

- (ii) the Trustees' Costs;
- (iii) any Costs associated with the preparation, execution and completion of:
 - (A) the DOCA; and
 - (B) this Trust,
 - (C) the costs associated with convening and holding the meetings in clause 14 of this document; and
 - (D) any stamp duty assessed on this document;
- (f) **"Creditor(s)"** means all creditors of the Company having a Claim;
- (g) **"Director(s)"** means any person who by reason of the definition of "director" in section 9 of the Corporations Act, is a director of the Company;
- (h) **"Dividend"** means the amount to be paid out of the balance of the Trust Fund to Admitted Creditors, having regard to each Trust Creditor's Pro-rata Entitlement, which the Deed Administrators declare;
- (i) **"DOCA"** means the Deed of Company Arrangement entered into by the Company executed on [xxxxxx];
- (j) **"Entitlement"** means for each Admitted Creditor, the sum calculated by multiplying that Trust Creditor's Pro-rata Entitlement, by the balance of the Trust Fund, in accordance with the priorities specified in clause 8.4;
- (k) **"Pro-rata Entitlement"** means for each Trust Creditor, the fraction expressed as a percentage, calculated by dividing that Trust Creditor's Admitted Claim by the total dollar value of Admitted Claims for all Trust Creditors taking into account the priorities specified in clause 8.4;
- (l) **"Reconstruction Deed"** means the Deed entered into by the parties and Trident on [xxxxxx] 2009;
- (m) **"Resolution"** means a resolution passed at a meeting of Admitted Creditors convened in accordance with the terms of this document;
- (n) **"Termination Date"** means the date of termination of this Trust;
- (o) **"Trident"** means Trident Capital Pty Ltd (ACN 100 561 733);
- (p) **"Trust"** means the trust created by the terms of this Trust Deed;
- (q) **"Trust Creditor"** means a Creditor;
- (r) **"Trust Deed"** means this trust deed as amended from time to time;
- (s) **"Trust Fund"** means all the monies and property that the Trustees are required to hold on trust pursuant to the terms of this Trust Deed and the DOCA, as paid or transferred to the Trustees including the monies and property transferred to the Trustees pursuant to clause 12.4 of the DOCA, such monies and property constituting the Trust;
- (t) **"Trustees' Costs"** means the remuneration and costs of the Trustee as set out in clause 18 of this document; and
- (u) **"Trustees' Powers"** means the trusts, rights, powers and remedies granted by law and exercisable by the Trustee.

1.2 Rules for Interpreting this Document

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply;
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate issue under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this deed;
 - (vii) amendment includes addition, alteration, deletion, extension, modification and variation; and
 - (viii) property includes real and personal property and any estate, right or interest in or to any real or personal property, money, debt or other thing in action,
- (c) A singular word includes the plural, and vice versa;
- (d) A word which suggests one gender includes the other genders;
- (e) If a word is defined, another part of speech has a corresponding meaning;
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (g) Words defined in the GST Law have the same meaning in this deed unless the context makes it clear that a different meaning is intended.
- (h) A recital, schedule or annexure, a description of the parties forms part of this deed; and
- (i) An expression defined in or given a meaning for the purposes of the Act (except where defined or given a meaning in this deed) has the same definition or meaning in this deed where it relates to the same matter as the matter for which it is defined or given a meaning in the Act.

1.3 Business Days

If the day on or by which a person must do something under this document is not a Business Day;

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

1.4 Applied DOCA Provision

A provision of the DOCA that is applied or incorporated in this document 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 document.

2 Commencement Date

This Trust shall come into effect and the Deed Administrators shall act as Trustees pursuant to the terms of this Trust Deed on the date of completion of the Reconstruction Deed.

3 Appointment and Authority of Trustees

3.1 Appointment

In accordance with the terms of the DOCA, each Trust Creditor and the Company appoint the Trustees as their trustees on the terms and conditions contained in this Trust Deed.

