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# **SO4 Fertiliser Developments Pty Ltd**

## **Deed of Company Arrangement**

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Martin Bruce Jones and Matthew David Woods

Arredo Pty Ltd

## Contents

1.	Definitions and interpretation	2
2.	Conditions for Operation and Continued Operation	4
3.	Appointment of Deed Administrators	4
4.	Management of Company	4
5.	Execution of Trust Deed	5
6.	Object of this Deed and Trust Deed	5
7.	Creditors' Consent to Arrangement	6
8.	Moratorium	6
9.	Non-participating Creditors	7
10.	Owners and Lessors of Property	7
11.	Admissibility of Debts or Claims	7
12.	Secured Creditor	8
13.	Meeting to Consider Variation or Termination	8
14.	Termination	9
15.	Release of Participating Creditors' Claims	10
16.	Machinery Provisions to Give Effect to Release	10
17.	Abandonment by Creditors Who Do Not Prove	10
18.	Remuneration of Deed Administrators	11
19.	Deed Administrators' Indemnity	11
20.	Member's Rights Exercisable by Deed Administrators	12
21.	Exclusion of Prescribed Provisions	13
22.	Incorporation of Definitions	13
23.	Application of the Act and Corporations Regulations 2001	13
24.	General provisions	13

# Deed of Company Arrangement

Dated 22 DECEMBER 2022

## Parties

1. Martin Bruce Jones and Matthew David Woods of Level 8, 235 St Georges Terrace, Perth, WA 6000 (**Deed Administrators**).
2. Arredo Pty Ltd (ACN 009 256 606), of 18 View Street, Peppermint Grove, WA 6011 (**Proponent**).
3. SO4 Fertiliser Developments Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) ACN 634 354 224 care of the Administrators of Level 8, 235 St Georges Terrace, Perth, WA 6000 (**Company**).

## Background

- A. On 20 October 2021 the Company appointed the Administrators as administrators of the Company pursuant to s.436A of the Act.
- B. On 20 October 2021, the Receivers were appointed the receivers and managers of the assets of the Company by GLAS.
- C. On 21 December 2021, orders were made in the Supreme Court of Western Australia that the SPA be appointed as a special purpose administrator to the Company pursuant to s.447A of the Act.
- D. The second meeting of the Company's Creditors, being the meeting pursuant to s.439A of the Act, was held on 30 September 2022. This meeting was adjourned for a period not exceeding forty-five (45) Business Days.
- E. The reconvened second meeting of the Company's Creditors was held on 2 December 2022.
- F. At the reconvened second meeting of the Company's Creditors, the Company's Creditors resolved, pursuant to s.439C(a) of the Act, that the Company execute a deed of company arrangement on terms proposed by the Proponent.
- G. This Deed has been prepared by the Deed Administrators in accordance with s.444A(3) of the Act as the instrument setting out the terms of the deed of company arrangement that the Company's Creditors resolved on 2 December 2022 that the Company executes.
- H. The purpose of this Deed is to provide for the business, property and affairs of the Company to be administered in a way that maximises the chances of the Company, or as much as possible of its business, continuing in existence, or, if it is not possible for the Company or its business to continue in existence, results in a better return for the Company's Creditors and members than would result from an immediate winding up of the Company.

## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

Words and phrases defined in the Main DOCA (defined in this clause) shall have the same meaning in this Deed unless the contrary intention is shown.

**Claim** means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages or by way of fine or penalty or under a guarantee) and for the avoidance of any doubt includes any claim by a member or former member of the Company to which section 563C of the Act applies;

**Creditor** means a person who has a Claim against the Company, the circumstances giving rise to which occurred on or before the Relevant Date;

**Creditor's Claim** means, in relation to a Creditor, the Creditor's Claim against the Company, the circumstances giving rise to which occurred on or before the Relevant Date;

**Deed** means this document, including any schedule or annexure to it;

**Essential Expenses** are expenses of the Company that are required to be fully paid in order to ensure the ASX listing and tenements of the SO4 Group are kept in good standing including but not limited to rates, rents and taxes owed to government agencies;

**Non-participating Creditor** means:

- (a) a Creditor that is a company within the SO4 Group; and
- (b) a Creditors of Essential Expenses;

**Participating Creditor** means a Creditor other than:

- (a) a Non-participating Creditor; or
- (b) the Secured Creditor.

