

The Minister for Resources on behalf of the Crown in Right of the State of Victoria
WHSP Stockman Pty Limited

Stockman Project Post Closure Deed

101 Collins Street
Melbourne VIC 3000 Australia
T +61 3 9614 1011
F +61 3 9614 4661
www.allens.com.au

© Allens Australia 2017

Contents

1	Definitions and Interpretation	1
	1.1 Definitions	1
	1.2 Interpretation	6
	1.3 Consents or approvals	7
	1.4 Delegation	7
	1.5 Implied terms	8
2	Conditions	8
3	Bank Guarantee	8
	3.1 Amount of Bank Guarantee	8
	3.2 Return of Bank Guarantee	9
4	Post Closure Management Plan	9
	4.1 Closure Expert	9
	4.2 Post Closure Management Plans	10
5	Insurance Amount	10
6	Final Closure Amount	11
	6.1 Determination of Final Closure Amount	11
	6.2 Payment of Final Closure Amount	12
	6.3 Payment	12
	6.4 No deduction or withholding	12
7	Establishment of the Post Closure Fund	12
8	Responsibility for Tailings Storage Facility	13
	8.1 Licensee responsible	13
	8.2 Notifications	14
	8.3 Crown responsible	15
9	Assignment Restrictions	15
10	Legislation to Prevail	15
11	Confidentiality	16
	11.1 Licensee's obligations of confidentiality	16
	11.2 Disclosures required by Law	16
	11.3 Obligations on disclosure	16
	11.4 Publication of Deed	17
12	Completion, Default and Termination	17
	12.1 Completion	17
	12.2 Default Event	17
	12.3 General termination powers	17
13	Notice	18
	13.1 Requirements	18
	13.2 Receipt	18
14	Dispute Resolution	19
	14.1 No court proceedings	19
	14.2 Referral to representatives	19
	14.3 Referral to chief representative and Secretary	19
	14.4 Referral to arbitration	19
	14.5 Continuation of rights and obligations	19
15	General Provisions	20

15.1	Costs	20
15.2	Amendment	20
15.3	Counterparts	20
15.4	Entire agreement	20
15.5	Execution by attorneys	20
15.6	Governing law	20
15.7	Jurisdiction	20
15.8	Inconsistency	20
15.9	Invalid or unenforceable provisions	20
15.10	No merger	20
15.11	Waiver and exercise of rights	20
15.12	Equal opportunity, anti-discrimination, data security and privacy legislation	21
15.13	Negation of partnership and agency	21
15.14	Indemnities	21

This Deed is made on

4 December 2017.

Parties

- 1 **The Minister for Resources** on behalf of the **Crown in Right of the State of Victoria** of 1 Treasury Place, Melbourne Victoria 3000 (*Minister*).
- 2 **WHSP Stockman Pty Limited** (ACN 619 759 465) of Level 32, 10 Eagle Street, Brisbane Queensland 4001 (*Licensee*).

Recitals

- A The Licensee has agreed to contribute the Final Closure Amount to the Post Closure Fund for the Tailings Storage Facility on the terms as set out in this Deed.
- B The Licensee has agreed to contribute the Insurance Amount on the terms as set out in this Deed.
- C The Minister intends to use best endeavours to establish the Post Closure Fund.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

In this Deed unless the context requires another meaning:

Act means the *Mineral Resources (Sustainable Development) Act 1990* (Vic) and includes any regulations, by-laws and other subordinate legislation or instruments issued or authorised under that Act.

ANCOLD Guidelines means:

- (a) the Guidelines on Dam Safety Management prepared by the Australian National Committee on Large Dams Inc dated August 2003; and
- (b) the Guidelines on Tailings Dams – Planning, Design, Construction, Operation and Closure prepared by Australian National Committee on Large Dams Inc dated May 2012, as amended, consolidated, supplemented or replaced from time to time.

Bank Guarantee means an unconditional undertaking by an Australian bank to pay, upon demand, the Final Closure Amount and the Insurance Amount.

Bank Guarantee Trigger has the meaning given to that term in clause 3.1(e).

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

Change in Control occurs if, in respect of the Licensee, a person is able to Control the Licensee when that person was not able to Control the Licensee as at the date of this Deed.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, Tax, liability, Loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Cleared Funds means money that is immediately available to the recipient and freely transferable by it.

Closure Date means the date on which the Rehabilitation Bond is returned to the Licensee or, if the Licensee has not satisfied section 82 of the Act, the date the Minister notifies the Licensee that he or she will not return the Rehabilitation Bond to the Licensee.

Condition Precedent has the meaning given to that term in clause 2.

Confidential Information of a party (**Disclosing Party**) means all information (regardless of its form) disclosed or otherwise made available by the Disclosing Party to the other party (**Receiving Party**) or of which the Receiving Party otherwise becomes aware in connection with this Deed and the transactions contemplated by this Deed which is of a confidential nature, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Deed or any other confidentiality obligation by the Receiving Party; or
- (b) has been independently developed or acquired by the Receiving Party as established by written evidence.

Consequential Loss means any consequential or indirect Loss (of whatsoever nature and howsoever arising) suffered or incurred by a party as a result of an act or omission of the other party which does not arise naturally (that is, according to the usual course of things) from the act or omission, and expressly includes economic and business loss, loss of revenue and loss of profit. To avoid doubt, Consequential Loss does not include any Loss arising from contamination or environmental harm to Tambo River or Straight Creek (including any reduction in water quality) which is attributable to the Tailings Storage Facility.

