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22 June 2009

To: The Manager
Announcements
Company Announcements Office
Australian Stock Exchange

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CBD Energy Limited – Rights Issue Prospectus

Attached is the Note Trust Deed relating to the convertible notes offered under the pro rata non-renounceable rights issue by CBD Energy Limited.

For and on behalf of CBD Energy Limited

A handwritten signature in black ink, appearing to read 'Gerry McGowan'.

GERRY MCGOWAN
Managing Director

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Note Trust Deed

CBD Energy Limited

Australian Executor Trustees Limited

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Date	22 June 2009
Parties	
1.	CBD Energy Limited (ABN 88 010 966 793) Suite 2, Level 2, 53 Cross Street, Double Bay NSW 2028 (the Issuer); and
2.	Australian Executor Trustees Limited (ACN 007 869 794) Level 22, 207 Kent Street, Sydney NSW 2000 (the Trustee).
Recitals	
A	As contemplated by the Prospectus the Issuer wishes to make provision for the raising of money by the issue of debt instruments which convert, in certain circumstances, into ordinary shares.
B	By this Deed, the Trustee is appointed to act as trustee in the interests of persons who take up notes offered by the Issuer. The Trustee is entitled, according to the laws of all States and Territories of the Commonwealth of Australia where any of the notes are subscribed, to act in that capacity.

IT IS DECLARED as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Deed unless the context requires otherwise.

Accounts means profit and loss accounts, balance sheets and cashflow statements together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them.

ASIC means the Australian Securities and Investments Commission.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASTC Settlement Rules means the operating rules of ASTC as varied or replaced from time to time.

ASX means the Australian Securities Exchange Limited (ACN 008 624 691).

Auditors means the independent auditors of the Issuer from time to time.

Authorisation includes:

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- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency (including any renewal or variation); or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Business Day means a day on which banks are open in Sydney, (not being a Saturday, Sunday or a public holiday)..

CBD Note Trust means the trust declared in this Deed and in particular in clause 6.

Conditions means, in relation to a Note, the terms and conditions applicable to those Notes set out in Schedule 1.

Conversion means conversion of the Notes into ordinary shares of the Issuer in accordance with Condition 5 of the Conditions.

Conversion Date means (where a Conversion Notice is given under Condition 5):

- (a) an Interest Payment Date;
- (b) the Maturity Date; or
- (c) any Business Day during a Takeover Period.

Conversion Notice means the notice in the form of Schedule 2 which may be given by a Noteholder to the Issuer pursuant to Condition 5.1.

Conversion Option means the option conferred by Condition 5.1 on the Noteholder to apply all or part of the redemption proceeds towards subscription for ordinary shares in the Issuer.

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

Director means a person appointed to the office of director of the Issuer and includes any alternate director duly appointed and acting as director.

Early Redemption Amount means in relation to a Note, the Principal Amount of that Note plus any interest accrued but unpaid on that Note up to and including the Early Redemption Date.

Early Redemption Announcement means an announcement of an early redemption by the Issuer in accordance with Condition 4.

Early Redemption Date means the date specified in an Early Redemption Announcement as the date on which Notes are to be redeemed by the Issuer which must not be later than 90 days after the Early Redemption Announcement.

Event of Default means any of the events specified in clause 11.

Financial Half-Year means a financial half year of the Issuer beginning on 1 January in each year and ending on the following 30 June or beginning on 1 July in each year and ending on the following 31 December.

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Financial Year means a financial year of the Issuer beginning on 1 January in each year and ending on the following 31 December.

Government Agency means any government or any governmental, semi-governmental or judicial entity or authority in Australia. It also includes any self-regulatory organisation established under statute or any stock exchange.

GST has the meaning given to that term in clause 23.1.

Interest Payment Date means the day which is 3 months after the Issue Date and thereafter the day which is 3 months after the previous Interest Payment Date until the Maturity Date and includes the Maturity Date (except that where there is a Conversion or a Redemption of the Notes under Condition 4, the Conversion Date or the Early Redemption Date (as the case may be) shall be the final Interest Payment Date in respect of the Notes Converted or Redeemed);

Interest Period means, in relation to a Note, the period from (and including) the Issue Date to (but excluding) the first Interest Payment Date and thereafter means:

- (a) where there is a Conversion Date or where the Notes are redeemed under Condition 4 (as the case may be), the period from (and including) the preceding Interest Payment Date to (and including) the Conversion Date or the Early Redemption Date (as the case may be); or
- (b) the period from (and including) the preceding Interest Payment Date to (but excluding) the following Interest Payment Date; or
- (c) the period from (and including) the preceding Interest Payment Date to (but excluding) the Maturity Date.

Interest Rate means 12.5% (expressed as a percentage rate per annum).

Issue Date means, in the absolute discretion of the Issuer, the date on which Notes are issued pursuant to the Prospectus.

Listing Rules has the same meaning as in section 761A of the Corporations Act as it relates to the ASX.

Liquidation includes receivership, compromise, arrangement, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors or bankruptcy, or any amalgamation or reconstruction (unless undertaken while solvent).

Maturity Date, in relation to a Note, means the Business Day immediately before the 18 month anniversary of the Issue Date.

Moneys Owning means all money which the Issuer (whether alone or not) is or at any time may become liable to pay to or for the account of the Trustee, a Noteholder or the Trustee on a Noteholder's behalf (whether alone or not) for any reason whatever under or in connection with any Transaction Document.

It includes:

- (a) the aggregate Principal Amount and any interest payable on all of the Notes and any other moneys payable to the Noteholders under or pursuant to this Deed; and;

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- (b) money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with this Deed or a Note, or as a result of a breach of or default by the Issuer under or in connection with any Transaction Document,

and in relation to a Noteholder means that portion of the Moneys Owing which is owing to or in relation to that Noteholder.

Where the Issuer would have been liable for any Moneys Owing but for its Liquidation, it will be taken still to be liable for such Moneys Owing.

Note means, at any time, an unsecured convertible note issued by the Issuer under this Deed.

Noteholder in relation to a Note, means, at any time, the person whose name is entered into the Register as the holder of that Note.

Principal Amount means, in relation to each Note, the nominal principal amount of such Note recorded in the Register.

Prospectus means the prospectus to be dated on or about 22 June 2009 lodged with ASIC by the Issuer for the issue of Notes after the date of this Deed.

Record Date has the meaning given in Condition 9 of the Conditions.

Redemption means redemption by the Issuer of all or some of the Notes then outstanding in accordance with the Conditions.

Register means the register of persons who hold Notes required to be kept and updated by the Issuer or the Registrar on its behalf in accordance with clause 5.

Registrar means the person appointed by the Issuer from time to time to keep and update the Register, and as at the date of this Deed is Computershare Investor Services Pty Limited

Related Body Corporate means a body corporate related to another body corporate by virtue of section 50 of the Corporations Act.

SCH means ASTC or other applicable CS facility licensee.

SCH Business Rules means the operating rules of ASTC or of any relevant organisation which is an alternative to, or successor or replacement of, ASTC or any applicable CS facility licensee.

Settled Sum means \$10.

Special Resolution means a resolution of Noteholders passed as a special resolution under clause 21.10(a).

Takeover Event means:

- (a) announcement by or on-behalf of the bidder to the ASX of a takeover bid under which the bidder proposes to obtain voting power in the Issuer of 50% or more; or
- (b) announcement to the ASX of a scheme of arrangement which, if effective, would result in a person obtaining voting power in the Issuer of 50% or more;

whether or not the bidder or person obtaining voting power already has voting power in the Issuer of 50% or more.

Takeover Period means the period of time commencing on a Takeover Event and ending:

- (a) in the case of a takeover bid, 5 Business Days before the close of the offer period under the bid; and
- (b) in the case of a scheme of arrangement, 5 Business Days after the day on which the Court makes an order approving the scheme.

Tax includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Government Agency, and any related interest, penalty, charge, fee or other amount. It includes GST.

Transaction Document means:

- (a) any Note;
- (b) this Deed;
- (c) any document or agreement which the Issuer and the Trustee (acting on the instructions of a special resolution of Noteholders) at any time agree is to be a Transaction Document for the purposes of this Deed; or
- (d) any document or agreement entered into under, or for the purposes of amending or novating, any of them.

Trustee Company means a corporation which would be entitled, according to laws of all States and Territories of the Commonwealth of Australia where any of the Notes were offered, to act as a trustee for the holders of Notes subscribed for pursuant to an offer or invitation to the public and which is a corporation which satisfies the requirements of section 283AC of the Corporations Act.

Unmarketable Parcel means any parcel of Notes which is not a **marketable parcel** as defined by the ASX Listing Rules or the SCH Business Rules.

Unpaid Interest means, in relation to a Note, any interest accrued and due on that Note which is not paid by the Issuer on its due date.

1.2 Interpretation

In addition to the following rules of interpretation which apply in this Deed, the interpretation provisions in the Conditions apply *mutatis mutandis* in this Deed, unless the contrary intention appears or the context otherwise requires.

- (a) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (b) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (c) A reference to a clause or schedule is a reference to a clause of, or schedule to, this Deed.

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- (d) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (e) A reference to the Trustee, the Company or any person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (f) Words and phrases not specifically defined in this Deed have the same meanings (if any) given to them in the Corporations Act.
- (g) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the next Business Day.
- (h) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (i) A reference to a party using its **best endeavours** or **reasonable endeavours** does not include a reference to that party paying money or providing other valuable consideration to or for the benefit of any person (and an obligation on a party to use its best or reasonable endeavours does not oblige that party to pay money or provide other valuable consideration to or for the benefit of any person).

1.3 Inconsistency

- (a) A provision of this Deed which is inconsistent with a provision of the Corporations Act (with any declarations made by or exemptions granted by the Australian Securities and Investments Commission which are current in respect of or applicable to this Deed) does not operate to the extent of the inconsistency, and this clause prevails over all provisions of this Deed.
- (b) If there is any inconsistency between the provisions of this Deed (other than the Conditions) and the Conditions then the Conditions will prevail to the extent of the inconsistency and the provisions of this Deed (other than the Conditions) will be construed accordingly.

