

Deed of Company Arrangement

of Westinghouse Solar Pty Limited ACN 163 078 699 (Administrators Appointed)

24 December 2014

Sydney

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Deed of Company Arrangement

Date 24 December 2014

Parties

Company

Name Westinghouse Solar Pty Limited
(Administrators Appointed) (**Company**)

ACN 163 078 699

Administrators

Name Trevor Pogroske and Said Jahani in their capacity as joint and several administrators of the Company (**Administrators**)

BlueNRGY

Name BlueNRGY LLC (**BlueNRGY**), a limited liability company incorporated under the laws of Florida, United States of America

CBDE

Name CBD Energy Limited (Administrators Appointed) (**CBDE**)

ACN 010 966 793

WFF

Name Wind Farm Financing Pty Ltd (**WFF**)

ACN 165 836 760

WHSP

Name Washington H. Soul Pattison and Company Limited (**WHSP**)

ACN 000 002 728

Background

- A. On 14 November 2014, the Administrators were appointed joint and several administrators of the Company pursuant to section 436A of the Corporations Act.
- B. At a meeting of Creditors held pursuant to section 439A of the Corporations Act on 19 December 2014, the Creditors resolved pursuant to section 439C of the Corporations Act that the Company enter into a deed of company arrangement in terms substantially in the form of this Deed.
- C. The Parties have made provision in this Deed to seek Creditor approval of a variation of this Deed to allow for the creation of a trust for Creditors' pursuant to the terms of the Trust Deed (with Creditor approval).

Operative part

Pursuant to Part 5.3A of the Corporations Act, the Parties and all others bound by this Deed agree:

1 Definitions, interpretation, and incorporated provisions

1.1 Definitions

Unless context indicates a contrary intention, a term or expression used in this Deed starting with a capital letter:

- (a) Which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) Which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 Interpretation

The rules of interpretation for this Deed are set out in Schedule 1.

1.3 Incorporated provisions

- (a) Except to the extent that they are expressly or implied varied or excluded by this Deed, the prescribed provisions in Schedule 8A of the Corporations Regulations are incorporated into this Deed.
- (b) For the purposes of administering Claims under this Deed, section 544 and Subdivisions A, B, C, D and E (other than sections 563B and 564) of Division 6 of Part 5.6 of the Corporations Act, and Corporations Regulations 5.6.37 and 5.6.39 to 5.6.72 (inclusive, and other than Corporations Regulations 5.6.43A, 5.6.54 and 5.6.70A) are incorporated into this Deed and apply to Claims under this Deed, as if they were fully set out herein and as if:
 - (i) references to the liquidator were references to the Administrators;
 - (ii) references to winding up were references to the operation and performance of this Deed;
 - (iii) references to creditor were references to Creditor (as defined in this Deed); and
 - (iv) references to the court were references to Court as defined in this Deed.
- (c) If there is any inconsistency between the provisions incorporated into this Deed by virtue of this clause and the provisions of this Deed, the latter prevails to the extent permitted by law.

2 Preliminary matters

2.1 Purpose and objects of this Deed

This Deed is to provide for the business, property, and affairs of the Company to be administered in a way that:

- (a) Complies with the requirements of the Corporations Act and Corporations Regulations;
- (b) Aims to achieve a greater return to Admitted Creditors than the return that would likely be available to them in the event the Company was put into liquidation (if any);
- (c) Is consistent with and assists in the a restructure of the business of CBDE, including the planned injection of capital into that company, to allow the Company to remain in business;
- (d) Provides for a return to the Company's employees of the amount they would otherwise be entitled to under the FEG Scheme;
- (e) Allows the majority of the Company's workforce to retain their employment;
- (f) Offers Admitted Creditors an equity stake in the restructured CBDE;
- (g) Meets the Company's debt to WFF and releases the security held by WFF over the Company's Assets; and
- (h) Provides for the Administrators to run the business of the Company on the terms set out in this Deed for an Interim Management Period and thereafter for a trust to be created pursuant to the Trust Deed or else for the business of the Company to be operated under licence by a nominee of BlueNRGY acceptable to the Administrators

2.2 *Commencement and term*

- (a) Except for clause 3 of this Deed, which takes effect immediately upon the signing of this Deed, the balance of this Deed takes effect on the Commencement Date and continues until the Termination Date, unless terminated earlier.
- (b) The following are conditions precedent to this Deed taking effect:
 - (i) The CBDE DOCA taking effect; and
 - (ii) Prior to the date on which this Deed is fully effectuated, BlueNRGY will give the Administrators written notice of the employees of the Company they require to be terminated and the Administrators must terminate those employees.
- (c) The conditions precedent set out in sub-clause (b) are for the benefit of BlueNRGY and may only be waived by BlueNRGY. Such waiver must be in writing sent to all of the parties to this Deed.

2.3 *Binding nature of this Deed*

This Deed binds:

- (a) The Parties;
- (b) In accordance with section 444D of the Corporations Act, the Creditors;
- (c) In accordance with section 444G of the Corporations Act, the Company, the Administrators, and the Members and Officers of the Company; and

(d) By virtue of clause 10.1(a)(iii), WFF and WHSP;

except that:

- (e) Unless expressly stated to the contrary, this Deed does not bind any secured creditor of the Company without such secured creditor's express agreement; and
- (f) This Deed does not limit the entitlement of any Creditor that has the benefit of any bond, bank guarantee or similar instrument as security for any claim it may have against the Company to call upon that bond, bank guarantee or other instrument in accordance with its terms.

3 Continuation and management of the business of the Company

3.1 *Interim Management Period*

- (a) Commencing on the date of this Deed and ending on the Closing Date (**Interim Management Period**) the Administrators:
 - (i) will have control of the Company and will be responsible for the management of the business and affairs of the Company; and
 - (ii) for the purpose of sub-clause (a)(i), will continue to have the powers and duties they had as administrators of the Company prior to entry into this Deed.
- (b) The Administrators will have no obligations under clause 3.1(a) if:
 - (i) they do not have recourse to sufficient funding to meet their remuneration, costs and disbursements associated with such obligations; and
 - (ii) BlueNRGY has not made such funds available to the Administrators, following a request to BlueNRGY that it do so.
- (c) On or before the date of this Deed, BlueNRGY must pay to the Administrators as an advance on the Capital Funds expected to be raised from the Capital Raising under the CBDE DOCA, the sum of AU\$32,651 (**Initial Advance**) to cover the costs of the Interim Management Period as provided in this clause up until 31 December 2014. To the extent that further advance on the Capital Funds is required by the Administrators in respect of the costs of that part of the Interim Management Period falling after 31 December 2014, BlueNRGY agrees to meet with the Administrators on a weekly basis commencing on 29 December 2014 in good faith to discuss and if possible reach agreement in respect of the provision of additional week-by-week funding by BlueNRGY in respect of the costs of that part of the Interim Management Period falling after 31 December 2014, which additional funding shall be considered part of the Interim Advance for the purposes of this Deed. If an agreement cannot be reached in respect of the costs of any part of the Interim Management Period falling after 31 December 2014, the Administrators shall not have any obligations

under clause 3.1(a) of this Deed nor have any obligation to incur any liabilities in the operation of the Company.

- (d) The Administrators must, during the Interim Management Period, treat the Initial Advance as part of the Deed Fund, and must apply the Initial Advance to pay:
- (i) Up to AU\$2,000 in respect of the costs of convening the meeting of Creditors referred to in clause **Error! Reference source not found.** of this Deed. For the avoidance of doubt, the parties acknowledge that this clause does not in any way limit the ability of the Administrators' to claim their remuneration, costs and disbursements from other sources;
 - (ii) The Administrators' remuneration, costs, and disbursements in connection with carrying out their role during the Interim Management Period; and
 - (iii) All debts and liabilities incurred during, or referable to, the Interim Management Period for goods bought, services rendered or property hired or leased, by the Company or by the Administrators on behalf of the Company, including employee salaries and on costs arising out of the operation of the Assets and (to the extent they continue to be operated) the Excluded Assets,

and the Administrators are entitled to be indemnified out of the Initial Advance for those amounts, that indemnity being subject to clause 6.5(d) of this Deed.

- (e) Notwithstanding any other provision of this Deed, and to avoid doubt, the Administrators may have access to and apply the Initial Advance during the Interim Management Period in accordance with this clause even if the remaining provisions of this Deed have not come into effect.
- (f) In return for providing the Initial Advance as funding to operate the business of the Company during the Interim Management Period, BlueNRGY is entitled to all revenue and debtors (or receivables) generated from the operation of the Assets and from the operation of the Excluded Assets received or receivable in respect of or referable to the Interim Management Period, including any recovery of the Company's debtors from service rendered during the Interim Management Period.
- (g) The Administrators are entitled to all revenue and debtors (or receivables) generated from the operation of the Assets and from the operation of the Excluded Assets received or receivable in respect of, or referable to, the period prior to Interim Management Period including any recovery of the Company's debtors from service rendered prior the Interim Management Period.

3.2 *Licence Agreement if Creditors' Trust not created*

In the event that the Creditors do not resolve that the Company should enter into the Trust Deed as envisaged by clause 13 of this Deed, then:

- (a) On or before the Closing Date the Company, WHS, the Administrators, and a nominee of BlueNRGY acceptable to the Administrators all must enter into a licence agreement containing similar terms to those set out in the draft licence agreement attached to this Deed; and
- (b) In accordance with the terms of the Licence Agreement, responsibility for the continued operations and management of the business of the Company will pass to the licensee.

3.3 *Administrators' duties*

- (a) Subject to having available funding, the Administrators must, from the date of this Deed and throughout the Arrangement Period, do all things reasonably necessary to preserve the Company's Assets.
- (b) Without in any way limiting sub-clause (a), subject to having available funding, the Administrators must do all things reasonably necessary to ensure that before, during, and after the Arrangement Period:
 - (i) The Company continues to have the use and benefit of all licences, agreements, and consents under which its businesses are operated including, without limitation, the global licence agreement that commenced in or about September 2013 by which the Company operates the Westinghouse Solar brand;
 - (ii) The Company and the subsidiaries of the Company retain their rights in and under any contracts to which the Company or subsidiary is party;
 - (iii) Except where disposed of in the ordinary course of trade, or to the extent they are Excluded Assets, the Company and its subsidiaries preserve all merchantable inventory stock and assets pertinent to the Company's solar business; and
 - (iv) The Company retains its rights in respect of any claims it may have against any parties, including claims or rights under insurance policies; and
 - (v) If and to the extent that it is possible to reach a mutually acceptable arrangement with the relevant counter-parties, the Company retains the management contract for the Taralga Wind Farm project.
- (c) The Administrators and the Company must not, without the prior written consent of BlueNRGY, terminate the employment of any Employee other than an employee referred to in clause 2.2(b)(ii) of this Deed.

