

Convertible Notes Trust Deed

Resolute Mining Limited (ACN 097 088 689)

Issuer

Australian Executor Trustees Limited (ABN 84 007 869 794)

Trustee

HARDY♦BOWEN

LAWYERS

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Our Ref – 140318

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This Deed is made this 6th day of November 2014

Parties **Resolute Mining Limited (ACN 097 088 689)** of 4th Floor, BGC Centre, 28 The Esplanade, PERTH WA 6000 (**Issuer**)

and

Australian Executor Trustees Limited (ABN 84 007 869 794) of Level 22, 207 Kent Street, SYDNEY NSW 2000 (**Trustee**)

Recitals

- A. The Issuer wishes to issue Notes subject to and under the terms of this Trust Deed.
- B. The Trustee has agreed, at the request of the Issuer, to act on the terms set out in this Trust Deed as trustee for the benefit of persons who are Holders from time to time.

This Deed provides

1. Interpretation

1.1 Definitions

In this Trust Deed the following terms shall bear the following meanings:

Amendment has the meaning given in clause 19.1.

Application Form means the relevant application form attached to, or accompanying, the Prospectus upon which an application for Offer Securities may be made.

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

ASX Settlement means ASX Settlement Pty Limited ABN 49 008 504 532 or, as the context requires, the financial market operated by it.

ASX Settlement Operating Rules means the ASX Settlement rules and any other operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

Attorney means an attorney appointed under this Trust Deed and any attorney's substitute or delegate.

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Authorised Representative means, for a person:

- (a) a company secretary or director of the person or an employee of the person whose title includes the word "manager", "officer", "director", "counsel", "chief" or "head";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by the person by written notice to the other party to this Trust Deed.

Authorised Representative's Certificate means a certificate signed by an Authorised Representative of the Issuer.

Business Day means a day on which all banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday or public holiday.

CHESS means the Clearing House Electronic Subregister System.

CHESS Approved Securities means securities in respect of which approval has been given by ASX Settlement in accordance with the ASX Settlement Operating Rules.

Confidential Information means all information and other material (other than information or material in the public domain) provided to or obtained by the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this Trust Deed or any obligation, duty or power of the Trustee under this Trust Deed, which the Issuer advises is to be treated as confidential information.

Controller has the same meaning as in the Corporations Act.

Conversion Date means 31 January, 30 April, 31 July or 31 October.

Conversion Notice means the notice substantially in the form of Schedule 3.

Conversion Option has the meaning given in clause 4.1(a) of the Terms.

Conversion Rate means each Note is convertible into one Share or one (as the context may require), unless adjusted in accordance with clause 4.6 of the Terms.

Corporations Act means the Corporations Act 2001 (Cth).

Early Redemption Date has the meaning given in clause 3.5(a) of the Terms.

Early Redemption Notice means the notice which may be given by the Issuer pursuant clause 3.5(b) of the Terms.

Early Redemption Interest Rate means an initial interest rate of 6% during the month which is 12 months from the Maturity Date with the interest rate reducing by 0.5% for every month that passes up till the Maturity Date.

The table below illustrates the applicable interest rate in each of the monthly periods up till the Maturity Date.

Months to Maturity Date	12	11	10	9	8	7	6	5	4	3	2	1
Early Redemption	6%	5.5%	5%	4.5%	4%	3.5%	3%	2.5%	2%	1.5%	1%	0.5%

Interest Rate												
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Excluded Tax means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this Trust Deed or the transactions that this Trust Deed contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this Trust Deed or because it is participating in the transactions that this Trust Deed contemplates.

Event of Default an event or circumstance described in clause 8.1 of the Terms.

Existing Senior Facility means the Issuer's existing senior secured Financial Indebtedness, under or in connection with:

- (a) the Syndicated Facilities Agreement dated 7 April 2008 (as amended on 17 September 2008, 28 November 2008, 30 June 2009, 7 August 2009, 17 June 2011 and 25 February 2013) between the Issuer, Barclays Bank PLC, Australia Branch, Investec Bank PLC and others;
- (b) the Coordination Deed dated 21 October 2013 between the Issuer, Barclays Bank PLC, Australia Branch, Investec Bank PLC and others;
- (c) the Bonds, Guarantee and/or Indemnities Facility dated on or around 16 June 2014 provided to the Issuer by Barclays Bank PLC, as supported by a Counter-Indemnity dated on or around 16 June 2014 provided by the Issuer in favour of Barclays Bank PLC; and
- (d) the Letter of Facility Agreement dated 30 October 2014 between the Issuer and Citibank N.A., Sydney Branch,

plus all interest, costs and expenses relating to this Financial Indebtedness.

Face Value means the face value of a Note being A\$1.00 per Note.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting principles, standards and practices in Australia, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;

- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (j) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Group means the Issuer and each of its Subsidiaries.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Holder means a person who is entered into the Register as the holder of a Note.

Insolvency Event means, in respect of any person (or, in respect of the Trustee, in its personal capacity and not as trustee of any trust):

- (a) an administrator being appointed to the person;
- (b)
 - (i) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy

or analogous person to the person or any of the person's property and not being withdrawn, stayed or dismissed within 30 days; or

- (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA);
- (d) an order being made, or the person passing a resolution, for its winding up; or
- (e) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Interest Payment means the interest payable on a Note on the Interest Payment Date, as calculated in accordance with clause 2 of the Terms.

Interest Payment Date means, for an Interest Period, the date which is 8 calendar days after the Interest Record Date and if that date is not a Business Day, then the next Business Day.

Interest Period means the period determined in accordance with clauses 2.1(d) and 2.1(e) of the Terms.

Interest Rate has the meaning given in clause 1.1(b) of the Terms.

Interest Record Date means the last day of an Interest Period.

Institutional Investor means a person to whom Offer Securities are able to be offered and/or issued under applicable law without the need for any prospectus, registration or other formality (other than a registration or formality with which the Issuer is willing to comply), which in Australia means a "sophisticated investor" (within the meaning of section 708(8) of the Corporations Act) or a "professional investor" (within the meaning of section 708(11) of the Corporations Act).

Investors means both Institutional Investors and Retail Investors who participate in the Offer.

Issue Date means the date on which a Note is issued by the Issuer.

Issuer's Territory has the meaning given in clause 16.1(c).

Joint Venture Agreements means any incorporated or unincorporated joint venture agreements entered into by the Issuer and notified to the Trustee in writing or disclosed on page 108 of the Issuer's annual report for the 12 month period ending 30 June 2014, under the heading titled "Note 26: Joint Venture Interests".

Liquidation includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy.

Listing Rules means the listing rules of ASX.

Majority Holders means Holders who together hold at least 50.1% of the total Face Value of Notes then Outstanding.

Material Adverse Effect means an event or circumstance which (and, for the avoidance of doubt, after taking account of any warranty, indemnity or other right of recourse against any creditworthy third party with respect to the relevant event or circumstance provided that in each such case the benefit of each such warranty, indemnity, insurance, or other right of recourse is likely to be realised within a timeframe sufficient to negate the otherwise material adverse effect of the event or circumstance in question) has or would reasonably be expected to have a material adverse effect on:

- (a) the ability of the Issuer to meet its payment obligation under the Notes; or
- (b) subject to the reservations or qualifications of any legal opinion accepted by the Trustee in connection with the issue of any Notes, the validity or enforceability of the rights and remedies (taken as a whole) of the Holders under this Trust Deed.

Maturity Date means the date that is three years from the date the first Note is issued.

Meeting Provisions means the provisions for meetings of the Holders and related matters contained in Schedule 2.

Moneys Owning means, without double counting, the aggregate of all moneys owing (whether presently, contingently or prospectively) from time to time by the Issuer to the Trustee and the Holders under this Trust Deed and the Notes and, in relation to a Holder, means the foregoing to the extent that it is owing to or relates to that Holder.

Notes means the unsecured notes as described in clause 1.1 of the Terms.

Note Certificate means a certificate or negotiable instrument issued by the Issuer in respect of a Note.

Offer means the offer by the Issuer to Investors to subscribe for Offer Securities under the Offer Documents at the Face Value, to raise up to \$25,000,000.

Offer Documents means all documents issued or published by or issued with the consent of the Issuer in connection with the Offer, including:

- (a) the Prospectus;
- (b) any Application Form;
- (c) any ASX announcements and investor presentation materials in respect of the Offer;
- (d) any other public or media statements, announcements, advertisements, publicity, roadshow materials or marketing presentations in respect of the Offer; and

- (e) all other communications with investors or potential investors, nominees and other parties approved or authorised by or issued with the consent of the Issuer in respect of the Offer.

Offer Securities means the Notes which are to be issued by the Issuer pursuant to the Offer.

Official List means the Official List of the ASX.

Ordinary Resolution means a resolution approved by not less than 50% of all votes cast by Holders present and entitled to vote on the resolution.

Outstanding means a Note that has not been redeemed by the Issuer or converted by the Holder.

Permitted Financial Indebtedness means Financial Indebtedness:

- (a) incurred or subsisting by the Issuer to a Related Body Corporate;
- (b) provided by the Issuer in respect of the liability or obligation of a Related Body Corporate;
- (c) incurred or subsisting by the Issuer under an existing finance lease, hire purchase, sale and lease back or similar facility as at the date of this Trust Deed, entered into in its ordinary course of business, at arm's length and on normal commercial terms;
- (d) the Senior Facility;
- (e) the issue of Notes up to an aggregate Face Value of \$25,000,000;
- (f) unsecured Financial Indebtedness, ranking equally and without preference to the Notes, of up to \$25,000,000 in aggregate;
- (g) incurred in relation to trade or in the ordinary course of business which does not exceed, in aggregate A\$10,000,000 (or its equivalent) at any time; or
- (h) any other Financial Indebtedness incurred with the prior written consent of the Trustee (acting on the instructions of the Majority Holders who must act reasonably).

Permitted Security Interest means:

- (a) **(Trust Deed)** a Security Interest (if any) created under this Trust Deed;
- (b) **(arising by law)** a Security Interest:
 - (i) in favour of any Government Agency for Taxes or any other governmental charges; or
 - (ii) in favour of any other person that arises by operation of law in the ordinary course of ordinary business,

where the amount secured is not overdue or, if it is overdue:

- (iii) it is being diligently contested in good faith; and

- (iv) adequate reserves have been set aside in the books and records of the person to whose property or assets the Security Interest attaches;
- (c) **(title retention arrangements)** any title retention arrangement which is entered into in the ordinary course of day-to-day trading on arm's length and customary terms (or on terms more favourable to the Issuer than customary terms), as long as the obligation it secures is discharged when due or is being diligently contested in good faith and appropriately provisioned;
- (d) **(cash deposits)** a Security Interest over cash or any bank account securing the performance of obligations:
 - (i) under any law; or
 - (ii) in respect of tenders, leases, government contracts, letters of credit or surety, bid or performance bonds,

which are entered into in the ordinary course of ordinary business;
- (e) **(set-off)** a Security Interest resulting from any provision permitting set-off (whether in a winding-up or otherwise), right to combine or consolidate accounts or banker's lien in:
 - (i) any agreement relating to Financial Indebtedness of the Issuer which:
 - (A) is held by a financial institution in respect of Financial Indebtedness of the Issuer; and
 - (B) arises in the ordinary course of ordinary transactional business with that institution; or
 - (ii) any other agreement entered into in the ordinary course of ordinary business;
- (f) **(netting)** any netting or set-off arrangement entered into by the Issuer in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (g) **(turnover trust)** a turnover trust under a subordination arrangement;
- (h) **(deemed security interests)** an interest that is a Security Interest by virtue only of the operation of section 12(3) of the PPSA;
- (i) **(leases)** a Security Interest arising or granted under any operating lease, finance lease, hire purchase, sale and leaseback, conditional sale arrangement, consignment or any similar arrangement entered into on the supplier's usual terms (or on terms more favourable to the Issuer) in respect of goods supplied to the Issuer or any proceeds (as defined in the PPSA) of those goods;
- (j) **(other Security Interests)** a Security Interest created by the Issuer, but not permitted under any other provision of this definition, if the aggregate outstanding principal dollar amount secured by that and all other such Security Interests does not at any time exceed \$2,000,000;
- (k) **(Senior Facility security)** a Security Interest in favour of the Senior Lender in connection with the Senior Facility;

- (l) **(Subordination Deed)** a Security Interest under any Subordination Deed; or
- (m) **(consent)** any Security Interest to which the Trustee consents (acting on the instructions of the Majority Holders who must act reasonably).

Power means any right, power, authority, discretion or remedy of, or conferred on, the Trustee or a Holder, an Attorney or a Controller by this Trust Deed or any applicable law.

PPS Security Interest means a security interest that is subject to the PPSA.

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

Prospectus means a prospectus to be issued by the Issuer in respect of the Offer.

Protected Person means the Trustee and any Authorised Representative, director, officer, employee, agent, delegate, attorney or related body corporate of the Trustee.

Recovered Money means (subject to this Trust Deed), the net proceeds of all money received or recovered by the Trustee under this Trust Deed and Chapter 2L of the Corporations Act whether by enforcement or otherwise (after deduction of fees, costs, charges, expenses and other amounts paid or incurred in accordance with this Trust Deed and Chapter 2L of the Corporations Act).

Redemption Amount means the amount determined in accordance with clause 3.2 of the Terms.

Redemption Date has the meaning given in clause 3.1 of the Terms.

Redemption Notice means the notice which may be given by the Trustee pursuant to an exercise of its rights under clause 8.3 of the Terms.

Register means the register of Holders established and maintained under clause 6 and, where appropriate, includes:

- (a) a sub-register maintained by or for the Issuer under the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules; and
- (b) any branch register.

Registry means the registry of the Issuer from time to time.

Regulatory Change means:

- (a) the introduction of;
- (b) a change in, or in the interpretation or administration by a Government Agency of; or
- (c) the compliance by a Holder or any related body corporate of the Holder with,

an applicable law or regulatory requirement or a direction, request or requirement of any Government Agency (whether or not having the force of law) which commences, is made or comes into effect after the date of this Trust Deed.

Related Body Corporate has the meaning given to it in the Corporations Act.

Retail Investor means a person who is not an Institutional Investor.

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge;
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property; or
- (d) any retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security.

Senior Facility means the Existing Senior Facility and any other senior secured Financial Indebtedness of the Issuer, notified to the Trustee pursuant to clause 10.1, which, excluding indebtedness referred to in paragraph (i) of the definition of Financial Indebtedness, does not exceed US\$150,000,000 in aggregate, plus all interest, costs and expenses relating to that Financial Indebtedness.

Senior Lender means the financier(s) of any Senior Facility to the Issuer (and includes any agent or trustee on a financier's behalf).

Share means a fully paid ordinary share in the capital of the Issuer.

Special Resolution means:

- (a) resolution passed at a meeting of the Holders duly called and held under the Meeting Provisions:
 - (i) by at least 75% of the persons voting on a show of hands (unless paragraph (ii) below applies); or
 - (ii) if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution by Holders representing (in aggregate) at least 75% of the Face Value of all of the Notes Outstanding.

Subordination Deed means a deed regulating the priority between Senior Lenders and Holders on or substantially on the terms of, or terms similar to, the subordination deed in Schedule 4, and if more than one such subordination deed has been entered into means the latest such deed, which does not impose any additional personal obligations on the Trustee or require the Trustee to exercise any discretion or make a determination without the approval of the Majority Holders.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Substitute Territory has the meaning given in clause 16.1.

Substituted Issuer has the meaning given in clause 16.1.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Terms means the terms and conditions of the Notes as set out in Schedule 1.

Total Assets means, at any time, the aggregate of all tangible assets and intangible assets of the Group on a consolidated basis as at that time, as shown in the relevant annual audited financial reports.

Trust Deed means:

- (a) where not used in the Terms, the Deed and all schedules and annexures; and
- (b) where used in the Terms; the trust deed to which these Terms are attached as Schedule 1.

Trust Fund means (with none of the following limiting any other):

- (a) the sum of \$10 referred to in clause 2.2(a);
- (b) all right, title and interest vested in the Trustee in, to and under this Trust Deed, including all rights and benefits under them;
- (c) the benefit of all undertakings, covenants, agreements, representations and warranties made or given or agreed to or in favour of, or granted to or for the benefit of, the Trustee under this Trust Deed;
- (d) the right to enforce the Issuer's duty to repay the Moneys Owing;
- (e) the right to enforce any other duties that the Issuer has under the Terms, this Trust Deed and Chapter 2L of the Corporations Act;
- (f) all money paid to the Trustee under this Trust Deed in its capacity as trustee of the Trust;
- (g) all Recovered Money;
- (h) the benefit of all claims, actions and demands arising in respect of the Powers; and
- (i) all other property acquired by the Trustee and intended to be held for the benefit of the Holders or the Trustee from time to time on the trusts of this Trust Deed.

Trustee Company means any person qualified to be a trustee of the Trust in accordance with section 283AC of the Corporations Act.

Voting Shares has the meaning give to it in section 9 of the Corporations Act.

1.2 Rules for interpreting this Trust Deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Trust Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this Trust Deed) or agreement, or a provision of a document (including this Trust Deed) or agreement, is to that

document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this Trust Deed or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) A reference to "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
 - (g) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (h) The expressions "subsidiary", "holding company" and "related body corporate" have the same meanings as in the Corporations Act.
 - (i) A reference to "dollars" or "\$" is to an amount in Australian currency.
 - (j) If a calculation is required under this Trust Deed, the calculation will be rounded to four decimal places, provided that the amount to be paid to a Holder will be rounded down to the nearest whole cent.
 - (k) A reference to the "fraud", "negligence" or "wilful default" of the Trustee, means the fraud, negligence or wilful default of the Trustee and of its officers and employees.
 - (l) A reference to "wilful default" in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this Trust Deed other than a failure or breach which:
 - (i) arises as a result of a breach of this Trust Deed by a person other than:
 - (A) the Trustee; or
 - (B) any other person referred to in clause 1.2(k) in relation to the Trustee; or

- (ii) is in accordance with a lawful court order or direction or required by law; or
- (iii) is in accordance with any proper instruction or direction of the Holders given at a meeting of Holders convened pursuant to the Meeting Provisions.
- (m) An Event of Default "continues" or "subsists" until it has been waived by the Trustee (acting on the instructions of the Majority Holders who must act reasonably) or remedied.

1.3 Non Business Days

If the day on or by which a person must do something under this Trust Deed is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the next Business Day.

1.4 Inconsistency

- (a) **(Corporations Act):** This Trust Deed is to be interpreted subject to the Corporations Act. If any provision of this Trust Deed is or becomes inconsistent with the Corporations Act, as modified by any applicable exceptions or declarations made by ASIC, this Trust Deed does not operate to the extent of the inconsistency. This provision prevails over all other provisions of this Trust Deed (including clause 1.4(b)(ii)).
- (b) **(Listing and ASX Settlement Operating Rules):** This Trust Deed is to be interpreted subject to the Listing Rules, while the Issuer is admitted to the official list of ASX, and the ASX Settlement Operating Rules while the Notes are CHESS Approved Securities. To the extent that the Listing Rules or the ASX Settlement Operating Rules:
 - (i) restrict or prohibit an act from being done, it may not be done;
 - (ii) require an act to be done, it must be done;
 - (iii) require this Trust Deed to contain a provision, this Trust Deed is taken to contain that provision; and
 - (iv) require this Trust Deed not contain a provision, the document is taken not to contain that provision,

and if any provision of this Trust Deed is or becomes inconsistent with the Listing Rules or the ASX Settlement Operating Rules, this Trust Deed is taken not to contain that provision to the extent of the inconsistency.

- (c) **(PPSA terms)** Unless the contrary intention appears, in this Trust Deed a reference to any of the following terms has the meaning it has in the PPSA: Accession, Account, After-Acquired Property, Amendment Demands, Chattel Paper, Commercial Consignment, Commingled, Control, Financing Change Statement, Financing Statement, Interest, Perfected, Personal Property, PPS Lease, Purchase Money Security Interest, Registration, Secured Party, Security Interest, Serial Number and Verification Statement.

- (d) **(Subordination Deed):** This Trust Deed is to be interpreted subject to the terms of the Subordination Deed and in the event of any inconsistency between the terms of the Trust Deed and Subordination Deed, the Subordination Deed prevails.

2. Declaration of Trust

2.1 Appointment of Trustee

The Issuer appoints the Trustee to act as trustee of the Trust, on the terms and conditions of this Trust Deed, and the Trustee accepts that appointment with effect on and from the date of this Trust Deed.

2.2 Establishment of the Trust

- (a) The Issuer has settled the sum of \$10 on the Trustee.
- (b) The Trustee declares that it holds the sum of \$10, and will hold the Trust Fund, on trust for the Holders from time to time on the terms and conditions of this Trust Deed.

2.3 Name of the Trust

The Trust is to be known as the "Resolute Mining Limited 2014 Notes Trust".

