

Trust Deed

Establishing the CBD Energy Creditors' Trust

28 January 2015

Sydney

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Deed of Company Arrangement

Date 28 January 2015

Parties

Company

Name CBD Energy Limited (Subject to Deed of Company Arrangement) (**Company**)

ACN 010 966 793

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 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. The Company would have better prospects of retaining its listing on the NASDAQ Stock Exchange, which outcome would benefit the interests of both the Company's shareholders and the 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) The 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 CBD Energy 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 Deed 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 4.2 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 4.2 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 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 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 the terms of this deed, 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, WFF in respect of any Excluded Assets over the sum of AU\$81,209; and
- (f) 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 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 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 CBD Energy 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 5 of this Deed.

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.

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 means the Deed of Company Arrangement of CBD Energy 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 CBD Energy 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 document.
- (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

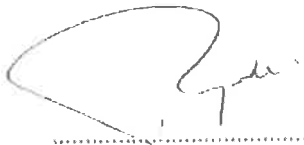
Signed for CBD Energy Limited
ACN 010 966 793 (Subject to Deed of
Administration) by its deed administrator in
the presence of:

)
)
)
)
)



.....

Signature of Witness



.....

Signature of Deed Administrator

JEFFREY MARDEN

Print name of Witness

TREVOR POGROSKE

Print name of Deed Administrator


Signed by Trevor Pogroske in the
presence of:

)
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)



.....

Signature of Witness



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Signature of Trevor Pogroske

JEFFREY MARDEN

Print name of Witness

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


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Signature of Witness


.....

Signature of Said Jahani

LEISL WRATTEN
.....

Print name of Witness