

**PROTO RESOURCES & INVESTMENTS LTD  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)  
(ASX Code – PRW)**

**ASX ANNOUNCEMENT – 17 SEPTEMBER 2014**

**NOTICE OF EXECUTION OF A DEED OF COMPANY ARRANGEMENT &  
APPOINTMENT OF DIRECTORS**

At the reconvened 2<sup>nd</sup> meeting of creditors of Proto Resources & Investments Ltd (**PRW**) held on 22 August 2014, creditors resolved that a Deed of Company Arrangement (**DOCA**) be executed by the company.

Notice is hereby given that the company executed the DOCA on 12 September 2014. A copy of the executed DOCA is attached to this notice.

Notice is also given that on 12 September 2014 and prior to execution of the DOCA, the following persons who had consented were appointed as Directors of the company by the Administrators:

- Mr Steven Andrew Shilkin;
- Mr Benjamin Heath Cooper;
- Mr Phillip Siu; and
- Mr Scott Mitchell Rowe.

As a consequence of execution of the DOCA and by its terms, control of the company was returned to the company's Board of Directors. Going forward, any shareholder queries should be directed to the offices of the company on + 61 2 9293 2876.



**B A Taylor**  
Deed Administrator

# Deed of company arrangement

Proto Resources & Investments Limited (Administrators Appointed)  
Company

Barry Taylor and Todd Gammel  
Deed Administrators

Superstructure International Operations Group Pty Limited  
Superstructure

Inosite Limited  
Inosite

Tianjin Taijiang International Trade Co (Australia) Pty Ltd  
Tianjin

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Our reference 12818/17650/80158112

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## Deed of company arrangement

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- Date** 12 SEPTEMBER 2014
- Parties**
- Proto Resources & Investments Limited (Administrators Appointed) ACN 108 507 517** of Unit 2, 70 Shaw Street, Beaconsfield, TAS 7270 (**Company**)
- Barry Taylor and Todd Gammel**, Chartered Accountants and Registered Liquidators, of HLB Mann Judd, Level 19, 207 Kent Street, Sydney NSW 2000 (**Deed Administrators**)
- Superstructure International Operations Group Pty Limited ACN 600 161 224** of Unit 56, Level 11, 88 Pitt Street, Sydney, NSW 2000 (**Superstructure**)
- Inosite Limited ACN 116 936 862** of 108 Outram Street, West Perth, WA 6005 (**Inosite**)
- Tianjin Taijiang International Trade Co (Australia) Pty Limited ACN 169 494 866** of Suite 405, 74 Pitt Street, Sydney, NSW 2000 (**Tianjin**)

### Background

- A. On 13 June 2014, White Oak Ridge Capital LLC appointed the Administrators as joint and several voluntary administrators of the Company pursuant to section 436C of the *Corporations Act 2001* (Cth).
- B. On 20 June 2014, the Supreme Court of New South Wales ordered by consent that for the purpose of the convening period and the holding of meetings of creditors, the Voluntary Administration is to be treated as having commenced on 20 June 2014.
- C. On 22 August 2014, at an adjourned second meeting of the Creditors of the Company convened under section 439A of the Act, the Creditors of the Company resolved that the Company enter into a deed of company arrangement.
- D. The Administrators have consented to their appointment as administrators of this deed and have caused this deed to be prepared to set out the terms of the arrangement between the Company and its creditors.

### Operative provisions

#### Part 1. Preliminary

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#### 1. Definitions, interpretation and governing law

##### 1.1 Definitions

In this deed:

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

**Administrators** means Barry Taylor and Todd Gammel in their capacities as joint and several voluntary administrators of the Company.

**Administrators' Remuneration** means the remuneration of the Administrators, their partners, staff and any contractors or agents, or other fees the Administrators are lawfully entitled to, with respect to acting as voluntary administrators of the Company between the Admissible Claim Date and the date of execution of this deed calculated in accordance with the rates of charge issued from time to time by HLB Mann Judd as approved by Creditors or the Court.

**Admissible Claim Date** means the day on or before which claims must have arisen if they are to be admissible under this deed, being 13 June 2014.

**Admitted Claims** means those Admitted Creditors' claims admitted by the Deed Administrators in accordance with the provisions of this deed.

**Admitted Creditors** means creditors whose claims are ascertained and admitted by the Deed Administrators in accordance with the provisions of this deed.

**ASIC** means the Australian Securities and Investment Commission.

**ASX** means the Australian Stock Exchange.

**Available Assets** means the assets of the Company that are available to pay Admitted Claims under this deed, as set out in clause 11.

**Business Day** means a day on which banks are open for business in New South Wales, excluding a Saturday, Sunday or public holiday.

**Axino GmbH** means the company Axino GmbH, registered in Germany, of Neckarstrasse 45, 73728 Esslingen / Germany.

**Claim** means any debt payable by, claim or liability, present or future, certain or contingent, ascertained or sounding only in damages, against the Company as at the Admissible Claim Date the circumstances giving rise to which occurred before the Admissible Claim Date and includes any pre-Administration contract that is breached after the Admissible Claim Date but prior to the Termination Date.

**Commencement Date** means the date on which this deed comes into operation in accordance with clause 3.

**Company** means Proto Resources & Investments Limited (Administrators Appointed) ACN 108 507 517.

**Costs and Expenses of this deed** means:

- (a) **(Preparation)** all costs, charges, fees, stamp duty and expenses in connection with the preparation, approval and implementation of this deed, and of the preparation and implementation of any documents necessary as prerequisites to the approval of this deed;
- (b) **(Administration)** all costs, charges and expenses and all liabilities incurred by the Deed Administrators in good faith in respect of or in the performance or administration of this deed, or as a result of any actual or attempted execution or exercise, or failure to execute or exercise, any power in relation to this deed or arising from their being the administrators of this deed, including liability for any GST or tax arising under the Income Tax Law or other tax legislation, any money borrowed by them for the purposes of this deed, any interest on borrowed money, and any contracts adopted or otherwise agreed by the Deed Administrators;
- (c) **(Actions)** all liabilities incurred by the Deed Administrators as a result of any action, suit, proceeding, account, claim or demand arising out of or relating to this deed which may be commenced, incurred by or made on them by any person, including

all liabilities incurred by them in defending any civil or criminal proceedings in which judgment is given in their favour or in which they are acquitted; and

- (d) **(Remuneration)** the remuneration of the Deed Administrators under clause 6.4.

