

Jason Preston, Jason Ireland and Katherine Sozou in their capacity as joint and several deed administrators of Autonomous Energy Pty Ltd ACN 113 593 383 (Administrators Appointed)

ITB Holdings Pty Ltd ACN 652 752 086

Autonomous Energy Pty Ltd ACN 113 593 383 (Administrators Appointed)

Deed of Company Arrangement Autonomous Energy Pty Ltd (Administrators Appointed)

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This Deed is made on 13 August 2021

Parties

- 1 **Jason Preston, Jason Ireland and Katherine Sozou** of c/- McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, in their capacity as joint and several deed administrators of the Company under this Deed (the **Deed Administrators**).
- 2 **ITB Holdings Pty Ltd** (ACN 652 752 086) of c/- Progue Pty Ltd, Suite 407, 12 Century Circuit Norwest NSW 2153 (the **Deed Proponent**).
- 3 **Autonomous Energy Pty Ltd (Administrators Appointed)** (ACN 113 593 383) of c/- McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000 (the **Company**).

Recitals

- A On the Appointment Date, Jason Preston, Jason Ireland and Katherine Sozou were appointed as administrators of the Company pursuant to Part 5.3A of the Act.
- B The Deed Proponent has proposed a deed of company arrangement in respect of the Company under which ownership of the Company would be transferred to the Deed Proponent, the Company would be released from certain liabilities and certain funds would be made available for distribution to Creditors on the terms set out in this Deed.
- C At a meeting held on 12 August 2021 and convened pursuant to section 439A of the Act, the Creditors of the Company resolved that the Company execute this deed of company arrangement proposed by the Deed Proponent under section 444B(2)(b) of the Act.
- D The Deed Administrators, the Company and the Deed Proponent have agreed to execute this Deed to give effect to the resolution in recital C above.
- E The Deed Administrators have consented to be the Administrators of this Deed.
- F Subject to the terms of this Deed, this Deed binds all Creditors of the Company, in accordance with section 444D of the Act, and also binds the Company, and their Officers and Members in accordance with section 444G of the Act.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

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

Administration Period means the period beginning on the Appointment Date and ending on the day the Deed Administrators cease to be administrators of the Company.

Admitted Claim means any Claim by a Participating Creditor against the Company that is admitted by the Trustees after adjudication in accordance with clause 5 of the Trust Deed.

Admitted Creditor means a Participating Creditor with an Admitted Claim.

Administration Liabilities means all amounts, debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments in respect of which the Voluntary Administrators and Deed Administrators are entitled to be indemnified under clause 15.2.

Appointment Date means 21 July 2021.

Assets mean (other than Excluded Assets) all undertakings, property and assets of the Company.

Business Day means any day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for normal banking business in Sydney, excluding Saturdays and Sundays.

Claim means (excluding the Excluded Claims) any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Company or by any agreement, circumstance or event, occurring on or before the Appointment Date, including:

- (a) a Priority Creditor's Claim;
- (b) a debt arising from a failure by the Company to pay a Superannuation Contribution;
- (c) a debt arising by way of a Superannuation Guarantee Charge; or
- (d) any entitlements, if any, under a renewable energy certificate; or
- (e) any right pursuant to any warranty, performance guarantee or other guarantee.

Commencement Date means the date of this Deed, being the date on which the last of the Deed Proponents, the Deed Administrators or the Company executes this Deed.

Committee of Inspection means the committee of Creditors referred to in clause 13.

Completion means completion of the steps set out in clause 6.3 of this Deed.

Completion Date means the date on which each Condition Precedent has been satisfied or otherwise waived in accordance with clause 5.

Conditions Precedent means the conditions set out in clause 5.1.

Costs includes costs, charges, fees (including legal fees), government charges, taxes (including any stamp duty and taxes required to be paid by the Deed Administrators in accordance with clause 30 of this Deed) and expenses, including those incurred in connection with advisers, incurred in connection with the performance or as a result of any actual or attempted execution or exercise or failure to execute or exercise of the Voluntary Administrators' and Deed Administrators' duties, obligations and responsibilities under the Act and the Deed during the Administration Period and the Deed Period costs, charges, fees (including legal fees), government charges, taxes and expenses including preparation, approval and implementation of this Deed and of the preparation and implementation of any documents necessary to or associated with approval of this Deed, but does not include Administration Liabilities.

Court means any court having jurisdiction to hear and determine matters under the Act.

Creditor means any person who has a Claim against the Company.

Deed means this Deed of Company Arrangement as amended from time to time.

Deed Administrators means Jason Preston, Jason Ireland and Katherine Sozou (or any of them), in their respective capacities as administrators of the deed of company arrangement of the Company and any successor to that office appointed pursuant to the Act.

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

Deed Proponent BG Contribution means \$475,000.

Deed Proponent Trust Fund Contribution means \$500,000.

Director means a director, as defined in section 9 of the Act, of the Company.

Employee means any current employee of the Company at the time of Completion.

Employee Priority Claim means a Claim of a Terminated Employee that would rank for payment in priority to the payment of other unsecured Claims under section 556 of the Act if the Company was taken to be in liquidation on the Appointment Date.

Enforcement Process has the meaning given to it in the Act.

Excluded Assets means any of the following:

- (a) Any cash held by the Administrators immediately prior to Completion;
- (b) Any cash held by the Former Administrators which exceed the amounts which they are entitled to be paid;
- (c) In the event that the Stockland Bank Guarantee and/or the SAPM DLP Bank Guarantee is returned to Westpac Banking Corporation, the corresponding amount of cash that would be released by Westpac Banking Corporation;
- (d) SAPM invoice No 6575 for the amount of \$6,049.12;
- (e) Any GST refunds referable to the Administration Period;
- (f) Any large-scale generation certificates (**LGCs**) recorded in the Autonomous Energy Renewable Certificate Registry, and includes each of the following recorded in respect of the Company as at the date of this deed:
 - (i) Department of Justice and Community Safety;
 - (ii) Westpac (Concord2021);
 - (iii) Westpac (Kogarah2021);
 - (iv) Toyota; and
 - (v) St Andrews Lutheran College (SALC),

or, if any LGCs are realised prior to Completion, the cash referable to the sale of those LGCs. For the avoidance of doubt, LGCs does not include small-scale technology certificates;

- (g) Any funds recovered in respect of work conducted for Port of Brisbane up to the date of this Deed (to be reflected in an invoice in the amount of approximately \$16,257); and
- (h) Any funds recovered in respect of work conducted for Wollongong City Council up to the date of this Deed (to be reflected in an invoice in the amount of approximately \$64,130).

Excluded Claims means any of:

- (a) the claims by the counterparties in respect of future obligations of the Company pursuant to the project, service and maintenance and consulting contracts listed in Schedule 1, being contracts which the Company will continue to perform post Completion. For the avoidance of doubt, any Claim related to a warranty, performance guarantee or other guarantee in respect of work undertaken or services provided by the Company prior to the Appointment Date will not constitute an 'Excluded Claim' ; and
- (b) claims by the counterparties in respect of future obligations of the Company pursuant to all current contracts under which the Company provides services to third parties as at the date of this Deed; and
- (c) claims by each of the following lessees (whose leases are to remain on foot):

- (i) Lease in respect of Lot 1 in SP10 Rodborough Rd, Frenchs Forest, NSW, 2086 with Goodman Property Services (Aust) Pty Ltd; and
- (ii) Printer lease contract N061815029 with Kyocera Document Solutions.

Excluded Creditor means all employees other than any Terminated Employees.

Existing Term Deposit means the term deposit held in the account ending with 989 in the name of the Company with Westpac Banking Corporation established prior to the date of this Deed.

Former Administrators means Domenico Alessandro Calabretta, Thyge Trafford-Jones and Grahame Ward of Mackay Goodwin in their capacity as the former administrators of Autonomous Energy ACN 113 593 383 (Administrators Appointed).

Fund Amount means

- (a) any unencumbered cash held by the Company at Completion (except to the extent required to pay costs and expenses of the administration of the Company);
- (b) the Deed Proponent Trust Fund Contribution;
- (c) the sum of \$475,000 released from the Existing Term Deposit once the new term deposit is established using the Deed Proponent BG Contribution in accordance with clause 10 (or if applicable, the sums received in accordance with clause 10(c) below); and
- (d) any Sale Consideration (if applicable).

GST has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Practice Rules has the meaning given in the Act.

Insolvency Practice Schedule has the meaning given in the Act.

Insured Claim means a Claim which a Creditor has against the Company, which would have been entitled to priority in a liquidation of the Company under section 562 of the Act, where:

- (a) that Company is insured against the Claim under a contract of insurance (not being a contract of reinsurance) entered into before the Appointment Date; and
- (b) an amount in respect of that Claim would be payable by the insurer to the Company under the contract of insurance,
- (c) but only to the extent of such part of the Claim as would be discharged by the payment from the insurer and provided that the Creditor complies with the requirements of clause 8 in relation to such a Claim.

lugis means lugis Investments Pty Ltd (In Liquidation) ACN (647 627 745).

McGrathNicol Trust Account means the general trust account used by McGrathNicol.