3.4 *Termination of Executory Contracts*

- (a) Prior to this Closing Date, BlueNRGY will give the Administrators written notice of the Excluded Executory Contracts. Upon receipt of such notice the Administrators to the extent they have actual knowledge of those Executory Contracts, will, to the maximum extent permitted by law and the terms of those Executory Contracts, terminate all Executory Contracts other than the Excluded Executory Contracts.
- (b) For the avoidance of doubt:
 - (i) nothing in this Deed creates an obligation on the Administrators to perform any Executory Contracts other than the Excluded Executory Contracts (and in that regard only to the extent of funds or assets available to do so);
 - (ii) the parties to this Deed acknowledge that:
 - (A) the Administrators do not have funding available to perform the Executory Contracts other than the Excluded Executory Contracts (and in regard to the Excluded Executory Contracts only to the extent of funds or assets available to do so); and
 - (B) the Company cannot perform the Executory Contracts other than the Excluded Executory Contracts in the absence of sufficient funding to do so.

4 *Restructuring*

4.1 *Capital Raising*

- (a) CBDE, and BlueNRGY on behalf of the Company, agree to use best efforts to raise the Capital Funds in accordance with the terms of the CBDE DOCA.
- (b) The Administrators and the Company must apply the Capital Funds achieved through the Capital Raising as follows:
 - (i) \$390,000 is to be paid into the Deed Fund; and
 - (ii) US\$610,000 is to be paid into the Deed Fund under the CBDE DOCA in accordance with the terms of that deed.

4.2 *Events on Closing Date*

- (a) On the Closing Date:
 - (i) If the Trust Deed has not been entered into, a Licence Agreement for the continued operation of the business of the Company must be entered into in accordance with clause 3.2 of this Deed;
 - (ii) That portion of the Capital Funds specified as forming part of the Deed Fund must be paid into the Deed Fund, together with so

much of the Initial Advance as has not been expended by the Administrators in accordance with clause 3.1(d) of this Deed;

- (iii) In accordance with the provisions of the CBDE DOCA, CBDE will issue to the Administrators to hold on trust for the Creditors subject to the provisions of this Deed and the CBDE DOCA, 38,123,652 shares in the Company; and
 - (iv) To the extent that the Excluded Assets include entities, the Company must execute all documentation (such as share transfers) required to give effect to the terms of this Deed.
- (b) To the extent that CBDE would breach Chapter 6 of the Corporations Act by issuing shares under sub-clause (a) above, it will instead issue convertible notes to those parties that were to receive the relevant shares. The convertible notes will convert automatically to equity as and when and to the extent that on converting the relevant party would not be in breach of Chapter 6 of the Corporations Act.
- (c) The Parties agree to do all things reasonably necessary to ensure that the things set out in sub-clause (a) above can be done on the Closing Date.

5 Moratorium and Release

5.1 *Moratorium on Creditor Claims*

From the date of this Deed until this Deed is terminated, Creditors, and the owners and lessors of property used or occupied by the Company, must not:

- (a) Make or concur in an application for an order to wind up the Company;
- (b) Proceed with an application to wind up the Company made before this Deed became binding on such person;
- (c) Begin or continue any proceeding (including any arbitration) against the Company or in relation to any of its Property;
- (d) Begin or continue any Enforcement Process in relation to the Company's Property;
- (e) Make or concur in an application, or continue any application, for the appointment of a receiver, receiver and manager, provisional liquidator, or court-appointed receiver of the Company or any of its Property;
- (f) Commence or take any additional step in any proceeding or any arbitration against the Company or to which the Company is a party; or
- (g) Exercise any right of set-off or cross claim against the Company which the person would not have been entitled to exercise had the Company been wound up upon the Commencement Date,

except, in the case only of paragraphs (c) and (d), with the leave of a Court and in accordance with such terms (if any) as a Court imposes.

5.2 *Release by Creditors*

- (a) As a consequence of the operation of this Deed, all Creditors accept their entitlements under this Deed in full satisfaction and complete discharge of any Claim that they have or claim to have had against the Company.
- (b) A Creditor must, if required by the Company or the Administrators, execute all such documents, written material, or otherwise, including forms or release, as the Company or the Administrators may require from time to time to give effect to the release in this clause.
- (c) All Creditors are barred from taking any further action with respect of any Claim that they have or claim to have had against the Company.

5.3 *Moratorium regarding shares*

- (a) Except as expressly provided by this Deed or the CBDE DOCA, during the Arrangement Period, a transfer of shares in the Company, or an alteration in the status of Members of the Company, shall be void except with the written consent of the Administrators or so far as the Court otherwise orders.
- (b) The Administrators will not be liable for any loss or damage arising by reason of their refusal to give consent under clause 5.3(a) of this Deed.

6 Deed Administrators

6.1 *Appointment*

- (a) The Administrators are appointed the Deed Administrators of this Deed.
- (b) By their execution of this Deed, each of the Administrators consents to and accepts his appointment as Deed Administrator, and agrees to act as such during the Arrangement Period or until removal from office in accordance with this Deed.
- (c) This appointment is joint and several such that the functions and powers of the Deed Administrators may be performed or exercised by any one of them or both of them together, and the rights, benefits and obligations under this Deed are conferred or imposed on them jointly and severally.
- (d) The Administrators' appointment as Deed Administrators shall begin on the Commencement Date and continue until the Termination Date or until their retirement or removal from the office of Deed Administrator.
- (e) In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Administrators will act as agents for and on behalf of the Company.

6.2 *Responsibilities and powers*

- (a) The Administrators have the powers, functions, and duties conferred under this Deed and the Corporations Act.

- (b) During the Arrangement Period, the Administrators will be responsible for the supervision and administration of this Deed.
- (c) Without limiting the generality of sub-clause (a), the Administrators will have all of the powers set out in Schedule 8A of the Corporations Regulations.

6.3 *Remuneration and reimbursement from Deed Fund*

- (a) The Administrators will be remunerated by the Company in accordance with this Deed in respect of the Administrators Costs and Deed Administrators' Costs, and will be reimbursed by the Company in respect of the Administrators' Disbursements and Deed Administrators' Disbursements.
- (b) The Administrators will be entitled to draw from the Deed Fund in accordance with clause 8.3(a) to meet the Administrators' Costs, the Administrators' Disbursements, the Deed Administrators' Costs and the Deed Administrators' Disbursements.
- (c) The Administrators may employ staff to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed, and the remuneration of the Administrators, their employees and staff will be calculated in accordance with the rates of charge issued from time to time by the Administrators for work of that nature plus GST payable thereon, determined according to and as required by law.

6.4 *Limitation of liability*

- (a) Subject to the Corporations Act, and to the extent permitted by law, in the performance of the Administrator's functions and duties and the exercise of the Administrator's powers under this Deed and in taking any step or failing to take any step relating, in any way, to this Deed, the Administrators will not be personally liable for any debt, liability or other obligation or for any loss or damage caused by any act or omission of the Company or the Administrator.
- (b) The Parties to this Deed release the Administrators personally from any debt, liability, or other obligation or for any loss or damage caused by any act or omission of the Company or the Administrator in accordance with, or otherwise arising from, the performance of any function in relation to this Deed.

6.5 *Indemnity*

- (a) Subject to sub-clause (d) to this clause, the Administrators are entitled to be indemnified out of the Deed Fund for:
 - (i) The remuneration and reimbursement payable pursuant to clause 6.3 of this Deed; and
 - (ii) The liabilities and debts incurred or paid by the Administrators in the performance or exercise of any of the Administrators' powers,

rights, and functions as Deed Administrators, which were properly incurred during the Arrangement Period.

- (b) The indemnity in this clause will take effect on and from the Commencement Date and is without limitation as to time and will continue for the benefit of the Administrators' legal personal representatives despite the removal of the Administrators or any of them and the appointment of a new Deed Administrator of this Deed or the termination of this Deed for any reason whatsoever.
- (c) The indemnity in this clause will not:
 - (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators and extends 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
 - (ii) affect or prejudice any right that the Administrators may have against the Company or any other person to be indemnified for the costs, charges, expenses and liabilities incurred by the Administrators in connection with the exercise or performance of any of the powers or authorities conferred on the Administrators by this Deed or otherwise.
- (d) The Administrators shall not be entitled to an indemnity in respect of any particular liabilities or demands if the Administrators, or any partner, employee, authorised agent or delegate of the Administrators, acts dishonestly, negligently, or in breach of trust or duty in relation to the act or omission in issue, including an act or omission in respect of which this indemnity would not be allowed by reason of section 199A or 199B of the Corporations Act.

7 Deed Fund

7.1 *Constitution of the Deed Fund*

- (a) The Administrators must establish the Deed Fund as soon as practicable after the Commencement Date.
- (b) The Administrators must hold all amounts in the Deed Fund for use or distribution in accordance with the terms of this Deed.
- (c) The Deed Fund will comprise:
 - (i) the Capital Funds referred to in clause 4.1(b)(i) of this Deed;
 - (ii) so much of the Initial Advance not expended during or in respect of the Interim Management Period; and
 - (iii) the Excluded Assets.
- (d) To avoid doubt, the Assets of the Company do not and will not form part of the Deed Fund.

- (e) If funds from the Capital Raising are received in United States Dollars, the Administrators may, in their absolute discretion, maintain any funds held by them in United States Dollars or convert all or part of those funds to Australian Dollars at any time.
- (f) The Administrators will not be liable for any loss or damage arising by reason of converting all or part of the Deed Fund from United States Dollars to Australian Dollars.

8 Distribution of Deed Fund

8.1 *Proof and adjudication of Claims*

- (a) The Administrators must call for formal proofs of debt in support of any Claims from Creditors pursuant to those parts of the Corporations Act and Corporations Regulations incorporated into this Deed for the purpose of deciding whether to admit that Claim pursuant to this Deed.
- (b) In calling for formal proofs of debt, the Administrators must specify a date no later than 31 March 2015 by which those proofs of debt are to be lodged with the Administrators.
- (c) Only Claims that were capable of being admitted to proof under this Deed may be accepted as admitted Claims.
- (d) Interest shall not accrue or be payable on any Claim from the Appointment Date.
- (e) Only Admitted Creditors are entitled to participate in any dividend from the Deed Fund and to a share in the Creditor Share Pool.
- (f) The rights of the Admitted Creditors are limited to a share in the Deed Fund and in the Creditor Share Pool in accordance with the terms of this Deed.

8.2 *Abandonment and release of Claims*

Despite anything contained in the Corporations Act or Corporations Regulations to the contrary, a Creditor will have abandoned and released, and will be taken for all purposes to have abandoned and released, all Claims and all other entitlements (if any) on the Deed Fund and to a share in the Creditor Share Pool if:

- (a) a proof of debt for that Claim has not been lodged with the Administrators within the time that the Administrators allow for lodgement of such proofs of debts in their call; or
- (b) that Claim has been rejected by the Administrators (including as a result of any Court application).

