



DEED OF COMPANY ARRANGEMENT

**Millennium Minerals Limited (Administrators Appointed)
(Receivers and Managers Appointed)**

Matthew James Donnelly

Richard John Hughes

IMC Resources Investments Pte Ltd

IMC Resources Gold Holdings Pte Ltd

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DETAILS

Date 21 January 2020

Parties

Company

Name Millennium Minerals Limited (Administrators Appointed)
(Receivers and Managers Appointed)
ACN 003 257 556
Address c/- Deloitte Financial Advisory Pty Ltd, Level 7 – 9,
Brookfield Place, Tower 2, Perth, Western Australia

Administrators

Name Matthew James Donnelly and Richard John Hughes in their
capacities as the administrators and deed administrators of
the Company
Address c/- Deloitte Financial Advisory Pty Ltd, Level 7 – 9,
Brookfield Place, Tower 2, Perth, Western Australia

Proponent

Name IMC Resources Investments Pte Ltd incorporated in
Singapore with registration number 201027174C
Address 9 Temasek Boulevard; #11-01 Suntec Tower Two;
Singapore 038989

IMC Gold

Name IMC Resources Gold Holdings Pte Ltd incorporated in
Singapore with registration number 201115162Z
Address 9 Temasek Boulevard; #11-01 Suntec Tower Two;
Singapore 038989

BACKGROUND

- A The Company owns and operates the Nullagine Gold Operation, approximately 185kms north of Newman.
- B On 24 November 2019 the Board of the Company resolved to appoint Matthew James Donnelly and Richard John Hughes as voluntary administrators of the Company pursuant to section 436A of the Corporations Act (Cth) (the **Act**).
- C The Proponent is the Company's largest secured creditor and, together with the Proponent's associates, also the Company's largest equity holder.
- D The Proponent, via instruction to the security trustee of the secured facilities, (namely IMC Gold as security trustee for the Millennium Minerals Security Trust), appointed Richard Scott Tucker and John Allan Bumbak of KordaMentha as Receivers and Managers to the Company (**Receivers**).
- E On 10 December 2019 the Administrators applied to the Court to extend the convening period until 10 January 2020 pursuant to section 439A(6) of the Act. The Court made the orders on 12 December 2019.

F On 17 January 2020, at the Meeting pursuant to section 439A of the Act, the creditors of the Company passed a resolution authorising the Company to execute a deed of company arrangement as proposed by the Proponent.

G This Deed has been prepared in compliance with the Administrators' obligations pursuant to section 444A(3) of the Act.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Deed the following definitions apply unless the context requires otherwise:

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

Administration Liabilities means:

- (a) any debts or other obligations and liabilities properly incurred by the Company for which the Administrators are liable (whether as voluntary administrators of the Company or administrators of this Deed) and which were properly incurred during the period from the Appointment Date to the Termination Date;
- (b) any debts or other obligations and liabilities properly incurred by the Administrators (whether as voluntary administrators of the Company or administrators of this Deed) during the period from the Appointment Date to the Termination Date; and
- (c) without limitation to paragraphs (a) and (b) above:
 - (i) any debts to which the statutory indemnity under section 443D of the Act applies; and
 - (ii) any amounts in respect of which the Administrators are entitled to exercise a lien whether in law, equity or under section 443F of the Act on the property of the Company.

Administration Period means the period commencing on the Appointment Date and ending on the Execution Date.

Administrators means Matthew James Donnelly and Richard John Hughes, each of Deloitte Financial Advisory Pty Ltd, in their capacities as joint and several administrators of the Company or in their capacity as joint and several administrators of this Deed, as the case may be.

Administrators' Remuneration means the remuneration and other fees to which the Administrators are lawfully entitled (under section 449E of the Act, division 60 of the IPS, this Deed or otherwise) by reason of the performance of their duties as voluntary administrators and/or deed administrators under this Deed, during the period from the Appointment Date to the Termination Date (subject to the limits on remuneration and other fees in clause 14.1).

Admitted Claim means a Claim by a Creditor (other than a Non-Participating Creditor) that is admitted to proof (wholly or in part) by the Administrators (whether as voluntary administrators of the Company or administrators of this Deed) or the Trustees (as the case may be) against the

Company (but excluding any Insurance Claim which is not released by this Deed due to clause 7.8).

Appointment Date means 24 November 2019.

ASIC means the Australian Securities and Investments Commission.

ASIC Relief means all relief required to be granted by the Australian Securities and Investments Commission pursuant to the Act in order to enable the transfers of fully paid ordinary shares in the Company pursuant to the Transfer Orders to take effect without beaching the Act (including relief from section 606 of the Act).

Available Property has the meaning given in clause 3.6.

Board means the board of directors of the Company as constituted from time to time.

Business Day means a day that is not a Saturday, a Sunday, a public holiday or bank holiday in Western Australia.

Claim means a debt payable by, or claim against, the Company (based in contract, tort, statute or otherwise, present or future, certain or contingent, ascertained or sounding only in damages), being a debt or claim (denominated in Australian dollars or, if denominated in a different currency, converted into Australian dollars at the Published FX Rate) the circumstances giving rise to which occurred on or before the Appointment Date that would be admissible to proof against the Company in accordance with Division 6 of Part 5.6 of the Act if the Company were to be wound up.

Company means Millennium Minerals Limited ACN 003 257 556 (Administrators Appointed) (Receivers and Managers Appointed).

Conditions Precedent has the meaning given in clause 17.1.

Contribution means the amount of \$6.2 million to be paid by the Proponent or its nominee to the Company via the Receivers, which the Company will then pay to the Trustees and which forms part of the Trust Fund.

Creditor means any person who has a Claim against the Company.

Creditors' Trust means a trust established as referred to in clause 3.1 of this Deed, and named the Millennium Minerals Limited Creditors' Trust, being subject to the Trust Deed.

Court has the meaning given by section 58AA of the Act.

Deed means this deed of company arrangement.

Deed Period means the period commencing on the Execution Date and ending on the Termination Date.

Deed Poll means a deed poll to be signed by the Company, releasing (with effect upon Effectuation) the claims of the Company against the November Payees in relation to the November Payments.

Effectuation means effectuation of this Deed in accordance with clauses 17.1 and 17.2.

Employees means the persons employed by or determined by a Court to be employed by the Company at the Appointment Date.

End Date means 30 April 2020 or, such later date as is mutually agreed by the Administrators and the Proponent.

Enforcement Process has the same meaning as in section 9 of the Act.

Execution Date means the date this Deed is executed by all parties to it.

FIRB means the Australian Foreign Investment Review Board.

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.

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

IMC Gold means IMC Resources Gold Holdings Pte Ltd incorporated in Singapore with registration number 201115162Z.

Insurance Claim means any liability of the Company, covered by insurance policies taken out prior to the Appointment Date.

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

IPS means the *Insolvency Practice Schedule (Corporations)* which appears as Schedule 2 to the Act.

Lessor means any person who is the legal or beneficial owner of property in the possession of the Company as at the Execution Date that is leased or hired by the Company.

Meeting means the second meeting of the Creditors of the Company held on 17 January 2020.

New Directors has the meaning given in clause 4.2.

Non-Participating Creditors means:

- (a) the Proponent, IMC Gold and any Creditor who is nominee or a Related entity of the Proponent or IMC Gold; and
 - (b) Employees of the Company as of the date of Effectuation,
- (or any one or more of them).

November Payment means a payment received by a Creditor from the Company on 25 November 2019.

November Payees means those Creditors who received a November Payment.

November Repayers means those November Payees who, upon demand by the Company, have repaid to the Company the November Payments received by them.

Officer means any person who, by reason of section 9 of the Act, is an 'officer' of the Company, and includes, without limitation, a director.

Owner means any person who is the legal or beneficial owner of property used or occupied by, or in the possession of, the Company at the Execution Date.

Participating Creditors means all Creditors who have an Admitted Claim (excluding, for the avoidance of doubt, Non-Participating Creditors).

Pool A Creditors means each of the following parties who have voted in favour of this Deed at the Meeting:

- (a) GBF Number 5 Pty Ltd ACN 601 374 029;
- (b) Redline Drill & Blast Pty Ltd ACN 151 437 802;
- (c) Chichester Metals Pty Ltd ACN 109 264 262;
- (d) Rivet Mining Services Pty Ltd ACN 119 899 446;
- (e) Cater Care Services Pty Ltd ACN 109 553 504; and
- (f) UON Pty Ltd ACN 099 963 354.

Pool B Creditors means Participating Creditors, each of whom has total Admitted Claims admitted for an amount of less than \$15,000 (but excluding any such Participating Creditor who the Administrators (whether as voluntary administrators of the Company or administrators of this Deed) or the Trustees (as the case may be) reasonably consider has unilaterally reduced any Claim for the purpose of seeking to be categorised as a Pool B Creditor).

Property means a legal or equitable estate or interest in property of any description.

Proponent means IMC Resources Investments Pte Ltd incorporated in Singapore with registration number 201027174C.

Priority Creditors means Participating Creditors who would have had a right or entitlement to a priority for payment pursuant to Section 556(1) of the Act (including (for the avoidance of doubt) Participating Creditors who were employees of the Company but ceased to be employees of the Company prior to the date of Effectuation).

Published FX Rate means the opening inward remittances carded foreign exchange rate issued by the Commonwealth Bank of Australia on the Appointment Date.

Receivers has the meaning given in the Background.

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

Related entity has the same meaning as prescribed by section 9 of the Act.

Resolution means a resolution passed at a meeting of the Creditors of the Company convened in accordance with clause 16 of this Deed.