Member has the meaning given to it in section 9 of the Act.

Officer has the meaning given to it in section 9 of the Act.

Participating Creditor means a Creditor with a Claim against the Company, other than an Excluded Creditor.

Participating Creditor Payment means the assets and funds held by the Trustees at Completion for distribution to Participating Creditors.

Priority Creditor means a Creditor with a Priority Creditor's Claim.

Priority Creditor's Claim means a Claim against the Company as at the Appointment Date which, in a liquidation of the Company, would have been a Claim that was required to be paid in

priority to all other unsecured debts or Claims in accordance with sections 556, 560 or 561 of the Act, with the winding up taken to have begun on the Appointment Date.

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

Remuneration means the remuneration payable to the Voluntary Administrators or Deed Administrators for work performed by them or any of their partners, employees, directors, officers, contractors, advisers or delegates with respect to acting as administrators of the Company or as administrators of this Deed as determined by the Committee of Inspection and Division 60 of the Insolvency Practice Schedule.

Sale Period means two (2) months from the date of Completion.

SAPM DLP Bank Guarantee means the bank guarantee issued by Westpac Banking Corporation at the request of the Company in favour of South Australian Produce Market Limited dated 11 June 2021.

Section 439C Resolution means the resolution of the Creditors referred to in Recital C of this Deed.

Secured Creditor means any Creditor with a valid Security Interest at the Appointment Date over all or any of the Assets of the Company, whether securing all or part of the Creditor's Claim, including, for the avoidance of doubt, any such creditor with a claim by way of subrogation.

Security Interest means any mortgage, chattel mortgage, pledge, charge, agreement, encumbrance, lien, right of set-off (arising otherwise than by operation of law or as a result of a banker's right to combine accounts) and assignment which provides for and secures the payment of any debt or monetary liability or the performance of any obligation and any 'security interest' as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth).

Schedule 8A means Schedule 8A to the Regulations.

Sunset Date means 31 August 2021 (or such other date agreed by the Deed Administrators, the Company and the Deed Proponent).

Superannuation Contribution has the meaning given to it in section 556 of the Act.

Superannuation Guarantee Charge has the meaning given to it in the Superannuation Guarantee (Administration) Act 1992.

Stockland Bank Guarantee means the bank guarantee issued by Westpac Banking Corporation at the request of the Company in favour of Stockland Development Pty Limited dated 2 August 2018.

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Termination Date means the date on which this Deed terminates pursuant to clause 17.

Terminated Employee means any employee of the Company whose employment has been terminated either prior to the Commencement Date or prior to Completion (and any person who made an advance of money to the Company for which section 560 of the Act would apply) if the Company was taken to be in liquidation as at the Appointment Date.

Trust means the Autonomous Energy Creditors' Trust to be established under the Trust Deed.

Trust Deed means the trust deed to be entered into between the Company and the Deed Administrators substantially in the form contained in Schedule 3.

Trust Fund has the same meaning as under the Trust Deed.

Trustees' Costs means the costs, charges and expenses, incurred by the Trustees in connection with the performance of their duties, obligations and responsibilities as trustees of the Trust,

including those incurred in connection with advisers.

Trustees' Remuneration has the meaning given to it in the Trust Deed.

Trustees means the trustees of the Autonomous Energy Creditors' Trust established under the Trust Deed.

Voluntary Administrators means Jason Preston, Jason Ireland and Katherine Sozou (or any of them) in their respective capacities as joint and several voluntary administrators of the Company.

1.2 Interpretation

In this Deed:

- (a) a reference to an entity is a reference to that entity in its own right and in its capacity as trustee of any trust;
- (b) words importing the singular will (where appropriate) include the plural and vice versa;
- (c) words importing any one gender will (where appropriate) include the other gender and vice versa;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) words importing natural persons will (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (f) words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently visible form;
- (g) headings are for convenience of reference only and will not affect the meaning or interpretation of this Deed;
- (h) references to any statutory enactment or law will be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- (i) references to Parts, Clauses, paragraphs and Schedules will be construed as references to the Parts, Clauses, paragraphs and Schedules of and to this Deed;
- (j) unless otherwise stated, references to Sections will be construed as references to Sections of the Act and references to Regulations will be construed as references to the Regulations;
- (k) a term of expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act;
- (l) references to an "agreement" include any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (m) references to an agreement or document (including a reference to this Deed) are to the agreement or document as amended, substituted, novated, supplemented, varied or replaced;
- (n) references to the rights or obligations of two or more persons under this Deed will be interpreted as entitling or obliging them jointly and severally;
- (o) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;

- (p) a construction that would promote the purpose or object underlying this Deed (whether or not stated in this Deed) is to be preferred to a construction that would not promote that purpose or object;
- (q) no rule of construction applies to the disadvantage of a party to this Deed because that party was responsible for the preparation of this Deed or any part of it;
- (r) a reference to "\$" is to Australian currency; and
- (s) a reference to "cash" includes cash equivalents.

1.3 Inconsistency with Act or Regulations

If there is any inconsistency between the provisions of this Deed and the Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.

1.4 Other inconsistencies

If there is any inconsistency between the provisions of this Deed and the constitution of the Company or any other obligation binding on the Company, the provisions of this Deed prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things to remove such inconsistency, the costs of which will be borne by the Company.

1.5 Prescribed provisions

- (a) The prescribed provisions contained in Schedule 8A of the Regulations apply to this Deed.
- (b) To the extent that the Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed, and all persons bound by this Deed agree to sign all documents and do all things necessary to include such a provision in this Deed, the costs of which will be borne by the Company.

1.6 Bar to Claims

As and from Completion, this Deed may be pleaded and tendered by:

- (a) the Company against any person having or asserting a Claim released, discharged and extinguished by clause 7; and
- (b) the recipient of any release or covenant contained in this Deed, as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

2 Commencement of this Deed

This Deed will commence and take effect on the Commencement Date.

3 Execution of the Deed

- (a) This Deed is subject to and conditional upon:
 - (i) the execution of this Deed by each person named as a party to it; and
 - (ii) the Deed Proponent having transferred into the McGrathNicol Trust Account the Deed Proponent Contribution and the Deed Proponent BG Contribution.
- (b) The Voluntary Administrators must execute this Deed on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed.

- (c) If as a result of a failure by the Deed Proponents to execute this Deed, this Deed has not come into full force and effect on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.
- (d) If the Voluntary Administrators do not execute this Deed within the period specified in clause 3(b), the Voluntary Administrators consent to the grant of injunctive relief to enforce the Voluntary Administrators' obligations under that clause.

4 Moratorium created by this Deed

4.1 Deed binds all persons

This Deed binds:

- (a) in accordance with section 444D of the Act, all Creditors; and
- (b) in accordance with section 444G of the Act, the Company, their Officers and Members and the Deed Administrators.

4.2 No limitation

Nothing in this Deed limits the rights in law or equity of the Deed Administrators:

- (a) to make an application under section 444F of the Act; or
- (b) to apply for orders or directions pursuant to the Act (including, without limitation, section 447A(1) or 90-15 of the Insolvency Practice Schedule).

4.3 Restrictions on persons bound by this Deed

During the Deed Period, and subject to clause 8 in relation to Insured Claims, no Creditor (in relation to that Creditor's Claim), Officer or Member or any other party bound this Deed may:

- (a) make, or concur in the making of, 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 the person;
- (c) begin or continue with any proceeding against the Company or in relation to any the Company's property;
- (d) begin or continue with any Enforcement Process against the Company or in relation to the Company's property; or
- (e) exercise any right of set-off or cross action to which a Creditor would not have been entitled had the Company been wound up at the Appointment Date; or
- (f) commence or take any further step in any proceeding against the Company or to which the Company is a party,

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

For the purpose of this clause 4, "*property*" includes property used or occupied by, or in the possession of the Company.

5 Conditions Precedent

5.1 Conditions Precedent to Completion

- (a) Completion, in accordance with clause 6 of this Deed, is conditional upon all of the following events occurring by the Sunset Date (**Conditions Precedent**):

- (i) **(Execution)** the Creditors approve this Deed at the second meeting of creditors convened pursuant to section 439A of the Act;
- (ii) **(Creditors' Trust Deed)** the Deed Administrators, the Deed Proponent and the Company execute the Creditors' Trust Deed; and
- (iii) **(Written Consent and share transfer documents)** lugis (acting through its liquidators) has provided:
 - (A) its written consent to the transfer of its shares in the Company to the Deed Proponent for the purposes of s444GA(1) of the Act (the **Proponent Shares**); and
 - (B) the share certificates and the transfer of share forms (undated) be provided in respect of the Proponent Shares to be held by the Deed Proponent pending Completion

5.2 Obligation to satisfy Conditions Precedent

To the extent that it is within the control of a party to this Deed, that party must use all reasonable endeavours to ensure that the Conditions Precedent are satisfied.

5.3 Waiver of Conditions Precedent

A Condition Precedent in clause 5.1 may only be waived (wholly or partially) by agreement of the Deed Administrators and the Deed Proponent such agreement to be evidenced in writing.