Continuing Clauses means clauses 1, 11, 13, 14 and 15.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Controller has the meaning given to 'controller' in section 9 of the Corporations Act.

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

CPI means the Consumer Price: All Groups Index Number Melbourne as published by the Australian Bureau of Statistics.

In this definition:

- (a) the reference to the Consumer Price: All Groups Index Number Melbourne means:
 - (i) the same numbers but with different names at any time; or
 - (ii) the same numbers adjusted mathematically to take account of a change at any time in the base period provided that indices of the same base year are used throughout the calculation; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
 - (i) the Australian Bureau of Statistics but with a different name at any time; and
 - (ii) a Government Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

If the Consumer Price: All Groups Index Number Melbourne is suspended or discontinued or the basis of calculating that index is changed substantially the Minister may nominate a replacement index, which reflects fluctuations in the cost of living in Melbourne, to be used for the purposes of this definition.

CPI Multiplier is:

- (a) the CPI for the most recent March Quarter; divided by
- (b) the CPI for the June Quarter 2017.

Crown means the Crown in right of the State.

Crown Land Minister means the Minister under the *Crown Land (Reserves) Act 1978 (Vic)*.

Cut-Off Date means 9 December 2017, unless extended by agreement between the parties.

Default Event means the Licensee's failure to remedy a breach of this Deed in accordance with clause 12.2(c).

Department means the Victorian Department of Economic Development, Jobs, Transport and Resources or its successor.

Department Head has the meaning given to that term in the Act.

Dispute has the meaning given to that term in clause 14.1.

Dollars and \$ means the lawful currency of Australia.

EES means the Environment Effects Statement entitled Stockman Project Environment Effects Statement dated 14 March 2014 prepared by the Former Licensee for the purposes of the Stockman Project.

Environmental Law means any Law about the environment, planning, building or local government and includes any Law about land use or occupation of land or building, occupational health and safety, heritage preservation, protection or conservation, pollution or contamination of the environment, water, waste disposal, treatment or storage or chemicals, pesticides or other toxic, hazardous or dangerous substances.

Environmental Liability means any liability, obligation, cost, expense, penalty, compensation or fine imposed or incurred under an Environmental Law.

Final Closure Amount has the meaning given to that term in clause 6.1.

Former Licensee means Independence Stockman Project Pty Ltd (ACN 124 695 567).

GHD Report means the Assessment of the Proposed Post Closure Design for Stockman Tailings Storage Facility Report dated February 2014 prepared by GHD for the Department.

Government Agency means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

Indemnified Parties has the meaning given to that term in clause 8.1.

Independent Expert has the meaning given to that term in clause 6.1.

Insolvency Event means, for the Licensee, the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the Minister:
 - (i) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within seven days of it being filed; or
 - (ii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or

- (iii) a resolution that it be wound up is passed or proposed;
- (b) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (c) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected or by reason of financial difficulties it begins negotiations with one or more of its creditors with a view to readjustment or rescheduling of any of its indebtedness;
- (f) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
- (g) it is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (h) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (i) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
- (j) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
- (k) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (j) inclusive happens to it under the law of any jurisdiction.

Insurance Amount means the lesser of:

- (a) \$1 million multiplied by the CPI Multiplier as at the immediately preceding 30 June; and
- (b) the amount (if any) agreed between the parties within 30 days after the date of this Deed multiplied by the CPI Multiplier as at the immediately preceding 30 June.

Land Owner means the owner of the land subject to the Licence from time to time, which as at the date of this Deed is the State.

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State; and
- (b) the common law and principles of equity as applied from time to time in the State.

Licence means the Infrastructure Mining Licence granted, or to be granted, to the Licensee under the Act for the purpose of operating and maintaining the Tailings Storage Facility as part of the Stockman Project.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.

Mining Licence means Mining Licence MIN5523 granted to the Licensee under the Act, together with all extensions, variations, renewals or further rights arising out of or flowing from Mining Licence MIN5523.

Minister for Planning means the Minister under the *Planning and Environment Act 1987* (Vic).

Notice of Intention to Commence Work means a written notice issued by the Licensee in accordance with section 42(1)(g) of the Act stating an intention to commence work on the land covered by the Mining Licence.

Planning Assessment means the Minister for Planning's assessment under the *Environment Effects Act 1978* (Vic) for the Stockman Project dated October 2014.

Post Closure Fund has the meaning given to that term in clause 7.

Post Closure Management Plan has the meaning given to that term in clause 4.1.

Quarter means any calendar quarter (or part of a calendar quarter) commencing on 1 January, 1 April, 1 July or 1 October in any year.

Recommendation 12 means inquiry recommendation 12 of the Planning Assessment, which recommended that the Post Closure Fund should provide for:

- (a) the ongoing employment of an Independent Technical Reviewer post-closure of the mine;
- (b) rebuilding of the Tailings Storage Facility wetlands periodically after closure, if recommended by the Independent Technical Reviewer;
- (c) any maintenance requirements in accordance with model predictions for failure of the grout curtain, engineered soils and membrane;
- (d) maintenance of emergency water supply system or other means to maintain a water cover of the Tailings Storage Facility;
- (e) treatment of supernatant water from the Tailings Storage Facility long-term; and
- (f) monitoring of the surface and ground water flows and quality in the vicinity of the Tailings Storage Facility and mine in accordance with the Independent Technical Reviewer's recommendations.

In this definition, Independent Technical Reviewer has the meaning given in the Planning Assessment.

Rehabilitation Bond means any rehabilitation bond entered into by the Licensee in relation to the Licence or the Mining Licence under section 80 of the Act.