Section 439C Resolution means the resolution of the Creditors of the Company passed at the Meeting to the effect that the Company execute this Deed.

Secured Creditor means a Creditor (excluding Non-Participating Creditors) with a valid and properly registered financing statement on the Personal Property Security Register under the *Personal Property Securities Act 2009* (Cth) in respect of a security interest it has in the property of the Company.

Security Interest means a valid security interest as defined in the *Personal Property Securities Act 2009* (Cth) to the extent that the *Personal Property Securities Act 2009* (Cth) applies to it.

Superannuation Contribution means a contribution payable by the Company to a fund for the purposes of making provision for, or obtaining, superannuation benefits for an Employee, or for dependants of such an Employee.

Superannuation Guarantee Charge means a charge imposed by the *Superannuation Guarantee Charge Act 1992* (Cth).

Termination Date means the date on which this Deed is terminated in accordance with clause 17 of this Deed.

Transfer Orders has the meaning given in clause 5.1.

Trust Deed means the deed, in the form or substantially in the form of Attachment 1 to this Deed, under which the Trustees are obliged to hold the Trust Fund on certain trusts for the Participating Creditors, as set out therein.

Trust Fund has the meaning given in clause 3.6.

Trustees means each of the Administrators, in accordance with clause 3.3.

WPH means Western Plant Hire (WA) Pty Ltd ACN 091 713 218.

Interpretation

1.2 In this Deed, unless the context otherwise requires:

- (a) month means a calendar month;
- (b) headings are for convenience only and do not affect the interpretation of this Deed;
- (c) references to sections, sub-sections and paragraphs of the Act are references to sections, sub-sections and paragraphs of the *Corporations Act 2001* (Cth);
- (d) references to clauses are references to clauses of this Deed;
- (e) the singular includes the plural and vice versa;
- (f) words importing a gender include each other gender;
- (g) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (h) a reference to any thing includes a part of that thing;

- (i) a reference to any statute, regulation, proclamation, ordinance or by-law includes a reference to each statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes a reference to each regulation, proclamation, ordinance and by-law issued under that statute;
- (j) a reference to a document includes a reference to an amendment or supplement to, or replacement or novation of, that document;
- (k) a reference to a party, clause, paragraph, schedule, appendix or annexure is a reference to a party, clause, paragraph, schedule, appendix or annexure to or of this Deed;
- (l) a reference to a party to any document includes a reference to that party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (m) a reference to an amount, a dollar or \$ is a reference to Australian currency;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it;
- (o) a covenant or agreement on the part of two or more persons binds them jointly and individually; and
- (p) words such as 'includes' and 'including' are not to be construed as words of limitation and do not limit what else might be included in any relevant clauses.

Other rules of interpretation

1.3 In this Deed, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this Deed is given by them or for their benefit jointly and severally;
- (c) **(Business Days)** if:
 - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
 - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (d) **(inconsistency within document)** if a clause of this Deed is inconsistent with a schedule or annexure of this Deed, the clause prevails to the extent of the inconsistency.

Prescribed Provisions

- 1.4 Except for paragraphs 3(c), 10 and 11, all of the prescribed provisions contained in Schedule 8A of the Regulations apply to and are incorporated into this Deed.
- 1.5 If there is any inconsistency between the terms of this Deed and the prescribed provisions, then the provisions of this Deed shall prevail to the extent of such inconsistency.

Purpose and objects

- 1.6 The purpose and objects of this Deed are to provide for the business, property and affairs of the Company to be administered in a way that:
- (a) complies with the Act;
 - (b) provides Participating Creditors of the Company with a better return than they would otherwise receive in liquidation;
 - (c) facilitates an orderly and cost effective transition of the Company's operations to the Proponent (or the Proponent's nominee) in a manner that minimises disruption and maximises the return available to Participating Creditors; and
 - (d) minimises the holding costs and ongoing expenses in relation to the Company including further Administrators' and Receivers' fees and other costs associated with external administration.

2. COMMENCEMENT OF THIS DEED

- 2.1 This Deed will operate according to its terms on and from the Execution Date.

Interim effect

- 2.2 Insofar as a person would be bound by this Deed if it had already been executed, the person must not, at any time after the date of the Meeting but before the Execution Date, do anything inconsistent with the terms of this Deed, except with the leave of a Court.

3. ESTABLISHMENT OF CREDITORS' TRUST AND CONTRIBUTION PAYMENT

Creditors' Trust

- 3.1 A Creditors' Trust will be established for the purposes of this Deed for and on behalf of all Participating Creditors, and named Millennium Minerals Limited Creditors' Trust, in the form or substantially in the form of Attachment 1 to this Deed, under which the Trustees are obliged to hold the Trust Fund on certain trusts for the Participating Creditors, as set out therein.
- 3.2 Non-Participating Creditors will not participate in, or be entitled to, any distribution from the Creditor's Trust.
- 3.3 The Administrators are to be the trustees of the Creditors' Trust (**Trustees**), which the Administrators will establish by no later than when all Conditions Precedent have been satisfied (or waived to the extent permitted by clause 17.5) other than the Conditions Precedent in clauses 17.1(d), 17.1(e) and 17.1(f).

- 3.4 The Trustees' role will be to act as trustees under the Trust Deed as set out in the Trust Deed.
- 3.5 The Trustees shall have the powers specified in the Trust Deed, as provided by the general law and by the *Trustees Act 1962* (WA).
- 3.6 The trust fund to be held by the Trustees pursuant to the Creditors' Trust in accordance with the Trust Deed will comprise the following property (**Available Property**):
- (a) the Contribution; and
 - (b) any residual cash held by the Administrators on the date of Effectuation (after the repayments are made by the Administrators pursuant to clause 17.2(a)),

(Trust Fund).

- 3.7 The Trust Fund shall constitute the whole of the property available for distribution to Participating Creditors.
- 3.8 The Participating Creditors will become beneficiaries in the Creditors' Trust and will have a right to prove in the Creditors' Trust after the Effectuation, subject to the Trust Deed.

Causes of action and claims by the Company

- 3.9 Any claim or cause of action identified by the Company, the Administrators or the Receivers, being a cause of action in favour of the Company or claim by the Company, including but not limited to a claim or cause of action:
- (a) against any third parties (including in relation to the November Payments);
 - (b) pursuant to section 437D of the Act; or
 - (c) against any directors or officers of the Company,

will in each case remain with the Company and will not form part of the Trust Fund or Available Property. Such causes of action and claims are exclusively available to the Company and are an asset of the Company (including, except to the extent they become released by the Deed Poll, after Effectuation). This extends to the benefit of any causes of action or claims by the Company which pre-appointment insurances may respond to.

Contribution Payment

- 3.10 The Proponent (or its nominee) will pay the Contribution to the Company via its Receivers, payable by no later than when all Conditions Precedent have been satisfied (or waived to the extent permitted by clause 17.5) other than the Conditions Precedent in clauses 17.1(e) and 17.1(f).
- 3.11 On Effectuation of this Deed, the payment of the Contribution will be deemed a loan from the Proponent (or its nominee) to the Company.
- 3.12 Upon receipt of the Contribution, the Company will pay the Contribution to the Trustees to form part of the Trust Fund.

4. CONTROL OF THE COMPANY

4.1 During the Deed Period:

- (a) each director of the Company cannot perform or exercise, and must not purport to perform or exercise, a function or power as an officer of the Company, except as provided for by this Deed or otherwise with the Administrators' prior written approval;
- (b) each director of the Company must cooperate with, and assist, the Administrators in the performance of their obligations under this Deed, including by providing the Administrators with such information about the business, property affairs and financial circumstances of the Company as the Administrators reasonably require;
- (c) each director of the Company must cooperate with and assist the Administrators in the performance by the Administrators of their obligations under this Deed;
- (d) each director of the Company and the Administrators must use their best endeavours to ensure the satisfaction of the Conditions Precedent;
- (e) the directors of the Company must ensure that all documents in relation to the Company bear the notation 'Subject to Deed of Company Arrangement';
- (f) to the maximum extent permitted by law, the Administrators are not liable for any actions of the directors of the Company or the Company; and
- (g) the Administrators shall have the power to appoint and remove Directors on written notice to the Company, and must do so in accordance with the directions of the Proponent (subject to such directions being reasonable, except that, subject to compliance with applicable laws and duties, the obligations under this Deed for the Administrators to appoint the New Directors are mandatory).

Nomination of New Directors

- 4.2 As soon as practicable after execution of this Deed, the Proponent will nominate, by written notice to the Administrators, a new Board comprising of at least three directors to be appointed to the Company (**New Directors**).

Books and records

- 4.3 During the Deed Period, the Administrators are entitled to inspect and obtain copies of all of the books and records of the Company and enter upon any premises occupied or being used by the Company or where such books and records are kept to inspect or obtain copies of them.

5. TRANSFER OF SHARE CAPITAL

Application to the Court

- 5.1 The Administrators shall make, as soon as reasonably practicable but by no later than five Business Days after the Execution Date, an application to the Court pursuant to section 444GA of the Act approving the transfer to the Proponent and/or the Proponent's nominees of all fully paid ordinary shares in the Company (which are not already registered in the name of the Proponent or in other names specified by the Proponent from time to time) (**Transfer Orders**).

5.2 From the Execution Date, all parties to this Deed shall use their best endeavours to obtain the Transfer Orders.

6. FIRB AND REGULATORY APPROVAL

6.1 The Proponent (or, in the case of the Transfer Orders and ASIC Relief, the Administrators and the Company) will make any applications to any government or regulatory body to obtain FIRB or other regulatory approvals needed to give effect to the transactions contemplated by the this Deed, and all parties agree to use their best endeavours to obtain such orders.