5.4 Consequence of non-satisfaction of Conditions Precedent

If any of the Conditions Precedent are not satisfied in accordance with clause 5.1, or are not waived in accordance with clause 5.3, by the Sunset Date:

- (a) the Deed Administrators will upon a request in writing from the Deed Proponent pay as directed by the Deed Proponent's BG Contribution and the Deed Proponent Trust Fund Contribution;
- (b) the Deed Administrators will convene a meeting of Creditors to determine the future of the Company;
- (c) the provisions of clause 7.3 will be treated as having no further force and effect and the rights of a Creditor in respect of any Insured Claim arising prior to the Commencement Date against the Company will be reinstated in full, and
- (d) the contributions made by the Deed Proponent under clause 6.3 will be immediately returned.

6 Completion

6.1 Completion

Completion will take place on the Completion Date.

6.2 Timing

The parties will use their best endeavours to reach Completion by no later than 14 August 2021.

6.3 Completion steps

On the Completion Date:

- (a) \$975,000 paid into the McGrathNicol Trust Account by, or on behalf of, the Deed Proponent shall be taken to constitute:

- (i) Insofar as the sum of \$500,000 is concerned, the Deed Proponent Trust Fund Contribution; and
- (ii) Insofar as the sum of \$475,000 is concerned, the Deed Proponent BG Contribution;
- (b) the Deed Proponent Trust Fund Contribution (which sum is held in the McGrathNicol Trust Account) shall be taken to be held for the benefit of the Participating Creditors, and the Deed Administrators and Trustees shall be authorised to pay that sum into the Trust Fund following execution of the Creditors' Trust Deed;
- (c) the Deed Proponent BG Contribution (which sum is held in the McGrathNicol Trust Account) shall be taken to be held for the benefit of the Participating Creditors to be applied in accordance with clause 10;
- (d) the Proponent Shares will be transferred from Iugis to the Deed Proponent and the Deed Administrators will update the register of members to record the Deed Proponent as the sole shareholder of the Company;
- (e) the Deed Administrators will:
 - (i) in relation to the Existing Term Deposit:
 - (A) pay the amounts over and above the amounts required to secure the existing bank guarantees to the Trust Fund; and
 - (B) in relation to the balance, transfer control to the Trustee to retain that amount pending its application in accordance with clause 10 below;
 - (ii) pay any other unencumbered cash held by the Company at Completion to the Trust Fund.

6.4 Effectuation

- (a) Immediately following Completion, the Deed Administrators will sign a certificate in the form of Schedule 2 for the Company for the purpose of terminating this Deed on the basis of this Deed having been effectuated. Such a certificate to be signed within 2 business days of Completion.
- (b) Upon effectuation occurring, the following shall occur automatically and without the need for any party to take any further step:
 - (i) all rights to the Excluded Assets shall transfer to the Trustees; and
 - (ii) the Trustees shall be authorised to take any step they deem necessary to give effect to the transaction contemplated by this Deed (including clause 10).

6.5 Completion steps to be simultaneous as far as possible

- (a) The actions to take place as contemplated by clause 6.3 are interdependent and must take place as close in time to each other as possible.
- (b) If any of the steps in clause 6.3 is not completed, the parties must take such actions and steps as are necessary to put each of the parties in the same position as if none of the Completion steps in clause 6.3 had occurred.

6.6 Trust Creditors' available assets

- (a) The following sums currently held in the Existing Term Deposit shall be released to the Trustees to be administered under the Trust as follows:

- (i) Upon the Deed Proponent BG Contribution being used by the Trustees to provide security in respect of outstanding bank guarantees in accordance with clause 10, a corresponding amount from the Existing Term Deposit;
 - (ii) Upon the SAPM DLP Bank Guarantee and/or the Stockland Bank Guarantee being returned to the issuing bank in accordance with clause 10, the amounts that the issuing bank agrees to release from the Existing Term Deposit.
- (b) The Excluded Assets (and where applicable, their proceeds) shall be released to the Trustees to be administered under the Trust. All other Assets of the Company will remain with the Company.
- (c) The Creditors (other than the Excluded Creditors) will instead be entitled to a distribution from the Trust Fund.

7 Release of Claims

7.1 Release of Claims

Each Creditor agrees that on the occurrence of Completion in accordance with clause 6, the Claims by Participating Creditors (other than any Excluded Claim) are extinguished and released.

7.2 Excluded Claims

- (a) The Company will continue to perform the contracts it has entered into in respect of Excluded Claims.
- (b) The creditors with an Excluded Claim are not entitled to participate in or receive any distribution from, and will not prove to recover any Excluded Claim for the purpose of, or in relation to, the Trust Fund, in respect of an Excluded Claim.
- (c) For the avoidance of doubt, the creditors with Excluded Claims will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, for any Claim that is not an Excluded Claim.

7.3 Insured Claims

Any uninsured component of an Insured Claim is extinguished and released on the Commencement Date and Creditors with Insured Claims are not entitled to participate in or receive any distribution from, and will not prove to recover any Insured Claim for the purpose of, or in relation to, the Trust Fund, in respect of an Insured Claim.

7.4 Execution of all necessary documents

Each Creditor must, if required by the Company or the Deed Administrators, execute any document that the Company or the Deed Administrators may require from time to time to give effect to the releases in clause 7.1.

7.5 Conversion of Claims

Subject to clause 7.2, the Deed Administrators and the Participating Creditors agree that:

- (a) upon all Claims being released pursuant to clause 7.1, each Participating Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim; and
- (b) all Participating Creditors having a Claim must accept their entitlements under the Trust Fund in full satisfaction and complete discharge of all Claims which they have or claim to have against the Company as at Completion and the Claims of all Creditors will be extinguished as against the Company.

7.6 Bar to Claims

Subject to section 444D of the Act, on Completion this Deed may be pleaded by the Company or the Deed Administrators against any person having a Claim (other than an Excluded Claim) against the Company as an absolute bar and defence to any legal proceedings brought or made at any time in respect of that Claim.

7.7 Employee Priority Claims

- (a) Each of the Employees will remain employed by the Company and the Company will remain liable for all Employee Priority Claims.
- (b) For the purposes of section 444DA of the Act, in the event that any Employee was made redundant prior to Completion, the claims of that Employee will have priority of payment out the Trust Fund, at least equal to that which they would have been entitled if the property of the Company had been applied in accordance with sections 556, 560 and 561 of the Act.

7.8 Superannuation Contribution Debt

For the purposes of section 444DB of the Act, the Deed Administrators (in their capacity as Trustees) must determine that a debt (or part thereof) by way of a Superannuation Contribution is not admissible to proof as a Participating Creditor Claim if:

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

8 Insured Claims

8.1 Rights of Creditors who have Claims covered by insurance

If insurance is held by or on behalf of the Company in respect of an Insured Claim:

- (a) the Creditor may, in relation to its Insured Claim and notwithstanding that Completion has occurred, take action to recover the amount due in respect of the Insured Claim against the Company, but such action must not exceed what is necessary to obtain payment from the insurer;
- (b) to the extent that the Creditor is able, by settlement, arbitral award or judgment, to obtain payment from the insurer on account of the Insured Claim, the Creditor may retain that amount in full satisfaction of its Claim; and
- (c) the Company is not required to provide assistance to a Creditor in relation to any Insured Claim under this clause or take any action in response to enforcement action taken by a Creditor in accordance with this clause.

8.2 Release of Insured Claims where payment not obtained from insurer

To the extent that the Creditor is unable to seek or obtain payment on account of its Insured Claim from the insurer this Deed operates as a complete release and bar to that part of the Creditor's Insured Claim which has not been met by the insurer.

9 Secured Creditors

Nothing in this Deed restricts or otherwise affects any right of a Secured Creditor to realise or otherwise deal with its security to the extent permitted by section 444D(2) of the Act.

10 Deed Proponent BG Contribution

- (a) The Deed Proponent BG Contribution is to be held by the Deed Administrators and upon effectuation of this Deed, the Trustees for the purpose of setting up a term deposit in the name of the Company which will provide security in respect of the existing bank guarantees issued at the Company's request.
- (b) Upon that new term deposit being established and the issuer of the bank guarantees agreeing for that new term deposit to be security for the existing bank guarantees, a corresponding amount (being the sum of \$475,000) shall be released from the Existing Term Deposit and paid into the Trust Fund in accordance with 6.3(e).
- (c) The balance of the funds held in the Existing Term Deposit shall be paid into the Trust Fund in the event that they are released by the relevant bank following the return of the Stockland Guarantee and/or the SAPM DLP Guarantee. If that does not occur within a period of 12 months, the Company will resume its right in respect of that balance.
- (d) If the action contemplated by clause 10(b) has not occurred by the earlier of:
 - (i) The return of the Stockland Guarantee and the SAPM DLP Guarantee; or
 - (ii) Three (3) months from date of this Deed; then
 - (iii) The Deed Proponent BG Contribution shall be paid by the Voluntary Administrators into the Trust Fund for the benefit of Participating Creditors.
 - (iv) The Existing Term Deposit (other than the amounts held as security for the Stockland Guarantee and/or the SAPM DLP Guarantee) shall be transferred to the Company subject to the consent of the issuer of the bank guarantees.