Sale Agreement means the asset sale agreement entered into by the Licensee, Washington H. Soul Pattinson and Company Limited (ACN 000 002 728), the Former Licensee and Independence Group NL (ACN 092 786 304) dated 13 June 2017.

State means the State of Victoria.

State's Representative means the Executive Director, Earth Resources Policy and Programs of the Department or any other person nominated by the Minister.

Stockman Project means the underground copper and zinc mine in East Gippsland, Victoria to be developed by the Licensee to extract ore from the Wilga and Currawong deposits or other new mineral discoveries on the land covered by the Mining Licence and any associated tenure.

Tailings Storage Facility means the tailings dam located on the land subject to the Licence, as may be expanded from time to time, for the storage of waste rock and solid processing wastes known as tailings from the Stockman Project.

Tax means:

- (a) a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty and GST) at any time imposed or levied by any Government Agency or required to be remitted to, or collected, withheld or assessed by, any Government Agency; and
 - (b) any related interest, expense, fine, penalty or other charge on those amounts,
- and includes any amount that a person is required to pay to another person on account of that other person's liability for Tax.

Trustee means the trustee of the Post Closure Fund.

Work Plan means the work plan for the Licence and the Mining Licence which is approved from time to time under and in accordance with the Act.

1.2 Interpretation

- (a) In this Deed:
 - (i) unless the context requires, a reference to:
 - (A) the singular includes the plural and vice versa;
 - (B) a gender includes all genders;
 - (C) a document (including this Deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (D) a deed includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (E) a party means a party to this Deed;
 - (F) a paragraph, Recital, clause, Schedule or Annexure is to a paragraph, Recital, clause, Schedule or Annexure of or to this Deed;
 - (G) a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Deed;
 - (H) any governmental department, professional body, committee, council or other body includes the successors to that body or any relevant activity or function of that body;
 - (I) a person (including a party) includes:
 - (1) an individual, company, other body corporate, association, partnership, firm, joint venture, trust and Government Agency;
 - (2) the person's successors, permitted assigns, substitutes, executors and administrators; and
 - (3) a reference to the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
 - (J) a liability includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;

- (K) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (L) proceedings includes litigation, arbitration and investigation;
 - (M) a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
 - (N) dollars and \$ is to Australian currency;
 - (O) time is to Melbourne time;
 - (P) day is to a day in Melbourne; and
 - (Q) the words 'including' and 'includes' mean 'including, but not limited to', and 'includes, without limitation' respectively;
- (ii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (iii) headings are for convenience only and do not affect interpretation of this Deed;
 - (iv) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
 - (v) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.
- (b) This Deed may not be construed adversely to a party only because that party was responsible for preparing it.

1.3 Consents or approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of the Minister or is within the power of the Minister, the consent or approval may be given or the power may be exercised conditionally or unconditionally or withheld by the Minister in his or her absolute discretion unless express provision to the contrary is made.

1.4 Delegation

- (a) The Minister may delegate any power, function or responsibility which the Minister has under this Deed.
- (b) Any such delegation may be:
 - (i) revoked or changed; and
 - (ii) limited or may be subject to such conditions as the Minister determines from time to time.
- (c) The Licensee is entitled to request details of the delegation of any power, function or responsibility by the Minister under this Deed where a person purports to be acting under such a delegation. Once the Licensee obtains such details, it is entitled to rely on them unless and until given notice of revocation of that delegation.
- (d) Any person to whom a power, function or responsibility is delegated by the Minister has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind the Minister under this Deed.

1.5 Implied terms

All implied terms, conditions and warranties, including any implied duty of good faith, are, to the maximum extent permitted by Law, excluded from this Deed.

2 Conditions

- (a) Except for this clause 2 and the Continuing Clauses, this Deed is conditional on the completion of the sale of the Stockman Project from the Former Licensee to the Licensee on or before the Cut-Off Date in accordance with the Sale Agreement (**Condition Precedent**).
- (b) If the Condition Precedent is not satisfied, or waived, by the Licensee on or before the Cut-Off Date then this Deed terminates on the day after the Cut-Off Date. The termination of this Deed pursuant to this paragraph (b) does not affect any accrued rights or remedies of either party.

3 Bank Guarantee

3.1 Amount of Bank Guarantee

- (a) The parties acknowledge and agree that their estimate of the capitalised costs associated with the final Post Closure Management Plan is \$5,770,000 as at the date of this Deed.
- (b) The Licensee must deliver to the Minister, or as the Minister directs (acting reasonably), a Bank Guarantee in the amount of:
 - (i) \$5,770,000 multiplied by the CPI Multiplier as at the immediately preceding 30 June; plus
 - (ii) the Insurance Amount,at least seven days prior to the Licensee's intended date of delivery of the Notice of Intention to Commence Works.
- (c) The Bank Guarantee must be in a form and upon such terms and conditions as are acceptable to the Minister (acting reasonably) and the Bank Guarantee must not have an expiry date.
- (d) Every five years after the date of this Deed, the Licensee must deliver to the Minister a replacement Bank Guarantee in the amount of:
 - (i) \$5,770,000 multiplied by the CPI Multiplier as at the immediately preceding 30 June; plus
 - (ii) the Insurance Amount,which complies with paragraph (c).
- (e) If before the Bank Guarantee is returned in accordance with clause 3.2:
 - (i) the Licensee surrenders the Mining Licence or the Licence;
 - (ii) the Minister lawfully cancels the Mining Licence or the Licence;
 - (iii) a Default Event occurs; or
 - (iv) an Insolvency Event occurs in relation to the Licensee,(each a **Bank Guarantee Trigger**) then the Licensee's obligation to pay the Final Closure Amount and the Insurance Amount will become immediately due and payable on demand and the Minister may, without notice, apply any part or all of the Bank Guarantee against the Licensee's obligation to pay the Final Closure Amount and the Insurance Amount.