7. SCOPE OF THIS DEED AND MORATORIUM

Deed binds all persons

7.1 Subject to clause 8 of this Deed, but without limiting the operation of the Act, this Deed binds:

- (a) in accordance with section 444D of the Act, all persons having a Claim against the Company;
- (b) in accordance with section 444G of the Act, the Company, the Administrators and the members and Officers of the Company; and
- (c) any:
 - (i) Owner;
 - (ii) Lessor; and/or
 - (iii) Secured Creditor,

who voted in favour of the Section 439C Resolution.

Restrictions of persons bound

7.2 Subject to clause 8 of this Deed, during the Deed Period, a person who has a Claim against the Company must not:

- (a) make an application for an order to wind up the Company or take, or concur in taking, any step to wind up the Company;
- (b) proceed with an application to wind up the Company made before this Deed became binding on that person;
- (c) begin or continue any legal proceeding or arbitration against the Company or in relation to any of its Property, except with the leave of a Court and in accordance with such terms (if any) as the Court imposes;
- (d) begin or proceed with an Enforcement Process in relation to the Property of the Company unless with the leave of a Court and in accordance with such terms (if any) as the Court imposes;
- (e) make or proceed with an application for a court appointed receiver, receiver and manager, or a provisional liquidator to the Company or any of its Property; or

- (f) take or continue any action whatsoever against the Company to seek to recover any part of its Claim other than pursuant to this Deed.

Moratorium

7.3 Until the date of Effectuation:

- (a) the provisions in sections 440A, 440B and 440D will continue to apply as if the Company remained in voluntary administration; and
- (b) a moratorium will apply to all Claims of Creditors (other than Non-Participating Creditors) which will be stayed and no step, action or proceeding may be taken in respect of such Claim against the Company.

Superannuation Claims

7.4 The Administrators or the Trustees must determine that the whole of a debt by way of a Superannuation Contribution is not an Admitted Claim if:

- (a) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
- (b) the Administrators or the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.

7.5 The Administrators or the Trustees must determine that a particular part of a debt by way of a Superannuation Contribution is not an Admitted Claim if:

- (a) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
- (b) the Administrators or the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

Insurance Claims

7.6 Subject to clauses 7.7 and 7.8, the Company shall, with effect from the date of Effectuation, be released from all Insurance Claims.

7.7 On receipt by the Company, from an insurer, of any monies relating to an Insurance Claim:

- (a) such monies shall (after deduction of all costs, fees and expenses of and incidental to recovering those monies incurred by the Company) be paid by the Company to the claimant of that Insurance Claim;
- (b) in the event that there are any monies remaining after the claimant of that Insurance Claim has been paid, the Company shall be entitled to retain those funds;
- (c) any such Insurance Claim shall be limited to and satisfied by the application of the monies in accordance with clause 7.7(a) and not be paid from the Trust Fund.

7.8 To the extent that the Company receives amounts in respect of any Insurance Claim from insurers, that Insurance Claim is not released by this Deed.

8. SECURED CREDITORS, NON-PARTICIPATING CREDITORS, OWNERS, LESSORS, POOL A CREDITORS, WPH AND NOVEMBER REPAYORS

Secured Creditors

- 8.1 Subject to section 444F of the Act, nothing in this Deed shall in any way restrict the right of any Secured Creditor who did not vote in favour of the Section 439C Resolution or did not otherwise consent to be bound by the terms of this Deed from lawfully enforcing its Security Interest, subject to any proper entitlement of the Administrators to assert a lien.

Non-Participating Creditors

- 8.2 The Claims of Non-Participating Creditors will not be released or compromised by this Deed.
- 8.3 Non-Participating Creditors will not participate in the Creditors' Trust.
- 8.4 Non-Participating Creditors are not entitled to prove their Claim in the Creditors' Trust. Claims of the Non-Participating Creditors will otherwise be uncompromised and remain on the balance sheet of the Company, including after Effectuation of this Deed.
- 8.5 However, the Proponent and IMC Gold agree that, with effect on the date of Effectuation of this Deed, but conditional on that Effectuation occurring, they defer the Company's obligation to pay their Claims (and the loan repayment obligations under clauses 3.11 and 17.2(k)) until the first anniversary of the date on which Effectuation occurs (except that the obligation for the Company to pay those Claims and loan repayment obligations would trigger earlier if and when a breach of any of the Company's contractual obligations to one or both of the Proponent or IMC Gold occurs).

Owners and Lessors

- 8.6 Each Owner and Lessor bound by this Deed acknowledges and agrees that the Administrators have not adopted, ratified or in any manner become personally bound under any agreement between the Company and any Owner or Lessor as a result of:
- (a) any discussions or correspondence of the Administrators with any Owner or Lessor;
 - (b) the use, occupation or possession of the Property of the Owner or Lessor by the Company during:
 - (i) the Administration Period; or
 - (ii) the Deed Period; or
 - (c) any other act, matter or thing done or omitted to be done by the Administrators or the Company.

Owners and Lessors rights not otherwise affected

- 8.7 This Deed does not affect a right that an Owner or Lessor of Property has in relation to that Property unless:
- (a) the Court grants any equitable relief;

- (b) this Deed so provides in relation to that Owner or Lessor who voted in favour of the Section 439C Resolution; or
- (c) the Court orders under section 444F of the Act or otherwise.

WPH

- 8.8 As a consequence of WPH voting in favour of this Deed, the Company has entered into a deed of release with WPH pursuant to which, subject to the terms of that deed of release, the Company releases claims which it may have against WPH including but not limited to those arising out of WPH demobilising from the Company's site on or about 22 November 2019.

Pool A Creditors

- 8.9 The Company will use its best endeavours, to the extent that it considers it commercial to do so, to engage the services of the Pool A Creditors, in the event of the recommencement of operations by the Company after the Effectuation of this Deed.

November Repayors

- 8.10 On the date of Effectuation of this Deed, the Deed Administrator will repay (in accordance with clause 17.2(a)) to November Repayors those November Payments which were repaid by the November Repayors to the Company.

9. THE ADMINISTRATORS

Deed Administrators

- 9.1 The Administrators are joint and several deed administrators for the purpose of this Deed, and accept their appointment as administrators of this Deed.

Administer the Deed

- 9.2 The Administrators will administer this Deed and have all the powers, functions and duties conferred on them by this Deed and the Act during the Deed Period or until the Administrators retire or are removed from office in accordance with the Act.

Agents of the Company

- 9.3 The Administrators are the agents of the Company in so far as they exercise their powers, obligations, functions and duties in administering this Deed.

Administrators not personally liable

- 9.4 Subject to any relevant provisions of the Act, in the performance or exercise of the Administrators' powers, obligations, functions and duties under this Deed, the Administrators will not be personally liable for:
- (a) any debts, liabilities, obligations or Claims of any kind whatsoever incurred by or on behalf of the Company whether before, during or after the period of the operation of this Deed; and

- (b) any loss or damage of any kind whatsoever caused by or as a result of any act, default or omission of the Administrators or any person or body corporate acting on their behalf in exercising their powers, obligations, functions or duties under this Deed.

Survival of clause

- 9.5 Clause 9.4 will continue to apply despite termination of this Deed.

Joint and several Administrators

- 9.6 The functions and powers of the Administrators may be performed or exercised by any one of them, or both of them together.
- 9.7 The rights, benefits and obligations of the Administrators are joint and several.

10. POWERS OF THE ADMINISTRATORS

General responsibilities and powers

- 10.1 The powers of the Administrators are as set out in this Deed and in the Act, to the extent that they are applicable.
- 10.2 During the Deed Period, and notwithstanding clause 1.4, the Administrators will have all of the powers set forth in paragraph 2 Schedule 8A of the Regulations.
- 10.3 During the Deed Period, the Administrators' powers shall also include (without limitation) the power:
 - (a) to remove from office a director of the Company and appoint a person as a director of the Company, whether to fill a vacancy or not;
 - (b) to convene and hold meetings of the Creditors and members of the Company, for any purpose authorised by the Administrators;
 - (c) to appoint a solicitor, accountant, or other professionally qualified person to assist the Administrators;
 - (d) to permit any person authorised by the Administrators to operate any account in the name of the Company;
 - (e) to liaise with any government or regulatory body (including ASIC) for any purpose associated with the business or affairs of the Company;
 - (f) to do all things or execute all documents or deeds in the name of and on behalf of the Company;
 - (g) to execute and do all things reasonably necessary or convenient to be done to give effect to this Deed;
 - (h) to do anything that is incidental to exercising a power set out in this Deed or the Act;
 - (i) to bring, prosecute and defend in the name and on behalf of the Company, or in the name of the Administrators, any action, suits or proceedings against any former director of the Company; and

- (j) to engage the services of their partners and employed staff of and consultants to their firm, Deloitte Financial Advisory Pty Ltd and associated entities, to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed.

Discretion of the Administrators

- 10.4 It is acknowledged and agreed that the Administrators shall have an absolute discretion as to the manner in which their powers and duties are exercised and performed, including as to time.

Overlap of Administrators' and Officers' powers

- 10.5 Where the powers of the Administrators and Officers overlap, the Administrators' powers operate to the exclusion of the Officers' powers, unless the Administrators grant their prior consent in writing.