2.4 Benefit of the Trust

Each Holder from time to time is entitled to the benefit of the Trust Fund on the terms and conditions contained in this Trust Deed.

2.5 Trust account

The Trustee must promptly credit the sum of \$10 referred to in clause 2.2(a) to a bank account.

3. Payment of moneys owing and obligation to perform

3.1 Undertaking to pay and perform

The Issuer undertakes unconditionally and irrevocably in favour of the Trustee that it will:

- (a) subject to the Subordination Deed, pay the Moneys Owing when due and payable in accordance with the Terms to, or to the order of, the Trustee; and
- (b) otherwise comply with this Trust Deed.

3.2 Payments to Holders

Notwithstanding clause 3.1, every payment by the Issuer in accordance with this Trust Deed to a Holder on account of the Moneys Owing in relation to that Holder will be in satisfaction of the Issuer's obligation to pay those Moneys Owing to the Trustee under clause 3.1.

4. Issue and ownership of Notes

4.1 Issue of Notes

The Issuer may issue Notes from time to time in accordance with this Trust Deed by entering the relevant subscriber in the Register as the holder of those Notes.

4.2 Form, constituent documents and denomination of the Notes

Each Note will:

- (a) **(registered securities)** be in the form of a registered debt security;
- (b) **(constituent document)** be constituted by, and owing under, this Trust Deed and issued on and subject to the Terms and the terms of the Subordination Deed;
- (c) **(denomination)** be denominated in Australian dollars;
- (d) **(ranking)** rank equally and without preference amongst all other Notes; and
- (e) **(issue)** subject to clause 4.4, be created and issued upon inscription in the Register of the relevant subscriber as the initial Holder of the Note.

4.3 Holders bound by this Trust Deed

- (a) The terms and conditions of this Trust Deed are binding on each Holder and all persons claiming through any Holder as if that Holder and those persons were a party to this Trust Deed.
- (b) It is a condition of a Holder receiving any of the rights or benefits in connection with this Trust Deed or Notes that the Holder performs all of the obligations and complies with all restrictions and limitations applicable to it under this Trust Deed.
- (c) Each Holder is taken to have irrevocably authorised the Trustee to enter into this Trust Deed and to perform its obligations and duties, and to exercise its rights, under this Trust Deed and Chapter 2L of the Corporations Act.

4.4 Subscription for Notes in cleared funds

No actual or proposed Holder or any other person has any right, title or interest in, under or to any Note until the Issuer has received cleared funds in full for the money subscribed for the Note, unless otherwise agreed between the Holder and the Issuer.

4.5 Payment of commission

Subject to it complying with applicable law, the Issuer may pay a commission, underwriting fee, brokerage or any other analogous fees to any person for subscribing or underwriting the subscription of or obtaining subscription for the Notes.

4.6 Notes not invalid if issued in breach

No Note will be invalid or unenforceable on the ground that it was issued in breach of this Trust Deed.

5. Note Certificates

5.1 No Note Certificates unless required by law etc

- (a) No Note Certificate will be issued by the Issuer to evidence title to a Note unless the Issuer determines that such evidence should be made available or is required by law, the Listing Rules or the ASX Settlement Operation Rules and such document is expressed on its face to be subject to the terms of the Subordination Deed.
- (b) If the Issuer determines that a Note Certificate should be issued for the purposes of paragraph (a) above, clauses 5.2, 5.3 and 5.4 will apply.

5.2 Form of Note Certificates

A Note Certificate will be in such form as may be agreed from time to time between the Issuer and the Trustee.

5.3 Execution of Note Certificates

- (a) A Note Certificate may be engraved, lithographed or printed and must be signed, either manually, mechanically, electronically, by facsimile or by other means agreed between the Issuer and the Trustee, by an Authorised Representative or other delegate of the Issuer.
- (b) A Note Certificate is valid notwithstanding that when the Note Certificate is issued the person whose facsimile signature has been applied to the Note Certificate has died or otherwise ceased to hold office.

5.4 Worn out or lost note certificates

If a Note Certificate becomes worn out or defaced, then upon production of it to the Issuer, a replacement will be issued. If a Note Certificate is lost or destroyed, and upon proof of this to the satisfaction of the Issuer and the provision of such indemnity as the Issuer considers adequate, a replacement Note Certificate will be issued. A fee not exceeding \$10 may also be charged by the Issuer for the new Note Certificate if it so requires.

5.5 Uncertificated holdings and holding statements

Where no Note Certificate is issued to a Holder, such Holder will be entitled to receive, and the Issuer or the Registry (as applicable) must provide to such Holder, statements of the holdings of Notes of the Holder as the Issuer is required to give pursuant to the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules.

6. The Register

6.1 Establishment, maintenance and location of the Register

- (a) The Issuer must establish and maintain, or procure the establishment and maintenance of, a register in relation to the Notes.
- (b) The Register must be located in:
 - (i) Sydney, Melbourne or Perth; or

- (ii) such other Australian city as may be notified from time to time by the Issuer to the Trustee in writing.

The Issuer must notify the Trustee in writing of the location of any register maintained in respect of the Notes.

- (c) If the Issuer is not itself establishing or maintaining the Register, the Issuer must:
 - (i) require the person that is maintaining the Register on its behalf to discharge the Issuer's obligations under this Trust Deed in relation to the Register; and
 - (ii) give the Trustee notice of the name of the person that the Issuer has appointed from time to time to establish or maintain the Register on the Issuer's behalf being, as at the date of this Trust Deed, Security Transfer Registrars Pty Ltd.
- (d) Neither the Issuer nor the Trustee is liable for any act or omission of any person appointed by the Issuer under clause 6.1(c), provided that the Issuer will be so liable unless it has taken reasonable steps to select a person competent to perform the intended functions.

6.2 Information to be entered on the Register

The following information must be entered on the Register in respect of a Note and each Holder:

- (a) **(name, email address and address)** the name, address and email address (if notified by the relevant Holder) of each Holder;
- (b) **(amount of Notes)** the number of Notes then held by each Holder;
- (c) **(Australian tax file number)** if provided, the Australian tax file number of each Holder or evidence of any exemption from the need to provide an Australian tax file number;
- (d) **(ACN, ABN etc)** if provided, the Australian Company Number, Australian Business Number or other identifying registration number of each Holder;
- (e) **(payment instructions)** any payment instructions or account details notified by the relevant Holder (or by the Issuer in respect of the relevant Holder) to the Registrar for the purpose of receiving payments in relation to the Notes held by such Holder; and
- (f) **(additional required information)** such other information as:
 - (i) is required by this Trust Deed, the Corporations Act or by any other applicable law; or
 - (ii) the Trustee or the Issuer considers necessary or desirable.

6.3 No Notice of any trust or other interests

Except as provided by statute or as required by an order of a court of competent jurisdiction:

- (a) **(No trusts)** no notice of any trust (whether express, implied or constructive or other interest) may be entered in the Register in respect of a Note; and
- (b) **(No other interests)** neither the Issuer nor the Trustee is to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Notes other than the registered Holder's absolute right to the entire interest in the Notes and the receipt of the Holder is a good discharge to the Trustee and the Issuer.

6.4 Title from Register

Each entry in the Register in respect of a Note:

- (a) **(separate obligations)** evidences a separate and independent obligation owing by the Issuer to the person so entered;
- (b) **(conclusive evidence of title)** evidences conclusively that the person or persons so entered is the absolute owner of, and holder of title to, the Note, except:
 - (i) if more than one person is specified in the entry, the persons hold the Note as joint tenants (but no more than four persons may be specified in an entry); and
 - (ii) the entry is subject to rectification for fraud or any manifest error made in the entry; and
- (c) **(absolute ownership)** vests absolute ownership in, and title to, the Note in the person specified in the entry, to the exclusion of the previous Holder and other persons.

6.5 Change of details

- (a) Any change of the name or address of a Holder must be notified immediately by the Holder in writing to the Issuer. That notice must be accompanied, in the case of a change of name, by any evidence the Issuer requires.
- (b) Upon receipt of a notice pursuant to paragraph (a) above, the Issuer will alter the Register, or procure the alteration of the Register, accordingly.

6.6 Rectification of Register

If:

- (a) **(omissions)** an entry is omitted from the Register;
- (b) **(non-compliant entries)** an entry is made in the Register otherwise than in accordance with this Trust Deed;
- (c) **(incorrect entries)** an entry wrongly exists in the Register;
- (d) **(errors or defects)** there is an error or defect in any entry in the Register; or
- (e) **(default)** default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Notes,

then the Issuer may rectify the same.

6.7 No liability for errors

- (a) The Issuer is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 6.6 occurring provided that it is not as a result of the Issuer's fraud, negligence or wilful default.
- (b) The Trustee is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 6.6.

6.8 Inspection

The Register will be open, during business hours for the inspection by the Trustee, a Holder (to the extent that the inspection or request relates to that part of the Register which contains particulars of that person's holdings), by any persons authorised in writing by the Trustee or the Holders, and by any persons as required by the Corporations Act as it applies to the Issuer.

6.9 Closure of Register

The Issuer may, subject to the Listing Rules or ASX Settlement Operating Rules, from time to time close the Register for any period or periods not exceeding in total in any one year the maximum period for the time being permitted by law or 30 days, whichever is the lesser period.

6.10 Location of the Notes

Property in the Notes is located at the place where the Register is kept.

6.11 Copy of Register to the Trustee

The Issuer will give, or procure to be given, to the Trustee a complete copy of the Register within two Business Days after the Trustee so requests.

6.12 Joint Holders

- (a) **(registration of address of joint Holders)** Subject to clause 6.12(e), if more than one person is registered as the holder of a Note, the address of only one of them will be entered on the Register. If more than one address is notified to the Issuer, the address recorded in the Register will be the address of the joint Holder whose name first appears in the Register.
- (b) **(delivery of notices to first joint Holder)** The delivery to the joint Holder whose name first appears in the Register of a notice or other communication to the joint Holders will be an effective discharge by the Issuer or the Trustee of any obligation to deliver that notice or communication to the joint Holders, and in that case the notice or communication will be deemed to be given to all those joint Holders.
- (c) **(entitlement to a Note Certificate or Holding Statement)** Only the joint Holder in respect of a Note whose name first appears on the Register is entitled to be issued a Note Certificate (if Note Certificates have or will be issued in respect of that Note) or a statement of holding of Notes.
- (d) **(payment to one joint Holder)** The payment to any one joint Holder of any moneys from time to time payable or repayable to the joint Holders will be an

effective discharge to the Issuer or the Trustee from each of the joint Holders for the moneys so paid.

- (e) **(maximum number of registered Holders)** Subject to the ASX Settlement Operating Rules, the Issuer will not be bound to register more than four persons as the joint holders of any Notes.
- (f) **(all joint Holders required)** All joint Holders in respect of a Note must join in:
 - (i) any transfer of the Note; and
 - (ii) any application for the replacement of the Note Certificate (if any) relating to the Note that has been lost, destroyed, worn out or defaced.

7. Transfer of Notes

7.1 Transfer must comply with this clause

Subject to this Trust Deed, each Note is transferrable in whole but not in part in accordance with this clause but not otherwise.

7.2 Form of transfers

A Holder may transfer all or any of the Notes the Holder holds by:

- (a) where, at any time, a Note is quoted on the Official List, by an instrument in writing in any usual form or in any other form that the directors of the Issuer approve, provided it complies with the requirements of the Corporations Act and Listing Rules (in respect of an off market transfer);
- (b) where, at any time, a Note is quoted on the Official List, in accordance with the Listing Rules or the ASX Settlement Operating Rules (as applicable), and recognised under the Corporations Act (for on market transfers);
- (c) where, at any time, a Note is not quoted on the Official List, by a written instrument of transfer in a form that the directors of the Issuer approve, provided it complies with the requirements of the Corporations Act.

7.3 Registration of transfer

A transferor of Notes remains the owner of the Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes, and the transferee of Notes on being entered on the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Holder under this Trust Deed.

7.4 Directors to register transfers

Subject to clause 7.5, the Issuer will not refuse to register or fail to register or give effect to a transfer of Notes.

7.5 Refusal to register transfers other than Proper ASTC Transfers

- (a) **(refusal to register transfers)** The Issuer may refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Listing Rules or ASX Settlement Operating Rules permit the Issuer to do so.

- (b) **(breach of Listing Rules)** The Issuer will refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules require the Issuer to do so, or the transfer is in breach of the Listing Rules.

7.6 Notice of refusal to register

- (a) **(notice to transferee)** Where the Issuer refuses to register a transfer of Notes under clause 7.5, the Issuer will give written notice of the refusal and the reasons for the refusal to the transferee and the person who lodged the transfer, if not the transferee, within five Business Days after the date on which the transfer was lodged with the Issuer.
- (b) **(failure to notify)** A failure by the Issuer to give notice under clause 7.6(a) will not invalidate the refusal to register the transfer in any way.

7.7 Participation in transfer systems

The Issuer may determine that the Notes which are quoted on the official list of ASX will participate in the CHESS or any other computerised or electronic system of transfer or registration and may create rules to facilitate such participation which may be additional to or may override this clause 7.

7.8 Death and legal disability

- (a) **(legal personal representative)** The legal personal representative of a deceased Holder (not being a joint Holder) will be the only person recognised by the Issuer as having any title to that Holder's Notes. Any person becoming entitled to Notes in consequence of the death or Liquidation of any Holder may, on producing such evidence of that person's title as the Issuer requires be registered as the holder of the Notes or may transfer those Notes. The Issuer may retain the Face Value and Interest Payments and any other money payable in respect of any Notes which any person under this clause is entitled to or to transfer until that person is registered or has transferred the Notes. Nothing in this clause will prejudice the rights of any person to vote in respect of that Note at any meeting or on a poll.
- (b) **(joint Holders)** In the case of the death of any one joint Holder, the survivors will be the only persons recognised by the Issuer as having any title to or interest in the Notes registered in their names jointly.

7.9 Transfer and transmission under clause 7.8

The Issuer need not register any transfer or transmission under clause 7.8 unless the transferee provides an indemnity in favour of the Issuer in a form determined by or satisfactory to the Issuer in respect of any consequence arising from the transfer or transmission.

7.10 Two or more persons jointly entitled

Where two or more persons are jointly entitled to any Note in consequence of the death of the registered holder of that Note, they will be regarded as joint holders of that Note.

7.11 Moneys payable in respect of Notes

The Issuer may retain any moneys payable in respect of any Notes which any person under this clause 7 is entitled to transfer until such person is registered or has duly transferred the Notes.

8. Representations and Warranties

8.1 Representations and warranties – Issuer and Trustee

Each of the Issuer and the Trustee (in respect of itself in its personal capacity) represents and warrants that:

- (a) **(status)** it is a company limited by shares incorporated under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this Trust Deed and to carry out the transactions that this Trust Deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Trust Deed and to carry out the transactions contemplated;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Trust Deed and to carry out the transactions that it contemplates; and
 - (ii) ensure that this Trust Deed is legal, valid, binding and admissible in evidence,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(Trust Deed effective)** this Trust Deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(no contravention)** neither its execution of this Trust Deed nor the carrying out by it of the transactions that it contemplates, does or will cause it to:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any material agreement binding on it or any of its property; or
 - (iv) contravene its constitution or the powers or duties of its directors; and

- (g) **(ensure true and fair accounts)** in respect of the Issuer, its most recent consolidated audited accounts have been prepared in accordance with current accounting practice (except to the extent disclosed in them) and with the laws of its place of incorporation and give a true and fair view of its consolidated financial position as at the date of those accounts and of its consolidated results of operations for the financial year then ended.

8.2 Representation and warranty – Offer Documents

The Issuer represents and warrants that, as at the date of the Offer Documents, the Offer Documents will contain all of the information required to comply with all applicable law and will not be misleading or deceptive or otherwise defective.

8.3 Repetition of representations and warranties

The representations and warranties in clause 8.1 are taken to be repeated on each Issue Date and on each Interest Payment Date, on the basis of the facts and circumstances as at that date.

9. Issuer's Covenants

9.1 Issuer's obligations

The Issuer covenants with the Trustee that, for so long as any Notes remain outstanding, it will:

- (a) **(keep accounts)** keep or cause to be kept proper books of account (in accordance with current accounting practice and standards);
- (b) **(provide accounts)** provide the following:
 - (i) without charge, to the Trustee (within 120 days after 30 June in each year) and to each Holder who requests it in accordance with section 318(2) of the Corporations Act, a copy of the Issuer's consolidated audited accounts in respect of each financial year and a copy of the Issuer's annual report for that financial year; and
 - (ii) without charge, to the Trustee (within 90 days after 31 December in each year), a copy of the Issuer's consolidated financial report in respect of each financial half year in the form submitted to the ASX;
- (c) **(stamp duty)** where there exists any recurring obligation on the Issuer or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, provide such information as is required by the Trustee to properly complete any return required to be lodged under the provisions of any stamp duty legislation which are applicable to this Trust Deed or any of the Notes or otherwise to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation, such information to be furnished to the Trustee not less than 14 days prior to the time when such return is required to be lodged;
- (d) **(make records available for inspection)** make all financial and other records of the Issuer (insofar as they relate to the Notes) available for inspection by:
 - (i) the Trustee;

- (ii) any registered company auditor appointed by the Trustee for that purpose; and
- (iii) any officer, employee or auditor of the Trustee authorised by the Trustee to carry out the inspection,

and give them any information, explanations or other assistance that they reasonably require about matters relating to those records;

- (e) **(make payments)** make all payments of principal and interest in respect of the Notes, as and when due, in accordance with the Terms, to the persons who are entitled to receive such payments;
- (f) **(listing)** use its best endeavours to ensure that the Notes are, upon being issued, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and provide to the ASX such information as the ASX may require in accordance with the Listing Rules and any other ASX requirements (including providing ASX with a copy of this Trust Deed);
- (g) **(comply with obligations)** comply with its obligations under the terms of this Trust Deed, the Corporations Act (including Chapter 2L), the Listing Rules and the ASX Settlement Operating Rules where a failure to do so would have or would be likely to have a Material Adverse Effect;
- (h) **(information)** give the Trustee (and, in respect of paragraph (v) below, a Holder, within 10 Business Days of a request by that Holder):
 - (i) **(s283BF quarterly reports)** within one month after the end of each calendar quarter, the report required by section 283BF of the Corporations Act, containing all information required by section 283BF of the Corporations Act;
 - (ii) **(confirm payments)** promptly after redeeming or cancelling all Notes in full, details of that redemption or cancellation;
 - (iii) **(copies of notices to Holders)** a copy of all documents and notices which it gives to Holders;
 - (iv) **(other information)** promptly, all other information requested the Trustee which is reasonably required for the purposes of the discharge of its duties, trusts and powers under this Trust Deed or imposed upon it by law;
 - (v) **(copies of this Trust Deed)** a copy of this Trust Deed, if requested; and
 - (vi) **(retirement of auditor)** promptly of any appointment, retirement, resignation or removal of an auditor of the Issuer;
- (i) **(notify breaches)** promptly notify the Trustee, and in any event no later than 2 Business Days after it becomes aware, of an Event of Default or any other breach by the Issuer of any obligation under this Trust Deed or Chapter 2L of the Corporations Act; and
- (j) **(assist Trustee)** do any other thing reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this Trust Deed, the Corporations Act (or any other laws binding on the Trustee with

respect to the Trust or the Notes), the Listing Rules or the ASX Settlement Operating Rules.

9.2 Issuer's obligations on execution

As soon as practicable after execution of this Trust Deed, the Issuer will attend to all filings and registrations which are required to be effected, and all Taxes which are required to be paid, to ensure that this Trust Deed is legal, valid, binding and admissible in evidence.

9.3 Notification obligations when in Liquidation

If the Issuer or any of its assets are placed in Liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Issuer or its assets (as applicable) ("**Appointee**") must:

- (a) notify the Holders of each relevant Event of Default and of the Appointee's appointment; and
- (b) provide regular updates to the Trustee and the Holders as to the status of the Liquidation and any other material developments affecting the Issuer or its assets.

9.4 General undertakings

The undertakings in this clause 9.4 remain in force from the Issue Date for so long as any amount is outstanding under the Notes.

(a) Financial Indebtedness

The Issuer shall not incur Financial Indebtedness without the consent of the Trustee (acting on the instructions of the Majority Holders who must act reasonably) other than Permitted Financial Indebtedness.