**Court** has the meaning given to that term in section 58AA(1) of the Act.

**Creditors** means all creditors of the Company that have a Claim against the Company as at the Admissible Claim Date.

**Deed Administrators** means:

- (a) the persons named in this deed as administrators of this deed; and
- (b) the replacement of any one of them appointed in accordance with the Act or this deed; and
- (c) where 2 or more persons are so named or appointed, each administrator of this deed separately and all administrators of this deed collectively.

**Deed Administrators' Remuneration** means the remuneration of the Deed Administrators, their partners, staff and any contractors or agents, or other fees the Deed Administrators are lawfully entitled to, with respect to acting as Deed Administrators under this deed, calculated in accordance with the rates of charge issued from time to time by HLB Mann Judd, together with further remuneration as resolved by a resolution of the creditors of the Company, the Committee of Inspection or by the Court.

**Director** means a person appointed from time to time as a director of the Company (and expressly includes persons who had been directors of the Company as at the Admissible Claim Date, whether or not such person has resigned in the interim).

**Dividend** means a distribution from the Available Assets to the Admitted Creditors or to a class of Admitted Creditors, and includes the Final Dividend.

**Eligible Employee** means a Creditor of the Company whose debt or Claim would, in the event of a winding up of the Company be payable in priority to other unsecured debts and Claims in accordance with subsections 556(1)(e),(f),(g), or (h), section 560 or section 561 of the Act.

**Final Dividend** means the distribution from the Available Assets by which either:

- (a) all of the Admitted Creditors receive (in aggregate with prior distributions) 100 cents in the dollar on their Admitted Claims; or
- (b) the Deed Administrators distribute to the Admitted Creditors the whole of the Available Assets or remainder of the Available Assets after prior distributions.

**Fund** means the assets described in clause 11.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

**Income Tax Law** means as applicable:

- (a) the *Income Tax Assessment Act 1997*;
- (b) the *Income Tax Assessment Act 1936*;
- (c) the *Taxation Administration Act 1953*; and



- (d) any other imposition, collection or subordinate legislation connected with any enactment or legislation referred to in this definition.

**Meeting** means the meeting referred to in Background paragraph C.

**Members** means a person who is a member of the Company within the meaning of section 231 of the Act.

**Net Company Property** means the proceeds of realisation of the following property:

- (a) the Syndicate Contribution;
- (b) any realised debtors of the Company collected by the Administrators or the Deed Administrators including any research and development refunds from the ATO; and
- (c) the proceeds from the sale or realisation of the Available Assets; and
- (d) any interest on or increase of any money or property referred to in the preceding sub-paragraphs.

**Paradise Capital** means Paradise Capital Pty Ltd ACN 119 783 738.

**Payment Date** means the date as determined by the Deed Administrators on which any Dividend is paid.

**Regulations** means the *Corporations Regulations* 2001 made under the Act.

**Related Parties** means Lia Melissa Darby, Andrew Kenneth Bruce Mortimer, Andrew Norman Heap and Patricia Kay Philip and any other related entity within the definition of related entity under Section 9 of the Act.

**Resolution** means a resolution passed in accordance with Regulation 5.6.19 or Regulation 5.6.21 of the Regulations.

**RM Capital** means RM Capital Pty Ltd ACN 065 412 820.

**Scheduled Rates** means the rates set out in Schedule 1.

**Subordinated Debt** means the total debt owed by the Company to Inosite, the Related Parties, Axino GmbH, Paradise Capital and RM Capital, and includes any interest, costs, expenses, fees or other amounts which may accrue on or in connection with the those debts from time to time.

**Superannuation Contribution** has the same meaning as in section 556 of the Act.

**Superannuation Guarantee Charge** has the same meaning as in the Superannuation Guarantee (Administration) Act 1992 (Cth).

**Syndicate** means Superstructure International Operations Group Pty Limited ACN 600 161 224, Inosite Limited ACN 116 936 862, and Tianjin Taijiang International Trade Co (Australia) Pty Ltd ACN 169 494 866.

**Syndicate Contribution** means the sum of \$80,000 to be paid by the Syndicate to the Deed Administrators on or before execution of this deed, to be dealt with by the Deed Administrators in accordance with this deed.

**Term** means the period from the Commencement Date to the Termination Date.

**Termination Date** means the date on which this deed terminates, whether under clause 18 or otherwise.



## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words have the meaning given them by Part 1.2 of the Act; and
- (c) where any 2 or more persons are appointed as Deed Administrators:
  - (i) the function or powers of the Deed Administrators may be performed or exercised by any one of them, or any 2 or more of them together, except to the extent that this deed or the resolution or instrument appointing them otherwise provides; and
  - (ii) the rights, benefits and obligations of the Deed Administrators under this deed, including with respect to the indemnity and lien in clause 6, are joint and several;

and unless the context indicates a contrary intention:

- (d) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (e) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (g) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (j) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (l) the expression "**includes**" in any form is not a word of limitation;
- (m) a reference to "\$" or "**dollar**" is to Australian currency;

and, except as expressly provided to the contrary:

- (n) nothing in this deed will alter or be deemed to alter as between the Company and any Creditor the right of a Creditor to payment of interest up to the Admissible Claim Date in accordance with the terms of the instrument or agreement which created that debt, on any debt owed by the Company; and

- (o) nothing will alter or be deemed to alter the order of priority, either legal or equitable, of any debts owed by the Company.

### **1.3 Governing law**

This deed is governed by and must be construed according to the law applying in New South Wales, Australia.

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## **2. Prescribed provisions excluded**

This deed does not include the provisions of schedule 8A to the Regulations.

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## **3. Commencement**

### **3.1 Commencement date**

This deed will become a deed of company arrangement under the Act on the date by which the Company and the Deed Administrators have executed it.

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## **4. Purpose and objects of this deed**

The purpose and objects of this deed are to provide for the business, property and affairs of the Company to be administered in a way that:

- (a) results in a better return for Creditors than would result from an immediate winding up of the Company;
- (b) provides for an assessment, determination, compromise and release of all Claims against the Company;
- (c) provides for subordination of the claims of Inosite, the Related Parties and Axino GmbH, Paradise Capital and RM Capital for the benefit of the Creditors;
- (d) provides for the payment of the remuneration and expenses of the Administrators and the Deed Administrators; and
- (e) provides a moratorium on Creditors and Members taking any actions against the Company.