Any such application will not operate to waive any Default Event and will not prejudice any other right of the Minister arising upon a Default Event or Insolvency Event.

3.2 Return of Bank Guarantee

The Minister must return the Bank Guarantee to the Licensee:

- (a) if prior to delivering to the Notice of Intention to Commence Works in accordance with the Act the Licensee notifies the Minister that it no longer intends to develop the Stockman Project and surrenders the Licence, promptly after receipt of the notification and surrender; or
- (b) otherwise, on payment by the Licensee of both the Insurance Amount in accordance with clause 5(a) and the Final Closure Amount in accordance with clause 6.2(a).

4 Post Closure Management Plan

4.1 Closure Expert

- (a) The Licensee must appoint an independent expert or experts with relevant qualifications and experience (**Closure Expert**) for the purpose of:
 - (i) preparing one or more plans for the ongoing inspection, monitoring, management and maintenance of the Tailings Storage Facility in perpetuity after the Closure Date (**Post Closure Management Plan**); and
 - (ii) advising if any variation to the Work Plan necessitates any change to the current Post Closure Management Plan,

in accordance with this clause 4. The Licensee must obtain the Minister's approval of any Closure Expert prior to the appointment of the Closure Expert pursuant to this paragraph (a). Such approval by the Minister must not be unreasonably withheld.

- (b) The parties must supply the Closure Expert with any information, assistance and cooperation which he or she may request in connection with preparing a Post Closure Management Plan.
- (c) The Licensee must ensure that, when preparing a Post Closure Management Plan, the Post Closure Expert:
 - (i) undertakes an assessment of the potential risks associated with the Tailings Storage Facility after the Closure Date;
 - (ii) takes into account:
 - (A) the Planning Assessment including Recommendation 12;
 - (B) up to date processes, techniques, technology and methodologies for the inspection, monitoring, management and maintenance of tailings dams;
 - (C) prevailing industry standards in relation to the inspection, monitoring, management and maintenance of tailings dams in Australia as specified in the ANCOLD Guidelines; and
 - (D) the methodology used, and the matters to which regard was had, in the GHD Report; and
 - (iii) consults, at his or her discretion, with any experts he or she thinks fit.
- (d) The fees and expenses related to the Post Closure Management Plan and the Closure Expert must be borne by the Licensee.

4.2 Post Closure Management Plans

- (a) The Licensee must submit to the Minister:
- (i) the initial Post Closure Management Plan prepared by the Closure Expert within 120 days after the Licensee's initial Work Plan is approved by the Department Head in accordance with section 40A of the Act;
 - (ii) if the Closure Expert determines under paragraph (c) that a variation to the Work Plan necessitates any change to the current Post Closure Management Plan, an updated Post Closure Management Plan prepared by the Closure Expert within 120 days after the Work Plan variation is approved by the Department Head in accordance with the Act; and
 - (iii) the final Post Closure Management Plan prepared by the Closure Expert at the same time as the Licensee provides notice to the Minister in accordance with clause 8.2(a).
- (b) The Licensee must procure that the Closure Expert:
- (i) provides each party with a draft of each Post Closure Management Plan at least 120 days before it is due to be submitted by the Licensee in accordance with paragraph (a);
 - (ii) provides each party with a revised draft of each Post Closure Management Plan at least 60 days before it is due to be submitted by the Licensee in accordance with paragraph (a) which takes into account any submissions put forward by a party within 30 days after receipt of the draft Post Closure Management; and
 - (iii) takes into account any submissions put forward by a party on the revised draft of the Post Closure Management Plan within 30 days after receipt of the revised draft Post Closure Management Plan in:
 - (A) the initial Post Closure Management Plan;
 - (B) any updated Post Closure Management Plan; or
 - (C) final Post Closure Management Plan,prepared by the Closure Expert for submission by the Licensee in accordance with paragraph (a).
- (c) If the Licensee varies the Work Plan in accordance with the Act in a manner that affects or could affect the Tailings Storage Facility, the Licensee must obtain a written determination from the Closure Expert on whether the variation to the Work Plan necessitates any changes to the current Post Closure Management Plan. The Licensee must provide the Closure Expert's determination to the Minister within seven days after the variation is approved by the Department Head in accordance with the Act.

5 Insurance Amount

- (a) The Licensee must pay the Insurance Amount to either:
- (i) the Post Closure Fund; or
 - (ii) if the Post Closure Fund has not been established, to a fund or account the purpose of which is to be the informal precursor to the Post Closure Fund pending the establishment of the Post Closure Fund,

at least seven days prior to return of the Rehabilitation Bond or, if the Licensee has not satisfied section 82 of the Act and the Minister notifies the Licensee that he or she will not return the Rehabilitation Bond to the Licensee, promptly on demand by the Minister.

- (b) The parties acknowledge and agree that the Insurance Amount is a contribution by the Licensee to the cost of insuring the Tailings Storage Facility in respect of property damage and Environmental Liabilities after the Closure Date.