(b) Disposals

- (i) The Issuer shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (ii) Paragraph (i) above does not apply to any sale, lease, transfer or other disposal:
 - (A) made in the ordinary course of trading of the disposing entity;
 - (B) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose;
 - (C) of worn out or obsolete assets;
 - (D) where the higher of the market value or consideration receivable does not exceed A\$2,000,000 (or its equivalent in another currency or currencies) in any financial year;
 - (E) which is or pursuant to a Permitted Security Interest;

- (F) of any interest whatsoever in Joint Venture Agreements in accordance with any default provisions contained in the governing documents in respect of such interests, as in force from time to time;
- (G) by the Issuer to a Related Body Corporate;
- (H) a sale and lease back or similar transaction which is Permitted Financial Indebtedness;
- (I) where it is required to be made under any applicable Law or an order or directive of a court or Government Agency;
- (J) of assets in respect of which insurance claims are made and met, where the proceeds of such insurance claims are used in respect of the replacement or reinstatement of the relevant asset; or
- (K) with the consent of the Trustee (acting on the instructions of the Majority Holders who must act reasonably).

(c) **Carry on business**

The Issuer must carry on and conduct its business in a proper and efficient manner.

(d) **Trust Deed effective**

The Issuer must obtain and maintain each Authorisation that is necessary or desirable to:

- (i) execute this Trust Deed and to carry out the transactions that this Trust Deed contemplates;
- (ii) ensure that this Trust Deed is legal, valid, binding and admissible in evidence; or

and must comply with any conditions to which any of these Authorisations are subject.

10. Senior Facilities

10.1 Senior Lenders

If the Issuer requires any financier (or an agent or trustee for the financier) to be recognised as a Senior Lender, it must provide the Trustee with:

- (a) a notice, signed by a Director of the Issuer, setting out:
 - (i) details of the new financing arrangements, including the name of each financier or, in the case of debt instruments, the name of the proposed trustee, agent or other representative for the holders of such debt instruments, together with a confirmation from the Issuer that the proposed arrangements constitute a Senior Facility;
 - (ii) a statement that the arrangement will not give rise to an Event of Default; and

- (iii) any additional information reasonably requested by the Trustee; and
- (b) a completed and executed Subordination Deed (if requested by the Senior Lender) signed by the Issuer, the new Senior Lender and any previous Senior Lender who remains a Senior Lender.

10.2 Execution of Subordination Deed

If the Trustee has received the documentation required from the Issuer pursuant to clause 10.1, the Trustee is irrevocably instructed by the Issuer and the Holders (without the need for any further action on the part of the Issuer or any Holder), to execute, within 5 Business Days, the Subordination Deed provided by the Issuer in such number of counterparts as may be reasonably requested by the Issuer and return the same to the Issuer.

For the avoidance of doubt, the Trustee's obligation under this clause 10.2 to execute the Subordination Deed, provided by the Issuer pursuant to clause 10.1(b), does not impose any obligation on the Trustee to consider the merits or substance of the Subordination Deed as it relates to the interests of the Holders.

11. Trustee's limitation of liability

- (a) The Trustee is not liable to the Issuer, any Holder or any other person in any capacity other than as trustee of the Trust.
- (b) Any liability arising under or in connection with this Trust Deed or a Note is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified out of the Trust Fund for that liability. This limitation of the Trustee's liability applies despite any other provision of this Trust Deed or the Terms and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Trust Deed or a Note.
- (c) For the avoidance of doubt, the Trustee is not liable to the Issuer nor any Holder for a failure to do or refrain from doing anything under this Trust Deed, including upon any direction or instruction by any Holder(s), which would be contrary to its obligation under the Subordination Deed.
- (d) Neither the Issuer nor any Holder may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a Controller (except in relation to the Trust Fund), a liquidator an administrator or any other similar person to the Trustee or prove in any Liquidation of or affecting the Trustee (except in relation to the Trust Fund).
- (e) The Issuer and each Holder waives each of their rights against the Trustee, and each releases the Trustee from any personal liability, in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Trust Deed or a Note, which cannot be paid or satisfied out of the Trust Fund.
- (f) The provisions of this clause 11 will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.
- (g) The Issuer and each Holder each acknowledge that it is responsible for performing a variety of obligations under this Trust Deed and the Terms. No act or omission of the Trustee (including any related failure to satisfy its

obligations or breach of representation or warranty under this Trust Deed or the Terms) will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause 11 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, a Holder or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer, a Holder or any other person.

- (h) No Authorised Representative of the Trustee appointed in accordance with this Trust Deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no such act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of this clause 11.
- (i) The Trustee is not obliged to do or refrain from doing anything under this Trust Deed or the Terms (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 11.
- (j) The provisions of this clause 11:
 - (i) are paramount and apply regardless of any other provision of this Trust Deed or the Terms or any other instrument, even a provision which seeks to apply regardless of any other provision;
 - (ii) survive and enure beyond any termination of this Trust Deed for any reason; and
 - (iii) are not severable from this Trust Deed.

12. Trustee's rights and responsibilities

12.1 Trustee entitled to exercise all rights

Subject to this Trust Deed and the terms of the Subordination Deed:

- (a) the Trustee is entitled to exercise all Powers under this Trust Deed and any other document to which it is party in its capacity as trustee of the Trust (including those Powers conferred on trustees generally by statute and those conferred on trustees generally by law or equity) as if the Trustee were the absolute and beneficial owner of the Trust Fund and such documents;
- (b) the Trustee may enter into such other documents in its capacity as trustee of the Trust as it is authorised to from time to time by the Holders; and
- (c) (despite clause 12.2 and any other clause operating as between the Trustee and the Holders) the Trustee will, as between itself and each Holder, have the absolute discretion:
 - (i) as to whether or not to take any steps to enforce the Notes or otherwise seek to recover moneys payable under the Notes; and
 - (ii) as to the manner of any enforcement (including the identity of a Controller to be appointed under this Trust Deed).

12.2 Trustee's general undertakings

The Trustee undertakes to the Holders that it will:

- (a) act honestly and in good faith in the performance of its functions as Trustee, and show the degree of care and diligence required of a trustee having regard to the extent of its rights and obligations under this Trust Deed;
- (b) act continuously as Trustee until either the Trust is terminated, or it retires or is removed in accordance with clause 13;
- (c) comply with all duties imposed on it under the Corporations Act and satisfy at all times the requirements of a trustee as provided for in sections 283AC(1) and 283A(2) of the Corporations Act;
- (d) subject to the provisions of this Trust Deed and the Trustee's general duties as trustee at law, in equity or by statute, not interfere with the conduct of the ordinary business of the Issuer;
- (e) hold, and account for, the Trust Fund separate from any other property owned or administered by it; and
- (f) not sell or otherwise dispose or part with possession of, or create or permit to exist any Security Interest over, any part of the Trust Fund, except to the extent contemplated by this Trust Deed,

without being responsible, or liable to any person, for any loss occasioned by so doing unless the Trustee has been guilty of fraud, wilful default or negligence.

12.3 Exercise of powers to waive

- (a) Except where otherwise expressly provided in this Trust Deed, by the Corporations Act or by the Subordination Deed, the Trustee may waive or excuse any breach (whether anticipatory or actual) of any provision under this Trust Deed (acting on the instructions of the Majority Holders) (except the non-payment of the Face Value of any Note in breach of this Trust Deed which has not been remedied).
- (b) Each Holder will be bound by any such waiver or excusal of breach by the Trustee.

12.4 Exercise of enforcement and other powers

- (a) While an Event of Default is subsisting, the Trustee may, and must, if so directed or instructed by a Special Resolution of Holders or so requested in writing by the Majority Holders:
 - (i) give notice to the Issuer that the total Redemption Amount of Notes Outstanding is due and payable (and that amount will immediately become due and payable when the notice is served); and/or
 - (ii) institute proceedings for the winding-up of the Issuer and/ or prove in the winding-up of the Issuer and/or claim in the Liquidation of the Issuer, for the amount payable under the Terms.
- (b) The Trustee may at any time, at its discretion and without further notice, institute such proceedings against the Issuer as it may think fit to enforce any term or condition binding on the Issuer under this Trust Deed, except that (without prejudice to clause 12.4(a)) the Trustee must not institute any proceedings or take any steps to enforce any payment obligation of the Issuer under or arising from this Trust Deed or the Notes, including, without limitation, payment of any principal or interest in respect of the Notes, any Redemption

Amount or Interest Payment, and including damages awarded for the breach of any obligations, and in no event shall the Issuer, by virtue of the institution of any such proceedings or steps, be obliged to pay any sum or sums in cash or otherwise, sooner than the same would otherwise have been payable by it under the Terms.

- (c) The Trustee and Noteholders may not take any action under this clause in breach of the terms of the Subordination Deed.

12.5 Trustee to convene meeting

If the Trustee is actually aware of the occurrence of an Event of Default and provided that the Trustee has, or will have, available to it from the Trust Fund sufficient money to cover the cost and expenses of doing so, the Trustee must promptly convene a meeting of Holders in accordance with clause 18 at which it must seek directions from the Holders as to the action it should take in relation to that Event of Default.

12.6 Trustee not bound to enforce

Subject to the Terms, the Subordination Deed and section 283DA(h) of the Corporations Act, the Trustee shall not in any event be bound to take any action referred to in clauses 12.4 and 12.5 unless:

- (a) in respect of clause 12.4 only, it shall have been so requested by the Majority Holders or it shall have been so directed by a Special Resolution of the Holders;
- (b) it shall have been indemnified by the Holders as contemplated by clause 14.3 of this Trust Deed; and
- (c) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that such action is or could be inconsistent with this Trust Deed or the Corporations Act or any other applicable law, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction given by Special Resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.

12.7 No obligation to notify or investigate or monitor

Subject to section 283DA of the Corporations Act and the Subordination Deed, the Trustee need not:

- (a) notify any person of the execution of this Trust Deed or the occurrence of any breach of this Trust Deed or Event of Default;
- (b) take any steps to ascertain whether there has occurred (and will not be deemed to have knowledge that such has occurred until it has received written notice from the Issuer or a Holder in relation to such) any:
 - (i) Event of Default; or
 - (ii) event which constitutes or which would, with the giving of notice or the lapse of time or the issue of a certificate, constitute an Event of Default;

- (c) enquire as to whether the provisions of this Trust Deed have been complied with;
- (d) notify any Holder of any breach by the Issuer of any provision of this Trust Deed;
- (e) request information or otherwise keep itself informed about the circumstances of the Issuer or consider or provide to any person (including a Holder) any information with respect to the Issuer (whenever coming into its possession);
- (f) investigate the adequacy, accuracy or completeness of any information provided by the Issuer; or
- (g) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer.

12.8 Holders' right to enforce

No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Note unless the Trustee, having become bound to so proceed, fails to do so within a reasonable period and the failure is continuing, in which case any such Holder may, subject to terms of the Subordination Deed, itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Holder and not the Trustee.

12.9 Instructions and extent of discretion

- (a) Except:
 - (i) in respect of amounts due to the Trustee in its personal capacity; or
 - (ii) to the extent expressly provided to the contrary in this Trust Deed,

in exercising any Power or giving any consent, approval, agreement or waiver or making any determination under this Trust Deed, the Trustee must, and is only obliged to, act if and only if it is directed to do so by the Majority Holders or a Special Resolution of Holders (as applicable), unless a provision of this Trust Deed expressly states otherwise.
- (b) Unless this Trust Deed expressly provide to the contrary, any direction by the Majority Holders or a Special Resolution of Holders (as applicable) is binding on all Holders except where this Trust Deed provides that instructions must be provided by all the Holders or by such other number of Holder or Holders.
- (c) Each Holder authorises the Trustee to give any consent and do any other matter or thing necessary or appropriate for it to give effect to any instructions given under this Trust Deed.
- (d) Any action taken by the Trustee under this Trust Deed is binding, as between the Trustee and the Holders, on all the Holders.
- (e) Where a direction by way of a Special Resolution of Holders or an instruction by the Majority Holders is required under this Trust Deed, for the purposes of determining whether the Special Resolution has been given or made or whether the Majority Holders have so instructed the Trustee:

- (i) the Trustee will request each Holder to provide to it within a reasonable specified period (which will be at least 5 Business Days or, in an urgent case, any shorter period agreed by the Trustee and the Issuer) a signed written direction or confirmation of its decision; and
 - (ii) the Trustee will determine whether the Special Resolution or the instructions from the Majority Holders has or have been granted or made.
- (f) If a Holder does not provide instructions in writing within the period specified it will be taken to have a Face Value of Notes of nil for the purpose only of determining whether instructions have been given by a specified majority of Holders.
- (g) Each Holder agrees with the Trustee that the Holder will act reasonably in giving instructions to the Trustee in respect of any matter in which:
 - (i) the consent or approval of the Trustee is required, the Trustee is required to form an opinion or the Trustee is given powers; and
 - (ii) this Trust Deed provides that the consent or approval of the Trustee may not be withheld unreasonably, that the consent or approval must be given reasonably, that the opinion must be a reasonable opinion, or that the Trustee must act reasonably in the exercise of those powers.
- (h) Any statement by the Trustee to the Issuer that instructions or a direction have been given to the Trustee by any Holder, the Majority Holders, all the Holders or by way of a Special Resolution, as the case may be, or as to the terms of those instructions or direction, is sufficient evidence of its contents.
- (i) Despite any other provision of this Trust Deed, the Trustee is not obliged to take any action under this Trust Deed, or exercise any Power until it is first indemnified to its satisfaction in accordance with clause 15 or otherwise.
- (j) The Trustee may apply to a court for directions in relation to any disputes or ambiguity relating to any of its rights, powers, authorities, discretions, remedies and obligations under this Trust Deed or any applicable law and may comply with any such directions. For so long as the Trustee is using reasonable endeavours to resolve any dispute or ambiguity, the Trustee may (but need not) refuse to do anything in relation to such rights, powers, authorities, remedies or obligations (as the case may be) affected by the dispute or ambiguity until such direction is given by the court.

12.10 Performance of obligations of Trustee

The Trustee may:

- (a) refrain from doing anything that would, or in its reasonable opinion might, contravene any applicable law or a directive or request (whether or not having the force of law) of a Government Agency or constitute a breach of trust or of any proper practice relating to secrecy or confidentiality; and
- (b) do anything that, in its reasonable opinion, is necessary to comply with any applicable law or a directive or request (whether or not having the force of law) of a Government Agency.

12.11 Right to appoint agents and delegates

- (a) The Trustee, instead of acting personally, may employ an agent to do an act required or permitted to be done under this Trust Deed or in relation to this Trust Deed or the Notes. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such agent prior to that appointment or revocation.
- (b) The Trustee may delegate any of its Powers, either wholly or partially or subject to any limitations or restrictions, to any person as it thinks fit and may revoke that delegation and may for that purpose execute powers of attorney or other instruments, as it thinks fit. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such delegate prior to that appointment or revocation.
- (c) No person dealing with the Trustee, or any delegate to whom any Powers of the Trustee has been delegated, is bound to enquire whether the delegation remains in force.
- (d) The Trustee may rely and act on the opinion, certificate or advice of or information obtained from, an agent, delegate, expert or legal or other professional adviser appointed by it or by any one or more of the Holders. The Trustee is not responsible to a Holder for any loss occasioned by so doing if the Trustee has acted in good faith in so acting.

12.12 Trustee may rely on certain matters

The Trustee:

- (a) may accept and rely upon an Issuer's Authorised Representative's Certificate as to any fact or matter as conclusive evidence of it;
- (b) may accept, rely upon and act upon any information, statement, certificate, report, balance sheet or account supplied by or on behalf of the Issuer; and
- (c) may accept, rely upon and act upon the statements and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of this Trust Deed as conclusive evidence of the contents of it.

The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or account nor to enquire as to the accuracy thereof and is not responsible for any loss or damage that may be occasioned by its reliance.

12.13 Trustee may assume certain matters

The Trustee may assume that:

- (a) any representation or statement made by a person in this Trust Deed or the Prospectus remains true;
- (b) any deed or information provided to it is genuine and accurate if it believes in good faith that this is the case; and
- (c) (unless it is notified in writing by a Holder or the Issuer to the contrary) any right, power, authority or discretion vested in any party has not been exercised.

12.14 Identity of Holders

The Trustee may assume that each Holder is the beneficial owner of its respective rights, and is bound by its obligations, under this Trust Deed, except to the extent that it receives a notice satisfactory to the Trustee (acting reasonably) of the assignment or transfer of those rights.

12.15 Information to Holders

- (a) Unless this Trust Deed specifically provides otherwise, the Trustee is not required to determine the accuracy or completeness of any document or copy that it receives, or that it gives to another party (including to a Holder).
- (b) Nothing in this Trust Deed obliges the Trustee to disclose any information relating to the Issuer if the disclosure would constitute a breach of any law or duty of secrecy or confidence.

12.16 Holders' own investigations

- (a) As a condition to its holding of Notes, each Holder will be deemed to have confirmed that, as between itself and the Trustee, it:
 - (i) has made its own appraisal and investigation of the business, financial condition, status and affairs of the Issuer;
 - (ii) is solely responsible for continuing that appraisal and investigation after the date of this Trust Deed;
 - (iii) has subscribed for its Notes without any inducement from the Trustee; and
 - (iv) has made its own appraisal of its financial return under each Note that it holds.
- (b) As a condition to its holding of Notes, each Holder will be deemed to have confirmed that it has not relied, and will not rely, on the Trustee at any time to:
 - (i) give it any information concerning the business, financial condition, status or affairs of the Issuer, other than the provision of any notices, reports, accounts or other documents or information which must be provided to the Holders by the Trustee under this Trust Deed;
 - (ii) investigate the adequacy, accuracy or completeness of any information given by the Issuer in connection with this Trust Deed or the Terms (whether or not the information is given to that Holder by the Trustee); or
 - (iii) assess or keep under review the business, financial condition, status or affairs of the Issuer.

12.17 Monitoring and Events of Default

- (a) Except where otherwise expressly provided in this Trust Deed, by the Corporations Act or the Subordination Deed, the Trustee is not required to:
 - (i) notify any person of the execution of this Trust Deed;

- (ii) monitor, enquire or keep itself informed as to whether any party is in breach of its obligations under this Trust Deed or another document or agreement to which the Issuer is a party; or
 - (iii) inspect the properties or books of the Issuer or to assess or keep under review the business, operations, financial condition, creditworthiness or state of affairs of the Issuer.
- (b) The Trustee is not taken to have knowledge that an Event of Default has occurred unless:
 - (i) the Trustee becomes actually aware that an Event of Default has occurred; or
 - (ii) the Issuer informs the Trustee in writing that an Event of Default has occurred and gives it details of that event.
- (c) If the Trustee receives a notice of the kind referred to in clause 12.17(b)(ii), the Trustee may consider the Event of Default to be continuing until:
 - (i) the Trustee has received a further notice from the party giving the original notice stating that the Event of Default is no longer continuing, and the Trustee may rely on that further notice for all purposes under this Trust Deed; or
 - (ii) the Trustee becomes actually aware that the Event of Default is no longer continuing.
- (d) Subject to this Trust Deed, the Trustee may represent the Holders generally in:
 - (i) any investigation, negotiation, action, transaction or proceeding relating to or affecting the interests of the Holders; or
 - (ii) the enforcement of the rights of the Holders or the Trustee,

and in representing the Holders, has an absolute discretion to act or to refrain from acting and to commence, prosecute, vary or discontinue, abandon, waive or compromise any action, proceeding or claim on any terms or conditions as it thinks fit.

12.18 Knowledge of the Trustee

The Trustee will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, actual notice or actual awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust.

12.19 Protection of Trustee

- (a) Subject to clause 12.19(b), no Protected Person is liable to a Holder or the Issuer for:
 - (i) any loss or damage occurring as a result of any of them exercising, failing to exercise or purporting to exercise any Power under this Trust Deed or in relation to a Note;

- (ii) any Event of Default, negligence or fault of any of them whether or not their employment or appointment was necessary or expedient;
 - (iii) a mistake or omission made by any of them;
 - (iv) any other matter or thing done, or not done, by any of them in relation to this Trust Deed or a Note;
 - (v) the value, validity, effectiveness, genuineness, execution, enforceability or sufficiency of this Trust Deed or a Note or any document or agreement referred to or provided for in, or received by any of them under, this Trust Deed;
 - (vi) an absence of, or defect in, title or for the inability of any of them to exercise any of the Trustee's Powers arising from an absence of, or defect in, title;
 - (vii) a failure by the Issuer to perform its obligations under this Trust Deed or in relation to a Note;
 - (viii) any recital, statement, representation or warranty contained in this Trust Deed, in any information memorandum or in any document or agreement referred to or provided for in, or received by any of them under, this Trust Deed;
 - (ix) the financial condition or solvency of the Issuer;
 - (x) the acts or omissions of a Controller;
 - (xi) any action taken or not taken by the Trustee under this Trust Deed or in relation to a Note:
 - (A) in accordance with any instructions or directions from the appropriate Holder(s);
 - (B) in any manner, where this Trust Deed does not require instructions to be given to the Trustee; or
 - (xii) the registration, perfection or priority of any Security Interest in relation to this Trust Deed (or any transaction in connection with this Trust Deed) under the PPSA. The Trustee is not required to take any action with respect to the PPSA other than as directed by the appropriate Holders.
- (b) This clause 12.19 does not exempt the Trustee from liability to a Holder or the Issuer:
- (i) if the Trustee fails to follow the lawful directions of the appropriate Holders given in accordance with this Trust Deed;
 - (ii) if the Trustee fails to seek the required consent of the appropriate Holders, in any circumstance where that consent is required under this Trust Deed; or
 - (iii) to the extent that a Protected Person has been guilty of fraud, default or negligence.

