g) references in this Deed to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- (h) references in this Deed to sections shall be construed as references to sections of the Act;
- (i) references to (or to any specific provision of) this Deed or to any other agreement or document shall be construed as references to (that provision of) this Deed or that other agreement or document as amended, substituted, novated, supplemented, varied or replaced with the agreement of the relevant parties and in force at any relevant time;
- (j) headings in this Deed are for the purpose of mere convenient reference only and do not form the clause of this Deed or affect its construction or interpretation;

- (k) a term or expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act;
- (l) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any clause of it; and
- (m) a reference to “\$” or “dollar” is to Australian currency.

1.3 Application of the Act and Regulations

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

1.4 Other inconsistencies

If there is any inconsistency between the provisions of this Deed and the Constitution of the Companies and any other obligation binding on the Companies, the provisions of this Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Trust Fund.

1.5 Business Days

Except where otherwise expressly provided, 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, such act, matter or thing shall be done on the immediately succeeding Business Day.

1.6 Successors and assigns

The obligations and liabilities imposed and rights and benefits conferred on the parties under this Deed shall be binding upon and enure in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

2 Declaration of Trust

2.1 Commencement Date

This Deed has effect on and from the Commencement Date.

2.2 Appointment

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

2.3 Declaration

On the Commencement Date:

- (a) the Deed Administrators will pay the sum of ten dollars (\$10) to the Creditors' Trust; and
- (b) the Trustees acknowledge and declare that:
 - (i) the amount referred to in clause 2.3(a);
 - (ii) the Fund Amount (as is transferred to the Creditors' Trust in accordance with the DOCA); and
 - (iii) any income accruing on the Fund Amount (such income to be applied in the same manner as the principal upon which it accrued),

will be held on trust by the Trustees for the Creditors, Administrators and Deed Administrators on the terms in this Deed.

2.4 Name of Creditors' Trust

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

2.5 Trustees' Duties

The Trustees must:

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

2.6 Trustees' powers

Without limiting the powers that the Trustees have by operation of the Trustees Act, for the purposes of administering the trust created by this Deed, the Trustees have the following powers:

- (a) to administer the Trust Fund in accordance with the provisions set out in the DOCA and this Deed;
- (b) to fulfil the Trustees' obligations in terms of this Deed;
- (c) to sell, re-invest or otherwise deal with the assets of the Trust Fund;

- (d) to perfect title in any assets of the Trust Fund;
- (e) to insure any assets of the Trust Fund;
- (f) to, at any time, call meetings of the Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
- (g) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
- (h) to determine Admitted Claims and then to pay Dividends in accordance with the terms of this Deed;
- (i) to enforce compliance with the terms of this Deed;
- (j) to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to it;
- (k) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (l) to convene and hold meetings of the Creditors for any purpose as the Trustees consider fit;
- (m) to permit any person authorised by the Trustees to operate any account in the name of the Creditors' Trust;
- (n) to do all acts and execute in the name and on behalf of the Creditors' Trust all deeds, receipts and other documents;
- (o) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Creditors' Trust;
- (p) subject to the Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Creditors' Trust;
- (q) to bring or defend an application for the vesting or winding up of the Creditors' Trust;
- (r) to report to the Creditors from time to time;
- (s) to make interim or other Dividends from the Trust Fund;
- (t) to appoint agents to do any business or attend to any matter or affairs of the Creditors' Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
- (u) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (v) to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit;
- (w) to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any tax, including income tax, capital gains tax or GST;

- (x) to do anything incidental to exercising a power set out in this Deed; and
- (y) to do anything else that is necessary or convenient for administering the Creditors' Trust.

2.7 Access to records

The Companies will provide the Trustees with free and unrestricted access to the Companies' books and records in existence as at the Effective Date, as and when requested by the Trustees (acting reasonably), to enable the Trustees to determine the Claims of the Creditors, or such other purpose as may reasonably be required pursuant to this Deed.