11. REMUNERATION, COSTS, CHARGES AND EXPENSES OF THE ADMINISTRATORS

Calculation of Remuneration

- 11.1 Subject to the approval of the Creditors, or a Court pursuant to section 449E of the Act or division 60 of the IPS (and subject to clause 11.2 and to the limits on remuneration in clause 14.1), the remuneration of the Administrators, their partners and staff will be calculated on a time basis at the hourly rates usually charged by the Administrators, their partners and staff for insolvency related matters together with rates charged by other service lines in accordance with the hourly rates charged for such service lines.
- 11.2 The Administrators may only draw the Administrators' Remuneration and the Administration Liabilities from:
 - (a) the funds held by the Administrators from time to time, subject to the limits in clause 14.1 (and the parties agree, for the avoidance of doubt, that the dollar value limits in clauses 14.1(a) and 14.1(b) apply to limit drawings from those funds to pay the Administrators' Remuneration and the Administration Liabilities); or
 - (b) the Trust Fund in accordance with clause 14.1.
- 11.3 The Administrators are not entitled to any reimbursement (or other drawing) from the funds held by them from time to time, or the Trust Fund or other indemnity in relation to any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred arising out of, in connection with or incidental to:
 - (a) any fraudulent or negligent act or omission by him or her;
 - (b) any act or omission done or omitted to be done by him or her:
 - (i) dishonestly; or
 - (ii) in contravention of any provision of sections 180 to 184 inclusive of the Act; or

- (c) any act done by him or her in contravention of the provisions of this Deed or the Act.

12. ADMINISTRATORS' LIABILITIES

Liabilities of the Administrators

- 12.1 Subject to the Act, the Administrators shall not be personally liable for:
- (a) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Administrators in administering this Deed or exercising their duties and obligations under this Deed;
 - (b) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Company; or
 - (c) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any Officer, shareholder of the Company or Creditor.

Part 5.3A of the Act

- 12.2 Nothing in this Deed affects or limits the operation of Subdivision B of Division 9 of Part 5.3A of the Act.

Survival Clause

- 12.3 This clause 12 will continue to apply despite termination of this Deed.

Misconduct

- 12.4 No person, including without limitation the Administrators, shall be entitled to any drawing from the Trust Fund or other indemnity in respect of any liability arising out of any fraudulent, dishonest or negligent act or omission on their part.

13. MAKING OF CLAIMS BY CREDITORS

Making of asserted Claims

- 13.1 The Trust Deed governs the process of Creditors (other than Non-Participating Creditors) seeking to formally prove their Claims.
- 13.2 If they consider that it is in the best interests of the Company or the Creditors to do so, the Administrators may adjudicate upon Claims of Creditors, applying the provisions of the Trust Deed in this regard, *mutatis mutandis*.

Set-off

- 13.3 Where there have been mutual credits, mutual debts or other mutual dealings between the Company and a Creditor (other than a Non-Participating Creditor):

- (a) an account must be taken of what is due from the one party to the other in respect of those mutual dealings;
- (b) the sum due from one party is to be set off against any sum due from the other party;
- (c) only the balance of the account (if any) in favour of that Creditor as against the Company is to be released;
- (d) only the balance of the account (if any) in favour of the Company as against that Creditor, is payable by that Creditor to the Company.

13.4 A Creditor (other than a Non-Participating Creditor) will not be entitled to claim the benefit of any set-off if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, it had notice of the fact that the Company was insolvent.

14. PRIORITY OF DISTRIBUTIONS

Application of Available Property

14.1 In accordance with the terms of the Trust Deed, the Trustees must apply the Available Property from the Trust Fund in the following order of priority:

- (a) firstly:
 - (i) to the extent not already paid, to the Administrators' professional fees incurred from 4 December 2019 up to the Execution Date pursuant to section 443D of the Act and the provisions of the IPS and IPR, subject to an aggregate maximum amount of \$250,000 (excluding GST) inclusive of amounts already paid;
 - (ii) to the extent not already paid during the Deed Period, up to a maximum amount of \$290,000 (excluding GST) inclusive of amounts already paid during the Deed Period, for legal costs (including, without limitation, counsel fees and disbursements) arising from the Company's external administration; and
 - (iii) to the extent not already paid, the costs of expert reports and other external liabilities of the Administrators, in each case as reasonably incurred and arising from the Company's external administration;
- (b) secondly:
 - (i) as to:
 - (A) to the extent not already paid during the Deed Period, Administrators' professional fees in their capacities as deed administrators under this Deed; and
 - (B) Trustees' professional fees and disbursements in their capacities as Trustees pursuant to the Trust Deed,

subject to an aggregate maximum amount of \$250,000 (excluding GST) inclusive of amounts already paid during the Deed Period;

- (ii) to the extent not already paid during the Deed Period, for legal costs (including, without limitation, counsel fees and disbursements) for the Company's external administration, the deed administration under this Deed and the Creditors' Trust, any unused portion of the maximum amount allocated for legal costs under clause 14.1(a)(ii) above (except that those properly and reasonably incurred legal costs will not be capped to the extent that the application to the Court referred to in clause 5.1 (pursuant to section 444GA of the Act) is contested by a third party appearing before the Court); and
 - (iii) to the extent not already paid, the costs of expert reports and other external liabilities of the Administrators in their capacities as deed administrators under this Deed, in each case as reasonably incurred and arising from the deed administration;
- (c) thirdly, to the Admitted Claims of Priority Creditors;
 - (d) fourthly, pro rata between Pool A Creditors up to a maximum amount of \$1.2 million of their Admitted Claims;
 - (e) fifthly, pro rata between Pool B Creditors up to a maximum amount of \$0.55 million of their Admitted Claims;
 - (f) sixthly, pro rata between remaining Participating Creditors up to a maximum amount of 2 cents for every dollar of their aggregated Admitted Claims;
 - (g) seventhly and finally, to the Company.

14.2 For the avoidance of doubt, Non-Participating Creditors will not be entitled to a distribution under the Trust Deed.

Distribution from Creditors' Trust

14.3 The Available Property will be distributed from time to time by the Trustees in accordance with the Trust Deed.

14.4 The terms of section 556, 560 and 561 of the Act shall apply as if references to 'liquidator' were references to the 'Trustees', references to 'winding up' were references to the 'Creditors' Trust' and with such other modifications as are necessary to give effect to the terms of this Deed.

14.5 For the avoidance of doubt, the maximum limits on Trustees' professional fees and disbursements in clause 14.1(b)(i)(B) and on legal costs in relation to the Trust in clause 14.1(b)(ii) do not apply to reasonably incurred Trustees' professional fees and disbursements (including legal fees) arising from a Creditor appealing against the Administrators' or Trustees' adjudication upon that Creditor's proof of debt.

November Payments

14.6 Notwithstanding the other provisions of this Deed, for the purpose of:

- (a) the Administrators (whether as voluntary administrators of the Company or administrators of this Deed) or the Trustees adjudicating which Claims are Admitted Claims and their quantum; and

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- (b) determining which sub-clause in clause 14.1 consequently applies to a given Participating Creditor,

the aggregate Admitted Claims of a given Participating Creditor who is a November Payee are deemed to be reduced by the total November Payment which was received by that Participating Creditor.

15. RELEASE AND EXTINGUISHMENT OF CLAIMS

Release of Claims

- 15.1 All Creditors (other than Non-Participating Creditors) having a Claim in respect of the Company accept their right (subject to the terms of the Trust Deed) to prove under the Trust Deed in accordance with its terms in full and final satisfaction and complete discharge of any Claims.

Release documentation

- 15.2 If the Administrators request Creditors to do so, each Creditor (other than Non-Participating Creditors) must, within seven days after the making of the request, execute and deliver to the Company a written release of the relevant Creditor's Claim (other than Non-Participating Creditors) in the form the Administrators reasonably require to fulfil the arrangement effected by this Deed, save to say that any such release will not take effect unless and until Effectuation occurs.
- 15.3 Each Creditor (other than Non-Participating Creditors) irrevocably appoints the Administrators to be the attorney of that Creditor with full power for and on behalf of and in the name of that Creditor to do all acts and things and sign and execute all deeds, documents and notices as may be necessary or convenient for the purpose of the execution and delivery to the Company of the written release of that Creditor's Claim.

Abandonment by creditors who do not prove

- 15.4 A Creditor (other than Non-Participating Creditors) will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) that the Creditor has to the Trust Fund that:
 - (a) are not the subject of a proof lodged with the Trustees in the form required by the Trustees prior to the declaration of a final dividend; or
 - (b) have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within 21 days after the date of notification of the rejection to that Creditor.
- 15.5 For the avoidance of doubt, the release contained in clause 15.1 is deemed to apply to a Creditor (other than a Non-Participating Creditor) who is taken to have abandoned their Claim as if they had received a distribution from the Trust Fund pursuant to the terms of this Deed.

No application to Non-Participating Creditors

- 15.6 For the avoidance of doubt, this clause 15 does not apply to Non-Participating Creditors.

16. MEETINGS

Convening meetings

- 16.1 The Administrators may at any time convene a meeting of Creditors and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the IPR applies, with such modifications as are necessary, to meetings of the Creditors as if the references to the liquidator, the liquidator or provisional liquidator, the liquidator, provisional liquidator or chairman, or a liquidator, provisional liquidator or trustee for debenture holders, as the case may be, were references to the Administrators.
- 16.2 Notwithstanding clause 16.1 but subject to compliance with applicable laws and duties, the Administrators will only convene a meeting of Creditors or Participating Creditors, for the purpose of terminating this Deed, after the Administrators receive the prior written consent of the Proponent.