**Participating Creditor's Claim** means, in relation to a Participating Creditor, the Participating Creditor's Claim against the Company, the circumstances giving rise to which occurred on or before the Relevant Date but, for the purpose of distribution of dividends to Participating Creditors, excludes any part of that Claim that constitutes a Priority Creditor's Claim;

**Main DOCA** means the deed of company arrangement entered into between the Administrators, Salt Lake Potash Limited (In Administration) (ACN 117 085 748), and the Proponent on or around the same date this Deed is executed by the Deed Administrators and any later variations;

**Priority Creditor** means a Participating Creditor having a Claim against the Company as at the Relevant Date which, had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a Claim which must be paid in priority to all other unsecured Claims in accordance with section 556(1)(e), (f), (g) and (h), section 560 or section 561 of the Act;

**Priority Creditor's Claim** means in relation to a Priority Creditor, the Priority Creditor's Claim against the Company, the circumstances giving rise to which occurred on or before the Relevant Date;

**Receivers** means Richard Tucker and Craig Shepard being the receivers and managers appointed to the assets of the Company by GLAS and any other receiver and manager appointed by the Secured Creditors from time to time in accordance with the Security;

**Relevant Date** means 20 October 2021;

**Secured Creditor** means GLAS and each other "Beneficiary" (as defined in the Security Trust Deed);

**Secured Creditor's Claim** means, in relation to a Secured Creditor, the Secured Creditor's Claim against the Company which is secured under the Security including the "Secured Money" as defined in the Security Trust Deed; and

**Security** means any Encumbrance in whatever form held by any Secured Creditor in relation to Claims owed by the Company to the Secured Creditor including each security granted by the Company in favour of GLAS to secure the Company's obligations in respect of the "Secured Money" as defined in the Security Trust Deed and each "Transaction Security Interest" (as defined in the Security Trust Deed).

**Security Trust Deed** means the Security Trust Deed dated 4 August 2020 between amongst others the Company and GLAS and each of the Beneficiaries under the Security Trust Deed;

## 1.2 Interpretation

- (a) In this document, unless the context requires otherwise:
- (i) clause and subclause headings are for reference purposes only;
  - (ii) the singular includes the plural and vice versa;
  - (iii) words denoting any gender include all genders;
  - (iv) a reference to a person includes any other entity recognised by law and vice versa;
  - (v) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (vi) any reference to a party to this document includes its successors and permitted assigns;
  - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
  - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
  - (ix) the expression **at any time** includes reference to past, present and future time and performing any action from time to time;
  - (x) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally;

## **2. Conditions for Operation and Continued Operation**

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- 2.1 The coming into operation of this Deed is conditional upon the execution of each and all of the deeds of company arrangement comprising the Group Deeds of Company Arrangement.
- 2.2 The operation of this Deed commences from the time when the Main DOCA comes into effect in accordance with clause 2.2 of the Main DOCA.
- 2.3 The continued operation of this Deed is subject to the continued operation of the Main DOCA.

## **3. Appointment of Deed Administrators**

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- 3.1 The Company appoints the Deed Administrators as and the Deed Administrators consent to and accept an appointment as the administrators of this Deed.
- 3.2 The Deed Administrators are and act as the agent of the Company.
- 3.3 For the purpose of administering this Deed the Deed Administrators have the following powers set out in the Prescribed Provisions.
- 3.4 Any Claims against the Company the circumstances giving rise to which occur after the execution of this Deed are not liabilities of the Deed Administrators.

