

## **Northern Iron Creditors' Trust Deed**

**Northern Iron Limited (Subject to Deed of Company Arrangement)  
Company**

**James Gerard Thackray in his capacity as deed administrator of  
Northern Iron Limited (Subject to Deed of Company Arrangement)  
Trustee**

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This Deed is made this 13<sup>th</sup> day of May 2016

**Parties**                      **Northern Iron Limited (Subject to Deed of Company Arrangement)**  
ACN 125 264 575 of C/- The Headquarters Corporate Advisory, 5 Mitford  
Street, Swanbourne (**Company**)

and

**James Gerard Thackray** of The Headquarters Corporate Advisory, 5 Mitford  
Street, Swanbourne (**Trustee**)

## **Recitals**

- A.        On 19 November 2015, James Thackray was appointed as voluntary administrator of the Company pursuant to Part 5.3A of the Act.
- B.        At the second meeting of the Company's creditors on 24 March 2016 convened pursuant to section 439A of the Act the creditors of the Company resolved that the Company enter into the DOCA pursuant to Part 5.3A of the Act and that James Gerard Thackray be appointed as deed administrator.
- C.        On 24 March 2016, the Deed Administrator and the Company executed the DOCA pursuant to section 444B(2)(b) of the Act.
- D.        The DOCA provides for the establishment of this Trust for the benefit of the Admitted Creditors.
- E.        The Company and the Trustee enter into this deed as contemplated by the DOCA in order to facilitate distribution by the Trustee to the Admitted Creditors in their capacity as beneficiaries of the Trust Fund.

## **This Deed provides**

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# **1. Definitions and interpretation**

## **1.1 Definitions**

In this Deed terms defined in the DOCA have the same meaning when used in this deed unless otherwise required by the context or the subject matter. In addition, the following definitions apply in this Deed.

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

**Commencement Date** means the date of execution of the DOCA by the Company.

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

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

**DOCA** means the deed of company arrangement entered into by the Company, the Deed Administrator and Otsana Capital on or about 24 March 2016.

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

**Settled Sum** means \$10.00.

**Trust** means the trust established by this Deed.

**Trust Fund** means the Trust Fund set out in clause 2.2.

**Trust Termination Date** means the date on which the Trust terminates pursuant to clause 12.1.

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

**Trustee's Powers** means any right, power, authority, discretion and remedy available to the Trustee under this Deed, the DOCA or at law.

## 1.2 Interpretation

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 Act;
- (d) the singular includes the plural and vice versa;
- (e) words importing a gender include each other gender;
- (f) an expression importing a natural person includes any corporation, partnership, joint venture, association or other body corporate;
- (g) a reference to any thing includes a part of that thing;
- (h) 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;
- (i) a reference to a document includes a reference to an amendment or supplement to, or replacement or novation of, that document;
- (j) a reference to a party to any document includes a reference to that party's successors and permitted assigns;
- (k) 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;
- (l) a reference to a dollar or \$ is a reference to Australian currency; and
- (m) a covenant or agreement on the part of two or more persons binds them jointly and individually.

### **1.3 Applied DOCA provision**

A provision of the DOCA that is applied or incorporated in this Deed is (as so applied or incorporated) to be interpreted in accordance with the same definitions and interpretation principles that apply to the provision as it has effect in or under the DOCA unless a contrary intention appears in the application or incorporation provision in this Deed.

### **1.4 Inconsistency with Act or Corporations Regulations**

If there is any inconsistency between the provisions of this Deed and the Act or Corporations Regulations, this Deed shall prevail to the extent permitted by law.

### **1.5 Other inconsistencies**

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

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## **2. Creation and declaration of trust**

### **2.1 Creation of Trust**

- (a) The Company must pay the Settled Sum to the Trustee prior to Completion.
- (b) The Trust is created as soon as the Settled Sum is received by the Trustee.

### **2.2 Declaration of trust**

The Trustee acknowledges and declares that:

- (a) the Settled Sum;
- (b) the benefits of the covenants made in the Trustee's favour in the DOCA (including any monies pursuant to clause 4.5 of the DOCA) and in this Deed;
- (c) the Deposit;
- (d) the Otsana Capital Payment;
- (e) the Deed Fund (as then comprised) transferred to the Trustee pursuant to clauses 6.2 and/or 6.4 of the DOCA; and
- (f) any income accruing on the assets of the Trust (such income to be applied in the same manner as the principal upon which it accrued),

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

### **2.3 Condition for operation**

The provisions of the Trust come into effect only upon Completion.

## 2.4 Name of Trust

The name of the Trust constituted by this Deed is the 'Northern Iron Limited Creditors' Trust'.