- (c) Failure by the Trustee to act due to lack of instructions or directions or lack of proper or clear instructions or directions from the appropriate Holders required to be given under this Trust Deed does not amount to fraud, default or negligence of or on the part of the Trustee.
- (d) The Trustee is not bound by any waiver, amendment, supplement or modification of this Trust Deed unless it gives its consent as Trustee under this Trust Deed.
- (e) The Trustee is not liable to the Issuer if a Holder fails to perform its obligations under this Trust Deed.

12.20 Receipts and business activities

The Trustee may:

- (a) retain for its own benefit any amount received by it for its own account; and
- (b) accept deposits from, lend money or provide services to, and generally conduct any banking or other business with, or enter into any contract or arrangement with, the Issuer or any Holder and any person connected with the Issuer or any Holder without having to account to the Holders or any other person (including in respect of any fee, remuneration or profit received or accruing in connection with any of the above).

12.21 Other capacities

- (a) If the Trustee also enters into any document or holds any Note in any capacity other than as Trustee, it may exercise any rights it has in such other capacities as if it were not acting as the Trustee.
- (b) The Trustee, in its capacity as a Holder, has the same rights and Powers under this Trust Deed as any other Holder and may exercise the same as if it were not acting as the Trustee.
- (c) In acting as trustee for the Holders, the Trustee is regarded as acting through its corporate trust division which will be treated as a separate entity from any other of its divisions or departments. If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is taken not to have notice of it.

12.22 Nature of relationship

The Trustee is not an agent of or fiduciary for the Issuer.

12.23 Issuer not concerned with authority of Trustee

The Issuer is not entitled to enquire whether any action by the Trustee has in fact been authorised by the appropriate Holders and, as between the Issuer and the Holders, any action taken by the Trustee concerning this Trust Deed or any Note is taken to be authorised by the appropriate Holders.

12.24 Protection of third parties

No person dealing with the Trustee is bound to enquire as to whether the Trustee has been properly appointed under this Trust Deed or as to whether the Trustee has the requisite Power and may assume that anything purported to be done by the Trustee

under this Trust Deed or in relation to any Note has been duly authorised by this Trust Deed and the appropriate Holders.

12.25 Application to court for direction

The Trustee may apply to a court for directions in relation to any question relating to its duties under this Trust Deed or in relation to any Note or relating to its Powers.

12.26 Conflicts of interest

Each Protected Person and a Controller or other person appointed by the Trustee under this Trust Deed or in relation to any Note may exercise or agree to exercise a Power even though that person may have a conflict of interest in exercising the Power.

12.27 Investment of money

The Trustee may invest any money forming part of the Trust Fund in investments in which trustees are authorised to invest funds under the law of any State or Territory of Australia.

12.28 Exclusions of law where permitted

- (a) To the maximum extent permitted by law, the Trustee's obligations, duties and responsibilities are expressly limited to those set out in this Trust Deed.
- (b) All liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the extent permitted at law or in equity, excluded and, except to the extent provided to the contrary in this Trust Deed, expressly negated and waived by the other parties.

12.29 Evidence of claims

The Trustee is entitled and is authorised by the Issuer to call for (and will be entitled to accept as conclusive evidence) a certificate from any Controller or similar officer of the Issuer as to:

- (a) the amounts of the claims of the creditors which have been admitted in any Liquidation and which will not have been satisfied in full out of the other resources of the Issuer; and
- (b) the persons entitled thereto and their respective entitlements.

Any such certificate given by any such Controller or officer of the Issuer will be conclusive and binding on the Trustee and all Holders.

12.30 Subordination Deed obligations

Despite any other provision of this Trust Deed, the Trustee is not obligated to do or refrain from doing anything under this Trust Deed, including upon any direction or instruction by any Holder(s), which would be contrary to the Trustee's obligations under the Subordination Deed.

13. Change of Trustee

13.1 Resignation of Trustee

Subject to this clause 13 and any applicable law, the Trustee may resign as trustee by giving at least 90 days' notice (or such other period as the Trustee and the Issuer may agree in writing) in writing to the Issuer.

13.2 Removal of Trustee

If:

- (a) **(Trustee in default)** the Trustee has:
 - (i) not paid any moneys required to be paid by the Trustee in relation to this Trust Deed within 10 Business Days of receipt of all relevant information (including bank account details, if applicable) necessary for the Trustee to effect payments; or
 - (ii) not observed or performed any of its material obligations under this Trust Deed or has otherwise acted fraudulently or with negligence or is in wilful default (and, if such is capable of rectification, it is not rectified within 10 Business Days of notice to the Trustee of its occurrence);
- (b) **(Insolvency Event)** an Insolvency Event occurs in relation to the Trustee;
- (c) **(ceases to be eligible to be Trustee)** the Trustee ceases to be a person that can continue to act as Trustee due to section 283AC(1) or section 283AC(2) of the Corporations Act;
- (d) **(ceases to hold authorisation)** any licence, consent, authorisation or similar thing the Trustee is required to hold to carry out its obligations under this Trust Deed is revoked or is not renewed;
- (e) **(Special Resolution to remove passed)** a Special Resolution of Holders is passed that the Trustee is to be removed from office; or
- (f) **(section 283BD of the Corporations Act)** the Issuer reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred,

the Issuer may, subject to the provisions of this clause 13 and the Corporations Act, and by at least 15 Business Days' written notice to the Trustee, remove the Trustee from office.

13.3 Appointment of new Trustee

- (a) **(power to appoint vested in Issuer)** Subject to clause 13.3(b), the power to appoint a new Trustee is vested in the Issuer.
- (b) **(in default, Trustee may appoint replacement)** Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree in writing) after the Trustee has given notice under clause 13.1 a new Trustee has not been appointed by the Issuer pursuant to clause 13.3(a), the Trustee may appoint (or, in its discretion, apply to the court for the appointment of) a new Trustee.

- (c) **(new Trustee must be Trustee company)** A new Trustee appointed under this clause 13 must be a Trustee Company or otherwise authorised under the Corporations Act to act as a trustee.
- (d) **(approval of Holders not required)** Any appointment of a new Trustee under this clause is effective without the approval of the Holders being necessary.
- (e) **(retirement not effective until new Trustee appointed)** The retirement of the Trustee pursuant to this clause 13 will not take effect unless and until a new Trustee has been appointed and has taken office as trustee of the Trust.

13.4 Issuer must assist in replacing the Trustee

The Issuer must take all reasonable steps to replace the Trustee under section 283AE of the Corporations Act as soon as practicable after the Issuer becomes aware that the Trustee:

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) is no longer a Trustee Company or otherwise authorised under the Corporations Act to act as a trustee;
- (d) has failed or refused to act as Trustee; or
- (e) has resigned as Trustee.

13.5 Outgoing Trustee discharged

On the retirement or removal of the Trustee taking effect:

- (a) the successor Trustee succeeds to the position of the retiring or removed Trustee;
- (b) the retiring or removed Trustee is discharged from any further obligations under this Trust Deed, but without affecting any accrued rights or obligations;
- (c) the indemnities under this Trust Deed in favour of the retiring or removed Trustee survive concerning matters occurring before the appointment of the successor Trustee, and the retiring or removed Trustee continues to have the benefit of this clause 13; and
- (d) the successor Trustee, the Issuer and the Holders have the same rights and obligations as if the successor Trustee had been a party to this Trust Deed.

13.6 ASIC to be advised of new Trustee

The Issuer must advise ASIC of the name of the new Trustee within 14 days after the appointment of the new Trustee.

14. Trustee's fees and expenses

14.1 Fees

- (a) Subject to clause 14.3, the Issuer must pay to the Trustee by way of remuneration for its services a fee (exclusive of GST) as may be agreed

between the Issuer and the Trustee in writing from time to time. The payment of such fee must be made by the Issuer by transfer to such account nominated from time to time by the Trustee to the Issuer in writing or by such other means notified by the Trustee to the Issuer in writing from time to time.

- (b) If the Trustee is required at any time to:
 - (i) take any enforcement action in relation to this Trust Deed or the Notes, upon a default by the Issuer or the occurrence of an Event of Default; or
 - (ii) undertake duties which are agreed by the Issuer to be of exceptional nature or otherwise agreed by the Issuer to be outside the scope of the normal duties of the Trustee,

the Issuer agrees to pay to the Trustee, on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action, as shall from time to time be agreed between the Issuer and the Trustee.

- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 14.1(b) above, the Trustee shall be entitled to charge the Issuer reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:
 - (i) reflect the level of expertise required to perform the work; and
 - (ii) be commensurate with and referable to the hourly rates charged at a reasonable rate determined by the Trustee from time to time.

14.2 Expenses

- (a) Subject to clause 14.3, the Issuer must indemnify the Trustee against, and must pay the Trustee on demand the amount of all costs, charges and expenses (including legal expenses on a full indemnity basis) reasonably and properly incurred in connection with each of the following:
 - (i) the preparation, negotiation, execution, stamping and registration of this Trust Deed and each other document relating to the Notes (including, but not limited to, the Prospectus and the Terms);
 - (ii) the transactions that this Trust Deed and each other document relating to the Notes (including, but not limited to, the Prospectus and the Terms);
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Trust Deed;
 - (iv) the carrying out by the Trustee of any right, power, privilege, authority or discretion conferred expressly or impliedly on the Trustee or on any Holder by this Trust Deed or any other document relating to the Notes (including, but not limited to, the Prospectus and the Terms);
 - (v) any breach or default in the observance or performance by the Issuer of any of its obligations under this Trust Deed or any other document relating to the Notes (including, but not limited to, the Prospectus and the Terms);

- (vi) the convening and holding of any meeting of Holders or the carrying out of any directions or resolutions of any such meeting; and
 - (vii) all actions taken under this Trust Deed by the Trustee in order to comply with any notice, request or requirement of any Government Agency and any investigation by a Government Agency into the affairs of the Issuer.
- (b) If the Issuer or any of its assets are placed in Liquidation or a Controller is appointed to the Issuer or any of its assets, the Trustee is entitled to claim and receive from any Controller amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as Trustee.

14.3 Indemnity by Holders

The Trustee is not entitled to any additional remuneration (to the extent that this may be referred to in any agreement pursuant to clause 14.1) or to the payment of any additional costs and expenses pursuant to clause 14.2 where the Trustee is separately actually indemnified in relation thereto by the Holders or individual Holders pursuant to this Trust Deed or otherwise. If, following payment by the Issuer to the Trustee of any additional remuneration pursuant to clause 14.1 or any additional costs and expenses pursuant to clause 14.2, the Trustee is indemnified by the Holders or individual Holders in relation to such remuneration, costs or expenses (as the case may be) the Trustee shall promptly repay any amounts received under clause 14.1 or clause 14.2 in respect of such remuneration, costs or expenses (as the case may be) to the Issuer.

14.4 Priority of entitlement

All amounts payable to the Trustee under this clause 14 will be paid in priority to any claim by any Holder and will continue to be payable until paid notwithstanding that this Trust Deed or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court. This priority of the Trustee will subsist whether or not an external administrator is appointed to the Issuer or any of its assets or the Trust is in the course of administration by or under the order of any court.

15. Trustee's indemnity

15.1 Corporations Act

The Trustee's right of indemnity and any limitation on the Trustee's liability under this Trust Deed is subject to the Corporations Act.

15.2 Indemnity for Trustee

- (a) Subject to clause 15.2(b), and without affecting any right of indemnity given to it by law or equity (and in addition to, and without affecting, another indemnity in this Trust Deed), each Protected Person is, and is entitled to be, indemnified by the Issuer, in respect of all claims, demands, actions, damages, losses, liabilities, costs, charges, expenses and Taxes (other than Excluded Taxes):
- (i) incurred by it in the exercise of any Power or the undertaking by it of any obligations, duties or responsibilities, including:

- (A) moneys paid or to be paid for, or incurred as a result of, the employment or appointment of an agent or Controller; and
 - (B) from acting in good faith or relying in good faith on any notice, request or instruction given by fax or telephone or given in accordance with clause 21, which purports to originate from, or which the Trustee reasonably believes to have originated from, the offices or an Authorised Representative of the Issuer or a Holder or the Majority Holder (as applicable); and
- (ii) arising in relation to this Trust Deed.
- (b) The indemnity in clause 15.2(a) does not apply:
 - (i) where the relevant Protected Person (except for an agent which has been appointed by the Trustee at the request of the Holders) has been guilty of fraud, default or negligence; or
 - (ii) if the Protected Person is the Trustee, to the extent that the Trustee is actually indemnified by a person other than the Issuer for the matters referred to in clause 15.2(a). If, following payment by the Issuer to the Trustee of any indemnified amount pursuant to this clause 15.2, the Trustee is indemnified by any other person for the matters referred to in clause 15.2(a), the Trustee shall promptly repay any such indemnified amounts received under this clause 15.2 to the Issuer.
- (c) The Trustee may from time to time retain and pay out of any moneys forming part of the Trust Fund an amount to satisfy the indemnity given by the Issuer under clause 15.2(a) or any other right of indemnity given to a Protected Person under this Trust Deed or by law or equity. The Trustee must provide details to the Holders of amounts so retained or paid out.
- (d) The indemnity contained in clause 15.2 is a continuing additional, separate and independent obligation of the Issuer and survives:
 - (i) the winding up or termination of the trusts under this Trust Deed; and
 - (ii) the retirement or removal of the Trustee as trustee.

16. Substitution of Issuer

16.1 Trustee may agree to substitution of Issuer

The Trustee may, without the approval of the Holders, agree to the substitution of any Related Body Corporate (as defined in the Corporations Act) of the Issuer (the "**Substituted Issuer**") in place of the Issuer (or of any previous substitute under this clause 16) as the principal debtor under this Trust Deed provided that:

- (a) **(not materially prejudiced)** the Trustee is satisfied that the interests of the Holders will not be materially prejudiced by the substitution;
- (b) **(document or undertaking given)** a document is executed or an undertaking given by the Substituted Issuer to the Trustee, in form and manner satisfactory to the Trustee, agreeing to be bound by this Trust Deed (with consequential amendments as the Trustee may deem appropriate) as if the Substituted

Issuer had been named in this Trust Deed as the principal debtor in place of the Issuer;

- (c) **(taxing jurisdiction)** if the Substituted Issuer is subject generally to the taxing jurisdiction of a territory or any authority of or in that territory with power to tax (the "**Substituted Territory**") other than the territory of the taxing jurisdiction to which (or to any such authority of or in which) the Issuer is subject generally (the "**Issuer's Territory**"), the Substituted Issuer will (unless the Trustee otherwise agrees) give to the Trustee an undertaking satisfactory to the Trustee in terms corresponding to the Terms with the substitution for the references in the Terms to the Issuer's Territory of references to the Substituted Territory whereupon the Trust Deed and the Terms will be read accordingly;
- (d) **(certification by directors)** if any two directors of the Substituted Issuer certify that it will be solvent immediately after such substitution, the Trustee need not have regard to the Substituted Issuer's financial condition, profits or prospects or compare them with those of the Issuer; and
- (e) **(other compliance)** the Issuer and the Substituted Issuer comply with such other requirements as the Trustee may reasonably direct in the interests of the Holders which may include without limitation, procuring that a third party approved by the Trustee in writing provide an opinion on the solvency and creditworthiness of the Substituted Issuer.

16.2 Release of substituted Issuer

An agreement by the Trustee pursuant to this clause 16 will, if so expressed, release the Issuer (or a previous substitute) from any or all of the obligations it has incurred in its capacity as issuer under this Trust Deed. Notice of the substitution will be given to the Holders within 14 days of the execution of such documents and compliance with such requirements.

16.3 Completion of substitution

On completion of the formalities set out in this clause 16, the Substituted Issuer will be deemed to be named in this Trust Deed as the principal debtor in place of the Issuer (or of any previous substitute) and this Trust Deed will be deemed to be amended as necessary to give effect to the substitution.

17. Application of moneys

17.1 Order of priority

Subject to the terms of the Subordination Deed, the Trustee must promptly pay all moneys received by it in respect of this Trust Deed or the Notes for the following purposes and in the following order of priority:

- (a) **(Trustee's costs and expenses)** first, to meet all costs, charges, fees, expenses (including legal fees) and liabilities incurred or paid by the Trustee under or in connection with this Trust Deed or the Notes, including all remuneration payable to the Trustee for which the Issuer is liable under this Trust Deed;
- (b) **(Controller's costs and expenses)** second, in payment of all costs, charges, fees, expenses and liabilities incurred by or other amounts owing to a

Controller under or in connection with this Trust Deed or the Notes (including all remuneration payable to that Controller);

- (c) **(Amounts due on the Notes)** third, to pay any amounts due and payable on each Note by the Issuer under this Trust Deed (including pursuant to the Terms) pari passu and without preference or priority amongst Holders, subject to any necessary rounding; and
- (d) **(the Issuer)** fourth, to pay the balance (if any) to the Issuer.

17.2 Moneys received

In applying any moneys towards satisfaction of the Moneys Owing, the Issuer will be credited only with so much of the moneys available for that purpose as the Trustee has actually received and is not required for whatever reason to be disgorged, such credit to date from the time of such receipt.

17.3 Application of moneys

Notwithstanding any principle or presumption of law to the contrary or any direction given at the time of it being received by the Trustee or, the Trustee has, subject to this Trust Deed and the Subordination Deed, an absolute discretion without the need to communicate its election to any person to apply any payment or credit received by it under this Trust Deed in reduction of any part of the Moneys Owing.

17.4 Investment of Funds

Unless expressly provided in this Trust Deed or the Subordination Deed, all moneys received by the Trustee and not required to be immediately applied under this Trust Deed may be invested by the Trustee in such investments as it thinks appropriate.

18. Meetings of Holders

18.1 Meeting procedures

- (a) The Trustee or the Issuer may call a meeting of Holders in the manner provided in the Meeting Provisions.
- (b) All meetings of Holders are to be conducted in accordance with the Meeting Provisions.
- (c) Subject to this Trust Deed, the Holders may by Ordinary Resolution:
 - (i) give a direction to the Trustee as to; or
 - (ii) authorise, ratify or confirm anything done or not done by the Trustee in respect of,

the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this Trust Deed or the Notes.

18.2 Approval

Notwithstanding any other term of this Trust Deed, the Holders may, by Special Resolution, approve the release of the Trustee from liability for anything done or omitted to be done by the Trustee or any other person.

19. Amendments to this Trust Deed

19.1 Amendments

Subject to clause 19.2 and the terms of the Subordination Deed, the Issuer and the Trustee may jointly amend, add to or revoke in writing any provision of this Trust Deed, including this clause (an "**Amendment**") if:

- (a) **(without consent of Holders)** the Issuer and the Trustee are of the opinion that the Amendment is:
 - (i) made to cure any ambiguity or correct a manifest error;
 - (ii) of a formal, minor or technical nature;
 - (iii) necessary or expedient for the purposes of enabling the Notes to be:
 - (A) listed for quotation, or to retain quotation, on any stock exchange; or
 - (B) offered for subscription or for sale under the laws from the time being in force in any place,and, otherwise not materially prejudicial to the interests of Holders generally;
 - (iv) necessary to comply with:
 - (A) the provisions of any statute or the requirements of any statutory authority; or
 - (B) the Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of Notes,and, otherwise not materially prejudicial to the interests of Holders generally; or
 - (v) not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to Holders generally;
- (b) **(consent of Holders)** except as otherwise provided in paragraph (a) above or (c) below, where the Amendment is to a provision of this Trust Deed (other than the Terms) the Amendment is authorised by an Ordinary Resolution of Holders;
- (c) **(Special Resolution)** in the case the Meeting Provisions require the Amendment to be approved by a Special Resolution of Holders, the Amendment is approved by a Special Resolution of Holders; and
- (d) **(Terms)** where the Amendment is to a provision of the Terms, the Amendment is authorised by a Special Resolution of Holders.

19.2 Terms

The Issuer must provide the Trustee with a copy of any proposed and any final amendment to the Terms.