3.2 Irrevocable

Subject to clause 16, the appointment of the Trustees is irrevocable prior to the payment out of the whole of the Trust Fund pursuant to the terms of this document.

3.3 Termination

Once:

- (a) the Trust Fund has been realised to the extent the Trustees in their discretion believe it possible and appropriate to do so; and
- (b) the Trust Fund has been distributed under the terms of this Trust Deed and the Trustees have received payment for all remuneration and costs to which they are entitled pursuant to clause 18 of this document,

then this Trust Deed and the Trust created by it shall be at an end.

4 Declaration of Trust

4.1 Declaration

The Trustees declare that they will hold:

- (a) the sum of ten dollars (\$10) paid to them on the date of this Deed by the Company (receipt of which the Trustees acknowledge);
- (b) the Trust Fund; and

- (c) the benefit of the covenants made in the Trustees' favour in the DOCA or in this Trust Deed,

subject to the Trust.

4.2 Beneficiaries

The Trustees shall receive and hold the Trust Fund on trust for Trust Creditors and distribute the Trust Fund in accordance with the terms of this Trust Deed.

5 Trustees' Duties and Powers

5.1 Determine Claims

The Trustees are empowered by the Trust Creditors, subject to the terms of this Trust Deed, to determine the Claims of Trust Creditors and to distribute the Trust Funds to the Trust Creditors in one or more instalments at such time as determined by the Trustees in their absolute discretion.

5.2 Trustees' Duties

The Trustees must

- (a) collect, sell or otherwise realise the property held on trust (including, for the avoidance of doubt, any causes of action forming part of the Trust Fund), to the extent and in a manner the Trustees believe is appropriate; and
- (b) distribute the Trust Fund in accordance with clause 8 of this document.

5.3 Trustees' Powers

For the purpose of performing their duties under this document, the Trustees have all of the rights, powers, discretions and remedies granted by law to Trustees including the power to:

- (a) determine the Claims of Trust Creditors; and
- (b) distribute the Trust Fund in accordance with the terms of this Trust Deed.

6 Perpetuity Period

Notwithstanding any other provision of this Trust Deed, each:

- (a) interest in property; and
- (b) Trustees' powers over or in connection with Property, created or granted by this Trust Deed, that but for this provision, might vest, take effect, or be exercisable, after the expiry of eighty years commencing on the date of this document:
- (c) if it has not vested or taken effect by that date 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.

7 Name of Trust

The name of the trust constituted by this document is the Soil Sub Technologies Creditors' Trust.

8 Distribution of Trust Fund

8.1 Entitlements

Each Admitted Creditor is entitled to its Entitlement in accordance with the terms of this Trust Deed.

8.2 Ascertaining Creditors

So far as the Deed Administrators have not ascertained all of the Admitted Creditors and all of their Admitted Claims under clause 9 of the DOCA before the termination of the DOCA, the Trustees must ascertain those Admitted Creditors and their Admitted Claims to the extent that they were entitled to claim under the DOCA, and shall thereby establish their Entitlements (if any) in accordance with clause 8.3.

8.3 Determining Entitlements

- (a) For the purposes of determining the Entitlements under this document, the terms of clause 9 of the DOCA are incorporated into this Trust Deed, read as if the references to the Deed Administrators are references to the Trustees, and with such other modifications as are necessary to give effect to this Trust Deed.
- (b) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Trust Creditor under section [xx] of the **Trusts Act (Victoria) (the "Trusts Act")** informing the Trust Creditor of the proposed rejection and giving to that party a reasonable period of time within which to make an application to the Court under section [xx] of the **Trusts Act** to determine the questions relating to the Claim.
- (c) The Trustees shall be entitled to rely upon determinations made by the Deed Administrators as to the admissibility of Claims of Trust Creditors under the DOCA prior to its termination together with any information and proofs of debt submitted to the Administrators and Deed Administrators in relation to the Claims of Trust Creditors.

8.4 Distribution

The Trustees shall apply the Trust Fund held in accordance with clause 8.3 of the DOCA.