8.3 *Distribution of dividends*

- (a) The Administrators will distribute the Deed Fund by distributing one or more dividends as soon as practicable in the following order of priority:

- (i) First, subject to clause 6.3 and 6.5, to the Administrators in satisfaction of the Administrators' Costs, the Administrators' Disbursements, the Deed Administrators' Costs, the Deed Administrators' Disbursements, and any indemnity to which the Administrators are entitled pursuant to this Deed;
 - (ii) Next, to the Employees in payment of the amounts to which they would be entitled pursuant to sections 556, 560, and 561 of the Corporations Act if the Company was in liquidation, but limited to the amount that would be recoverable by the Employees in respect of their Claim were it made under the FEG Scheme, including to any entity entitled to repayment of any advances made for the Company to make priority payments in relation to employees pursuant to section 560 of the Corporations Act;
 - (iii) Next, pari-passu to the Admitted Creditors with respect to admitted Claims; and
 - (iv) Next, in the event of any surplus remaining after all Admitted Creditors have been paid 100 cents in the dollar (excluding interest) with respect to admitted Claims, to the Company.
- (b) The Administrators must use reasonable endeavours, consistent with this Deed and their obligations under the Corporations Act, to complete the adjudication of proofs of debt, to distribute the Deed Fund, and to transfer the Creditor Share Pool to Admitted Creditors by 30 May 2015.
 - (c) Notwithstanding any other provision of this Deed, the Administrators need not make a payment of a dividend unless they hold funds in the Deed Fund.
 - (d) If the cost of paying a dividend to an Admitted Creditor would exceed the amount to be distributed to that Admitted Creditor or would otherwise be impractical in the reasonable opinion of the Administrators, the Administrators are not required to pay that dividend and must instead distribute that amount to the remaining Admitted Creditors pursuant to this clause.
 - (e) In the event that the Administrators are unable to locate a person entitled to a distribution under this clause, or if payment is not accepted, is rejected, or is not accepted within a reasonable period of time, then the Trustees may, in their discretion, stop the payment and distribute the amount of the distribution to the remaining persons so entitled under this clause.

8.4 *Section 444DB Statement*

- (a) Notwithstanding anything to the contrary in this Deed:
 - (i) If the whole of a Claim by way of a Superannuation Contribution:
 - (A) is a Claim by way of Superannuation Guarantee Charge that:

- (I) has been paid; or
 - (II) otherwise is, or would be, admissible to proof; and
- (B) the Administrators are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the Claim, then the whole of such Claim is not admissible to proof.
- (ii) If the Administrators determine, under paragraph (i), that the whole of a Claim is not admissible to proof, the whole of the Claim is nonetheless extinguished upon termination of this Deed.
- (iii) If a particular part of a Claim by way of a Superannuation Contribution:
 - (A) is a Claim by way of Superannuation Guarantee Charge that:
 - (I) has been paid; or
 - (II) otherwise is, or would be, admissible to proof; and
 - (B) the Administrators are satisfied that the Superannuation Guarantee Charge is attributable to that part of the Claim, then the Administrators must determine that such part of the Claim is not admissible to proof.
- (iv) If the Administrators determine, under paragraph (iii), that a part of a Claim is not admissible to proof, that part of the Claim is nonetheless extinguished upon termination of this Deed.
- (b) To the extent of any inconsistency between this clause and any other provision of this Deed, this clause shall prevail.

9 Share transfers to Admitted Creditors

9.1 Creditor Share Pool

- (a) Of the shares referred to in clause 4.2(a)(iii) of this Deed, 10% of those shares are to be held by the Administrators on trust for the Creditors.
- (b) To avoid doubt, WFF is not entitled to a share of the Creditor Share Pool but instead will take a shareholding in the Company pursuant to clause the terms of the CBDE DOCA.
- (c) The Administrators must transfer full legal and beneficial ownership of the shares in the Company referred to in sub-clause (a) to the Admitted Creditors in the same proportion as each Admitted Creditor's pari-passu entitlement in the Deed Fund under this Deed.
- (d) In the event that an Admitted Creditor can satisfy the Administrators that the Admitted Creditor is unable to accept a transfer of the full legal and beneficial ownership of shares to which it is entitled under this clause, then subject to all applicable laws the Administrators must

attempt to liquidate the relevant shares on the market and after payment of all associated costs must remit the net proceeds of the sale of the shares to the relevant Admitted Creditor.

- (e) In the event that an Admitted Creditor is able but unwilling to accept a transfer of the full legal and beneficial ownership of shares to which it is entitled under this clause, or in the event that the Administrators are not able to dispose of shares on the market pursuant to sub-clause (c) within twelve months, then subject to the consent of the relevant Creditor those shares will return to the Creditor Share Pool for distribution to those Admitted Creditors who did accept shares.

10 Secured Creditor

10.1 *Wind Farm Financing Pty Ltd*

- (a) In return for the consideration granted to them by CBDE under the CBDE DOCA, WFF and WHSP agree:
- (i) that they accept that consideration in full satisfaction and complete discharge of any Claim that they have or claim to have had against the Company;
 - (ii) to forthwith release all security they holds over any of the Assets;
 - (iii) to be bound by this Deed; and
 - (iv) to forever waive any entitlement to participate in the Deed Fund or the Creditor Share Pool.

11 Meetings

11.1 *Meetings*

The Administrators may at any time convene a meeting of Admitted Creditors and, except to the extent that they are excluded, modified by, or inconsistent with the terms of this Deed, regulations 5.6.12 to 5.6.36A of the Corporations Regulations will apply, with all necessary modifications, to meetings of the Creditors as if the reference to “liquidator” or “provisional liquidator”, “chairperson” or “trustee” were references to the Administrators.

12 Variation of this Deed

12.1 *Variation by Creditors*

In addition to clause 13, this Deed may be varied with the consent of the Administrators by resolution passed at a meeting of the Creditors convened under section 445F of the Act, as modified by any orders of the Court, but only if the variation is not materially different from a proposed variation set out in the notice of that meeting.

12.2 *Consent of interested parties*

A variation of this Deed that directly or indirectly impacts upon BlueNRGY may only be made with the written consent of BlueNRGY.

13 Proposed variation of this Deed to provide for a Trust Deed and Trust Fund

The Administrators must convene a meeting of Creditors under section 445F of the Act to be held on or before 7 January 2015 for the purposes of passing a resolution to vary this Deed to provide as follows:

- (a) That on the Closing Date:
 - (i) the Company and the Administrators shall enter into the Trust Deed;
 - (ii) the Deed Fund shall be transferred to the Trust Fund; and
 - (iii) the Creditor Share Pool shall be held on trust in accordance with the terms of Trust Deed;
- (b) To vary clauses 5, 6, 8, and 9 of this Deed to the extent required to accommodate the creation and operation of the trusts established pursuant to Trust Deed; and
- (c) To vary clause 14 to provide that upon the occurrence of the events set out in sub-clauses (a) to (c) above this Deed will be fully effectuated and complete.

14 Completion and termination of this deed

14.1 Completion

This Deed will be completed immediately when:

- (a) the Trust Deed is entered into and the Deed Fund and Creditor Share Pool are transferred to the Trust Fund and the Administrators have issued an Effectuation Notice; or
- (b) otherwise, when all of the Deed Fund and the shares in the Creditor Share Pool have been distributed in accordance with the provisions of this Deed and the Administrators have issued an Effectuation Notice.

14.2 Termination

This Deed will immediately terminate upon the earliest of:

- (a) **Completion:** Completion of the Deed pursuant to clause 14.1;
- (b) **Failure to Complete:** 1 January 2017, if the Deed is not completed pursuant to clause 14.1 by that date;
- (c) **Court order:** A court making an order in accordance with section 445D of the Corporations Act; or
- (d) **Resolution of Admitted Creditors:** The Admitted Creditors passing a resolution terminating this Deed at a meeting of Admitted Creditors convened in accordance with the provisions of clause 14.3 of this Deed.

14.3 *Meeting of Admitted Creditors*

- (a) Subject to sections 445A, 445E, and 445F of the Corporations Act and clause 12 of this Deed, and any Court orders modifying the operation of those sections of the Corporations Act, the Administrators must convene a meeting of the Admitted Creditors to consider a resolution to terminate or vary this Deed if at any time prior to completion of this Deed the Administrators determine or a Court orders that:
 - (i) The terms of this Deed cannot be fulfilled; or
 - (ii) There is some other good reason why this Deed ought to be terminated.
- (b) Upon a meeting being convened pursuant to sub-clause (a), the Administrators must send to each Admitted Creditor prior to that meeting a report as to the state of the affairs of the Company accompanied by such financial statements as the Administrators think fit. Any such report must include a statement:
 - (i) Explaining the circumstances that have caused the Administrators to convene the meeting; and
 - (ii) That this Deed will be terminated if the Admitted Creditors so resolve.

14.4 *Effect of termination*

- (a) The termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.
- (b) If this Deed is terminated under clause 14.2(a), the Company will cease to be subject to this Deed and control of the Company will revert to the Directors.
- (c) If this Deed is terminated otherwise than under clause 14.2(a), then section 445A of the Corporations Act is taken to apply and the Company is taken to have passed a special resolution under section 491 of the Corporations Act that the Company be wound up voluntarily, and, notwithstanding sub-clause (a) above, part 5 of this Deed shall have no operation.
- (d) The obligations of all of the parties to this Deed are deemed to be satisfied if the parties have complied with their obligations under the Deed to the satisfaction of the Administrators.
- (e) Within the period ending five years after the date on which the Administrators lodge the Effectuation Notice, the Company must provide the Administrators with reasonable access to the Company's books and records for the purpose of the Administrators fulfilling any reporting obligations imposed upon them.

15 General provisions

15.1 Counterparts

- (a) This document may be executed and exchanged in counterparts.
- (b) This document is not binding upon a party until all executed counterparts have been exchanged.
- (c) Delivery of a counterpart of this document by email attachment or fax constitutes an effective mode of delivery. The party effecting exchange by email attachment or facsimile must deliver the original executed counterpart document as soon as is practicable after the time of exchange.

15.2 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

15.3 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and any courts competent to hear appeals from those courts.

15.4 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act or Corporations Regulations, then the provisions of this Deed will prevail to the extent of that inconsistency and to the extent permitted by law.
- (b) If there is any inconsistency between the provisions of this Deed and the constitution of the Company or any other obligations binding on the Company, then the provisions of this Deed will prevail to the extent of the inconsistency.

15.5 Severance

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

Schedule 1 Dictionary

1 Dictionary

1.1 In this Deed, unless the context indicates a contrary intention:

Administrators' Costs means the remuneration and costs incurred by the Administrators and their staff in respect of acting as voluntary administrators from the Appointment Date to the Commencement Date calculated in accordance with the rates of charge issued from time to time by the Administrators, plus any GST payable thereon, as approved by Creditors.