20. Discharge and Release

20.1 Termination

- (a) The Trust will terminate, and the Issuer will be discharged and released from its liabilities, obligations and covenants under this Trust Deed (subject to this clause 20.1), on the earlier of the following:
 - (i) on the first date after the date of this Trust Deed that both of the following have occurred:
 - (A) the redemption or conversion of all Notes and all Moneys Owing having been paid in full (as to which the Trustee may accept as conclusive an Authorised Representative's Certificate of the Issuer); and
 - (B) the payment of all fees, costs, charges and expenses properly incurred by the Trustee and reimbursable by the Issuer; and
 - (ii) the date which is 80 years after the date of this Trust Deed.
- (b) On the occurrence of all the matters referred to in clause 20.1(a)(i), the Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer.
- (c) On the Trust being terminated, the Issuer must keep the Trustee indemnified in respect of all unpaid fees due to it and all costs, losses, liabilities and expenses reasonably and properly incurred by it in respect of an event which occurred prior to the date of termination (other than such cost, loss, liability or expense to the extent that it arises out of the Trustee's fraud, negligence or wilful default).

20.2 Disposal and distribution of trust assets on termination

Subject to clause 20.3, if the Trust is terminated in accordance with clause 20.1, the Trustee will distribute the balance of the capital and income of the Trust at the direction of the Issuer.

20.3 Further declaration of Trust

If the Notes are outstanding on the date which is 79 years after the date of this Trust Deed, the Trustee and the Issuer will execute a further document as soon as practicable thereafter (and in any event prior to the date which is 80 years after the date of this Trust Deed) on substantially the same terms as this Trust Deed (including this clause 20.3) and all of the property, rights and powers under the Trust will from the date of execution of the further document be held on and subject to the trust constituted thereunder and the terms thereof.

21. Notices

21.1 How to give a notice

Subject to clauses 21.3 and 21.5, a notice, consent or other communication under this Trust Deed is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given in one of the following ways:
 - (i) sent by prepaid mail (by airmail, if the addressee is overseas) or delivered to that person's address;
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error;
 - (iii) given personally; or
 - (iv) by electronic form (such as email).

21.2 When a notice is given

Subject to clause 21.3, a notice, consent or other communication that complies with this clause is conclusively regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail, when it would be delivered in the ordinary course of post, but in any event:
 - (i) not later than three Business Days after posting within Australia; or
 - (ii) not later than seven Business Days after posting to or from a place outside Australia;
- (c) if given personally, when actually received by that person;
- (d) if it is sent in electronic form, when the addressee's email system logs the email message as having been received;
- (e) if published on a website, on the day following the date on which such notice is published by the Issuer or the Trustee (as applicable) on the website; and
- (f) if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

21.3 Notices to or from the Holders

- (a) Any notice, consent or other communication to be made or delivered to the Holders, or by a Holder to the Issuer, must be given in accordance with the Terms.
- (b) A notice may be given by the Trustee to any Holder, or in the case of joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission to the Holder's address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia or by publishing the notice on the Issuer's or the Trustee's website or in any case, by email to an electronic address nominated by the Holder for such communication. If the notice is signed, the signature may be original or printed.
- (c) Where a notice is given by the Issuer to Holders generally, a copy of the notice must also be given to the Trustee.

21.4 Address for notices

Subject to clause 20.3, a person's address and fax number are those set out below, or as the person notifies the sender:

Resolute Mining Limited

Address: 4th Floor, BGC Centre, 28 The Esplanade, Perth, WA 6000
Fax number: +61 8 9322 7541
Email: contact@rml.com.au
Attention: Company Secretary

Australian Executor Trustees Limited

Address: Level 22, 207 Kent Street, Sydney, NSW 2000
Fax number: +61 2 9028 5942
Email: corptrustnotes@aetlimited.com.au
Attention: Corporate Trust

21.5 Notices subject to Meeting Provisions requirements

These provisions in this clause 21 are subject to the notice requirements set out in the Meeting Provisions.

22. Recovery of GST

- (a) Unless otherwise indicated all amounts referred to in this Trust Deed are exclusive of GST.

- (b) If the Trustee makes a taxable supply under or in connection with this Trust Deed for consideration that is exclusive of GST, the Issuer must:
 - (i) pay to the Trustee an amount equal to any GST for which the Trustee is liable in relation to that supply; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided.
 - (c) If requested by the Issuer, the Trustee must issue a tax invoice for a taxable supply to the person to whom it made the supply.
 - (d) The Issuer's obligation to reimburse the Trustee for an amount paid or payable to a third party (including an obligation to pay the Trustee's or another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the Trustee is entitled to an input tax credit for that GST. Unless notified otherwise by the Trustee, the Issuer must assume that the Trustee is not entitled to any input tax credit for that GST.
-

23. Confidentiality and Privacy

23.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 23.2.

23.2 Permitted disclosure

The Trustee may disclose Confidential Information:

- (a) to the extent required by this Trust Deed or by law, but only to the extent so required;
- (b) to the extent requested by a Governmental Agency but only to the extent so requested;
- (c) to its officers, employees and professional advisers, but only to the extent that such disclosure is necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this Trust Deed;
- (d) to the Holders if the Trustee reasonably considers that disclosure is necessary for it to fulfil any obligation that it has at law or under this Trust Deed; and
- (e) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

23.3 Privacy

- (a) The Issuer must take all action necessary to comply with the *Privacy Act 1988* (Cth) and all regulations passed pursuant to that Act (together **Privacy Requirements**).
- (b) Without limiting clause 23.3(a), the Issuer agrees to obtain sufficient authorisations from persons providing personal information to the Issuer to enable the Issuer to:
 - (i) transfer that personal information to the Trustee; and

- (ii) permit the Trustee and its agents to collect, use, handle and disclose that personal information for the purposes of carrying out the Trustee's obligations under this Trust Deed.
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24. General

24.1 Governing law

- (a) This Trust Deed is governed by the laws of the State of Western Australia.
- (b) Each person taking the benefit of or bound by this Trust Deed submits to the non-exclusive jurisdiction of the courts of the State of Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Trust Deed.
- (c) Each person taking the benefit of or bound by this Trust Deed irrevocably waives:
 - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
 - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

24.2 Liability for own expenses

The Issuer is liable for its own costs and expenses in complying with this Trust Deed, including where it does so at the Trustee's request or for the Trustee's benefit.

24.3 Statutory powers

The powers of the Trustee under this Trust Deed are in addition to any powers the Trustee has under applicable law.

24.4 Giving effect to this Trust Deed

Each party must do anything, and must ensure that its employees and agents do anything, that the other party may reasonably require to give full effect to this Trust Deed.

24.5 Variation of rights

The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a failure to exercise, or a delay in the exercise of, a right operates as an election or variation of the terms of this Trust Deed.

24.6 Operation of this Trust Deed

- (a) Subject to clause 24.6(b), this Trust Deed contains the entire agreement between the parties about their subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Trust Deed and has no further effect.
- (b) Any right that the Trustee may have under this Trust Deed is in addition to, and does not replace or limit, any other right that the Trustee may have.

- (c) Any provision of this Trust Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Trust Deed enforceable, unless this would materially change the intended effect of this Trust Deed.

24.7 Operation of indemnities

- (a) Each indemnity in this Trust Deed survives the expiry or termination of this Trust Deed.
- (b) The Trustee may recover a payment under an indemnity in this Trust Deed before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this Trust Deed is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,a person who is not a party to this Trust Deed, the Issuer agrees that the Trustee holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this Trust Deed on their behalf and for their benefit.

24.8 Consents

Where this Trust Deed contemplates that the Trustee may agree or consent to something (however it is described), the Trustee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Trust Deed expressly contemplates otherwise.

24.9 No merger

Nothing in this Trust Deed merges with any other Security Interest, or any judgment or other right or remedy, that the Trustee may hold at any time.

24.10 Exclusion of contrary legislation

Any legislation that affects an obligation of the Issuer in a manner that is adverse to the interests of the Trustee or the Holders, or adversely affects the exercise by the Trustee or the Holders of a right or remedy, under or relating to this Trust Deed is excluded to the full extent permitted by law.

24.11 Inconsistency with other documents

If this Trust Deed is inconsistent with any other document or agreement between the parties, this Trust Deed prevails to the extent of the inconsistency.

24.12 Counterparts

This Trust Deed may be executed in counterparts. Delivery of a counterpart of this Trust Deed by email attachment or fax constitutes an effective mode of delivery.

24.13 No representation or reliance

Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Trust Deed, except for representations or inducements expressly set out in this Trust Deed.

24.14 Stamp duties

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Trust Deed, the performance of this Trust Deed and each transaction effected by or made under this Trust Deed; and
- (b) must indemnify the Trustee against any liability arising from failure to comply with clause 24.14(a).

24.15 Void or voidable transactions

If:

- (a) **(release of Issuer)** the Trustee has at any time released or discharged the Issuer from its obligations under this Trust Deed in reliance on a payment, receipt or other transaction to or in favour of the Trustee or Holders or any payment or other transaction to or in favour of the Trustee or Holders has the effect of releasing or discharging the Issuer from its obligations under this Trust Deed;
- (b) **(payment void)** that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under any law relating to insolvency or the winding up of companies or under the general law; and
- (c) **(claim upheld)** that claim is upheld or the claim is conceded or compromised by the Trustee or a Holder,

then:

- (d) **(restitution of rights)** the Trustee and each Holder will immediately become entitled against the Issuer to all rights as it had immediately before that release or discharge;
- (e) **(restore position)** the Issuer must immediately do all things and execute all documents as the Trustee may reasonably require to restore to the Trustee and the Holders all those rights; and
- (f) **(indemnity)** the Issuer must indemnify the Trustee and each Holder against costs, losses and expenses suffered or incurred by the Trustee or Holder in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

24.16 Untraceable Holders

Subject to applicable law and the Listing Rules, where the Issuer:

- (a) is, in respect of a Note, required to pay any amount to a Holder; and

- (b) has made reasonable efforts to locate a Holder but is unable to do so, then that amount:
 - (i) if the amount has been paid to the Trustee and the Trustee has actual possession and control of such amount, must be repaid by the Trustee to the Issuer; and
 - (ii) is to be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the Holder, or any legal personal representative of the Holder, claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed amounts.

The Trustee is not liable to any Holder for any amounts paid to the Issuer under this clause 24.16. The Issuer indemnifies the Trustee for any and all costs, losses, liabilities, expenses demands or claims suffered or incurred by the Trustee in respect of any moneys paid to the Issuer under this clause 24.16.

Schedule 1 – Terms and conditions of Notes

1. The Note Issue

1.1 Terms

Each Note will:

- (a) have a Face Value of A\$1.00 on the Issue Date, subject to adjustment in accordance with these Terms;
- (b) bear interest at a rate of 10.00% per annum ("**Interest Rate**");
- (c) be convertible into Shares at the Conversion Rate, such that the number of Shares that a Holder receives on conversion is equal to the Conversion Rate multiplied by the number of Notes being converted (unless adjusted in accordance with clauses 4.6, 4.7 or 4.8 of these Terms); and
- (d) where the Notes have not been converted in accordance with clause 4 of these Terms, be redeemed in accordance with clause 3 of these Terms; and
- (e) be an unsecured liability of the Issuer in accordance with the terms of the Trust Deed, will be subject to the terms of the Subordination Deed and will rank at least pari passu with other unsecured liabilities of the Issuer.

1.2 Quotation

The Issuer will apply for official quotation by the ASX of all Notes. Such application will be made on the date the Prospectus is issued.

1.3 Withholding Tax

- (a) All payments or credits to, or to the account of Holders (including payment of, and credits in respect of interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by the Issuer except to the extent that the Issuer is satisfied that the Holder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made. Any Holder claiming any such exemption or to be such a person will provide the Issuer with such evidence as the Issuer may from time to time require to satisfy itself as to the validity of such claim.
- (b) The Issuer may make any deduction or withholding from any amount payable to a Holder in respect of Notes for or on account of withholding or other tax required by law to be deducted or withheld, and, where any such deduction or withholding has been made and the amount thereof accounted for by the Issuer to the Commissioner of Taxation or other appropriate taxing authority and the balance of the amount payable has been paid to the Holder concerned, the full amount payable to such Holder will be deemed to have been duly paid and satisfied by the Issuer.

1.4 Entry in Register

The Issuer must ensure that each Holder's details are entered in a register of Holders as required pursuant to the Corporations Act.

1.5 Trust Deed and Trustee

The Holder acknowledges and agrees that:

- (a) the terms and conditions in these Terms are subject to the terms of the Trust Deed and Subordination Deed;
- (b) in the event of any inconsistency between these terms and conditions and the Trust Deed, the Trust Deed prevails;
- (c) in the event of any inconsistency between the Trust Deed and Subordination Deed, the Subordination Deed prevails;
- (d) Holders are not entitled to instruct the Trustee to do or refrain from doing any act which would be contrary to the terms of the Subordination Deed;
- (e) Holders are entitled to the benefit of, are bound by and are deemed to have notice of the Trust Deed and any document to which the Trustee becomes a party as the trustee of the Holders; and
- (f) Holders are bound by and are deemed to have notice of the Subordination Deed as “Junior Creditors” (as defined in the Subordination Deed), and give each of the undertakings, and make each of the representations and warranties, given or made under the Subordination Deed by “Junior Creditors” (as defined in the Subordination Deed).

1.6 Holders to provide certain information

If requested by the Issuer, each Holder agrees, and it is a condition of the issue of the Notes, to provide certain information required by it or the Trustee in order to comply with any applicable law, including the United States Foreign Account Tax Compliance Act (FATCA).

2. Interest

2.1 Interest Rate and Interest Periods

- (a) Interest will be payable on the Face Value of each Note at the Interest Rate.
- (b) Interest will accrue daily on the Face Value of each Note over each Interest Period from (and including) the first day of the Interest Period to (and including) the Interest Record Date for that Interest Period. Subject to clause 2.2 and clause 3.2 of these Terms, the Issuer must pay the interest that accrues on a Note over an Interest Period on the Interest Payment Date at the end of that Interest Period.
- (c) Subject to the terms of the Subordination Deed, interest payable will be paid on the relevant Interest Payment Date.
- (d) Each Interest Period for a Note:
 - (i) is a three month period (as adjusted in accordance with clause 2.1(e)); and
 - (ii) commences on the Issue Date and thereafter on the day after the previous Interest Record Date for that Note.

- (e) If an Interest Period would otherwise end after the Maturity Date, it ends:
 - (i) if the Maturity Date is a Business Day, on the Maturity Date; or
 - (ii) if the Maturity Date is not a Business Day, on the Business Day before the Maturity Date.

2.2 Interest in the event of conversion

If a Holder elects to convert any Note in accordance with clause 4 of these Terms at any time after the Issue Date (other than on an Interest Payment Date) then, because interest is payable in arrears, on the next Interest Payment Date being a date following the date of conversion of the Notes the Issuer will pay to the Holder on the next Interest Payment Date an amount of interest calculated in accordance with the following formula:

$$\text{Where: } R = \left(\frac{MP}{91} \times I \right)$$

R = the amount of interest to be paid by the Issuer;

I = the total amount of interest that would have been payable to that Holder in respect of the Notes held by that Holder in arrears on the next Interest Payment Date following the date of conversion, had the Notes not been converted; and

MP = the number of days commencing on the day after the Interest Record Date which immediately preceded the date of conversion and ending on the date of conversion.

2.3 Interest and transfers of Notes

Transfers of Notes do not affect when interest is paid. On each Interest Payment Date the full amount of accrued interest will be paid in cash to the person who is the Holder on the applicable Interest Record Date.

2.4 Day count convention

Any interest accruing on the Notes will accrue from day to day and is calculated on the actual number of days elapsed and a year of 364 days.

3. Redemption

3.1 Redemption

Subject to clause 4 of these Terms and the Subordination Deed, a Note is required to be redeemed on the first to occur of the following:

- (a) if an Event of Default has occurred and continues and a Redemption Notice is given to the Issuer pursuant to clause 8.3 of these Terms; or
 - (b) on the Maturity Date,
- (the "**Redemption Date**").

3.2 Redemption Amount

On the Redemption Date, the Issuer will deliver to the Holder a cheque, draft or electronic transfer in favour of the Holder, for the applicable Face Value of the Note

plus the amount of any accrued but unpaid interest calculated in accordance with the following formula:

Where: $R = \left(\frac{MP}{91} \times I \right)$

R = the amount of interest to be added to the Face Value of the Note.

I = the total amount of interest that would have been payable to that Holder in respect of the Notes held by that Holder in arrears on the next Interest Payment Date immediately following the date of the Redemption Notice (had the Redemption Notice not been given); and

MP = the number of days commencing on the day after the Interest Record Date which immediately preceded the Redemption Date and ending on the Redemption Date.

3.3 Exclusion

The Holder will not be entitled to require redemption of any Notes held by it otherwise than pursuant to this clause 3 of these Terms.

3.4 Holders' right to enforce

No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Note unless the Trustee, having become bound to so proceed, fails to do so within a reasonable period and the failure is continuing, in which case any such Holder may itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceeding must be brought in the name of the Holder and not the Trustee.

3.5 Early redemption by Issuer

- (a) Subject to the Subordination Deed, the Issuer is entitled to redeem some or all of the Notes at any time during the period commencing on the date which is two years after the Issue Date and ending on the Maturity Date ("**Early Redemption Date**").
- (b) The Issuer may only redeem a Note under clause 3.5(a) if the Issuer has given at least 20 Business Days written notice to the Trustee and Holder of the redemption and the proposed Early Redemption Date.
- (c) During the period commencing on the day of receipt of the Early Redemption Notice by a Holder until the Early Redemption Date, a Holder can elect to convert their Notes in accordance with clause 4.

3.6 Early Redemption Amount

On the Early Redemption Date, the Issuer will deliver to the Holder a cheque, draft or electronic transfer in favour of the Holder, for:

- (a) the applicable Face Value of the Note;
- (b) the amount of any accrued but unpaid interest calculated in accordance with the following formula:

Where: $R = \left(\frac{MP}{91} \times I \right)$

R = the amount of interest to be added to the Face Value of the Note.

I = the total amount of interest that would have been payable to that Holder in respect of the Notes held by that Holder in arrears on the next Interest Payment Date immediately following the date of the Early Redemption Notice (had the Early Redemption Notice not been given); and

MP = the number of days commencing on the day after the Interest Record Date which immediately preceded the Early Redemption Date and ending on the Early Redemption Date; and

- (c) the early redemption fee, being an amount calculated based on the Face Value of the Note multiplied by the Early Redemption Interest Rate.

4. Conversion

4.1 Conversion

- (a) A Holder will be entitled to convert all or part of the Notes held by that Holder in accordance with this clause 4 of these Terms, by delivering a Conversion Notice to the Issuer ("**Conversion Option**").
- (b) A Holder may only exercise the Conversion Option:
 - (i) in respect of the whole or part (but if in part, in a minimum amount of 500 Notes) of the total number of Notes held by that Holder; and
 - (ii) in respect of the whole of the Face Value of a Note held by that Holder and not in respect of a portion only of the Face Value of the Note.
- (c) Subject to clause 4.1(f), a Holder will be entitled to exercise the Conversion Option on at any time during the period between the Issue Date and the Maturity Date.
- (d) Subject to clause 4.1(f), a Holder must deliver a Conversion Notice to the Issuer at least 5 Business Days prior to the relevant nominated Conversion Date.
- (e) Subject to clause 4.1(f), on the Conversion Date the Issuer will proceed to issue and allot to the Holder that number of Shares as calculated in accordance with clause 4.2 of these Terms, and will notify the Trustee accordingly.
- (f) If a Holder has received an Early Redemption Notice:
 - (i) the Holder can deliver a Conversion Notice to the Issuer and exercise their Conversion Option at any time during the period commencing on the day of receipt of the Early Redemption Notice by the Holder until the Early Redemption Date; and
 - (ii) within 3 Business Days of receipt of the Conversion Notice referred to in clause 4.1(f)(i), the Issuer will proceed to issue and allot to the Holder that number of Shares as calculated in accordance with clause 4.2 of these Terms, and will notify the Trustee accordingly.

- (g) The issue and allotment of Shares on conversion pursuant to this clause will be and be deemed for all purposes to be in full satisfaction and discharge of the principal amount owing to the Holder pursuant to the Notes the subject of the Conversion Notice but the conversion pursuant to this clause will in no way affect any liability of the Issuer for unpaid interest accrued up to the date of conversion which the Issuer will pay to the Holder in accordance with clause 2.2 of these Terms.
- (h) The Shares issued and allotted upon the conversion pursuant to this clause will rank equally in all respects with all issued ordinary shares in the capital of the Issuer at the date of conversion.
- (i) The Issuer will make application for official quotation by the ASX of all Shares issued and allotted upon the conversion pursuant to this clause. Such application will be made as soon as reasonably practicable after Shares are so issued and allotted.
- (j) Within 10 Business Days of the issue and allotment of Shares to a Holder upon the conversion pursuant to this clause, the Holder will be issued with a holding statement from the Registry detailing the number of Shares issued.