3 Trust Fund

3.1 Trust Fund

The Trust Fund shall be comprised of the assets set out in clause 2.3(b).

3.2 Benefit of Trust Fund

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

3.3 Postponement

Should proceedings be brought by any person in respect of the distribution of the Trust Fund then the Trustees shall be entitled at their sole discretion to postpone the payment of any Dividend until determined by the Trustees.

4 Perpetuity Period

Notwithstanding any other provision in this Deed, each

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

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

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

5 Claims

5.1 Entitlements

Each Admitted Creditor is entitled to its Entitlement as determined in accordance with the terms of this Deed.

5.2 No Interest

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

5.3 Ascertaining Creditors

In adjudicating the Creditor's Claims, the Trustees are entitled to adopt the conclusions and findings of the Deed Administrators, such that if a Creditor's Claim has been previously rejected, it is to be treated as rejected under this Deed and if a Creditor's Claim has been previously admitted to prove, it is to be treated as having been admitted to prove under this Deed.

5.4 Determining Admitted Claims

In accordance with clauses 1.3 and 1.4, the Prescribed Provisions apply to the adjudication of Creditor Claims by the Trustees.

5.5 Distribution of the Trust Fund

- (a) The Trustees will distribute the Trust Fund in the following manner:
- (i) first, payment of the Deed Administrators' Liabilities, then the Trustees' Liabilities, then the Deed Administrators' Remuneration, and then the Trustees' Remuneration (in each case up to the Maximum Amount);
 - (ii) second, payment of any indemnified liability of the Deed Administrators and Special Purpose Administrator and then the Trustees (including Statutory Liabilities, and amounts indemnified pursuant to this Deed) (in each case up to the Maximum Amount);
 - (iii) third, to each Admitted Creditor with an Admitted Priority Claim, the amount of any Admitted Priority Claim on a pro rata basis in accordance with the dollar value of the Admitted Priority Claims of those Admitted Creditors;
 - (iv) fourth, to each Pool A Creditor, the amount of any Admitted Claim on a pro rata basis in accordance with the dollar value of the Admitted Claims of those Pool A Creditors up to a maximum dividend of 9c/\$ to each Pool A Creditor;
 - (v) fifth, to each Pool B Creditor, the amount of any Admitted Claim on a pro rata basis in accordance with the dollar value of the Admitted Claims of those Pool B Creditors.
- (b) Payments out of the Trust Fund to pay Admitted Claims will be made in the manner and at the time determined by the Trustees in their absolute discretion.

5.6 Payments not made

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

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

to "company" were references to the "Trust" (however, the terms of this Deed and the DOCA prevail to the extent of any inconsistency).

5.7 Admissibility of Claims

- (a) Upon effectuation of the DOCA, each Creditor's Claims shall, in accordance with the DOCA, be released and, subject to adjudication, be converted into and become a claim against the Trust Fund in accordance with this Deed, which is equal in amount to their released Claims.
- (b) Interest will not accrue or be payable on any Admitted Claim.

5.8 Adjudication of proofs

- (a) Creditors are entitled to submit a proof of debt in respect of their Claim for adjudication by the Trustees in accordance with this Deed.
- (b) Those Creditors entitled to submit a proof of debt to the Trustees are required to lodge their proof of debt on or before the time fixed in accordance with Regulation 5.6.39.
- (c) The Trustees are to adjudicate the proofs of each Creditor's Claim in accordance with the Prescribed Provisions, the DOCA, and this Deed.

5.9 Trustee's discretion

The Trustees may, in their absolute discretion:

- (a) admit Claims; and
- (b) pay any Admitted Claim in accordance with the provisions of this Deed.

5.10 Payment of Claims

- (a) The Trustees may pay Admitted Creditors (if any) by electronic funds transfer.
- (b) The Trustees need not pay a Dividend to, or make a distribution to, an Admitted Creditor if the amount due to them in respect of a Dividend or payment would be less than \$25.