Administrators' Disbursements means all incidental costs and disbursements incurred by the Administrators from the Appointment Date to the Commencement Date in connection with the preparation and subsequent implementation of this Deed and the performance of the Administrators' duties, plus any GST payable thereon.

Admitted Creditor means a Creditor whose Claim has been admitted by the Administrators.

Appointment Date means 14 November 2014.

Arrangement Period means the period commencing on the Commencement Date and ending on the Termination Date.

Assets means all property of the Company as at the Commencement Date, whether or not identified or otherwise known to the Administrators as at that date, including, to avoid doubt, all of the Company's interest in its Associated Entities and the Property, but excluding the Excluded Assets.

Capital Funds means the funds realised by the Capital Raising provided for in the CBDE DOCA.

Capital Raising means the capital raising provided for in the CBDE DOCA.

CBDE DOCA means the Deed of Company Arrangement of CBD Energy Limited (Administrators Appointed) entered into pursuant to a resolution of creditors of that company on 19 December 2014, as varied from time to time.

Claim means a debt payable by, or a claim against, the Company, whether present or future, certain or contingent, ascertained or sounding only in damages or by way of fine or penalty, being a debt or claim that arose before the Appointment Date or out of events or circumstances which occurred before the Appointment Date, and irrespective of whether the debt or claim arose by virtue of contract, at law, by statute, in equity, or otherwise, including any claim in respect of an Terminated Executory Contract.

Closing Date means the date of the Closing Date under the CBDE DOCA.

Commencement Date means the date on which the last of the conditions precedent set out in clause 2.2(b) of this Deed is satisfied, unless waived by BlueNRGY.

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

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

Court means any court having jurisdiction to hear and determine matters under the Corporations Act in New South Wales.

Creditor means a person who has a Claim against the Company which remains unpaid or unsatisfied, including employees of the Company.

Creditor Share Pool means the shares in the Company available for distribution to Creditors pursuant to clause 9.1.

Deed Administrator means a deed administrator of this Deed appointed under this Deed.

Deed Administrators' Costs means the remuneration and costs to which the Deed Administrators are entitled pursuant to the terms of this Deed incurred by the Deed Administrators and their staff in respect of acting as Deed Administrators during the Arrangement Period in accordance with its terms, calculated in accordance with the rates of charge issued from time to time by the Administrators, plus any GST payable thereon.

Deed Administrators' Disbursements means all incidental costs and disbursements incurred by the Deed Administrators from the Appointment Date to the Commencement Date until termination of this Deed in accordance with its terms in connection with the performance of their duties under this Deed, plus any GST payable thereon.

Deed Fund means the fund established pursuant to this Deed and the aggregate of the amounts paid into that fund pursuant to the terms of this Deed.

Deed means this Deed of Company Arrangement.

Effectuation Notice means a notice issued by the Deed Administrators in accordance with section 445FA(1) of the Corporations Act.

Employees means the employees of the Company.

Excluded Assets means:

- (a) the Company's cash at bank, excluding any cash at bank resulting from the Initial Advance (which forms part of the Deed Fund);
- (b) the settlement payment due to the Company pursuant to the settlement agreed between KI Solar Pty Ltd and Hydro Tasmania;
- (c) subject to sub-paragraph (h) below, the amounts referred to in clause 3.1(g);
- (d) the solar plant manufacturing equipment owned by Eco-kinetics Group Pty Ltd (or any of its subsidiaries);
- (e) realisations from listed equities held by the Company on the Appointment Date;
- (f) dividends received by the Company from the liquidation of its subsidiaries; and
- (g) the Taralga Wind Farm joint venture.

Excluded Executory Contract means an Executory Contract which is subject to the notice by BlueNRGY to the Administrators referred to in clause 3.4(a)

Executory Contract means any contract to which the Company is party with a term extending more than 60 days after the date of this Deed and that obliges the Company to make a future payment or to procure goods or services for such payment.

FEG Scheme means the scheme for the payment of certain employee entitlements established pursuant to the *Fair Entitlement Guarantee Act 2012* (Cth).

Interim Management Period means the period commencing on the date of this Deed and ending on the Closing Date referred to in 3.1.

Initial Advance means the sum referred to in clause 3.1(c).

Licence Agreement means the Licence Agreement entered into in accordance with clause 3.2(a).

Parties means the parties listed under that heading in this Deed.

Property means a legal or equitable estate or interest in property of any description, and includes property used or occupied by, or in the possession of, the Company.

Termination Date means the date defined in clause 14.1.

Terminated Executory Contract means an Executory Contract terminated by the Administrators in accordance with clause 3.4(a) and an Executory Contract that is not performed by the Company.

Trust Deed means the proposed deed pursuant to which the Trustees will be obliged to hold the Trust Fund on certain trusts for Admitted Creditors.

Trust Fund means the trust fund declared pursuant to the terms of the Trust Deed.

Trustees means the trustees under the Trust Deed.

2 Rules of interpretation

In this Deed, unless context indicates a contrary intention:

- (a) **(documents)** a reference to this or another document includes any document which varies, supplements, replaces, assigns or novates this Deed or that other document.
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed.
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this .
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity.

- (g) (**rights and obligations**) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed.
- (h) (**requirements**) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.
- (i) (**including**) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (j) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning.
- (k) (**singular**) the singular includes the plural and vice-versa.
- (l) (**gender**) words importing one gender include all other genders.
- (m) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.
- (n) (**rules of construction**) neither this nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (o) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (p) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales, Australia, even if the obligation is to be performed elsewhere.
- (q) (**joint and several**) an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally.
- (r) (**writing**) a reference to a notice, consent, request, approval or other communication under this Deed or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (s) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (t) (**United States currency**) a reference to dollars or \$ is to United States currency.
- (u) (**month**) a reference to a month is a reference to a calendar month.
- (v) (**year**) a reference to a year is a reference to twelve consecutive calendar months.
- (w) (**GST**) words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (x) (**GST group**) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled

include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

Schedule 2 Creditors' Trust

Trust Deed

Establishing the Westinghouse Solar Creditors' Trust

____ **January 2015**

Sydney

Level 16, 321 Kent Street, Sydney NSW 2000

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Deed of Company Arrangement

Date _____ January 2015

Parties

Company

Name Westinghouse Solar Pty Limited (Subject to Deed of Company Arrangement)
(Company)

ACN 163 078 699

Trustees

Name Trevor Pogroske and Said Jahani in their capacity as joint and several administrators of the Company
(Trustees)

Background

- A. On 14 November 2014, the Administrators were appointed joint and several administrators of the Company pursuant to section 436A of the Corporations Act.
- B. At a meeting of Creditors held pursuant to section 439A of the Corporations Act on 19 December 2014, the Creditors resolved pursuant to section 439C of the Corporations Act that the Company enter into a deed of company arrangement in terms substantially in the form of this Deed.
- C. The Deed of Company Arrangement made provision to seek Creditor approval of a variation of the Deed to allow for the creation of a trust for Creditors', including so that:
 - a. Once the consummation of the acquisition of BlueNRGY LLC and the related capital raising process envisaged by the Deed of Company Arrangement of the Company's parent company, CBD Energy Limited (Subject to Deed of Company Arrangement) has been completed, the Deed Fund will be constituted and the trust for creditors established;
 - b. As a result of the establishment of the trust for Creditors, the creditors of the Company and investors participating in the capital raising will have greater confidence in the prospects of the Company going forward;

- c. CBDE would have better prospects of retaining its listing on the NASDAQ Stock Exchange, which outcome would benefit the interests of the Company's creditors as future shareholders under the terms of the Deed of Company Arrangement; and
 - d. The Administrators may be relieved of the burden of managing the day to day business of the Company earlier, such that the costs that otherwise would be expended funding the Administrators will not deplete the Deed Fund or the working capital of the Company going forward.
- D. At a meeting of Creditors held pursuant to the terms of the Deed of Company Arrangement and section 445F of the Corporations Act, the Creditors resolved that the Company vary the Deed of Company Arrangement to allow for the creation of a trust for Creditors' on the terms set out in this Deed.

Operative part

The Parties agree:

1 Definitions, interpretation, and incorporated provisions

1.1 Definitions

Unless context indicates a contrary intention, a term or expression used in this Deed starting with a capital letter:

- (a) Which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) Which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) Which is defined in the DOCA, but is not defined in the Dictionary or the Corporations Act, has the same meaning given to it in the DOCA.

1.2 Interpretation

The rules of interpretation for this Deed are set out in Schedule 1.

1.3 Incorporated provisions

- (a) In the event that the terms of this Deed are inconsistent with the Corporations Act or the Corporations Regulations, to the maximum extent permitted by law, the terms of this Deed prevail to the extent of any inconsistency.
- (b) In the event that the terms of this Deed are inconsistent with the DOCA, the terms of this Deed prevail to the extent of any inconsistency.

2 Commencement and term

- (a) The Trust shall come into effect as at the date of this Deed.
- (b) This Deed and the Trust shall come to an end once:
 - (i) The Trust Fund has been distributed under the terms of this Deed;

- (ii) The Share Pool has been distributed under the terms of this Deed; and
- (iii) Trustees have received payment for the costs and disbursements to which they are entitled by the terms of this Deed.

3 Trust and Trustees

3.1 *Name*

The name of the Trust is the Westinghouse Solar Creditors' Trust.

3.2 *Identify and appointment of Trustees*

- (a) In accordance with the Deed of Company Arrangement, and in furtherance of its objectives, each Creditor and the Company appoints the Deed Administrators as their trustees on the terms and conditions contained in this Deed.
- (b) The appointment of the Trustees is irrevocable prior to the payment out of the whole of the Trust Fund and distribution of the whole of the Share Pool pursuant to the terms of this Deed.

3.3 *Declaration of Trust*

- (a) The Trustees declare that they will hold:
 - (i) The Trust Fund;
 - (ii) The Share Pool; and
 - (iii) The benefit of the covenants made in the Trustees' favour in the Deed of Company Arrangement or in this Deed,subject to the Trust.
- (b) The Trustees will receive and hold the Trust Fund and Share Pool on trust for Creditors and distribute the Trust Fund and Share Pool in accordance with the terms of this Deed.