6 Final Closure Amount

6.1 Determination of Final Closure Amount

- (a) Upon receipt of the draft final Post Closure Management Plan from the Closure Expert in accordance with clause 4.2(b)(i), the parties must select a panel of three independent experts with the relevant qualifications and experience to determine the costs associated with the final Post Closure Management Plan (**Final Closure Amount**).
- (b) Upon receipt of the final Post Closure Management Plan or on the occurrence of a Bank Guarantee Trigger, the Minister must choose and appoint an independent expert (**Independent Expert**) to determine the Final Closure Amount in accordance with this clause 6. Provided a Bank Guarantee Trigger has not occurred, the Independent Expert must be from the panel of independent experts selected under paragraph (a).
- (c) The parties must supply the Independent Expert with any information, assistance and co-operation which he or she may request in connection with his or her assessment of the Final Closure Amount.
- (d) In assessing the Final Closure Amount under this clause 6.1, the Independent Expert:
 - (i) must make his or her determination independently;
 - (ii) must take into account:
 - (A) the costs associated with the ongoing inspection, monitoring, management and maintenance of the Tailings Storage Facility in perpetuity identified in the final Post Closure Management Plan including avoiding, mitigating and managing the risks identified in the final Post Closure Management Plan; and
 - (B) that the Final Closure Amount should not include costs associated with residual risks which will not be addressed by way of the inspection, monitoring, management and maintenance measures set out in final Post Closure Management Plan;
 - (iii) may consult, at his or her discretion, with any experts he or she thinks fit;
 - (iv) must provide each party with an initial draft of his or her determination of the Final Closure Amount at least 120 days before it is due to be submitted to the parties in accordance with paragraph (d)(vi);
 - (v) must provide each party with a revised draft of his or her determination of the Final Closure Amount at least 60 days before it is due to be submitted to the parties in accordance with paragraph (d)(vi) which takes into account any submissions put forward by a party within 30 days after receipt of the initial draft Final Closure Amount; and
 - (vi) must provide his or her determination of the Final Closure Amount to the parties at least 14 days prior to return of the Rehabilitation Bond which takes into

account any submissions put forward by a party within 30 days after receipt of the revised draft Final Closure Amount under paragraph (v).

- (e) In the absence of manifest error material to the determination, the Independent Expert's determination of the Final Closure Amount will be final and binding on the parties.
- (f) The fees and expenses of the Independent Expert must be borne by the Licensee.

6.2 Payment of Final Closure Amount

- (a) The Licensee must pay the Final Closure Amount to either:

- (i) the Post Closure Fund; or
- (ii) if the Post Closure Fund has not been established, to a fund or account the purpose of which is to be the informal precursor to the Post Closure Fund pending the establishment of the Post Closure Fund,

at least seven days prior to return of the Rehabilitation Bond or, if the Licensee has not satisfied section 82 of the Act and the Minister notifies the Licensee that he or she will not return the Rehabilitation Bond to the Licensee, promptly on demand by the Minister.

- (b) The parties acknowledge that:
 - (i) the State has no obligation under this Deed or otherwise to contribute any funds into the Post Closure Fund; and
 - (ii) the Licensee has no obligation under this Deed to pay any further funds into the Post Closure Fund on satisfaction of its obligations under paragraph (a) and clause 5(a).

6.3 Payment

All payments under this Deed must be made:

- (a) on the due date for payment;
- (b) in Cleared Funds; and
- (c) to the account specified by the recipient,

or in any other manner as the recipient (including the Trustee of the Post Closure Fund) may notify the party required to make the payment.

6.4 No deduction or withholding

All money payable by the parties under this Deed must be paid unconditionally and in full without demand, set off, withholding, counterclaim or deduction.

7 Establishment of the Post Closure Fund

- (a) Subject to compliance by the Licensee with its obligations under this Deed, the Minister must use his or her reasonable endeavours to establish a trust (the **Post Closure Fund**) within four years after delivery to the Minister of the Bank Guarantee and the terms of the Post Closure Fund must be in accordance with the following terms:
 - (i) the Trustee must be the Crown, the Minister, the Crown Land Minister or an appropriate person or body appointed by the Minister;
 - (ii) the purpose of the Post Closure Fund is to provide sufficient funds for the ongoing inspection, monitoring, management and maintenance of the Tailings Storage Facility in perpetuity after the Closure Date (including, if a Bank Guarantee Trigger occurs, engaging a Closure Expert to prepare the final Post

Closure Management Plan and engaging an Independent Expert to determine the Final Closure Amount) but, to avoid any doubt, does not include:

- (A) any activities which the Licensee is required to undertake with respect to the Tailings Storage Facility under the Licence, the Mining Licence, the Act, the Work Plan or the EES up to the return of the Rehabilitation Bond; and
 - (B) any other activities for which the Licensee has provided a bond or other form of security;
- (iii) the Trustee must hold, pay and apply the funds held under the Post Closure Fund for:
- (A) the inspection, monitoring, management and maintenance of the Tailings Storage Facility; or
 - (B) any other purpose associated with Tailings Storage Facility or the Stockman Project after the Closure Date including effecting any necessary insurances;
- (iv) the beneficiary of the Post Closure Fund must be the Land Owner; and
- (v) the Post Closure Fund must not be used for purposes which are not associated with Tailings Storage Facility or the Stockman Project.
- (b) The parties acknowledge that the establishment of the Post Closure Fund may require enabling legislation, in which case the rights, powers and obligations of the Trustee, are at all times subject to any such legislation.
- (c) The Minister must notify the Licensee in writing of the establishment and details of the Post Closure Fund within 14 days after the establishment of the Post Closure Fund.