1.4 Trustee capacity

- (a) Subject to paragraph (c), the Trustee is bound by and will undertake all covenants, terms and conditions on its part to be observed and performed in this Deed and in the Conditions in its capacity as trustee of the CBD Notes Trust only. Any actual, contingent or other kind of liability or right of indemnity in respect of any matter, thing, act or omission arising from this Deed or any other Transaction Document (in this clause called the **liability**) on the part of the Trustee:
 - (i) is at all times limited to the CBD Notes Trust in respect of which the liability arose; and
 - (ii) does not extend beyond money received by the Trustee for or on behalf of the Noteholders subject always to such payments, deductions or

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withholdings by the Trustee as are authorised by the Transaction Documents.

Subject to paragraph (c), this limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligation of the Trustee in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed.

- (b) Subject to paragraph (c), Issuer and any Noteholder may not sue the Trustee in any capacity other than as trustee of the CBD Notes Trust, including seeking the appointment of a receiver (except in relation to the property of the CBD Notes Trust), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (except in relation to the property of the CBD Notes Trust).
- (c) The limitation of the Trustee's liability pursuant to paragraphs (a) and (b) above will not apply to the extent that such liability arises from the Trustee's fraud, negligence or wilful default.

1.5 Inconsistency with ASX Listing Rules

This Deed is to be interpreted subject to the ASX Listing Rules and the ASTC Settlement Rules and accordingly:

- (a) if the ASX Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision;
- (f) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

This clause applies notwithstanding any other provision of this Deed.

1.6 Current accounting practice

A reference to **current accounting practice** is to accounting principles and practices applying by law or otherwise generally accepted in Australia, consistently applied. A reference to an accounting term is to be interpreted according to those principles and practices.

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2. Appointment of Trustee

2.1 Appointment of Trustee

The Trustee is appointed to act as trustee on behalf of the Noteholders on the terms and conditions set out in this Deed.

2.2 Extent of obligations

The Trustee has no obligations except those expressly set out in the Transaction Documents to which it is a party and the Corporations Act.

2.3 Excluded roles and duties

The appointment as Trustee does not mean that the Trustee:

- (a) is a trustee for the benefit of; or
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with, any Noteholder, the Issuer or any other person, except as expressly set out in any Transaction Document to which it is a party or the Corporations Act.

3. Issue of Notes

3.1 The Issuer may Issue Notes

The Issuer may issue Notes on the Issue Date. The Notes shall:

- (a) be issued to such persons as the Issuer thinks fit; and
- (b) be issued on the terms set out in the Conditions, but if the terms set out in the Prospectus or any supplementary prospectus are different from the terms set out in the Conditions, the terms in the Prospectus shall be deemed to be the Conditions in substitution for the terms in Schedule 1.

3.2 Creation by inscription

The Issuer creates the Notes by procuring the Registrar to inscribe the details of those Notes in the Register. The Notes will be taken to be issued upon entry of the Noteholder's name in the Register.

4. Legal Nature and Status of Notes

4.1 Legal nature of Notes

Issuer's and the Trustee's obligations in relation to the Notes are constituted by, and specified in, this Deed and become effective on entry in the Register of the details for those Notes and on such entry in the Register a Note will be deemed to be issued.

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4.2 Title to Notes

Subject to the Conditions, the person whose name appears in the Register as the holder of a Note will be treated by Issuer and the Trustee as, and Issuer and the Trustee will be entitled to recognise that person as, the absolute owner of that Note.

4.3 Transaction Documents

Noteholders are deemed to have notice of, and be bound by, each Transaction Document. Each Transaction Document is binding on Issuer and the Trustee.

4.4 Cleared funds

Notwithstanding any other provisions of this Deed, no actual or proposed Noteholder or any other person has any right, title or interest in, under or to any Note until Issuer has received cleared funds in payment in full of the money paid for a Note.

4.5 Status

- (a) The Notes:
 - (i) are direct, unsecured and unsubordinated obligations of the Issuer;
 - (ii) rank without preference or priority among themselves and at least equally with all present and future unsubordinated and unsecured obligations of the Issuer (except liabilities mandatorily preferred by law and subject to laws and principles of equity generally affecting creditors' rights); and
 - (iii) rank ahead of ordinary shareholders of the Issuer.
- (b) The ranking of Notes is not affected by the date of inscription in the Register.

4.6 No voting rights

The Notes do not carry a right to vote at any general meeting of the Issuer (other than at a meeting convened for the Noteholders) and the issue of a Note does not include the transfer of any voting rights attaching to any ordinary shares in the Issuer which may be issued on the conversion of the Note.

4.7 No right to participate in future issues

Subject to this Deed, Notes carry no right to participate in any future issue of securities by the Issuer.

5. The Register

5.1 Establishment of Register

The Issuer shall establish and maintain or cause to be established and maintained the Register in accordance with the Corporations Act.

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5.2 Trustee may accept correctness

The Trustee is entitled to accept the correctness of all information contained in the Register and is not liable to any person for any error in it, whether or not the information shown in the Register is inconsistent with any other document.

5.3 Audit of Register

If required by the Trustee, the Issuer will procure that its auditors conduct an audit of, and certify to the Trustee, the proper maintenance of the Register in accordance with the Corporations Act.

5.4 Details kept on Register

The following details must be entered on the Register:

- (a) **(date of issue)** the date on which each Note is issued;
- (b) **(details of Noteholders)** the name, address, email address and fax number of each Noteholder;
- (c) **(number of Notes)** the number of Notes held by each Noteholder;
- (d) **(date of entry)** the date on which a person was entered as a Noteholder;
- (e) **(date of cessation)** the date on which a person ceased to be a Noteholder;
- (f) **(account)** the account to which any payments due to a Noteholder are to be made (if applicable).
- (g) **(payments)** a record of each payment made in respect of each Note.
- (h) **(tax file number / Australian Business Number)** a record that the Issuer has received the tax file number or Australian Business Number of each Noteholder and, if applicable, the grounds for exemption from the requirement of a Noteholder to hold a tax file number; and
- (i) **(additional information)** such other information as is required by this Deed or the Corporations Act or the ASX Listing Rules

5.5 Details to be made available to the Trustee by the Issuer

The Issuer must make the information set out in clause 5.4 of this Deed available to the Trustee upon request.

6. Acknowledgement of Trust

6.1 Trust

The Trustee acknowledges receipt of the Settled Sum from the Issuer and agrees that it shall hold:

- (a) the Settled Sum;
- (b) all moneys received by it in its capacity as trustee for Noteholders;
- (c) the right of Noteholders to enforce the Issuer's duty to repay the Principal Amount;

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- (d) the right of Noteholders to enforce any other duties of the Issuer under this Deed, the Conditions or the Corporations Act; and
- (e) the benefit of this Deed and the Transaction Documents,
on trust for Noteholders, upon and subject to the terms and conditions of this Deed.

6.2 Name of Trust

The trust established under this Deed will be known as the CBD Notes Trust.

6.3 Benefit of Trust

- (a) Each Noteholder is entitled to the benefit of the CBD Notes Trust.
- (b) The provisions of this Deed and the Conditions are binding on Issuer and each Noteholder, and all persons claiming through them respectively.

6.4 Acknowledgement of indebtedness

The Issuer acknowledges its indebtedness to the Trustee as trustee for the Noteholders in respect of all amounts owing under or in respect of the Notes.

6.5 Discharge

Any payment to be made in respect of a Note by Issuer or the Trustee may be made as provided in the Conditions and any payment so made will to that extent be a good discharge to Issuer or the Trustee, as the case may be.

7. Repayment of Notes and Payment Of Interest

7.1 Repayment of Principal

The Issuer shall, in accordance with the Conditions, pay to the Trustee the Principal Amount represented by the Notes, but to the extent that the Issuer makes such payment to or at the written direction of a Noteholder, received prior to the relevant Record Date, this obligation is satisfied.

7.2 Payment of Interest

The Issuer shall, in accordance with the Conditions, pay to the Trustee the interest in respect of the Notes, but to the extent that the Issuer makes such payment to or at the written direction of a Noteholder received prior to the relevant Record Date, this obligation is satisfied.

7.3 Taxes

The payment of the Principal Amount and interest shall be made net of any Taxes required to be deducted and every such payment shall operate in satisfaction of the Issuer's obligations under this clause 7.

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7.4 Purchase of Notes

Subject to the Conditions, the Issuer may at any time, and from time to time, purchase any of the Notes in any manner the Issuer considers appropriate. However, (but without limiting the Conditions) this clause 7.4 will not of itself oblige any Noteholder to transfer any Notes to the Issuer.

7.5 Cancellation of Notes

All Notes redeemed or purchased by the Issuer, or converted by any person shall be cancelled by the Issuer forthwith upon Redemption, Conversion or purchase.

8. Representations and Warranties

8.1 General representations and warranties

Each of Issuer and the Trustee make the following representations and warranties.

- (a) **(Status)** It is a corporation duly incorporated under the laws of Australia.
- (b) **(Power for business)** It has the power to own its assets and to carry on its business (if any) as now conducted or contemplated.
- (c) **(Power for documents)** It has the corporate power to enter into and perform its obligations under the Transaction Documents to which it is a party.
- (d) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is a party.
- (e) **(Documents binding)** Each Transaction Document to which it is a party is its valid and binding obligation enforceable in accordance with its terms (subject to any necessary stamping).
- (f) **(Authorisations)** Each Authorisation which is required in relation to:
 - (i) the execution, delivery, issue and performance by it of each Transaction Document to which it is a party or any Note and each transaction contemplated by those documents; or
 - (ii) the validity and enforceability of those documents,
 has been obtained or effected. Each is in full force and effect. It has complied with each of them.
- (g) **(Transactions permitted)** The execution and performance by it of the Transaction Documents to which it is a party and each transaction contemplated by those documents did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (ii) its constitution; or
 - (iii) any other document or agreement that is binding on it or its assets.

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8.2 Trustee representation and warranty

The Trustee represents and warrants that it meets the requirements of a trustee as set out in section 283AC of the Corporations Act.

8.3 Reliance

Each of the Issuer and the Trustee acknowledge that the other party has entered into each Transaction Document to which it is a party in reliance on the representations and warranties in, or given under, this Deed.

8.4 No other representations

Other than as set out in clause 8.1 or as otherwise expressly provided in this Deed, the Issuer and the Trustee make no representation or warranty, express or implied, in relation to or in connection with the Notes.

8.5 Representations and warranties repeated

Each representation and warranty in clause 8.1 and 8.2 is deemed to be repeated on each Issue Date by reference to the facts and circumstances existing on that date and survive execution of this Deed.