## 2.5 Powers of Trustee

- (a) Without limiting the Trustee's powers under the Trustees Act or under any law with respect to trustees, for the purposes of administering the trust created by this Deed, the Trustee has the following powers:
- (i) to administer the Trust Fund in accordance with the provisions set out in the DOCA and this Deed;
  - (ii) to fulfil the Trustee's obligations in accordance with the terms of this Deed;
  - (iii) to sell, reinvest or otherwise deal with the assets of the Trust Fund;
  - (iv) to perfect title in any assets of the Trust Fund;
  - (v) to insure any assets of the Trust Fund;
  - (vi) to, at any time, call meetings of the Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
  - (vii) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
  - (viii) to determine Admitted Claims and then pay dividends in accordance with the terms of this Deed;
  - (ix) to act as attorney for the Company or any other person for any purposes associated with the Trust or the Trust Fund;
  - (x) to enforce compliance with the terms of this Deed;
  - (xi) 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;
  - (xii) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers to any part of the Trust Fund;
  - (xiii) to bring prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in either of the Company's name or (after assignment) in the Trustee's 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 the Trustee thinks fit and to commence or defend and conduct any action or other proceeding in any court of

- justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustee sees fit;
- (B) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasions may require; and
  - (C) to take any other lawful ways and means for the recovery or getting in any of the Trust Fund;
- (xiv) to convene and hold meetings of the Creditors for any purpose as the Trustee considers fit;
  - (xv) to permit any person authorised by the Trustee to operate any account in the name of the Trust;
  - (xvi) to do all acts and execute in the name of and on behalf of the Trust all deeds, receipts and other documents;
  - (xvii) to draw, accept, make or endorse any bill of exchange or promissory note in the name of or on behalf of the Trust;
  - (xviii) subject to the Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;
  - (xix) to bring or defend an application for the vesting or winding up of the Trust;
  - (xx) to report to Creditors from time to time;
  - (xxi) to make interim or other distributions of the Trust Fund;
  - (xxii) to appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustee is unable to do, or that it is unreasonable to expect the Trustee to do, in person;
  - (xxiii) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustee;
  - (xxiv) to compromise any claim, action, suit or proceeding brought by or against the Trustee in such terms as the Trustee considers fit, which power includes the power to compromise any claim, action, suit or proceeding referred to in paragraph (xiii) of this clause;
  - (xxv) to provision for and set aside a sum or sums equal to an amount with the Trustee reasonably anticipates may be payable in respect of any tax, including income tax, capital gains tax or GST;
  - (xxvi) to do anything incidental to exercising a power set out in this Deed; and
  - (xxvii) to do anything else that is necessary or convenient for administering the Trust.
- (b) Without limiting the Trustee's powers under any law with respect to trustees or otherwise, the Trustee may deal with the property comprising the Trust



Fund in any manner as if the Trustee were the legal and beneficial owner of that property, and may also exercise any power in respect of the property comprising the Trust Fund and the Trustee's functions under this Deed as the Deed Administrator is or was entitled to exercise under the terms of the DOCA.

- (c) Without limiting clauses 2.5(a) and (b):
  - (i) the Trustee also has, with respect to the property comprising the Trust Fund, all of the powers set out in paragraph 2 of Schedule 8A of the Corporations Regulations, with all modifications as are necessary to give effect to this Deed as if:
    - (A) the Trust were a company subject to a DOCA; and
    - (B) the Trustee were the deed administrator of that deed;
  - (ii) the Trustee may appoint any person to manage the property comprising the Trust Fund on terms determined by the Trustee.
- (d) The Trustee may exercise any discretion under this Deed in the Trustee's absolute and unfettered discretion.

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### **3. Distribution of Trust Fund**

#### **3.1 Distribution of Trust Fund**

- (a) The Trustee shall distribute the Trust Fund in the following priority:
  - (i) first, the Administrators' Disbursements and Administrators' Trading Expenses (to the extent not paid);
  - (ii) second, the Administrators' Remuneration (to the extent not paid);
  - (iii) third, the Trustee's Costs and Expenses and the Trustee's Remuneration;
  - (iv) fourth, Priority Creditors pro rata according to the amount for which each such creditor shall be admitted to proof pursuant to this Deed; and
  - (v) the balance, if any, to be distributed in respect of the unsecured claims of the remaining Admitted Creditors in accordance with the provisions of the Act.