11 Sale of the Company

The Deed Proponent may enter into a binding agreement for the sale of the Company to a third party within the Sale Period.

11.1 Sale Consideration

- (a) If during the Sale Period, either:
 - (i) the Deed Proponent enters into a binding agreement for the sale of all or substantially all of the Company; or
 - (ii) a sale agreement is entered into for the sale of all or substantially all of the shares in the Proponent,then upon completion of that sale, the sum of \$400,000 (**Sale Consideration**) must be paid by the Deed Proponent into the Trust Fund.

12 Deed Administrators

12.1 Appointment

The Deed Administrators are appointed joint and several administrators of the Deed.

12.2 Acceptance of appointment

The Deed Administrators consent to and accept the appointment as administrators of the Deed.

12.3 Management after Commencement Date

The Deed Administrators shall be responsible for the management, operation and control of the business and affairs of the Company throughout the period from the Commencement Date to Completion or until the Deed Administrators retire or are removed from office in accordance with this Deed or the Act.

12.4 Powers of Deed Administrators

- (a) This Deed will be administered by the Deed Administrators who will be entitled to exercise all the powers, functions and duties conferred on them by this Deed, the Act and, to the extent they are not inconsistent with the terms of this Deed, Schedule 8A to the Regulations to the exclusion of the Directors.
- (b) In addition to the powers set out in clause 12.4 above, the Deed Administrators will also have the power to:
 - (i) perform any function and exercise any power that the directors could perform or exercise if the Company was not under external administration;
 - (ii) do anything that is incidental to exercising a power set out in this Deed;
 - (iii) on written notice to the Directors of the Company:
 - (A) remove any Director or Officer of the Company;
 - (B) appoint any person as Director of the Company; or
 - (C) replace any vacancy created as a result of the resignation of any Director; and
 - (iv) do anything else that is necessary or convenient for the purpose of exercising their powers to administer this Deed.
- (c) The Deed Administrators will be entitled to engage the services of their partners, employees, directors, officers, contractors, advisers or delegates to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed.

12.5 Agent of the Company

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators will act as agent for and on behalf of the Company.

12.6 Joint and Several

The rights, powers and privileges of the Deed Administrators may be exercised by one or more of them jointly and each of them severally.

12.7 Limitation of Deed Administrator's liability

- (a) To the maximum extent permitted by law, the Deed Administrators (including in their former capacity as Voluntary Administrators) shall not be personally liable for:
 - (i) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators in administering this Deed or exercising their duties and obligations under this Deed;
 - (ii) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Company; or

- (iii) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any directors, officers or Creditors of the Company.

12.8 Calling for proofs of debt

The Deed Administrators may exercise any of the powers conferred on the Trustees under the Trust Deed for the purpose of commencing the process for the adjudication of Claims under the Trust Deed, which exercise will be treated for all purposes under the Trust Deed as if those powers had been exercised by the Trustees after the commencement of the Trust.

12.9 Deed Administrator's resignation

Any Deed Administrator may resign at any time by giving not less than 10 Business Days' prior written notice to the Company, unless that resignation would result in there being no remaining Deed Administrators in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Company in accordance with clause 16 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 12.9(b) above.

13 Committee of Inspection

- (a) The Committee of Inspection which was formed in accordance with subsection 80-15 of the Insolvency Practice Schedule for the purposes of the Administration of the Company will continue to operate for the purposes contemplated by this Deed and to assist the Deed Administrators in respect of the Company
- (b) The members of the Committee of Inspection (or any related entity of those members) are permitted to continue dealing with the Company and their creditors on a business as usual basis during the period of the external administration.
- (c) The Committee of Inspection may approve the remuneration of the Deed Administrators in accordance with Division 60 of the Insolvency Practice Schedule.

14 Powers of Officers other than the Deed Administrators Suspended

14.1 Directors remain in office

The Directors of the Company remain in office throughout the Deed Period unless they resign or are otherwise removed by the Deed Administrators however the Deed Administrators will do all things necessary to remove Basile Papadimitriou as director of the Company.

14.2 Appointment of Directors

On receipt of a written request from the Deed Proponent, the Deed Administrators will do all things reasonably necessary to appoint a person or persons nominated by the Deed Proponent to the Board of the Company, with such appointment(s) to take effect at Completion.

14.3 Assistance

The Deed Proponents and Directors of the Company will provide to the Deed Administrators (or in their capacity as Trustees) such assistance and co-operation as may be reasonably required by the Deed Administrators in the exercise of the powers, functions and duties conferred on the Deed Administrators by this Deed and under the Act. This includes such assistance and co-

operation as required by the Deed Administrators and the Trustees in obtaining or realising any of the Excluded Assets, including in respect of any LGCs recorded in the Autonomous Energy Renewable Certificate Registry.

14.4 No exercise of power as Officer without Consent

Subject to Clause 14.5, while the Company is subject to this Deed, a person (other than the Deed Administrators) cannot perform or exercise and must not purport to perform or exercise a function or power as an Officer of the Company except with the prior written approval of the Deed Administrators.

14.5 Statutory duties

While they remain Directors, the Directors will not be relieved of their statutory duties as Directors and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.

15 Voluntary Administrators and Deed Administrators' remuneration and indemnity

15.1 Remuneration

(a) The Voluntary Administrators and Deed Administrators are entitled to their Remuneration and their Costs, as approved in accordance with the Act, on the basis of the time spent by the Deed Administrators or the Voluntary Administrators (as the case may be) themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates in the performance of services in connection with or in relation to the administration of the Company under Part 5.3A of the Act and this Deed and such time will be charged at the Voluntary Administrators and the Deed Administrators' standard rates, from time to time, for work of that nature.

15.2 Indemnity

The Deed Administrators and Voluntary Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified out of the property of the Company for:

- (a) as to the Deed Administrators in their administration of this Deed:
- (i) the Administrators' right to remuneration and reimbursement under this Deed, and otherwise at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Act;
 - (ii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to any debts incurred by the Company, the Administrators or the Administrators' partners or employees in the course of the administration of this Deed; and
 - (iii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, or in connection with or incidental to the Deed Administrators' administration of this Deed; and
- (b) as to the Deed Administrators in their former capacity as Voluntary Administrators of the Company:
- (i) the Voluntary Administrators' right of remuneration and reimbursement as voluntary administrators of the Company pursuant to Part 5.3A of the Act as is

- approved from time to time under section 60-10 of Schedule 2 (Insolvency Practice Schedule (Corporations)) of the Act;
- (ii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, or in connection with or incidental to any debts incurred by the Company, the Voluntary Administrators or Voluntary the Administrators' partners or employees in the course of the administration of the Company; and
 - (iii) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Voluntary Administrators or the Voluntary Administrators' partners or employees, arising out of, or in connection with or incidental to the Voluntary Administrators' administration of the Company,
- save that following Completion, their rights in this regard will be limited to the Participating Creditor Payment.
- (c) The Deed Administrators and Voluntary Administrators are not entitled to an indemnity out of the property of the Company against any claims arising out of any fraudulent or negligent act or omission by the Deed Administrators or the Voluntary Administrators, and in each case, their partners or employees.
 - (d) The indemnity shall not:
 - (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators or the Voluntary 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 or the Voluntary Administrators, the approval and execution of this Deed or otherwise; or
 - (ii) affect or prejudice any or all rights that the Deed Administrators or the Voluntary Administrators may have against the Company or any person to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators or the Voluntary Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators or the Voluntary Administrators by this Deed or otherwise.
 - (e) The Deed Administrators' and the Voluntary Administrators' right of indemnity out of the property of the Company has priority over the Claims of any Creditor or all Creditors generally (including, to the extent permitted by law, any Priority Creditor's Claims), save that following Completion, their rights of indemnity will be limited to the Participating Creditor Payment.
 - (f) The Deed Administrators and the Voluntary Administrators are entitled to exercise, in each case, their right of indemnity conferred by this Deed whether or not the Deed Administrators have paid or satisfied the Admitted Claims.
 - (g) The Deed Administrators and the Voluntary Administrators are entitled to exercise a lien on the property of the Company to secure, in each case, their right of indemnity under this Deed and otherwise at law and in equity, save that following Completion, their rights in this regard will be limited to the Participating Creditor Payment.

- (h) The Deed Administrators or the Voluntary Administrators are entitled to exercise a lien at law or in equity on the property of the Company, save that following Completion, their rights in this regard will be limited to the Participating Creditor Payment.

15.3 Continuing Indemnity

The indemnity in the Deed is a continuing indemnity and will endure despite the removal of the Deed Administrators or the appointment of new Deed Administrators or the termination of the Deed for any reason whatsoever.

15.4 Indemnity not affected or prejudiced

The indemnity under clauses 15.2 and 15.3 will not:

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

15.5 Deed Administrators' lien

Until Completion, the Deed Administrators and Voluntary Administrators (whether or not they are still acting in either capacity) are entitled to exercise a lien over the Assets for all amounts in respect of which they are entitled to an indemnity from the Company under clause 15.2.

15.6 Priority

The Deed Administrators' right of indemnity under clause 15.2 and their lien under clause 15.5 have priority over the claims of all Creditors.