## **Part 2. Administration**

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## **5. Exercise of function or power**

A function or power of the Deed Administrators may be performed or exercised by any one of them, or by any 2 or more of them together.

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## **6. Indemnity and remuneration**

### **6.1 Indemnity**

The Deed Administrators are entitled to be indemnified out of the Available Assets against the Costs and Expenses of this deed, provided that the Deed Administrators will not be entitled to an indemnity in respect of any liability to the extent that the indemnification contravenes section 199A or 199B of the Act or if the Deed Administrators have been guilty of actual fraud.

## 6.2 Continuing indemnity

The indemnity conferred by clause 6.1 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 Deed Administrators and the appointment of new Deed Administrators or the termination of this deed for any reason whatsoever.

## 6.3 Indemnity not to be affected or prejudiced

The indemnity conferred by clause 6.1 will not:

- (a) **(Irregularity)** be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators 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 Deed Administrators, the approval and execution of this deed or otherwise; or
- (b) **(Other indemnity)** affect or prejudice all or any rights that the Deed Administrators may have against the Company or any other person to be indemnified against the Costs and Expenses of this deed.

## 6.4 Remuneration and reimbursement of Deed Administrators

- (a) **(Remuneration)** The Deed Administrators are to be remunerated from the Available Assets for work done by them, and any of their partners, agents or employees, in connection with:
  - (i) the preparation, approval and execution of this deed, and the preparation and execution of any documents necessary as prerequisites to the approval of this deed; and
  - (ii) the administration and implementation of this deed and the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Deed Administrators,
 at the Scheduled Rates plus disbursements and GST.
- (b) **(Reimbursement)** The Deed Administrators are to be reimbursed from the Available Assets for any Costs and Expenses of this deed paid by them.
- (c) **(Payments)** The Deed Administrators' remuneration and reimbursement must be paid from the Available Assets monthly in arrears, and must be paid or provided for in full before payment of the Final Dividend.
- (d) **(Resolution at Meeting)** The parties acknowledge that the creditors of the Company resolved, at the Meeting, that the Deed Administrators are entitled to be remunerated at the usual rates charged from time to time by HLB Mann Judd calculated on an hourly basis (subject to approval of Creditors).

## 6.5 Administrators and Deed Administrators' lien

The Administrators and Deed Administrators are entitled to a lien over the Available Assets to secure:

- (a) the indemnity, remuneration and reimbursement provided for by this clause 6; and
- (b) the Administrators' Remuneration and all costs, charges and expenses and all liabilities incurred by the Administrators in respect of or in connection with acting as voluntary administrators of the Company.

## 6.6 Priority

Subject to clause 12, the Deed Administrators' right of indemnity, remuneration and reimbursement and their lien under clause 6.5 respectively have priority over the Claims of all Creditors and Members.

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## 7. Deed Administrators not personally liable

### 7.1 Agency

Subject to the Act, in the performance of their duties and the exercise of their functions and powers under this deed the Deed Administrators are taken to act as agents for and on behalf of the Company. The Deed Administrators will not be personally liable for:

- (a) (Debt) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company in the administration and implementation of this deed; or
- (b) (Loss or damage) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators in the performance of their duties or the exercise of their functions and powers under this deed.

### 7.2 General debts

Without prejudice to their rights against the Company or anyone else, the Deed Administrators will be liable for debts they incur, in the performance or exercise, or purported performance or exercise, of any of their functions and powers as Deed Administrators, for:

- (a) services rendered; or
- (b) goods bought; or
- (c) property hired, leased, used or occupied.

### 7.3 Right of indemnity

Without prejudice or limitation to their rights under clause 6 or any other right of indemnity or otherwise to which they may be entitled, the Deed Administrators are entitled to be indemnified out of the Available Assets for debts for which they are liable under clause 7.2, and the debts for which the Deed Administrators are liable under that clause form part of the Costs and Expenses of this deed.

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## 8. Resignation and replacement of Deed Administrators

### 8.1 Resignation

A Deed Administrator may resign by notice in writing given to the Company.

### 8.2 Replacement

Where a Deed Administrator:

- (a) dies; or
- (b) becomes prohibited from acting as Deed Administrator in accordance with the Act; or
- (c) resigns by notice in writing given to the Company,

the remaining Deed Administrator or Deed Administrators may convene a meeting of Creditors in accordance with clause 16 to appoint a replacement Deed Administrator and (if appropriate) to determine the rate of remuneration to be paid to him or her.

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## **9. Powers and duties of the Deed Administrators**

### **9.1 Administer this deed**

The Deed Administrators must administer this deed, and for that purpose have the powers, functions, duties and discretions conferred on them by this deed and the Act.

### **9.2 Manage and control the Company**

The day to day control and stewardship of the Company will return to the directors of the Company as at the Commencement Date provided always that the Deed Administrators retain the right and entitlement, in their absolute discretion, to exercise all or any of the powers conferred on the Deed Administrators by this deed or the Act to the exclusion of the powers of the directors of the Company.

### **9.3 Specific powers and duties**

For the purpose of administering this deed, the Deed Administrators have the power to:

- (a) obtain any information from the Directors or any servant or agent of or adviser to the Company, the Creditors or any other person as they may require to perform their duties under this deed;
- (b) inspect all books and records of the Company as they may require to perform their duties under this deed;
- (c) make any compromise or arrangement with any Creditor or person claiming to be a Creditor or having or claiming to have any claim against the Company whereby the Company may be rendered liable;
- (d) enter upon or take possession of the Available Assets;
- (e) lease or let on hire the Available Assets;
- (f) grant options over the Available Assets on any conditions as the Deed Administrators think fit;
- (g) insure the Available Assets;
- (h) repair, renew or enlarge the Available Assets;
- (i) sell, call in, collect or convert into money the Available Assets, to apply the money in accordance with this deed and otherwise effectively and properly to carry out their duties as Deed Administrators;
- (j) administer the assets available for the payment of claims of Creditors in accordance with the provisions of this deed;
- (k) purchase, hire, lease or otherwise acquire any property or interest in property from any person;
- (l) borrow or raise money, whether secured on any or all of the Available Assets or unsecured, for any period and on any terms as the Deed Administrators think fit, and whether in substitution for any existing security or otherwise;