8 Responsibility for Tailings Storage Facility

8.1 Licensee responsible

- (a) On and from the date of the Notice of Intention of Commence Works until the Closure Date, the Licensee assumes all responsibility and liability for the Tailings Storage Facility and its operation, including without limitation under all Environmental Laws.
- (b) To avoid doubt, paragraph (a) applies even if the Environmental Liability does not arise on the land subject to the Mining Licence or the Licence including adverse impacts arising in connection with the Tailings Storage Facility on:
 - (i) quality of groundwater; or
 - (ii) water quality in Tambo River or Straight Creek.
- (c) The Licensee acknowledges that the Minister has not, nor has any of his or her representatives, made any representations or warranties or undertakings in relation to the Tailings Storage Facility including in relation to design, construction, maintenance, operation, performance, suitability for purpose or legal compliance of the Tailings Storage Facility.
- (d) The Licensee releases the Minister from any Claim whatsoever in relation to the Tailings Storage Facility (including in relation to the design, construction, maintenance, operation, performance, suitability for purpose or legal compliance of the Tailings Storage Facility) accruing or arising on or after the date of the Notice of Intention to Commence Works, other than a Claim which directly relates to a Claim brought by a third party against the Licensee after the Closure Date (**Third Party Claim**) but only to the extent the Loss in

respect of the Third Party Claim was caused or contributed to by an act or omission of the Minister after the Closure Date.

- (e) Subject to paragraphs (f) and (h), the Licensee indemnifies the Minister and his or her officers, employees and agents (referred to in this clause 8.1 as the **Indemnified Parties**) from and against all Losses that may be sustained or incurred by any of the Indemnified Parties arising out of or as a consequence of:
 - (i) a negligent, reckless, unlawful act or omission, or wilful default of the Licensee, its employees, agents or other persons acting on its behalf or under its direction in relation to the Tailings Storage Facility; or
 - (ii) the breach by the Licensee of this Deed or of a Law.
- (f) The Licensee will have no obligation under paragraph (e) to indemnify the Indemnified Parties to the extent that:
 - (i) the Loss is a Consequential Loss;
 - (ii) the Loss is caused or contributed to by the negligence, unlawful act or omission or wilful default of, or breach of this Deed or of a Law by, the relevant Indemnified Party; or
 - (iii) the relevant Indemnified Party receives a payment pursuant to an insurance policy after the Closure Date in respect of the Loss.
- (g) The indemnity provided in paragraph (e) is in addition to, and not exclusive of, any other right, power, or remedy provided by Law. However, the Indemnified Parties are not entitled to be compensated in excess of the amount of the relevant Loss.
- (h) The Minister must take, and must procure each Indemnified Party takes, reasonable steps to mitigate any Loss which may give rise to a Claim under paragraph (e).

8.2 Notifications

- (a) The Licensee must provide the Minister with written notice as soon as practicable after the Licensee determines (acting reasonably) that it will be able satisfy its obligation to rehabilitate the land under section 78(1) of the Act 180 days after the date such written notice is provided. The written notice to be provided under this paragraph (a) must include evidence, satisfactory to the Minister, of the basis on which Licensee has made the determination.
- (b) Without limiting its obligations under any Law, the Licensee must immediately notify the State's Representative in writing of:
 - (i) any breach of the obligations of the Licensee with respect to the Tailings Storage Facility under the Licence, the Mining Licence, the Work Plan or the Act including full details of the breach and the causes of such breach;
 - (ii) any breach of any contractors or sub-contractors of the Licensee with respect to any design, construction, maintenance, repair or operation of the Tailings Storage Facility including full details of the breach, the causes of such breach, and how such breach may affect the performance of the Tailings Storage Facility;
 - (iii) any event, occurrence, act or omission which has or may result in an Environmental Liability being imposed relating to (either directly or indirectly) the Tailings Storage Facility, including all details of the event, occurrence, act or omission and the relevant Environmental Liability; and

- (iv) any failure of the Tailings Storage Facility to operate as intended, including full details of the failing and the relevant causes of such failing.

8.3 Crown responsible

- (a) Subject to paragraph (b) and clauses 8.1(e) and 10, the Minister releases the Licensee from any Claim in relation to the Tailings Storage Facility, including in relation to the design, construction, maintenance, operation, performance, suitability for purpose or legal compliance of the Tailings Storage Facility accruing or arising after the Closure Date.
- (b) Nothing in this Deed releases the Licensee from, or otherwise limits, the obligations of the Licensee with respect to the Tailings Storage Facility under the Licence, the Mining Licence, the Work Plan, the Act or other relevant Law.

9 Assignment Restrictions

- (a) The Licensee must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with any of its rights under this Deed, except with the prior written consent of the Minister, which must not be unreasonably withheld by the Minister if:
 - (i) the Minister has consented to the transfer the Licence and the Mining Licence to the proposed assignee in accordance with the terms of the Act;
 - (ii) the Licensee is not in breach of any applicable conditions or obligations under this Deed, the Work Plan, the Licence, the Mining Licence or the Act;
 - (iii) the proposed assignee is, in the opinion of the Minister, a fit and proper person, is solvent and has the financial, mining and business skills necessary to perform the Licensee's obligations under this Deed, the Work Plan, the Licence, the Mining Licence and the Act;
 - (iv) the proposed assignee provides the Minister with a bank guarantee for the same sum and on the same terms as the current Bank Guarantee provided by the Licensee on or before the date of the assignment; and
 - (v) the proposed assignee enters into a deed of assignment and assumption with the Minister, on terms acceptable to the Minister, under which the rights of the Licensee under this Deed are assigned to the proposed assignee and the obligations of the Licensee under this Deed are assumed by the proposed assignee.
- (b) The Minister must return the Bank Guarantee provided by the Licensee promptly after the replacement Bank Guarantee is provided by the proposed assignee in accordance with paragraph (a)(iv).
- (c) For the purposes of this clause 9, the Licensee is deemed to have assigned or otherwise dealt with this Deed if there is a Change in Control of the Licensee.
- (d) To avoid doubt, nothing in paragraph (a) is to be construed to fetter the discretion of the Minister under the Act, and no assignment, transfer, charge, trust or dealing with any right or other interest under this Deed may occur if to do so would amount to non-compliance with the Act or any other Law.