5.11 Abandonment of Claims

- (a) A Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:
 - (i) which are not the subject of a proof lodged with the Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
 - (ii) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed for appeals by Regulation 5.6.54.
- (b) In the event that the Trustees declare an interim Dividend, regulation 5.6.65 of the Regulations will apply to the Claims of any Creditors who fail to submit a proof of debt before the date on which the interim Dividend is paid.

6 Instructions from Creditors

6.1 Instructions from Creditors

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

- (a) may, if they see fit, seek instructions from the Creditors; and
- (b) must act in accordance with any Resolutions of Creditors unless doing so would be inconsistent with this Deed or their obligations at law.

6.2 Best interests

In the absence of an instruction received by the Trustees from the Creditors at a meeting convened in accordance with clause 9 and except as otherwise provided in this Deed, the Trustees may, but are not obliged to, act as the Trustees determine is in the best interests of the Creditors.

6.3 Binding effect

Any action taken by the Trustees in accordance with clauses 6.1(a) or 6.1(b) is binding on each Creditor.

7 Register

7.1 Register

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

- (a) the Admitted Creditor's name and address;
- (b) details of each Claim and the Admitted Creditor's Entitlement, including the balance outstanding after payment of any amount under this Deed or the DOCA; and
- (c) amounts paid to each Admitted Creditor pursuant to this Deed and the DOCA.

7.2 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.

7.3 Register conclusive

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

8 Superannuation contribution debts

8.1 Whole of superannuation contribution debt

The Trustees must determine that the whole of a debt by way of a superannuation contribution is not admissible to prove 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.

8.2 Part of superannuation contribution debt

The Trustees must determine that a particular part of a debt by way of a superannuation contribution is not admissible to prove 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.

9 Meetings of Admitted Creditors

- (a) The Trustees may at any time convene a meeting of Creditors.
- (b) In accordance with clauses 1.3 and 1.4, the Prescribed Provisions apply to meetings of Creditors convened for the purposes of this Deed.
- (c) Creditors who have been paid the full amount of their Entitlements under this Deed, will no longer be entitled to attend and participate in meetings of Creditors.

10 Remuneration

10.1 Remuneration and costs

Subject at all times to the Maximum Amount, from the Trust Fund, the Trustees, Special Purpose Administrator and Deed Administrators will receive:

- (a) payment of the Deed Administrators' Remuneration and the Trustees' Remuneration; and
- (b) payment of the Deed Administrators' Liabilities and Trustees' Liabilities.

10.2 Calculation of remuneration

- (a) The Trustees' Remuneration is to be calculated by reference to the remuneration and fees for services for any work performed by them or their Representatives in performing their powers, functions and duties as trustees of the Creditors' Trust and as a result of acting in their capacity as trustees to be calculated on a time/cost basis at the scheduled hourly rates charged from time to time by their firm.

- (b) The Trustees' Remuneration will not, without approval by the Court, a committee of creditors or of the Creditors at a meeting of creditors, exceed the amounts approved by the Court or Creditors from time to time (exclusive of GST and disbursements).

10.3 Payment

Subject at all times to the Maximum Amount, the Trustees, Administrators, Special Purpose Administrator and Deed Administrators are entitled to draw from the Trust Fund at the end of each calendar month or in any other manner as may be approved by Resolution of the Creditors or the Court from time to time, the amounts payable to them pursuant to this Deed and the DOCA.

10.4 Cap on Trustees' Remuneration and Deed Administrators' Remuneration

- (a) Notwithstanding any contrary term of this Deed or the DOCA, the Trustees' Remuneration is subject at all times to the Maximum Amount.
- (b) Notwithstanding any contrary term of this Deed or the DOCA, the Deed Administrators' Remuneration is subject at all times to the Maximum Amount.
- (c) For the avoidance of doubt, in applying the Maximum Amount:
 - (i) \$1,400,000 (plus GST) is the *total* cap for the *combined* Deed Administrators' Liabilities, Deed Administrators' Remuneration, and any indemnified liability of the Deed Administrators; and
 - (ii) \$50,000 (plus GST) is the *total* cap for the *combined* Trustees' Liabilities, Trustees' Remuneration and any indemnified liability of the Trustees.