- (m) bring, prosecute and defend in the name and on behalf of the Company or in the name of the Deed Administrators any action, suit or proceeding in any court or tribunal;
- (n) refer to mediation or arbitration any question affecting the Available Assets;
- (o) pay any secured creditor of the Company, and any person who is the owner or lessor of property possessed, used or occupied by the Company;
- (p) convene and hold meetings of the Members or Creditors of the Company for any purpose the Deed Administrators think fit;
- (q) make interim or other distributions of the funds available for the payment of claims of Creditors as provided in this deed;
- (r) appoint agents to do any business or to attend to any matter or affairs of the Company that the Deed Administrators are unable to do, or that it is unreasonable to expect the Deed Administrators to do, in person;
- (s) engage or discharge employees on behalf of the Company;
- (t) appoint solicitors, accountants or other professionally qualified persons to assist the Deed Administrators;
- (u) permit any person authorised by the Deed Administrators to operate any account in the name of the Company;
- (v) do all acts and execute in the name and on behalf of the Company all deeds, receipts and other documents, using the Company's common or official seal when necessary;
- (w) subject to the *Bankruptcy Act* 1966 (Cth), prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under that Act;
- (x) subject to the Act, prove in the winding up of any contributory or debtor of the Company or under any deed of company arrangement executed under the Act;
- (y) draw, accept, make or indorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (z) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot conveniently be done in the name of the Company;
- (aa) bring or defend an application for the winding up of the Company;
- (bb) sell any or all of the Available Assets at any time the Deed Administrators think fit, either by public auction or by private contract, and either for a lump sum, for a sum payable by instalments, or for a sum on account and to obtain a mortgage, charge or encumbrance for the balance or otherwise;
- (cc) compromise any debts or claims owed or brought by or against the Company on any terms as the Deed Administrators think fit, and take security for the discharge of any debt forming part of the Available Assets;
- (dd) pay any class of Creditors in full, subject to Subdivision D of Division 6 of Part 5.6 of the Act;



- (ee) do any acts and things as are in their opinion necessary, desirable, convenient or expedient for the purpose of administering, giving effect to or implementing this deed.

### Part 3. Provision for Creditors

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## 10. Payment of Dividend to the Admitted Creditors

### 10.1 Distribution

The Deed Administrators may make one or more distributions of the Available Assets to the Admitted Creditors, and must distribute the Final Dividend as soon as reasonably practicable in accordance with the provisions of this deed.

### 10.2 Capital and income

The Admitted Creditors are entitled to distributions of both income and capital of the Available Assets.

### 10.3 Exclusion or deferral

The Deed Administrators may exclude or defer any Creditor from any distribution by written arrangement with him or her.

### 10.4 Eligible Employees

Any Eligible Employee will be entitled to a priority at least equal to what they would have been entitled if the Fund were applied in accordance with sections 556, 560 and 561 of the Act.

### 10.5 Superannuation Contribution Debts not admissible

The Deed Administrators must determine that the whole of a debt or a particular part of a debt by way of Superannuation Contribution is not admissible to proof against the Company if:

- (a) a debt by way of a Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to proof against the Company; and
- (b) the Deed Administrators are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first mentioned debt in the case of the whole of a debt or part of the first mentioned debt in the case of part of a debt.

### 10.6 Distribution methods

- (a) The Deed Administrators may for the purpose of distributing Dividends make any provision as they think fit for the purpose of avoiding fractions, notwithstanding that loss may thereby be occasioned to any Creditor.
- (b) Distributions of any income or capital of the Available Assets may be given effect by the Deed Administrators in their discretion by:
  - (i) **(Payment)** payment of the distribution amount to or at the direction of each person entitled; or
  - (ii) **(Asset transfer)** transfer in specie of a capital asset of the Available Assets to each person entitled.



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## 11. Property available for distribution

The following property is available for distribution under this deed:

- (a) the Net Company Property;
- (b) any other amount paid or property transferred to the Company or to the Deed Administrators to form part of the property available for distribution under this deed; and
- (c) any interest on or increase of any money or property referred to in the preceding paragraphs of this clause 11.

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## 12. Order of distribution of Available Assets from the Fund

### 12.1 Deed Administrators' discretion

The Deed Administrators may, in their absolute discretion, pay any Admitted Claim in full if they consider it desirable to do so, having regard to (among other things) the interests of the Admitted Creditors.

### 12.2 Order of priority

Subject to clause 12.1, the Deed Administrators must make any distributions of the Available Assets in the following order.

- (a) **(Reimbursement)** First, in reimbursement and payment of the Costs and Expenses of this deed.
- (b) **(Priority distributions)** Next, but subject to this clause 12.2, in the order set out in section 556 of the Act including the payment of the remuneration of the Deed Administrators and of any amounts by way of indemnity or reimbursement, all as provided for in clause 6.
- (c) **(Admitted Creditors)** Next, to the Admitted Creditors in proportion to their Admitted Claims.
- (d) **(Interest)** Next, by payments or distributions to any Admitted Creditors that have a legal or contractual right or entitlement to interest on their Claims, the amount of that interest calculated to the date of payment of their Claim in full.

### 12.3 Return to Admitted Creditors not to exceed 100 cents in the dollar

In the event that there is a surplus or balance in the Available Assets after the Admitted Creditors have received 100 cents in the dollar on their Admitted Claims, such surplus or balance shall remain with or be paid by the Deed Administrators to the Company.

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## 13. Moratorium and deferral of debts

Subject to section 444D of the Act there will be a moratorium in favour of the Company from the Commencement Date until the Termination Date for all Claims, and during that moratorium a Creditor (whether the Creditor's Claim is or is not admitted or established under this deed) must not:

- (a) **(Wind up)** wind up or take or concur in any step to wind up the Company or, without limiting the generality of the foregoing, present any application for the winding up of the Company or continue to prosecute any application presented on or before the Commencement Date for the winding up of the Company;

- (b) **(Institute proceedings)** except for the purpose and to the extent provided in this deed, institute or prosecute any legal proceedings or continue to prosecute any legal proceedings instituted on or before the Commencement Date in relation to any Claim;
- (c) **(Enforce debt)** take or concur in any step or any further step for the purpose of enforcing, whether by way of legal or equitable execution or otherwise, any judgment debt owed by the Company or arbitration award against the Company at the Admissible Claim Date, or any interest on that judgment debt or award;
- (d) **(Set off)** exercise any right of set off or defence, cross claim or cross action to which that Creditor would not have been entitled had the Company been wound up on the Admissible Claim Date; or
- (e) **(Arbitration)** commence or take any further step in any arbitration against the Company or to which the Company is a party in relation to any matter arising or occurring before the Admissible Claim Date.