## **4. Management of Company**

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- 4.1 After the Commencement Date and subject to the powers of the Receivers and the rights of the Secured Creditors:
  - (a) the Deed Administrators will, if requested by the Proponent, remove any of the Directors of the Company and appoint New Directors in their stead. For the avoidance of doubt the Deed Administrators have the power to remove and appoint directors to the Company under the terms of this Deed.
  - (b) the Company is to carry on the Company's business under the control of the Directors.
- 4.2 For the purpose of carrying on the Company's business the Directors have subject to the powers of the Receivers and the rights of the Secured Creditors the same powers as if the Company was not subject to this Deed or under external administration.
- 4.3 Any Claims against the Company the circumstances giving rise to which occur while the Company is carrying on the Company's business under the control of the Directors:
  - (a) are not liabilities of the Deed Administrators; and
  - (b) are not admissible to proof under this Deed or the Trust Deed.
- 4.4 Notwithstanding the passing of management control of the Company, until such time as this Deed terminates:
  - (a) other than while the Receivers are appointed to the assets of the Company, the Company will provide the Deed Administrators with any information reasonably required by the Deed Administrators as to the affairs of the Company during the continuation of this Deed;

- (b) the Directors and the Company will co-operate with and assist the Deed Administrators to give effect to the purpose, terms and conditions of this Deed and otherwise co-operate with and assist the Deed Administrators in the performance of their obligations under this Deed;
  - (c) the Directors shall take no steps to have the Company wound up.
- 4.5 Notwithstanding anything else in this Deed, the Act, the Corporations Regulations 2001 or otherwise, to the extent permitted by law, the Deed Administrators' and the Directors' functions and powers are subject to the functions and powers of the Receivers. To the extent permitted by law, the functions and powers of the Receivers prevail over the functions and powers of the Deed Administrators and the Directors.
- 4.6 Nothing in this Deed is intended to prevent the Receivers' ability to continue to administer assets or property of the Company to which they have been appointed.

## **5. Execution of Trust Deed**

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The Deed Administrators must execute the Trust Deed in accordance with the Main DOCA.

## **6. Object of this Deed and Trust Deed**

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- 6.1 The object of this Deed and the Trust Deed is that on execution of the Trust Deed and the transfer of the Fund pursuant to clause 15.1 of the Main DOCA:
- (a) the Participating Creditors are to obtain an entitlement under the arrangement provided for in the Trust Deed in exchange for their Participating Creditor's Claim; and
  - (b) the Deed Administrators as Trustee under the Trust Deed are to have duties and obligations in relation to the Trust Fund and the Creditors equivalent to those duties and obligations applicable to the Deed Administrators under this Deed immediately before termination of this Deed in relation to the Available Property and the Creditors
- 6.2 For the avoidance of doubt, there is no property of the Company to be applied for the benefit of Participating Creditors and the Proponent will not make available any funds for distribution to the Creditors, the Administrators or the Deed Administrators or otherwise.
- 6.3 Upon the execution of the Trust Deed and the transfer of the Fund pursuant to clause 15.1 of the Main DOCA, all Participating Creditors' Claims will be administered by the Trust Deed and all Participating Creditors will become beneficiaries under the Trust Deed. All Participating Creditors agree to accept their entitlements under Trust Deed in full satisfaction their respective Participating Creditor's Claims.
- 6.4 For the avoidance of doubt:
- (a) In accordance with s.444DA(1) of the Act, for the purposes of the Deed Administrators applying the Fund, Eligible Employee Creditors are entitled to a priority at least equal to the priority the Eligible Employee Creditors would have been entitled to if the Fund were applied in accordance with ss.556, 560 and 561 of the Act.
  - (b) In accordance with s.444DB of the Act, the Deed Administrators must determine that a particular part or the whole (as the case may be) of a debt by way of superannuation contribution is not admissible to proof against the Company if:

- (i) a debt by way of superannuation guarantee charge:
  - (A) has been paid; or
  - (B) is, or is to be, admissible to proof against the Company; and
- (ii) the Deed Administrators is satisfied that the superannuation guarantee charge is attributable to that part or the whole of the first mentioned debt as the case may be.