17. EFFECTUATION AND TERMINATION OF DEED

Effectuation of Deed

- 17.1 Subject to this clause 17, this Deed will effectuate immediately upon the date which is 2 Business Days after each of the following conditions precedent to Effectuation are satisfied (or waived to the extent permitted under clause 17.5):
- (a) the execution of the Deed Poll by the Company;
 - (b) the Administrators have issued notices to the holders of all options and performance rights on issue in the Company, cancelling, with effect as at the date of those notices, those options and performance rights for nil consideration;
 - (c) the execution of the Trust Deed;
 - (d) establishment of the Creditors' Trust;
 - (e) payment of the Contribution by the Proponent (or the Proponent's nominee) to the Company;
 - (f) payment of the Contribution by the Company to the Trustees to form part of the Trust Fund;
 - (g) the obtaining of all requisite regulatory approvals required to permit the transfers of the relevant fully paid ordinary shares in the Company pursuant to the Transfer Orders (including the ASIC Relief);
 - (h) the Court makes the Transfer Orders pursuant to 444GA of the Act;
 - (i) the Administrators transfer the shares to the Proponent or the Proponent's nominee pursuant to the Transfer Orders and the terms of this Deed;
 - (j) the obtaining of all and any FIRB or other regulatory approvals needed to give effect to the transactions contemplated by this Deed; and
 - (k) the New Directors are appointed,

(together the **Conditions Precedent**).

17.2 Upon the date of Effectuation:

- (a) the Administrators will repay to the November Repayers those November Payments which were repaid by the November Repayers to the Company;
- (b) the Available Property which has not already been paid to the Trustees, is paid by the Administrators to the Trustees to form the balance of the Trust Fund;
- (c) the Company will be released from external administration;
- (d) this Deed will terminate (except that clauses 3.7, 3.8, 3.9, 3.11, 7.4 to 7.8 (inclusive), 8, 12, 14, 15, 16, 17.2, 17.11 and 20 (and those other clauses expressed to survive termination of this Deed) will survive that termination of this Deed);
- (e) the control of the Company will revert to control of the New Directors;
- (f) the Creditors' Trust will operate in accordance with the Trust Deed for and on behalf of all Participating Creditors;
- (g) the Administrators will act as the Trustees of the Creditors' Trust;
- (h) the Participating Creditors will become beneficiaries in the Creditors' Trust and will, subject to the terms of the Trust Deed, only have a right to prove their Claims in the Creditors' Trust;
- (i) the Creditors' Claims (other than Non-Participating Creditors' Claims) against the Company will be released and forever extinguished;
- (j) the Receivers will retire; and
- (k) all of the costs of the Proponent and the Receivers will be classified as loans from the Proponent or the Receivers (as applicable) to the Company, which will survive termination of this Deed.

Termination where this Deed fails

17.3 If the Conditions Precedent are not satisfied (or waived to the extent permitted by clause 17.5) by the End Date, (except where this Deed has already terminated in accordance with either of clauses 17.2 or 17.4) this Deed will automatically terminate at 5:00pm (Perth time) on the End Date without the need for any action by the parties to this Deed.

Termination of this Deed by Court order

17.4 Except where this Deed has already terminated in accordance with either of clauses 17.2 or 17.3, this Deed will terminate, and the Company will be wound up, if a Court so orders in accordance with sections 445D or 445G of the Act.

Waiver of certain Conditions Precedent

17.5 The Conditions Precedent in clauses 17.1(b) and 17.1(g) to 17.1(k) (inclusive) are for the sole benefit of the Proponent and may only be waived in the Proponent's sole discretion, by the Proponent giving notice to the Company.

Resignation and removal of the Administrators

- 17.6 The appointment of the Administrators may be terminated:
- (a) by their resignation in writing signed and tendered to the Creditors; or
 - (b) by a resolution passed at a meeting of Creditors.
- 17.7 In the event of the death of one or both of the Administrators or in the event of their appointment being determined in accordance with the provisions of this Deed whilst this Deed remains on foot, the Creditors shall have the power by resolution to appoint a substitute Administrator or substitute Administrators to carry out his duties at a rate of remuneration not exceeding that determined to be paid to the Administrators and with the powers, duties and functions of the Administrators.
- 17.8 Nothing in this section affects either the Administrators' right to remuneration pursuant to clause 11 of this Deed.

Previous operation of this arrangement preserved

- 17.9 The termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed or the obligations of the Company or the Officers of the Company under this Deed.

Notice of performance of the Deed

- 17.10 If this Deed is terminated, the Administrators will certify to that effect in writing and lodge with ASIC a notice of termination of this Deed in accordance with ASIC form 509G (or in such other relevant form as required by ASIC).

ASIC Notice

- 17.11 As soon as practicable following Effectuation, the Administrators must certify in writing that the components of this Deed pertaining to the deed of company arrangement period have been fully effectuated and immediately lodge with ASIC Form 5056 in relation to the Company.

18. THE BOARD

- 18.1 From the Execution Date, the Board shall use all reasonable endeavours to co-operate with and assist the Administrators in carrying out their duties and functions under this Deed.

19. GOODS AND SERVICES TAX

If consideration is described as "GST-inclusive"

- 19.1 Unless specifically described in this Deed as 'GST-inclusive', any consideration payable or to be provided for a supply made, to be made or taken to be made for the purposes of the GST Law under or in connection with this Deed does not include an amount on account of GST (**GST Exclusive Consideration**) and may be increased on account of any GST payable on that supply under clause 19.2.

Gross-up of consideration

- 19.2 If a person (**Supplier**) makes or is taken to make a supply under or in connection with this Deed to another person (**Recipient**) which is a Taxable Supply (not being a supply the consideration for which is specifically described in this Deed as GST-inclusive) then:
- (a) the GST Exclusive Consideration (if any) is increased by, and Recipient must also pay to Supplier, an amount on account of, the GST payable by Supplier on that supply to be calculated by multiplying the GST Exclusive Consideration for that supply by the rate of GST prevailing at the time that the supply is made or taken to be made; and
 - (b) provided that Supplier has issued a tax invoice to Recipient, the amount by which the GST Exclusive Consideration is increased must be paid to Supplier by Recipient without set off, deduction or requirement for demand, at the earlier of the time at which:
 - (i) the GST Exclusive Consideration (if any) is payable or to be provided; and
 - (ii) the GST on the supply is payable by Supplier.

Reimbursements

- 19.3 If a payment to a person is a reimbursement or indemnification that is calculated by reference to a loss, cost or expense incurred by that person, the payment will be reduced by the amount of any input tax credit to which that person is entitled for the acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, clause 19 will apply.

Interpretation

- 19.4 For the purposes of this clause 19, all terms defined in the GST Law have the meanings given to those terms in the GST Laws.

Survival of clause

- 19.5 This clause 19 will continue to apply despite termination of this Deed.

20. GENERAL

Further assurances

- 20.1 Each of the parties to this Deed will do all acts, matters and things as may be reasonably necessary or expedient to implement and give full effect to the transactions contemplated by this Deed.

Bar to Claims

- 20.2 Following Effectuation, this Deed may be pleaded and tendered by the Company against any person having or asserting a Claim (except for Non-Participating Creditors) as an absolute bar and defence to any legal proceeding brought or made at any time in respect of that Claim, release or covenant (as the case may be).

Variation of this Deed by Creditors

- 20.3 Subject to clause 20.4, this Deed may be varied by a Resolution of the Creditors but only if the variation is not materially different from a proposed variation set out in the notice of meeting.
- 20.4 Neither the Proponent nor IMC Gold is bound by any variation to this Deed which they do not agree to in writing.

Governing law

- 20.5 This Deed is governed by and will be construed in accordance with the laws in force in Western Australia.

Forum

- 20.6 Any proceedings in relation to or arising out of this Deed, including appeals against rejections of Claims must be commenced in either the Supreme Court of Western Australia or the WA Registry of the Federal Court of Australia.

Inconsistency with the Act

- 20.7 If there is any inconsistency between the terms of this Deed and the Act, the Act will, only to the extent of the inconsistency, prevail and this Deed will be interpreted accordingly.

Severance

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

This Deed prevails over constitution, etc

- 20.9 If there is any inconsistency between the provisions of this Deed and the constitution or memorandum of association or articles of association of the Company or any other obligations binding on the Company, then the provisions of this Deed will prevail to the extent of the inconsistency.

Notices

- 20.10 Any notice given under this Deed:
- (a) must be in writing addressed to the intended recipient at the address as stated in the 'Parties' section of this Deed or the address last notified by the intended recipient to the sender;
 - (b) must be signed by the sender; and
 - (c) will be taken to have been given:
 - (i) **(in the case of delivery in person)** when delivered, received or left at the address as outlined at the commencement of this Deed;

- (ii) **(in the case of facsimile transmission)** when recorded on the transmission result report unless:
 - (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or illegible form; or
 - (B) the transmission result report indicates a faulty or incomplete transmission; and
- (iii) **(in the case of registered mail)** on the seventh day after the date on which the notice is accepted for posting by the relevant postal authority;
- (iv) but if delivery or receipt is on a day on which commercial premises are not generally open for business in the place of receipt or is later than 4.00 pm (local time) on any day, the notice will be taken to have been given on the next day on which commercial premises are generally open for business in the place of receipt.

No waiver

- 20.11 No failure to exercise or delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or future exercise of that or any other right, power or remedy.

Counterparts

- 20.12 This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon the same instrument. A party who has executed a counterpart of this Deed, may exchange it with another party by emailing a PDF (portable document format) copy of the executed counterpart to that other party, in which case the emailed PDF document shall be treated as and deemed to be an original execution counterpart.