16 Reporting and Meetings of Creditors

16.1 Reporting

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the termination of this Deed and the Creditors' Trust becoming effective and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.

16.2 Meetings

- (a) The Deed Administrators may convene a meeting or meetings of Creditors at any time in accordance with Division 75 of the Insolvency Practice Schedule and must convene such a meeting or meetings when required to do so under Division 75 of the Insolvency Practice Schedule.
- (b) The provisions of this Deed may be varied by resolution of Creditors passed at a meeting of Creditors convened in accordance with clause 16.2(a), but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

17 Termination

17.1 Termination of this Deed following effectuation

- (a) This Deed will terminate on the occurrence of Completion in accordance with clause 6 following the Deed Administrators signing a certificate in the form of Schedule 2 in accordance with clause 6.3(d) in respect of the Company..

17.2 Automatic termination of this Deed

This Deed automatically terminates on the earlier of the following:

- (a) the Court makes an order terminating this Deed under section 445D of the Act; or
- (b) the Creditors pass a resolution terminating this Deed in accordance with sections 445C(b) and 445CA of the Act.

17.3 Initiation of Termination by the Deed Administrators

If the Deed Administrators reasonably determine that it is no longer practicable to continue to implement the administration under this Deed and it is not (in the Deed Administrators' reasonable opinion) commercially justifiable to vary this Deed to achieve a satisfactory outcome for Creditors, the Deed Administrators may:

- (a) convene a meeting of Creditors for the purpose of passing a resolution under section 445C(b) of the Act; and
- (b) forward to each Creditor not less than five (5) business days before the meeting an up-to-date report about the position of the Company accompanied by any financial statements as the Deed Administrators think fit, together with a statement that they do not think it practicable or desirable to continue the administration of this Deed, and that the administration of this deed will be terminated if the Creditors so resolve.

17.4 Effect of Termination

In accordance with section 445H of the Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

17.5 Severance

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

17.6 Consequences of Automatic Termination

- (a) Upon termination of this Deed in accordance with clause 17.2 and if section 446AA of the Act does not apply:
 - (i) the Company will be taken to have passed special resolutions under section 491 of the Act that the Company be voluntarily wound up and that the Deed Administrators be the Company's liquidators;
 - (ii) Regulation 5.3A.07 of the Regulations (as though it had not been repealed) will apply; and
 - (iii) the Company will be wound up.

17.7 Survival of clauses

Despite any provision of this Deed, clauses 4, 9, 10, 11, 12, 14.3, 15, 17, and 30 survive the termination of this Deed.

18 Application to Court

18.1 Unforeseen circumstances

If any circumstances arise for which this Deed does not either expressly or by necessary implication provide, the Deed Administrators will in their absolute discretion make such provision as they think fit for the purpose of effectuating this Deed and they may, if they think fit, apply to the Court for directions.

18.2 Application to the Court

No person bound by this Deed (other than the Deed Administrators or the Deed Proponents) may make any application to the Court in relation to any matter arising under this Deed unless at least 5 Business Days prior notice in writing has been given to the Deed Administrators. The notice must give particulars of the proposed application and attach a copy of any papers proposed to be filed with the Court in support of that application.

19 Variation

Subject to the provisions of the Act, a variation of any term of this Deed may only be varied with the written consent of the Deed Proponent and by a resolution passed at a meeting of the Creditors convened in accordance with Division 75 of Schedule 2 (Insolvency Practice Schedule (Corporations)) of the Act, but only if the variation is not materially different from a proposed variation set out in a notice of meeting.

20 Assignment

Rights arising out of or under this Deed are not assignable by a party without the prior written consent of the other parties.

21 Power of Attorney

The Company hereby irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to exercise or refrain from exercising (in the Deed Administrators' absolute discretion) any and all of the Company's rights or powers in relation to or in connection with its right, title and interest in the Excluded Assets and the Company will make, do and provide all things and documents reasonably necessary to give proper effect to this clause.

22 Creditor's Power of Attorney

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 7.

23 Waiver

No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. The meanings of the terms used in this clause are below:

- (a) conduct includes delay in the exercise of a right;
- (b) right means any right arising under or in connection with this Deed and includes the right to rely on this clause; and
- (c) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

24 Notices

24.1 Form of Notice

A notice or other communication to a party under this Deed (Notice) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in the recitals (or any alternative details nominated to the sending party by Notice).

24.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (business hours period), then the Notice will instead be regarded as given and received at the start of the following business hours period.

| Method of giving Notice | When Notice is regarded as given and received |
|---|---|
| By hand to the nominated address | When delivered to the nominated address |
| By pre-paid post to the nominated address | At 9.00am (addressee's time) on the second Business Day after the date of posting |
| By fax to the nominated fax number | At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety. However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included. |
| By email to the nominated email address | When the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been addressed to the addressee). |

24.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than fax and email as permitted in clause 24.2).

25 Jurisdiction

This Deed will be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales and all persons bound by this Deed submit to the exclusive jurisdiction of the Courts of that State, including any Courts having appellate jurisdiction.

26 Further assurances

All persons bound by this Deed will exercise all such powers as are available to them, do all such acts and things and sign, execute and deliver all such documents and instruments and provide assistance and co-operation as may be necessary or reasonably required to give full effect to the provisions of this Deed.

27 Entire agreement

This Deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

28 No reliance

No party has relied on any statement by any other party not expressly included in this Deed.

29 Severance

Notwithstanding anything contained in any provision of this Deed, if any such provision is held or found to be void, invalid or otherwise unenforceable, such provision will 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 will remain in full force and effect.

30 Stamp duty and GST**30.1 Stamp Duty**

The Deed Administrators, on behalf of the Company, will pay all stamp duty payable on this Deed and any other document required to give effect to or contemplated by the provisions of this Deed.

30.2 GST

Any GST payable by the Deed Administrators in respect of a Taxable Supply made under this Deed or contemplated by this Deed to another person (including any person bound by this Deed), must be borne by that other person, and will be paid by that person, subject to the prior receipt of a valid tax invoice, in addition to the other consideration given by that person to the Deed Administrators or the Company (as the case may be) for the Taxable Supply.

31 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. Transmission by email of an executed counterpart of this Deed and all documents required to be executed and delivered pursuant to this Deed will be deemed to constitute due and sufficient delivery of such counterpart.

Executed and delivered as a Deed.

Signed sealed and delivered by Autonomous Energy Pty Ltd (Administrators Appointed) (ACN 113 593 383) by its joint and several deed administrator in the presence of:



Witness Signature

Kirsty Prinsloo

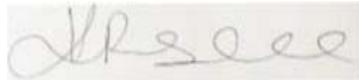
Name of Witness

Kathy Sozon

Deed Administrator

Each of the joint and several deed administrator and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Jason Preston
in the presence of:



Witness Signature

Kirsty Prinsloo

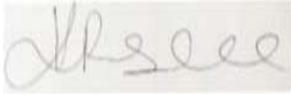
Name of Witness

Jason Preston

Signature

Each of Jason Preston and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Jason Ireland
in the presence of:



Witness Signature

Kirsty Prinsloo

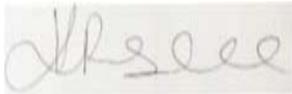
Name of Witness



Signature

Each of Jason Ireland and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Katherine Sozou
in the presence of:



Witness Signature

Kirsty Prinsloo

Print Name



Signature

Each of Katherine Sozou and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

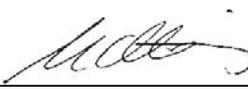
Signed sealed and delivered by ITB Holdings Pty Ltd ACN 652 752 086
in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director Signature

Simon Mason

Print Name



Secretary/Director Signature

Matthew Linney

Print Name

Schedule 1 – Projects, Service & Maintenance and Consulting Contracts

- (a) Gippsland Water - Water Factory;
- (b) Westpac Banking Corporation:
 - (i) Lighting
 - (ii) 97 King William St EE Upgrade;
 - (iii) Lockleys; and
 - (iv) Concord;
- (c) John Heine & Sons - Solar;
- (d) The Scots College;
- (e) Port Adelaide Plaza Pty Ltd - Site; Custom House Adelaide;
- (f) ABB Australia / Canon - Hail Damage Replacement;
- (g) Built Constructions - Westpac; Lockleys Commercial;
- (h) Port of Brisbane - Export settings changes;
- (i) Parramatta Council - Car Park;
- (j) Kings School Rectification Works;
- (k) Wollongong City Council - SunPark Admin Building;
- (l) Scentre Group - Audit of existing system at Kotara Westfield;
- (m) The Kings School:
 - (i) Tender Package;
 - (ii) System Audits for 7 PV systems;
 - (iii) Rectification work from audit investigation;
- (n) Northern Beaches Council - Battery feasibility;
- (o) Bellengin Shire Council - Battery feasibility and design;
- (p) Zoos Victoria - Battery expansion feasibility; and
- (q) Byron Shire Council - Early Tender workshop consulting.
- (r) Centennial Coal Airly Mine SLA2
- (s) SAPM SLA2
- (t) Siemens Multiple Sites SLA2
- (u) Sydney Markets Buildings D&E SLA2
- (v) Verdia Burleigh Heads SLA2
- (w) Verdia Cairns SLA2
- (x) Westpac Lockleys SLA2
- (y) Precision Group Port Adelaide Plaza SLA2
- (z) Lockleys ESCOSA Licence
- (aa) Westpac Concord SLA2
- (bb) Sydney Markets Carparks D&F&V SLA2
- (cc) Stockland Wetherill Park SLA2