9. General Undertakings by Issuer

The Issuer undertakes to the Trustee and each Noteholder that it will:

- (a) **(keep accounts)** keep or cause to be kept proper books of account (in accordance with current accounting practice and standards) and enter into those books full particulars of all dealings and transactions in relation to its business;
- (b) **(provide accounts)** provide the following:
 - (i) without charge, to the Trustee (at the time required by the Corporations Act) and to each Noteholder who requests it in accordance with section 318(2) of the Corporations Act, a copy of Issuer's consolidated audited Accounts in respect of each Financial Year and a copy of Issuer's annual report for that Financial Year; and
 - (ii) without charge, to the Trustee, a copy of Issuer's consolidated Accounts in respect of each Financial Half Year at the time required by the Corporations Act;
- (c) **(provide reports)** provide to the Trustee within one month after the end of each reporting period any report or other information required by the Corporations Act;
- (d) **(provide documents)** promptly give the Trustee copies of all material documents and notices received by it from any Noteholder or which it gives to a Noteholder, whether directly, through market release, public newspapers or otherwise;
- (e) **(provide copy of deed)** without charge, provide a copy of this Deed to the Trustee or a Noteholder if they request a copy;

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- (f) **(inspection and access to records)** whenever requested by the Trustee, promptly allow the Trustee or an officer or employee of the Trustee, to have access to and inspect its financial records and any other records and provide assistance to the Trustee, in respect of such inspection, as required.
- (g) **(confirm payments)** promptly after Redeeming or Converting any Note in full, confirm details of that Redemption or Conversion to the Trustee;
- (h) **(anti-money laundering)** take all action required to comply with the Anti-Money Laundering Counter-Terrorism Financing Act 2006 (**Act**), any regulation or rules passed in relation to this Act or any other anti-money laundering or counter-terrorism financing laws in connection with the performance of obligations by it under this Deed or in connection with the Transaction Documents to which it is a party, including the provision of any information and/ or documents reasonably required by a party to this Deed or a Transaction Document, to comply with all applicable anti-money laundering or counter-terrorism financing laws.
- (i) **(other information)** whenever requested by the Trustee, promptly give to the Trustee or any person authorised by the Trustee to receive it, such other information as the Trustee reasonably considers necessary for the purposes of the discharge of the duties, trusts and powers vested in the Trustee under this Deed or imposed upon it by law (provided that Issuer's obligation to do so shall not extend beyond its obligations of disclosure under the Corporations Act or the ASX Listing Rules);
- (j) **(failure to qualify or delisting)** if the Notes do not qualify, or cease to qualify, for official quotation on the ASX, all of the Notes will be redeemed automatically.
- (k) **(notify of Event of Default)** notify the Trustee within 2 Business Days if an Event of Default occurs or is likely to occur, giving full details of the event and any steps taken or proposed to remedy it;
- (l) **(provide notices)** notify the Trustee within 2 Business Days:
- (i) if any charge or encumbrance is created over the Issuer;
 - (ii) if it holds any assets as trustee of any trust and provide particulars to the Trustee; and
 - (iii) if any provision, term or obligation under this Deed or the Conditions cannot be, or has not been, complied with by the Issue and provide full details of such breach to the Trustee;
- (m) **(listing)** use its best endeavours to ensure that the Notes are, upon being issued, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and provide to the ASX such information as the ASX may require in accordance with the ASX Listing Rules and any other ASX requirements (including providing ASX with a copy of this Deed);
- (n) **(valuation)** provide the Trustee (at the Issuer's cost) a valuation of its assets and business conduct on a going concern basis, as and when requested by the Trustee, or provide any other information requested by the Trustee for the purpose

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of ensuring that the Trustee can comply with Chapter 2L of the Corporations Act; and

- (o) **(compliance with law)** comply with all laws binding on it with respect to the Notes, including the Corporations Act and the ASX Listing Rules and do anything reasonably requested by the Trustee to enable the Trustee to comply with the Corporations Act (or any other laws binding on the Trustee with respect to the Trustee or the Notes) and the ASX Listing Rules.

10. Trustee's Undertakings

10.1 Benefit of undertakings

The provisions of this clause 10 are for the benefit of the Noteholders.

10.2 Act continuously as trustee

The Trustee will act continuously as trustee of the CBD Notes Trust until the CBD Notes Trust is terminated as provided by this Deed or the Trustee has retired or been removed from office in the manner provided under this Deed or, if applicable, the Corporations Act.

10.3 Comply with general duties

The Trustee will:

- (a) **(act honestly)** act honestly and in good faith and comply with all relevant material laws in the performance of its duties and in the exercise of its discretions under this Deed;
- (b) **(conduct business)** use its best endeavours (consistent with its duties as a trustee) to carry on and conduct its business in so far as it relates to this Deed in a proper and efficient manner;
- (c) **(keep records)** keep accounting records which accurately record and explain all amounts paid and received by the Trustee in its capacity as trustee of the CBD Notes Trust;
- (d) **(separate assets and liabilities)** keep the assets of the CBD Notes Trust separate from all other assets of the Trustee in any capacity other than as trustee of the CBD Notes Trust and account for assets and liabilities of the CBD Notes Trust separately from those of other trusts and all other assets and liabilities of the Trustee in any capacity other than as trustee of the CBD Notes Trust;
- (e) **(further assurances)** take all reasonable actions which are necessary, including obtaining all necessary Authorisations which relate to it in its capacity as trustee of the CBD Notes Trust, to ensure that it is able to exercise all its powers and remedies and perform all its obligations under the Transaction Documents;
- (f) **(restrict activities)** not, in its capacity as trustee of the CBD Notes Trust, engage in any business or activity except as permitted, contemplated or required by the Transaction Documents;

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- (g) **(not guarantee)** not, in its capacity as trustee of the CBD Notes Trust, guarantee or become obligated for the debts of any other entity or hold out its credit as being available to settle the obligations of others except as contemplated or required by the Transaction Documents;
- (h) **(not interfere)** not interfere with the conduct of the business of Issuer provided that where that Trustee is acting at any time as instructed in a resolution of Noteholders, any act or omission by the Trustee will not be deemed to constitute the Trustee unduly interfering with the business of Issuer; and
- (i) **(comply with other duties)** comply with all other duties imposed on it under the Corporations Act in relation to the Notes.

10.4 Not dispose of assets

Except as provided or permitted in, or required by, any Transaction Document, the Trustee will not, nor will it permit any of its officers to, sell, mortgage, charge or otherwise encumber or part with possession of any asset of the CBD Notes Trust. Nothing in this clause will prohibit the Trustee from taking or having a lien over any asset of the CBD Notes Trust or from taking such action (in accordance with this Deed) as it deems necessary to exercise or realise its rights in relation to any indemnity given under any Transaction Document.

10.5 Perform Transaction Documents

The Trustee will properly perform the functions which are required of it under all Transaction Documents in respect of the CBD Notes Trust.

10.6 Maintain insurance

The Trustee will, while it is trustee under this Deed, maintain adequate professional indemnity insurance and will confirm to Issuer its compliance with that obligation on request by Issuer.

11. Events of Default

11.1 Events of Default

For the purposes of this clause 11 each of the following shall constitute an **Event of Default**:

- (a) **(default in payment of principal)** the Issuer makes default in the payment of any principal which it is bound to pay under the Conditions;
- (b) **(default in payment of interest)** the Issuer makes default in the payment of any interest which it is bound to pay under the Conditions and such default continues for a period of 10 days after the due date for payment of the interest;
- (c) **(failure to allot)** the Issuer fails to allot, within 10 Business Days after the date on which it is bound by the Conditions, the shares which are to be allotted on conversion of the Notes; and
- (d) **(failure to give notice)** the Issuer fails to provide a notice to the Trustee within 2 Business Days in the circumstances described in clause 9(i) and 9(k) of this Deed.

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- (e) **(winding up, arrangements, insolvency etc)** if:
- (i) the Issuer:
 - (A) becomes insolvent and is unable to pay its debts as they fall due, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts;
 - (B) commences negotiations, steps or proceedings with a view to readjustment, rescheduling or deferral of all of its debts (or any part of its indebtedness which it will or might otherwise be unable to pay when due)
 - (C) proposes or makes a general assignment or any arrangement or composition with or for the benefit of its creditors; or
 - (D) a moratorium is agreed or declared in respect of or affecting all or a material part of the Issuer;
 - (ii) the Issuer takes any steps to obtain protection, or is granted protection from its creditors or an administrator is appointed to the Issuer; or
 - (iii) except for the purpose of a solvent reconstruction or amalgamation, a bona fide application or an order is made, proceedings are commenced (and those proceedings are not struck out or withdrawn within 30 days), a resolution is passed or proposed in a notice of meeting or an application to a court or other steps (other than frivolous or vexatious applications, proceedings, notices and steps) are taken for:
 - (A) the winding up, dissolution, official management or administration of the Issuer; or
 - (B) the Issuer enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.

11.2 Consequence of Breach

- (a) In addition to any other rights provided by law or by the Conditions, at any time after an Event of Default which is subsisting and has not been waived by the Trustee, or remedied by the Issuer, the Trustee will by notice to the Issuer declare all Moneys Owing immediately due and payable, and the Issuer shall immediately pay such amounts.
- (b) The Trustee may (but is not required to) seek further direction by ordinary resolution from Noteholders,

11.3 Subsistence of an Event of Default

An Event of Default subsists until it has been:

- (a) waived in writing by the Trustee; or
- (b) remedied by the Issuer within 10 Business Days of the Issuer becoming aware of that Event of Default.

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12. Enforcement of this Deed

12.1 Enforcement on direction of Noteholders

The Trustee shall take action to enforce any Transaction Document, in accordance with and subject to their terms, where all the following conditions are satisfied:

- (a) the Trustee is directed by the Noteholders to take the action; and
- (b) the direction to the Trustee is made by a resolution of Noteholders passed in accordance with clause 21.10(b); and
- (c) the Trustee is indemnified by the Noteholders, to its satisfaction, against:
 - (i) all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action; and
 - (ii) all costs, fees, charges, damages and expenses which the Trustee may thereby incur; and
- (d) the Trustee, acting on the advice of its legal counsel, is not of the view that such enforcement is inconsistent with the Conditions, this Deed or the Corporations Act.