#### **3.2 Payments not made**

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

- (a) the Trustee shall stop payment of such cheque;
- (b) the monies represented by such stopped cheque or held by the Trustee on behalf of the Admitted Creditor shall be paid to the ASIC; and

- (c) the provisions of sections 544(1) and 544(3) of the Act will apply, with such modifications as are necessary, to such payment as if references in those sections to "liquidator" were references to the "Trustee".

### **3.3 Discharge**

- (a) A payment made by the Trustee in accordance with this Deed will constitute a full and final discharge of the obligations of the Trustee to the Admitted Creditor under the Trust.
- (b) Claims of a creditor who has failed to submit a sworn proof of debt when called for by the Trustee pursuant to clause 5.1 are absolutely barred and extinguished against the Trust.

### **3.4 Surplus in the Trust Fund**

In the event that there is surplus or balance in the Trust Fund after the Admitted Creditors have received 100 cents in the dollar on their Admitted Claims, such surplus shall be paid by the Trustee to the Company.

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## **4. Perpetuity Period**

Subject to any other provision in this Deed, each

- (a) interest in property; and
- (b) Trustee's Power over or in connection with property,  
  
created or granted by this Deed, that, but for this provision, might vest, take effect, or be exercisable, after the expiry of EIGHTY (80) years commencing on the date of this Deed, but has not vested or taken effect by that date:
- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

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## **5. Claims**

### **5.1 Admissibility of Claims**

- (a) Upon this Deed being settled, and in accordance with clause 4.3 of the DOCA, all Claims against the Company will convert to and become claims against the Trust Fund under this Deed, equal in amount to the released Claims.
- (b) Unless Claims have already been admitted or rejected by the Administrator, the Trustee shall consider the Claims for the purposes of deciding whether to admit them under this Deed.
- (c) Only Claims are admissible under this Deed.
- (d) Interest will not accrue or be payable on any Admitted Claim.
- (e) The Trustee may, in his absolute discretion and subject to clause 5.1(c):
  - (i) admit all or part of any Claim;

- (ii) reject all or part of any Claim; and
  - (iii) pay any Admitted Claim,
- in accordance with the provisions of this Deed.

## 5.2 Determination of Claims

- (a) Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this deed, subdivisions A and B of Division 6 of Part 5.6 of the Act (except sections 553B, 554(A)(3) to 554(A)(8) other than to the extent expressly incorporated)) and Corporations Regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.52 (inclusive), 5.6.55, 5.6.56, 5.6.70 and 5.6.70A apply to this Deed with such modifications as may be necessary, including:
  - (i) references to the 'liquidator' to be read as references to the Trustee; and
  - (ii) references to 'winding up' to be read as references to the operation and performance of this Deed.
- (b) The Trustee may make interim distributions of trust property under this Deed.
- (c) The Trustee must declare and distribute trust property under this Deed as soon as practicable after the Trust comes into effect under clause 2.2. However, subject to clause 5.2(a), the Trustee has an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of the trust property in payment of Admitted Claims.
- (d) Where the Trustee proposes to reject a Claim (whether in part or in full) the Trustee shall send a notice to the Claimant informing the Claimant of the proposed rejection and giving to that party 21 days within which to make an application to the Court to determine the questions relating to the Claim.
- (e) Subject to clause 5.2(f), where there have been mutual credits, mutual debts or other mutual dealings between the Company and an Admitted Creditor:
  - (i) an account must be taken of what is due from the one party to the other in respect of those mutual dealings;
  - (ii) the sum due from one party is to be set off against any sum due from the other party;
  - (iii) only the balance of the account (if any) in favour of the Admitted Creditor as against the Company is to be admissible to proof pursuant to this Deed.
- (f) An Admitted Creditor is not entitled under clause 5.2(e) 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.

## 5.3 Insurance Claims

- (a) On receipt by the Company from an insurer of any monies relating to an Insurance Claim:

- (i) 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;
  - (ii) in the event that there are any monies remaining after the claimant of that Insurance Claim has been paid, the Company shall pay such moneys to the Trust Fund; and
  - (iii) any such Insurance Claim shall be limited to and satisfied by the application of the monies in accordance with clause 5.3(a)(i) and not be paid from the Trust Fund; and
- (b) To the extent that the Company is entitled to or receives amounts in respect of any Insurance Claim from insurers, that Insurance Claim is not released by the DOCA.

#### **5.4 Superannuation Claims**

- (a) The Trustee must determine that the whole of a debt by way of a Superannuation Contribution is not an Admitted Claim if:
- (i) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
  - (ii) the Trustee is satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first-mentioned debt.
- (b) The Trustee must determine that a particular part of a debt by way of a Superannuation Contribution is not an Admitted Claim if:
- (i) a debt by way of a Superannuation Guarantee Charge has been paid or is, or is to be, an Admitted Claim; and
  - (ii) the Trustee is satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned debt.