- (dd) Sydney Markets Building E Panel Cleaning
- (ee) Sydney Markets Building D Panel Cleaning
- (ff) Westpac Kogarah SLA2 326kW
- (gg) DOJCS 5x Rooftop Sites SLA1
- (hh) Verdia Hervey Bay SLA2
- (ii) St Andrews Lutheran Junior & J Block SLA2
- (jj) Verdia Merrylands SLA2
- (kk) Newington College Concordia & Sports Centre SLA2
- (ll) Sydney Markets Buildings: Dx2,E,F,V,Z LGC Management
- (mm) Westside Christian SLA1 Multi Site
- (nn) Growthpoint 3MR SLA2
- (oo) Parramatta City Council 5xsites SLA2
- (pp) Lend Lease Sunshine Plaza SLA2
- (qq) St Patricks College SPC SLA2
- (rr) Shire Christian School SCS SLA2
- (ss) Growthpoint 5MR SLA2
- (tt) Parramatta City Council Rydalmere OC SLA2
- (uu) Sydney Markets Warehouse Z SLA2
- (vv) Col Crawford Motors SLA1 combined260kW_4sites
- (ww) Sydney Airport Int. Terminal 550kW LGC Management
- (xx) NIDA_215 Anzac Pde Kensington SLA1
- (yy) St Luke's Grammar SLG SLA2
- (zz) DOJCS Ararat Rivergum Hopkins LGC 1 year 2021
- (aaa) Pymble Ladies College Centenary & Science Only LGC Management
- (bbb) Parkes Shire Council STP&WTP LGC Management 2021-25
- (ccc) NIDA_215 Anzac Pde Kensington LGC Management
- (ddd) St Andrews Lutheran College Tallebudgera LGC Management
- (eee) Inaburra School 194kW LGC Management
- (fff) Port of Brisbane BICT 789.2kW LGC Management
- (ggg) Marymede Catholic College 170kW LGC Management
- (hhh) DOJCS Ararat Rivergum Hopkins SLA1 1 year 2021
- (iii) DOJCS Loddon Prison Kareenga Prison LGC Management
- (jjj) Dexu 100 Harris St Pyrmont LGC Management
- (kkk) Barker College Jnr School Hornsby 69kW_LGC Management
- (lll) MLC Burwood
- (mmm) Port Adelaide Plaza LGC Management included in SLA
- (nnn) St BrendanShaw SBS SLA2 219kW

Schedule 2 - Certification of Termination

Autonomous Energy Pty Ltd
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)
ACN 113 593 383

I, [insert name], an administrator of the Deed of Company Arrangement of Autonomous Energy Pty Ltd (Subject to Deed of Company Arrangement) executed on [insert date], **CERTIFY** that the deed has been wholly effectuated.

Signature

Date: _____

Schedule 3 - Trust Deed

Jason Preston, Jason Ireland and Katherine Sozou in their capacity as joint and several deed administrators of Autonomous Energy Pty Ltd ACN 113 593 383 (Administrators Appointed)

Autonomous Energy Pty Ltd ACN 113 593 383 (Administrators Appointed)

Creditors' Trust Deed Autonomous Energy

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Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
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This Deed is made on 13 August 2021

Parties

- 1 **Jason Preston, Jason Ireland and Katherine Sozou** of c/- McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000 in their capacity as joint and several deed administrators of the Company (the **Trustees**).
- 2 **Autonomous Energy Pty Ltd (Administrators Appointed)** (ACN 113 593 383) of c/- McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000.

Recitals

- A On the Appointment Date, Jason Preston, Jason Ireland and Katherine Sozou were appointed as administrators of the Company pursuant to Part 5.3A of the Act.
- B The Deed Proponent has proposed a deed of company arrangement in respect of the Company under which ownership of the Company would be transferred to the Deed Proponent, the Company would be released from certain liabilities and certain funds would be made available for distribution to Creditors on the terms set out in the DOCA and this Deed.
- C At meetings held on 12 August 2021 and convened pursuant to section 439A of the Act, the Creditors of each of the Company resolved that the companies execute the DOCA proposed by the Deed Proponent under section 444B(2)(b) of the Act.
- D On or about the date of this Deed, the Deed Administrators, the Deed Proponent and the Company executed the DOCA pursuant to section 444B(2)(b) of the Corporations Act.
- E The Fund Amount will be transferred to the Trustees to settle the Trust on the terms set out in the DOCA and this Deed.
- F The Company and the Trustees enter into this Deed as contemplated by the DOCA in order to facilitate a distribution by the Trustees to the Participating Creditors in their capacity as beneficiaries of the Trust Fund.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

Unless defined below, capitalised terms used in this Deed have the meaning set out in the DOCA:

Admitted Claim means any Claim by a Participating Creditor against the Company that is admitted by the Trustees after adjudication in accordance with clause 5 of this Deed.

Deed means this creditors' trust deed as amended from time to time.

Dividend means any amount paid to a Participating Creditor in respect of that Creditor's Admitted Claim.

DOCA means the deed of company arrangement executed by the Company, the Deed Proponent and the Voluntary Administrators in accordance with the resolution referred to in the recitals of this Deed.

Final Dividend means the last Dividend amount paid by the Trustees to any Participating Creditor under this Deed.

Indemnity means the indemnity in clause 9 of this Deed.

Termination Date means the date on which the Trust terminates in accordance with clause 13.

Trust means the trust established by this Deed.

Participating Creditor's Claim means a Claim of a Participating Creditor.

Trust Fund means the trust fund contemplated by the DOCA and established under this Deed, being the aggregate of the Fund Amount (which will be held in an account to be established by the Trustee).

Trustee Act means *The Trustee Act 1925* (NSW).

Trustees means jointly and severally, Jason Preston, Jason Ireland and Katherine Sozou, in their capacity as trustees of the Trust and any successor to that office appointed pursuant to the Trustee Act.

Trustee's Costs means all costs, charges, fees (including legal fees), government charges, taxes (including any Stamp Duty required to be paid in accordance with clause 14.9 of this Deed) and expenses incurred by the Voluntary Administrators, Deed Administrators or Trustees in the performance of their duties, obligations and responsibilities under this Deed and the Trustee Act.

Trustee's Remuneration means the remuneration of the Trustee referred to in clause 8.

1.2 Interpretation

In this Deed:

- (a) a reference to an entity is a reference to that entity in its own right and in its capacity as trustee of any trust;
- (b) words importing the singular will (where appropriate) include the plural and vice versa;
- (c) words importing any one gender will (where appropriate) include the other gender and vice versa;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) words importing natural persons will (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (f) words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently visible form;
- (g) headings are for convenience of reference only and will not affect the meaning or interpretation of this Deed;
- (h) references to any statutory enactment or law will be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- (i) references to Parts, Clauses, paragraphs and Schedules will be construed as references to the Parts, Clauses, paragraphs and Schedules of and to this Deed;
- (j) unless otherwise stated, references to Sections will be construed as references to Sections of the Act and references to Regulations will be construed as references to the Regulations;
- (k) a term of expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act;

- (l) references to an “agreement” include any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (m) references to an agreement or document (including a reference to this Deed) are to the agreement or document as amended, substituted, novated, supplemented, varied or replaced;
- (n) references to the rights or obligations of two or more persons under this Deed will be interpreted as entitling or obliging them jointly and severally;
- (o) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (p) a construction that would promote the purpose or object underlying this Deed (whether or not stated in this Deed) is to be preferred to a construction that would not promote that purpose or object;
- (q) no rule of construction applies to the disadvantage of a party to this Deed because that party was responsible for the preparation of this Deed or any part of it;
- (r) a reference to “\$” is to Australian currency; and
- (s) a reference to “cash” includes cash equivalents.

1.3 Inconsistency with Act or Regulations

If there is any inconsistency between the provisions of this Deed and the Act, Trustee Act, Regulations, Insolvency Practice Schedule, or Insolvency Practice Rules this Deed shall prevail to the extent permitted by law.

1.4 Other inconsistencies

If there is any inconsistency between the provisions of this Deed and the constitution of the Company and any other obligation binding on the Company, the provisions of this Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company.

1.5 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

2 Declaration of Trust

2.1 Declaration

The Trustees acknowledge and declare that the Trust Fund will be held on trust by the Trustees for the Participating Creditors..

2.2 Name of Trust

The trust constituted by this Deed will be called the Autonomous Energy Creditors' Trust.