If the Trustee forms the view that such action is or could be inconsistent with this Deed or the Corporations Act or any other applicable law or is or could be otherwise objectionable, it must take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable, and subject to the availability of sufficient funds, a court direction or order to set aside or vary any direction given by Special Resolution or ordinary resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by such Special Resolution or ordinary resolution.

12.2 Compromise or Settlement of Enforcement

The Trustee must call a meeting of Noteholders and be directed by an ordinary resolution of Noteholders before:

- (a) initiating any enforcement action in relation to an Event of Default; or
- (b) entering into any compromise or settlement of a dispute or enforcement action against the Issuer for any Event of Default or other material breach of this Deed,

provided that the Trustee shall not be obliged to call any meeting if it does not have a reasonable expectation that the Issuer will have sufficient funds to cover its costs in calling a meeting of Noteholders. If the Trustee does not call a meeting of Noteholders as contemplated above, then it can not, and is not obliged to, take any action described in paragraphs (a) and (b) of this clause 12.2.

12.3 No individual enforcement

Unless the Trustee having become obliged to take action to enforce the rights of the Noteholders under this Deed fails to do so within 10 Business Days of being obliged to do so and such failure is continuing, the rights of each Noteholder to enforce the obligations of Issuer under Notes are limited to the exercise of its rights to enforce and seek due administration by the Trustee of this Deed. In particular, unless the Trustee having

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become obliged to take action to enforce the rights of the Noteholders under this Deed fails to do so within 15 Business Days of being obliged to do so and such failure is continuing, no Noteholder may, with respect to payment of any amount due under the Notes held by it:

- (a) issue any demand under section 459E(1) of the Corporations Act (or any analogous provision under any other law) against Issuer;
- (b) apply for or take any steps for the purpose of obtaining the winding-up, dissolution or other insolvency administration of Issuer;
- (c) levy or enforce any distress or other execution to, on, or against any assets of Issuer;
- (d) apply for or take any step for the appointment by a court of a liquidator, receiver, receiver and manager or similar officer to any of the assets of Issuer; or
- (e) do anything analogous to any of the above or take proceedings for any of the above.

12.4 Invalid resolution

The Trustee is entitled to act on, and shall not be in any way responsible for acting on, a resolution purporting to have been passed at any meeting of Noteholders where minutes of the relevant meeting have been made, signed by the Chair of the meeting and provided to the Trustee even though it may subsequently be found that there was some defect in the constitution of the meeting or that the passing of the resolution was not valid or binding on any of those Noteholders whom it purports to bind or on the Trustee.

13. Trustee’s Powers and Discretions

13.1 Powers of the Trustee

Subject to this Deed, the Trustee (in addition to those powers of trustees arising under any law) has all the powers in relation to the trusts constituted by this Deed that it is legally possible for a natural person or corporation to have, and (without limitation):

- (a) **(applicable law)** has the powers and discretions, and is entitled to have indemnities and protections, conferred on trustees by applicable law except to the extent that this Deed expressly provides otherwise;
- (b) **(use agents)** may exercise its rights and perform its duties either personally or through agents or contractors selected by it with reasonable care;
- (c) **(representation)** may at any time represent the Noteholders generally in:
 - (i) any investigation, negotiation, action, transaction or proceeding relating to or affecting the interests of the Noteholders; or
 - (ii) the enforcement of the rights of the Noteholders or the Trustee;
- (d) **(delegate)** in addition to paragraph (b) above, the power to delegate to any person the trusts, powers or discretions vested in the Trustee by this Deed, including this right of delegation, on such terms and conditions as the Trustee, in the interests of Noteholders, thinks fit, but so that the Trustee is responsible for any acts or

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omissions of any person to whom the delegation is made to the same extent as if the delegation had not been made;

- (e) **(modify deed)** without limiting Issuer's rights under the Conditions, by agreement with Issuer from time to time, the power to modify the terms of this Deed and the Conditions where such modification is:
 - (i) of a formal, minor or technical nature;
 - (ii) made to correct a manifest error;
 - (iii) made to comply with any law or the ASX Listing Rules;
 - (iv) made to comply with the listing or quotation requirements of any securities exchange on which Issuer may propose to seek quotation of the Notes or is convenient for the purpose of obtaining or maintaining the listing or quotation of the Notes; or
 - (v) in the opinion of the Trustee, is not likely (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously with that modification) to be prejudicial to the interests of the Noteholders;
- (f) **(make modifications agreed to by Noteholders)** without limiting Issuer's rights under the Conditions, by agreement with Issuer, the power to make any alteration, modification or replacement of this Deed or the Conditions which has been assented to by the Noteholders by Special Resolution;
- (g) **(waive as instructed)** on the instructions of the Noteholders by ordinary resolution, the power to waive any breach by Issuer of any of the obligations binding on it under this Deed, on such terms as the Noteholders instruct;
- (h) **(waive without instruction)** the power to waive any minor breach of a formal, technical or administrative nature by Issuer of any of the obligations binding on it under this Deed, on such terms as the Trustee thinks fit, provided that the Trustee believes on reasonable grounds that the Noteholders will not be materially prejudiced as a result of granting such waiver;
- (i) **(seek advice)** the power to seek the advice of any barrister, solicitor or accountant or any other expert that the Trustee reasonably and properly considers necessary for the purposes of the discharge of the duties, trusts and powers vested in the Trustee under this Deed or imposed upon it by law;
- (j) **(rely on advice)** the power to rely on the advice of any barrister, solicitor or accountant or any other expert, whether obtained by the Trustee or by Issuer or by any Related Body Corporate of Issuer; and
- (k) **(interpret deed)** the power to determine all questions and matters of doubt arising in relation to the Conditions, and every such determination, whether made on a question actually raised or implied in the acts or proceedings under this Deed, is conclusive and binding on the Noteholders, Issuer and all persons claiming through them.

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13.2 Legal Proceedings

The Trustee may apply to any court for directions in relation to any question and may assent to and approve or oppose any application to any court made by or at the instance of any Noteholder. The Trustee shall provide written notice to the Issuer of any application made by it or by a Noteholder pursuant to this clause 13.2.

13.3 No obligation to inform

Nothing contained in this Deed shall impose on the Trustee an obligation to inform any Noteholders of any breach by the Issuer of any provision of this Deed.

13.4 Discretion of Trustee absolute

The Trustee shall, as regards all the trusts, powers, authorities and discretions vested in it by this Deed, subject to the terms and conditions of this Deed, have absolute and uncontrolled discretion as to the exercise of them in all respects.

13.5 Trustee may be a Noteholder

- (a) Nothing in this Deed will prohibit the Trustee from being a Noteholder or from acting in any representative capacity for a Noteholder, including so acting on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity, nor shall acting in any such capacity be deemed a breach of the obligations arising out of the fiduciary relationship between the Trustee on the one hand and the Noteholders on the other which is established under this Deed or otherwise imposed or applied by law.
- (b) The Trustee will not by reason of its fiduciary capacity be prevented from making any contracts or entering into any transactions with the Issuer or any of its Related Bodies Corporate.

13.6 Trustee reliance on the Issuer

The Trustee is:

- (a) entitled to accept a certificate signed by any two Directors as to any factual matter as conclusive evidence of the matter;
- (b) entitled to accept and act on any information, statements, certificates, report, balance sheet or account supplied by the Issuer or any Director, Secretary, Auditors or duly authorised officer of the Issuer; and
- (c) entitled to accept and act upon the statements and opinions contained in any statement, certificate, report, balance sheet, or account given pursuant to the provisions of this Deed as conclusive evidence of the contents of it.

13.7 Trustee not obliged to notify or investigate

Subject to section 283DA of the Corporations Act, the Trustee need not:

- (a) notify any person of the execution of this Deed; or

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- (b) take any steps to ascertain whether there has occurred any:
 - (i) Event of Default; or
 - (ii) event which constitutes or which, with the giving of notice or the lapse time or the issue of a certificate would constitute an Event of Default; or
- (c) enquire as to whether the provisions of any Transaction Document have been complied with; or
- (d) request information or otherwise keep itself informed about the circumstances of Issuer or consider or provide to any Noteholder any information with respect to the Issuer (whenever coming into its possession).

This clause 13.7 in no way limits the Trustee's obligations under clause 10 and clause 11

13.8 Consents etc may be conditional

Subject to the terms and conditions of this Deed, any consent, authority, determination or waiver given by the Trustee for the purpose of this Deed may be given on terms and subject to conditions (if any) the Trustee thinks fit.

14. Liability of the Trustee and indemnity

14.1 Limitation of liability and responsibility

The Trustee is not liable to the Issuer any Noteholder or any other person in any capacity other than as trustee of the Trust.

A liability to the Issuer or any Noteholder arising under or in connection with this Deed is limited to and can be enforced by the Issuer or any Noteholder against the Trustee only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

The Issuer and any Noteholder may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Trust).

The Issuer and each Noteholder waive their rights and release the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed, which cannot be paid or satisfied out of any property held by the Trustee.

The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.

The Issuer acknowledges that it is responsible under this Deed for performing a variety of obligations under this Deed. No act or omission of the Trustee (including any related failure

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to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default of the Trustee for the purposes of clause 14 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer or any other person.

No attorney, agent or delegate appointed in accordance with this Deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 14.

14.2 Indemnity from the Issuer

- (a) Without prejudice to any indemnity allowed by law and subject to clause 14.1, the Issuer shall indemnify the Trustee for all costs, charges, expenses and liabilities incurred and payments made in or about the proper execution, administration or enforcement of this Deed or the exercise of any right under any Transaction Document by the Trustee and the remuneration payable by the Issuer to the Trustee.
- (b) The indemnity in clause 14.2(a):
 - (i) is a continuing obligation;
 - (ii) is separate and independent from the Issuer's other obligations; and
 - (iii) survives the termination of this Deed.

14.3 Release

Where clause 14.1 is not effective to absolve the Trustee from any liability mentioned in clause 14.1 the Noteholders may release the Trustee in respect of any such liability to the extent and in the manner contemplated by section 283DB of the Corporations Act.

15. Remuneration of Trustee

15.1 Fees

- (a) The Issuer must pay fees to the Trustee on terms agreed between the Issuer and the Trustee from time to time.
- (b) If the Trustee takes any enforcement action in relation to any Transaction Document, the Issuer agrees to pay to the Trustee on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such enforcement action, as shall from time to time be agreed between the Issuer and the Trustee.
- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 15.1(b) above, the Trustee shall be entitled to charge the Issuer reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:

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- (i) reflect the level of expertise required to perform the work; and
- (ii) be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind being performed by the Trustee's officers and employees.