8.5 No Interest

Interest shall not accrue, and shall not be payable, in respect of any of the Admitted Claims.

8.6 Payments not made

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

- (a) the Trustees shall stop payment of such cheque;

- (b) the monies represented by such stopped cheque or held by the Trustees on behalf of the Trust Creditor shall be paid to the ASIC; and
- (c) the provisions of section 544(1) and 544(3) of the Corporations Act shall apply, with such modifications as are necessary, to such payment as if references in those sections to “liquidator” were references to the “Trustees”.

8.7 Discharge

- (a) A payment made by the Trustees in accordance with this Trust Deed shall constitute a full and final discharge of the obligations of the Trustees to the Creditor under the Trust.
- (b) All claims and rights of action, remedies and Claims by a Trust Creditor who has been notified by the Trustees in accordance with clause 8, and has failed to submit a sworn proof of debt, and to whom the Trustees have not granted an extension of time, are absolutely barred and extinguished against the Trust.

9 Register

9.1 Maintain a register

The Trustees shall maintain in Melbourne, Victoria, or elsewhere as the Trustees shall determine, an up-to-date register and shall enter in the register in respect of each Trust Creditor's Entitlement

- (a) the Trust Creditor's name and address;
- (b) details of each Claim and the Trust Creditor's Entitlement including the balance outstanding after payment of any amount under this document; and
- (c) amounts paid to each Trust Creditor pursuant to this document.

9.2 Register to be kept open

The Trustees shall keep the register open at all reasonable times during business hours for the inspection of Trust Creditors or any person authorised in writing by a Trust Creditor.

9.3 Register conclusive

The register is conclusive evidence of the matters entered on the register.

10 Payment from Trust Fund

10.1 Dividend

After the Trustees have paid the Costs, the Trustees must pay the amounts as specified in clause 8.3 of the DOCA.

10.2 Timing of payment of dividends

The Trustees shall make payments out of the Trust Fund by one or more instalments, and at such times, as the Trustees in their absolute discretion determine.

11 Moratorium

A Trust Creditor must not take actions or steps to enforce the Trust Creditor's rights to recover the whole or part of the Trust Claim or Entitlement owed to the Trust Creditor whilst the Trustees remain the Trustees for the Trust Creditors on the terms of this document.

12 Instructions from Creditors

12.1 Instructions from Trust Creditors

In the exercise of the Trustees' powers, the Trustees:

- (a) may, if they see fit, seek instructions from the Trust Creditors, including instructions to vary the terms of this Trust Deed; and
- (b) shall act in accordance with the instructions of the Creditors delivered at a meeting convened in accordance with clause 14.

12.2 Best Interest of Creditors

In the absence of an instruction received by the Trustees from the Trust Creditors at a meeting convened in accordance with clause 14 by the Trustees to obtain their instructions, and except as otherwise provided in this document, the Trustees may, but are not obliged to, act as the Trustees determine is in the best interests of the Creditors.

12.3 Binding Effect

Any action taken by the Trustees in accordance with clause 12.2 is binding on each Trust Creditor.

12.4 Approval for Variation

The Trustees shall not seek to vary the terms of this document without receiving the instructions of the Majority Creditors approving any proposed amendments.

13 Deed May Be Pleaded In Bar

13.1 No action by Creditors

Subject to section 444D of the Corporations Act, the DOCA and this Trust Deed may be pleaded by the Company against any Creditor in bar of any debt or Claim that is admissible under the document and a Creditor (whether the Creditor's debt or claim is or is not admitted or established under the document) must not, before the termination of this Trust Deed:

- (a) take or concur in the taking of any step to wind up the Company;
- (b) except for the purpose and to the extent provided in this Trust Deed, institute or prosecute any legal proceedings in relation to any debt or liabilities incurred or alleged to have been incurred by the Company before the Appointment Date;
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company at the Appointment Date;

- (d) exercise any right of set-off, cross-claim or cross-action to which the Creditor would not have been entitled had the Company been wound up at the Appointment Date; or
- (e) commence or take any further step in any arbitration against the Company or to which the Company is a party.