2.3 Trustees' powers

Without limiting the powers that the Trustees have by operation of the Trustees Act, for the purposes of administering the trust created by this Deed, the Trustees have the following powers:

- (a) to administer the Trust Fund in accordance with the provisions set out in the DOCA and this Deed;

- (b) to fulfil the Trustees' obligations in accordance with the terms of this Deed;
- (c) to sell, re-invest or otherwise deal with the assets of the Trust Fund;
- (d) to perfect title in any assets of the Trust Fund;
- (e) to insure any assets of the Trust Fund;
- (f) to, at any time, call meetings of the Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
- (g) to admit Claims to proof in accordance with the provisions of the DOCA and this Deed;
- (h) to determine Admitted Claims and then to pay Dividends in accordance with the terms of this Deed;
- (i) to act as attorney for the Company or any other person for any purpose associated with the Trust or this Trust Fund;
- (j) to enforce compliance with the terms of this Deed;
- (k) to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to it;
- (l) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (m) to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in either of the Company's name or (after assignment) in the Trustees' name, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
 - (i) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees think fit;
 - (ii) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasion may require; and
 - (iii) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund;
- (n) to convene and hold meetings of the Participating Creditors for any purpose as the Trustees consider fit;
- (o) to permit any person authorised by the Trustees to operate any account in the name of the Trust;
- (p) to do all acts and execute in the name and on behalf of the Trust all deeds, receipts and other documents;
- (q) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Trust;

- (r) subject to the Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;
- (s) to bring or defend an application for the vesting or winding up of the Trust;
- (t) to report to the Participating Creditors from time to time;
- (u) to make interim or other distributions of the Trust Fund;
- (v) 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;
- (w) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (x) to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which power includes the power to compromise any claim, action, suit or proceeding referred to in clause 2.3(m);
- (y) to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any tax, including income tax, capital gains tax or GST;
- (z) to do anything incidental to exercising a power set out in this Deed; and
- (aa) to do anything else that is necessary or convenient for administering the Trust.

3 Trust Fund

3.1 Trust Fund

The Trust Fund shall be comprised of:

- (a) The monies in the Account which is released to the Trustees upon effectuation of the DOCA;
- (b) The amounts released to the Trustees from the Existing Term Deposit under clause 6.6(a) of the DOCA;
- (c) The Excluded Assets and the proceeds from those (to the extent not covered by (a) and (b) above);
- (d) The Sale Consideration (if any) received in accordance with clause 11 of the DOCA; and
- (e) any interest earned on the Fund Amount held in the Trust Fund.

3.2 Trust Deed

The Trust Fund is to be held by the Trustees for the benefit of the Participating Creditors.

3.3 Distribution of the Trust Fund

- (a) The Trust Fund will be applied in the following order of priority:
 - (i) the Voluntary Administrators' and Former Voluntary Administrators' remuneration, costs and expenses;
 - (ii) the Priority Creditors for any Admitted Claim which is a Priority Creditor's Claim;
 - (iii) the Deed Administrators' and the Trustees' remuneration, costs and expenses;
 - (iv) the sum of \$1 to Iugis as consideration for the transfer of the shares that it owns in the Company;

- (v) on a pro rata basis, the Participating Creditors (other than the Priority Creditors) for any Admitted Claim; and
 - (vi) finally, any remaining balance of the Trust Fund is to be paid to Iugis (being the equity owner prior to the implementation of the DOCA).
- (b) For the avoidance of doubt, no distributions will be made in respect of a Participating Creditor's Claim unless that Participating Creditor's Claim is an Admitted Claim.
- (c) For the purposes of section 444DA of the Act, any Terminated Employees will retain a priority in respect of the assets of the Trust Fund at least equal to that which they would have been entitled if the property of the Company had been applied in accordance with sections 556, 560 and 561 of the Act.
- (d) The Trustees may distribute the Trust Fund at such times as the Trustees consider, in their absolute discretion, is appropriate and feasible to do so, including making distributions under any lower ranking subclause in clause 3.3(a) in advance of making any payments under any higher ranking subclause, on the basis that they have retained sufficient funds to ensure that any payments to be made under those higher ranking subclauses will be made when the time comes to do so.

3.4 Subsequent Trust distribution

In the event that the Sale Consideration is paid, that shall be distributed in accordance with the order of priority in clause 3.3.

3.5 Unclaimed monies

In the event that the Trustees, for any reason, are unable to locate a Participating Creditor, or if any cheque sent by the Trustees to a Participating Creditor has not been presented within 12 months, then:

- (a) the Trustees shall stop payment of such cheque;
- (b) the moneys represented by such stopped cheque or held by the Trustees on behalf of the Participating Creditor shall be paid to the relevant authority; and
- (c) the provisions of sections 544(1) and 544(3) of the Act will apply, with such modifications as are necessary, to such payment as if references in those sections to 'liquidator' were references to the 'Trustees'.

3.6 Postponement

Should proceedings be brought by any person in respect of the distribution of the Trust Fund, and the Trustees have made or apprehend that they will make a claim on the Indemnity, then the Trustees are entitled at their sole discretion to postpone the payment of any Dividend until determined by the Trustees.

4 Perpetuity Period

Notwithstanding any other provision in this Deed, each

- (a) interest in property; and
- (b) Trustees' power over or in connection with property,

created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable after the expiry of eighty (80) years commencing on the date of this Deed, but which has not vested or taken effect by that date,

- (a) will vest or take effect on the last day of that period; and

- (b) is exercisable only on or before the last day of that period.

5 Claims

5.1 Admissibility of Claims

- (a) Upon this Deed being settled and upon Completion, in accordance with clause 7.4 of the DOCA, all Claims of the Participating Creditors against the Company will convert to and become claims against the Trust Fund under this Deed, equal in amount to the released Claims.
- (b) Interest will not accrue or be payable on any Admitted Claim.

5.2 Trustees' discretion

The Trustees may, in their absolute discretion:

- (a) admit all or part of any Claim by a Participating Creditor;
- (b) reject all or part of any Claim by a Participating Creditor; or
- (c) pay any Admitted Claim of a Participating Creditor,

in accordance with the provisions of this Deed.

5.3 Set-off

- (a) Subject to clause 5.3(b), where there have been mutual credits, mutual debts or other mutual dealings between the Company and an Admitted Creditor:
 - (i) an account must be taken of what is due from the one party to the other in respect of those mutual dealings;
 - (ii) the sum due from one party is to be set off against any sum due from the other party;
 - (iii) only the balance of the account (if any) in favour of the Participating Creditor as against the Company is to be admissible to proof under this Deed.
- (b) A Participating Creditor is not entitled under clause 5.3(a) to claim the benefit of any set-off if, at the time of giving credit to the Company, or at the time of receiving credit from the Company, it had notice of the fact that the Company was insolvent.

5.4 Determination of Claims

- (a) Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of the DOCA, subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the Act (except sections 553(1A) and section 553B of the Act) (other than to the extent expressly incorporated)) and section 544 apply to Claims under this Deed as if references to the liquidator were references to the Trustees and references to winding up were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (b) Regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed and to the Trustees, and as if references to the liquidator were references to the Trustees and references to winding up were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.

- (c) Any notice (Call for Proofs) given by the Deed Administrators in accordance with the terms of the DOCA requiring a Creditor to submit particulars of his or her debt or claim, or to formally prove his or her debt or claim, will be treated for the purpose of this Deed as sufficient to comply with regulations 5.6.39 and 5.6.49 respectively as applied by clause 5.3.
- (d) The Trustees may make interim distributions of trust property under this Deed.
- (e) The Trustees must declare and distribute trust property under this Deed as soon as practicable after the Trust comes into effect under clause 2.1. However, subject to clauses 5.4(a) and 5.4(b), the Trustee has an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of the trust property in payment of Admitted Claims.
- (f) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustee shall send a notice to the Claimant informing the Claimant of the proposed rejection and giving the party 14 days within which to make an application to the Court to determine the questions relating to the Claim.
- (g) The Trustees are entitled to rely upon any steps and determinations made by the Deed Administrators for the purposes of this clause in respect of whether a claim asserted for the purposes of claiming under this Deed is an Admitted Claim, together with any information, and proofs or particulars or debt provided to the Deed Administrators.

5.5 Register of Admitted Creditors

The Trustees shall maintain a list of the Participating Creditors that are Admitted Creditors including a register of distributions or dividends made by the Trustees under this Deed to the relevant Admitted Creditors.

5.6 Retention of and access to records

The Trustees may at any time inspect the books and records of the Company and the Company authorises the Trustees and their staff to enter the Company premises on any Business Day between the hours of 9.00am and 5.00pm with no less than 48 hours prior notice for the purpose of conducting such an inspection and for the purpose of doing anything necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Trustees under this Deed.

5.7 Superannuation debts not admissible

For the purposes of section 444DB of the Act, the Trustees must determine that a debt (or part thereof) by way of a Superannuation Contribution is not admissible to proof as a Participating Creditor Claim if:

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

5.8 Creditors' costs and expenses

Any costs and expenses incurred by a Participating Creditor in asserting a Claim under this Deed will be borne by that Creditor and will not form part of that Creditor's Claim under this Deed.

5.9 Abandonment of Claims

A Participating Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:

- (a) which are not the subject of a proof lodged with the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed under clause 5.4(f).