10.5 Costs and outlays

- (a) The costs and outlays connected with the negotiation, preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Trustees in connection with or incidental to its administration of this Deed.
- (b) All Statutory Liabilities, including any stamp duty or GST, payable in connection with this Deed or the Trustees' Remuneration, may be treated as costs and expenses of the administration of this Deed.

11 Indemnity

11.1 Indemnity

- (a) Without limiting any other provision of this Deed or the Trustees', Administrators', Special Purpose Administrator or Deed Administrators' rights under the Act or otherwise at law, the Trustees, Special Purpose Administrator, Administrators and Deed Administrators are, to the fullest extent permissible by law (including section 199C of the Act), jointly and severally entitled to be indemnified out of the Trust Fund for (subject at all times to the Maximum Amount):
 - (i) the Trustees', Administrators', Special Purpose Administrator's and Deed Administrators' rights of remuneration and reimbursement under this Deed and the DOCA;

- (ii) all claims against the Trustees, the Deed Administrators, , Special Purpose Administrator, the Administrators or their Representatives, arising out of or in connection, directly or indirectly, with:
 - (A) the Deed Administrators' administration of the DOCA;
 - (B) the Trustees' administration of this Deed;
 - (C) the Administrator's appointment as voluntary administrators of the Companies;
 - (D) the Special Purpose Administrator performing the tasks set out in the Order of Master Sanderson made on 21 December 2021 in the Supreme Court of Western Australia proceedings COR 196/2021;
 - (E) the Deed Administrators exercise or non-exercise of their duties or powers, including under the DOCA;
 - (F) the Trustees' exercise or non-exercise of their duties or powers under this Deed or otherwise at law;
 - (G) the Companies, the DOCA, this Deed; and
 - (H) the Trustees' role as trustees of the Creditors' Trust;
 - (iii) all claims arising out of the Creditors' Trust 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 these; and
 - (iv) any Statutory Liabilities relating to any of the above.
- (b) Subject at all times to the Maximum Amount, each of the Trustees', Administrators', Special Purpose Administrator's and Deed Administrators' rights of indemnity conferred by this clause has priority over the Claims and Entitlements of any Creditor or Creditors generally (including any Admitted Claims and Admitted Priority Claims).
 - (c) The Trustees, Administrators, Special Purpose Administrator and Deed Administrators are entitled to exercise their right of indemnity conferred by this clause whether or not they have paid or satisfied the Creditors' Claims and Entitlements.

11.2 Continuing indemnity

The indemnity in clause 11.1 takes effect on and from the Commencement Date and is without limitation as to time and enures for the benefit of the Trustees, Special Purpose Administrator, Administrators and Deed Administrators and their Representatives, irrespective of the removal of the Trustees and the appointment of new trustees or the determination of the Creditors' Trust for any reason, or the termination of this Deed.

11.3 Indemnity not affected or prejudiced

The indemnity under clause 11.1 shall not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees, Special Purpose Administrator, the Administrators or the Deed Administrators, and

extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, Special Purpose Administrator, the Administrators or the Deed Administrators, the approval and execution of this Deed or otherwise; or

- (b) subject at all times to the Maximum Amount, affect or prejudice all or any rights that the Trustees, Administrators or the Deed Administrators may have against the Company or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees, the Administrators or the Deed Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or the Deed Administrators by the DOCA, or otherwise.

11.4 Lien

Subject at all times to the Maximum Amount, the Trustees, Administrators, Special Purpose Administrator and Deed Administrators each have a lien over the Trust Fund to secure the rights of indemnity under this Deed.