4.2 Conversion Rate

- (a) Subject to this clause 4 of these Terms, the number of Shares to which a Holder will be entitled on conversion will be equal to the Conversion Rate multiplied by the number of Notes being converted by that Holder.
- (b) Where the number of Shares to which a Holder will be entitled, when calculated in accordance with clause 4.2(a), is not a whole number, the number of Shares to which a Holder will be entitled on conversion will be rounded down to the nearest whole number.

4.3 No other rights of conversion

A Note will only be converted to Shares as set out in this clause 4 of these Terms.

4.4 Shares allotted on conversion

The Shares to be allotted on conversion will be shares with respect to which no provision is made (whether by the Constitution of the Issuer or other instrument constituting or defining the constitution of the Issuer or otherwise) for changing or converting them into shares of another class, except for the purpose of enabling, in accordance with any law relating to companies, the consolidation and division of all or any of the share capital of the Issuer or of another company or the subdivision of all or any of the shares in the capital of the Issuer or of another company.

4.5 Participation in new issues

There are no participation rights or entitlements inherent in the Notes and the Holder will not be entitled to participate in new issues of capital offered to Shareholders during the currency of the Notes.

4.6 Pro rata issue

If at any time after the issue of a Note and prior to the issue of a Conversion Notice, Redemption Notice or Early Redemption Notice, the Issuer makes a pro rata offer (excluding a bonus issue) to shareholders, the Conversion Rate will be adjusted using the formula as follows:

$$NR = OR + \frac{E[P - (S+D)]}{N+1}$$

NR = the new Conversion Rate of the Notes under clause 4.2 of these Terms.

OR = the old Conversion Rate of the Note under clause 4.2 of these Terms.

E = the number of Shares into which one Note is convertible.

P = average market price per Share weighted by reference to volume of the underlying Shares during the 5 trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price of a Share under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying Shares (except those to be issued under the pro rata issue).

N = the number of Shares with rights or entitlements that must be held to receive a right to one (1) new share.

4.7 Reconstruction

- (a) If there is a reconstruction (including, consolidation, subdivision, reduction or return) of the issued capital of the Issuer, the basis for conversion of the Notes set out in these Terms will be reconstructed in the same proportion as the issued capital of the Issuer is reconstructed and in a manner which will not result in any additional benefits being conferred on the Holder which are not conferred on the shareholders of the Issuer, (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for conversion of the Notes will remain unchanged.
- (b) The adjustments in this clause 4.7 of these Terms will, subject to the Listing Rules, be determined by the Issuer.

4.8 Bonus Share issue

Where the Issuer declares a bonus Share issue, at any time after the issue of a Note and prior to the issue of a Conversion Notice, Redemption Notice or Early Redemption Notice, the basis for conversion of the Notes set out these Terms will be adjusted by the number of bonus Shares that a Noteholders would have received if the Note had been exercised prior to the record date for the bonus issue. The Issuer will notify the Trustee and Holders of any such adjustment. No change will be made to the Conversion Rate.

4.9 Non Voting

The Notes do not confer on the Holders any rights to attend or vote at general meetings of shareholders of the Issuer (unless provided for by the Listing Rules or the Corporations Act) but the Issuer will send to Holders copies of all material that the Issuer sends to its ordinary shareholders.

5. Foreign Holders

Where Notes are held by or on behalf of a person resident outside Australia, then, despite any other terms or conditions applicable to such Notes, it will be a condition precedent to the right of the Holder to receive payment of any amount payable under these terms or to obtain Shares on conversion that the requirements of all applicable laws of the Commonwealth of Australia or any of its States or Territories and of the country of residence of the Holder in respect of such payment or conversion are satisfied so that such payment or conversion will not result in a breach of any such applicable law by the Issuer (any such requirements must be satisfied by the Holder at its own cost).

6. Conversion to Voting Shares precluded

6.1 Breaches of law

Notwithstanding any other term of the Trust Deed or these Terms, a Holder is not entitled to convert (and the Issuer is entitled to refuse to convert) such number of Notes that would result in:

- (a) a person acquiring Voting Shares in the Issuer in breach of section 606 of the Corporations Act (or any equivalent provision); or
- (b) a person acquiring Shares where a notification or consent being required to be sent to, or consent is required under, any legislation by which the Issuer and its Related Bodies Corporate are bound has not been obtained.

6.2 Statutory Declaration

The Issuer may in its discretion require a Holder to provide a statutory declaration confirming that the circumstances referred to in clause 6.1 of these Terms do not exist in respect of any conversion of Notes by that Holder.

6.3 Acknowledgement

Each Holder acknowledges that the Issuer has not obtained any shareholder approval under section 611(7) of the Corporations Act in connection with the conversion of any Notes, and that no Holder shall have the ability to compel the Issuer to convene a shareholder's meeting for the purpose of obtaining any such approval in connection with conversion of any Notes.

7. Transfers

7.1 Form of transfer

Subject to the terms of the Trust Deed, a Holder may transfer all or any of the Notes the Holder holds:

- (a) where, at any time, a Note is quoted on the Official List, by an instrument in writing in any usual form or in any other form that the directors of the Issuer approve, provided it complies with the requirements of the Corporations Act and the Listing Rules (in respect of an off market transfer);
- (b) where, at any time, a Note is quoted on the Official List, in accordance with the Listing Rules or the ASX Settlement Operating Rules (as applicable), and recognised under the Corporations Act (for on market transfers); or

- (c) where, at any time, a Note is not quoted on the Official List, by a written instrument of transfer in a form that the directors of the Issuer approve, provided it complies with the requirements of the Corporations Act.

7.2 Registration of transfers

A transferor of Notes remains the owner of Notes transferred until the transfer is registered and the name of the transferee is entered into the Register in respect of Notes, and the transferee of Notes on being entered on the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Holder under this Trust Deed.

7.3 Increased costs

If:

- (a) a Holder transfers any or all Notes that it holds; and
- (b) the Issuer is required to make a payment because of a Regulatory Change after the date of the transfer to the transferee,

then the Issuer is only required to make that payment up to the amount that would have been payable had the transfer not occurred.

8. Events of Default

8.1 Events of default

Each of these events or circumstances is an Event of Default:

- (a) **(non-payment)**
 - (i) if the Issuer fails to pay any interest that is due and payable by it in accordance with clause 2.1 within 15 Business Days of its due date; and
 - (ii) if the Issuer fails to pay any amount that is due and payable by it under the Trust Deed within 15 Business Days of its due date;
- (b) **(other obligations)** if the Issuer fails to comply with any of its obligations under these Terms or the Trust Deed (other than a failure referred to elsewhere in this clause) and, where the failure can be remedied, is not remedied within 30 Business Days after the Trustee notifies the Issuer of the failure and requires it to be remedied;
- (c) **(Insolvency Event)** if an Insolvency Event occurs in respect of the Issuer;
- (d) **(ASX)** if the Issuer ceases to be listed on the Official List or its shares are suspended from official quotation on the ASX for a period of more than 20 consecutive Business Days (excluding trading halts); and
- (e) **(cross default)** if:
 - (i) any Financial Indebtedness of the Issuer exceeding A\$10,000,000 (or its equivalent in any other currency or currencies) is not paid when due nor within any originally applicable grace period;

- (ii) any Financial Indebtedness of the Issuer exceeding A\$10,000,000 (or its equivalent in any other currency or currencies) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or review event (however described); or
- (iii) any creditor of the Issuer becomes entitled to declare any Financial Indebtedness of the Issuer exceeding A\$10,000,000 (on a non-aggregated basis except to the same creditor) (or its equivalent in any other currency or currencies) due and payable prior to its specified maturity as a result of an event of default or review event (however described).

8.2 Grace period

No Event of Default under clause 8.1 above will occur if the event or circumstance is capable of remedy and is remedied within 30 Business Days of the Trustee giving notice to the Issuer (unless otherwise specified in these Terms).

For the avoidance of doubt, there is no additional grace period in respect of the Events of Default set out in clauses 8.1(a) and 8.1(d).

8.3 Consequences of an Event of Default

If an Event of Default is subsisting and subject to the terms of the Subordination Deed, the Trustee may, and must if so directed by the Majority Holders (subject in each case to clause 12.6 (*Trustee not bound to enforce*) of the Trust Deed) exercise its power under clause 12.4(a).

8.4 Notice

The Issuer agrees to promptly notify the Trustee, and in any event no later than 2 Business Days after it becomes aware, of an Event of Default and if the Event of Default is subsisting.

9. Definitions and Interpretation

- (a) Terms that are defined in the Trust Deed have the same meaning in these Terms, unless otherwise indicated.
- (b) The rules set out in clauses 1.2 to 1.4 of the Trust Deed apply to these Terms.

Schedule 2 – Provisions for Meetings of Holders

1. Definitions

In this schedule terms that are defined in the Trust Deed have the same meaning, unless the context requires otherwise:

Holder means the person or persons named as Holder in the Register one Business Day prior to the date that the notice of the meeting is given.

Representative means:

- (a) in relation to a Holder, a person appointed as a proxy for that Holder pursuant to clause 3.3 of this schedule; and
- (b) without limiting the generality of paragraph (a), in relation to a Holder that is a body corporate, a person appointed as a representative of that Holder pursuant to clause 3.4 of this schedule.

2. Calling of Meetings

2.1 Who may call a meeting

- (a) **(Issuer and Trustee):** The Issuer or the Trustee may at any time call a meeting of Holders.
- (b) **(meeting on request by Holders):** The Issuer must call a meeting of Holders if:
 - (i) Holders who together hold 10% or more of the Face Value of the Notes outstanding request the Issuer to do so; and
 - (ii) the direction is given to the Issuer in writing at its registered office; and
 - (iii) the purpose of the meeting is to:
 - (A) consider the financial statements that were laid before the last AGM of the Issuer; and/or
 - (B) give the Trustee directions in relation to the exercise of any of its powers.
- (c) **(When otherwise required by law):** The Issuer must call a meeting of Holders whenever required to do so by law.

2.2 Method of calling a meeting

- (a) **(by notice):** The Issuer or the Trustee may call a meeting of Holders by notice given:
 - (i) to the other in accordance with this Trust Deed at least 21 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given; and

- (ii) each Holder at least 21 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given:
 - (A) by posting it to the Holder's address as recorded on the Register on the Business Day prior to the date that the notice is given;
 - (B) by providing it to the Holder personally;
 - (C) by sending it to the fax number or electronic address nominated by the Holder;
 - (D) by publishing an advertisement in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia; or
 - (E) if delivered to CHESS (or any other applicable securities clearance and settlement system through which the Notes are cleared and/or settled) for communication by them to persons shown in their respective records as having interests therein.

If the notice is posted to the Holder, the Holder is taken to have received it 3 days after it is posted, or if the notice is sent electronically or by fax, the Holder is taken to have received it on the Business Day after it is sent.

- (b) **(contents of notice):** A notice under clause 2.2(a) of this schedule must:
 - (i) state the date, commencement time and place of the meeting;
 - (ii) describe the general nature of the business to be considered and, where a resolution to amend the Terms is proposed, must specify the terms of the proposed amendment (but, in other cases, not specify the precise terms of the resolutions proposed); and
 - (iii) provide that Holders may attend personally or through a Representative appointed and notified to the Trustee.
- (c) **(notice to the Issuer's auditor):** If the Issuer is required to call a meeting in accordance with clauses 2.1(b) or 2.1(c) of this schedule then it must also give prior notice of the meeting to the Issuer's auditor.

2.3 Corporations Act

The Issuer and the Trustee must comply with the requirements of the Corporations Act when calling meetings.

2.4 Failure to notify Holder need not invalidate a meeting

Any:

- (a) **(Accidental omission to give notice):** accidental omission to give notice to, or the non-receipt of notice by, any person other than the Issuer or the Trustee; or
- (b) **(Change in the identity of the Holders):** any change in the identity of the Holders from that recorded on the Register on the Business Day before the

notice of meeting is given, will not invalidate a meeting nor any resolution passed at that meeting.

2.5 Consequences of failure to notify the Issuer or the Trustee

An omission to give notice to, or the non-receipt of notice by, the Trustee or the Issuer under clause 2.2(a)(i) of this schedule, within the period specified in that clause, invalidates a meeting unless:

- (a) **(Recipient has refused delivery)**: the Trustee or the Issuer (as the case may be) refuses to accept delivery of that notice; or
- (b) **(Recipient waives compliance)**: the Trustee or the Issuer (as the case may be), by notice to the other, waives its right to compliance with clause 2.2(a)(i).

2.6 Meeting in more than one place

A meeting of Holders may, if the Trustee so determines, be held at two or more meeting venues linked together by audio-visual communication equipment which, by itself or in conjunction with other arrangements:

- (a) **(Participate in proceedings)**: gives the Holders in the separate venues a reasonable opportunity to participate in the proceedings;
- (b) **(Chairman aware of proceedings)**: enables the chairman to be aware of proceedings in each such venue; and
- (c) **(Vote)**: enables the Holders in each such venue to vote on a show of hands and on a poll.

A Holder at one of the separate meeting venues is taken to be present at the meeting of the Holders and is entitled to exercise all rights which a Holder has under the this Trust Deed and this schedule in relation to a meeting of Holders. Where a meeting of Holders is held at two or more meeting venues pursuant to this clause that meeting will be regarded as having been held at the venue determined by the chairman of the meeting.

3. Attendance at Meetings

3.1 By Issuer and Trustee

The Issuer and the Trustee (in each case, personally or through their respective representatives and financial and legal advisers) may attend and speak at any meeting of Holders.

3.2 By Holders

A Holder (whether it received notice of the meeting or not) may attend, and speak and vote at, a meeting either personally or through its Representative.

3.3 Appointment of proxy

A Holder (whether a body corporate or not) by an instrument may appoint a proxy to attend, speak and vote on the Holder's behalf at a specified meeting or at meetings generally of Holders.

3.4 Appointment of representative by body corporate

A Holder that is a body corporate, may authorise a person to act as its representative at a specified meeting or at meetings generally of Holders.

3.5 Form of Instrument appointing representative

An instrument appointing a Representative must be:

- (a) **(Approved form)**: in a form acceptable to the Trustee or the Issuer;
- (b) **(Lodged with Trustee)**: lodged at such places in Australia as the Trustee or the Issuer direct in the notice convening the meeting (or if no such place is appointed then with the Trustee at least 48 hours before the meeting, adjourned meeting or taking of a poll at which it is to be relied on; and
- (c) **(Proof of attorney's power)**: in the case of an instrument appointing a proxy which is under the hand of an attorney, accompanied by proof acceptable to the Trustee of the attorney's authority.

3.6 Waive requirements

The Trustee or the Issuer may in its sole discretion waive any of the requirements in relation to the appointment of a Representative and approve as valid any instrument appointing a Representative despite that it does not comply with those requirements or is received or produced at the wrong place or the wrong time.

3.7 Appointment applies for meeting

Unless the instrument provides otherwise, an instrument appointing a Representative is valid for the meeting to which it relates and for any adjournment of that meeting.

3.8 Qualifications of representative

A Representative need not be a Holder. The Trustee and any officer of the Trustee may be appointed a Representative.

3.9 Continuing appointment

Action taken at a meeting, adjourned meeting or on the taking of a poll by a representative appointed and notified to the Trustee is valid despite:

- (a) **(Death etc)**: any death, unsoundness of mind or dissolution of the Holder;
- (b) **(Revocation)**: any revocation of the instrument of appointment (or of the authority under which it was executed); or
- (c) **(Transfer)**: any transfer of the Note in respect of which the appointment was made, unless the Issuer or the Trustee has received notice of this at its registered office before the meeting or adjourned meeting commences.

3.10 Rights of representative

A Representative has the right to demand or join in demanding a poll and (except and to the extent to which the Representative is specially directed to vote for or against any proposal) has power generally to act at a meeting for the Holder concerned.

3.11 Voting by person of unsound mind

A Holder of unsound mind or in respect of whom an order has been made by any court having jurisdiction in respect of mental health may vote whether on a show of hands or on a poll by his committee or trustee or other person who properly has the management of the Holder's estate.

3.12 Objection to voter's qualification

An objection may only be raised to the entitlement of a person to attend or vote at a meeting of Holders at the meeting in question (or adjournment of it). Any such objection is to be considered by the chairperson of the meeting whose decision will be final and conclusive. The chairperson may consult with any representative of the Issuer and the Trustee present at the meeting.

4. Procedure at Meetings

4.1 Quorum

- (a) **(No business unless quorum present at commencement):** No business may be transacted at a meeting of Holders unless a quorum is present at the time the meeting proceeds to business.
- (b) **(Calculation of quorum):** The quorum for a meeting of Holders, which is to be calculated by reference to Holders who:
 - (i) are present in person or by Representative (even if by the same Representative); and
 - (ii) are entitled to vote at that meeting,holding in aggregate Notes representing at least 10% of the aggregate Face Value of the Notes outstanding when the meeting proceeds to business.
- (c) **(Quorum not present):** If a quorum is not present within 15 minutes of the announced commencement time for a meeting, the meeting:
 - (i) if convened pursuant to clause 2.1(b) of this schedule, is dissolved; or
 - (ii) in any other case, stands adjourned to such day, and to such time and place, as the chairperson determines (and at such meeting the percentage Notes of Holders referred to in clause 4.1(b) of this schedule will be ignored when determining whether there is a quorum under that clause).

4.2 Chairperson

- (a) **(Appointment by Trustee):** The Trustee may appoint a person to be chairperson at a meeting of Holders.
- (b) **(Ordinary Resolution in default of Trustee):** If the Trustee does not appoint a person to be chairperson of a meeting, or the person is not present within 15 minutes of the announced commencement time for a meeting or is unwilling to act, the Holders must appoint a person by Ordinary Resolution to be chairperson of that meeting.
- (c) **(Qualifications of chairperson):** The chairperson:

- (i) need not be a Holder; and
 - (ii) may be an officer of the Issuer or the Trustee.
- (d) **(Casting Vote):** The chairperson has a casting vote, both on a show of hands and on a poll.

4.3 Voting procedure

- (a) **(In the first instance by a show of hands):** Every question submitted to a meeting must be decided in the first instance by a show of hands of Holders or their Representatives. Unless a poll is demanded in accordance with this clause 4.3, a declaration by the chairperson that a resolution has been carried, carried by a particular majority, lost or not carried is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (b) **(Call for a Poll):** Each of:
 - (i) the chairperson;
 - (ii) the Issuer or the Trustee; or
 - (iii) a Holder or Holders holding in aggregate at least 5 per cent. of the Face Value of the Notes outstanding when the meeting proceeds to business (or its or their Representatives), may call for a poll on a resolution before or on the declaration of the result of the show of hands. A demand for a poll may be withdrawn.
- (c) **(Taking of a Poll):** A poll on the election of a chairperson or a question of adjournment must be taken immediately. A poll on other matters must be taken in the manner, at the time and in the place determined by the chairperson. The result of a poll is to be taken to be the resolution of the meeting at which the poll was demanded, passed on the day the poll is taken.
- (d) **(Continuation of business):** The demand for a poll may not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) **(Number of votes):** In the case of a vote:
 - (i) on a show of hands, each person present and entitled to vote has one vote; and
 - (ii) on a poll, each person who is present and entitled to vote has one vote in respect of each Note in respect of which that person is the Holder or in respect of which that person is otherwise entitled to vote.

Without prejudice to the obligations (if any) imposed by a Holder on its Representative, any person entitled to more than one vote need not exercise all those votes in the same way.

- (f) **(Vote of joint Holders):** If a Note is held by joint Holders, only the vote of the most senior such person who tenders a vote (whether in person or by Representative) may be accepted as a vote, to the exclusion of any attempted votes of the other joint Holders of that Note (which may not be regarded as valid votes for any purpose). For this purpose, seniority is determined by the order in which names are recorded in the Register in respect of that Note.

4.4 Resolutions

- (a) **(Ordinary Resolutions):** Except to the extent provided in this Trust Deed or the Corporations Act, a resolution may be passed as an ordinary resolution of the Holders which requires approval by Ordinary Resolution.
- (b) **(Special Resolutions):** A resolution which if passed would:
 - (i) release any party from any liability to the Holders;
 - (ii) adversely affect the rights of any Holder;
 - (iii) require the resignation or removal of the Trustee; or
 - (iv) approve an amendment to the Terms,requires a Special Resolution.
- (c) **(Resolutions bind Holders):** A resolution passed at a meeting of Holders convened and held in accordance with this schedule binds all Holders whether present at the meeting or not.
- (d) **(Declaration of result conclusive):** At a meeting of Holders, a declaration by the chairperson that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.
- (e) **(Written Resolutions):** Despite the other provisions in this schedule, an Ordinary Resolution and a Special Resolution may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing signed by Holders holding the relevant proportion of the Moneys Owing to pass the relevant resolution and any such instrument is effective upon presentation to the Issuer for entry in the minutes referred to in clause 5 of this schedule.