---

## **14. Release of debts**

### **14.1 Release on payment of Final Dividend**

On payment in full of the Final Dividend, all Claims except Subordinated Debt are forever released, discharged and extinguished.

### **14.2 Creditors to accept entitlements**

Creditors must accept their entitlements under this deed in full satisfaction and complete discharge of all Claims and each of them must, if called upon to do so, execute and deliver to the Company such form of release of any Claim as the Deed Administrators may require.

### **14.3 Bar to claims against the Company**

This deed may be pleaded by the Company against any Creditor in bar of any Claim that is subject to this deed, whether or not the Claim is admitted or established under the provisions of this deed.

## **Part 4. Administrative matters**

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## **15. Ascertaining creditors**

### **15.1 Ascertaining Claims**

Claims against the Company will be ascertained in the following manner:

- (a) as soon as practicable after realising the Available Assets, the Deed Administrators will place an advertisement once in each of a daily newspaper circulating in New South Wales and a daily newspaper which is circulated nationally, requiring all persons asserting a claim against the Company to lodge their claim within 21 days after publication of the advertisement;
- (b) Creditors must lodge their claims with the Deed Administrators within 21 days after the publication of the advertisement and thereafter all their rights, claims and remedies will be absolutely barred and their Claims extinguished unless the Deed Administrators in their absolute discretion deem it proper to extend the time for lodging claims;

- (c) the Deed Administrators or their agent appointed in writing will receive all claims and the Deed Administrators must adjudicate on them as soon as is reasonably practicable;
- (d) each person lodging a claim with the Deed Administrators must:
  - (i) provide the Deed Administrators with such further proof, evidence or information in support of its claim as the Deed Administrators may reasonably require; and
  - (ii) if so required by the Deed Administrators, verify the claim by a statutory declaration in any form as the Deed Administrators require;
- (e) the Deed Administrators must, as soon as practicable after adjudicating on a claim lodged with the Deed Administrators or their agent, notify the claimant whether the claim has been admitted or rejected wholly or in part, by notice posted to the last known address of the claimant;
- (f) if any claim is rejected wholly or in part by the Deed Administrators the claimant may, within 21 days of the posting of the notice referred to in clause 15.1(e) bring legal proceedings for the purpose of establishing the existence and amount of the alleged claim, and if any claim is established it will, together with any costs awarded to the claimant, be dealt with in all respects as if it had originally been admitted;
- (g) unless the proceedings referred to in clause 15.1(f) are commenced within the time specified, the Deed Administrators' decision as to any claim is final and binding, and any claim for any amount or any amount in excess of the amount admitted by the Deed Administrators will at the expiration of the time specified be deemed to be forever barred and extinguished unless the Deed Administrators in their absolute discretion otherwise direct;
- (h) time is of the essence in respect of all provisions applying to persons asserting claims under this clause 15.1;
- (i) if any claim by a claimant has not been finally determined by the Payment Date for any Dividend, the Deed Administrators must set aside from the Available Assets an amount or assets sufficient to pay out or satisfy the Dividend due on the disputed claim if it is admitted in accordance with this clause 15.1. If the claim is later rejected by the Deed Administrators and extinguished under clause 15.1(g), or is not established by legal proceedings, the money or assets set aside under this clause 15.1(i) will remain part of the Available Assets and be distributed in accordance with the provisions of this deed; and
- (j) the Deed Administrators or their agent must draw up and maintain a register of Admitted Claims, the entries on which will be binding on the Creditors.

## 15.2 Mutual dealings

- (a) Subject to clause 15.2(b), where there have been mutual credits, mutual debts or other mutual dealings between the Company and a Creditor:
  - (i) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings; and
  - (ii) the sum due from the one party is to be set off against any sum due from the other party; and
  - (iii) only the balance of the account is an Admitted Claim against the Company, or is payable to the Company, as the case may be.

- (b) A person is not entitled to claim the benefit of a set off under clause 15.2(a) if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, the person had notice of the fact that the Company was insolvent.

---

## 16. Meetings

### 16.1 When convened

The Deed Administrators may convene a meeting of Creditors at any time in accordance with section 445F of the Act, and must convene such a meeting when required to do so under section 445F(1)(b) of the Act.

### 16.2 Application of Regulations

The provisions of Regulations 5.6.12 to 5.6.36A inclusive of the Regulations apply, with such modifications as are necessary, to meetings of Creditors as if the references to 'the liquidator', 'the liquidator or provisional liquidator', 'the liquidator, provisional liquidator or chairperson' or 'a liquidator, provisional liquidator or trustee for debenture holders', as the case may be, were references to the Deed Administrators.

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## 17. Directors

### 17.1 Directors and other officers to assist

- (a) Each officer of the Company must:
- (i) attend on the Deed Administrators at all times;
  - (ii) give the Deed Administrators all information known to the officer about the Company's business, property, affairs and financial circumstances;
  - (iii) attend all meetings of the Creditors; and
  - (iv) do whatever the Deed Administrators require the officer to do,
- as the Deed Administrators reasonable require to assist the Deed Administrators in administering this deed or to fulfil the arrangements effected by this deed.

## Part 5. Termination of this deed

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## 18. Termination of deed

### 18.1 Termination generally

This deed will continue in operation until it is terminated:

- (a) by an order of the Court under section 445D of the Act;
- (b) by a Resolution of the Creditors at a meeting convened under section 445F of the Act and in accordance with clause 16;
- (c) by the happening of events which are by the terms of this deed expressed to terminate this deed automatically without recourse to the Court or to a meeting of the Creditors;
- (d) automatically without recourse to the Court or to a meeting of the Creditors if within 7 days of the date of this deed (provided that such period may be extended by the Deed Administrators at any time and from time to time in their absolute discretion) a

Deed of Subordination in the form of Annexure A to this deed has not been duly executed by each of the parties to it.

If this deed is terminated pursuant to clause 18.1(c) or 18.1(d), the Company immediately goes into liquidation and the Deed Administrators become the liquidators of the Company.