13.2 Acceptance of Entitlements and Release

Trust Creditors must accept their Entitlements under this Trust in full satisfaction and complete discharge of all debts, liabilities or claims which they have or claim to have against the Company, as at the Appointment Date, or against the Trust Fund and each of them will, if called upon to do so, execute and deliver to the Trustees, Company and Directors such forms of release of any such claim as the Trustees require.

13.3 Claims extinguished

Payment by the Trustees to a Trust Creditor of an amount declared by the Trustees to be a final payment or dividend under the Trust (even if the amount of the payment is nil) will be in full satisfaction of all debts, liabilities or claims, present or future, actual or contingent, due or which may become due by the Trust and the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, and each Claim against the Trust and the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, will thereby be extinguished.

14 Meetings of Admitted Creditors

14.1 Convening meetings by Trustees

The Trustees may at any time convene a meeting of Admitted Creditors of the Company.

14.2 Convening Meetings at the Request of Admitted Creditors

The Trustees must convene a meeting of the Admitted Creditors if so requested in writing by an Admitted Creditor or Admitted Creditors the value of whose Admitted Claims is not less than 10% or the value or the total of the Admitted Claims.

14.3 Manner of Convening Meetings

Meetings of Admitted Creditors must be convened by the Trustees in accordance with section 445F of the Corporations Act, as though references in that section to “administrators” were references to “Trustees” and references to “deed of company arrangement” were references to this Trust Deed.

14.4 Right of Admitted Creditors to Attend Meetings

Admitted Creditors who have been paid the full amount of their Entitlements under clause 8 of this Trust Deed will no longer be entitled to attend and participate in meetings of Admitted Creditors.

15 Reports to Admitted Creditors

The Trustees must report to Admitted Creditors on any matters which the Trustees consider should be brought to the attention of the Admitted Creditors. The Trustees must send a copy of the report to each Admitted Creditor.

16 Trustees May Resign

The Trustees may resign at any time by giving not less than thirty (30) days prior notice to the Trust Creditors and to the Company in which event the Trustees must assign, to a replacement trustee nominated by the Trust Creditors, the Trust Fund and the Trustees' rights under this Trust Deed.

17 Exclusion of Liability

The Trustees are not liable for any loss, damages, costs or expenses which may result from the exercise or attempted exercise of the Trustees' Powers in the absence of wilful default fraud, gross negligence or breach of trust.

18 Trustees' Remuneration and Indemnity

18.1 Remuneration

The Trustees must be;

- (a) remunerated from the Trust Fund in respect of any work done by the Trustees, their partners and staff, in their former capacities as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, in accordance with the hourly rates charged by Ferrier Hodgson; and
- (b) reimbursed from the Trust Fund in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities in their former capacity as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, including any GST payable in respect of their remuneration of such costs, fees and expenses, to a maximum of \$50,000.

18.2 Payment of Remuneration

The Trustees' remuneration and costs as referred to in this clause shall be reimbursed and paid out of the Trust Fund. The Trustees shall be entitled to draw from the Trust Fund, at the end of each calendar month or in any other manner as may be approved by Resolution of the Admitted Creditors or the Court from time to time, their remuneration and costs (plus any GST payable in respect of their remuneration and costs) as referred to in this clause.