15.2 Reimbursement of costs

On demand, without limiting the generality of the other provisions of this Deed, and without prejudice to any other right of indemnity given by law to trustees but subject to any agreement to the contrary, the Issuer will reimburse or pay to the Trustee all costs, charges and expenses and other liabilities including solicitor and client as well as party and party legal costs and any stamp or other duty reasonably and properly incurred or payable by the Trustee in connection with the execution or purported execution of the trusts hereof or (without limiting the generality of the foregoing):

- (a) in or in connection with the carrying out by the Trustee of any right, power, privilege, authority or discretion by any Transaction Document conferred expressly or impliedly on the Trustee or on any Noteholder;
- (b) in or in connection with any breach or default in the observance or performance by the Issuer of any of the covenants, obligations and conditions of any Transaction Document; or
- (c) in or in connection with the convening and holding of any meeting of Noteholders or the carrying out of any directions or resolutions of such meeting.

15.3 Priority of payments

All the remuneration and payments mentioned above shall be paid in priority to any claim by any Noteholder and, subject to the terms provided above, shall continue to be payable until the Trust is terminated. This priority of the Trustee shall subsist whether or not a receiver is appointed or the Trust is in the course of administration by or under the order of any court.

16. Retirement of Trustee and appointment of new trustee

16.1 Right of Trustee to retire

Subject to any statutory provisions for the time being relating to the retirement of trustees, the Trustee may retire at any time (with or without giving any reason for its retirement) after the expiration of not less than 60 days' notice in writing to the Issuer of its intention so to do provided that such retirement shall not take effect until a new trustee who is willing to act and who is a Trustee Company has been appointed by the Issuer in accordance with the provisions of this clause 16.

16.2 Power of Issuer to appoint a new trustee

The power under this Deed of appointing a new trustee of the Trust is vested in the Issuer and the Issuer may at any time remove the Trustee and appoint a new trustee of the Trust (who must be a Trustee Company and may be a Related Body Corporate of the Issuer):

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- (a) on not less than 60 days' notice; or
- (b) immediately if:
 - (i) any of the events referred to in section 283BD of the Corporations Act occur in relation to the Trustee;
 - (ii) any of the events referred to in clause 11.1(e) occurs in relation to the Trustee (as if reference in that clause to the "Issuer" were a reference to the "Trustee"); or
 - (iii) the Trustee is in material breach of any of its obligations under any Transaction Document and the breach is not capable of remedy, or the breach is capable of remedy and has not been remedied within 10 Business Days after receiving written notice of the default from the Issuer requiring the default to be remedied.

16.3 Power of existing Trustee to appoint a new trustee

If:

- (a) when the period of notice referred to in clause 16.1 expires, a new trustee (who must be a Trustee Company) has not been appointed;
- (b) the Issuer removes the Trustee under clause 16.2 but does not appoint a new trustee by 10 Business Days of the removal becoming effective; or
- (c) the Noteholders remove the Trustee under Condition 21.14(b) but do not appoint a new trustee by 10 Business Days of the removal becoming effective,

the Trustee may at any time thereafter and so long as an appointment has not been made by the Issuer or the Noteholders, appoint in writing another person to act as the new trustee of the Note Trust (who must be a Trustee Company) and any such appointment shall be effective without the further approval of the Issuer or of the Noteholders.

16.4 Retirement or removal of Trustee

On the retirement or removal of the Trustee, the retiring or departing Trustee shall at the cost of the Issuer do all such things and execute all such deeds and assurances as are reasonably necessary for the purpose of vesting in the new trustee or new trustees all money, property, rights, powers, authorities and discretions vested in the Trustee under this Deed.

16.5 Release of Trustee

Upon the appointment of the new trustee, the retiring or departing Trustee shall be released from all further obligations and liabilities in respect of the Note Trust arising after the date its retirement or removal takes effect. The retirement or removal of the Trustee will not be effective unless and until a replacement Trustee has been appointed in accordance with this clause 16.

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17. Application of Money Received

All moneys received by the Trustee in respect of amounts payable under this Deed will be applied for the following purposes and, subject to the Conditions, in the following order of priority:

- (a) first – in payment of all costs, charges, expenses and liabilities incurred and payments made by the Trustee under or in connection with this Deed or any other Transaction Document (including all remuneration payable to the Trustee);
- (b) second – in payment of any amounts due and payable on each Note by Issuer under this Deed *pari passu* and without preference or priority amongst Noteholders, subject to any necessary rounding; and
- (c) third – in the payment of the balance (if any) to Issuer without prejudice to the provisions of this clause 17.

18. Termination of Note Trust

18.1 Termination events

The Note Trust will terminate on the earliest to occur of the following:

- (a) the date immediately following the later of:
 - (i) the Redemption or Conversion in full of all Notes; and
 - (ii) the payment of all costs, charges and expenses properly incurred by the Trustee under or in connection with this Deed or any other Transaction Document;
- (b) the date on which the Noteholders unanimously determine that the Note Trust is to be wound up; or
- (c) the date which is the day prior to the eightieth anniversary of the date of this Deed.

18.2 Disposal and distribution of trust assets on termination

If the Note Trust is terminated in accordance with clause 18.1, the Trustee must distribute the balance of the capital and income of the Note Trust (including, without limitation, cash) .

18.3 Release

Upon termination of the Note Trust under clause 18.1(a), (b) or (c), the Trustee and the Issuer are discharged and released from all their obligations under this Deed.

19. Notices

19.1 Service of notices

- (a) A notice may be given by Issuer or the Trustee to any Noteholder, or in the case of joint Noteholders to the Noteholder whose name appears first in the Register, personally, by leaving it at the Noteholder’s registered address or fax number (as

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the case may be) or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission addressed to the Noteholder's registered address or fax number (as the case may be) or, by publishing such notice in a national newspaper, or in any case, by other electronic means, including by email or by posting a web notice on the internet, determined by Issuer or the Trustee. If the notice is signed, the signature may be original or printed.

- (b) A notice given by Issuer, the Trustee or a Noteholder to Issuer or the Trustee must:
- (i) be in writing and signed by a person duly authorised by the sender; and
 - (ii) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address below or the address last notified by Issuer or Trustee, or sent by a facsimile transmission to the fax number below or the fax number last notified by Issuer or Trustee:

Issuer

Suite 2, Level 2
53 Cross Street
Double Bay NSW 2028

Attention: Company Secretary
Fax No: (02) 9363 9955

The Trustee

Level 22
207 Kent Street
Sydney NSW 2000

Attention: Corporate Trust
Fax No: (02) 9028 5942

19.2 When notice considered to be received

Any notice is taken to be received:

- (a) if served personally or left at the intended recipient's address, when delivered;
- (b) if sent by post, on the third day (or, if posted to or from a place outside Australia, sixth day) after the envelope containing the notice is posted; and
- (c) if sent by facsimile or other electronic transmission, on production of a report by the machine or other system by which the transmission is sent indicating that the transmission has been made in its entirety to the correct fax number or other transmission address and without error,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

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19.3 Service on deceased Noteholders

A notice served in accordance with this clause 19 is (despite the fact that the Noteholder is then dead and whether or not Issuer has notice of the Noteholder's death) considered to have been properly served in respect of any Note, whether held solely or jointly with other persons by the Noteholder, until some other person is registered in the Noteholder's place as the Noteholder or joint Noteholder. The service is sufficient service of the notice or document on the Noteholder's personal representative and any persons jointly interested with the Noteholder in the Notes.

20. Lodgement of documents by Noteholders

Where in this Deed provision is made for or reference is made to the production, surrender, lodgment or delivery of, instruments of transfer or transmission of Notes or other documents or the giving of notice in each case by transmission of Notes or other documents or the giving of notice in each case by Noteholders to the Issuer, the same will be deemed not to have been produced, surrendered, lodged, delivered or given to the Issuer by any Noteholder unless and until it is actually received by the Issuer at the place where the Register is kept or such other place as the Issuer may reasonably nominate for the purposes of this clause.

21. Meetings of Noteholders

21.1 Trustee or Issuer may convene a meeting of Noteholders

The Trustee or the Issuer may at any time convene a meeting of the Noteholders and must do so if required by the Corporations Act.

21.2 Power of Noteholders to direct Issuer to convene a meeting

- (a) The Issuer undertakes to hold a meeting of Noteholders if required to do so in accordance with Part 2L.5 of the Corporations Act.
- (b) A requisition of a meeting called under paragraph (a) shall state the general nature of the business proposed to be dealt with at the meeting. Meetings of Noteholders must be held at such place as the Trustee and the Issuer shall from time to time reasonably determine or approve.

21.3 Right of attendance

The Trustee, its solicitors and such other experts or advisors as the Trustee may engage, the Directors, the Issuer's solicitors, the Auditors and such other experts or advisors as the Issuer may engage, have the right to attend and, if they wish to, address any meeting of Noteholders.

21.4 Notice

- (a) Any notice of meeting of Noteholders must be given with at least 14 days' or, when the meeting is to consider a special resolution, 21 days' prior notice to the Noteholders, the Trustee must specify:

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- (i) who convened the meeting;
 - (ii) the place, day and hour of the meeting;
 - (iii) the nature of the business to be transacted at the meeting; and
 - (iv) the place where any instrument appointing a proxy or attorney or other authority described in clause 21.12(c) shall be deposited.
- (b) Any accidental omission to give any notice of any meeting or the non-receipt by any Noteholder of any notice shall not invalidate the proceedings of any meeting, but where notice of a meeting convened by the Issuer is not received by the Trustee or notice of a meeting convened by the Trustee is not received by the Issuer, all business transacted and all resolutions passed at the meeting shall (unless the party who did not receive the notice otherwise agrees) be void and of no effect.

21.5 Quorum

- (a) At any meeting of Noteholders there will be quorum if:
- (i) 2 or more Noteholders present in person or by proxy or attorney are present; and
 - (ii) the Noteholders who are so present hold more than 10% in aggregate Principal Amount of all the Notes on issue at the time of the meeting.

No business shall (subject to paragraph (b) below) be transacted at any meeting unless the requisite quorum is present at the commencement of business.