## **18.2 Termination of deed where arrangement fails**

If the Deed Administrators determine that it is no longer practicable or desirable either to continue to carry on the business of the Company or to implement this deed, the Deed Administrators:

- (a) may cease to carry on the business of the Company except so far as is necessary for the beneficial winding up of the Company;
- (b) must summon a meeting of Creditors for the purpose of passing a resolution under section 445C(b) of the Act; and
- (c) must forward to each Creditor not less than 14 days before the meeting an up-to-date report about the position of the Company accompanied by any financial statements as the Deed Administrators think fit, together with a statement that they do not think it practicable or desirable to carry on the business of the Company or to continue this deed, and that this deed will be terminated if the Creditors so resolve.

## **18.3 Termination of deed where arrangement achieves purpose**

If the Deed Administrators have:

- (a) paid all the Dividends to the Creditors in accordance with the provisions of this deed: and
- (b) otherwise complied with all of the provisions of this deed,

the Deed Administrators must:

- (c) certify that the deed has been wholly effectuated by executing a document in the form of ASIC Form 5056; and
  - (d) within 28 days of its execution, lodge the document with ASIC and the ASX,
- and execution of the document terminates this deed.

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## **19. Accounts**

Sections 432 and 434 of the Act apply to the Deed Administrators as if the reference to a controller were a reference to the Deed Administrators.

## **Part 6. General**

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### **20. Execution of further documents**

The Company, the Directors and other officers of the Company, the Creditors and the Deed Administrators must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

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**21. Costs of deed**

Each party must pay their own costs and expenses of negotiating, preparing and executing this deed.

---

**22. Inconsistency with Act**

Subject to clause 2 and those provisions of this deed that expressly or by necessary implication exclude or vary the provisions of the Act so far as they may be excluded or varied, if there is any inconsistency between the terms of this deed and the Act then, to the extent of the inconsistency, the Act will prevail and this deed will be interpreted accordingly.

---

**23. Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

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**24. Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of the deed, and all together constitute one document.

**Schedule 1 - Schedule of remuneration**

The Deed Administrators' remuneration for their services as administrators of this deed is to be the amount calculated as follows:

$$\text{Remuneration} = (\text{Time} \times \text{Firm Rates}) + \text{GST}$$

where:

- (a) "Time" means the time actually spent by the Deed Administrators and any of their partners, agents or employees in performance of the services referred to in clause 6.4(a) (calculated in 6 minute units or part thereof); and
- (b) "Firm Rates" means the hourly rates for persons having the job description of the Deed Administrators and their partners, agents and employees performing the services referred to in clause 6.4(a).

**Table of Rates**

<b>Title</b>	<b>\$ Hourly Rate</b>
Deed Administrator/Partner	600
Director	500
Manager 1	440
Manager 2	390
Supervisor	350
Senior 1	310
Senior 2	270
Intermediate	240
Graduate 1	210
Graduate 2	190
Cadet	160
Secretary	130
Disbursements	Charged as incurred

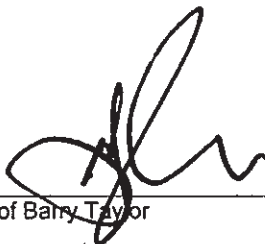


Executed as a deed.

Executed by Proto Resources & Investments Ltd (Administrators Appointed) ACN 108 507 517 by Barry Taylor and Todd Gammel in their capacity as Voluntary Administrators in the presence of:


  
Signature of witness

TIMOTHY DAVID MACLEAN  
Full name of witness

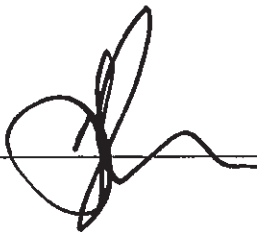
  
Signature of Barry Taylor

Signature of Todd Gammel


Signed, sealed and delivered by Barry Taylor, in his capacity as proposed joint and several Deed Administrator in the presence of:

  
Signature of witness

TIMOTHY DAVID MACLEAN  
Full name of witness

  
Signature

Signed, sealed and delivered by Todd Gammel, in his capacity as proposed joint and several Deed Administrator in the presence of:

  
Signature of witness

TIMOTHY DAVID MACLEAN  
Full name of witness

  
Signature

Executed by Superstructure International Operations Group Pty Limited ACN 600 161 224 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company director

Full name of company director

Executed as a deed.

Executed by Proto Resources & Investments Ltd (Administrators Appointed) ACN 108 507 517 by Barry Taylor and Todd Gammel in their capacity as Voluntary Administrators in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Barry Taylor

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of Todd Gammel

Signed, sealed and delivered by Barry Taylor, in his capacity as proposed joint and several Deed Administrator in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness

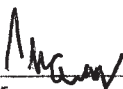
Signed, sealed and delivered by Todd Gammel, in his capacity as proposed joint and several Deed Administrator in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness

Executed by Superstructure International Operations Group Pty Limited ACN 600 161 224 in accordance with section 127 of the Corporations Act 2001 (Cth):

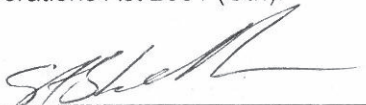
  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of ~~company~~ director *company secretary*

**ANDREW MORTIMER**  
\_\_\_\_\_  
Full name of director

**GILLIAN DARBY**  
\_\_\_\_\_  
Full name of company director

**Executed by Inosite Limited ACN 116 936 862**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):



\_\_\_\_\_  
Signature of director

*STEVEN ANDREW SHILKIN*

\_\_\_\_\_  
Full name of director

**Executed by Tianjin Taijiang International  
Trade Co (Australia) Pty Ltd ACN 169 494 866**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director



\_\_\_\_\_  
Signature of company director

*SCOTT MITCHELL ROWE*

\_\_\_\_\_  
Full name of company director

\_\_\_\_\_  
Signature of company secretary/director


\_\_\_\_\_  
Full name of company secretary/director

**Executed by Inosite Limited ACN 116 936 862**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

**Executed by Tianjin Taijiang International  
Trade Co (Australia) Pty Ltd ACN 169 494 866**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth).