3.4 *Duties of Trustees*

Subject to the terms of this Deed, the Trustees must:

- (a) fulfil the Trustees' obligations under this Deed;
- (b) administer the Trust Fund and Share Pool in accordance with the provisions set out in this Deed;
- (c) collect, sell, or otherwise realise the property held on trust to the extent and in a manner that the Trustees believe to be appropriate;
- (d) distribute the Trust Fund in accordance with clause 5.5 of this Deed;
- (e) distribute the Share Pool in accordance with clause 5.9 of this Deed;
- (f) take such legal proceedings and other steps as the Trustees think fit to enforce the obligations imposed on the parties to this Deed;

- (g) keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund and Share Pool;
- (h) as soon as practicable after the end of each financial year, prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that accounting period;
- (i) comply in all respects with the obligations of a holder of the shares in the Share Pool on trust for the Creditors;
- (j) vote the shares in the Share Pool in accordance with recommendations approved by a majority of the members of the Company's Board of Directors; and
- (k) maintain in respect of their position as Trustees all insurances that they ordinarily would maintain if they were appointed as administrators of a company having a similar scope of activity as the Deed Fund pursuant to the Corporations Act.

3.5 *Powers of Trustees*

Subject to the terms of this Deed, the Trustees have the following powers:

- (a) to fulfil the Trustees' obligations pursuant to this Deed;
- (b) to administer the Trust Fund in accordance with the provisions in this Deed;
- (c) collect, sell, or otherwise realise the property held on trust to the extent and in a manner that the Trustees believe to be appropriate;
- (d) to adjudicate Claims in accordance with this Deed;
- (e) to appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
- (f) to admit Claims to proof in accordance with the provisions of this Deed;
- (g) to pay distributions out of the Trust Fund in accordance with the provisions of this Deed;
- (h) to transfer the shares in the Share Pool, and to do all other things necessary to effect such transfers, in accordance with the provisions of this Deed and applicable securities laws;
- (i) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (j) to compromise any Claim on such terms as the Trustees consider fit;
- (k) to do all things in relation to the assets of the Trust Fund that an administrator is empowered to do in relation to a company under a deed of company arrangement which incorporates the prescribed provisions in Schedule 8A of the Corporations Regulations;

- (l) to do anything that is incidental to exercising a power set out in this clause; and
- (m) to do anything else that is necessary or convenient for administering the Trust in accordance with the provisions of this Deed.

3.6 *Conflict*

All powers and discretions of the Trustees may be exercised notwithstanding that the Trustees or any person being a partner, employee or related party of the Trustees, are a beneficiary or may have been a beneficiary or has a direct, indirect or personal interest (in whatever capacity) in the manner of, or as a result of exercising such power or discretion or may benefit directly or indirectly as a result of any such power or discretion.

3.7 *Vesting*

Notwithstanding any other provision of this Deed, each interest in property and Trustee's power over or in connection with property that is created or granted by this Deed, which, but for this provision, might vest, take effect, or be exercisable, after the expiry of eighty years commencing on the date of this Deed, if it has not vested or taken effect by that date will vest or take effect on the last day of that period, and is exercisable only on or before the last day of that period.

4 Remuneration and indemnification of Trustees

4.1 *Exclusion of liability*

- (a) The Trustees are not liable for any loss, damages, costs or expenses that may result to the Trust Fund or any person in the absence of wilful default, fraud or breach of trust.
- (b) The Trustees are not personally liable in any way in respect of Claims.

4.2 *Remuneration and reimbursement from Trust Fund*

- (a) The Trustees will be remunerated from the Trust Fund in respect of the Trustees' Costs, and will be reimbursed from the Trust Fund in respect of the Trustees' Disbursements.
- (b) The Trustees may employ staff to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed, and the remuneration of the Trustees, their employees and staff will be calculated in accordance with the rates of charge issued from time to time by the Trustees for work of that nature plus GST payable thereon, determined according to and as required by law.

4.3 *Indemnity*

- (a) The Trustees are entitled to be indemnified out of the Trust Fund for:
 - (i) Remuneration and reimbursement payable pursuant to clause 4.1 of this Deed; and

- (ii) The liabilities and debts incurred or paid by the Trustees in the performance or exercise of any of the Trustees' powers, rights, and functions as Trustees,

provided always that, subject to any order by a Court to the contrary, the Trustees will not be entitled to any indemnity in respect of any liabilities or demands if the Trustees or any of their partners, employees, agents, or delegates has acted dishonestly, negligently, in breach of duty, or in breach of trust including any act or omission in respect of which this indemnity would be void by reason of section 199C of the Corporations Act.

- (b) The indemnity in this clause will take effect on and from the date of this Deed and be without limitation as to time and will endure for the benefit of the Trustee's 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.
- (c) The indemnity in this clause will not:
 - (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and extends 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 and execution of this Deed or otherwise; or
 - (ii) affect or prejudice any right that the Trustees may have against the Company or any other person to be indemnified for the costs, charges, expenses and liabilities incurred by the Trustees in connection with the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or otherwise.

4.4 *Lien for remuneration*

The Deed Administrators and the Trustees shall have a lien over the Trust Fund to secure payments due under clause 4.1 of this Deed and in respect of the matters described in clause 4.3 of this Deed.

5 Claims

5.1 *Admissibility and adjudication of Claims*

- (a) Upon entry into this Deed the DOCA shall be effectuated and terminated and all Claims of Creditors against the Company shall become Claims against the Trust Fund and Share Pool pursuant to this Deed.
- (b) The Trustees must call for formal proofs of debt in support of any Claims from Creditors pursuant to those parts of the Corporations Act and Corporations Regulations incorporated into this Deed by clause 5.2 of this Deed for the purpose of deciding whether to admit that Claim pursuant to this Deed as an Admitted Claim.

- (c) Interest shall not accrue or be payable on any Claim from the Appointment Date.
- (d) A Creditor has 21 days from being notified of the Trustees' decision under sub-clause (b) of this Deed to file with the Court and serve on the Trustees any appeal or other application in relation to the Trustees' decision. The Trustees will not pay a final dividend from the Trust Fund or make any final distribution from the Share Pool (as the case may be) until the Court appeal or application has been determined.
- (e) Only Admitted Beneficiaries are entitled to participate in any dividend from the Deed Fund and to a share in the Creditor Share Pool.
- (f) Only Claims that were capable of being admitted to proof under the DOCA may be accepted as Admitted Claims.
- (g) The rights of the Admitted Beneficiaries are limited to a share in the Deed Fund and in the Creditor Share Pool in accordance with the terms of this Deed.
- (h) Neither WFF nor WHSP shall have any entitlement to claim against the Trust Fund or Share Pool, by virtue of their claims against the Company having been met and extinguished pursuant to the DOCA.

5.2 *Application of Corporations Act provisions for dealing with Creditors' Claims*

Section 544 and Subdivisions A, B, C, D and E (other than sections 563B and 564) of Division 6 of Part 5.6 of the Corporations Act, Corporations Regulations 5.6.37 and 5.6.39 to 5.6.72 (inclusive and other than Corporations Regulations 5.6.43A, 5.6.54 and 5.6.70A) of the Corporations Regulations are incorporated into this Deed and the Trust and apply to Claims under this Deed, as if they were fully set out herein and as if:

- (a) references to the liquidator were references to the Trustees;
- (b) references to winding up were references to the operation and performance of this Deed;
- (c) references to creditor were references to Creditor (as defined in this Deed); and
- (d) references to the court were references to Court as defined in this Deed.

5.3 *Access to books and records*

Within the period ending five years after the date on which the Administrators lodge the Effectuation Notice (as defined in the DOCA), the Company must provide the Trustees with reasonable access to the Company's books and records for the purpose of the Trustees adjudicating proofs of debt and fulfilling any reporting obligations imposed upon them.

5.4 *Register of Admitted Beneficiaries and distributions*

The Trustees shall maintain a register of Admitted Beneficiaries including, but not limited to, a register of distributions made by the Trustees to the relevant Admitted Beneficiaries.

5.5 *Priorities*

Subject to clause 12.2, the Trustee must distribute the Trust Fund in the following order of priority:

- (a) First, to the Administrators in satisfaction of the Administrators' Costs, the Administrators' Disbursements, the Deed Administrators' Costs, the Deed Administrators' Disbursements, and any indemnity to which the Administrators are entitled pursuant to the DOCA, to the extent such amounts are outstanding and not already paid out of the Deed Fund;
- (b) Next, to the Trustees in satisfaction of the Trustees' Costs and Trustees' Disbursements and any indemnity to which the Trustees are entitled pursuant to this Deed;
- (c) Next, to the Employees in payment of the amounts to which they would be entitled pursuant to sections 556, 560, and 561 of the Corporations Act if the Company was in liquidation, but limited to the amount that would be recoverable by the Employees in respect of their Claim were it made under the FEG Scheme, including to any entity entitled to repayment of any advances made for the Company to make priority payments in relation to employees pursuant to section 560 of the Corporations Act;
- (d) Next, *pari-passu* to the Admitted Beneficiaries with respect to admitted Claims; and
- (e) Next, in the event of any surplus remaining after all Admitted Beneficiaries have been paid 100 cents in the dollar (excluding interest) with respect to admitted Claims, to the Company.

5.6 *Trustee's discretion*

- (a) The Trustees will make distributions under clause 5.5 at such times as the Trustees may determine and otherwise in the Trustee's absolute discretion. The Trustees may make one or more interim distributions under clause 5.5 in their absolute discretion.
- (b) The Trustees may pay any Admitted Claim in preference and priority to any other Admitted Claim if the Trustees consider that it is in the interests of the Admitted Beneficiaries to do so.
- (c) The Trustees may, in their absolute discretion, defer payment of any distributions under clause 5.5.

5.7 *Section 444DB Statement*

- (a) Notwithstanding anything to the contrary in this Deed:
 - (i) If the whole of a Claim by way of a Superannuation Contribution:

- (A) is a Claim by way of Superannuation Guarantee Charge that:
 - (I) has been paid; or
 - (II) otherwise is, or would be, admissible to proof; and
- (B) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to the whole of the Claim, then the whole of such Claim is not admissible to proof.
- (ii) If the Trustees determine, under paragraph (i), that the whole of a Claim is not admissible to proof, the whole of the Claim is nonetheless extinguished upon termination of this Deed.
- (iii) If a particular part of a Claim by way of a Superannuation Contribution:
 - (A) is a Claim by way of Superannuation Guarantee Charge that:
 - (I) has been paid; or
 - (II) otherwise is, or would be, admissible to proof; and
 - (B) the Trustees are satisfied that the Superannuation Guarantee Charge is attributable to that part of the Claim, then the Trustees must determine that such part of the Claim is not admissible to proof.
- (iv) If the Trustees determine, under paragraph (iii), that a part of a Claim is not admissible to proof, that part of the Claim is nonetheless extinguished upon termination of this Deed.
- (b) To the extent of any inconsistency between this clause and any other provision of this Deed, this clause shall prevail.