18.3 Scope of Indemnity

The Trustees are indemnified by the Trust and are entitled to be identified out of the Trust Fund for:

- (a) their remuneration, costs, fees and expenses payable under this clause 18;

- (b) all liabilities incurred and payments made by the Trustees in their former capacity as voluntary Administrators or Deed Administrators of the DOCA, or in connection with the Trust or their role as Trustees, including (without limitation) any moneys borrowed by the Trustees and interest on these moneys and any contracts adopted or otherwise agreed by the Trustees (the “**Liabilities**”);
- (c) all action, suits, proceedings, accounts, claims and demands arising out of the Trust which may be commenced, incurred by, or made on the Trustees by any person, and against all costs, charges and expenses incurred by the Trustees in respect of these (the “**Demands**”); and
- (d) any GST payable in respect of the matters referred to in paragraphs (a), (b) and (c) above;

PROVIDED ALWAYS that, subject to any order by the court to the contrary, the Trustees will not be entitled to an indemnity in respect of any liabilities or demands if the Trustees, or any partner, employee, authorised agent or delegate of the Trustees has acted dishonestly, negligently, in breach of duty, or breach of trust, including (without arbitration) any or omission in respect of which this indemnity would be void by reason of section 199C of the Corporations Act.

18.4 Continuing Indemnity

This indemnity will take effect on and from the date of this Trust Deed and be without limitation as to time and will ensure for the benefit of the Trustees’ respective legal personal representatives irrespective of the removal of the Trustees and the appointment of a new trustee or the determination of the Trust for any reason.

18.5 Indemnity not to be Affected or Prejudiced

The indemnity under this clause 18 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, the approval, execution or amendment of this document or otherwise; or
- (b) affect or prejudice all or any rights that the Trustees may have against the Company or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this document or on the Deed Administrators by the DOCA.

18.6 Trustees Lien

The Trustees will be entitled to exercise a lien over the Trust Fund for all amounts in respect of which they are entitled to an indemnity from the Trust Fund.

19 GST

19.1 GST Exclusive Amounts

All amounts referred to in this document, unless otherwise stated, are exclusive of GST.

19.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and
- (b) the recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

19.3 Reimbursements

Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claimed against or set-off against another party under this Trust Deed, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient under clause 19.2.

20 Law and Jurisdiction

This Trust Deed is governed by the law in force in the State of Victoria. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Victoria and any Court which may hear appeals from those Courts in respect of any proceedings in connection with the DOCA or this document.

21 Entire Deed

Save that this Trust Deed should be read together with the DOCA, this Trust Deed is the sole and entire memorandum and agreement between the parties to this Trust Deed regarding the matters the subject of it. It supersedes any prior understandings, deeds, agreements, conditions and representations relating to those matters whether oral or written, express or implied.

22 Further Assurances

Each of the parties to this Trust 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 Trust Deed.

23 General

23.1 Inconsistency with the DOCA

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

23.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

23.3 Accumulative Rights

The rights, powers, discretions and remedies provided by this Trust Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

23.4 Notice

Any notice or other communication required or permitted to be given under this Trust Deed may be given in accordance with the terms of clause 22.1 of the DOCA, to be read as if references to "this Deed" in that clause were references to "this Trust Deed".

23.5 Attorneys

Each person who executes this Trust Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

23.6 Severability

Any provision in this Trust Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Trust Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

23.7 Counterparts

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

23.8 Stamp Duty and GST

The Trustees must bear all stamp duty and GST payable on or in respect of this Trust Deed or the transactions contained in this Trust Deed for which amounts the Trustees will be entitled to payment and indemnity pursuant to the terms of clause 18 of this Trust Deed.

Executed as a deed:

EXECUTED by **NYLEX LIMITED** (ACN 009)
375 553) in accordance with section 127 of the)
Corporations Act)
)
)

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

SIGNED by the said **GEORGE GEORGES** in)
the presence of:)

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED by the said **JOHN LINDHOLM** in the)
presence of:)

Witness Signature

Witness Name

Witness Address

Witness Occupation

DRAFT

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NYLEX LIMITED CREDITORS' TRUST DEED

NYLEX LIMITED
(Subject to Deed of Company
Arrangement) (Administrators Appointed)
(Receivers of Managers Appointed)

(COMPANY)

GEORGE GEORGES

JOHN LINDHOLM

(TOGETHER THE ADMINISTRATORS)



PHONE (618) 9221 6733 | FAX (618) 9221 6744 | ABN 83 662 050 668

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