12 Liability

12.1 Exclusion of liability

To the maximum extent permitted by law the Trustees shall 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 Trustees or their Representatives in administering this Deed or exercising his duties and discharging their 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 the 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 Shareholder, Director, Officer or Creditor of the Company.

12.2 Reliance on advice

Where the Trustees act in reliance upon the advice of any solicitor instructed on behalf of the Creditors' Trust in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the 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 Trustees' Resignation

The Trustees (or either of them) may resign at any time by giving not less than twenty-eight (28) days prior written notice to Creditors in which event the Trustees shall:

- (a) convene a meeting of Creditors in accordance with clause 9 of this Deed for the purpose of nominating a replacement Trustee;

- (b) shall assign to a replacement Trustee nominated by the Creditors the Trustees' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause above.

14 Trustees not obliged to take action

The Trustees will not be obliged to take any action under this Deed until such time as there are sufficient funds in hand to pay their remuneration, costs, fees and expenses in accordance with the terms of this Deed.

15 Termination

15.1 Termination of the Creditors' Trust

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

- (a) distribution of the Final Dividend from the Trust Fund and there no longer being any remaining Fund Amount; or
 - (b) the expiry of the perpetuity period referred to in clause 4,
- whichever occurs first.

15.2 Termination of the Creditors' Trust by Court order

The Creditors' Trust will terminate if a Court so orders.

15.3 Previous operation of this Deed preserved

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

15.4 Variation of Deed

This Deed may be varied with the consent of the Trustees by resolution passed at a meeting of Creditors held pursuant to clause 9 but only if the variation is not materially different from the proposed variation set out in the notice of that meeting.

16 Goods and Services Tax

16.1 GST Exclusive Amounts

- (a) If GST is or will be payable on a supply made under or in connection with this Deed, to the extent that the consideration otherwise provided for that supply under this Deed is not stated to include an amount in respect of GST on the supply:
 - (i) the consideration otherwise provided for that supply under this Deed is increased by the amount of that GST; and
 - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already

been paid or provided, within 7 days of receiving a written demand from the supplier.

- (b) The right of the supplier to recover any amount in respect of GST under this Deed on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant input tax credit.

16.2 Reimbursements

If a payment to a person is a reimbursement or indemnification that is calculated by reference to a loss, cost or expense incurred by that person, the payment will be reduced by the amount of any input tax credit to which that person is entitled for the acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, clause 16.1 will apply.

16.3 Interpretation

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

17 General

17.1 Invalidity/severance

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

17.2 Further assurances

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

17.3 Notices

(a) Address of Notice

Any notice or document required to be given to or served upon any of the parties pursuant to or in connection with this Deed shall be in writing and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of the transmission has been received) to the party to which such notice is given or served by:

- (i) any means permitted by the law or the regulations; or
- (ii) email or pre-paid post to the person's email address or address (as applicable) last known to the Trustees.

(b) Notice by Post

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

(c) Notice by Facsimile

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

(d) Notice by Email

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

(e) Signing of Notice

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

17.4 Waivers

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

17.5 Counterparts

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

17.6 Jurisdiction

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

17.7 Stamp duty

Subject at all times to the Maximum Amount, any stamp duty assessed on this Deed is to be paid out of the Trust Fund.

17.8 Survival

This clause and clauses 1, 10, 11 and 15.3 survive termination of this Deed.

17.9 Governing Law

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

EXECUTED as a deed.

Trustees

SIGNED, SEALED AND DELIVERED
by **MARTIN BRUCE JONES** in the
presence of:

.....
Signature of witness

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

.....
Signature of MARTIN BRUCE JONES

SIGNED, SEALED AND DELIVERED
by **MATTHEW WOODS** in the
presence of:

.....
Signature of witness

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

.....
Signature of MARTIN BRUCE JONES