5.8 *Other provisions*

- (a) If the cost of making a distribution to an Admitted Beneficiary would exceed the amount to be distributed to that Admitted Beneficiary or would otherwise be impractical, in the reasonable opinion of the Trustees, the Trustees are not required to distribute that amount, and instead, may pay the amount to the remaining persons so entitled pursuant to clause 5.5.
- (b) In the event that the Administrators are unable to locate an person entitled to a distribution under this clause, or if payment is not accepted, is rejected, or is not accepted within a reasonable period of time, then the Administrators may, in their discretion, stop the payment and distribute the amount of the distribution to the remaining persons so entitled under this clause

5.9 *Creditor Share Pool*

- (a) The Trustees must transfer full legal and beneficial ownership of the shares in the Share Pool to the Admitted Beneficiaries in the same proportion as each Admitted Beneficiary's pari-passu entitlement in the Trust Fund under this Deed.
- (b) In the event that an Admitted Beneficiary can satisfy the Trustees that the Admitted Beneficiary is unable to accept a transfer of the full legal and beneficial ownership of shares to which it is entitled under this clause, then subject to all applicable laws (including securities laws) the Trustees must, in consultation with the Company and in a manner that is not disruptive to the market, attempt to liquidate the relevant shares on the market and after payment of all associated costs must remit the net proceeds of the sale of the shares to the relevant Admitted Beneficiary.
- (c) In the event that an Admitted Beneficiary is able but unwilling to accept a transfer of the full legal and beneficial ownership of shares to which it is entitled under this clause, or in the event that the Trustees are not able to dispose of shares on the market pursuant to sub-clause (b) within twelve months, then subject to the consent of the relevant Admitted Beneficiary those shares will return to the Share Pool for distribution to those Admitted Beneficiaries who did accept shares.

6 Discharge and moratorium

- (a) Upon the Trustees:
 - (i) Paying to an Admitted Beneficiary the distribution from the Trust Fund to which that Admitted Beneficiary is entitled under this Deed (even if the amount of the distribution is nil); and
 - (ii) Transferring to an Admitted Beneficiary the shares from the Share Pool to which that Admitted Beneficiary is entitled under this Deed, or net proceeds in lieu of those shares pursuant to clause 5.9(b), or else if clause 5.9(c) applies,

then:

 - (iii) That shall constitute the full and final satisfaction and discharge of the obligations of the Trustees to that Creditor under the Trust; and
 - (iv) Subject to any appeal rights that Creditor may have under this Deed, the receipt of those entitlements by the Creditor will effect a full satisfaction and complete discharge and release of all Claims which the Admitted Beneficiary has or claim to have against the Trustees or the Trust Fund and the Admitted Beneficiary must, if called upon to do so, execute and deliver to any of them such forms of release of any such Claim as required.
- (b) Despite anything contained in the Corporations Act or Corporations Regulations to the contrary, in the interests of the orderly and certain

determination of Claims, a Creditor will have abandoned and released, and will be taken for all purposes to have abandoned and released, all Claims and all other entitlements (if any) on the Trust Fund if:

- (i) a proof for that Claim has not been lodged with the Trustees in accordance with clause 5.1 of this Deed; or
 - (ii) that Claim has been rejected by the Trustees (including as a result of any Court application).
- (c) A Creditor must not take any actions or steps to enforce the Creditor's rights to a distribution under the Trust whilst the Trustees remain the Trustees of the Trust on the terms of this Deed.
- (d) Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Trustees against any person having a claim against the Trustees as an absolute bar and defence to any legal proceedings brought or made at any time in respect of that claim.

7 Meeting of Admitted Beneficiaries

7.1 Meeting of Admitted Beneficiaries

- (a) The Trustees may, or must if requested by at least 10% in value of the Admitted Beneficiaries, at any time convene a meeting of Admitted Beneficiaries and, except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Corporations Regulations 5.6.12 to 5.6.36A will apply, with all necessary modifications, to meetings of the Admitted Beneficiaries as if the reference to "liquidator" or "provisional liquidator", "chairperson" or "trustee" were references to the Trustees.
- (b) If at any time prior to the termination of the Trust or this Deed the Trustees:
- (i) determine that it is no longer practicable or desirable to continue to implement or carry out this Deed;
 - (ii) consider that it is in the best interests of Admitted Beneficiaries to do so;
 - (iii) retire or are otherwise no longer able to act as trustee/s of the Trust; or
 - (iv) the Court so orders,
- the Trustees must convene a meeting of the Admitted Beneficiaries to consider and, if thought appropriate, pass a resolution to vary this Deed as allowed pursuant to this Deed, terminate the Trust or Deed or appoint a new trustee/s.
- (c) Upon a meeting being convened pursuant to sub-clause (b), the Trustees must send to each Admitted Beneficiary prior to the meeting a report as to the state of affairs of the Trust accompanied by such

financial statements as the Trustees think fit. The report must include a statement:

- (i) explaining the circumstances which have caused the Trustees to convene the meeting; and
- (ii) a statement that the Trust and this Deed will be terminated if the Admitted Beneficiaries so resolve.

8 Resignation and replacement of the Trustees

8.1 *Voluntary resignation*

The Trustees may resign at any time by giving not less than 30 days' prior written notice to the Admitted Beneficiaries and to the Company.

8.2 *Mandatory resignation*

- (a) The Trustees must resign as trustees of the Trust if:
 - (i) Admitted Beneficiaries resolve at a meeting held under the terms of this Deed to both remove the Trustees and appoint a new trustee or trustees (such meeting to also be a meeting for the purposes of clause 7.1 of this Deed);
 - (ii) required by law; or
 - (iii) either of the Trustees cease to be Registered Liquidators.
- (b) The Trustees are taken to automatically resign as trustees of the Trust if they become bankrupt or die.

8.3 *Appointment of new trustee*

- (a) In the event of the resignation of the Trustees:
 - (i) The Admitted Beneficiaries shall convene a meeting of Admitted Beneficiaries in accordance with this Deed for the purpose of nominating a replacement trustee or trustees;
 - (ii) The Admitted Beneficiaries shall instruct the Trustees to assign to the replacement trustee or replacement trustees the Trustees' rights, title, and benefit under this Deed; and
 - (iii) The Trustees shall do all things reasonably necessary to effect that assignment.
- (b) The new trustee or new trustees appointed under this clause shall be appointed to the Westinghouse Solar Creditors' Trust.
- (c) A new trustee or new trustees appointed under this clause must be a Registered Liquidator.

9 Termination

9.1 *Termination of the Trust and Deed*

The Trust and this Deed will immediately terminate upon payment of all distributions pursuant to Clause 12.

9.2 *Termination of the Trust by Court order or Admitted Beneficiaries' resolution*

The Trust and this Deed will terminate if:

- (a) a Court so orders; or
- (b) the Admitted Beneficiaries pass a resolution terminating the Trust and the Deed at a meeting of the Admitted Beneficiaries pursuant to the terms of this Deed.

9.3 *Previous operation of this Deed preserved*

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

9.4 *Variation of Deed*

Subject to clause 7 of this Deed, this Deed may be varied with the consent of the Trustees by resolution passed at a meeting of Admitted Beneficiaries but only if the variation is not materially different from the proposed variation set out in the notice of that meeting.

10 *General provisions*

10.1 *Counterparts*

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10.2 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

10.3 *Governing law and jurisdiction*

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and any courts competent to hear appeals from those courts.

10.4 *Inconsistency*

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act or Corporations Regulations, then the provisions of this Deed will prevail to the extent of that inconsistency and to the extent permitted by law.
- (b) If there is any inconsistency between the provisions of this Deed and the constitution of the Company or any other obligations binding on the Company, then the provisions of this Deed will prevail to the extent of the inconsistency.

10.5 *Severance*

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

Schedule 1 Dictionary

1 Dictionary

1.1 In this Deed, unless the context indicates a contrary intention:

Administrators means Trevor Pogroske and Said Jahani in their capacity as joint and several administrators of the Company.

Administrators' Costs has the same meaning it has in the DOCA.

Administrators' Disbursements has the same meaning it has in the DOCA.

Admitted Beneficiary means a Creditor whose Claim has been admitted by the Trustees in accordance with this Deed.

Appointment Date has the same meaning it has in the DOCA.

CBDE means CBD Energy Limited (Subject to Deed of Company Arrangement).

Claim means an amount to which a Creditor would have been entitled to claim against the Company but for the operation of the DOCA, calculated by reference to the relevant debt payable by, or a claim against, the Company, whether present or future, certain or contingent, ascertained or sounding only in damages or by way of fine or penalty, being a debt or claim that arose before the Appointment Date or out of events or circumstances which occurred before the Appointment Date, and irrespective of whether the debt or claim arose by virtue of contract, at law, by statute, in equity, or otherwise.

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

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

Court means any court having jurisdiction to hear and determine matters under the Corporations Act in New South Wales.

Creditor means a person who has a Claim against the Company which remains unpaid or unsatisfied, including employees of the Company.

Deed Administrators' Costs has the same meaning it has in the DOCA.

Deed Administrators' Disbursements has the same meaning it has in the DOCA.

Deed Fund has the same meaning it has in the DOCA.

Deed means this Trust Deed.

DOCA or **Deed of Company Arrangement** means the Deed of Company Arrangement of Westinghouse Solar Pty Limited (Administrators Appointed) dated 24 December 2014.

Employees means the employees of the Company.

Parties means the parties listed under that heading in this Deed.

Share Pool means the shares in the Company issued to the Trustee on trust for the Creditors pursuant to the terms of the DOCA.

Trust means the trust created by the terms of this Deed, also known as the Westinghouse Solar Creditors' Trust.

Trust Fund means the trust fund established by this Deed, and includes all amounts of money, property, receivables, and interests paid or transferred to the Trustees pursuant to the terms of this Deed and the DOCA.

Trustees' Costs means the remuneration and costs to which the Trustees are entitled pursuant to the terms of this Deed incurred by the Trustees and their staff in respect of acting as Trustees from the commencement of the Trust until it comes to an end, calculated in accordance with the rates of charge issued from time to time by the Administrators, plus any GST payable thereon.

Trustees' Disbursements means all incidental costs and disbursements incurred by the Trustees are entitled pursuant to the terms of this Deed incurred by the Trustees and their staff in respect of acting as Trustees from the commencement of the Trust until it comes to an end in connection with the performance of their duties under this Deed, plus any GST payable thereon.

WFF means Wind Farm Financing Pty Ltd ACN 165 836 760.

WHSP means Washington H. Soul Pattison and Company Limited ACN 000 002 728.

2 Rules of interpretation

In this Deed, unless context indicates a contrary intention:

- (a) **(documents)** a reference to this or another document includes any document which varies, supplements, replaces, assigns or novates this Deed or that other document.
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed.
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this .
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity.
- (g) **(rights and obligations)** a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed.
- (h) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.
- (i) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (j) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (k) **(singular)** the singular includes the plural and vice-versa.
- (l) **(gender)** words importing one gender include all other genders.