- (b) If, within half an hour from the time appointed for any meeting of the Noteholders, a quorum is not present the meeting shall stand adjourned to such day and time of not less than 14 days' or, if the meeting was to consider a special resolution, 21 days' later and at a place announced by the chair at the time of the adjournment. If at such adjourned meeting a quorum is not present the Noteholders then present (provided that there are 2 or more Noteholders present who hold more than 5%, in terms of aggregate in Principle Amount and are entitled to vote) shall form a quorum and may transact any business which a meeting of Noteholders is competent to transact.

21.6 Chair

A person, who need not be a Noteholder, nominated by the Trustee is entitled to take the chair at every meeting of Noteholders. If the Trustee does not nominate a chair or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Noteholders present may choose an individual present to be chair.

21.7 Voting

- (a) Every question submitted to a meeting of Noteholders must be decided in the first instance by a show of hands.
- (b) At every meeting of Noteholders each voter is:
 - (i) on a show of hands, entitled to one vote; and

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- (ii) on a poll, entitled to one vote in respect of each Note held by the Noteholder or by the person for whom he is the proxy or attorney.
- (c) At any meeting of Noteholders, unless a poll is demanded by:
 - (i) the chair or the Trustee; or
 - (ii) at least 5 Noteholders present in person or by proxy or by attorney; or
 - (iii) Noteholders present in person or by proxy or by attorney who together hold at least 5% in aggregate of the Principal Amount of all the Notes on issue at the time of the meeting; or
 - (iv) the Issuer,

a declaration by the chair that a resolution has been carried by a particular majority or lost or not carried by a particular majority is conclusive evidence of the fact.
- (d) Where a poll is demanded under paragraph (c) above it shall be taken either at once or after an interval of adjournment. If the poll is to be taken on an adjournment, the poll shall be taken as the chair directs, but in no case shall the date on which the poll is taken be a date more than 30 days from the date of the adjournment. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (e) The chair may with the consent of such meeting adjourn the same from time to time and from place to place.

21.8 Right to vote

A Noteholder or, in the case of joint Noteholders, the Noteholder whose name stands first on the Register, shall be entitled to vote in respect of such Notes either in person or by proxy or attorney in accordance with the Conditions.

21.9 Resolution binding

A resolution passed at a meeting of Noteholders duly convened and held is binding on all the Noteholders whether present or not present at such meeting, whether they are in favour or opposed to the resolution and each of the Noteholders is bound to give effect to any resolutions passed at such meeting.

21.10 Resolution is passed

- (a) A resolution shall be deemed duly passed as a Special Resolution if it is approved in either of the following ways:
 - (i) by a resolution in writing signed by Noteholders that represent not less than 75% in aggregate of the Principal Amount of all the Notes then on issue, which resolution may be contained in one document or in several documents in like form each signed by one or more Noteholders; or
 - (ii) at a meeting of Noteholders, by not less than 75% of the votes cast.

For the purpose of paragraph (a)(ii), the Noteholders as recorded in the Register 48 hours before the time appointed for the holding of the meeting shall be the only

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Noteholders entitled to vote on any such resolution and the Notes so recorded at such time are the only Notes taken into account in determining whether the requisite majority has been obtained.

- (b) Any resolution (other than a Special Resolution) shall be deemed duly passed as an ordinary resolution if it is approved in any one of the following ways:
 - (i) by a resolution in writing signed by Noteholders who represent more than 50% in aggregate of the Principal Amount of all the Notes then on issue which resolution may be contained in one document or in several documents in like form each signed by one or more Noteholders; or
 - (ii) at a meeting of Noteholders, if carried by more than 50% of the votes cast.

For the purpose of paragraph (b)(ii), the Noteholders as recorded in the Register 48 hours before the time appointed for the holding of the meeting shall be the only Noteholders entitled to vote on or sign any such resolution and the Notes so recorded at such time are the only Notes taken into account in determining whether the requisite majority has been obtained.

- (c) Minutes of all resolutions and proceedings at every such meeting of Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Issuer. Any minutes purporting to be signed by the chair of the meeting at which such resolutions were passed, or proceedings taken, or by the chair of the next succeeding meeting of Noteholders, shall be conclusive evidence of the matters contained in those minutes and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings taken to have been duly passed and taken.

21.11 Circular resolution

A resolution can be made by way of circular resolution.

21.12 Proxy

- (a) A Noteholder may by a notice in writing in the form for the time being available from the specified officer of the Registrar signed by the Noteholder or, in the case of a corporation executed under its common seal or signed on its behalf by its duly appointed attorney or a duly authorised officer of the corporation, appoint any person to attend and act on that person's behalf in connection with any meeting or proposed meeting of the Noteholders. Every such proxy shall enable the Noteholder to vote for or against any resolution and shall be in any usual or common form or in any other form which the Directors may approve.
- (b) Any person may be appointed a proxy whether or not that person is a Noteholder.
- (c) An instrument appointing an attorney and an instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed shall be deposited at such place as the Issuer or Trustee (as relevant) shall in the notice convening the meeting direct not less than 24 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time

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appointed for the taking of the poll) and in default, the power of attorney or instrument of proxy, as the case may be, may at the discretion of the Issuer or Trustee be invalid.

- (d) The Noteholders as recorded in the Register 24 hours before the time appointed for the holding of the meeting and no other person or persons shall be recognised and treated as the legal holders of the Notes for any purpose associated with any meeting of Noteholders.

21.13 Referral to Noteholders

The Trustee or the Issuer may, at its discretion, refer any question arising under or in connection with this Deed to a meeting of Noteholders and may if it thinks fit act in accordance with any resolution passed in relation to such question. This clause 21.13 does not curtail or limit in any way any power of the Issuer or the Trustee under this Deed.

21.14 General Powers of Meeting of Noteholders

Subject to other provisions of this Deed, a meeting of Noteholders will in addition to all other powers have the following powers exercisable:

- (a) by special resolution:
 - (i) to sanction the release of the Issuer from all or part of its liability to pay the Moneys Owing on any Notes;
 - (ii) to sanction any modification or compromise or arrangement in respect of the rights of Noteholders against the Issuer;
 - (iii) to give any sanction, direction or request which under any of the provisions of this Deed is required to be given by a special resolution of Noteholders; and
- (b) by ordinary resolution, to remove the Trustee.

22. Taxes

- (a) The Issuer shall pay all stamp, transaction, registration and similar Taxes (including fines and penalties but not including income taxes) for which the Issuer is liable under a Transaction Document and which may be payable in relation to the execution, delivery, performance or enforcement of any Transaction Document or any payment or receipt or any other transaction contemplated by any Transaction Document.
- (b) The Issuer is not liable for any Tax or other charge arising from the ownership, transfer or maturity of the Notes. The holder of the Notes must pay all Tax and other charges, if any, payable in connection with the ownership, transfer and maturity of the Notes.

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23. GST

23.1 Definitions

In this clause 23:

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Recipient has the meaning given by the GST Law.

Tax Invoice has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

23.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 23 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive. Payment of the GST Amount is conditional upon the prior delivery to the Recipient of the supply of a valid Tax Invoice.

23.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

23.4 Cost exclusive of GST

Any reference in this Deed (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.

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23.5 GST obligations to survive termination

This clause 23 will continue to apply after expiration or termination of this Deed.

24. General Provisions

24.1 Deemed terms

Any terms required by law from time to time to be in this Deed are deemed to be set out in this Deed.

24.2 Waivers, remedies cumulative

Except as provided in this Deed, no failure to exercise and no delay in exercising on the part of any party of any right, power or privilege under this Deed shall operate as a waiver. Nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of that or any other right, power or privilege.

24.3 Severability of provisions

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent of that prohibition or unenforceability. This does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

24.4 Counterparts

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

24.5 Inspection of this Deed and copies of this Deed

The Noteholders may inspect a copy of this Deed at the registered office of the Issuer or at the place where the Register is kept during normal business hours, and shall be entitled to a copy of it on payment of the prescribed fee within 15 Business Days of receipt of such payment by the Issuer.

24.6 Governing law, jurisdiction and service of process

This Deed is governed by the laws of New South Wales. Each Person taking benefit of or bound by this Deed submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and waives any right it has to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction. Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on the Issuer by being delivered to or left for the Issuer at its address as stated in this Deed.

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24.7 Receipt of application moneys

Where payment of application money is made by cheque, it is deemed received at the time when, and at the place where, it is actually received by the Issuer or its agent, subject to that cheque subsequently being cleared.

25. Rights and obligations of Noteholders

25.1 Noteholders bound

Each Noteholder and any person claiming through each Noteholder who asserts an interest in a Note under this Deed is bound by this Deed.

25.2 Deed

Subject to this Deed, each Noteholder has the benefit of and is entitled to enforce this Deed even though it is not a party to, or is not in existence at the time of execution and delivery of, this Deed.

25.3 Independent enforcement

Subject to this Deed, each Noteholder may enforce its rights under this Deed independently from each other Noteholder.

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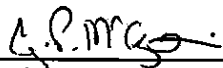
Note Trust Deed

Allens Arthur Robinson 

EXECUTED and **DELIVERED** as a deed in Sydney.

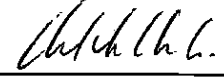
Each attorney executing this Deed states and declares that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered by CBD Energy Limited:



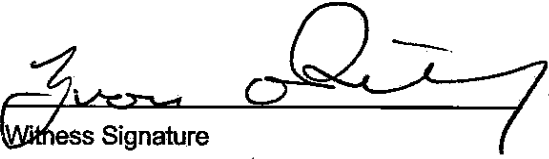
Director Signature
G.P. MCGOWAN

Print Name



Secretary Signature
DIRECTOR
MARK VAILE

Print Name



Witness Signature
YVONNE O'REILLY

Print Name

The Common Seal of Australian Executor Trustees Limited ACN 007 869 794 was affixed with the authority of:

..... (signed)
..... (print name)

Authorised Officer

..... (signed)
..... (print name)

Authorised Officer

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EXECUTED and **DELIVERED** as a deed in Sydney.

Each attorney executing this Deed states and declares that he has no notice of revocation or suspension of his power of attorney.