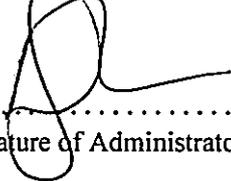
Entire agreement

- 20.13 This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

EXECUTION

Executed as a Deed

Signed, sealed and delivered for Millennium Minerals Limited (Administrators Appointed) (Receivers and Managers Appointed) by its administrator:

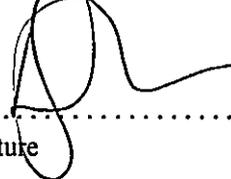

.....
Signature of Administrator

Matthew Donnelly.....
Print name of Administrator

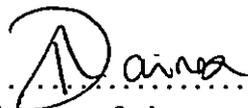

.....
Signature of witness

Donna Haines.....
Print name of witness

Signed, sealed and delivered by Matthew James Donnelly (in his capacity as joint and several administrator of Millennium Minerals Limited):


.....
Signature

Matthew Donnelly.....
Print name


.....
Signature of witness

Donna Haines.....
Print name of witness

Signed, sealed and delivered by Richard John Hughes (in his capacity as joint and several administrator of Millennium Minerals Limited):



.....
Signature

Richard Hughes
.....
Print name



.....
Signature of witness

LISA HARMON
.....
Print name of witness

Signed, sealed and delivered by IMC Resources Investments Pte Ltd in accordance with the laws of its place of incorporation:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of director

.....
Name of director (print)

Signed, sealed and delivered by IMC Resources Gold Holdings Pte Ltd in accordance with the laws of its place of incorporation:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of director

.....
Name of director (print)

Signed, sealed and delivered by **Richard John Hughes (in his capacity as joint and several administrator of Millennium Minerals Limited)**:

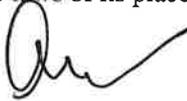
.....
Signature

.....
Signature of witness

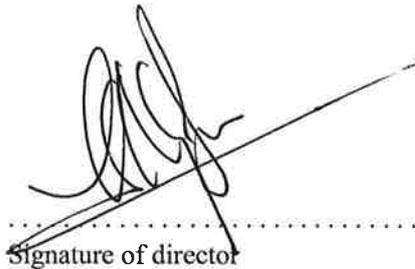
.....
Print name

.....
Print name of witness

Signed, sealed and delivered by **IMC Resources Investments Pte Ltd** in accordance with the laws of its place of incorporation:



.....
Signature of witness

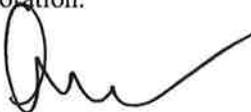


.....
Signature of director

Oon Chen Yen
.....
Name of witness (print)

Loh Niap Juan
.....
Name of director (print)

Signed, sealed and delivered by **IMC Resources Gold Holdings Pte Ltd** in accordance with the laws of its place of incorporation:



.....
Signature of witness



.....
Signature of director

Oon Chen Yen
.....
Name of witness (print)

Coelho Lorenzon Bruno
.....
Name of director (print)

Attachment 1 - Trust Deed



DATED

2020

CREDITORS' TRUST DEED
for the
Millennium Minerals Limited Creditors' Trust

DLA Piper Australia
Level 31, Central Park
152-158 St Georges Terrace
Perth WA 6000
PO Box Z5470
Perth WA 6831
Australia
www.dlapiper.com

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DETAILS

Date	2020
Parties	Company
	Name Millennium Minerals Limited (Administrators Appointed) (Receivers and Managers Appointed)
	ACN 003 257 556
	Address c/- Deloitte Financial Advisory Pty Ltd, Level 7 – 9, Brookfield Place, Tower 2, Perth, Western Australia
	Trustees
	Name Matthew James Donnelly and Richard John Hughes
	Address c/- Deloitte Financial Advisory Pty Ltd, Level 7 – 9, Brookfield Place, Tower 2, Perth, Western Australia

BACKGROUND

- A On 24 November 2019, the Company was placed into voluntary administration in accordance with Part 5.3A of the Act.
- B At a meeting held on 17 January 2020, Creditors of the Company approved the entry into the DOCA.
- C The terms of the DOCA contemplate the establishment of the Trust on the terms contained in this Deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The meanings of the terms used in this deed are set out below.

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

Additional Amount has the meaning given in clause 20.3.

Administrators means Matthew James Donnelly and Richard John Hughes in their capacity as the administrators of the Company.

Admitted Claim has the same meaning as defined in the DOCA.

Appointment Date means 24 November 2019.

Business Day a weekday on which banks are generally open for business in Western Australia.

Claim has the same meaning as defined in the DOCA.

Claimant means a person who has a Claim or claims to have a Claim against the Trust Fund.

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

Creditor means any person who has a Claim against the Company.

Deed means this trust deed, as amended from time to time.

Deed Administrators means the Administrators in their capacity as deed administrators under the DOCA.

Deposit-Taking Institution has the same meaning as defined in the *Banking Act 1959* (Cth).

DOCA means the deed of company arrangement entered into by the Company, the Administrators, the Proponent and IMC Gold.

Employees means the persons employed by or determined by a Court to be employed by the Company at the Appointment Date.

Execution Date means the date of execution of the DOCA by the parties to it.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.

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

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

IMC Gold means IMC Resources Gold Holdings Pte Ltd incorporated in Singapore with registration number 201115162Z.

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

IPS means the *Insolvency Practice Schedule (Corporations)* which appears as Schedule 2 to the Act.

Non-Participating Creditors means:

(a) the Proponent, IMC Gold and any Creditor who is nominee or a Related entity of the Proponent or IMC Gold; and

(b) Employees of the Company as of the date of Effectuation,

(or any one or more of them).

Participating Creditors has the same meaning as defined in the DOCA.

Pool A Creditors has the same meaning as defined in the DOCA.

Pool B Creditors has the same meaning as defined in the DOCA.

Power means any right, power, authority, discretion or remedy available to the Trustee under this Deed, the DOCA or at law.

Prescribed Provisions means the provisions contained in Schedule 8A of the Corporations Regulations.

Priority Creditors has the same meaning as defined in the DOCA.

Proponent means IMC Resources Investments Pte Ltd incorporated in Singapore with registration number 201027174C.

Related entity has the same meaning as prescribed by section 9 of the Act.

Settlement Sum means the sum of \$10.

Superannuation Contribution means a contribution payable by the Company to a fund for the purposes of making provision for, or obtaining, superannuation benefits for an Employee, or for dependants of such an Employee.

Superannuation Guarantee Charge means a charge imposed by the *Superannuation Guarantee Charge Act 1992* (Cth).

Tax Invoice means any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling the recipient to an input tax credit.

Trust means the trust established hereunder.

Trust Fund has the same meaning as defined in the DOCA.

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

Trustees' Costs means the Trustees' Remuneration and the Trustees' Expenses.

Trustees' Expenses means

- (a) all debts and liabilities incurred by the Trustees in the performance or exercise, or purported performance or exercise, of any of their functions as Trustees of the Trust; and
- (b) all incidental costs and disbursements incurred by the Trustees in connection with the implementation of and performance of the Trustees' duties, (but excluding legal costs in respect of the foregoing).

Trustees' Remuneration means the remuneration of the Trustees, their partners, staff and agents incurred in acting as Trustees, calculated in accordance with the usual hourly rates of charge of Deloitte Financial Advisory Pty Ltd.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- 1.2.1 month means a calendar month;
- 1.2.2 headings are for convenience only and do not affect the interpretation of this Deed;
- 1.2.3 references to sections, sub-sections and paragraphs of the Act are references to sections, sub-sections and paragraphs of the *Corporations Act 2001* (Cth);

- 1.2.4 references to clauses are references to clauses of this Deed;
- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 words importing a gender include each other gender;
- 1.2.7 words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- 1.2.8 a reference to any thing includes a part of that thing;
- 1.2.9 a reference to any statute, regulation, proclamation, ordinance or by-law includes a reference to each statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes a reference to each regulation, proclamation, ordinance and by-law issued under that statute;
- 1.2.10 a reference to a document includes a reference to an amendment or supplement to, or replacement or novation of, that document;
- 1.2.11 a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed;
- 1.2.12 a reference to a party to any document includes a reference to that party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- 1.2.13 when a day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day;
- 1.2.14 a reference to an amount, a dollar or \$ is a reference to Australian currency;
- 1.2.15 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it;
- 1.2.16 a covenant or agreement on the part of two or more persons binds them jointly and individually; and
- 1.2.17 words such as 'includes' and 'including' are not to be construed as words of limitation and do not limit what else might be included in any relevant clauses.

1.3 **Incorporated terms**

Capitalised terms or expressions used in this Deed which are defined in the DOCA have the same meaning in this Deed as given to them in the DOCA, unless expressly defined otherwise in this Deed.

2. **CREATION AND DECLARATION OF TRUST**

2.1 **Creation of Trust**

The Trust is created as soon as the Settlement Sum is received by the Trustees.

2.2 Declaration of trust

The Trustees acknowledge and declare that:

- 2.2.1 the Settlement Sum; and
- 2.2.2 the Trust Fund; and
- 2.2.3 the benefits of the covenants made in the Trustees' favour in the DOCA and in this Deed,

are or will be held on trust by the Trustees for the Participating Creditors upon the terms and conditions of this Deed.

2.3 Name of Trust

The name of the Trust constituted by this Deed is the 'Millennium Minerals Limited Creditors' Trust'.