#### **5.5 Creditors' costs and expenses**

Any costs or expenses incurred by a Creditor in asserting a Claim under this Deed will be borne by that Creditor and will not form part of that Creditor's Claim under this Deed.

#### **5.6 Abandonment of Claims**

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

- (a) which are not the subject of a proof lodged with the Deed Administrator or the Trustee in the form required by the Trustee prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustee 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.

## **5.7 Register of Admitted Creditors**

The Trustee shall maintain a register of Admitted Creditors including, but not limited to, the Admitted Creditor's name and address, details of each Admitted Claim and distributions made by the Trustee to the relevant Admitted Creditor.

## **5.8 Discharge of Claims**

All persons having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all claims which they have or claim to have against the Trustee or the Trust Fund and each of them will, if called to do so, execute and deliver to the Trustee such forms or release of any such claim as the Trustee requires.

## **5.9 Claims extinguished**

On payment of the Final Dividend (if any) to the Admitted Creditors from the Trust Fund, all Claims against the Trust Fund are extinguished and each Creditor will, if called upon to do so, execute and deliver to the Trustee such forms or release of any such claim as the Trustee requires.

## **5.10 Bar**

After distribution of the Final Dividend (if any) from the Trust Fund, the Trustee may plead this Deed in bar to any Claim.

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# **6. Meetings of Admitted Creditors**

The Trustee may at any time convene a meeting of Admitted Creditors (including for the purpose of approving further Trustee's Remuneration) and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply, with such modifications as are necessary, to meetings of the Admitted 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 Trustee.

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# **7. Indemnity and Remuneration**

## **7.1 Indemnity**

Subject to the DOCA and the Act, the Administrator and the Trustee are entitled to be indemnified out of the Trust Fund for:

- (a) the Trustee's Costs and Expenses;
- (b) the Trustee's Remuneration;
- (c) the remuneration costs and expenses of the Trustee in his former capacity as Administrator and Deed Administrator of the DOCA;
- (d) all liabilities incurred and payments made by the Trustee in his former capacity as Administrator or Deed Administrator of the DOCA or in connection with the Trust or his role as Trustee; and

- (e) all actions, suits, proceedings, accounts, claims and demands arising after the Commencement Date, out of or relating to the DOCA or out of or relating to this Deed which may be commenced, incurred by or made on the Administrator (in any capacity), or the Trustee by any person and against all costs, charges and expenses incurred by the Administrator or the Trustee in respect of them,

PROVIDED THAT the Administrator and the Trustee shall not be entitled to an indemnity in respect of any liabilities or demands if the Administrator or the Trustee, or any partner, employee, authorised agent or delegate of the Administrator or the Trustee, have acted dishonestly, with gross negligence, in breach of fiduciary duty, or breach of trust including any act or omission in respect of which this indemnity would not be allowed by reason of Section 199A of the Trustees Act.

## **7.2 Continuing indemnity**

This indemnity will take effect on and from the Commencement Date and will be without limitation as to time and will operate notwithstanding the removal of the Administrator or the Trustee and the appointment of new Administrator or new Trustee or the termination of the DOCA, or this Trust for any reason whatsoever.

## **7.3 Indemnity not to be affected or prejudiced**

The indemnity under clauses 7.1 and 7.2 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrator or the Trustee 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 Administrator or the Trustee, the approval and execution of this Deed or the DOCA or otherwise; or
- (b) affect or prejudice all or any rights that the Administrator and the Trustee may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Administrator or the Trustee of or incidental to the exercise or performance of any of the powers of authorities conferred on the Administrator or the Trustee by this Deed or the DOCA or otherwise.

## **7.4 Lien**

To secure the rights or indemnity under clauses 7.1 and 7.2, the Trustee has a lien over the Trust Fund.

## **7.5 Priority**

Subject to clause 3.1, the Deed Administrator's right of indemnity and the Deed Administrator's lien under clause 7.4 has priority over the Claims of all Creditors.