Signed Sealed and Delivered by CBD Energy Limited:

Director Signature

Secretary Signature

Print Name

Print Name

Witness Signature

Print Name

The Common Seal of Australian Executor Trustees Limited ACN 007 869 794 was affixed with the authority of:

..... (signed)

..... **Stuart Alexander Howard**..... (print name)

Authorised Officer

..... (signed)

..... **Glenn White**..... (print name)



Authorised Officer

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Schedule 1 – Terms and Conditions of the Notes

1. Issue Price

The Notes will:

- (a) be paid for in full on application; and
- (b) have an issue price per Note equal to the Principal Amount.

2. Interest

2.1 Payment of Interest

The Issuer shall pay accrued interest in arrears on each relevant Interest Payment Date to those persons who are Noteholders on the last relevant Record Date before that Interest Payment Date.

2.2 How Interest Accrues

For each Noteholder, interest accrues daily and, in the case of each Interest Period, the interest payable is calculated by:

- (a) multiplying the Principal Amount of the Notes held by that Noteholder on the relevant Record Date by the Interest Rate; and
- (b) dividing the resultant amount by 365; and
- (c) multiplying the resultant amount by the actual number of days in the applicable Interest Period; and
- (d) rounding the resultant amount down to the nearest cent.

The Issuer's certificate as to the amount of interest that accrues and is payable on Notes is (in the absence of manifest error) sufficient evidence of the amount of interest due unless proven wrong.

2.3 Compound of Unpaid Interest

Unpaid interest on the Notes shall:

- (a) remain owing and not form part of the principal owing to the Noteholder; and
- (b) bear interest at the same rate as interest is payable on the Principal Amount calculated daily and payable on each Interest Payment Date on Maturity Date.

3. Redemption by the Issuer

- (a) The Issuer shall redeem all issued and uncanceled Notes on the Maturity Date. The Principal Amount on each Note to be redeemed on the Maturity Date shall be repaid in full by the Issuer on the Maturity Date (along with interest payable in

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accordance with Condition 2.1), in accordance with and subject to the Conditions to the person who is the Noteholder on the relevant Record Date.

- (b) The Issuer may also redeem some or all of the Notes on issue prior to the Maturity Date on each of the respective dates which are 6 months and 12 months after the Issue Date. The Principal Amount on each Note to be redeemed on such dates shall be repaid in full by the Issuer (along with interest payable in accordance with Condition 2.1), in accordance with and subject to the Conditions to the person who is the Noteholder on the relevant Record Date.
- (c) The Issuer may also redeem some or all of the Notes in accordance with Condition 17 and the Principal Amount plus all accrued and unpaid interest will be paid in accordance with and subject to the Conditions to the person who is the Noteholder on the relevant Record Date.

4. Early Redemption for Takeover Event

4.1 Early redemption by Issuer

If a Takeover Event occurs, the Issuer may in its absolute discretion, elect to redeem all or some (pari passu) of the Notes on issue prior to the Maturity Date:

- (a) with effect on the Early Redemption Date;
- (b) by payment of an amount equal to the Early Redemption Amount in respect of each Note redeemed; and
- (c) along with payment of any accrued and unpaid interest up to the Early Redemption Date,

provided that:

- (d) the Issuer has made an Early Redemption Announcement within 15 days after the Takeover Event and not less than 30 days prior to the proposed Early Redemption Date;
- (e) the Issuer has complied with clause 5.1(d); and
- (f) the Issuer first complies with any Conversion Notice received from a Noteholder prior to the proposed Early Redemption Date in accordance clause 5.1(c).

4.2 Early Redemption Announcement

An Early Redemption Announcement must:

- (a) be made to the ASX;
- (b) state that the Issuer will redeem the Notes, the Early Redemption Amount to be repaid, the basis upon which the Early Redemption Amount is calculated and the number of Notes to be redeemed;
- (c) state the Early Redemption Date; and
- (d) otherwise comply with any requirements of the Listing Rules and the Corporations Act as to contents and timing.

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5. Conversion

5.1 Conversion by Noteholders

- (a) Subject to paragraphs (b) and (c), a Noteholder may deliver a Conversion Notice to the Issuer at the address of the Register (which shall be irrevocable) requiring the conversion of all of the Principal Amount of a Note towards a subscription for ordinary shares in the Issuer, determined in accordance with Conditions 5.4 and 5.5, at any time during the period of 15 Business Days ending on the Business Day before a Conversion Date (the **Conversion Option**).
- (b) A Noteholder may convert all or some of its holding of Notes. Where a Noteholder converts only part of its holding of Notes, the Noteholder must convert at least 5,000 Notes and in integral multiples of 1,000 Notes. If a Noteholder converts all of their Notes, it may do so regardless of the number of Notes held.
- (c) If the Conversion Date is a Business Day during a Takeover Period, then the Conversion Notice must be given on a Business Day before the last day of the Takeover Period.
- (d) On the occurrence of a Takeover Event, the Issuer shall give notice of the occurrence of that event to the Trustee and to all Noteholders as soon as reasonably practicable and, in any event, within 5 Business Days of the date of occurrence of the Takeover Event.

5.2 Issue of ordinary shares

Within 5 Business Days of the Conversion Date, the Issuer shall issue to the Noteholder that number of ordinary shares in the capital of the Issuer in accordance with Condition 5.4 (subject to any adjustments in accordance with Condition 5.5) in full satisfaction of the Principal Amount otherwise owing on the Notes which are the subject of the Conversion Notice.

5.3 Ranking of ordinary shares

The ordinary shares in the capital of the Issuer issued upon the conversion shall rank equally in all respects with all issued ordinary shares in the capital of the Issuer at the Conversion Date.

5.4 Number of ordinary shares issued on conversion

Subject to Condition 5.5, a Noteholder on the Conversion of Notes shall be entitled to one ordinary share in the capital of the Issuer for every Note converted.

5.5 Adjustments

Subject to the Listing Rules the following applies:

- (a) If there is a reorganisation (including, consolidation, subdivision, reduction or return) of the issued capital of the Issuer prior to the Conversion Date, the number of ordinary shares in the capital of the Issuer issued on Conversion shall be adjusted in the same proportion as the issued capital of the Issuer is reorganised

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and in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the shareholders of the Issuer, (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for Conversion of the Notes shall remain unchanged.

- (b) The adjustments in this Condition 5.5 shall be determined by the Auditors acting as an expert and not as an arbitrator and the provisions of any applicable arbitration legislation are excluded to the fullest extent possible.
- (c) The determination of the Auditors will be final and binding subject only to any adjustment necessary to correct the manifest error of objective fact or calculation apparent on the face of their determination.
- (d) All costs and expenses of the Auditors must be paid by the Issuer.

5.6 Register Conclusive

- (a) Subject to Condition 5.6(b), for the purposes of Conversion:
 - (i) the Register shall be conclusive of the identity of the Noteholder entitled to deliver a Conversion Notice in accordance with Condition 5.1;
 - (ii) the Issuer shall not be affected by notice of any transfer of Notes where that transfer has not been registered on or before the Conversion Date;
 - (iii) the Register shall be conclusive as to the identity of the Noteholder on the Conversion Date for the purpose of determining who shall be issued ordinary shares pursuant to Condition 5.2; and
 - (iv) the Issuer shall have no responsibility, duty or liability to issue ordinary shares to any person other than to the Noteholder shown on the Register at the relevant Conversion Date.
- (b) If the Noteholder shown on the Register at the relevant Conversion Date is different from the Noteholder giving the Conversion Notice, that Conversion Notice shall be disregarded and shall have no effect for the purpose of Condition 5.1.

6. Purchase by Issuer

- (a) Provided that no Event of Default has occurred or is continuing, the Issuer may purchase all or any of the Notes on-market or by tender or by private contract at any price.
- (b) Any Notes purchased by the Issuer shall be cancelled and may not be resold or reissued.

7. Bonus issues

If the Noteholder exercises the Conversion Option and the Issuer at any time during the period subsequent to the issue of the Note to a Noteholder and prior to the Conversion

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Date shall have made a pro rata bonus issue to all its ordinary shareholders, then the following provisions shall apply.

- (a) The Issuer shall on issuing the ordinary shares in accordance with Condition 5.4 on exercise of the Conversion Option, issue (on terms and conditions that are the same as or correspond with, or are no more favourable to the Noteholder than, the terms and conditions on which the bonus shares were allotted to the ordinary shareholders of the Issuer) to the Noteholder that number of bonus shares to which the Noteholder would have been entitled if that proportion of the Principal Amount of those Notes had been converted immediately prior to the making of each bonus issue by the Issuer.
- (b) In respect of any reorganisation of capital referred to in Condition 5.5(a) which would have applied to ordinary shares issued under a pro rata bonus issue to which this Condition 7 applies, the provisions of Condition 5.5 shall apply with necessary changes to any ordinary shares issued as bonus shares pursuant to this Condition 7.

8. Power of the Noteholders to direct Trustee

Upon the occurrence of an Event of Default, the Noteholders shall have the following powers exercisable by ordinary resolutions:

- (a) to direct the Trustee to take any particular action under this Deed or the Notes;
- (b) to direct the Trustee to direct the Issuer to redeem the Notes in full;
- (c) to direct the Trustee to commence legal proceedings against the Issuer to recover the Moneys Owning; and
- (d) to direct the Trustee to take such other action as the Noteholders deem appropriate to recover the Moneys Owning,

and the Trustee shall comply with those directions subject to the terms of this Deed, subject to having sufficient funds, and the Conditions.

9. Record Date

The Record Date:

- (a) for the making of interest payments shall be 8 calendar days before the Interest Payment Date; and
- (b) for the making of any other payment (including payment of the Principal Amount on the Maturity Date or the Early Redemption Amount on the Early Redemption Date) shall be 8 calendar days before the Maturity Date, the Early Redemption Date or other payment date; and
- (c) for issuing ordinary shares in the Issuer after a Conversion Date shall be the Conversion Date,

or, in each case, such other date required by the Listing Rules or the SCH Business Rules.

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10. Method of payment

10.1 Payment to Noteholders

Subject to Conditions 9 and 10.2, any interest or other monies payable on or in respect of any Notes must be paid in Australian dollars only:

- (a) by payment of cheque marked “not negotiable” and sent through the post to the address of the Noteholder on the Register or other person entitled thereto, or where the Notes are held by joint Noteholders to the address of the Noteholder whose name stands first on the Register in respect of those Notes; or
- (b) by deposit, including by way of telegraphic transfer, to such account with any ADI (as that expression is defined in the *Banking Act 1959* (Cth)) in Australia as the Noteholder (or, where the Notes are held by joint Noteholders, the Noteholder whose name stands first on the Register), by written notice to the Issuer, may direct; or
- (c) by any other method of transferring money approved by the Trustee from time to time.