4.5 Adjournment

- (a) **(Who may adjourn):** Each of:
 - (i) the chairperson;
 - (ii) the Trustee; and
 - (iii) the Holders (or their Representatives) by Ordinary Resolution,may adjourn a meeting (including an adjourned meeting) to such time and place as the Trustee or that resolution (as appropriate) determines. The only business which may be transacted at an adjourned meeting is business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (b) It is not necessary to give notice of an adjourned meeting.

4.6 Court order

A meeting of Holders ordered to be held by a court will be conducted, in accordance with the provisions of this Trust Deed, unless the court otherwise directs.

5. General

5.1 Minutes

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be provided for that purpose by the Trustee. Any such minutes if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings transacted or by the chairman of the next succeeding meeting (if any) of Holders, are conclusive evidence of the matters stated in them. Every such meeting in respect of the proceedings of which minutes have been made and signed are deemed to have been duly convened and held and all resolutions passed and proceedings conducted at such meetings are deemed to have been duly passed and conducted.

5.2 Further procedures for meetings

Subject to all other provisions of this Trust Deed and this schedule, the Trustee may without the consent of the Holders prescribe such further regulations regarding the holding of meetings of the Holders and attendance and voting at such meetings as the Trustee may in its sole discretion determine including particularly (but without prejudice to the generality of the foregoing) such regulations and requirements as the Trustee thinks reasonable:

- (a) **(Regarding entitlement to vote):** so as to satisfy itself that persons who purport to attend or vote at any meeting of Holders are entitled to do so in accordance with this schedule and the other provisions of this Trust Deed; and
- (b) **(Regarding representatives):** as to the form of appointment of a Representative.

Schedule 3 – Conversion Notice

To: Company Secretary
Resolute Mining Limited
4th Floor, BGC Building
28 The Esplanade
PERTH WA 6000

NOTICE OF CONVERSION OF CONVERTIBLE NOTES

I/WE

Name of Holder

of

Address of Holder

hereby request conversion of [Number of Notes to be converted] Notes into fully paid ordinary shares in the capital of Resolute Mining Limited on [Nominated Conversion Date] in accordance with the Terms of the Convertible Notes Trust Deed dated [].

I/WE agree to be bound by the constitution of Resolute Mining Limited.

Signature:

Holder/Director/Sole Director

Name (please print):

Signature:

Name (please print):

Dated:

Schedule 4 – Subordination Deed

This Deed is made this

day of

20##

Parties **[#name of other Secured Party]** of **[#address of party]** (**Senior Creditor**)

Resolute Mining Limited (ABN 39 097 088 689) of Level 4, BGC Centre,
28 The Esplanade, Perth, Western Australia, 6000 (**Company**)

and

Australian Executor Trustees Limited (ABN 84 007 869 794) of Level 22, 207 Kent Street, Sydney, New South Wales, 2000 (Junior Trustee)

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

AET means Australian Executor Trustees Limited ABN 84 007 869 794.

Authorised Officer means:

- (a) in the case of the Senior Creditor, a director or secretary of the Senior Creditor or any person who purports to be a “director”, “chief”, “counsel”, “executive”, “head”, “president” or “manager” (or a person performing, or purporting to perform the functions of any of them) of the Senior Creditor; and
- (b) in the case of the Company, a director or secretary of the Company or any other person specified by it as an Authorised Officer for the purposes of the Security Trust Deed or this document by a notice to the Senior Creditor accompanied by a copy of the person’s signature certified by a director or secretary of the Company (and in respect of which the Senior Creditor has not received notice of revocation of the appointment); and
- (c) in the case of the Junior Trustee, a company secretary or director of the person or an employee of the person whose title includes the word “manager”, “officer”, “director”, “counsel”, “chief” or “head”, a person who is acting temporarily in one of those positions or a person, or a person holding a position, nominated by the person by written notice to the Senior Creditor.

Business Day means a day (not being a Saturday, Sunday or public holiday in that place) on which banks are open for general banking business in Perth and Sydney.

Controller has the meaning it has in the Corporations Act.

Convertible Notes means the unsecured convertible notes issued by the Company on the terms in Schedule 1 of the Junior Creditor Agreement.

Corporations Act means the Corporations Act 2001 (Cwlth).

Costs includes costs, charges and expenses including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Details means the section of this document headed “Details”.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Event of Default has the meaning it has in the Security Trust Deed.

Financier has the meaning it has in the Security Trust Deed.

Hedging Exposure Amount has the meaning it has in the Security Trust Deed.

Holder has the meaning it has in the Junior Creditor Agreement.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Senior Creditor); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, or any other action taken, in each case in connection with that person, in respect of any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Senior Creditor reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Junior Creditor means the Junior Trustee and each Holder from time to time.

Junior Creditor Agreement means the convertible notes trust deed dated [insert] between the Junior Trustee and the Company and all Convertible Notes issued under or in connection with it.

PPSA means the Personal Property Securities Act 2009 (Cwlth).

Proceeds means, in respect of a Junior Creditor:

- (a) any amount received or recovered by the Junior Creditor in respect of its Subordinated Debt in the Winding Up of the Company; and
- (b) any amount received or recovered by the Junior Creditor in connection with failure by it or the Company to comply with its obligations under this document.

Receiver includes a receiver or receiver and manager.

Related Entity has the meaning it has in the Corporations Act.

Security Provider means a person (other than the Company) which at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Senior Debt or any Subordinated Debt (as the context requires).

Security Trust means the Resolute Group Security Trust established under the Security Trust Deed.

Security Trust Deed means the security trust deed dated 26 February 2004 (as amended on 23 July 2004 and 7 April 2008) between the Company, the Senior Creditor and others.

Senior Creditor Agreement means each of:

- (a) [insert]

Senior Debt means all amounts (including damages and Hedging Exposure Amounts) that are payable, owing but not payable, or that otherwise remain unpaid by the Company to the Senior Creditor or any of the Trust Beneficiaries on any account at any time under or in connection with the Transaction Documents or any transaction contemplated by them, whether:

- (a) present or future, actual or contingent;
- (b) incurred alone, jointly, severally or jointly and severally;
- (c) the Company is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which Company is liable;
- (d) due to a Financier alone or with another person;
- (e) the Trust Beneficiary is entitled for its own account or the account of another person;
- (f) arising from a banker and customer relationship or any other relationship;
- (g) originally contemplated by the Company or the Trust Beneficiaries or not; or
- (h) the Senior Creditor or the Trust Beneficiary is the original person in whose favour the undertakings in the Transaction Documents or the Participating

Financing Arrangement were given or an assignee and, if the Senior Creditor or the Trust Beneficiary is an assignee:

- (i) whether or not the Company consented to or knew of the assignment;
- (ii) no matter when the assignment occurred; and
- (iii) whether or not the entitlements of that original person were assigned with this document,

but so that nothing in this paragraph (h) requires the Senior Creditor to recognise any assignee of a Trust Beneficiary's interest until that assignee has executed and delivered to the Senior Creditor the deed referred to in clause 10.2 of the Security Trust Deed.

Senior Debt Discharge Date means the date on which the Senior Creditor notifies the other parties that it is satisfied that all Senior Debt has been fully and irrevocably paid or discharged and all commitments of the Senior Creditor and the Trust Beneficiaries in respect of the Senior Debt have expired or been cancelled.

Subordinated Debt means all money which at any time for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever whether under law or otherwise (including liquidated or unliquidated damages for default or breach of any obligation) and whether or not of a type within the contemplation of the parties at the date of this document, arising from or in connection with the Junior Creditor Agreement:

- (a) the Company is or may become actually or contingently liable to pay to a Junior Creditor; or
- (b) a Junior Creditor has advanced or paid on the Company's behalf or at the Company's express or implied request; or
- (c) a Junior Creditor is liable to pay by reason of any act or omission on the Company's part or that a Junior Creditor has paid or advanced following an act or omission on the Company's part; or
- (d) the Company would have been liable to pay to a Junior Creditor but the amount remains unpaid by reason of the Company's Insolvency,

but, for the avoidance of doubt, does not include any amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Company or any other person to AET in its personal capacity.

This definition applies:

- (i) irrespective of the capacity in which the Company or a Junior Creditor became entitled to, or liable in respect of, the amount concerned (provided that it will not apply to AET in its personal capacity);
- (ii) whether the Company is liable as principal debtor, or surety or otherwise;
- (iii) whether the Company is liable alone, or together with another person;

- (iv) even if the Company owes an amount or obligation to a Junior Creditor because it was assigned to the Junior Creditor, whether or not:
 - (A) the assignment was before, at the same time as, or after the date of this document; or
 - (B) the Company consented to or was aware of the assignment; or
 - (C) the assigned obligation was secured before the assignment;
- (v) even if the Subordinated Debt was assigned to a Junior Creditor, whether or not:
 - (A) the Company or Senior Creditor consented to or was aware of the assignment; or
 - (B) any of the Subordinated Debt was previously unsecured;
- (vi) if the Company is a trustee, whether or not the Company has a right of indemnity from the trust fund.

Subordinated Debt Discharge Date means the date on which the Junior Trustee notifies the other parties that it is satisfied that all Subordinated Debt has been fully and irrevocably paid or discharged and the Junior Creditors have no further obligations in respect of the Subordinated Debt.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

Transaction Document has the meaning it has in the Security Trust Deed.

Trust Beneficiary has the meaning it has in the Security Trust Deed.

Winding Up means, in respect of a company, the happening of any of the following:

- (a) an order is made that it be wound up; or
- (b) appointment of a liquidator to it; or
- (c) appointment of a provisional liquidator to it and the provisional liquidator is required to admit all debts to proof or pay all debts capable of being admitted to proof proportionately; or
- (d) entry by it into a scheme of arrangement or deed of company arrangement, composition with, or assignment for the benefits of, all or any class of, its creditors.

1.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this document, the following applies:

- (a) the singular includes the plural and vice versa;

- (b) a reference to a document or an agreement (including this document) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (d) a reference to a particular person includes the person's executors, administrators, successors, permitted substitutes (including persons taking by novation) and permitted assigns;
- (e) the word "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a time of day is a reference to Perth time;
- (g) a reference to, dollars, \$ or A\$ is a reference to the currency of Australia;
- (h) a reference to the word "law" includes common law, principles of equity and legislation (including regulations);
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to the word "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;
- (o) a reference to "property" or "asset" includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (p) a reference to "control" includes control as defined in the PPSA;
- (q) a reference to "possession" includes possession as defined in the PPSA;
- (r) set off includes set off by way of combination of accounts.

1.3 Senior Creditor's Limitation of Liability

- (a) The Senior Creditor enters into this document only in its capacity as trustee of the Security Trust and in no other capacity. A liability arising under or in connection with this document can be enforced against the Senior Creditor only to the extent to which the Senior Creditor is entitled to be and is in fact

indemnified for that liability out of property of the Security Trust. This limitation of the Senior Creditor's liability applies despite any other provisions of this document and extends to all liabilities and obligations of the Senior Creditor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

- (b) The parties to this document other than the Senior Creditor may not sue the Senior Creditor personally or seek the appointment of a Controller to the Senior Creditor or prove in any liquidation, administration or arrangement of or affecting the Senior Creditor.
- (c) Paragraph (a) shall not apply to any obligation or liability of the Senior Creditor to the extent that it is not satisfied because under the Security Trust Deed or by operation of law there is a reduction in the extent of the Senior Creditor's indemnification out of the assets of the Security Trust, as a result of the Senior Creditor's fraud, gross negligence, wilful misconduct or breach of trust.
- (d) No:
 - (i) attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Senior Creditor in a way which exposes the Senior Creditor to any personal liability and no act or omission of any such person will be considered fraud, gross negligence, wilful default or breach of trust of the Senior Creditor; and
 - (ii) act or omission of the Senior Creditor (including any related failure to satisfy its obligations and liabilities under or in connection with this document) will be considered fraud, gross negligence, wilful misconduct or breach of trust of the Senior Creditor to the extent to which the act or omission was caused by any failure by any other party to fulfil its obligations relating to the Security Trust or the Senior Creditor.
- (e) This clause 1.3 shall continue beyond any termination of this document for any reason and is not severable from this document.

1.4 Junior Trustee's Limitation of Liability

- (a) For the purposes of this clause 1.4:
 - (i) **Note** has the meaning it has in the Junior Creditor Agreement;
 - (ii) **Terms** has the meaning it has in the Junior Creditor Agreement;
 - (iii) **Trust** means the Resolute Mining Limited 2014 Notes Trust; and
 - (iv) **Trust Fund** has the meaning it has in the Junior Creditor Agreement.
- (b) The Junior Trustee is not liable to the Senior Creditor, the Company, any Holder or any other person in any capacity other than as trustee of the Trust.
- (c) Any liability arising under or in connection with the Junior Creditor Agreement or a Note is limited to and can be enforced against the Junior Trustee only to the extent to which the Junior Trustee is actually indemnified out of the Trust Fund for that liability. This limitation of the Junior Trustee's liability applies despite any other provision of this document, any other Transaction Document, the Junior Creditor Agreement or the Terms and extends to all

liabilities and obligations of the Junior Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document, any other Transaction Document, the Junior Creditor Agreement or a Note.

- (d) For the avoidance of doubt, the Junior Trustee is not liable to the Senior Creditor, the Company nor any Holder for a failure to do or refrain from doing anything under the Junior Creditor Agreement, including upon any direction or instruction by any Holder(s), which would be contrary to its obligation under this document or any other Transaction Document.
- (e) None of the Senior Creditor, the Company or any Holder may sue the Junior Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a Controller (except in relation to the Trust Fund), a liquidator an administrator or any other similar person to the Junior Trustee or prove in any Liquidation of or affecting the Junior Trustee (except in relation to the Trust Fund).
- (f) Each of the Senior Creditor, the Company and each Holder waives each of their rights against the Junior Trustee, and each releases the Junior Trustee from any personal liability, in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Junior Trustee to perform its obligations under this document, each other Transaction Document, the Junior Creditor Agreement or a Note, which cannot be paid or satisfied out of the Trust Fund.
- (g) The provisions of this clause 1.4 will not apply to any obligation or liability of the Junior Trustee to the extent arising as a result of the Junior Trustee's fraud, negligence or wilful default.
- (h) The Senior Creditor, the Company and each Holder each acknowledge that the Company and each Holder are responsible for performing a variety of obligations under the Junior Creditor Agreement and the Terms. No act or omission of the Junior Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this document, any other Transaction Document, the Junior Creditor Agreement or the Terms) will be considered fraud, negligence or wilful default of the Junior Trustee for the purposes of this clause 1.4 to the extent to which the act or omission was caused or contributed to by any failure of the Company, a Holder or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Company, a Holder or any other person.
- (i) No Authorised Officer of the Junior Trustee appointed in accordance with the Junior Creditor Agreement has authority to act on behalf of the Junior Trustee in any way which exposes the Junior Trustee to any personal liability and no such act or omission of any such person will be considered fraud, negligence or wilful default of the Junior Trustee for the purpose of this clause 1.4.
- (j) The Junior Trustee is not obliged to do or refrain from doing anything under this document, any other Transaction Document, the Junior Creditor Agreement or the Terms (including incur any liability) unless the Junior Trustee's liability is limited in the same manner as set out in this clause 1.4.
- (k) The provisions of this clause 1.4:
 - (i) are paramount and apply regardless of any other provision of this document, any other Transaction Document, the Junior Creditor

Agreement or the Terms or any other instrument, even a provision which seeks to apply regardless of any other provision;

- (ii) survive and endure beyond any termination of the Junior Creditor Agreement for any reason; and
- (iii) are not severable from the Junior Creditor Agreement.

1.5 Subordination of Holders

This document binds each Holder from time to time as a Junior Creditor.

2. Purpose and consideration

This document sets out the terms on which the Subordinated Debt is subordinated to the Senior Debt. Each of the Company and the Junior Creditor acknowledges incurring obligations and giving rights under this document for valuable consideration including financial accommodation provided by the Senior Creditor to the Company at the request of the Junior Creditor.

3. Subordination

3.1 Subordinated Debt not payable until Senior Debt Discharge Date

The parties agree that subject to clause 3.2 ("Permitted payments") and clause 3.4 ("Effect of lodgment of proof") none of the Subordinated Debt is payable until the Senior Debt Discharge Date.

This clause applies despite any contrary agreement between the Junior Creditor and the Company.

3.2 Permitted payments

The Company may only make payments of Subordinated Debt when due if the payment is:

- (a) permitted by each Senior Creditor Agreement; and
- (b) in accordance with clause 3 of the Junior Creditor Agreement, but excluding payments:
 - (i) as a result of an early redemption or prepayment; or
 - (ii) while an event of default (however described) is continuing under the Junior Creditor Agreement.

3.3 Junior Creditor's restrictions on a Winding Up

- (a) The Junior Creditor may not vote in respect of its Subordinated Debt during a Winding Up of the Company unless it does so in accordance with the Senior Creditor's instructions.
- (b) The Junior Creditor agrees to vote and prove in respect of its Subordinated Debt in accordance with the Senior Creditor's instructions.

3.4 Effect of lodgment of proof

At the same time as the Junior Creditor lodges proof of its Subordinated Debt, the Subordinated Debt (up to the amount claimed in the proof in accordance with the Senior Creditor's instructions) is payable.

3.5 Junior Creditor will direct payment to Senior Creditor

If the Senior Creditor asks, the Junior Creditor agrees to direct payment of the Proceeds to the Senior Creditor, in the form prescribed by law or, if no form is prescribed, in a form approved by the Senior Creditor.

3.6 Proceeds held on trust

The Junior Creditor holds the Proceeds on trust for the Trust Beneficiaries (including the Senior Creditor) and the Junior Creditor. The Junior Creditor agrees as soon as practicable after receipt of the Proceeds, to deposit them into an account specifically designated and as directed by the Senior Creditor, in the form prescribed by law or, if no form is prescribed, in a form approved by the Senior Creditor. The Senior Creditor directs the Junior Creditor to deposit the Proceeds in accordance with this clause 3.6 and agrees to provide account details promptly on request by the Junior Creditor.

The Junior Creditor agrees that the Proceeds shall be distributed:

- (a) first, to the Senior Creditor to satisfy the Senior Debt; and
- (b) secondly, to the extent of any balance after repayment of the Senior Debt, to the Junior Trustee to satisfy the Subordinated Debt.

If the Proceeds are deposited into an account designated by the Senior Creditor, the Senior Creditor agrees to pay the balance of the Proceeds after the Senior Debt Discharge Date to an account nominated by the Junior Trustee.

3.7 Junior Creditor to pay over amounts recovered

If, other than as contemplated by clause 3.2 ("Permitted payments") an amount (in the form of money or any other property):

- (a) is received or recovered by the Junior Creditor on account of its Subordinated Debt (which is not subject to the trust in clause 3.6 ("Proceeds held on trust")); or
- (b) is paid to any person other than the Junior Creditor in connection with the Junior Creditor's Subordinated Debt; or
- (c) is set off against, or otherwise deducted from, the Junior Creditor's Subordinated Debt (whether by operation of law or otherwise),

that Junior Creditor agrees to, as soon as practicable, pay to the Senior Creditor an amount equal to the lesser of:

- (i) the amount received, recovered, paid or set off; or
- (ii) the Senior Debt at that time.

4. Representations and warranties

4.1 Junior Trustee and Company representations and warranties

Each of the Junior Trustee and the Company represents and warrants (except in relation to matters disclosed to the Senior Creditor and accepted by the Senior Creditor in writing) that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws; and
- (b) **(power)** it has power to enter into this document, comply with its obligations under it and exercise its rights under it; and
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it; and
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced; and
- (e) **(validity of obligations)** its obligations under this document are legal, valid and binding and are enforceable against it in accordance with its terms subject to any stamping and registration requirements, applicable equitable principles and laws generally affecting creditors' rights; and
- (f) **(benefit)** it benefits by entering into this document; and
- (g) **(no benefit to related party)** no person has contravened or will contravene Chapter 2E (related parties) or Part 2J.3 (financial assistance) of the Corporations Act (or any equivalent legislation in any other jurisdiction) by entering into this document or participating in any transaction in connection with this document; and
- (h) **(not Insolvent)** it is not Insolvent; and
- (i) **(documents and information)** in the case of the Company only, all documents (including the Junior Creditor Agreement) and information given to the Senior Creditor by or on behalf of the Company or any of its Subsidiaries in connection with this document, the Subordinated Debt or any transaction in connection with them are complete and not misleading or deceptive, in any material respect (including by omission) as at the date they are given or as at their stated date; and
- (j) **(not a trustee)** unless stated in the Details, it does not enter into this document as trustee.

4.2 Repetition of representations and warranties

The representations and warranties in this clause 4 are taken to be made on the date of this document and also made (by reference to the then current circumstances) on

each date on which the Senior Creditor and/or any Trust Beneficiary continues to provide financial accommodation to or at the request of the Company.

Any disclosure against a representation and warranty does not limit the Senior Creditor's rights under this document.