## **7.6 Remuneration of Trustee**

The Trustee:

- (a) is to be paid the Trustee's Remuneration from the Trust Fund, in connection with the:
  - (i) calling for and adjudicating upon the proofs of Claims,

- (ii) distribution of the Trust Fund,
  - (iii) exercise of his powers and discretions and the performance of his duties, obligations and responsibilities as Trustee under this Deed; and
- (b) may draw the Trustee's costs, expenses and remuneration from the Trust Fund as and when the Trustee raises an invoice for such amounts;
  - (c) is entitled to be reimbursed from the Trust Fund for the whole of costs, charges, disbursements and expenses incurred by the Trustee in connection with or incidental to the Trustee's administration of this Deed;
  - (d) acknowledges that the Trustee's Costs and Expenses, including all costs, fees and expenses incurred in connection with the foregoing, including, without limitation, any stamp duty payable in respect of this Deed and the DOCA, the Recapitalisation Proposal or any documents contemplated thereby and stamp duty, costs, fees or expenses incurred for the purpose of transferring assets to the Trustee to become part of the Trust Fund, will be payable from the Trust Fund.

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## **8. Liability**

### **8.1 Exclusion of liability**

- (a) The Trustee, including his partners and employees, is not liable for any loss, damages, costs or expenses which may result to the Trust Fund or any person in the absence of wilful default, fraud, gross negligence or breach of trust by the Trustee.
- (b) The recourse of a Claimant against the Trustee in his capacity as trustee of the Trust shall be limited to the Trust Fund.

### **8.2 Reliance on advice**

Where the Trustee acts in reliance upon the advice of any solicitor instructed on behalf of the Trust 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 Trustee is not liable to any person in respect of any act done or omitted to be done by the Trustee in accordance with the advice.

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## **9. Trust account**

### **9.1 Opening of bank account**

The Trustee must open a new bank account with an authorised deposit-taking institution (as that term is defined in the *Banking Act 1959 (Cth)*).

### **9.2 Bank account**

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

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## **10. Trustee's resignation**

The Trustee may resign at any time by giving not less than five (5) Business Days prior written notice to the Company.

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## **11. Trustee not obliged to take action**

The Trustee shall not be obliged to take any action under this Deed until such time as there are sufficient funds in hand to pay the Administrator's Trading Expenses, Administrator's Remuneration, the Trustee's Costs and Expenses and the Trustee's Remuneration.

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## **12. Termination**

### **12.1 Termination of the Trust**

This Trust will terminate and the Trustee shall resign as soon as reasonably practicable, on the earlier of:

- (a) as soon as reasonably practicable after distribution of the Final Dividend from the Trust Fund; or
- (b) the expiry of the perpetuity period referred to in clause 4 above.

### **12.2 Variation of Trust**

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

- (a) at any time prior to the termination of this Trust, the Trustee determines that it is no longer practicable or desirable to continue to implement or carry out this Deed; or
- (b) the Court so orders.

### **12.3 Termination of the Trust by Court order or beneficiaries resolution**

This Trust will terminate if:

- (a) a Court so orders; or
- (b) the Admitted Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 6 or 12.2.

### **12.4 Report to Admitted Creditors**

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

- (a) a statement explaining the circumstances which have caused the Trustee to convene the meeting pursuant to clause 12.2; and
- (b) 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.

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## **13. Variation of Deed**

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

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## **14. Inconsistency with DOCA**

If there is any inconsistency between the terms of this Deed and the DOCA then this Deed will, to the extent of the inconsistency, prevail and the DOCA will be interpreted accordingly.

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## **15. Further assurances**

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

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## **16. Notice**

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 in the register established under clause 5.7 of this Deed 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.

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## **17. Governing Law**

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

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## **18. Severance**

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

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## **19. Waivers**

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.

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## 20. Counterparts

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

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## 21. Stamp Duty

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

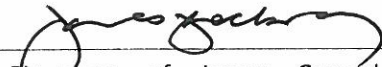
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## 22. GST


- (a) Words used in this clause 22 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates
- (b) Unless expressly included, the consideration for any supply under or in connection with this Deed is exclusive of GST.
- (c) 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").
- (d) The recipient need not pay the Additional Amount until it receives a Tax Invoice from the supplier with respect to the relevant taxable supply.

Executed as a deed.

Executed by Northern Iron Limited  
(Subject to Deed of Company  
Arrangement) ACN 125 264 575 by its  
Deed Administrator in accordance with  
the *Corporations Act*:

  
Signature of James Gerard Thackray as  
Deed Administrator for and on behalf of  
Northern Iron Limited (Subject to Deed of  
Company Arrangement) ACN 125 264 575

Signed by James Gerard Thackray in his )  
capacity as Deed Administrator of )  
Northern Iron Limited (Subject to Deed of )  
Company Arrangement) ACN 125 264 575  
in the presence of:

  
Signature

  
Signature of Witness

**RICHARD ABRAHAM**  
Name of Witness in full (BLOCK LETTERS)

*1 Boreham St, Cottesloe*  
Address

*Chartered Accountant*  
Occupation