5.10 Discharge of Claims

All Participating Creditors having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all claims which they have or claim to have against the Trustees or the Trust Fund and each of them will, if called upon to do so, execute and deliver to the Trustees such forms of release of any such claim as the Trustees require.

5.11 Claims extinguished

On payment of the Final Dividend to the Participating Creditors from the Trust Fund, all Claims against the Trust Fund are extinguished and each Participating Creditor will, if called upon to do so, execute and deliver to the Trustees such forms of release of any Claim as the Trustees require.

5.12 Bar

After distribution of the Final Dividend from the Trust Fund, the Trustees may plead this Deed in bar to any Participating Creditor's Claim.

5.13 Excluded Creditors

The Excluded Creditors are not entitled to participate in or receive any distribution from, and will not prove to recover any Excluded Claim for the purpose of, or in relation to, the Trust Fund, in respect of an Excluded Claim. For the avoidance of doubt, the Excluded Creditors will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, for any Claim that is not an Excluded Claim.

6 GST

6.1 Definitions

Words and expressions used in this clause 6 which are defined in the GST Act have the same meaning in this clause.

6.2 GST credits during operation of Trust

The parties agree and acknowledge that to the extent that an input tax credit is available in respect of a Trustee Cost which is incurred and paid for by the Voluntary Administrators, Deed Administrators or Trustees during the period of the administration, deed administration or operation of the Trust, the Trustees (acting in their capacity as Trustees of the Trust) will be responsible for the claiming those input tax credits.

7 Meetings of Creditors

The Trustees may at any time convene a meeting of Participating Creditors and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of the Insolvency Practice Schedule and Division 75 of the Insolvency Practice Rules,

with such modifications as are necessary, to meetings of the Participating Creditors as if the references to the an external administrator or chairperson were references to the Trustees.

8 Remuneration of Trustees

The Trustees:

- (a) are to be remunerated at the usual rates charged by McGrathNicol from time to time in respect of any work done by the Trustees, and or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates of the Trustees, in connection with:
 - (i) the calling for and adjudicating upon proofs of Claims;
 - (ii) the distribution of the Trust Fund;
 - (iii) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Trustees under this Deed; and
- (b) acknowledge that the Trustees' Costs, including costs, charges and expenses (including those incurred in connection with advisers) incurred in connection with the foregoing, including any stamp duty payable by them in respect of this Deed in accordance with clause 15.9 will be payable from the Trust Fund.

9 Indemnity

9.1 Indemnity

To the maximum extent permitted by law, the Trustees are entitled to be indemnified out of the Trust Fund for:

- (a) the Trustee's Remuneration;
- (b) Trustee's Costs; and
- (c) all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to this Deed which may be commenced, incurred by or made on the Trustees and any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates, by any person and against all costs, charges and expenses incurred by the Trustees in respect of them,

provided that the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent that the indemnification contravenes the Act or the Trustee Act or if the Trustees, or any partner, employee, authorised agent or delegate of the Trustees have acted negligently, in breach of fiduciary duty or in breach of trust.

9.2 Continuing indemnity

This indemnity takes effect on and from the Commencement Date and will be without limitation as to time and will operate notwithstanding the removal of the Trustees (or either of them) and the appointment of new trustees or the termination of this Trust for any reason whatsoever.

9.3 Indemnity not to be affected or prejudiced

The indemnity under clause 9.1 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, the approval and execution of this Deed or otherwise; or

- (b) affect or prejudice all or any rights that the Trustees may have against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees of or incidental to the exercise or performance of any of the powers of authorities conferred on the Trustees by this Deed or otherwise.

10 Liability

10.1 Exclusion of liability

- (a) To the maximum extent permitted by law, the Trustees, and any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates, are not liable for any loss or damage occasioned to the Trust Property or to any person by:
 - (i) the exercise of any discretion or power conferred by this Deed or by law on the Trustees or any delay or failure to exercise any of those discretions or powers;
 - (ii) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustees or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates; or
 - (iii) any disclosure by the Trustees or the officer of any document, matter or thing relating to the Trust, the Trust Property or any Participating Creditor or other beneficiary.
- (b) All persons claiming any interest in the Trust Property must be treated as taking it with and subject to notice of the protection conferred by this clause 10.

10.2 Proceedings against co-trustee

The Trustees are not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

10.3 Reliance on advice

Where the Trustees act in reliance upon the advice of any solicitor instructed on behalf of the Trust in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with the advice.

11 Trustees' retirement

Any Trustee may retire at any time by giving not less than 14 days' prior written notice to the Company unless that retirement would result in there being no remaining Trustee in which event the Trustees must:

- (a) convene a meeting of Participating Creditors in accordance with clause 6 of this Deed for the purpose of approving the appointment of a replacement trustee;
- (b) assign to a replacement trustee nominated by the Participating Creditors the Trustees' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11(b).

12 Trustees not obliged to take action

The Trustees will not be obliged to take any action under this Deed until such time as there are sufficient funds in hand and immediately available to them without prior or apprehended claim as referred to in clauses 3.4 and 3.5 to pay their remuneration, costs, fees and expenses.

13 Termination

13.1 Termination of the Trust

This Trust will terminate and the Trustees will resign after the final distribution has been made under clause 3.3 of this Deed.

13.2 Meeting of Participating Creditors

The Trustees must convene a meeting of Participating Creditors to consider a resolution to vary this Deed or terminate the Trust if:

- (a) at any time prior to the termination of the Trust, the Trustees determine that it is no longer practicable to continue to implement or carry out this Deed; or
- (b) the Court so orders.

13.3 Termination of the Trust by Court order and Participating Creditors' resolution

This Trust will terminate if:

- (a) a Court so orders; or
- (b) the Participating Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 13.2.

13.4 Report to Participating Creditors

Upon a meeting being convened pursuant to clause 13.2, the Trustees must send each Participating Creditor 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) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 13.2; and
- (b) a statement that this Trust will be terminated if the Participating Creditors so resolve.

13.5 Previous operation of this deed preserved

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

13.6 Variation of Deed

This Deed may be varied:

- (a) with the consent of the Trustees by resolution passed at a meeting of Participating Creditors by a majority of Participating Creditors in number and in value, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that the variation does not materially prejudice the interests of any class of Participating Creditors without the approval of a majority of that class of Participating Creditors in number and value; or
- (b) by the Court upon application of any of the Participating Creditors or the Trustees in accordance with section 81 of the Trustee Act.

14 General

14.1 Severance

Notwithstanding anything contained in any provision of this Deed, if any such provision is held or found to be void, invalid or otherwise unenforceable, such provision will 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 will remain in full force and effect.

14.2 Waiver

No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. The meanings of the terms used in this clause are below:

- (a) conduct includes delay in the exercise of a right;
- (b) right means any right arising under or in connection with this Deed and includes the right to rely on this clause; and
- (c) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

14.3 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. Transmission by email of an executed counterpart of this Deed and all documents required to be executed and delivered pursuant to this Deed will be deemed to constitute due and sufficient delivery of such counterpart.

14.4 Jurisdiction

This Deed will be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales and all persons bound by this Deed submit to the exclusive jurisdiction of the Courts of that State, including any Courts having appellate jurisdiction.

14.5 Further assurances

All persons bound by this Deed will exercise all such powers as are available to them, do all such acts and things and sign, execute and deliver all such documents and instruments and provide assistance and co-operation as may be necessary or reasonably required to give full effect to the provisions of this Deed.

14.6 Entire agreement

This Deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

14.7 No reliance

No party has relied on any statement by any other party not expressly included in this Deed.

14.8 Exercise of rights

- (a) Unless expressly required by the terms of this Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

14.9 Stamp duty

Any stamp duty assessed on this Deed is to be paid out of the Trust Fund.

15 Notices**15.1 Form of Notice**

A notice or other communication to a party under this Deed (Notice) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in the recitals (or any alternative details nominated to the sending party by Notice).

15.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (business hours period), then the Notice will instead be regarded as given and received at the start of the following business hours period.

| Method of giving Notice | When Notice is regarded as given and received |
|---|---|
| By hand to the nominated address | When delivered to the nominated address |
| By pre-paid post to the nominated address | At 9.00am (addressee's time) on the second Business Day after the date of posting |
| By fax to the nominated fax number | At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety. However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included. |
| By email to the nominated email address | When the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been addressed to the addressee). |

15.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than fax and email as permitted in clause 15.2).

Executed and delivered as a Deed.

Signed sealed and delivered by Autonomous Energy Pty Ltd (Administrators Appointed) (ACN 113 593 383)

by its joint and several deed administrator in the presence of:



Witness Signature

Kirsty Prinsloo

Name of Witness

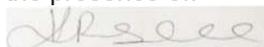


Deed Administrator

Each of the joint and several deed administrator and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Jason Preston

in the presence of:



Witness Signature

Kirsty Prinsloo

Print Name



Signature

Each of Jason Preston and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Jason Ireland

in the presence of:



Witness Signature

Kirsty Prinsloo

Print Name



Signature

Each of Jason Ireland and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed sealed and delivered by Katherine Sozou

in the presence of:



Witness Signature

Kirsty Prinsloo

Print Name



Signature

Each of Katherine Sozou and the witness states that this Deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).