10 Legislation to Prevail

- (a) The matters set out in this Deed supplement rather than substitute the Act and other relevant Law, and nothing in this Deed overrides or restricts the operation of the Act which prevails in the event of any inconsistency.

- (b) The Licensee acknowledges that its undertakings and agreements in this Deed are in addition to, and not in place of or in any way diminishing, the Licensee's obligations under the Act and other relevant Law.
- (c) The parties agree that:
 - (i) the Minister is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any Government Agency in the proper exercise and performance of any of his or her executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in this Deed has the effect of constraining the Minister or placing any fetter on the Minister's discretion to exercise or not to exercise any of his or her executive or statutory rights or duties.

11 Confidentiality

11.1 Licensee's obligations of confidentiality

Each party must not disclose or permit the disclosure of Confidential Information or any other information relating to this Deed except:

- (a) with the prior written consent of the other party (recognising that the parties will jointly develop agreed messages which can be used subsequently without requiring any prior consent of the other party on each subsequent occasion);
- (b) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency or for lawful public accountability reasons, including (without limitation) a request for information by parliament or a parliamentary committee, and for any other reporting requirements of the any Government Agency;
- (c) to the extent required in connection with legal proceedings;
- (d) where otherwise permitted under this Deed;
- (e) to its legal advisers or accountants or tax advisers in order to obtain advice in relation to its rights under this Deed; or
- (f) where the parties agree in writing that the information can be the subject of disclosure to media,

and then only to the extent strictly necessary for that purpose.

11.2 Disclosures required by Law

Prior to disclosing Confidential Information of the other party under clause 11.1(b) (excluding permissible disclosures under clause 11.4) a party will, if it is able to do so without breaching any Law and if time constraints reasonably permit, provide prior notice to the other party and give the other party a reasonable opportunity to object to the disclosure.

11.3 Obligations on disclosure

If a party discloses Confidential Information as permitted by this Deed (excluding permissible disclosures under clauses 11.1(f) and 11.4), that party must ensure that each person to whom the Confidential Information is disclosed is aware of the obligations under this clause 10 and agrees to keep the Confidential Information confidential as if it was bound by the obligations of confidentiality imposed on the parties under this clause 10.

11.4 Publication of Deed

- (a) Without limiting clause 11.1(b), the Licensee agrees that the Minister may publish, disclose or generally make available this Deed and any Post Closure Management Plan:
 - (i) on any State website; and
 - (ii) at the offices of the Department.
- (b) Without limiting clause 11.1(b), the Minister agrees that the Licensee may publish, disclose or generally make available this Deed and any Post Closure Management Plan:
 - (i) on its website; and
 - (ii) at its offices.

12 Completion, Default and Termination

12.1 Completion

Subject to clauses 8, 11, 13, 14 and 15 which survive termination of this Deed, this Deed ends on the later of:

- (a) the Closure Date; or
- (b) the day after the Licensee pays the Final Closure Amount.

12.2 Default Event

- (a) If the Minister forms the view (acting reasonably) that the Licensee is in breach of this Deed, the Minister must notify the Licensee of the alleged breach.
- (b) A notice under paragraph (a) must specify:
 - (i) the nature and details of the alleged breach of this Deed; and
 - (ii) where reasonably possible, the date on which the alleged breach occurred.
- (c) Upon receipt of a notice under paragraph (a), the Licensee must within 30 days after receiving the notice (or, in the case of a breach of clause 9, immediately on receipt of such notice):
 - (i) if the breach is remediable by payment of money, pay all moneys necessary to remedy the breach; or
 - (ii) otherwise, remedy the breach.

12.3 General termination powers

- (a) Either party may terminate this Deed upon giving seven days' notice to the other party if prior to the Licensee delivering the Notice of Intention to Commence Works in accordance with the Act:
 - (i) the Licensee notifies the Minister that it no longer intends to develop the Stockman Project;
 - (ii) the Licensee surrenders the Mining Licence or the Licence;
 - (iii) the Minister lawfully cancels the Mining Licence or the Licence; or
 - (iv) the Licence is not granted to the Licensee within 365 days after the date of this Deed.
- (b) Termination of this Deed does not affect any accrued rights or remedies of either party.

13 Notice**13.1 Requirements**

All notices must be:

- (a) in legible writing and in English;
- (b) addressed to the intended recipient at the address or email address set out below or to any other address or email address that a party may notify to the other:
 - (i) to the Minister: Address: 1 Treasury Place
Melbourne Victoria 3000

or:
GPO Box 4379
Melbourne Victoria 3001

Email: treasurer@dtf.vic.gov.au
 - (ii) to the Licensee: Address: Level 32, 10 Eagle Street
Brisbane Queensland 4001

Email: RCooper@copperchem.com.au
- (c) signed by the party; and
- (d) delivered to the intended recipient by prepaid post (airmail if to or from a place outside Australia) or by hand or email to the address or email address in paragraph (b) or the address or email address last notified by the intended recipient to the sender.