  
\_\_\_\_\_  
Signature of director

Phillip Sim  
\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company director

\_\_\_\_\_  
Full name of company director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director



**Annexure A Deed of Subordination**

" A "



# Deed of Subordination

## Company

Proto Resources & Investments Ltd  
(Administrators Appointed)  
ACN 108 507 517

## Administrators

Barry Anthony Taylor & Todd Andrew Gammel  
in their capacity as Administrators of Proto  
Resources & Investments Ltd (Administrators  
Appointed) ACN 108 507 517

## Subordinated Creditors

Lia Melissa Darby  
Director

Andrew Kenneth Bruce Mortimer  
Director

Andrew Norman Heap  
Director

Patricia Kay Philip  
Former Director

RM Capital Pty Ltd  
ACN 065 412 820

Paradise Capital Pty Ltd  
ACN 119 783 738

Inosite Limited  
ACN 116 936 862

AXINO GmbH  
HRB 738404

# Deed of subordination

**Date** September 2014

**Parties** Barry Anthony Taylor & Todd Andrew Gammel in their capacity as Administrators of Proto Resources & Investments Ltd (Administrators Appointed) ACN 108 507 517 of 19/207 Kent St, Sydney NSW 2000  
**(Administrators)**

Proto Resources & Investments Ltd (Administrators Appointed) ACN 108 507 517 **(Company)**

Lia Melissa Darby of 2/162 Brook Street Coogee NSW 2034  
Andrew Kenneth Bruce Mortimer of 2/162 Brook Street Coogee NSW 2034

Andrew Norman Heap of 49 Cameron Street Launceston TAS 7250

Patricia Kay Philip of 22 Loftus Street Katoomba NSW 2780

RM Capital Pty Ltd ACN 065 412 820

Paradise Capital Pty Ltd ACN 119 783 738

Inosite Limited ACN 116 936 862

AXINO GmbH HRB 738404

**(Subordinated Creditors)**

## Recitals

- A. On 22 August 2014 the creditors of the Company resolved that the Company execute a deed of company arrangement ("the DOCA").
- B. Amongst other provisions, the DOCA provided that the Subordinated Creditors agree to subordinate their claims against the Company.
- C. The parties have entered into this Deed to record their agreement.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1. Definitions

In this Deed:

**Administrators' Debt** means the money and all obligations and liabilities, whether certain or contingent, owing at any time by the Company to the



Administrators both in their capacity as Administrators of the Company and as Deed Administrators under the DOCA.

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in New South Wales.

**Creditor Claims** means all Admitted Claims (as defined in the DOCA) owed by the Company to its Admitted Creditors (as defined in the DOCA) which are to be discharged in accordance with the DOCA.

**Deed** means this document.

**Directors** means Lia Melissa Darby, Andrew Kenneth Bruce Mortimer, Andrew Norman Heap and Patricia Kay Philip.

**Existing Security** means:

- a) the General Security Deed;
- b) the Mortgage (NT); and
- c) the Mortgage (WA).

**General Security Deed** means the general security deed dated 21 March 2013 between the Company as grantor and Bergen Global Opportunity Fund II, LLC as secured party (as assigned by Bergen Global Opportunity Fund II, LLC to White Oak Ridge Capital, LLC on 6 June 2014 and as further assigned by White Oak Ridge Capital, LLC to Inosite Limited on 20 August 2014).

**Mortgage (NT)** means the statutory mortgage D93643 granted by the Company in favour of White Oak Ridge Capital, LLC (as transferred by White Oak Ridge Capital, LLC to Inosite Limited on 20 August 2014) in respect of mining tenement EL 25307.

**Mortgage (WA)** means the statutory mortgage 450798 granted by the Company in favour of White Oak Ridge Capital, LLC (as transferred by White Oak Ridge Capital, LLC to Inosite Limited on 20 August 2014) in respect of mining tenements EL 27/358, EL 51/1457 and EL 69/2872.

**Related Entity** is as defined in Section 9 of the *Corporations Act 2001*.

**Security Interest** includes:

- a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security;
- b) any interest in personal property encompassed by the definition of security interest in section 12 of the *Personal Property Security Act 2009*; and
- c) an agreement to create or give any security or right referred to in paragraph (a) or paragraph (b) of this definition.

**Subordinated Creditors' Debt** means all debts owing at any time by the Company to the Subordinated Creditors, whether certain or contingent, and whether arising out of or in connection with loans or advances made, or credit given to the Company.

## 1.2. Interpretation

In this Deed the headings are used for convenience only and do not affect the interpretation of this Deed and unless the context requires otherwise:

- a) the singular includes the plural and vice versa;
- b) a gender includes the other genders;
- c) other grammatical forms of defined words or expressions have corresponding meanings;
- d) a reference to a document includes the document as modified from time to time and any document replacing it;
- e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- f) the word "person" includes a natural person and any body or entity whether incorporated or not;
- g) the word "month" means calendar month and the word "year" means 12 months;
- h) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- i) a reference to a thing includes a part of that thing;

- j) a reference to all or any part of a statute, rule, regulation or ordinance includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- k) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- l) money amounts are stated in Australian currency unless otherwise specified; and
- m) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed, means the agency or body which performs most closely the functions of the defunct body.

### **1.3. Parties**

- a) If a party consists of more than one person, this Deed binds each of them separately and any two or more of them jointly.
- b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

## **2. Debts Subordinated**

### **2.1. Subordination of Debt**

Pursuant to the DOCA proposal approved by Creditors on 22 August 2014 and in consideration of the Administrators executing the DOCA and providing any other valuable consideration to the Subordinated Creditors, the Subordinated Creditors agree with the Administrators that:

- a) the Subordinated Creditors' Debt is subordinated to the Creditors' Claims and the Administrators' Debt; and
- b) before the Subordinated Creditors may make demand for payment or repayment of the Subordinated Creditor's Debt or the Subordinated Creditor's Debt may be paid or repaid:
  - i) the Administrators' Debt must have been paid or repaid in full and all commitments of the Company to the Administrators in respect of the Administrators' Debt (whether actual, contingent or potential) must have been satisfied in full; and
  - ii) the Creditors' Claims must have been paid in accordance with the DOCA; and
  - iii) the DOCA must have been fully effected in accordance with its terms.

## **2.2. No Payments to the Subordinated Creditors**

The Company must not, at any time until the provisions of clause 2.1(b) have been satisfied in full:

- a) pay any money to the Subordinated Creditors; or
- b) pay any money to any other person in satisfaction or purported satisfaction of the Subordinated Creditor's Debt.

## **2.3. Related Entities**

The Directors acknowledge and agree that all of their Related Entities will comply in full with this Deed as if those Related Entities are Subordinated Creditors and any amounts owed to them are Subordinated Creditors' Debts.

## **3. No assignment**

### **3.1. Warranty as to assignments**

The Subordinated Creditors warrant that they have not assigned, created or permitted the creation of any Security Interest over the Subordinated Creditor's Debt other than the Existing Security.