2.4 Powers of Trustees

- 2.4.1 Without limiting the Powers of Trustees, for the purposes of administering the Trust, the Trustees have the following powers:
 - 2.4.1.1 to administer the Trust Fund in accordance with the provisions of this Deed and the DOCA;
 - 2.4.1.2 to sell, transfer, realise or otherwise dispose of the assets of the Trust;
 - 2.4.1.3 to ensure that the obligations of the Company and the Proponent under the DOCA and under this Deed are fulfilled, and to take such legal proceedings or other steps as the Trustees think fit to enforce those obligations;
 - 2.4.1.4 to fulfil the Trustees' obligations under this Deed, the DOCA and all applicable laws;
 - 2.4.1.5 to admit Claims to proof in accordance with the provisions this Deed;
 - 2.4.1.6 to enforce compliance with the terms of this Deed and the DOCA;
 - 2.4.1.7 to make interim or other distributions of the Trust Fund;
 - 2.4.1.8 to appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
 - 2.4.1.9 to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
 - 2.4.1.10 to compromise any Claim on such terms as the Trustees consider fit;
 - 2.4.1.11 to do all those things in relation to the assets in the Trust Fund that an administrator is empowered to do in relation to a company under a

deed of company arrangement which incorporates the Prescribed Provisions, other than paragraphs 3(c), 10 and 11 of the Prescribed Provisions;

- 2.4.1.12 to do anything that is incidental to exercising a power set out in this clause, including investing the Trust Fund on such terms as the Trustees in their absolute discretion thinks fit;
- 2.4.1.13 to perfect title in any assets of the Trust Fund;
- 2.4.1.14 to insure any assets of the Trust Fund;
- 2.4.1.15 to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to it;
- 2.4.1.16 to bring, prosecute and defend any claim, action, suit or proceedings, which power includes the power to bring and defend any claim, counter claim, set off, action, suit or proceeding in its own name, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
 - (a) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as it shall think fit and to commence or defend and conduct any action or other proceedings in any court of justice in relation to the Trust and any claim, proceeding or action forming part of the Trust and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as it thinks fit;
 - (b) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasion may require; and
 - (c) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund or available property intended under the terms of the DOCA to be transferred to the Trustees and form part of and vest in the Trust Fund;
- 2.4.1.17 to convene and hold meetings of the Participating Creditors for any purpose as the Trustees consider fit (including, for the purpose of advising and assisting the Trustees);
- 2.4.1.18 to permit any person authorised by the Trustees to operate any account in the name of the Trust;
- 2.4.1.19 to do all acts and execute in the name and on behalf of the Trust all deeds, receipts and other documents;
- 2.4.1.20 to bring or defend an application for the vesting or winding up of the Trust;
- 2.4.1.21 to report to the Participating Creditors from time to time;

- 2.4.1.22 to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which power includes the power to compromise any claim, action, suit or proceedings referred to in subclause 2.4.1.16 above;
 - 2.4.1.23 to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any tax, including income tax, capital gains tax, or GST;
 - 2.4.1.24 to seek any order or make any application to a court for the purposes of determining a beneficiary's entitlement under this Deed; and
 - 2.4.1.25 to do anything else that is necessary or convenient for administering the Trust.
- 2.4.2 The Trustees shall not be required to assign any reason for the exercise of, or failure to exercise, any Power.
- 2.4.3 Subject to any express provision to the contrary in this Deed, every Power vested in the Trustees shall be exercisable in the Trustees' absolute and unfettered discretion.
- 2.4.4 No one Power shall limit the generality of any other Power, and the Trustees shall have the power to do anything the Trustees consider incidental to any Power.

3. DISTRIBUTION OF TRUST FUND

3.1 Distribution

The Trustees must apply the Available Property from the Trust Fund in the following order of priority:

3.1.1 firstly:

- 3.1.1.1 to the extent not already paid, to the Administrators' professional fees incurred from 4 December 2019 up to the Execution Date pursuant to section 443D of the Act and the provisions of the IPS and IPR, subject to an aggregate maximum amount of \$250,000 (excluding GST) inclusive of amounts already paid;
- 3.1.1.2 to the extent not already paid during the Deed Period, up to a maximum amount of \$290,000 (excluding GST) inclusive of amounts already paid during the Deed Period, for legal costs (including, without limitation, counsel fees and disbursements) arising from the Company's external administration; and
- 3.1.1.3 to the extent not already paid, the costs of expert reports and other external liabilities of the Administrators, in each case as reasonably incurred and arising from the Company's external administration;

3.1.2 secondly:

- 3.1.2.1 as to:

(a) to the extent not already paid during the Deed Period, Deed Administrators' professional fees in their capacities as deed administrators under the DOCA; and

(b) Trustees' Costs,

subject to an aggregate maximum amount of \$250,000 (excluding GST) inclusive of amounts already paid during the Deed Period;

3.1.2.2 to the extent not already paid during the Deed Period, for legal costs (including, without limitation, counsel fees and disbursements) for the Company's external administration, the deed administration under the DOCA and the Trust, any unused portion of the maximum amount allocated for legal costs under clause 3.1.1.2 above (except that those properly and reasonably incurred legal costs will not be capped to the extent that the application to the Court referred to in clause 5.1 of the DOCA (pursuant to section 444GA of the Act) is contested by a third party appearing before the Court); and

3.1.2.3 to the extent not already paid, the costs of expert reports and other external liabilities of the Deed Administrators in their capacities as deed administrators under the DOCA, in each case as reasonably incurred and arising from the deed administration;

3.1.3 thirdly, to the Admitted Claims of Priority Creditors;

3.1.4 fourthly, pro rata between Pool A Creditors up to a maximum amount of \$1.2 million of their Admitted Claims;

3.1.5 fifthly, pro rata between Pool B Creditors up to a maximum amount of \$0.55 million of their Admitted Claims;

3.1.6 sixthly, pro rata between remaining Participating Creditors up to a maximum amount of 2 cents for every dollar of their aggregated Admitted Claims;

3.1.7 seventhly and finally, to the Company.

3.2 The terms of section 556, 560 and 561 of the Act shall apply as if references to 'liquidator' were references to the 'Trustees', references to 'winding up' were references to the 'Trust' and with such other modifications as are necessary to give effect to the terms of the DOCA and this Deed.

3.3 **Cap on Trustees' Costs**

3.3.1 The maximum limits on Trustees' Costs in clause 3.1.2.1(b) and on legal costs in relation to the Trust in clause 3.1.2.2 do not apply to Trustees' Costs or legal costs in relation to the Trust incurred in dealing with:

3.3.1.1 a Court challenge to the Trustees' determination of a proof of debt; or

3.3.1.2 any other dispute or challenge in Court in respect of the Trustees' administration of the Trust Deed.

3.4 Timing of distribution

3.4.1 Subject to clause 3.4.2, the Trustees must distribute the Trust Fund as soon as reasonably practicable after Effectuation.

3.4.2 The Trustees may distribute the Trust Fund at such times as the Trustees, in their discretion, consider is appropriate and feasible.

3.5 November Payments

Notwithstanding the other provisions of this Deed, for the purpose of:

3.5.1 the Administrators, Deed Administrators or the Trustees adjudicating which Claims are Admitted Claims and their quantum; and

3.5.2 determining which sub-clause in clause 3.1 consequently applies to a given Participating Creditor,

the aggregate Admitted Claims of a given Participating Creditor who is a November Payee are deemed to be reduced by the total November Payment which was received by that Participating Creditor.

4. PERPETUITY PERIOD

4.1 Subject to any other provision in this Deed, each:

4.1.1 interest in property; and

4.1.2 Power of the Trustees over or in connection with property,

created or granted by this Deed, that, but for this provision, might vest, take effect, or be exercisable after the expiry of 80 years from the date of this Deed, but has not vested or taken effect by that date:

4.1.3 will vest or take effect on the last day of that period; and

4.1.4 is exercisable only on or before the last day of that period.

5. CLAIMS

5.1 Admissibility of Claims and Distribution

5.1.1 For the avoidance of doubt, the Claims of Non-Participating Creditors are not admissible under this Deed.

5.1.2 Unless Claims have already been admitted or rejected by the Administrators or Deed Administrators, the Trustees shall consider the Claims for the purposes of deciding whether to admit them under this Deed.

5.1.3 Only Claims of Participating Creditors are admissible under this Deed.

5.1.4 Interest from the Appointment Date shall not accrue or be payable on any Admitted Claim.

5.2 Determination of Claims

5.2.1 Subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the Act (except sections 554A(3) to 554A(8), other than to the extent expressly incorporated) apply to the admission of Claims under this Deed as if:

5.2.1.1 the reference to the liquidator were references to the Trustees;

5.2.1.2 references to winding-up were references to this Deed; and

5.2.1.3 references to appeals are references to an application to the Court under the Trustee Act,

and with such other modifications as are necessary to give effect to this Deed, except to the extent of any conflict with this Deed.

5.2.2 Corporations Regulations 5.6.11A, 5.6.37, and 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.52 (inclusive), 5.6.55 to 5.6.65 (inclusive), 5.6.67 to 5.6.70 (inclusive) and 5.6.70A of the Corporations Regulations shall apply to this Deed and to the Trustees as if:

5.2.2.1 the reference to the liquidator were references to the Trustees;

5.2.2.2 references to winding up were references to this Deed; and

5.2.2.3 references to appeals are references to an application to the Court under the Trustee Act,

and with such other modifications as are necessary to give effect to this Deed.