Every cheque or payment referred to in Condition 10.1(a) will be sent at the risk of the person entitled to the moneys represented by the cheque and payment will be deemed to have been made when the cheque is posted or the deposit is made in accordance with this Condition. The cost of any replacement cheque shall be at the expense of the Noteholder. The Noteholder will be wholly responsible for any account details provided to the Issuer or any error or omissions made by the Issuer in respect of that payment. Any cheque returned to the Issuer, or any cheque not presented by a Noteholder, shall be treated by the Issuer as unclaimed money.

10.2 Payments to the Trustee

If so requested by the Trustee, the Issuer must make any payments payable to the Trustee under this Deed:

- (a) at a place in Australia and in a manner reasonably required by the Trustee; and
- (b) in immediately available funds and without set-off, counterclaim, conditions or, unless required by law or the provisions of this Deed, deductions or withholdings.

10.3 No gross up

If the Issuer is required by law to deduct or withhold Taxes from any payment to the Trustee or a Noteholder it must:

- (a) make the required deductions and withholdings;
- (b) pay in accordance with the relevant law the full amount deducted or withheld;
- (c) deliver to the Trustee or the Noteholder (as the case may be) the receipt for each payment; and
- (d) reduce the amount of the payment due to the Trustee or the Noteholder (as the case may be) by an amount equal to the deduction or withholding and the payment

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of such reduced amount shall be in full satisfaction of the Issuer's relevant payment obligation.

11. Joint Noteholders

In the case of Notes being held by more than one person, the following shall apply:

- (a) if several persons are entered in the Register as joint Noteholders in respect of a Note the receipt by any one of such persons for the payment or satisfaction of any Moneys Owing from time to time payable or repayable to the joint Noteholders will be an effective discharge by the Issuer of its obligations in relation to that Note;
- (b) the Issuer will not be bound to register more than three persons as the joint holders of any Notes subject to Condition 13.4;
- (c) subject to the Conditions, all of the joint Noteholders in respect of any Note must join in any:
 - (i) application to transfer the relevant Note from one Register to another Register; or
 - (ii) transfer of the relevant Note.
- (d) in the case of the death of any one of the joint Noteholders, the survivors will be the only persons recognised by the Issuer as having any title to or interest in the Notes registered in their names jointly.

12. Non-resident Noteholders

Where Notes are held by, or on behalf of, a person resident outside the Commonwealth of Australia, then, despite anything to the contrary contained in or implied by the Conditions, it is a condition precedent to any right of the Noteholder:

- (a) to receive payment of the Principal Amount; or
- (b) to receive payment of any interest on the Notes,

that all necessary Authorisations (if any) and any other statutory requirements which may then be in existence are obtained at the cost of the Noteholder and satisfied, provided that the Issuer acknowledges that section 128F of the Income Tax Assessment Act 1936 has been satisfied in respect of the Notes.

13. Transfer of Notes

13.1 Form of transfer

A Noteholder is entitled to transfer a Note by:

- (a) an instrument in writing in any usual or common form or in such other form as the Issuer may approve; or

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- (b) a proper ASTC transfer or any other method of transferring or dealing in securities introduced by ASX or operated in accordance with the SCH Business Rules or Listing Rules, and in any such case recognised under the Corporations Act.

13.2 Issuer participation

If the Issuer participates in a computerised or electronic securities transfer, settlement and registration system recognised by or permitted by the Corporations Act:

- (a) the Issuer must comply with and give effect to the rules of that system; and
- (b) the only document required to be completed and delivered by the Issuer in relation to a transfer of the Notes is such document (if any) as those rules require to be so completed and delivered.

13.3 Written transfer instrument

- (a) A written transfer instrument must be forwarded for registration to the address of the Register and together with such other evidence as the Directors may require to prove:

- (i) the title of the transferor, or the Noteholder's right to transfer the Notes;
- (ii) the due execution of the transfer; and
- (iii) the due compliance with the provisions of any relevant statute relating to stamp duties,

and if satisfied with such evidence and that the transferor has otherwise complied with this Condition 13.3, the Issuer will register the transfer and recognise the transferee as the Noteholder entitled to the Notes comprised in the transfer.

- (b) A written transfer instrument must be:
 - (i) executed by the transferor;
 - (ii) executed by the transferee; and
 - (iii) endorsed or accompanied by an instrument executed by the transferee to the effect that the transferee agrees to accept the Notes subject to the terms and conditions on which the transferor held them, to become a Noteholder and to be bound by this Deed.

Subject to the Corporations Act, the written transfer instrument may comprise two or more documents.

- (c) Except in the case of a proper ASTC transfer, a transferor of Notes remains the owner of the Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes, and the transferee of Notes on being entered in the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Noteholder under this Deed.
- (d) Subject to the Listing Rules and the Conditions, the Directors of the Issuer may in their absolute discretion refuse to register:

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- (i) any transfer that is not in accordance with the Conditions; or
- (ii) any transfer of a Note in favour of a person who is known to the Issuer to be a minor or of unsound mind, but the Issuer will not be bound to enquire as to the age or soundness of mind of any transferee.

The Directors shall not be bound to give any reason for refusing to register any transfer and their decision shall be final, conclusive and binding.

- (e) No instrument of transfer will be registered by the Issuer during any period when the Register is closed.
- (f) The Issuer must:
 - (i) register all valid, registrable transfer forms (if any) and transfers (if any); and
 - (ii) mark or note transfer forms (if any), without charge.
- (g) Any power of attorney granted by a Noteholder may be lodged, produced or exhibited to the Issuer or any of its officers and will, as between the Issuer and the Noteholder who granted the power of attorney:
 - (i) be taken and deemed to continue and will remain in full force and effect; and
 - (ii) may be acted upon, unless express notice in writing of its revocation or of the death of the Noteholder who granted it is lodged with the Issuer.
- (h) All instruments of transfer which are registered or surrendered to the Issuer will remain the property of the Issuer and will be retained by it for a period of 3 years or such minimum period or in such alternative form as may be permitted by law after receipt. However, any instrument of transfer which the Issuer declines to register will (except in the case of fraud or suspected fraud) be returned on demand to the Person depositing the instrument.

13.4 Number of transferees

No transfer of a Note may be made to more than 3 transferees jointly unless the transferees are the legal personal representatives or trustees of a deceased Noteholder.

14. Form and Title

14.1 Constitution under this Deed

The Notes are constituted by, and owing under, this Deed. Each entry in the Register constitutes a separate and individual acknowledgement to the relevant Noteholder of its entitlement to the Notes.

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14.2 Register conclusive of title

Entries in the Register in relation to a Note constitute conclusive evidence that the person so entered is the registered holder of the Note, subject to rectification for fraud or manifest error.

14.3 Certificates

No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Note unless the Issuer determines that certificates should be made available or the Issuer is requested to issue such certificate by the Trustee or required to do so pursuant to any applicable law or regulation.

15. Indemnity to the Issuer

15.1 Indemnity of the Issuer

- (a) Whenever in consequence of:
 - (i) the death of a Noteholder;
 - (ii) the non-payment of any income Tax or other Tax payable by a Noteholder;
 - (iii) the non-payment of any stamp or other duty by the legal personal representatives of a Noteholder or his estate; or
 - (iv) any other act or thing in relation to a Note or a Noteholder,
 any law for the time being of any other country or place, in respect of that Note, imposes or purports to impose any liability of any nature whatever on the Issuer to make any payments to any Governmental Agency, the Issuer will in respect of that liability be indemnified by that Noteholder and the Noteholder's legal personal representatives and any monies paid by the Issuer in respect of that liability may be recovered by action from that Noteholder and/or the Noteholder's legal personal representatives as a debt due to the Issuer and the Issuer will have a lien in respect of those monies upon the Notes held by that Noteholder or his legal personal representatives and upon the principal and interest payable in respect thereof.
- (b) Nothing in this Condition 15.1 will prejudice or affect any right or remedy which any such law may confer or purport to confer on the Issuer.

16. Deceased or Insolvent Noteholders

The legal personal representatives of a deceased Noteholder (not being one of joint Noteholders) will be the only persons recognised by the Issuer as having any title to that Noteholder's Notes. Any person becoming entitled to Notes in consequence of the death or liquidation of any Noteholder may, on producing such evidence of that person's title as the Directors think sufficient, be registered as the holder of the Notes or, subject to the preceding Conditions of the Notes as to transfer, may transfer those Notes. The Directors will be at liberty to retain the principal and interest and any other monies payable in respect

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of any Notes which any person under this Condition is entitled to or to transfer until such person is registered or has duly transferred the Notes in accordance with these Conditions of the Notes.

17. Unmarketable Parcels

- (a) The Issuer may redeem any Notes held by a Noteholder which are an Unmarketable Parcel on one occasion in any 12 month period.
- (b) The Issuer must notify the Noteholder in writing of its intention to redeem the Notes under this Condition 17.
- (c) The Issuer will not redeem the relevant Notes:
 - (i) before the expiry of 6 weeks from the date of the notice given under paragraph (b); or
 - (ii) if within the 6 weeks allowed by paragraph (c)(i) the Noteholder advises the issuer that the Noteholder wishes to retain the Notes.
- (d) The power to redeem lapses following a Takeover Event, but the procedure may be started again after the end of the relevant Takeover Period.

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Schedule 2 – Conversion Notice

Conversion Notice

TO: CBD Energy Limited

ABN 88 010 966 793

(‘the Company’)

I/We _____ being a Noteholder in relation to the Notes referred to below issued pursuant to the Conditions under the Note Trust Deed give notice in accordance with Condition 5 that I/we require the Company to redeem the whole of the Principal Amount of that number of Notes detailed below in accordance with Condition 5 and apply the proceeds of redemption towards the subscription for that number ordinary shares in the Issuer as determined by Condition 5.4, subject to any adjustment in accordance with Condition 5.5.

Notes to be redeemed

Name of Noteholder	Number of Notes	HIN/ SRN

DATED the _____ day of _____ 200_

_____*

*If the Noteholder is a company, this notice must be signed in accordance with section 127 of the Corporations Act.

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