### **3.2. Prohibition on Assignments**

The Subordinated Creditors must not during the term of this Deed assign or create or permit the creation of any Security Interest over the Subordinated Creditor's Debt without first:

- a) obtaining the written consent of the Administrators;
- b) giving to any transferee, assignee, mortgagee, chargee or beneficiary due written notice of the provisions of this Deed; and
- c) obtaining a covenant from any transferee, assignee, mortgagee, chargee or beneficiary in favour of the Administrators under which the transferee, assignee, mortgagee, chargee or beneficiary agrees to be bound by all the provisions of this Deed, including the covenants contained in this clause 3.

## **4. Company consents**

The Company consents to this Deed and agrees:

- a) to be bound by its provisions, and
- b) other than in accordance with this Deed, not to pay or permit any other person to pay any of the Subordinated Creditor's Debt to the Subordinated Creditors or to any other person without obtaining the prior written consent of the Administrators.

## **5. Deemed to remain binding**

This Deed binds the parties to this Deed and is irrevocable unless and until:

- a) the DOCA is fully effected in accordance with its terms; or
- b) the DOCA is lawfully terminated.

## **6. Funds to be held on trust**

- a) Any funds received by the Subordinated Creditors or any other person from the Company or any other person in satisfaction or purported satisfaction of the Subordinated Creditor's Debt during the term of this Deed must be held by the Subordinated Creditors or any other person receiving it upon trust for the Administrators.
- b) The Subordinated Creditors must as soon as is practicable:
  - i. advise the Administrators in writing upon receipt by the Subordinated Creditors or any other person of funds referred to in clause 6(a); and
  - ii. account to the Administrators or cause the other person to account to the Administrators for those funds.

## **7. Subordinated Creditors not to enforce securities**

During the term of this Deed the Subordinated Creditors are not to enforce any Security Interest held over any of the assets of the Company.

## **8. Waiver**

- a) The Administrators' failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- c) A waiver is not effective unless it is in writing executed by the Administrators.
- d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **9. Severability**

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

## **10. Stamp duty and other expenses**

- a) The Subordinated Creditors must pay all stamp duty, legal charges (on a full indemnity basis), expenses, taxes and outgoings payable in respect of or incidental to this Deed or its enforcement or attempted enforcement.
- b) If the Subordinated Creditors do not pay any amount referred to in clause 10(a), the Administrators may do so and may, without any further authority than is given by this Deed, recover such funds as part of the Administrators' Debt.
- c) Any money expended is, from the date of payment by the Administrators, payable by the Subordinated Creditors on demand and until paid bears interest at the rate of 12 per cent per annum accruing daily and compounded monthly.

## **11. Consent by Administrators**

If the doing of anything by the Company or the Subordinated Creditors is dependent upon the consent or agreement of the Administrators, the consent or agreement may be given conditionally or withheld by the Administrators in their absolute discretion unless otherwise provided in this Deed.

## **12. Cross-default**

Any breach of the terms of this Deed by the Subordinated Creditors of the Company constitutes default under the DOCA.

## **13. Variation of deed**

An amendment or variation to the Deed is not effective unless it is in writing and signed by all parties.

## **14. General**

### **14.1. Deed poll**

To the extent that this Deed benefits persons or entities which are not a party to this Deed, this Deed operates as a deed poll.

### **14.2. No adverse construction**

This Deed is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

**14.3. Nature of obligations**

- a) Any provision in this Deed which binds more than one person binds all of those persons jointly and each of them severally.
- b) Each obligation imposed on a party by this Deed in favour of another is a separate obligation.

**14.4. Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

**14.5. Governing law and jurisdiction**

- a) This Deed is governed by and must be construed in accordance with the laws in force in New South Wales.
- b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

**14.6. Counterparts**

If this Deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

**14.7. Entire understanding**

- a) This Deed contains the entire understanding between the parties concerning the subject matter of this Deed and supersedes all prior communications between the parties.
- b) Each party acknowledges that, except as expressly stated in this Deed, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Deed.

**14.8. Deed immediately binding upon execution**

This Deed is binding upon a party that executes it immediately on and from execution by that party (whether or not any other party has executed this Deed) and, to the extent necessary to give effect to this clause, this Deed operates as a deed poll.



**Executed as a deed.**

**Signed, sealed and delivered** by Barry )  
Anthony Taylor in his capacity as Administrator )  
of Proto Resources & Investments Ltd )  
(Administrators Appointed) ACN 108 507 517 in )  
the presence of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

**Signed, sealed and delivered** by Todd Andrew )  
Gammel in his capacity as Administrator of )  
Proto Resources & Investments Ltd )  
(Administrators Appointed) ACN 108 507 517 in )  
the presence of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

**SIGNED, SEALED AND DELIVERED** by Proto )  
Resources & Investments Ltd (Administrators )  
Appointed) ACN 108 507 517 by its joint and  
several voluntary administrator in the presence  
of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

.....  
Name of Voluntary Administrator

**Signed, sealed and delivered** by Lia Melissa )  
Darby in the presence of: )  
)  
)

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

**Signed, sealed and delivered** by Andrew )  
Kenneth Bruce Mortimer in the presence of: )  
)  
)

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

)

**Signed, sealed and delivered** by Andrew )  
Norman Heap in the presence of: )  
)

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

**Signed, sealed and delivered** by Patricia Kay )  
Phillip in the presence of: )  
)

.....  
Signature of witness

.....  
Signature

.....  
Name of witness  
(please print)

**Executed** by RM Capital Pty Ltd ACN 065 412 )  
820 in accordance with section 127(1) of the )  
*Corporations Act 2001 (Cth):*

.....  
Signature

.....  
Signature

.....  
Name of Director  
(please print)

.....  
Name of Director/Secretary  
(please print)

**Executed by Paradise Capital Pty Ltd ACN 119 783 738** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....  
Signature

.....  
Name of Director  
(please print)

.....  
Signature

.....  
Name of Director/Secretary  
(please print)

**Executed by Inosite Limited ACN 116 936 862** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....  
Signature

.....  
Name of Director  
(please print)

.....  
Signature

.....  
Name of Director/Secretary  
(please print)

**Executed by AXINO GmbH HRB 738404:**

.....  
Signature

.....  
Name of Director  
(please print)

.....  
Signature

.....  
Name of Director/Secretary  
(please print)