5.2.3 The Trustees may make interim distributions of trust property under this Deed.

5.2.4 Within 7 days after the Trustees have rejected all or part of a formal proof of debt or claim, the Trustees must:

5.2.4.1 notify the Claimant of the grounds for that rejection; and

5.2.4.2 give notice to the Claimant at the same time:

(a) that the Claimant may make application to the Court under the Trustee Act challenging the decision of the Trustees to reject the proof of debt within the time specified in the notice, being not less than 14 days after service of the notice, or such further period as the Court allows; and

(b) that unless the Claimant makes application to the Court in accordance with sub-clause (a), the amount of his or her claim will be assessed in accordance with the Trustees' adjudication on the Claimant's proof of debt.

5.3 **Abandonment of Claims**

A Claimant (other than a Non-Participating Creditor) will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) that the Claimant has to the Trust Fund that:

- 5.3.1 are not the subject of a proof lodged with the Trustees in the form required by the Trustees prior to the declaration of a final dividend; or
- 5.3.2 have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within 21 days after the date of notification of the rejection to the Claimant.

5.4 **Insurance Claims**

On receipt by the Company, from an insurer, of any monies relating to an Insurance Claim:

- 5.4.1 such monies shall (after deduction of all costs, fees and expenses of and incidental to recovering those monies incurred by the Company) be paid by the Company to the claimant of that Insurance Claim;
- 5.4.2 in the event that there are any monies remaining after the claimant of that Insurance Claim has been paid, the Company shall retain such monies;
- 5.4.3 any such Insurance Claim shall be limited to and satisfied by the application of the monies in accordance with clause 5.4.1 and not be paid from the Trust Fund.

5.5 **Superannuation Claims**

The Trustees must determine that the whole of a debt by way of a Superannuation Contribution is not an Admitted Claim if:

- 5.5.1.1 a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
- 5.5.1.2 the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.
- 5.5.2 The Trustees must determine that a particular part of a debt by way of a Superannuation Contribution is not an Admitted Claim if:
 - 5.5.2.1 a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
 - 5.5.2.2 the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

5.6 **Set-off**

- 5.6.1 Where there have been mutual credits, mutual debts or other mutual dealings between the Company and a Creditor (other than a Non-Participating Creditor):
 - 5.6.1.1 an account must be taken of what is due from the one party to the other in respect of those mutual dealings;

- 5.6.1.2 the sum due from one party is to be set off against any sum due from the other party;
 - 5.6.1.3 only the balance of the account (if any) in favour of that Creditor as against the Company is to be released;
 - 5.6.1.4 only the balance of the account (if any) in favour of the Company as against that Creditor, is payable by that Creditor to the Company.
- 5.6.2 A Creditor (other than a Non-Participating Creditor) will not be entitled to claim the benefit of any set-off if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, it had notice of the fact that the Company was insolvent.

6. MEETINGS OF CREDITORS

The Trustees may at any time convene a meeting of Participating Creditors (including for the purpose of approving further Trustees' Remuneration) and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the *Insolvency Practice Rules (Corporations) 2016* applies, with such modifications as are necessary, to meetings of the Participating Creditors as if the references to the liquidator, the liquidator or provisional liquidator, the liquidator, provisional liquidator or chairman, or a liquidator, provisional liquidator or trustee for debenture holders, as the case may be, were references to the Trustees.

7. INDEMNITY AND REMUNERATION

7.1 Indemnity

Subject to not exceeding the maximum limits on Trustees' Costs in clause 3.1.2.1(b) and on legal costs in relation to the Trust in clause 3.1.2.2, the Trustees are entitled to be indemnified, to the extent permitted by law, out of the Trust Fund.

7.2 Continuing indemnity

This indemnity will take effect on and from the Execution Date without limitation as to time and will operate notwithstanding:

- 7.2.1 the removal of the Administrators, the Deed Administrators or the Trustees;
- 7.2.2 the appointment of new Administrators, the Deed Administrators or new Trustees;
or
- 7.2.3 the termination of the DOCA or this Trust for any reason whatsoever.

7.3 Indemnity not to be affected or prejudiced

The indemnity under clause 7.1 will not:

- 7.3.1 be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or the Trustees and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or the Trustees, the approval and execution of this Deed or the DOCA or otherwise; or

7.3.2 affect or prejudice all or any rights that the Administrators and the Trustees may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Administrators or the Trustees of or incidental to the exercise or performance of any of the powers of authorities conferred on the Administrators or the Trustees by this Deed or the DOCA or otherwise,

PROVIDED THAT the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands if the Trustees or any partner, employee, authorised agent or delegate of the Trustees are found by a Court of competent jurisdiction to have acted dishonestly, with gross negligence, in breach of fiduciary duty, or breach of the Trust.

7.4 Remuneration of Trustees

7.4.1 Subject to not exceeding the maximum limits on Trustees' Costs in clause 3.1.2.1(b), the Trustees are to be:

7.4.1.1 paid the Trustees' Remuneration from the Trust Fund; and

7.4.1.2 reimbursed the Trustees' Expenses from Trust Fund.

7.4.2 For the avoidance of doubt, subject to clause 3 the Trustees are entitled to be remunerated for time reasonably spent by the Trustees, their partners and staff in the performance of services in connection with and in relation to the administration of the Trust, calculated in accordance with the usual hourly rates of charge of Deloitte Financial Advisory Pty Ltd.

8. LIABILITY

8.1 Exclusion of Liability

8.1.1 The Trustees and the Trustees' partners, and staff are not liable for any loss, damages, costs or expenses which may result to the Trust Fund or any person unless the same is found by a Court of competent jurisdiction to have been caused by their wilful default, fraud, gross negligence or breach of this Trust.

8.1.2 All persons claiming an interest in the Trust Fund are to be treated as taking that interest with, and subject to, notice of the protection conferred by this clause.

8.2 Reliance on Advice

Where the Trustees act in reliance upon the advice of any solicitor instructed on behalf of the Trust, which advice is obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with that advice.

9. TRUST ACCOUNT

9.1 The Trustees must open a new bank account with an authorised Deposit-Taking Institution.

9.2 All financial transactions under this Deed must be effected through that bank account.

10. TRUSTEES' RESIGNATION

10.1 The Trustees may resign at any time by giving not less than 14 days prior written notice to the Company and to the Proponent.

10.2 In the event of the death or resignation of one or more of the Trustees, the Participating Creditors will have the power to appoint a substitute trustee or trustees by resolution:

10.2.1 to carry out their duties at a rate of remuneration not exceeding that as approved by the Participating Creditors or by the Court; and

10.2.2 with the powers, functions and duties of the Trustees.

11. TRUSTEES NOT OBLIGED TO TAKE ACTION

11.1 The Trustees shall not be obliged to take any action under this Deed unless there are sufficient funds in hand which are not subject to any apprehended claim to pay the Trustees' Costs.

12. TERMINATION

12.1 Termination of the Trust

This Trust will terminate and the Trustees shall resign on the earlier of:

12.1.1 as soon as reasonably practicable after distribution of the final distribution from the Trust Fund; or

12.1.2 the expiry of the perpetuity period referred to in clause 4 above.

12.2 Variation of Trust

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

12.2.1 any of the assets referred to in clause 2.2 of this Deed are not received by the Trustees on the due date therefore or within a reasonable period thereafter; or

12.2.2 at any time prior to the termination of this Trust, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed or the Court so orders.

12.3 Termination of the Trust by Court order or beneficiaries' resolution

This Trust will terminate if:

12.3.1 a Court so orders; or

12.3.2 the Participating Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clauses 6 or 12.2.

12.4 Report to Participating Creditors

Upon a meeting being convened pursuant to clauses 6 or 12.2, the Trustees must send each Participating Creditor prior to the meeting a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees think fit. The report must include:

12.4.1 a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 6 or 12.2; and

12.4.2 a statement that, this Trust will be terminated if the meeting so resolves.

12.5 Previous operation of this Deed preserved

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

12.6 Variation of Deed

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

13. FURTHER ASSURANCES

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

14. NOTICE

14.1 Any notices or other communications required or permitted to be given under this Deed to any person a party to it shall be in writing and be deemed to have been served if sent by pre-paid post to the address given for that person in this Deed or as held by the Trustee or any other address notified by that person in writing. Any notice or communication so served shall be deemed to have been received at the time that it would have been delivered in the ordinary course of post.

15. GOVERNING LAW AND FORUM

15.1 This Deed is to be governed and construed in accordance with the laws of Western Australia.

15.2 Any proceedings in relation to or arising out of this Deed must be commenced in either the Supreme Court of Western Australia or the WA Registry of the Federal Court of Australia.

16. SEVERANCE

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

17. WAIVERS

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

18. COUNTERPARTS

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

19. STAMP DUTY

- 19.1 The Trustees shall pay, out of the Trust Fund, any stamp duty payable with respect to this Deed.

20. GST

- 20.1 Words used in this clause 20 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.
- 20.2 Unless expressly included, the consideration for any supply under or in connection with this Deed is exclusive of GST.
- 20.3 To the extent that any supply made by a party (**Supplier**) under or in connection with this Deed is a taxable supply, the consideration for that supply is increased by, and the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on that supply (**Additional Amount**).
- 20.4 The recipient need not pay the Additional Amount until it receives a Tax Invoice from the supplier with respect to the relevant taxable supply.

EXECUTION

Executed as a Deed

Signed, sealed and delivered for **Millennium Minerals Limited (Administrators Appointed) (Receivers and Managers Appointed)** by its deed administrator:

.....
Signature of Deed Administrator

.....
Signature of witness

.....
Print name of Deed Administrator

.....
Print name of witness

Signed, sealed and delivered by **Matthew James Donnelly**:

.....
Signature

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Signature of witness

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Print name

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Print name of witness

Signed, sealed and delivered by **Richard John Hughes**:

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Signature

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Signature of witness

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Print name

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Print name of witness