6.5 The rights of each Participating Creditor to have their debts proved and the dividend paid is to be determined under the Trust Deed.

## **7. Creditors' Consent to Arrangement**

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The Creditors (other than the Secured Creditors):

- 7.1 consent to and agree to be bound by the arrangement effected by this Deed and the Trust Deed; and
- 7.2 appoint the Trustee as trustee of the Trust Fund on the Trust.

## **8. Moratorium**

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- 8.1 Until this Deed terminates, a Creditor (other than a Secured Creditor) must not:
  - (a) begin or proceed with any application for an order to wind up the Company;
  - (b) without the leave of the Court, and then, only in accordance with such terms as the Court imposes:
  - (c) begin or proceed with a proceeding against the Company or in relation to any of the Company's property or property used or occupied by, or in the possession of, the Company, either in a court or in an arbitration; or
  - (d) begin or proceed with any enforcement process in relation to the Company's property, or property used or occupied by, or in the possession of, the Company; or
  - (e) exercise any right of set off that the Creditor would not have been entitled to exercise had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun. For the avoidance of doubt, nothing in this Deed prevents a person exercising any right of set off against the Company to which the person would have been entitled had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun.
- 8.2 Until this Deed terminates, the Company may plead this Deed in bar to any action, proceeding or suit brought by a Creditor (other than a Secured Creditor) in respect of that Creditor's Claim.
- 8.3 Until this Deed terminates, the Company, the Company's members and the Company's officers (other than the Receivers) must not begin or proceed with any application for an order to wind up the Company.
- 8.4 Nothing in this clause 8 limits the operation of s.444D(2) or s.444D(3) of the Act. This clause 8 has effect in addition to, and not in derogation of, s.444E of the Act.



## **9. Non-participating Creditors**

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- 9.1 Non-participating Creditors are bound by this Deed.
- 9.2 The Creditors' Claims of Non-participating Creditors are not admissible to proof under this Deed or the Trust Deed.
- 9.3 Non-participating Creditors are not entitled to participate in any dividends declared and distributed under this Deed or the Trust Deed.
- 9.4 For the avoidance of doubt, while Non-participating Creditors are not entitled to prove under this Deed or the Trust Deed, the Non-participating Creditors' Claims are not released pursuant to clause 15.

## **10. Owners and Lessors of Property**

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- 10.1 This Deed binds Creditors who are owners or lessors of property that is used or occupied by, or is in the possession of, the Company.
- 10.2 Until this Deed terminates, Creditors who are owners or lessors of property that is used or occupied by, or is in the possession of, the Company, must not take possession of the property or otherwise recover the property.
- 10.3 If a Creditor who is an owner or lessor of property that is used or occupied by, or is in the possession of, the Company did not vote in favour of the resolution of the Company's creditors because of which the Company executed this Deed, then:
- (a) the Deed Administrators may at the Deed Administrators' absolute discretion make an application to the Court for an order pursuant to s.444F(4) of the Act that the Creditor, as owner or lessor, must not take possession of the property or otherwise recover the property; and
  - (b) this clause 10 does not apply unless and until the Court orders that the Creditor, as owner or lessor, must not take possession of the property or otherwise recover the property.

## **11. Admissibility of Debts or Claims**

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- 11.1 A Claim against the Company is not admissible to proof under this Deed or the Trust Deed unless it is a Claim against the Company the circumstances giving rise to which occurred on or before the Relevant Date.
- 11.2 The Deed Administrators, in the case of this Deed, and the Trustee, in the case of the Trust Deed, are to determine:
- (a) the Priority Creditors' Claims;
  - (b) the Participating Creditors' Claims; and
  - (c) the Creditors' Claims;
- that are admissible to proof under this Deed and the Trust Deed. For the avoidance of doubt:
- (d) there is nothing in this Deed that requires that the Deed Administrators commence or complete the determination of which Priority Creditors' Claims, Participating Creditors' Claims or Creditors' Claims are admissible to proof under

this Deed or the Trust Deed before the termination of this Deed in accordance with clause 14.1 and