13.2 Receipt

A notice will be conclusively taken to be duly given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by:
 - (i) express post (or equivalent), to an address in the same country, two Business Days after the date of posting; or
 - (ii) any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
- (c) in the case of email, the earlier of:
 - (i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (ii) the time that the intended recipient confirms receipt of the email by reply email; and
 - (iii) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be given or made:

 - (d) in the case of delivery by hand or post, at a time that is later than 4pm;
 - (e) in the case of delivery by email, at a time that is later than 7pm; or
 - (f) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 13.1(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

14 Dispute Resolution

14.1 No court proceedings

If a dispute arises in relation to this Deed (*Dispute*), a party must not commence court proceedings relating to the Dispute without first complying with this clause 14, except proceedings for urgent interlocutory relief.

14.2 Referral to representatives

- (a) A party claiming that a Dispute has arisen may give written notice of the Dispute to the other party.
- (b) During the 14 days after a notice is given in accordance with paragraph (a), each party must seek to settle the Dispute by referring the Dispute to a representative with authority to settle the Dispute.

14.3 Referral to chief representative and Secretary

If the parties' representatives are unable to settle a Dispute within seven days after the 14 day period referred to in clause 14.2(b), the Dispute must be referred:

- (a) in the case of the Licensee, to its chief executive officer or managing director; and
 - (b) in the case of the Minister, to the Secretary or Deputy Secretary of the Department,
- within seven days after the end of that 14 day period. Such persons must meet with each other to seek to resolve the Dispute within 14 days after the last date by which the Dispute must be referred to them under this clause 14.3.

14.4 Referral to arbitration

- (a) If the Dispute is not resolved within a further period of 14 days after the first meeting of the persons referred to in clause 14.3, the Dispute must be submitted to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- (b) The arbitrator will be an independent person agreed between the parties within 14 days of the names of one or more independent persons being proposed by either party or, failing agreement within 14 days of proposal, an arbitrator will be appointed by the Resolution Institute in accordance with article 8(2) of the Resolution Institute Arbitration Rules.
- (c) Subject to paragraph (a), the arbitration will be conducted and held in accordance with the laws of Victoria.
- (d) Any arbitration meetings and proceedings under this clause 14.4 must be held in Melbourne.

14.5 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Deed.

15 General Provisions

15.1 Costs

Each party must pay its own costs in respect of this Deed, except that the Licensee must pay all stamp duty chargeable on this Deed, and any other documents contemplated by this Deed.

15.2 Amendment

This Deed may be amended only by a document signed by all parties.

15.3 Counterparts

This Deed may be signed in counterparts and all counterparts taken together constitute one document.

15.4 Entire agreement

This Deed and any other documents referred to in this Deed or executed in connection with this Deed is the entire agreement of the parties about the subject matter of this Deed.

15.5 Execution by attorneys

Each attorney executing this Deed states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Deed.

15.6 Governing law

This Deed is governed by the laws of Victoria.

15.7 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the exclusive jurisdiction of the courts of Victoria; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

15.8 Inconsistency

If there is any conflict or inconsistency between the terms of this Deed and the Licence, the terms of the Licence will prevail to the extent of the conflict or inconsistency.

15.9 Invalid or unenforceable provisions

If a provision of this Deed is invalid or unenforceable:

- (a) it is to be read down or severed to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

15.10 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

15.11 Waiver and exercise of rights

- (a) A waiver by a party of a provision of or of a right under this Deed is binding on the party granting the waiver only if it is given in writing and is signed by the party.

- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

15.12 Equal opportunity, anti-discrimination, data security and privacy legislation

The Licensee must comply with the provisions of all applicable Commonwealth and State privacy, data security, anti-discrimination and equal opportunity legislation.

15.13 Negation of partnership and agency

The Licensee shall not, by virtue of this Deed, or for any purpose, be deemed to be a partner or agent of the State or as having any power or authority to bind or represent the State, and must not represent that it has any such authority.

15.14 Indemnities

Each indemnity or similar obligation in this Deed:

- (a) is a continuing, separate and independent obligation;
- (b) does not limit any other indemnity in this Deed or any other right or remedy of the indemnified person;
- (c) is payable on demand unless this Deed expressly provides otherwise; and
- (d) survives the expiry or termination of this Deed.

Executed and delivered as a Deed.

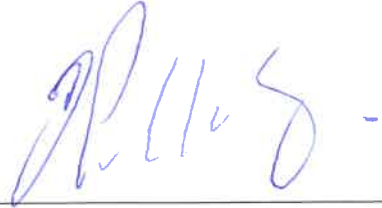
Signed Sealed and Delivered by the Minister for Resources on behalf of the Crown in Right of the State of Victoria in the presence of:



Witness Signature

Nathan Lambert

Print Name



Signature of the Minister

Tim Pallas

Print Name

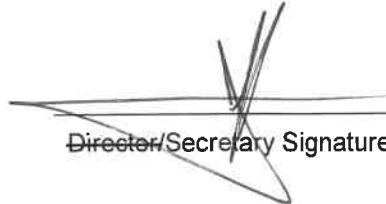
Executed as a Deed in accordance with section 127 of the Corporations Act 2001 by WHSP Stockman Pty Limited:



Director Signature

Todd Barlow

Print Name



Director/Secretary Signature

Jaime Pinto

Print Name