4.3 Reliance

Each of the Junior Trustee and the Company acknowledges that the Senior Creditor has entered into this document in reliance on the representations and warranties in this clause 4.

5. Undertakings

5.1 Junior Creditor's restrictions

Without the prior written consent of the Senior Creditor or except as otherwise expressly permitted by this document, the Junior Creditor may not, and may not agree to, do any of the following:

- (a) **(no demand)** demand or accept payment, repayment of or otherwise allow its Subordinated Debt to be satisfied or extinguished; or
- (b) **(not sue or take other action)** sue for or take any other action to recover its Subordinated Debt; or
- (c) **(vary)** vary, replace, transfer, waive or release any of its rights or obligations in respect of its Subordinated Debt or rescind or terminate any agreement in connection with its Subordinated Debt; or
- (d) **(set off)** exercise any right of set off, counterclaim or deduction in respect of its Subordinated Debt; or
- (e) **(negotiable instruments)** permit its Subordinated Debt to be evidenced by a negotiable instrument unless the instrument is expressed on its face to be subject to this document; or
- (f) **(borrow)** raise financial accommodation from, or otherwise create or increase indebtedness to, the Company; or
- (g) **(Encumbrance or guarantee)** accept the benefit of any Encumbrance or guarantee, indemnity or assurance against financial loss in respect of its Subordinated Debt; or
- (h) **(requisition)** requisition or convene a meeting to consider:
 - (i) a resolution for the winding up of the Company; or
 - (ii) any arrangement, assignment or composition or protection from any creditors under statute for the Company; or
 - (iii) a resolution for the appointment of an administrator to the Company; or
- (i) **(vote)** vote:
 - (i) for the winding up of the Company; or

- (ii) in connection with any proposed arrangement, assignment or composition or protection from any creditors under statute for the Company; or
- (j) **(apply to court)** apply to the court to wind up the Company; or
- (k) **(Junior Creditor Agreement)** amend or vary the Junior Creditor Agreement (or permit the Junior Creditor Agreement to be amended or varied); or
- (l) **(waiver or consent)** provide any waiver or consent under the Junior Creditor Agreement.

5.2 Junior Creditor's undertakings

The Junior Creditor agrees to:

- (a) in the case of the Junior Trustee only, notify the Senior Creditor promptly if:
 - (i) the Junior Trustee changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents; and
 - (ii) any ACN or ARBN allocated to the Junior Trustee changes, is cancelled or otherwise ceases to apply to it (or if it does not have any such applicable number, one is allocated, or otherwise starts to apply, to it); and
- (b) on request by the Senior Creditor, provide details of the amount of Subordinated Debt outstanding under the Junior Creditor Agreement or otherwise.

If the Company becomes aware of any of the things listed in clause **Error! Reference source not found.**, it agrees to notify the Senior Creditor promptly.

5.3 Company's restrictions

Without the prior written consent of the Senior Creditor or except to the extent otherwise expressly permitted by this document, the Company may not, and may not agree to, do any of the following:

- (a) **(repay)** pay, repay, purchase or otherwise satisfy or extinguish any Subordinated Debt; or
- (b) **(Encumbrance or guarantee)** create or allow to exist any Encumbrance or guarantee, indemnity or assurance against financial loss in respect of any Subordinated Debt; or
- (c) **(vary)** vary, replace, transfer, waive, release or affect any of its rights or obligations in respect of any Subordinated Debt or rescind or terminate any agreement in connection with any Subordinated Debt; or
- (d) **(set off)** exercise any set off in respect of any amount payable to it by the Junior Creditor; or
- (e) **(arrangements)** enter into any arrangement, take any action or fail to do any thing, which results in any Subordinated Debt not being subordinated to the Senior Debt.

5.4 Company undertaking

The Company undertakes to notify the Senior Creditor promptly if an “event of default” or “potential event of default” (however described) occurs under the Junior Creditor Agreement.

6. Changes to rights

6.1 Rights of the Senior Creditor are protected

Rights given to the Senior Creditor under this document, and the Junior Creditor’s liabilities under it, are not affected by any act or omission by the Senior Creditor or a Trust Beneficiary or any other person or any other thing which might otherwise affect them under law or otherwise. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) varying, replacing, supplementing, extending or restating in any way and for any reason any agreement or any arrangement under which the Senior Debt or Subordinated Debt is expressed to be owing, such as by adding, replacing or changing the purpose of a facility, increasing a commitment or facility limit or extending the term of a facility including in connection with a restructuring or refinancing of the secured money, changing the agent or substituting a financier);
 - (ii) releasing the Company or any Security Provider or giving them a concession (such as more time to pay);
 - (iii) releasing any person who gives a guarantee or indemnity in connection with any of the Company’s obligations;
 - (iv) releasing, losing the benefit of, or not obtaining or perfecting any Encumbrance or negotiable instrument;
 - (v) by which the obligations of the Junior Creditor, Company or any Security Provider may not be enforceable;
 - (vi) by which any person who was intended to guarantee or provide an Encumbrance securing the Senior Debt does not do so, or does not do so effectively;
 - (vii) by which the Junior Creditor is discharged from its obligations to the Senior Creditor under an agreement or by operation of law;
 - (viii) by which any Encumbrance which could be registered is not registered;
- (b) a person dealing in any way with an Encumbrance, guarantee, indemnity, judgment or negotiable instrument;
- (c) the death, mental or physical disability or Insolvency of any person including the Company or the Junior Creditor;
- (d) changes in the membership, name or business of any person;
- (e) the Company opening an account with them;

- (f) acquiescence or delay by the Senior Creditor, a Trust Beneficiary or any other person;
- (g) an assignment or novation of rights in connection with the Senior Debt or Subordinated Debt.

Each of the Senior Creditor and the Trust Beneficiaries may act freely in its interests in relation to any matter concerning the Senior Debt without regard to the interests of the Junior Creditor or the terms of any Subordinated Debt and without incurring any liability to the Junior Creditor.

6.2 Reinstatement of rights

Under law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with this document or the Senior Debt is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) each of the Senior Creditor and the Trust Beneficiaries is immediately entitled as against the Junior Creditor to the rights under this document in respect of the Senior Debt to which it was entitled immediately before the transaction; and
- (b) on request from the Senior Creditor, the Company and the Junior Creditor agrees to do anything (including signing any document) to restore to the Senior Creditor and/or a Trust Beneficiary any right the Senior Creditor and/or a Trust Beneficiary held from the Company and/or the Junior Creditor immediately before the transaction.

The Junior Creditor's and Company's obligations under this clause are continuing obligations, independent of the Junior Creditor's and Company's other obligations under this document and continue after this document ends.

6.3 No merger

This document does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any guarantee, indemnity or Encumbrance or other right, power or remedy to which the Senior Creditor or a Trust Beneficiary is entitled; or
- (b) a judgment which the Senior Creditor or a Trust Beneficiary obtains against the Junior Creditor or the Company or any other person in connection with the Senior Debt.

Each of the Senior Creditor and each Trust Beneficiary may still exercise its rights under this document as well as under the judgment, guarantee, indemnity, Encumbrance or right, power or remedy.

6.4 Junior Creditor's rights are suspended

Until the Senior Debt Discharge Date, the Junior Creditor may not, without the Senior Creditor's prior written consent:

- (a) exercise any legal right to claim to be entitled to the benefit of any of the Senior Creditor's or a Trust Beneficiary's rights (including the benefit of any Encumbrance securing the Senior Debt); or

- (b) claim an amount from the Company or any other Junior Creditor under a right of indemnity or contribution.

7. Payments

Each of the Junior Creditor and the Company agrees to make payments (including by way of reimbursement) under this document:

- (a) in full without set off or counterclaim, and without any deduction or withholding in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Senior Debt, in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

8. Interest

8.1 Obligation to pay

Each of the Junior Creditor and the Company agrees to pay interest on any money which is due for payment under this document but which is not otherwise incurring interest. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment (both before and after judgment as an independent obligation) and is calculated on actual days elapsed using a year of 360 or 365 days (as determined by reference to usual market practice for the relevant currency).

Each of the Junior Creditor and the Company agrees to pay interest under this clause on demand from the Senior Creditor.

8.2 Default interest

The rate of interest applying to each daily balance is the rate 4% per annum above the 60 day Bank Bill Swap Reference Rate last published on or before the day in The Australian Financial Review (or if no such rate is published, another rate set by the Senior Creditor in good faith).

8.3 Compounding

Interest accrued but which has not been paid under clause 8.1 ("Obligation to pay") is added to the overdue amount at the end of each period of 30 days (or any other period the Senior Creditor reasonably chooses). The first period begins on (and includes) the date for payment of the overdue amount. Interest is payable on the increased overdue amount at the rate set out in clause 8.2 ("Default interest") and in the manner set out in clause 8.1 ("Obligation to pay").

8.4 Junior Trustee

If the Junior Trustee is required to pay an amount of interest under this clause 8, each party (including each other Junior Creditor) acknowledges and agrees that it will not be fraud, negligence or wilful default on the part of the Junior Trustee if any amount which is due for payment under this document on which interest is, or will, accrue under this clause, is not paid by the Junior Trustee, or the Junior Trustee otherwise delays in making any such payment, as a result of the Junior Trustee properly exercising any of its rights or powers under this document or the Junior Creditor Agreement (including, but not limited to, seeking directions on how to act from the other Junior Creditors or advice from an agent, delegate, expert or legal or other professional adviser appointed by it or by any one or more of the other Junior Creditors).

9. Costs

The Company agrees, within 3 Business Days of demand, to pay or reimburse:

- (a) **(transaction costs)** the Senior Creditor and each Trust Beneficiary its reasonable Costs in connection with the preparation, negotiation, execution and registration of this document and giving and considering consents, waivers, variations, discharges and releases and producing documents and providing information in connection with this document;
- (b) **(other costs)** the Senior Creditor and each Trust Beneficiary's and any Attorney's Costs of exercising, enforcing or preserving rights, powers or remedies (or considering doing so) in connection with this document; and
- (c) **(Taxes)** stamp duty, registration and similar Taxes or fees paid or payable, in connection with this document or a payment or receipt or any other transaction contemplated by this document (including any fines and penalties in connection with any of these amounts). However, the Company need not pay or reimburse a fine or penalty to the extent that it has given the Senior Creditor all necessary documents and sufficient cleared funds in sufficient time to enable the Senior Creditor to pay those Taxes or fees by the due date.

10. Dealings

10.1 Dealings by Junior Creditor

Without the prior written consent of the Senior Creditor:

- (a) the Junior Creditor may not assign, create or allow to exist an Encumbrance in connection with, or otherwise deal in any way with, its Subordinated Debt or allow any interest in it to arise or be varied; and
- (b) the Company may not consent to any purported assignment, the creation of any Encumbrance or other dealing with the Subordinated Debt, or the creation or variation of any interest in it.

Any attempt to do so is ineffective and the Company agrees that:

- (i) despite any purported consent or dealing, the Company will continue to make all permitted payments in respect of the Subordinated Debt to the Junior Creditor, unless otherwise directed by the Senior Creditor; and
- (ii) the restrictions in this clause are an inherent element of the Subordinated Debt as if they were originally a component of it.

10.2 Dealings by Junior Creditor or Company

Neither the Junior Creditor, nor the Company, may assign or otherwise deal with its rights under this document or allow any interest in it to arise or be varied, without the Senior Creditor's prior written consent.

10.3 Dealings by Senior Creditor and Trust Beneficiaries

Each of the Senior Creditor and each Trust Beneficiary may assign or otherwise deal with its rights under this document in any way it considers appropriate. If the Senior

Creditor or a Trust Beneficiary does this, neither the Company nor the Junior Creditor may claim against any assignee (or any other person who has an interest in this document) any right of set off or other rights it has against the Senior Creditor or a Trust Beneficiary.

11. Termination

This document will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date;
 - (b) the Subordinated Debt Discharge Date; or
 - (c) termination by an agreement executed between the Senior Creditor, the Junior Creditor Trustee and the Company.
-

12. Notices and other communications

12.1 Form - all communications

Unless expressly stated otherwise in this document, all notices, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

12.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 12.1 ("Form - all communications"). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

12.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

12.4 When effective

Communications take effect from the time they are received or taken to be received under clause 12.5 ("When taken to be received") (whichever happens first) unless a later time is specified.

12.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 3 days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

12.6 Receipt outside business hours

Despite clauses 12.4 (“When effective”) and 12.5 (“When taken to be received”), if communications are received or taken to be received under clause 12.5 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

13. General

13.1 Realisation of distributions

If the Senior Creditor or a Trust Beneficiary receives a distribution other than in the form of money in connection with the Subordinated Debt, the Senior Creditor or Trust Beneficiary may realise it in any way it considers appropriate and the Senior Debt is not taken to be reduced by the distribution until the realisation proceeds are applied towards the Senior Debt.

13.2 Prompt performance

If this document specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all of its other obligations promptly. Time is of the essence in this document in respect of an obligation of the Company or the Junior Creditor to pay money.

13.3 Certificates

The Senior Creditor may give the Company or the Junior Creditor a certificate about an amount payable or other matter in connection with this document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

13.4 Set off

Each of the Senior Creditor and each Trust Beneficiary may set off any amount owing by the Senior Creditor or that Trust Beneficiary to the Company or the Junior Creditor (whether or not due for payment) against any amount due for payment by the Company

or the Junior Creditor (as applicable) to the Senior Creditor or that Trust Beneficiary in connection with this document.

The Senior Creditor or Trust Beneficiary may do anything necessary to effect any set off under this clause (including varying the date for payment of any amount owing by the Senior Creditor or that Trust Beneficiary to the Company or the Junior Creditor and making currency exchanges). This clause applies despite any other agreement between the parties.

A security interest created by this document over any account with the Senior Creditor or a Trust Beneficiary into which money is credited is subject to the Senior Creditor's or the Trust Beneficiary's rights under this clause. This clause also applies despite any other agreement between the parties.

13.5 Discretion in exercising rights

The Senior Creditor may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

13.6 Partial exercising of rights

If the Senior Creditor does not exercise a right, power or remedy in connection with this document fully or at a given time, the Senior Creditor may still exercise it later.

13.7 Conditions of consents, approvals or waivers

Each of the Company and the Junior Creditor agrees to comply with all conditions in any consent, approval or waiver given in connection with this document.

13.8 No liability for loss

The Senior Creditor is not liable for any loss, liability or Costs caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

13.9 Conflict of interest

The Senior Creditor may exercise its rights, powers and remedies in connection with this document even if this involves a conflict of interest or the Senior Creditor has a personal interest in their exercise.

13.10 Remedies cumulative

The rights, powers and remedies of the Senior Creditor under this document are in addition to other rights and remedies given by law independently of this document.

13.11 Other Encumbrances or judgments

This document does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Encumbrance or other right, power or remedy to which the Senior Creditor or a Trust Beneficiary is entitled; or
- (b) a judgment which the Senior Creditor or a Trust Beneficiary obtains against the Company or the Junior Creditor in connection with the Senior Debt.

The Senior Creditor or a Trust Beneficiary may still exercise its rights, powers or remedies under this document as well as under the judgment, other Encumbrance or the right, power or remedy.

13.12 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document given by the Company or the Junior Creditor:

- (a) is a continuing obligation despite any intervening payment, settlement or other thing; and
- (b) is independent of the Company's and the Junior Creditor's other obligations under this document; and
- (c) survives the termination or discharge of this document, the discharge of financial accommodation and the satisfaction of any payment or obligation secured by this document.

It is not necessary for the Senior Creditor or a Trust Beneficiary to incur expense or make payment before enforcing a right of indemnity in connection with this document.

13.13 Inconsistent law

To the extent permitted by law, this document prevails to the extent it is inconsistent with any law.

13.14 Supervening law

Any present or future law which operates to vary the obligations of the Company or the Junior Creditor in connection with this document with the result that the Senior Creditor's or a Trust Beneficiary's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

13.15 Provisions prohibited by law

If:

- (a) a law would otherwise make a provision of this document illegal, void or unenforceable; or
- (b) a provision of this document would otherwise contravene a requirement of a law or impose an obligation or liability which is prohibited by law,

this document is to be read as if that provision were varied to the extent necessary to comply with that law or, if necessary, omitted.

13.16 Variation and waiver

A provision of this document, or right created under it, may not be varied or waived except in writing signed by the party or parties to be bound.

13.17 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this document) except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this document (including preparatory steps such as negotiating with any potential transferee of the Senior Creditor's or a Trust Beneficiary's rights or other person who is considering contracting with the Senior Creditor or a Trust Beneficiary in connection with this document); or
- (b) to officers, employees, legal and other advisers and auditors of the Company, Junior Creditor, the Senior Creditor or a Trust Beneficiary; or
- (c) to any party to this document or any Related Entity of any party to this document, provided the recipient agrees to act consistently with this clause 13.17; or
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (e) any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency (except this paragraph does not permit any party to disclose any information under section 275(4) of PPSA unless section 275(7) of the PPSA applies).

Each party consents to disclosures made in accordance with this clause 13.17.

13.18 Further steps

Each of the Company and the Junior Creditor agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Senior Creditor asks and considers necessary to :

- (a) ensure that this document (including any Encumbrance created under it) is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (b) enable the Senior Creditor to apply for any registration, or give any notification, in connection with this document so that any Encumbrance created under it has the priority required by the Senior Creditor (including a registration under the PPSA for whatever collateral class the Senior Creditor thinks fit and the Company and the Junior Creditor consent to any such registration or notification and agree not to make an amendment demand); or
- (c) enable the Senior Creditor to exercise its rights in connection with this document; or
- (d) bind the Company or the Junior Creditor and any other person intended to be bound under this document; or
- (e) show whether it is complying with this document.

13.19 Supply of information

If the Senior Creditor asks, each of the Company and the Junior Creditor agrees to supply the Senior Creditor with any information about or documents affecting:

- (a) the Senior Debt; or
- (b) any Subordinated Debt; or
- (c) this document.

13.20 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) the Senior Creditor need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Senior Creditor need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this document to permit the Junior Creditor and the Senior Creditor to agree to not comply with or to exclude other provisions of the PPSA, the Senior Creditor may notify the Junior Trustee that any of these provisions is excluded, or that the Senior Creditor need not comply with any of these provisions, as notified to the Junior Trustee by the Senior Creditor; and
- (d) the Junior Creditor agrees not to exercise its rights to make any request of the Senior Creditor under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

13.21 Exercise of rights by Senior Creditor

If the Senior Creditor exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Senior Creditor states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

13.22 No notice required unless mandatory

To the extent the law permits, the Junior Creditor waives:

- (a) its rights to receive any notice that is required by:
 - (i) any provision of the PPSA (including a notice of a verification statement); or
 - (ii) any other law before a secured party or Receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Senior Creditor from giving a notice under the PPSA or any other law.

13.23 Each signatory bound

This document binds each person who signs as Company or Junior Creditor even if another person who was intended to sign does not sign it or is not bound by it.

13.24 Counterparts

This document may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

13.25 Governing law and jurisdiction

The law in force in Western Australia governs this document and, to the extent permitted by law, all matters in connection with this document including any non-contractual matters.

The parties submit to the non-exclusive jurisdiction of the courts of that place. To the extent permitted by law, the law of the Commonwealth as it applies in that jurisdiction governs a security interest provided for under this document.

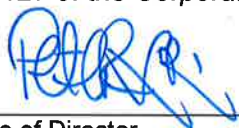
13.26 Serving documents

Without preventing any other method of service any document in a court action may be served on a party by being delivered or left at that party's address for service of notice under clause 12.3 ("Delivery").

EXECUTED as a deed between the parties to it and as a deed poll in favour of the Senior Creditor and each Trust Beneficiary, from time to time.

Executed as a deed.

Executed by Resolute Mining Limited
ACN 097 088 689 in accordance with
section 127 of the *Corporations Act*:



Signature of Director

PETER SULLIVAN

Name of Director in full



Signature of Secretary/~~other~~ Director

GREG FITZGERALD

Name of Secretary/~~other~~ Director in full

The common seal of Australian
Executor Trustees Limited ACN 007
869 794 was affixed with the authority of:

Signature of Authorised Officer

Name

Signature of Authorised Officer

Name

Executed as a deed.

Executed by Resolute Mining Limited
ACN 097 088 689 in accordance with
section 127 of the *Corporations Act*:

Signature of Director

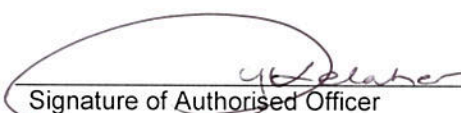
Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

The common seal of Australian
Executor Trustees Limited ACN 007
869 794 was affixed with the authority of:




Signature of Authorised Officer

Yvonne Kelaher

Name

Authorised Officer


Signature of Authorised Officer

Stuart Howard

Name

Authorised Officer