- (m) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.
- (n) (**rules of construction**) neither this nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (o) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (p) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales, Australia, even if the obligation is to be performed elsewhere.
- (q) (**joint and several**) an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally.
- (r) (**writing**) a reference to a notice, consent, request, approval or other communication under this Deed or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (s) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (t) (**United States currency**) a reference to dollars or \$ is to United States currency.
- (u) (**month**) a reference to a month is a reference to a calendar month.
- (v) (**year**) a reference to a year is a reference to twelve consecutive calendar months.
- (w) (**GST**) words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (x) (**GST group**) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

EXECUTED AS A DEED

Signed for Westinghouse Solar Pty Limited ACN 163 078 699 (Subject to Deed of Administration) by its deed administrator in the presence of:)
)
)
)
)

.....
Signature of Witness

.....
Signature of Deed Administrator

.....
Print name of Witness

.....
Print name of Deed Administrator

Signed by Trevor Pogroske in the presence of:)
)
)

.....
Signature of Witness

.....
Signature of Trevor Pogroske

.....
Print name of Witness

Signed by Said Jahani in the presence)
of:)
)

.....

Signature of Witness

.....

Signature of Said Jahani

.....

Print name of Witness

Schedule 3 Licence Agreement

Licence

CBD Energy Limited (administrators appointed)

ACN 010 966 793

and

Westinghouse Solar Pty. Ltd (administrators appointed)

ACN 163 078 699

and

Bluenrgy International Holdings S.A.

a Switzerland joint stock company

and

Trevor Mark Pogroske and Said Jahani

in their capacities as joint and several voluntary administrators of CBD Energy Limited and Westinghouse Solar Pty. Ltd.

Licence of Assets

2014

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THIS AGREEMENT is made on 2014

BETWEEN:

- (1) **CBD Energy Limited (administrators appointed)** ACN 010 966 793, of c/- Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000 (**CBDE**);
- (2) **Westinghouse Solar Pty. Ltd (administrators appointed)** ACN 163 078 699, of C/- Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000 (**WHS**);
- (3) **Bluenrgy International Holdings S.A.** a Switzerland joint stock company, whose registered office is at 110 E. Broward Boulevard, 19th Floor, Fort Lauderdale, Florida 33301 (the **Licensee**); and
- (4) **Trevor Mark Pogroske** and **Said Jahani** in their capacities as joint and several voluntary administrators of CBD and WHS (jointly and severally, the **Administrators**);

RECITALS:

- (A) The Administrators control the business, property and affairs of CBDE and WHS (collectively, the **Licensors**) pursuant to their appointment as voluntary administrators of the Licensors on 14 November 2014.
- (B) At the Licensee's request, the Licensors have agreed to provide a licence to the Licensee to possess, operate and control the Assets on the terms set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Assets means all of the assets and undertaking of CBDE and WHS, including without limitation all of CBDE's shareholding in WHS and any other company, other than the Excluded Assets.

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.

Capital Raising means the issuing by CBDE of new shares of securities to investors for the purpose of raising funds, during the Term.

Claim includes all sums of money, actions, suits, causes of action, proceedings, accounts, liability, losses, assessments, demands, costs, expenses, notices, demands for works or any other type of claim however arising and whether past, present or future, fixed or unascertained, actual or contingent.

Commencement Time means the time specified in the Commencement Time Notice.

Commencement Time Notice means the document to be executed by the Licensors and the Licensee pursuant to clause 3(a).

Confidentiality Deed Poll means the Confidentiality Deed Poll executed by the Licensee on or about [insert date of execution].

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

Debtors means the debtors of the Licensors which have accrued for payment up to and including the Commencement Time. Debtors do not include Licence Period Debtors.

Effectuation Notice means a notice pursuant to section 445FA(1) of the Corporations Act in respect of the deeds of company arrangement of both CBDE and WHS.

End Time means the time at which the deeds of company arrangement of both CBDE and WHS terminate in accordance with their terms or for some other reason.

Excluded Assets means:

- (a) any cash or cash equivalents owned by the Licensors at the Commencement Time;
- (b) all assets and undertakings of CBD Labs Pty Limited
- (c) CBDE's interest (in any capacity) in any property or agreement relating in any way to the:
 - (i) wind turbine electricity generation project located on Chatham Island, New Zealand; or
 - (ii) Taralga Wind Farm joint venture.

Franchising Code of Conduct means the Franchising Code of Conduct as contained in the Schedule to the *Trade Practices (Industry Codes – Franchising Regulations) 1998* (Cth).

Government Agency means:

- (d) a government or government department or other body;
- (e) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (f) a person (whether autonomous or not) who is charged with the administration of a law.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Licensee's Agent means every agent, employee, licensee, contractor and invitee of the Licensee in connection with the subject-matter of this document.

Licensors' Bank Account means [insert].

Licence Period Debtors means the Debtors of the Licensors which accrue for payment during the Term.

Licensors means CBDE and WHS.

Pre-existing Agreements means agreements entered into by the Licensors prior to the Commencement Time in respect of property used or occupied or in the possession of the Licensors.

Tax means any tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Term means the period commencing at the Commencement Time and ending at the End Time.

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 document, 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 legislation issued 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 document 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; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A reference to \$ or dollars is a reference to Australian dollars.
- (d) A singular word includes the plural, and vice versa.
- (e) A word which suggests one gender includes the other genders.
- (f) If a word is defined, another part of speech has a corresponding meaning.
- (g) 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.
- (h) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (i) The words **subsidiary**, **holding Licensor** and **related body corporate** have the same meanings as in the *Corporations Act 2001* (Cth).

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 **Multiple parties**

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party then, unless otherwise stated to the contrary:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2. **GRANT OF LICENCE**

2.1 **Licence**

- (a) In consideration of the Licensee's obligations under this document, the Licensors grant to the Licensee, and the Licensee accepts, a sole and exclusive licence to possess and operate the Assets, during the Term, on the terms set out in this document.
- (b) For the avoidance of doubt, the Licensee acknowledges that it has no interest or entitlement under this document (or on any basis) to the Excluded Assets.

2.2 **No Sub-Licences**

The Licensee must not sub-license any right or interest granted to it under this document.

2.3 **Licensee acknowledgment**

The Licensee acknowledges that nothing in this document gives the Licensee any rights or interests in the business, property and affairs of the Licensors, other than as Licensee under this document.

2.4 **Relationship of the parties**

The parties agree that:

- (a) each are independent contractors and are not partners, joint venturers or principal and agent; and
- (b) a party does not have authority to bind the other party by contract or otherwise and must not hold itself out as having authority to bind the other party to any contract or otherwise.

2.5 **Not a franchise agreement**

The Licensee expressly acknowledges that this document is not a franchise agreement for the purposes of the Franchising Code of Conduct and that it has been given the opportunity to seek independent legal advice on that issue.

3. **COMMENCEMENT TIME**

- (a) Once the deed of company arrangement in respect of both CBDE and WHS has become operational, the Licensors and the Licensee must execute and exchange a notice substantially in the form of Schedule 1, specifying the Commencement Time.
- (b) This document becomes effective at the Commencement Time.

4. **LICENSEE'S OBLIGATIONS**

4.1 **Obligations of Licensee during the Term**

- (a) The Licensee agrees that it shall be liable for all debts and liabilities incurred during, or referable to, the Term for goods bought, services rendered or property hired or leased, including employee salaries and on costs arising out of the operation of the Assets in accordance with this document. The Licensee agrees to indemnify and hold harmless the Licensors in respect of such debts and liabilities. The Licensee also agrees that it shall issue separate purchase orders in its own name in respect of goods and services during the Term and will account for any taxes payable, including any under the GST Law in respect of its operations during the Term.
- (b) The Licensee assumes no liability for obligations arising under Pre-existing Agreements or any other agreements entered into before the Commencement Time.
- (c) Notwithstanding clause 4.1(b), the Licensee is entitled to pay debts and liabilities arising under Pre-existing Agreements or other agreements entered into before the Commencement Time if the Licensee forms the opinion that the payment of those debts or claims is essential to the continued operation of the Licensors and its successful restructuring.
- (d) Before making any such payments, the Licensee will provide the Licensors with at least two Business Days' notice of the quantum and any supporting documents of any such amounts paid and the identity of the creditors paid under clause 4.1(c). The Licensee further agrees to reasonably consult with the Licensors to the extent that the Licensors form the view that either, such payments should not be made or, that other payments than those proposed by the Licensee should be made. For the avoidance of doubt however, the Licensee retains the ultimate discretion whether to make these payments or not.
- (e) If the Licensee forms the view that it is not in the Licensee's interest for the Licensee to meet obligations arising under Pre-existing Agreements or any other material agreements entered into before the commencement of the Term, it shall as soon as reasonably practicable give notice of such opinion and the details of the agreements to the Licensors which shall consider issuing notices to the parties to those Pre-Existing Agreements under section 443B(3) of the Corporations Act.
- (f) The Licensee shall have primary responsibility for the collection of the Debtors notwithstanding that Licensors are entitled to any recovery of the Debtors and that any receipts are to be banked into the Licensors' Bank Account.

4.2 **Conduct of Capital Raising**

- (a) The Licensors acknowledge it is intended that CBDE will undertake the Capital Raising, which will be effected by the Licensee.
- (b) The Licensee warrants to the Administrators that the Capital Raising will comply with the provisions of the Corporations Act and agrees to indemnify the Administrators in respect of any Claims relating to the Capital Raising.

4.3 **Compliance with applicable regulations and laws**

- (a) The Licensee undertakes that it will take all steps possible to maintain CBDE's listing on the NASDAQ, including without limitation:
 - (i) responding to all requests from the NASDAQ for information;
 - (ii) addressing any deficiencies in the audits of the accounts of CBDE for the 2012, 2013 and 2014 financial years to the satisfaction of the NASDAQ; and
 - (iii) appearing before the hearing convened by the NASDAQ on 8 January 2015 for the purpose of considering CBDE's de-listing from the NASDAQ; and
 - (iv) complying with all applicable NASDAQ listing rules.
- (b) For the duration of the Term, the Licensee agrees that it will take all necessary steps on behalf of the Licensors to necessary to comply with the provisions of the Corporations Act, including without limitation all applicable financial reporting obligations.

4.4 **Revenue during the Term**

- (a) The Licensors agree that:
 - (i) the Licensee is absolutely entitled to all revenue generated from the operation of the Assets during the Term, including any recovery of Licence Period Debtors;
 - (ii) the Licensee shall issue separate invoices to the Licensors' customers in respect of work undertaken during the Term; and
 - (iii) where invoices are issued by the Licensee in respect of work undertaken before, during and after the Term, there shall be a reasonable apportionment of that revenue between the Licensee and the Licensors.
- (b) For the avoidance of doubt, where the Licensee collects a prepayment in respect of work to be performed in the future, provided that the Licensee undertakes that work, the prepayment shall be treated as revenue earned during the Term.