- (e) this Deed may terminate in accordance with clause 14.1 notwithstanding that the Deed Administrators have not completed those determinations.
- 11.3 The following provisions apply to this Deed for the purpose of the Deed Administrators or the Trustee determining, the Priority Creditors' Claims, the Participating Creditors' Claims and the Creditors' Claims that are admissible to proof under this Deed and the Trust Deed:
- (a) section 560 and Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Act; and
  - (b) regulation 5.6.37, regulations 5.6.39 to 5.6.57 inclusive and regulation 5.6.70A of the Corporations Regulations 2001.

## **12. Secured Creditor**

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- 12.1 This Deed does not bind any Secured Creditor.
- 12.2 This Deed does not affect any Secured Creditor's right to enforce, realise or otherwise deal with the Security.
- 12.3 Nothing in this Deed including without limitation, any moratorium or release of claims in any manner affects, restricts or diminishes the right, title and interests of the Secured Creditors in relation to their security, loans, claims or under the Security Trust Deed or any "Secured Document" as defined in the Security Trust Deed.
- 12.4 Nothing in this Deed affects, restricts or diminishes the ability of the Secured Creditors or the Receivers to exercise any right, power or entitlement arising pursuant to the Security whether against or in respect of any property or assets of the Company. In particular, and without limiting the foregoing, the Secured Creditors, GLAS and the Receivers are free at any time to realise, enforce or otherwise deal with the Security in any way in accordance with the terms of the Security.
- 12.5 This Deed does not affect the functions or powers of the Receivers.

## **13. Meeting to Consider Variation or Termination**

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- 13.1 Without limiting the operation of s.445C, s.445E or s.445F of the Act, , in the event that a meeting of creditors is convened for the purposes of the Main DOCA, the Deed Administrators must also convene a meeting of the Company's Creditors to consider a resolution:
- (a) to vary this Deed (subject to the Proponent providing prior written confirmation that it agrees to the proposed variations); or
  - (b) terminating the Deed; or;
  - (c) entering into a new deed of company arrangement.
- 13.2 The Deed Administrators and the Proponent may also mutually agree that the Deed Administrators are to convene a meeting of the Company's Creditors to consider a resolution:

- (a) to vary this Deed (subject to the Proponent providing prior written confirmation that it agrees to the proposed variations); or
- (b) terminating the Deed; or
- (c) entering into a new deed of company arrangement,

as they may determine necessary.

13.3 At the same time as giving the Company's Creditors notice in writing of a meeting, the Deed Administrators must give the Company's Creditors:

- (a) a current report of the position of the Company; and
- (b) a statement that the Deed Administrators consider that it is no longer practicable or desirable to carry on the business of the Company or to continue this Deed and that the Deed will be varied or terminated if the Company's Creditors so resolve.

## 14. Termination

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14.1 This Deed automatically terminates when any 1 of the following conditions are met:

- (a) the following events occur:
  - (i) the Deed Administrators apply all of the Fund in accordance with clause 15 of the Main DOCA; and
  - (ii) the parties fulfil all of their obligations under this Deed; and
  - (iii) the Deed Administrators lodge the written notice with the Australian Securities and Investments Commission contemplated by clause 14.1(d);
- (b) the Court makes an order terminating this Deed;
- (c) the Company's Creditors pass a resolution terminating this Deed at a meeting that was convened under s.75-10 of Schedule 2 of the Act;
- (d) If the parties have otherwise fulfilled all of their obligations under this Deed, the Deed Administrators must, immediately after the Deed Administrators apply all the Funds in accordance with clause 18 of the Main DOCA lodge a written notice with the Australian Securities and Investments Commission in the following form:

**SO4 Fertiliser Developments Pty Ltd ACN 634 354 224**

*We, Martin Bruce Jones and Matthew David Woods of Level 8, 235 St Georges Terrace, Perth WA 6000, Deed Administrators of the deed of company arrangement executed by SO4 Fertiliser Developments Pty Ltd ACN 634 354 224 on [DATE] hereby certify that the deed has been wholly effectuated and is terminated upon lodgement of this notice with the Australian Securities and Investments Commission.*

14.2 On termination of this Deed in accordance with clause 14.1(a) the Deed Administrators must deliver to the Company all of the Company's books and records in the possession of the Deed Administrators other than those books and records created after the Relevant Date that the Deed Administrators wish to retain.

14.3 The termination of this Deed does not affect:

- (a) the previous operation of this Deed; or
- (b) the enforceability of any accrued obligations under this Deed. For that purpose where the termination of this Deed is followed by the winding up of the Company:
  - (i) the liquidator may enforce any obligation under this Deed owed to the Deed Administrators; and
  - (ii) may do so as if the liquidator had been a party to the Deed at the execution of the Deed in the place of the Deed Administrators.

## **15. Release of Participating Creditors' Claims**

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- 15.1 Upon Transfer of the Fund to the trustee pursuant to clause 15.1 of the Main DOCA, all Participating Creditors' Claims will be forever released, discharged and extinguished in consideration of grant of their entitlements under the Trust Deed.
- 15.2 Subject to the terms of this Deed and section 444D of the Act the Company may plead this Deed in bar to any action, proceeding or suit brought by a Participating Creditor in respect of that Participating Creditor's Claim.

## **16. Machinery Provisions to Give Effect to Release**

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- 16.1 Each Participating Creditor accepts the Participating Creditor's entitlement under this Deed in full satisfaction of the Participating Creditor's Claim.
- 16.2 If the Deed Administrators or the Proponent request Participating Creditors to do so, each Participating Creditor must, within 7 days after the making of the request, execute and deliver to the Company a written release of the Participating Creditor's Claim in the form the Deed Administrators reasonably requires to fulfil the arrangement effected by this Deed.
- 16.3 Each Participating Creditor irrevocably appoints the Deed Administrators to be the attorney of the Participating Creditor with full power for and on behalf of and in the name of the Participating Creditor to do all acts and things and sign and execute all deeds, documents and notices as may be necessary or convenient for the purpose of the execution and delivery to the Company of the written release of the Participating Creditor's Claim in accordance with this clause 16.

## **17. Abandonment by Creditors Who Do Not Prove**

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A Participating Creditor is taken to have abandoned the Creditor's Claim if, before the declaration of a final dividend to Participating Creditors in accordance with the Trust Deed, the Creditor:

- 17.1 fails to submit a formal proof of debt or claim in respect of the Participating Creditor's Claim; or
- 17.2 having submitted a formal proof of debt or claim in respect of the Participating Creditor's Claim which is rejected, fails to appeal to the Court against the rejection.

## 18. Remuneration of Deed Administrators

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- 18.1 Subject to clause 19.2, the Deed Administrators' remuneration for the Deed Administrators' services as administrators of this Deed is fixed at the amount calculated as follows:

$$\text{Remuneration} = \text{Time} \times \text{Firm Rates}$$

where:

**Time** means the time actually spent by the Deed Administrators and any of the Deed Administrators' partners or employees in performance of the services (to be calculated in 6 minute units or part of them); and

**Firm Rates** means the following hourly rates for persons having the job description of the Deed Administrators and the Deed Administrators' partners and employees performing the services:

Appointee/Partner:	725
Appointee/ Director	675
Director	630
Assistant Director	595
Manager:	530
Executive:	450
Analyst	375
Team Administrator	250

- 18.2 The Deed Administrators' remuneration for the Deed Administrators' services as administrators of this Deed is not to exceed \$2,500 (plus GST) or such greater amount as is approved from time to time under s.449E of the Act, or alternatively, by a resolution of the committee of inspection.
- 18.3 The Deed Administrators may draw the Deed Administrators' remuneration from the Fund, or, if the Fund is insufficient, from the Available Property.
- 18.4 The Deed Administrators are entitled to be reimbursed by the Company from the Fund, or, if the Fund is insufficient, from the Available Property, for the whole of the costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the Deed Administrators' administration of this Deed.
- 18.5 The Deed Administrators may draw the Deed Administrators' remuneration and reimbursement at the end of each month.

## 19. Deed Administrators' Indemnity

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- 19.1 Subject to clause 19.2, the Deed Administrators and the Administrators are entitled to be indemnified out of the Fund and the Available Property for:

- (a) remuneration and reimbursement:
- (i) under this Deed; and

- (ii) as administrators of the Company pursuant to Part 5.3A of the Act;
  - (b) all Claims arising out of, in connection with or incidental to any debts incurred by:
    - (i) the Company, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
    - (ii) the Company, the Administrators or the Administrators' partners or employees in the course of the administration of the Company pursuant to Part 5.3A of the Act;
  - (c) all Claims, other than a Claim by the Company:
    - (i) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, in connection with or incidental to the Deed Administrators' administration of this Deed; and
    - (ii) against the Administrators or the Administrators' partners or employees, arising out of, in connection with or incidental to the Administrators' administration of the Company pursuant to Part 5.3A of the Act.
- 19.2 Despite clause 19.1, the Deed Administrators and the Administrators are not entitled to an indemnity out of the Fund or the Available Property against any Claims arising out of, in connection with or incidental to:
- (a) any fraudulent or negligent act or omission by them or their partners or employees;
  - (b) any act or omission done or omitted to be done them or their partners or employees:
    - (i) in breach of good faith; or
    - (ii) in contravention of any provision of ss.180 to 184 inclusive of the Act;
  - (c) any act done by them or their partners or employees outside the powers of the Deed Administrators and the Administrators under this Deed or the Act;
- 19.3 The Deed Administrators, SPA and Administrators' right of indemnity conferred by this clause 19 has priority as a Priority Creditor's Claim.
- 19.4 The Deed Administrators, SPA and the Administrators are entitled to exercise their right of indemnity conferred by this clause 19 whether or not the Deed Administrators or the Administrators has paid or satisfied the Claims.
- 19.5 The Deed Administrators, SPA and the Administrators are entitled to exercise a lien on the Fund and the Available Property to secure the Deed Administrators' and the Administrators' right of indemnity conferred by this clause 19.
- 19.6 Nothing in this Deed, including this clause 19, affects or limits the operation of Subdivision B of Division 9 of Part 5.3A of the Act.

## **20. Member's Rights Exercisable by Deed Administrators**

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- 20.1 Until this Deed terminates, for the purpose of administering this Deed or fulfilling the arrangement effected by this Deed, the Deed Administrators have all the rights and powers of the Company's members in general meeting to the exclusion of the Company's members.

- 20.2 Until this Deed terminates, for the purpose of the Deed Administrators exercising the rights and powers of the Company's members in general meeting in accordance with this clause 20, each member of the Company irrevocably appoints the Deed Administrators to be the attorney of the member with full power for and on behalf of and in the name of the member to do all acts and things and sign and execute all deeds, documents and notices as may be necessary or convenient for the purpose of:
- (a) the Deed Administrators being appointed as the member's proxy to attend and vote instead of the member at a meeting of the Company; or
  - (b) passing a resolution without a general meeting being held in accordance with s.249A or s.249B of the Act.

## **21. Exclusion of Prescribed Provisions**

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Except where expressly included in this Deed the Prescribed Provisions are excluded from this Deed.

## **22. Incorporation of Definitions**

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Unless the contrary intention appears, where a word or expression is defined or given meaning in the Act or the Corporations Regulations 2001, the word or expression has the same meaning when used in this Deed.

## **23. Application of the Act and Corporations Regulations 2001**

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Where any provision of the Act or the Corporations Regulations 2001 is incorporated into or is said to apply to this Deed, that provision is incorporated into or applies to this Deed:

- 23.1 with all modifications as are necessary to give effect to Part 5.3A of the Act, this Deed and the Trust Deed; and
- 23.2 as if references to:
  - (a) the "liquidator" were references to the Deed Administrators;
  - (b) the "relevant date" were references to the Relevant Date; and
  - (c) references to "winding up" were references to the arrangement effected by this Deed and the Trust Deed.

## **24. General provisions**

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### **24.1 Costs and Outlays**

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 Deed Administrators in connection with or incidental to the Deed Administrators' administration of this Deed.

### **24.2 GST**

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient must pay to the supplier an amount (**GST Amount**) equal

to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

#### 24.3 **Assignment**

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

#### 24.4 **Amendments**

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

#### 24.5 **Further assurances**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

#### 24.6 **Waivers**

Any failure by a party to exercise any right under this document does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### 24.7 **Remedies**

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

#### 24.8 **Severability**

Any clause of this document which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this document or the validity of that clause in any other jurisdiction.

#### 24.9 **Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

#### 24.10 **Governing Law and Jurisdiction**

- (a) The law of Western Australia governs this Deed.
- (b) The parties submit to the exclusive jurisdiction of the Court and agree that any lawsuit must be heard, if at all, in the Court.

#### 24.11 **Parties**

- (a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.



- (b) An obligation, representation or warranty in this Deed in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A party to this Deed who is a trustee is bound both personally and in the party's capacity as a trustee.

#### 24.12 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right, and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked, and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust, and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists, or will be created or permitted to exist, and that right will have priority over the rights of the beneficiaries to the trust's assets.

## Signing page

### Signed by Martin Bruce Jones

Joint and Several Deed Administrators of  
SO4 Fertiliser Developments Pty Ltd in the presence of:



Witness

KIERAN CHU

Print name

c/- Level 8, 235 St George Terrace, PERTH WA 6000

Print address



Martin Bruce Jones

### Signed by Matthew David Woods

Joint and Several Deed Administrators of  
SO4 Fertiliser Developments Pty Ltd in the presence of:



Witness

KIERAN CHU

Print name

c/- Level 8, 235 St George Terrace, PERTH WA 6000

Print address



Matthew David Woods

Signed on behalf of  
**Arredo Pty Ltd (ACN 009 256 606)**  
in accordance with s.127 of the  
*Corporations Act 2001*

Secretary/Director

Print name

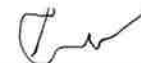
Director

Print name

Signed on behalf of  
**SO4 Fertiliser Developments Pty Ltd**  
**(receivers and managers appointed)**  
**(Administrators Appointed)**  
**ACN 634 354 224**  
By its Administrators



Martin Bruce Jones



Matthew David Woods

## Signing page

**Signed by Martin Bruce Jones**

Joint and Several Deed Administrators of  
SO4 Fertiliser Developments Pty Ltd in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Martin Bruce Jones**

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

**Signed by Matthew David Woods**

Joint and Several Deed Administrators of  
SO4 Fertiliser Developments Pty Ltd in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Matthew David Woods**

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

**Signed on behalf of**  
**Arredo Pty Ltd (ACN 009 256 606)**  
in accordance with s.127 of the  
*Corporations Act 2001*

\_\_\_\_\_  
Secretary/Director

*RS MIDDLEMAS*  
\_\_\_\_\_  
Print name

*Matthew Woods*  
\_\_\_\_\_  
Director

*RS MIDDLEMAS*  
\_\_\_\_\_  
Print name

**Signed on behalf of**  
**SO4 Fertiliser Developments Pty Ltd**  
**(receivers and managers appointed)**  
**(Administrators Appointed)**  
**ACN 634 354 224**  
By its Administrators

\_\_\_\_\_  
**Martin Bruce Jones**

\_\_\_\_\_  
**Matthew David Woods**