5. **LICENSORS' OBLIGATIONS**

- (a) The Licensors agree to:
 - (i) conduct a stock take of stock in trade held by the Licensors as at the Commencement Time and the Licensee agrees to account to the Licensors for any stock in trade used by the Licensee during the Term;
 - (ii) provide assistance to the Licensee throughout the Term to collect the Debtors;

- (iii) transfer any Debtor recoveries or prepayments for works not yet performed to the Licensee within two Business Days of any request for the following purposes:
 - (iv) make payments of wages and on costs for the Licensors employees to the extent that the Licensee has put the Licensors into funds to do so.
- (b) The Licensors agree to promptly consider any request made by the Licensee that the Licensors issue a notice under section 443B(3) of the Corporations Act in respect of Pre-existing Agreements, in the circumstances detailed in clause 4.1(e) above.
- (c) The Licensors agree:
 - (i) to assist the Licensee with invoicing;
 - (ii) to give prompt consideration to any request by the Licensee to make the Licensors' employees redundant;
 - (iii) to use their best endeavours to complete their statutory obligations efficiently and in accordance with the time frames set forth in the Corporations Act; and
 - (iv) to consult to the Licensee in relation to the content of any press release or media statement in relation to the Licensor or the Assets.

6. **RECORDS, STATEMENTS AND INSPECTIONS**

6.1 **Licensee's records**

During the Term, and for 12 months after the End Time, the Licensee must establish and keep, at its principal place of business, separate and accurate records in respect of the Assets that comply with the accounting requirements of the jurisdiction in which the Licensee is incorporated or operates.

6.2 **Licensee's report on revenue and expenditure**

The Licensee must provide a report to the Licensors, in a form approved by the Licensors, no later than 30 days after the End Date, that details:

- (a) the gross income received by the Licensee during the Term in respect of the Assets, specifying GST received on such income;
- (b) the payments made by the Licensee during the Term in respect of the Assets, specifying GST paid on such payments; and
- (c) the net income received by the Licensee in respect of the Assets.

6.3 **Inspections**

During the Term the Licensee must permit (and reasonably assist) the Licensors and their representatives, on reasonable notice during usual business hours, to inspect, audit and take copies of and extracts from the records kept by the Licensee under this document and to inspect the Assets (including to consult with any employees engaged by the Licensee in respect of the Assets).

6.4 **Liability**

Without limitation, the Licensors are not liable for any losses, liabilities, expenses or Taxes suffered or incurred by the Licensee because of the Licensors' failure or inability to take or consent to the taking of any action or the failure of any action in respect of the Assets.

7. **CONFIDENTIALITY**

- (a) No party may disclose any information provided under this document to any person who is not a party, except to the extent that:
 - (i) **(permitted by documents)** the disclosure is expressly permitted by this document or required by law to ensure the enforceability or priority of this document;
 - (ii) **(consent of other party)** the other parties consent to the disclosure;
 - (iii) **(public domain)** the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the disclosing party;
 - (iv) **(employees and advisers)** the disclosure is made on a confidential basis to the officers, employees, agents, lawyers, auditors or other professional advisers of the party or the Licensors; or
 - (v) **(comply with laws)** the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal.
- (b) The Licensors and the Licensee agree that the Licensee's obligations under the Confidentiality Deed Poll in respect of Confidential Information (as that term is defined in the Confidentiality Deed Poll) will continue until such time as an Effectuation Notice has been issued.

8. **RISK AND LIABILITY**

8.1 **Release of Licensors**

- (a) The Licensee operates the Assets at its own risk and the Licensors accept no responsibility for any loss or damage to the property of the Licensee.
- (b) To the extent permitted by law, the Licensee releases, and agrees to indemnify the Licensors in respect of any Claim, action, damage, loss, liability, cost or expense which the Licensee suffers or incurs or is liable for in respect of:
 - (i) this licence agreement;
 - (ii) any loss or damage to the Assets;
 - (iii) any loss or damage resulting from the Licensee's operation of the Assets; or
 - (iv) the death of, or injury to, any person who is involved in the Assets.

8.2 **Insurance**

The Licensee must take out and maintain insurance in the names of the Licensee and Licensor with an insurer approved by the Licensors in writing (such approval not to be unreasonably withheld) in respect of the following:

- (a) public liability insurance in respect of the premises in which the Assets are operated;
- (b) workers compensation insurance as required by statute;
- (c) any other insurance for an amount and on terms which in the Licensors' reasonable opinion a prudent Licensee should take out in respect of the Licensee's operation of the Assets under this document.

8.3 **Maintain insurance**

The Licensee must not do anything which could have the following result in respect of any insurance policy taken out by the Licensors in respect of the Premises:

- (a) increase the insurance premium payable; or
- (b) affect the Licensors' rights under the policy or make the policy invalid or able to be cancelled.

8.4 **Cost and risk of Licensee's obligations**

If the Licensee is obliged to do anything under this document, it must do so at its cost and at its risk.

9. **LIMITATIONS OF ADMINISTRATORS' LIABILITY**

9.1 **Release**

Each party to this document releases the Administrators personally from all liabilities, demands and claims arising out of this document and the transactions contemplated by this document.

9.2 **Covenant not to sue**

Each party to this document covenants not to sue the Administrators personally in respect of any liabilities, demands or claims arising out of this document and the transactions contemplated by this document.

9.3 **Agreements of the parties**

Each party to this document agrees that:

- (a) the Administrators are not personally liable for any amount required to be paid by the Licensors pursuant to this document or for any liability, demand or claim arising out of this document or the transactions contemplated by this document;
- (b) for the purposes of any acknowledgements or agreements as to, or provisions of, limitations of the liability of the Administrators in this document, references to the Administrators where the context so permits shall mean and include their present and future firm or firms, partners and employees, and any legal entity or partnership using in its name the word "GT" or "Grant Thornton", any successor or merged form and the partners, shareholders, officers and employees of any such entity or partnership;

- (c) these limitations of the liability of the Administrators shall continue notwithstanding them ceasing to act as voluntary administrators of the Licensors; and
- (d) these limitations of the liability of the Administrators shall be in addition to, and not in substitution for, any right of indemnity or relief otherwise available to the Licensors or the Administrators and shall continue notwithstanding termination of this document or completion of the transaction contemplated by this document.

10. **NOTICES**

10.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail to that person's address;
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent by e-mail.

10.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax or e-mail:
 - (i) on or before 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail within Australia - 3 Business Days after posting.

10.3 **Address for notices**

A person's mail and email address and fax number are those set out below, or as the person notifies the sender:

Licensors/Administrators

Address: C/- Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000

Email Address: said.jahani@au.gt.com; trevor.pogroske@au.gt.com

Attention: Said Jahani and Trevor Pogroske

Licensee

Address: C/- 110 E, Broward Boulevard, 19th Floor, Fort Lauderdale, Florida 33301

Email Address: Emmanuel.cotrel@bluenrgy.com

Attention: Emmanuel Cotrel

11. GENERAL

11.1 Governing law

This document is governed by the law in force in New South Wales.

11.2 Liability for expenses

- (a) Each party must pay its own expenses incurred in negotiating, executing and stamping this document.
- (b) The Licensee must identify the Licensors against, and must pay the Licensors on demand, the amount of any duty that is payable on or in relation to this document and the transaction that this document contemplates.

11.3 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

11.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

11.5 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

11.6 Amendments

Except as expressly provided otherwise, this document may only be amended, supplemented, replaced or novated by another document signed by the parties.

11.7 Counterparts

This document may be executed in counterparts.

11.8 **Attorneys**

Each person who executes this document 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.

SCHEDULE 1

Commencement Time Notice

We refer to the Licence Agreement dated _____ between CBD Energy Limited (administrators appointed), Westinghouse Solar Pty Ltd (administrators appointed and Bluenrgy International Holdings S.A. ("Licence Agreement")

Capitalised terms in this notice have the same meanings as in the Licence Agreement.

This is a Commencement Time Notice for the purposes of the Licence Agreement.

For the purposes of clause 3(a) of the Licence Agreement, we specify that the Commencement Time occurred at:

[time]

on:

[date]

Signed:

.....

.....

For and on behalf of

For and on behalf of

**CBD Energy Limited and Westinghouse Solar Pty Ltd
(both administrators appointed)**

Bluenrgy International Holdings S.A.

EXECUTED as an agreement.

CBDE

EXECUTED by **TREVOR MARK POGROSKE** in his capacity as joint and several voluntary administrator of CBDE, in the presence of:

Signature of witness

Signature of party

Name

Address of witness

WHS

EXECUTED by **TREVOR MARK POGROSKE** in his capacity as joint and several voluntary administrator of WHS, in the presence of:

Signature of witness

Signature of party

Name

Address of witness

ADMINISTRATORS

EXECUTED by **TREVOR MARK POGROSKE** in his capacity as voluntary administrator of the Licensors, solely for the purpose of obtaining the benefit of clause 9:

Signature of Adams Pauls Nikitins

Signature of witness

Name

Name of witness

EXECUTED by **SAID JAHANI** in his capacity as voluntary administrator of the Licensors, solely for the purpose of obtaining the benefit of clause 9:

Signature of Said Jahani

Signature of witness

Name

Name of witness

LICENSEE

SIGNED for **BLUENRGY INTERNATIONAL HOLDINGS S.A.** by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name and capacity

Name

EXECUTED AS A DEED

Signed for Westinghouse Solar Pty Limited ACN 163 078 699 (Administrators Appointed) by its administrator in the presence of:
)
)
)
)
)

.....
Signature of Witness

.....
Signature of Administrator

.....
Print name of Witness

.....
Print name of Administrator

Signed by Trevor Pogroske in the presence of:
)
)
)

.....
Signature of Witness

.....
Signature of Trevor Pogroske

.....
Print name of Witness

Signed by Said Jahani in the presence)
of:)
)

.....

Signature of Witness

.....

Signature of Said Jahani

.....

Print name of Witness

Signed by the authorised representative)
for **BlueNRGY LLC** who warrants that)
they are duly authorised to execute this)
document on behalf of **BlueNRGY LLC** in)
the presence of:)

.....
Signature of Witness

.....
Signature of Authorised Representative

.....
Print name of Witness

.....
Print name of Authorised Representative

.....
Role of Authorised Representative

Signed for **CBD Energy Limited**)
ACN 010 966 793 (Administrators)
Appointed) by its administrator in the)
presence of:)
)
)

.....
Signature of Witness

.....
Signature of Administrator

.....
Print name of Witness

.....
Print name of Administrator

Executed by Wind Farm Financing Pty)
Ltd ACN 165 836 760 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Executed by Washington H. Soul)
Pattinson and Company Ltd ACN 000)
002 728 in accordance with section 127 of)
the *Corporations Act 2001* (Cth) by:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary