

Execution version

12 April 2019

# DEED OF COMPANY ARRANGEMENT

Greatcell Solar Group

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Greatcell Solar Limited (Administrators  
Appointed)

ACN 111 723 883

*GSL*

Greatcell Solar Industries Pty Ltd (Administrators  
Appointed)

ACN 083 102 498

*GSI*



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Peter Paul Krejci and Andrew John Cummins in  
their capacities as joint and several deed  
administrators of the *companies*

*deed administrators*

Otsana Pty Ltd

ACN 145 168 216

*proponent*

GSL Rescue Group Pty Ltd

ACN 624 710 041 as trustee for the GSL Rescue Group Trust

*syndicate*



## Contents

PARTIES:.....	1
RECITALS:.....	2
1. TERM AND EFFECT .....	3
1.1. Commencement and term.....	3
1.2. Object.....	3
1.3. Binding effect.....	3
1.4. Moratorium on actions .....	3
1.5. Proponent and syndicate .....	4
1.6. Deed administrators and trustees.....	5
1.7. Prescribed provisions .....	5
1.8. Required provisions .....	5
2. CONDITIONS PRECEDENT'.....	6
2.1. Condition.....	6
2.2. Waiver of condition .....	7
2.3. Satisfaction of condition.....	7
2.4. Failure of conditions precedent.....	7
2.5. Not to act inconsistently with deed .....	7
3. RECAPITALISATION 'TRANSACTIONS'.....	8
3.1. Listing fee and approvals.....	8
3.2. Change of directors .....	9
3.3. Consolidation of share capital .....	9
3.4. Proponent payment.....	10
3.5. Placements.....	10
3.6. Assets and subsidiaries.....	10
3.7. Completion.....	12
4. CONSOLIDATION OF CLAIMS AND PAYMENT UNDER TRUST'.....	13
5. EFFECT ON CLAIMS.....	13
5.1. Release of claims.....	13
5.2. Excluded claims .....	13
5.3. Execution of all necessary documents.....	13
5.4. Conversion of claims .....	14
5.5. Creditors' trust .....	14
5.6. Bar to claims.....	14
5.7. Eligible employee creditors .....	14
5.8. Superannuation contribution debts .....	14
5.9. Insured claims .....	15
6. DEED ADMINISTRATORS .....	15



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6.1.	Appointment and term .....	15
6.2.	Agents of the companies .....	16
6.3.	Powers of deed administrators .....	16
6.4.	Joint and several rights, powers and privileges .....	16
6.5.	Books and records .....	16
6.6.	Deed administrators not personally liable.....	17
6.7.	Calling for proofs of debt.....	18
6.8.	Deed administrator's resignation.....	18
7.	THE COMPANIES .....	18
7.1.	Suspension of powers .....	18
7.2.	Other officers .....	19
7.3.	Appointment and removal.....	19
7.4.	Assistance .....	19
7.5.	Indemnity.....	19
8.	REMUNERATION, COSTS, CHARGES, AND EXPENSES OF ADMINISTRATORS AND DEED ADMINISTRATORS.....	20
8.1.	Remuneration and expenses of administrators and deed administrators.....	20
8.2.	Indemnity.....	20
8.3.	Lien.....	22
8.4.	Priority.....	22
9.	SCOPE OF THIS DEED .....	22
9.1.	Deed binds all persons.....	22
9.2.	Secured creditors .....	22
9.3.	Owners and lessors .....	23
9.4.	Liability.....	23
10.	REPORTS AND ACCOUNTS.....	24
10.1.	Reports to admitted creditors .....	24
10.2.	Court orders regarding returns and accounts.....	24
11.	EFFECTUATION OF DEED .....	24
12.	MEETINGS OF CREDITORS.....	25
13.	VARIATION OF DEED .....	25
13.1.	Variation by creditors.....	25
13.2.	Variation in writing.....	25
14.	TERMINATION OF DEED .....	25
14.1.	Termination on effectuation .....	25
14.2.	Termination prior to effectuation .....	26
14.3.	Consequences of termination .....	27
14.4.	Survival.....	27
15.	APPLICATIONS TO COURT .....	27
15.1.	Unforeseen circumstances.....	27
15.2.	Application to the Court .....	28



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16.	MISCELLANEOUS PROVISIONS.....	28
16.1.	Governing law.....	28
16.2.	Jurisdiction.....	28
16.3.	Severance .....	28
16.4.	Waiver .....	29
16.5.	Entire agreement .....	29
16.6.	Survival.....	29
16.7.	Merger .....	29
16.8.	Representations.....	29
16.9.	Further assurances.....	30
16.10.	Rights of third parties .....	30
16.11.	Expenses .....	30
16.12.	Indemnities .....	30
16.13.	Time of the essence.....	30
16.14.	Liabilities of parties .....	31
16.15.	Notices .....	31
16.16.	Counterparts.....	32
16.17.	Companies may execute this deed .....	32
16.18.	Stamp duty.....	32
17.	INTERPRETATION .....	32
17.1.	Application .....	32
17.2.	General.....	32
17.3.	Headings .....	34
17.4.	Inconsistency with other transaction documents .....	34
	SCHEDULE 1 – GLOSSARY .....	35
	SCHEDULE 2 – TERMS OF OPTIONS .....	44
	SCHEDULE 3 – NOTICE OF TERMINATION .....	50
	SCHEDULE 4 – PLANT AND EQUIPMENT .....	51
	SIGNING PAGE: .....	56



## Deed of Company Arrangement

Entered into on 12 April 2019.

### Parties:

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<i>GSL</i>	<b>Name:</b>	Greatcell Solar Limited (Administrators Appointed) (ACN 111 723 883)
	<b>Address:</b>	c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b>	c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b>	Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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<i>GSI</i>	<b>Name:</b>	Greatcell Solar Industries Pty Ltd (Administrators Appointed) (ACN 083 102 498)
	<b>Address:</b>	c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b>	c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b>	Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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<i>deed administrators</i>	<b>Name:</b>	Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several deed administrators of the <i>companies</i>
	<b>Address:</b>	c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b>	c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b>	Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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<i>proponent</i>	<b>Name:</b>	Otsana Pty Ltd ACN 145 168 216
	<b>Address:</b>	108 Outram Street, West Perth WA 6005
	<b>Postal:</b>	C/- Otsana Capital, PO Box 1974, West Perth WA 6872
	<b>Email:</b>	<a href="mailto:nicholas@otsana.com">nicholas@otsana.com</a>
	<b>Contact:</b>	Nicholas Young

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*syndicate*      **Name:**      GSL Rescue Grop Pty Ltd ACN 145 168 216  
**Address:**      52 Bergamont Street, Elanora, Queensland 4221  
**Email:**          nicholas@otsana.com  
**Contact:**        Nicholas Young

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## Recitals:

- A.      On 10 December 2018, the *administrators* were appointed as joint and several voluntary administrators of *GSL* and *GSI* (together, the *companies*) pursuant to section 436A(1) of the *Corporations Act*.
- B.      At a meeting of *creditors* held on 22 March 2019, convened pursuant to section 439A of the *Corporations Act*, it was resolved that the *companies* would execute a deed of company arrangement under section 444A of the *Corporations Act*, on the terms proposed by the *proponent* in the *proposal*.
- C.      The *administrators*, the *companies*, and the *proponent* have agreed to execute this *deed* to give effect to Recital B.
- D.      The *administrators*:
- a)      are registered liquidators under the *Corporations Act*;
  - b)      are not disqualified from acting as *deed administrators* of this *deed*; and
  - c)      give their consent to become the *deed administrators*.
- E.      Subject to the terms of this *deed*, this *deed* binds:
- a)      all *creditors* in accordance with section 444D of the *Corporations Act*; and
  - b)      the *companies*, the *officers*, and the *members* in accordance with section 444G of the *Corporations Act*.
- F.      Words in this *deed* that are italicised are defined in the Glossary located in Schedule 1.

## Operative Terms:

In consideration of the mutual covenants set out in this *deed*, this *deed* now provides:



# 1. TERM AND EFFECT

## 1.1. Commencement and term

This *deed* commences on the *execution date* and continues until the *termination date*.

## 1.2. Object

Pursuant to section 435A of the Corporations Act this *deed* seeks to achieve a better return to *creditors* of the *companies* than would exist in a winding up and to maximise the chances of the *companies*, or as much as possible of their business, continuing in existence.

## 1.3. Binding effect

### 1.3.1. This *deed*:

- (a) becomes a deed of company arrangement in accordance with subsection 444B(6) of the *Corporations Act*; and
- (b) has binding effect generally as a deed of company arrangement in accordance with the *Corporations Act*,

as soon as the *deed* has been executed by the *companies*, the *proponent*, the *syndicate* and the *deed administrators*.

## 1.4. Moratorium on actions

Subject to section 444D and 444G of the *Corporations Act*, and in accordance with item 7 of Schedule 8A of the *Corporations Regulations*, during the *deed period*, a *creditor* (in relation to that *creditor's claim* whether their relevant *claim* is or is not admitted or established under this *deed*), an *officer*, a *member*, or any other party bound this *deed* must not do any of the following except, in the case of paragraphs (d) and (e) with leave of a *Court* and in accordance with such terms (if any) as a *Court* imposes:

- (a) make, or concur in the making of, an application for an order to wind up the *companies* (or any one of them);
- (b) proceed with, or concur in proceeding with, any such application made before this *deed* became binding on the person;
- (c) in the case of a *creditor*, exercise any right of set-off or cross-claim to which a *creditor* would not have been entitled had the *companies* (or any one of them) been wound up at the *appointment date*;



- (d) commence or take any further step in any arbitration against the *companies* (or any one of them), or to which the *companies* (or any one of them) is a party;
- (e) begin, revive or continue with any proceeding or any *enforcement process* against the *companies* (or any one of them) or in relation to any of its *property*;
- (f) take any other step whatsoever to recover a *claim*; or
- (g) otherwise enforce any right it may have or acquired against the *companies* (or any one of them).

## 1.5. Proponent and syndicate

1.5.1. The *proponent* will act as exclusive proponent to manage and assist with:

- (a) the *companies'* recapitalisation; and
- (b) the implementation of this *deed* and the *creditors' trust deed*.

1.5.2. The *syndicate* agrees to assist the proponent with respect to the *companies'* recapitalisation, at all times, through to *effectuation*. To any extent *effectuation* is prevented or inhibited by an act or failure on the part of the *syndicate* that would be a breach of this *deed* had the act or failure been that of the *proponent*, the *syndicate agree and acknowledge that their act or failure will be a breach of this deed*.

1.5.3. In the event that:

- (a) any change occurs to an applicable law or regulation, or to the policy for the application of a law or regulation by a governmental or regulatory body (including *ASIC* or *ASX*), which would, in the *proponent's* reasonable opinion, have a material adverse effect on the *companies* or the implementation of the *proposal*; or
- (b) *effectuation* does not occur on or before the *completion date* or such later date as the *proponent* may allow, in its absolute discretion;
- (c) the *proponent* in consultation with the *deed administrators* determines from its due diligence inquiries that *GSL's* subsidiary Greatcell Solar Italia S.r.L has significant debts incurred as at the date of this *deed* which would be materially detrimental to the *proponent* entering into this *deed*,

the *proponent* may give the *deed administrators* written notice promptly when it becomes aware that it does not intend to continue with implementation of the *proposal*, following which:

- (d) the *proponent* will cease to be bound by the *transaction documents* and the *proponent* is released from its obligations under the *transaction documents*; excluding the





costs already incurred up to that time in preserving and maintaining the *required assets* as agreed by the *proponent* under clause 3.6.1.; and

- (e) the *deed administrators* will convene a meeting of *creditors* under clause 12 to determine the future of the *companies*.

## 1.6. Deed administrators and trustees

1.6.1. The *administrators* will become the *deed administrators* with effect from the *execution date*, being the administrators of this *deed*.

1.6.2. The *deed administrators* will become the *trustees* of the *creditors' trust* upon *effectuation*.

1.6.3. Prior to *completion*, the *deed administrators* will:

- (a) execute the *creditors' trust deed* on behalf of the *companies*; and
- (b) procure that the *trustees* execute the *creditors' trust deed* in their capacity as joint and several trustees of the *creditors' trust*.

1.6.4. The *creditors' trust* will vest and terminate when the *trust fund* has been fully distributed.

## 1.7. Prescribed provisions

1.7.1. This *deed* is intended to take effect in accordance with Part 5.3A of the *Corporations Act*.

1.7.2. Each of the prescribed items contained in Schedule 8A of the *Corporations Regulations* is expressly incorporated into this *deed*, except to the extent inconsistent with this *deed*.

## 1.8. Required provisions

1.8.1. To the extent that the *Corporations Act* requires any provision to be included in this *deed* which is not expressly included in this *deed*, such provision will be deemed to be included in this *deed*, and all persons bound by this *deed* agree to sign all documents and do all this necessary to include such a provision in this *deed*, the costs of which will be borne by the *companies*.



## 2. CONDITIONS PRECEDENT

### 2.1. Condition

*Completion* is conditional upon satisfaction of each of the following (*conditions precedent*):

- (a) **(consolidation)** approval of *GSL*'s shareholders under section 254H of the *Corporations Act* and *Listing Rules* 7.18 to 7.26 to undertake the *consolidation* and completion of the *consolidation*;
- (b) **(approval to issue securities)** approval of *GSL*'s shareholders under Chapter 2E of the *Corporations Act* (if necessary) and *Listing Rules* 7.1 and 10.11 (if necessary) for *GSL* to issue securities as contemplated by this *deed*;
- (c) **(proponent's due diligence)** the *proponent*, in consultation with the *deed administrators*, determine from its due diligence inquiries that *GSL*'s subsidiary Greatcell Solar Italia S.r.L has a suitable financial position and does not have significant debts incurred or outstanding;
- (d) **(change of *GSL* directors)** approval of *GSL*'s shareholders to appoint or ratify the appointment of the *nominee directors* referred to in clause 3.2;
- (e) **(change of *GSI* and required subsidiary directors)** all necessary shareholder, board, constitutional, and other *approvals* required of *GSI* and the *required subsidiaries* to remove the *existing directors* and appoint the *nominee directors* referred to in clause 3.2;
- (f) **(termination of employees)** all *employees* of the *companies* being terminated with effect from no later than the date of *effectuation*;
- (g) **(required assets being in good standing)** the *required assets* being in good standing (in the opinion of the *proponent*, acting reasonably) at *completion*;
- (h) **(required subsidiaries being retained)** *GSL* retaining its ownership or part ownership (as the case may be) in the *required subsidiaries*;
- (i) **(ASX in-principle advice)** receipt of in-principle advice from *ASX* that upon completion of the recapitalisation transactions set out in clause 3 it will reinstate *GSL*'s securities to trading without requiring *GSL* to re-comply with Chapters 1 and 2 of the *Listing Rules*, and if such confirmation is subject to conditions, those conditions being acceptable to the *proponent* (acting reasonably);



- (j) **(creditors' trust)** execution of the *creditors trust deed* by the *companies* and the *deed administrators*;
- (k) **(release of security interests)** all *security interests* over the *companies* being fully and finally de-registered, discharged, and released (provided that such release may be conditional upon (but only conditional upon) the making of the *proponent payment* and any consequent payment anticipated out of the *proponent payment* to the relevant secured party; and
- (l) **(ASIC relief)** receipt of relief from ASIC providing extended time for the lodging the outstanding financial statements and holding of annual general meetings.

## 2.2. Waiver of condition

- 2.2.1. The conditions in clause 2.1 are for the benefit of the *companies*, the *deed administrators* and the *proponent* and non-satisfaction of them may only be waived (if capable of waiver) with the written consent of the *companies*, the *deed administrators* and the *proponent*. The parties acknowledge that they must act in good faith and reasonably at all times.

## 2.3. Satisfaction of condition

The *deed administrators*, the *companies*, and the *proponent* must each take all reasonable steps to satisfy each of the *conditions precedent* as soon as practicable after the date of this *deed* and in any event on or before the *completion date*, or such later date as the *proponent* may allow in its absolute discretion.

## 2.4. Failure of conditions precedent

If the *conditions precedent* are not satisfied or waived in accordance with this *deed* on or before the *completion date*, then save for this clause 2.4 and the *surviving clauses*:

- (a) the *deed administrators* may terminate this *deed* pursuant to clause 14 of this *deed*, and
- (b) without limiting clause 2.4(a), the *proponent* may, on giving written notice to the *deed administrators*, cease to be bound by the *transaction documents* and the *deed administrators* will convene a meeting of *creditors* to determine the future of the *companies*.

## 2.5. Not to act inconsistently with deed

Until such time as the *conditions precedent* are satisfied or waived, or the *deed* terminates before the satisfaction or waiver of that condition, insofar as a person would be



bound by the *deed*, if all of the other clauses of this *deed* had come into effect, the person must not do anything inconsistent with the other clauses of this *deed*.

## 3. RECAPITALISATION TRANSACTIONS

### 3.1. Listing fee and approvals

3.1.1. The *proponent* will assist *GSL* with the following at the *proponent's* sole cost:

- (a) preparation by *GSL* of the following meeting materials (*meeting documents*) to convene a general meeting of *GSL* for the purpose obtaining shareholder *approvals* required to satisfy all relevant *conditions precedent* (*general meeting*):
  - (i) a notice of meeting, explanatory memorandum and proxy form; and
  - (ii) if required, an independent expert's report for the purposes of obtaining *approval* under section 611 (item 7) of the *Corporations Act* or otherwise under the *Listing Rules*;
- (b) submission or lodgement of the draft *meeting documents* with any regulatory body to which *GSL* is required to submit or lodge such documents for review before finalisation and issue, including *ASIC* and *ASX* (as applicable);
- (c) preparation, audit, and lodgement of any outstanding statutory accounts;
- (d) preparation and submission to applicable regulatory bodies such submissions or applications for determinations, rulings, legal relief or regulatory waivers the *proponent* reasonably determines are required to satisfy any *conditions precedent*, including submissions or applications to *ASIC* and *ASX* (as applicable);
- (e) preparation and lodgement of the prospectus which is required to conduct the *placements*; and
- (f) convening of the *general meeting*.

3.1.2. If any action or assistance is required by *GSI* to assist in the carrying out of the actions in clause 3.1.1, the *proponent* will assist *GSI* in so doing, at the *proponent's* own costs.

3.1.3. The costs under clause 3.1.1 and 3.1.2 exclude:

- (a) the legal costs of the *administrators*, the *deed administrators* and the *trustees* (as applicable); and
- (b) all *ASX* fees incurred prior to and during the *administration period* and the *deed period* pro-rated to the extent such costs relate to a period prior to or during the



*administration period* and *deed period* only, which costs shall form part of the *administration and deed costs*, provided that the *proponent* shall fund the payment of those fees in advance of *completion*, with such amounts to be deducted from the required *proponent payment* at *completion*.

- 3.1.4. To the extent that the *deed administrators* incur costs or expenses in assisting the *proponent* or the *companies* under clauses 3.1.1 and 3.1.2, including but not limited to the *deed administrators*' costs in relation to the convening, holding, or attending of the *general meeting* or assisting with the preparation of the *meeting documents*, any and all of those future costs will form part of the *administration and deed costs*.

## 3.2. Change of directors

- 3.2.1. The *deed administrators* must:

- (a) remove all *existing directors* holding office as *directors* and *officers* (as applicable) of each of the *companies*, and to the extent reasonably possible at law without a requirement to seek court orders, the *required subsidiaries*; and
- (b) subject to clause 3.2.2, appoint the *nominee directors* as *directors* of each of the *companies*, and to the extent reasonably possible at law without a requirement to seek court orders, the *required subsidiaries*.

- 3.2.2. The appointment of the *nominee directors* as *directors* is subject to each such person having provided their written consent to act in such office.

- 3.2.3. The removal and appointment of *directors* under clause 3.2.1 is to occur on the date of *effectuation* or such other date as agreed by the deed administrators and the *proponent*.

## 3.3. Consolidation of share capital

- 3.3.1. Subject to clause 3.3.3, *GSL* will undertake the *consolidation* in accordance with the timetable determined by the *proponent* and otherwise in accordance with Appendix 7A of the *ASX Listing Rules*.

- 3.3.2. The *proponent* may, by notice to *GSL* and the *deed administrators* prior to the date that the *meeting documents* are despatched to *members*, require *GSL* to conduct the *consolidation* by applying a different consolidation ratio.

- 3.3.3. *GSL*'s obligation to give effect to the *consolidation* is conditional upon *GSL* first obtaining all legal, regulatory, and shareholder *approvals* necessary to undertake the same (including from *ASIC* and *ASX*, as applicable).

- 3.3.4. The *approvals* referred to in clause 3.3.3 form part of the *approvals* necessary to satisfy the *conditions precedent*.



### 3.4. Proponent payment

- 3.4.1. Subject to satisfaction or waiver of all *conditions precedent*, the *proponent* (or its nominees) will pay the *proponent payment* to the *deed administrators* at completion in accordance with clause 3.7.2.
- 3.4.2. The assets (including, where applicable) the *proponent payment* will be paid by the *deed administrators* in the following manner and order:
- (a) to meet the *administration liabilities* and any other *administration and deed costs*; and
  - (b) to discharge and release the *secured creditors*.
- 3.4.3. If the *conditions precedent* have been satisfied or waived in accordance with this *deed*, the *deed administrators* must pay an amount equal to the *proponent payment* less the amounts payable to satisfy clause 3.4.2 above to the *trustees* to comprise and be administered under the *creditors'* trust as the *trust fund*.

### 3.5. Placements

- 3.5.1. Subject to clause 3.5.2, *GSL* will undertake the *placements*.
- 3.5.2. *GSL's* obligation to undertake the *placements* is conditional upon *GSL* first obtaining all legal, regulatory, and shareholder *approvals* necessary to undertake the same.
- 3.5.3. The *approvals* referred to in clause 3.5.2 form part of the *approvals* necessary to satisfy the *conditions precedent*.
- 3.5.4. The *placements* will each be conducted on a post-*consolidation* basis.
- 3.5.5. *GSL* and the *proponent* will take reasonable steps to ensure that none of the persons who receive *shares* or *options* under the *placements*, nor their respective 'associates' (within the meaning of that term under the *Corporations Act*) obtains or increases an existing 'relevant interest' (for the purposes of the *Corporations Act*) in *shares* such that it would contravene the takeover restrictions in Chapter 6 of the *Corporations Act*.
- 3.5.6. Subject to necessary legal and shareholder *approvals* first being obtained (if any), the *proponent* may require that the closing date, issue price, or the number of shares (or options) to be issued under the *placements* be amended before any *shares* or *options* are issued under the *placements*.

### 3.6. Assets and subsidiaries

#### *Required assets*

- 3.6.1. The *proponent* and the *deed administrators* agree that:



- (a) between the date of this *deed* and *effectuation*, the *proponent* and the *deed administrators* will use reasonable endeavours to keep the *required assets* in good standing (including their removal from premises no longer occupied by the *company* and storage of those *required assets*);
- (b) any costs incurred by the *administrators* or *deed administrators* under clause 3.6.1(a) up to \$50,000 shall be *administration and deed costs* in relation to the preservation and maintenance of the *required assets*, which shall be contributed by the *proponent* and deducted from the *proponent payment*; and
- (c) any costs incurred by the *administrators* or *deed administrators* under clause 3.6.1(a) in excess of \$50,000 shall be contributed by the *proponent* and reimbursed by the *companies* to the *proponent*, and shall not be deducted from the *proponent payment*.

*Required subsidiaries*

- 3.6.2. *GSL* is to retain ownership or part ownership (as the case may be) in the *required subsidiaries*.

*Non-required leases*

- 3.6.3. The *deed administrators* have taken steps to notify the *lessors* of premises formerly occupied by the *companies* at 3 Dominion Place Queanbeyan NSW and 11 Aurora Avenue Queanbeyan NSW that the *companies* do not require continued occupation of those premises and do not intend to comply with the terms of those leases after execution.
- 3.6.4. Nothing in clause 3.6.3 affects clauses 9.2.6 or 9.4 except that notification under clause 3.6.3 shall be consent to an *enforcement process* solely to the extent of retaking possession of the premises subject to such notification.

*Non-required subsidiaries*

- 3.6.5. The *non-required subsidiaries* will be dealt with as follows:
- (a) subject to any insolvency proceedings that may be taking place with respect to each of Greatcell Solar SA and Greatcell Inc. in their relevant jurisdiction that prevent the transfer of shares therein, each of Greatcell Solar SA and Greatcell Inc. will each be transferred from *GSI* to *GSA* for consideration of \$5,000 each (totalling \$10,000), such payment to be made using funds from the *proponent payment*; and
  - (b) *GSA* is to be liquidated and its shares transferred to the *creditor's trust*.



### 3.7. Completion

#### *Time, date and location*

- 3.7.1. *Completion* is to take place at 10:00am on the *completion date* at the offices of the *deed administrators*, or such other time, date or location as agreed between the *deed administrators* and the *proponent* in writing.

#### *Steps*

- 3.7.2. The following will occur at or prior to *completion*, provided that each *condition precedent* and activities and obligations in clauses 3.2, 3.4 and 3.5 have been satisfied (or waived) at or prior to *completion*:
- (a) the trustees and the companies must execute the creditors' trust deed;
  - (b) *GSL* must issue the securities under the *promotor placement*, the *interim placement*, and the *general placement* to parties as directed by the *proponent* (and the *deed administrators* shall use their reasonable endeavours to authorise or procure the issue of the securities);
  - (c) subject to the issue of securities under paragraph (b) above as required by law in order for the release of subscription funds, the *proponent* (or its nominee) must pay the *proponent payment* or any unpaid balance to the *deed administrators* or the *trustees* into a bank account in the name of the *creditors' trust*;
  - (d) the *deed administrators* must transfer the *assets* to comprise part of the *trust fund* to the *trustees* for the purposes of and to be held and dealt with by the *trustees* in accordance with the *creditors' trust deed*;
  - (e) if any *existing directors* have not resigned or been removed from that office, those *existing directors* will be removed from office by the *deed administrators*;
  - (f) if any *nominee directors* have not been appointed as *directors*, those *nominee directors* will be so appointed by the *deed administrators*;
  - (g) the *proponent payment* shall be distributed pursuant to clause 3.4.2 such that the input tax credits with respect to the payment of GST can be claimed by the *deed administrators*;
  - (h) the release the security interests shall be effected once payment is received by the *secured creditors* in respect of the amounts owing to Commonwealth Bank of Australia, St George Bank Ltd and *New Moonie*.

#### *Effecting completion*

- 3.7.3. The actions under clause 3.7.2 which are to occur at *completion* are interdependent upon each other and must take place, as near as possible, simultaneously.





- 3.7.4. *Completion* is taken to have occurred when each *party* has performed that *party's* obligations under clause 3.7.2.
- 3.7.5. If any obligations required to be performed by a *party* at *completion* are not performed as and when required by this *deed* and the *proponent*, the *deed administrators* and the *companies* do not agree to waive such obligation, the *parties* must take such actions and steps as reasonably required to place each of the *parties* in the same position as if none of the steps under clause 3.7.2 had occurred.

## 4. CONSOLIDATION OF CLAIMS AND PAYMENT UNDER TRUST

All persons bound by this *deed* acknowledge that for the purpose of this *deed*:

- (a) the *companies* will be treated as one entity; and
- (b) each *creditor* of *GSL* and *GSI* will be treated as a *creditor* of the *companies* as a whole.

## 5. EFFECT ON CLAIMS

### 5.1. Release of claims

Subject to clause 1.1, each *creditor* agrees that the *creditor's claims* (other than any *excluded claim*) are extinguished, discharged and released upon *effectuation*.

### 5.2. Excluded claims

- 5.2.1. An *excluded creditor* is not entitled to participate in or receive any distribution from, and will not prove to recover any *excluded claim* for the purpose of, or in relation to, the *trust fund*, in relation to an *excluded claim*.
- 5.2.2. An *excluded creditor* is entitled to make a claim against the *trust fund*, in accordance with the *creditors' trust deed*, for any *claim* that is not an *excluded claim*.

### 5.3. Execution of all necessary documents

Each *creditor* must, if required by the *companies* (or any one of them) or the *deed administrators*, execute any document that the *companies* (or any one of them) or the *deed administrators* may require from time to time to give effect to the releases in clause 5.1.



#### 5.4. Conversion of claims

Subject to clause 5.2, the *deed administrators* and the *creditors* agree that, upon all *claims* being released pursuant to clause 5.1, each *creditor* (other than an *excluded creditor*) who had a *claim*, will become a *trust claimant* and will be entitled to make a claim against the *trust fund* for an amount equal to their released *claim*, in accordance with the *creditors' trust deed*.

#### 5.5. Creditors' trust

5.5.1. Subject to the provisions of this *deed* and the *creditors' trust deed*, the *property* of the *companies* that is available to pay *admitted claims* is the *trust fund*.

5.5.2. All *creditors* must accept their entitlement under this *deed* and the *creditors' trust deed* in full and final satisfaction of their *claims*.

#### 5.6. Bar to claims

Subject to section 444D of the *Corporations Act*, this *deed* may be pleaded by the *companies* (or any one of them) or the *deed administrators* against any person having a *claim* (other than an *excluded claim*) against the *companies* (or any one of them) as an absolute bar and defence to any legal proceedings brought or made at any time in respect of that *claim*.

#### 5.7. Eligible employee creditors

For the purposes of section 444DA of the *Corporations Act*, *employees* will retain a priority:

- (a) until *completion* in relation to the *assets* which are under the *deed administrators'* control; and
- (b) after *completion*, in relation to the *trust fund*,

at least equal to that which they would have been entitled if the *property* of the *companies* (or any one of them) had been applied in accordance with sections 556, 560 and 561 of the *Corporations Act*.

#### 5.8. Superannuation contribution debts

For the purposes of section 444DB of the *Corporations Act*, the *trustees* must determine that a debt (or part thereof) by way of a *superannuation contribution* is not admissible to proof as *trust claim* if:

- (a) that debt (or part of the debt) by way of *superannuation guarantee charge*:



- (iii) has been paid; or
- (iv) is, or is to be admissible against, the *companies* (or any one of them); and
- (b) the *deed administrators* are satisfied that the *superannuation guarantee charge* is attributable to the whole of the first-mentioned debt.
- (c) If the *deed administrators* make a determination in accordance with clause 5.8, the superannuation debt is to be treated as extinguished as against the *companies*.

## 5.9. Insured claims

5.9.1. If insurance is held by or on behalf of the *companies* (or any one of them) in respect of an *insured claim*:

- (a) the *creditor* may, in relation to its *insured claim* and notwithstanding that *completion* has occurred, take action to recover the amount due in respect of the *insured claim* against the *companies* (or any one of them, as the case may be), but such action must not exceed what is necessary to obtain payment from the insurer;
- (b) to the extent that the *creditor* is able, by settlement, arbitral award or judgement, to obtain payment from the insurer on account of the *insured claim*, the *creditor* may retain that amount in full satisfaction of its *claim*; and
- (c) the *companies* are not required to provide assistance to a *creditor* in relation to any *insured claim* under this clause or take any action in response to enforcement action taken by a *creditor* in accordance with this clause.

5.9.2. To the extent that the *creditor* is unable to seek or obtain payment on account of its *insured claim* from the insurer, this *deed* operates as a complete release and bar to that part of the *creditor's insured claim* which has not been met by the insurer.

# 6. DEED ADMINISTRATORS

## 6.1. Appointment and term

6.1.1. The *deed administrators* are appointed as joint and several administrators of this *deed*.

6.1.2. Each *deed administrator's* appointment begins on the *execution date* and continues until the *termination date* or until their retirement or removal from office.

6.1.3. Each *deed administrator*:

- (a) consents to and accepts their appointment as *deed administrators* of this *deed*; and



- (b) agrees to act as *deed administrators* of this *deed* for the period of their appointment under clause 6.1.2.

## 6.2. Agents of the companies

The *deed administrators* are the agents of the *companies* insofar as they exercise powers, obligations, functions and duties in administering this *deed*.

## 6.3. Powers of deed administrators

- 6.3.1. The *deed administrators* will administer this *deed* and have all the powers, functions and duties conferred on them by this *deed*, the *Corporations Act*, and other than to the extent inconsistent with this *deed*, Schedule 8A of the *Corporations Regulations*.
- 6.3.2. The *deed administrators* will continue to maintain control of the *assets* of the *companies*, subject to the terms of this *deed*, from the *execution date* until the *termination date*.
- 6.3.3. In addition to, and without limiting, the powers referred to elsewhere in this *deed*, the *deed administrators* will have the power:
  - (a) to perform any function and exercise any power that the *directors* could perform or exercise if the *companies* (or any one of them) were not under external administration;
  - (b) to do anything that is incidental to exercising a power set out in this *deed*;
  - (c) to remove any *director* or *officer*;
  - (d) to appoint any person as any *director* or *officer*; and
  - (e) to sell the *assets* in the ordinary course of business;
  - (f) to do anything else that is necessary or convenient for the purpose of exercising their powers to administer this *deed*.
- 6.3.4. The *deed administrators* will be entitled to engage the services of their *personnel* to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this *deed*.

## 6.4. Joint and several rights, powers and privileges

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

## 6.5. Books and records

- 6.5.1. The *deed administrators* have the power to access books and records of the *companies*.



- 6.5.2. To the extent that the *deed administrators* are given access to or possession of the books and records of the *companies*, the *deed administrators* agree to maintain them in accordance with the requirements of the *Corporations Act*.
- 6.5.3. The *companies* and the *deed administrators* will provide the *trustees* with all reasonable access to the books and records of the *companies* to enable the *trustees* to adjudicate *claims* by *creditors*.

## 6.6. Deed administrators not personally liable

Subject to any relevant provisions of the *Corporations Act* and to the extent permitted by law, in the performance or exercise of the *deed administrators*' powers, obligations, functions and duties under this *deed*, the *deed administrators* will not be personally liable for:

- (a) any debts, liabilities, actions, suits, proceedings, accounts, obligations, *claims*, damages, awards and judgements of any kind whatsoever arising out of or in any way connection to the administration of *companies* incurred by or on behalf of the *companies* (or any one of them) whether before, during or after the *deed period*;
- (b) any amount which the *administrators* or *deed administrators* are, or would but for the transactions contemplated by this *deed* be, entitled to be indemnified out of the assets of the *companies*, for, in accordance with the *Corporations Act*, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the *Corporations Act*;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the *Corporations Act* applies;
- (d) any loss or damage of any kind whatsoever, excluding loss or damage arising from fraud or gross negligence, default or omission of the *deed administrators* or any person or body corporate or incorporate acting on the *deed administrators*' behalf in exercising their powers, obligations, functions or duties under this *deed*;
- (e) any debt, liability, remuneration, costs and expenses or other obligation which the *deed administrators* themselves or any of their *personnel*, may incur on behalf of any of the *companies* (or any one of them); or
- (f) any loss or damage caused by any act, default or omission by or on behalf of the *deed administrators* or any of their *personnel*, except where such loss, damage, claim, liability or expense is caused by gross negligence or wilful misconduct.



## 6.7. Calling for proofs of debt

- 6.7.1. The *deed administrators* may exercise any of the powers conferred on the *trustees* under the *creditors' trust deed* for the purpose of commencing the process for the adjudication of *claims* under the *creditors' trust deed*.
- 6.7.2. The *deed administrators'* exercise of power to adjudicate *claims* under clause 6.7.1 will be treated for all purposes under the *creditors' trust deed* as if those powers had been exercised by the *trustees* after the establishment of the *trust*.

## 6.8. Deed administrator's resignation

- 6.8.1. A *deed administrator* may resign or retire at any time by giving at least 14 days' prior written notice to the *companies* unless that resignation or retirement would result in there being no remaining *deed administrators*, in which event the *deed administrators* must:
- (a) convene a meeting of *creditors* in accordance with clause 12 of this *deed* for the purpose of approving the appointment of a replacement *deed administrator*;
  - (b) assign and transfer to a replacement trustee appointed by the *creditors* all of the *deed administrators'* rights, title and benefit under this *deed*; and
  - (c) do all things reasonably necessary to effect the assignment and transfer referred to in clause 6.8.1(b).
- 6.8.2. Nothing in this section affects the *deed administrators'* right to remuneration pursuant to clause 8 of this *deed* or the *deed administrators'* lien created pursuant to clause 8.3 of this deed over the *property* of the *companies*.

# 7. THE COMPANIES

## 7.1. Suspension of powers

- 7.1.1. Subject to clause 3.2 and subject to the prior written agreement of the *deed administrators*:
- (a) each *director* remains in office subject to the provisions of the *Corporations Act*; and
  - (b) control of the *companies* will remain with the *deed administrators* from the *execution date*, and will revert to the *nominee directors* immediately prior to the *effectuation*, subject to relevant shareholder approval, provided that the *nominee directors* shall have such power as is necessary or desirable in order to do all things necessary to satisfy the *conditions precedent* (including for the avoidance of doubt causing



any notice of general meeting to be sent and approving any disclosure document) ,

- 7.1.2. Where the powers of the *deed administrators* and the *directors* overlap, the *deed administrators*' powers operate to the exclusion of the *directors*' powers unless the *deed administrators* grant prior consent to the exercise by the *directors* of their powers.
- 7.1.3. The *deed administrators* may delegate to the *directors* such operations, functions and powers as the *deed administrators* in their sole discretion think fit and the *deed administrators* shall not be responsible or liable for anything done by the *directors* in relation to any operation, function or power so delegated.
- 7.1.4. The *nominee directors* must on request provide the *deed administrators* with a written report in a form approved by the *deed administrators* detailing their progress in respect of any matters delegated to them under clause 7.1.3 and identifying or notifying the *deed administrators* of any material issues in respect of those matters.

## 7.2. Other officers

As and from the *execution date*, each *officer* who is not a *director* remains in their office subject to the provisions of the *Corporations Act*.

## 7.3. Appointment and removal

The powers of the *deed administrators* under this *deed* to remove and to appoint *directors* or *officers* applies in precedence to, and to the exclusion of, any *members*' , *directors*' or *officers*' power to remove or to appoint *directors* or *officers* (or both).

## 7.4. Assistance

Each *company* and each *officer* must use all of their respective reasonable endeavours to co-operate with and assist the *deed administrators* in carrying out their duties and functions under this *deed* and the *Corporations Act*.

## 7.5. Indemnity

Without limitation, and in addition to, any other indemnity by the *companies* in favour of the *deed administrators* (including the indemnity provided for in clause 8.2), the *companies* indemnify and will keep indemnified the *deed administrators* against any debts, liabilities, obligations, *claims*, costs, and expenses of any kind whatsoever incurred by or on behalf of the *companies* (or any one of them) after the *execution date*.



## 8. REMUNERATION, COSTS, CHARGES, AND EXPENSES OF ADMINISTRATORS AND DEED ADMINISTRATORS

### 8.1. Remuneration and expenses of administrators and deed administrators

Subject to section 60-5 of the Insolvency Practice Schedule, the *deed administrators*, their partners and employees will be:

- (a) remunerated by the *companies* in respect of any work done by them as *administrators* and as *deed administrators* at the *standard rates* charged from time to time; and
- (b) reimbursed by the *companies* in respect of all costs and expenses incurred in the connection the *administrators* and *deed administrators'* duties, obligations and responsibilities.

### 8.2. Indemnity

*Grant*

8.2.1. Subject to clause 8.2.2, the *administrators* and *deed administrators* (as applicable) are entitled to be indemnified by the *companies* until *completion*, and after *completion* from the *trust fund*, for:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the *companies* (or any one of them) under Part 5.3A of the *Corporations Act* or under this *deed*, and incurred or sustained in good faith and without negligence;
- (b) any amount which the *administrators* or *deed administrators* (or both) are, or would but for the transactions contemplated by this *deed* be, entitled to be indemnified out of the *assets* of the *companies* (or any one of them) for, in accordance with the *Corporations Act*, at law or in equity, including any amounts payable pursuant to sections 443A, 443B or 443BA of the *Corporations Act*;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the *Corporations Act* applies;
- (d) their lien at law or in equity on the *property* of the *companies* (or any one of them) as set out in clause 8.3 of this *deed*; and





(e) their *administration and deed costs*.

8.2.2. Neither the *administrators* or the *deed administrators* will be entitled to an indemnity in relation to any liabilities or demands to the extent that:

- (a) the indemnification contravenes the *Corporations Act* or this *deed*; or
- (b) If the *administrators* or the *deed administrators*, or any *personnel* of the *administrators* or the *deed administrators*, has acted dishonestly, negligently, in breach of fiduciary duty or in breach of trust.

8.2.3. The indemnity under clause 8.2.1 will take effect on and from the *appointment date*.

*Continuing indemnities*

8.2.4. The indemnities in favour of the *administrators* or the *deed administrators* (or both) in this clause 8.2 and elsewhere in this *deed* are continuing indemnities which endure despite:

- (a) the removal of the *deed administrators*;
- (b) the appointment of new *deed administrators*; or
- (c) the termination of the *deed* for any reason whatsoever.

*Indemnities not affected or prejudiced*

8.2.5. The indemnities in favour of the *administrators* or the *deed administrators* (or both) will not:

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



### 8.3. Lien

8.3.1. Until *completion*, the *administrators* and the *deed administrators* (whether or not they are still acting in either capacity) are entitled to exercise a lien over the *property* for all amounts in relation to which they are entitled to an indemnity from the *companies* under this *deed*.

8.3.2. The lien under clause 8.3.1:

- (a) is in addition to any lien or other right to priority that may arise in favour of the *administrators* or the *deed administrators* by operation of law, including pursuant to section 443E or 443F of the *Corporations Act*, and
- (b) includes a lien over the *trust funds* as set out in clause 8.2.1(d).

### 8.4. Priority

The *administrators* and the *deed administrators* right of indemnity under clause 8.2 and their lien under clause 8.3 have priority over the *claims* of all *creditors*.

## 9. SCOPE OF THIS DEED

### 9.1. Deed binds all persons

This *deed* binds:

- (a) all *parties* to this *deed*;
- (b) in accordance with section 444D of the *Corporations Act*, all *creditors* of the *companies* (or any one of them) to the extent of *claims* arising on or before the *appointment date*, being the day specified in this *deed* under section 444A(4)(i) of the *Corporations Act*; and
- (c) in accordance with section 444G of the *Corporations Act*, the *companies*, the *deed administrators*, and the *members* and *officers* of the *companies*.

### 9.2. Secured creditors

9.2.1. Subject to subsection 444D(2) of the *Corporations Act*, this *deed* binds *secured creditors* of the *companies* (or any one of them).

9.2.2. Unless the *deed* expressly states otherwise, any *secured creditor* bound by this *deed* must, if that *secured creditor* receives payment which satisfies its *claim* against the *companies*, provide the *deed administrators* with a registrable form of discharge and release in



relation to any *security interest* that it holds over or in relation to the *property* of the *companies* (or any one of them).

- 9.2.3. Notwithstanding anything in this *deed*, the terms of this *deed* do not prejudice the rights of *secured creditors*.
- 9.2.4. Any *secured creditor* who voted in favour of the *proposal* under section 439C resolution at the meeting at which *creditors* resolved to enter into this *deed* may not realise or otherwise deal with its security after execution of this *deed*.
- 9.2.5. Unless expressly stated otherwise, nothing in this *deed* restricts or otherwise affects any right of a *secured creditor* to realise or otherwise deal with its security to the extent permitted by section 444D(2) of the *Corporations Act*.
- 9.2.6. Consistent with the *proposal*, the *New Moonie claim* shall be admitted in the amount of \$400,000 and *New Moonie* shall, at *completion*, release and discharge its *security interest* and release its *claim* (as well as any *claim* it has against *GSA*) in exchange for payment in that amount. The *proponent* also agrees to ensure that *New Moonie* is also provided with shares to a value of \$100,000 in the *placements*.
- 9.2.7. The *deed administrators* confirm that they are not aware of any *securities* over the *companies* or the *required subsidiaries* other than those disclosed on a search of the register maintained under the *Personal Property Securities Act 2009* (Cth) in respect of the *companies*.

### 9.3. Owners and lessors

- 9.3.1. Subject to subsection 444D(3) of the *Corporations Act*, this *deed* binds *owners* or *lessors* of *property* that is used or occupied by, or in the possession of, the *companies* (or any one of them), and who are also *creditors*. An *owner* or *lessor* bound by this *deed* may prove its *claim* in this *deed* or the *creditors' trust*.
- 9.3.2. To any extent at law that this *deed* may prohibit any *enforcement process*, throughout the *deed period*, an *owner* or *lessor* referred to in clause 9.3.1 must not, without the consent of the *deed administrators* or the leave of a *Court*, bring or proceed with any *enforcement process* in relation to that *property*.
- 9.3.3. Notwithstanding anything in this *deed*, the terms of this *deed* do not prejudice the rights of an *owner* or *lessor* referred to in clause 9.3.1.

### 9.4. Liability

- 9.4.1. Subject to clause 9.4.2, neither the *administrators* nor the *deed administrators* have nor will they be taken to have adopted, ratified, or in any manner become personally bound under any agreement, deed, or other binding undertaking between the



*companies* (or any one of them) and any *owner* or *lessor* of *property* or any other person or entity as a result of:

- (a) any discussions or correspondence with any *owner* or *lessor* of *property* or any other person or entity;
- (b) the use, occupation or possession of the *property* of the *owner* or *lessor* of *property* by the *companies* (or any one of them), whether that use, occupation or possession is during this *deed period*, or during the period in which the *administrators* were voluntary administrators of the *companies*, or any other period; or
- (c) any other act, matter or thing done or omitted to be done by the *administrators*, the *deed administrators* or the *companies* (or any one of them).

9.4.2. The *administrators* will be personally liable for expenses of the *companies* (or any one of them) incurred after the *appointment date* to the extent, and only to the extent, required under the *Corporations Act*.

## 10. REPORTS AND ACCOUNTS

### 10.1. Reports to admitted creditors

During the *deed period*, the *deed administrators* may, but are not obliged to, report to *admitted creditors* on the *companies*' state of affairs and on any matters which the *deed administrators* consider should be brought to their attention.

### 10.2. Court orders regarding returns and accounts

Section 434 of the *Corporations Act* applies to the *deed administrators* as if the references to a 'controller' were references to the *deed administrators*.

## 11. EFFECTUATION OF DEED

Effectuation under this *deed* is to occur on the latest of the following to occur:

- (a) satisfaction (or waiver) of each of the *conditions precedent*;
- (b) payment of the *proponent payment* under clause 3.4; and
- (c) the establishment and capitalisation of the *creditors' trust*.



## 12. MEETINGS OF CREDITORS

- 12.1. Meetings of *creditors* may be convened by the *deed administrators* from time to time in accordance with Division 75 of the *Insolvency Practice Schedule* and Division 75 of the *Insolvency Practice Rules*.
- 12.2. Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this *deed*, the provisions of Division 75 of the *Insolvency Practice Schedule* and Division 75 of the *Insolvency Practice Rules* apply to meetings of *creditors* convened under the *Corporations Act* or this *deed*.

## 13. VARIATION OF DEED

### 13.1. Variation by creditors

- 13.1.1. Pursuant to section 445A of the *Corporations Act*, this *deed* may be varied by resolution of *creditors* passed at a meeting of *creditors* convened in accordance with clause 12, but only if the variation is not materially different from a proposed variation set out in the notice convening such meeting.
- 13.1.2. Without limiting Clause 13.1.1, so long as a variation satisfies the requirements of Clause 13.2, to the extent that it does not effect a change to the proposal voted on by creditors of the *companies* to enter into this *deed*, this Clause 13.1 does not require a variation to be approved by a resolution of *creditors*.

### 13.2. Variation in writing

Subject to the provisions of the *Corporations Act*, a variation of any term of this *deed* must be in writing and signed by all *parties*.

## 14. TERMINATION OF DEED

### 14.1. Termination on effectuation

- 14.1.1. This *deed* will terminate immediately upon *effectuation* occurring in accordance with clause 10.2.
- 14.1.2. Within 28 days of *effectuation*, the *deed administrators* must execute and lodge with ASIC, in respect of each *company*, a notice in the form of the notice prescribed by ASIC for



the purposes of section 445FA(2) of the *Corporations Act* or, if a form is not prescribed, in the form set out in Schedule 3.

- 14.1.3. The *deed administrators* must not perform the acts set out in clause 14.1.2 if any *party* to this *deed* is in breach of its obligations or if obligations (other than those in this clause 14) of any *party* have not been fulfilled which obligations are necessary for the full *effectuation* under this *deed*.

## 14.2. Termination prior to effectuation

### *Initiation of termination or variation by deed administrators*

- 14.2.1. The *deed administrators* may, in their absolute discretion, convene a meeting of *creditors* if the *deed administrators* determine:

- (a) that it is no longer practicable or desirable to continue to implement this *deed*,  
or
- (b) the terms of this *deed* cannot be fulfilled.

- 14.2.2. A meeting under clause 14.2.1 will be convened for the purpose of the *creditors* resolving either:

- (a) to vary this *deed*; or
- (b) if there is an unrectified or material breach of this *deed*, terminating this *deed*.

- 14.2.3. The *deed administrators* must forward to each *creditor*, at least 14 days prior to a meeting clause 14.2.1, an up-to-date report as to the position of the *companies* accompanied by:

- (a) such financial information as the *deed administrators* think appropriate; and
- (b) a statement that:
  - (i) the *deed administrators* do not think that it is practicable or desirable to continue this *deed*; and
  - (ii) this *deed* will either be varied or terminated if the *creditors* so resolve.

### *Automatic termination*

- 14.2.4. In the event that:

- (a) *completion* does not occur by the *completion date*;
- (b) *effectuation* does not occur by the *completion date*;
- (c) the *deed administrators* and the *proponent* agree in writing prior to *effectuation* that the terms of this *deed* cannot be fulfilled, and it should be terminated;



- (d) a meeting of *creditors* is convened in accordance with Division 75 of the *Insolvency Practice Rules* and, at that meeting, the *creditors* pass a resolution terminating this *deed* in accordance with sections 445C(b) and 445CA of the *Corporations Act*; or
- (e) a *Court* makes an order terminating this *deed* under section 445D of the *Corporations Act*,

then:

- (f) this *deed* will automatically terminate;
- (g) each *company* will be taken to have passed a special resolution under section 491 of the *Corporations Act* that it be wound up voluntarily and to have done so without a declaration having been made under section 499 of the *Corporations Act* and the *deed administrators* be appointed as liquidators of that *company*;
- (h) subsections 446A(3), 446A(5) and 446A(7) of the *Corporations Act* shall apply as if each *company* were being wound up under section 446A of the *Corporations Act*.

#### *Effect on claims*

- 14.2.5. *Claims of creditors* will not be released under clause 5.1 if this *deed* is terminated prior to *effectuation* occurring except to the extent of the amounts or credits, if any, received by *creditors* under this *deed* or otherwise in relation to the *claim*.

### 14.3. Consequences of termination

Pursuant to section 445H of the *Corporations Act*, the termination or avoidance (whether in whole or in part) of this *deed* does not affect the previous operation of this *deed*.

### 14.4. Survival

The *surviving clauses* will continue to apply despite termination of this *deed*.

## 15. APPLICATIONS TO COURT

### 15.1. Unforeseen circumstances

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



## 15.2. Application to the Court

The persons bound by this *deed* (other than the *deed administrators* or *proponent*) may not make any application to a *Court* in relation to any matter arising under this *deed* unless at least 5 *business days* prior notice in writing has been given to the *deed administrators* and the *proponent*, with such notice to give particulars of the proposed application and attach a copy of any papers proposed to be filed with the *Court* in support of that application.

# 16. MISCELLANEOUS PROVISIONS

## 16.1. Governing law

The laws of the State of New South Wales govern this *deed*.

## 16.2. Jurisdiction

16.2.1. The *parties* submit to the exclusive jurisdiction of the *Courts*.

16.2.2. Any legal proceedings in relation to this *deed* must be held in Sydney, New South Wales unless otherwise agreed between the *parties* in writing.

## 16.3. Severance

16.3.1. Subject to clause 16.3.2, if any provision of this *deed* is invalid, illegal, or unenforceable, that provision must be severed from and ignored in the interpretation of this *deed* to the minimum extent necessary and with the intent that the remaining provisions of this *deed* remain in full force and effect.

16.3.2. Any provision of this *deed* or any right, power, authority, discretion or remedy of a *party* under this *deed* which is:

- (a) prohibited in a jurisdiction, is ineffective in that jurisdiction only to the extent of that prohibition; or
- (b) invalid, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

16.3.3. The application of clause 16.3.2 is not limited by any other provision of this *deed* in relation to severability, prohibition or enforceability.





## 16.4. Waiver

- 16.4.1. A *party* granting a waiver of a right under this *deed* must give written notice of that waiver to the *party* which benefits from the waiver.
- 16.4.2. A *party's* failure, partial failure or delay in exercising a right relating to this *deed* is not a waiver of that right.
- 16.4.3. A *party* may not claim that another *party's* delay or failure to exercise a right relating to this *deed*:
- (a) constitutes a waiver of that right; or
  - (b) is a defence to its own action or inaction.

## 16.5. Entire agreement

This *deed* constitutes the entire agreement between the *parties* and supersedes all previous discussions, undertakings and agreements in relation to the subject matter of this *deed*.

## 16.6. Survival

- 16.6.1. All of the indemnities provided for in the *deed*, including those set out at clauses 7.5 and 8.2, survives the performance of obligations relating to this *deed* and the termination of this *deed*.
- 16.6.2. To the extent that a *party* has not satisfied an obligation, or it is a continuing obligation, that obligation survives termination of this *deed*.

## 16.7. Merger

A *party's* rights and obligations in relation to this *deed* do not merge on the execution of this *deed* or the completion of a transaction under this *deed*.

## 16.8. Representations

Subject to the express provisions in this *deed*:

- (a) neither a *party* nor its representative has made any representation to another *party* to induce that other *party* to execute this *deed*; and
- (b) neither a *party* nor a person acting on a *party's* behalf was induced to execute this *deed* by relying on a representation that another *party* has made.



## 16.9. Further assurances

Each *party* at its own expense must exercise such powers as are available to them, do all such acts, sign, execute and deliver such documents or instruments, provide all such assistance, and otherwise do everything necessary to give full effect to this *deed*.

## 16.10. Rights of third parties

16.10.1. Subject to the rights of *creditors* under the *Corporations Act*, to the extent permitted by law, a person who is not a *party* to this *deed* does not have any right to enforce any term of this *deed* pursuant to the laws of any jurisdiction, except where and to the extent expressly set out in this *deed*.

16.10.2. Notwithstanding any rights of persons who are not *parties* to enforce this *deed*, this *deed* may be:

- (a) varied by the *parties* in accordance with clause 13 without the consent of any person who is not a *party*; and
- (b) terminated in any manner and circumstance in which termination is allowed under this *deed*, without the consent of any person who is not a *party*.

## 16.11. Expenses

Except as otherwise provided in this *deed*, each *party* must pay its own costs and expenses in relation to negotiating, preparing, executing, and performing this *deed*.

## 16.12. Indemnities

16.12.1. All of the indemnities provided for in the *deed*, including those set out at clauses 7.5 and 8.2, are continuing obligations, separate and independent from the other obligations of the *parties*, and survive termination, completion, or expiration of this *deed*.

16.12.2. It is not necessary for a *party* to incur expense or to make any payment before enforcing a right of indemnity conferred by this *deed*.

16.12.3. A *party* must pay on demand any amount it must pay under an indemnity in this *deed*.

## 16.13. Time of the essence

Time is of the essence in relation to this *deed* in all respects.



## 16.14. Liabilities of parties

If a *party* to this *deed* is made up of more than one person, or a term is used in this *deed* to refer to more than one *party*:

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

## 16.15. Notices

16.15.1. Each communication (including each notice, consent, approval, request and demand) given by a *party* to another *party* in relation to this *deed*:

- (a) must be in writing and in the English language;
- (b) must be addressed to the recipient *party* using the contact details of the recipient *party* specified in this *deed* or as otherwise notified by the recipient *party* to each other *party* from time to time;
- (c) must be signed by the *party* making it or by that *party's* lawyer, attorney, director, secretary or authorised agent;
- (d) must be delivered by hand, sent by prepaid post, sent by facsimile or sent by email to the recipient *party* at the address or using the contact details specified in this *deed*; and
- (e) is taken to be received by the recipient *party*:
  - (i) in the case of delivery by hand, upon delivery;
  - (ii) in the case of prepaid post sent to a recipient *party* in the same country as the sending *party*, on the 2<sup>nd</sup> *business day* after the date of posting;
  - (iii) in the case of prepaid post sent to a recipient *party* in another country to the sending *party*, on the 5<sup>th</sup> *business day* after the date of posting; or
  - (iv) in the case of email, at the time it is delivered to the recipient *party's* host server.

16.15.2. Notwithstanding clause 16.15.1(e), if a communication given under clause 16.15.1 is taken to be received on a day that is not a *business day* or after 5.00pm in the place where the communication is received, it will be taken to be received at 9.00am on the next *business day*.



## 16.16. Counterparts

- 16.16.1. This *deed* may be executed in any number of counterparts which taken together are one and the same document.
- 16.16.2. This *deed* is binding on the *parties* on the exchange of counterparts.
- 16.16.3. A copy of an entire signed counterpart of this *deed* sent by facsimile or email must be treated as an original counterpart.

## 16.17. Companies may execute this deed

Each *company* is authorised by the *administrators* to execute this *deed*.

## 16.18. Stamp duty

Any *stamp duty* assessed on this *deed* is to be paid by the *deed administrators* on behalf of the *companies*.

# 17. INTERPRETATION

## 17.1. Application

This clause 17 applies to the interpretation of this *deed* unless inconsistent with the context.

## 17.2. General

- 17.2.1. If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- 17.2.2. The singular includes the plural and vice versa.
- 17.2.3. A reference to a gender includes any gender.
- 17.2.4. A reference to a living thing includes a reference to an inanimate thing and vice versa.
- 17.2.5. A reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this *deed*.
- 17.2.6. The words “includes”, “including” and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this *deed*.
- 17.2.7. A reference to a document includes a variation or replacement of it.



- 17.2.8. A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- 17.2.9. A reference to this *deed* includes an annexure.
- 17.2.10. A reference to person includes a reference to:
- (a) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
  - (b) if the person is an individual, the person's personal representatives and assigns; and
  - (c) if the person is not an individual, the person's successors and assigns.
- 17.2.11. A reference to a thing, including a right, is a reference to either the whole thing or a part of the thing.
- 17.2.12. Part performance of an obligation does not constitute performance of an obligation.
- 17.2.13. A term, condition or warranty in this deed in favour of or on the part of two or more people benefits or binds them jointly and severally.
- 17.2.14. A reference to currency is to Australian currency unless specified otherwise.
- 17.2.15. A reference to time is to Australian Eastern Standard Time unless the context otherwise requires.
- 17.2.16. If the date on which a thing must be done is not a *business day*, then that thing must be done on the next *business day*.
- 17.2.17. A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.
- 17.2.18. If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- 17.2.19. A clause is not to be construed against a *party* solely on the ground that the *party* is responsible for the preparation of this *deed* or that clause.
- 17.2.20. A reference to a right includes a benefit, remedy, discretion or power.
- 17.2.21. The phrase "in relation to" has the widest possible import and encompasses the phrases "in relation to", "in connection with", "in respect of", "arising out of", "caused by" and "resulting from".
- 17.2.22. In the event of an inconsistency between the main body of this *deed* and any of the Schedules, the main body of this *deed* prevails to the extent of that inconsistency.



### 17.3. Headings

A heading in this *deed* is for convenience only and does not affect the interpretation of this *deed*.

### 17.4. Inconsistency with other transaction documents

- 17.4.1. If this *deed* is inconsistent with any other *transaction document* or other agreement between the *parties*, this *deed* prevails to the extent of the inconsistency.
- 17.4.2. If there is any inconsistency between the provisions of this *deed* and the *Corporations Act* then the *Corporations Act* will, only to the extent of the inconsistency and if that *Corporations Act* provision may not be varied or excluded by contract, prevail and this *deed* will be interpreted accordingly.
- 17.4.3. If there is any inconsistency between the provisions of this *deed* and the constitution of any *company* or any other obligations binding on a *company*, then the provisions of this *deed* will prevail to the extent of this inconsistency.



## Schedule 1 – Glossary

In this *deed*, unless the context otherwise requires, the *parties* defined commencing on Page 1 shall have the meanings ascribed to them there, and the following terms bear the following meanings:

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<i>administration and deed costs</i>	<p>(a) the remuneration payable to the <i>administrators</i> and the <i>deed administrators</i> (or either of them) for work performed by them or any of their <i>personnel</i> in relation to the <i>administration period</i> and the <i>deed period</i> (or either period) as determined by Division 60 of the <i>Insolvency Practice Schedule</i>;</p> <p>(b) the costs referred to in clause 3.6.1;</p> <p>(c) costs, charges, fees (including legal fees), government charges, taxes (including any <i>stamp duty</i> and taxes required to be paid by the <i>deed administrators</i> under this <i>deed</i>) and expenses incurred by the <i>administrators</i> or the <i>deed administrators</i>, including:</p> <p>(i) those incurred in connection with advisers, incurred in connection with the performance or as a result of any actual or attempted execution or exercise or failure to execute or exercise of the <i>administrators</i>' and/or the <i>deed administrators</i>' duties, obligations and responsibilities under the <i>Corporations Act</i> and this <i>deed</i> during the <i>administration period</i> and the <i>deed period</i>; and</p> <p>(ii) preparation, approval and implementation of this <i>deed</i> and of the preparation and implementation of any documents necessary to or associated with approval of this <i>deed</i>, other than <i>administration liabilities</i>; and</p> <p>(d) <i>administration liabilities</i>.</p>
<i>administration liabilities</i>	all amounts, debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments in respect of which the <i>administrators</i> and the <i>deed administrators</i> (or either of them) are entitled to be indemnified under clause 8.2 of this <i>deed</i> or otherwise at law including <i>trading liabilities</i> .
<i>administration period</i>	the period starting on the <i>appointment date</i> and ending on the date that this <i>deed</i> is executed.
<i>administrators</i>	Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several voluntary administrators of the <i>companies</i> under Part 5.3A of the <i>Corporations Act</i> .

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<b><i>admitted claim</i></b>	means a <i>claim</i> by a <i>creditor</i> , the proof of debt for which has been accepted fully or contingently by the <i>administrators</i> , the <i>deed administrators</i> , or the <i>trustees</i> (as the case may be) at their discretion.
<b><i>admitted creditor</i></b>	a <i>creditor</i> with an <i>admitted claim</i> .
<b><i>appointment date</i></b>	10 December 2018, being the date on which the <i>administrators</i> were appointed or were taken to be appointed pursuant to section 436A of the <i>Corporations Act</i> .
<b><i>approval</i></b>	any and all legal, regulatory, creditor, or shareholder approvals, as required by government entities and regulatory bodies, including <i>ASIC</i> and <i>ASX</i> .
<b><i>ASIC</i></b>	the Australian securities & Investments Commission.
<b><i>ASX</i></b>	ASX Limited (ACN 008 624 691) or the financial market conducted by it under the name Australian securities Exchange, as the context requires.
<b><i>assets</i></b>	means: <ul style="list-style-type: none"><li>(a) all cash at bank held by the <i>companies</i> at the date of execution of the <i>deed</i>;</li><li>(b) proceeds from the NIMS debtor</li><li>(c) any tax or GST refunds relating to the Administration Period or the <i>deed</i> period received prior to the <i>completion date</i>;</li><li>(d) proceeds from the sale of the <i>companies</i> physical assets,</li><li>(e) any physical assets (other than <i>required assets</i>) that are unsold as at the date of execution of the <i>deed</i>; and</li><li>(f) the remaining amount of the <i>proponent payment</i>.</li></ul>
<b><i>business day</i></b>	a day other than a Saturday, a Sunday, or a public holiday in Sydney, New South Wales .
<b><i>claim</i></b>	a debt payable by, or a liability of or claim against, the <i>companies</i> (or any of them) (whether present or future, certain or contingent, ascertained, or sounding only in damages) being a debt, liability or claim: <ul style="list-style-type: none"><li>(a) the circumstances giving rise to which occurred on or before the <i>appointment date</i>; or</li><li>(b) which was due or arising or which may become due or arise because of anything done or omitted by or on behalf of a <i>company</i> or the <i>companies</i> on or before the <i>appointment date</i>,</li></ul> (whether arising under common law, equity or statute) and which would be admissible to proof against the <i>companies</i> (or any of them, as the case may be) under Division 6, Part 5.6 of the <i>Corporations Act</i> had the <i>companies</i> (or any of

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	them, as the case may be) been wound up and the winding up was taken to have commenced on the <i>appointment date</i> , including but not limited to:
	(c) debts, liabilities or claims against the <i>companies</i> (or any of them, as the case may be) in relation to a <i>pre-administration contract</i> , including by way of a convertible note or leases;
	(d) claims relating to the termination of the employment of <i>employees</i> ;
	(e) a debt by way of a <i>superannuation contribution</i> accrued prior to the <i>appointment date</i> ; and
	(f) a debt by way of a <i>superannuation guarantee charge</i> accrued prior to the <i>appointment date</i> .
<i>companies</i>	<i>GSL</i> and <i>GSI</i> , or any of them, as the context requires
<i>completion</i>	completion of the steps and transactions contemplated by clause 3.7.2.
<i>completion date</i>	4 months from the date of this <i>deed</i> or such later date as agreed between the <i>proponent</i> and the <i>deed administrators</i> in writing.
<i>conditions precedent</i>	has the meaning given to that term in clause 2.1 of this <i>deed</i> .
<i>consolidation</i>	a consolidation of <i>GSL</i> 's share capital which as at the date of this deed is 388,068,379 issued shares on a 10 for 1 basis, subject to compliance with applicable laws.
<i>Corporations Act</i>	the <i>Corporations Act 2001</i> (Cth).
<i>Corporations Regulations</i>	the <i>Corporations Regulations 2001</i> (Cth).
<i>Court</i>	any court having jurisdiction to hear and determine matters under the <i>Corporations Act</i> .
<i>creditor</i>	any person who would have been entitled to prove in a winding up of any of the <i>companies</i> if the relevant <i>company</i> had been wound up and the winding up was taken to have commenced on the <i>appointment date</i> , including <i>employees</i> and <i>priority creditors</i> .
<i>creditors' trust</i>	the trust to be established and governed by the <i>creditors' trust deed</i> .
<i>creditors' trust deed</i>	the trust deed to be executed by the <i>companies</i> and the <i>trustees</i> , substantially in the form of the Annexure to this <i>deed</i> .
<i>deed</i>	this Deed of Company Arrangement, as amended from time to time.

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<i>deed period</i>	the period commencing on the <i>execution date</i> and ending on the <i>termination date</i> .
<i>director</i>	any person who, by reason of the definition of “director” in section 9 of the <i>Corporations Act</i> , is a director of any of the <i>companies</i> or a <i>required subsidiary</i> from time to time.
<i>dividend</i>	has the meaning given to that term in the <i>creditors’ trust deed</i> .
<i>effectuation</i>	effectuation of this <i>deed</i> under clause 10.2.
<i>employee</i>	current or former employees of the <i>companies</i> (or any one of them).
<i>employee entitlements</i>	the <i>claim</i> of any <i>employee</i> that would rank for payment in priority to the payment of other unsecured <i>claims</i> under section 556 of the <i>Act</i> if the <i>company</i> of which they were an <i>employee</i> had been wound up with the winding up taken to have commenced on the <i>appointment date</i> .
<i>enforcement process</i>	has the meaning given to that term in section 9 of the <i>Corporations Act</i> .
<i>excluded claim</i>	any <i>insured claim</i> .
<i>excluded creditor</i>	a <i>creditor</i> in relation to an <i>excluded claim</i> .
<i>execution date</i>	the day upon which this <i>deed</i> is executed by the <i>party</i> executing last in time.
<i>exempt investor</i>	a person of the nature described in section 708 of the <i>Corporations Act</i> to whom <i>securities</i> may be issued or granted without disclosure under Chapter 6D of the <i>Corporations Act</i> .
<i>existing director</i>	a <i>director</i> who holds office at the <i>execution date</i> .
<i>general meeting</i>	has the meaning given to that term in clause 3.1.1(a).
<i>general placement A options</i>	an option to subscribe for a fully paid ordinary share in <i>GSL</i> , exercisable at a price equal to 2.5 times the issue price under the <i>general placement</i> within 12 months of grant, and otherwise substantially on the terms set out in Schedule 2, or on such other terms as may be determined by the <i>proponent</i> .
<i>general placement B options</i>	an option to subscribe for a fully paid ordinary share in <i>GSL</i> , exercisable at a price equal to 5 times the issue price under the <i>general placement</i> within 2 years grant, and otherwise substantially on the terms set out in Schedule 2, or on such other terms as may be determined by the <i>proponent</i> .
<i>general placement</i>	a placement by <i>GSL</i> to <i>investors</i> , under which <i>GSL</i> seeks to raise a minimum of \$2,000,000 and up to \$7,000,000 in new working capital through the issue of at least 200,000,000 and up to 700,000,000 <i>shares</i> at an issue price of not



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	less than \$0.01 per <i>share</i> , together with an entitlement to receive one free <i>general placement A option</i> and one free <i>general placement B option</i> for every ten <i>shares</i> subscribed, or on such other terms as may be determined by the <i>proponent</i> .
<b>GSA</b>	Greatcell Solar Australia Pty Ltd (Administrators Appointed).ACN 131 374 064
<b>GSI</b>	Greatcell Solar Industries Pty Ltd (Administrators Appointed) ACN 083 102 498.
<b>GSL</b>	Greatcell Solar Limited (Administrators Appointed) ACN 111 723 883.
<b>GST</b>	goods and services tax levied or imposed pursuant to the <i>GST Act</i> .
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Insolvency Practice Rules</b>	the <i>Insolvency Practice Rules (Corporations) 2016</i> (Cth).
<b>Insolvency Practice Schedule</b>	Schedule 2 (the Insolvency Practice Schedule) to the <i>Corporations Act</i> .
<b>insured claim</b>	<p>a <i>claim</i> which a <i>creditor</i> has against the <i>companies</i> (or any one of them, as the case may be), which would have been entitled to priority in a liquidation of the relevant <i>company</i> under section 562 of the <i>Corporations Act</i>, where:</p> <ul style="list-style-type: none"><li>(a) that <i>company</i> is insured against the <i>claim</i> under a contract of insurance (not being a contract of reinsurance) entered into before the <i>appointment date</i>; and</li><li>(b) an amount in respect of that <i>claim</i> would be payable by the insurer to the <i>company</i> under the contract of insurance,</li></ul> <p>but only to the extent of such part of the <i>claim</i> as would be discharged by the payment from the insurer and provided that the <i>creditor</i> complies with the requirements of clause 5.9 in relation to such a <i>claim</i>.</p>
<b>interim placement</b>	a private placement by <i>GSL</i> to <i>exempt investors</i> identified by the <i>proponent</i> , under which <i>GSL</i> seeks to raise up to \$1,000,000 (before costs) in new working capital through the issue of up to 200,000,000 post- <i>consolidation shares</i> at an issue price of not less than \$0.005 per <i>share</i> , or on such other terms as may be determined by the <i>proponent</i> .
<b>lessor</b>	any person who is the lessor of <i>property</i> at the <i>appointment date</i> .
<b>Listing Rules</b>	the listing rules of <i>ASX</i> and any other rules of <i>ASX</i> applicable to a company admitted to the official list of <i>ASX</i> .

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<i>meeting documents</i>	has the meaning given to that term in clause 3.1.1(a).
<i>member</i>	in relation to any <i>company</i> , a person who is a member of the <i>company</i> under section 231 of the <i>Corporations Act</i> .
<i>New Moonie</i>	New Moonie Petroleum Pty Ltd ACN 603 088 651 it is own right and in its capacity as trustee.
<i>New Moonie claim</i>	all and any <i>claim</i> by <i>New Moonie</i> against either <i>company</i> .
<i>nominee director</i>	a person who is to be appointed as a <i>director</i> , as nominated by the <i>proponent</i> to the <i>deed administrators</i> in writing, at any time prior to <i>completion</i> .
<i>non-required subsidiaries</i>	(a) <i>GSA</i> ; (b) Greatcell Solar SA; and (c) Dyesol Inc..
<i>officer</i>	any person who, by reason of the definition of “officer of a corporation” in section 9 of the <i>Corporations Act</i> , is an officer of any of the <i>companies</i> or a <i>required subsidiary</i> .
<i>option</i>	an option to subscribe for a fully paid ordinary share in <i>GSL</i> .
<i>owner</i>	any person (other than a <i>company</i> ) who is the legal or beneficial owner of <i>property</i> at the <i>appointment date</i> .
<i>party</i>	a party to this <i>deed</i> , including that party’s successors and permitted assigns.
<i>personnel</i>	in relation to the <i>administrators</i> or the <i>deed administrators</i> , their respective partners, officers, employees, contractors, agents, and advisors, as the context requires.
<i>placements</i>	the <i>interim placement</i> , the <i>promoter placement</i> , and the <i>general placement</i> .
<i>pre-administration contract</i>	a contract, agreement, deed, lease or legally binding commitment entered into by the <i>companies</i> (or any of them) on or prior to the <i>appointment date</i> .
<i>priority claim</i>	<i>claim</i> (including a <i>priority employee claim</i> ) which, if the <i>companies</i> (or any of them) had been wound up with the winding up taken to have commenced on the <i>appointment date</i> , would have been a <i>claim</i> payable in priority to all other unsecured <i>claims</i> against the relevant <i>company</i> by reason of sections 556(1)(df), (e), (f), (g), (h), (1A), (1B), (1C), 560 or 561 of the <i>Corporations Act</i> .

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<b><i>priority employee claim</i></b>	any <i>employee entitlements</i> of any <i>employee</i> for which the <i>employee</i> would be entitled to prove in priority to other unsecured <i>creditors</i> as a <i>claim</i> against the <i>companies</i> (or any of them) pursuant to section 556 of the <i>Corporations Act</i> had that the relevant <i>company</i> been wound up and the winding up was taken to have commenced on the <i>appointment date</i> , save that such right or entitlement is subject to the limitations in section 556 of the <i>Corporations Act</i> , including in particular sections 556(1A) and (1B) of the Act.
<b><i>priority employee creditor</i></b>	a <i>creditor</i> who is an <i>employee</i> and who has a <i>priority employee claim</i> .
<b><i>promoter placement</i></b>	a placement by <i>GSL</i> to the <i>proponent</i> (or its nominees) for restructuring and advisory services, under which <i>GSL</i> seeks to raise \$31,250 (before costs) through the issue of up to 125,000,000 post- <i>consolidation shares</i> at an issue price of not less than \$0.00025 per <i>share</i> , together with an entitlement to receive one free <i>promoter placement option</i> for every <i>share</i> subscribed, or on such other terms as may be determined by the <i>proponent</i> .
<b><i>promoter placement options</i></b>	an option to subscribe for a fully paid ordinary share in <i>GSL</i> , exercisable at a price equal to 1.1 times the issue price under the <i>general placement</i> within 3 years of grant, and otherwise substantially on the terms set out in Schedule 2, or on such other terms as may be determined by the <i>proponent</i> .
<b><i>property</i></b>	any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description, including intellectual property and a chose or thing in action, and any real or personal property owned, used, occupied by or in the possession of, the <i>companies</i> (or any of them).
<b><i>proponent</i></b>	Otsana Pty Ltd ACN 145 168 216.
<b><i>proponent payment</i></b>	the sum of \$1,425,000 payable in cash by cheque or by electronic funds transfer to a bank account (held with an Australian Authorised Deposit Taking Institution and nominated in writing by the <i>deed administrators</i> ) out of the proceeds of the <i>placements</i> .
<b><i>proposal</i></b>	the proposal for the recapitalisation of the <i>company</i> by way of a deed of company arrangement under Part 5.3A of the <i>Corporations Act</i> , made by the <i>proponent</i> on the terms set out in its letter to the <i>administrators</i> dated 22 March 2019, as approved at the meeting of <i>creditors</i> held on 22 March 2019 for the purposes of sections 439A and 444A of the <i>Corporations Act</i> .
<b><i>required assets</i></b>	(a) all computers, servers, routers, accounting software, engineering design software, and all other software used in the running of the <i>companies</i> , to the extent available and owned by the <i>companies</i> (or any one of them), and not subject to licence arrangements;

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	(b) paper and electronic records;
	(c) patents and licences, including the EPFL licence; and
	(d) the Plant and Equipment set out in Schedule 4.
<i>required subsidiaries</i>	(a) <i>GSI</i> ;
	(b) Printed Power Pte Ltd;
	(c) Greatcell Solar Korea Co. Limited;
	(d) Greatcell Solar UK Limited; and
	(e) Greatcell Solar Italia S.r.L..
<i>secured creditor</i>	any <i>creditor</i> with the benefit of a <i>security interest</i> at the <i>appointment date</i> over all or any <i>property</i> of the <i>companies</i> (or any of them) securing all or any part of that <i>creditor's claim</i> .
<i>security interest</i>	(a) a 'security interest' for the purposes of the <i>Personal property securities Act 2009</i> (Cth); or
	(b) any other security for payment of money, performance of obligations or protection against default, including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements (as applicable).
<i>share</i>	a fully paid ordinary share in the capital of <i>GSL</i> .
<i>stamp duty</i>	any stamp, transfer, landholder, transaction, loan, mortgage, instrument or other duty of a like kind.
<i>standard rates</i>	the usual and standard rates charged by the <i>administrators</i> (or the <i>administrators' firm</i> ) or the <i>deed administrators</i> (or the <i>deed administrators' firm</i> ), from time to time, in relation to any work or services performed by the <i>administrators</i> or the <i>deed administrators</i> (as applicable), or by their <i>personnel</i> .
<i>superannuation contribution</i>	has the meaning given to it in section 556 of the <i>Corporations Act</i> .
<i>superannuation guarantee charge</i>	has the meaning given to it in the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth).
<i>surviving clauses</i>	clauses 1, 2, 6, 7.5, 8, 9.4, 14, 16 (other than 16.9) and 17 of this <i>deed</i> .
<i>syndicate</i>	GSL Rescue Group Pty Ltd ACN 624 710 041 as trustee for the GSL Rescue Group Trust.
<i>termination date</i>	the date on which this <i>deed</i> terminates in accordance with clause 14.

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<b><i>trading liabilities</i></b>	means all liabilities, costs and expenses of the <i>administrators</i> and the <i>deed administrators</i> incurred in connection with operating the business of the <i>companies</i> during the <i>administration period</i> and the <i>deed period</i> , including in connection with the payment of suppliers for debts arising before the <i>appointment date</i> and which the <i>administrators</i> or <i>deed administrators</i> determine need to be paid.
<b><i>transaction documents</i></b>	any one or more of the following: (a) this <i>deed</i> ; (b) the <i>creditors' trust deed</i> ; and (c) the letters from the <i>proponent</i> to the <i>administrators</i> containing the <i>proposal</i> .
<b><i>trust claim</i></b>	has the meaning given to that term in the <i>creditors' trust deed</i> .
<b><i>trust claimant</i></b>	has the meaning given to that term in the <i>creditors' trust deed</i> .
<b><i>trust fund</i></b>	has the meaning given to that term in the <i>creditors' trust deed</i> .
<b><i>trustees</i></b>	the trustees of the <i>creditors' trust</i> .

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## Schedule 2 – Terms of options

### 1. COVERAGE

This Schedule sets out the terms of the *general placement A options*, the *general placement B options*, and the *promoter placement options* (each, an *option*).

### 2. ENTITLEMENT

Each *option* entitles the holder (*option holder*) to subscribe for 1 fully paid ordinary share in *GSL* (*share*).

### 3. EXERCISE PRICE

The exercise price of each:

- (a) *general placement A option* is \$0.025;
  - (b) *general placement B option* is \$0.05; and
  - (c) *promoter placement option* is \$0.011,
- (*exercise price*).

### 4. EXPIRY DATE

4.1. Each *option* may be exercised at any time before 5.00pm (EST) on the date falling:

- (a) general placement A options — 12 months from grant;
  - (b) general placement B options — 2 years from grant; and
  - (c) promoter placement option options — 3 years from grant,
- (*expiry date*).

4.2. An *option* that is not exercised by the *expiry date* will automatically expire and lapse.

### 5. CERTIFICATE OR HOLDING STATEMENT

*GSL* must give the *option holder* a certificate or holding statement stating:

- (a) the number of *options* issued to the *option holder*;





- (b) the *exercise price* of the *options*;
- (c) the *expiry date* of the *options*; and
- (d) the date of issue of the *options*.

## 6. TRANSFER

- 6.1. The *options* are transferable, subject to any restrictions on transfer under the *Corporations Act* or the listing rules (*Listing Rules*) of the ASX Limited (ACN 008 624 691) (*ASX*), as applicable.
- 6.2. Subject to the *Corporations Act* and the *Listing Rules*, the *option holder* may transfer some or all of the *options* at any time before the *expiry date* by:
- (a) a proper transfer in accordance with the ASX Settlement Operating Rules, or any other method permitted by the *Corporations Act*; or
  - (b) a prescribed instrument of transfer.
- 6.3. An instrument of transfer of an *option* must be:
- (a) in writing;
  - (b) in any usual form or in any other form approved by the directors of *GSL* (*directors*) that is otherwise permitted by law;
  - (c) subject to the *Corporations Act*, executed by or on behalf of the transferor, and if required by *GSL*, the transferee; and
  - (d) delivered to *GSL*, at the place where *GSL's* register of *option holders* is kept, together with the certificate (if any) of the *option* to be transferred and any other evidence as the *directors* require to prove the title of the transferor to that *option*, the right of the transferor to transfer that *option* and the proper execution of the instrument of transfer.

## 7. QUOTATION

- 7.1. *GSL* will not apply to *ASX* for official quotation of the *options*. The *options* will be a class of unquoted securities.
- 7.2. *GSL* will apply to *ASX* for official quotation of the *shares* issued on exercise of *options* in accordance with the *Listing Rules*.



## 8. RIGHTS OF PARTICIPATION

### 8.1. *New issues*

- (a) The *option holder* is not entitled to participate in any new issue to *GSL's* shareholders of securities in *GSL* unless they have exercised their *options* before the record date for determining entitlements to the new issue of securities and participate as a result of holding *shares*.
- (b) *GSL* must give the *option holder* notice of the proposed terms of the issue or offer in accordance with the *Listing Rules*.

### 8.2. *Bonus issues*

If *GSL* makes a bonus issue of *shares* or other securities to shareholders (except an issue in lieu of dividends or by way of dividend reinvestment) (*bonus issue*) and a *share* has not been issued in respect of the *option* before the record date for determining entitlements to the *bonus issue*, then the number of underlying *shares* over which the *option* is exercisable will be increased by the number of *shares* which the *option holder* would have received if the *option holder* had exercised the *option* before the record date for determining entitlements to the *bonus issue*.

### 8.3. *Pro rata issues*

If *GSL* makes a pro rata issue of *shares* (except a *bonus issue*) to shareholders (except an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) (*pro rata issue*) and a *share* has not been issued in respect of the *option* before the record date for determining entitlements to the *pro rata issue*, the *exercise price* of each *option* will be adjusted in accordance with the *Listing Rules*.

## 9. REORGANISATION

- 9.1. If there is a reorganisation (including consolidation, sub-division, reduction or return) of the share capital of *GSL* (*reorganisation*), then the rights of the *option holder* (including the number of *options* to which the *option holder* is entitled and the *exercise price*) will be changed to the extent necessary to comply with the *Listing Rules* applying to a reorganisation of capital at the time of the *reorganisation*.
- 9.2. Any calculations or adjustments which are required to be made will be made by the *directors* and will, in the absence of manifest error, be final and conclusive and binding on *GSL* and the *option holder*.
- 9.3. *GSL* must, within a reasonable period, give to the *option holder* notice of any change to the *exercise price* of any *options* held by the *option holder* or the number of *shares* which the *option holder* is entitled to subscribe for on exercise of an *option*.



## 10. EXERCISE

- 10.1. To exercise *options*, the *option holder* must give *GSL* or its securities registry, at the same time:
- (a) a written exercise notice (in the form approved by the board of *GSL* from time to time) specifying the number of *options* being exercised and *shares* to be issued;
  - (b) payment of the *exercise price* for the *shares*, the subject of the exercise notice, by way of cheque or by other means of payment approved by *GSL*; and
  - (c) any certificate for the *options*.
- 10.2. The *option holder* may only exercise *options* in multiples of 10,000 *options* unless the *option holder* exercises all *options* held by the *option holder*.
- 10.3. *Options* will be deemed to have been exercised on the date the exercise notice is lodged with *GSL* or its securities registry.

## 11. NEW CERTIFICATE OR HOLDING STATEMENT AFTER EXERCISE

If the *option holder* exercises less than the total number of *options* registered in the *option holder's* name:

- (a) the *option holder* must surrender their certificate for the *options* (if any); and
- (b) *GSL* must cancel the certificate (if any) and issue the *option holder* a new certificate or a holding statement stating the remaining number of *options* held by the *option holder*.

## 12. ISSUE OF SHARES

- 12.1. Subject to items 13 and 14, *GSL* must issue the *option holder* the number of *shares* specified in an application for exercise of *options* by the later of:
- (a) 10 days after receiving an application for exercise of *options* and payment by the *option holder* of the *exercise price*; and
  - (b) the last *business day* of the calendar month in which the application for exercise of *options* and payment by the *option holder* of the *exercise price* is received by *GSL*.
- 12.2. Subject to *GSL's* Constitution, all *shares* issued on the exercise of *options* will rank in all respects (including rights relating to dividends) equally with the existing ordinary shares of *GSL* at the date of issue.



### 13. TAKEOVER RESTRICTION

- 13.1. If the exercise of an *option* (or any number of *options*) would result in any person contravening section 606 of the *Corporations Act* (*takeover restriction*), then any purported exercise of those *options* (or any part thereof) and related issue of *shares* will be:
- (a) subject to the requirements of section 611 of the *Corporations Act*, and
  - (b) deferred until such later time or times as such exercise would not result in a contravention of the *takeover restriction*.
- 13.2. *GSL* is entitled to assume that the issue of *shares* on the exercise of *options* will not result in the *option holder* or any other person being in contravention of the *takeover restriction*, unless *GSL* has actual notice to the contrary.

### 14. SECONDARY TRADING RESTRICTIONS

#### 14.1. *Application*

This item 14, applies if the *options* are not granted under a prospectus or other disclosure document in accordance with Chapter 6D of the *Corporations Act*.

#### 14.2. *Removal of secondary trading restrictions*

- (a) Subject to item 14.2(b), within 5 trading days of issuing *shares* on exercise of *options*, *GSL* must lodge with *ASX* a duly completed notice pursuant to section 708A(5) of the *Corporations Act*, meeting the requirements of section 708A(6) of the *Corporations Act* (*cleansing statement*).
- (b) If *GSL* is unable to issue a *cleansing statement* in relation to any *shares* issued on exercise of *options* due to an inability to satisfy the conditions under the *Corporations Act* to do so:
  - (i) *GSL* must within 60 days of receiving the notice of exercise and *exercise price* for the relevant *options*, lodge with *ASIC* a prospectus prepared in accordance with Chapter 6D of the *Corporations Act* offering *shares* (*cleansing prospectus*); and
  - (ii) *GSL* is not required to issue the *shares* on exercise of the relevant *options* until the *cleansing prospectus* is lodged with *ASIC*.
- (c) As an alternative to lodging a *cleansing prospectus* under item 14.2(b), *GSL* may, in its discretion, apply to *ASIC* for relief under section 741 of the *Corporations Act* to permit *GSL* to issue a *cleansing statement* (*relief application*) notwithstanding that it may not satisfy the requirements set out in section 708A(5) or (6) of the *Corporations Act*.



- (d) If item 14.2(c) applies, *GSL* is not required to issue the *shares* on exercise of the relevant *options* until the *relief application* is granted by *ASIC*.

## 15. GOVERNING LAW

- 15.1. These terms of the *options*, and the rights and obligations of the *option holder*, are governed by the laws of New South Wales.
- 15.2. The *option holder* irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the Federal Circuit Court of Australia (as applicable) sitting in Sydney, New South Wales.

## 16. AMENDMENTS REQUIRED BY ASX

These terms of the *options* may be amended as necessary by the *directors* to the extent required to comply with the *Listing Rules* or any directions of *ASX* (if applicable) in relation to the same.



## Schedule 3 – Notice of termination

**Greatcell Solar Limited (Subject to a Deed of Company Arrangement)**  
(ACN 111 723 883)

**Greatcell Solar Industries Pty Ltd (Subject to a Deed of Company Arrangement)**  
(ACN 083 102 498)

I, [name of *deed administrator*] of BRI Ferrier, Sydney in the State of New South Wales, as one of the joint and several administrators of the Deed of Company Arrangement for the above companies, executed on [date] April 2019, certify that the *deed* is wholly effectuated by circumstances set out in the *deed*.

date *deed* effectuated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
date



## Schedule 4 – Plant and Equipment

### 1. EQUIPMENT LOCATED AT AURORA AVENUE

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
		IT Eq.		Cisco			Cisco Server & associated peripherals

### 2. EQUIPMENT LOCATED AT DOMINION PLACE

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
2-89	1	IT Eq.		Samsung	Syncmaster 940 v		LCD Flat Screen Monitor estimated 20 inch
2-90	5	IT Eq.					Telephone Headsets (valued as a system)
2-91	1	IT Eq.		HP	Prodesk		Stand Alone Desktop Computer
2-94	1	IT Eq.		HP	P11002W		DeskJet Printer
2-95	1	IT Eq.		HP	Compaq		Stand Alone Desktop Computer
2-96	1	IT Eq.		LG	Flatron W2242P		LED Flat Screen Monitor estimate 22"
2-97	1	IT Eq.		Unbranded			LED Flat Screen Monitor estimate 22"



DEED OF COMPANY ARRANGEMENT – Greatcell Solar Group  
Schedule 4 – Plant and Equipment

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
2-98	1	IT Eq.		Samsung	2633		LED Flat Screen Monitor estimate 22"
2-99	1	IT Eq.		ASUS			LED Flat Screen Monitor estimate 26"
2-106	1	IT Eq.		Bang & Olufson	Elite Book		Laptop PC, Notebook core i7, Generation 7
2-107	1	IT Eq.					Docking Station
2-108	3	IT Eq.		ASUS	HDMI		LED Flat Screen Monitor estimate 26"
2-115	2	IT Eq.					IT Rack estimated 1800mm
2-116	1	IT Eq.		Cisco	Linksys		network storage system
2-117	1	IT Eq.		HP	Ito-6 Ultrium		Rackmount data storage server, drive, DVD, 10 x cartridges
2-118	1	IT Eq.		HP	not visible		Rackmount data storage server, drive, DVD, 6 x cartridges
2-119	1	IT Eq.		Netgear	Readynas 3100		Rackmounted server unit, 2x 500gb cartridges, 2x Tb cartridges
2-120	1	IT Eq.		HP	R5500XR Datto		Server Unit (advised leased)





DEED OF COMPANY ARRANGEMENT – Greatcell Solar Group  
Schedule 4 – Plant and Equipment

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
2-121	1	IT Eq.					Monitor keyboard and mouse
2-122	1	IT Eq.	2016				6 x patch wiring
2-123	1	IT Eq.	2016	Dlink	DGS 3100 24P		Communications switch
2-124	1	IT Eq.		Netgear	Prosafe GS752T P		Communications switch
2-125	1	IT Eq.		Netgear	GS748T P		Communications switch
2-126	1	IT Eq.		Cisco	4321		Router
2-127	1	IT Eq.		unbranded			Uninterruptible Power Supply, rackmounted
2-128	1	IT Eq.		Clone			Stand Alone Desktop Personal Computer, keyboard and mouse
2-129	1	IT Eq.		Polyview			LCD Flat Screen monitor est 20"
2-130	1	IT Eq.					Allowance for cabling and wiring to Comms and Data
2-132	1	Lab Eq.		Dong Guan Yuan Yao Electronics Company	YTM-408-40IP	YY161123	Temperature Humidity Chamber "Environmental Chamber"



DEED OF COMPANY ARRANGEMENT – Greatcell Solar Group  
Schedule 4 – Plant and Equipment

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
<i>2-133</i>	1	Lab Eq.		Dong Guan Yuan Yao Electroni cs Company	YTM- 408-40IP	161122	Temperature Humidity Chamber "Environmental Chamber"
<i>2-137</i>	1	Lab Eq.		Custom			Mobile Pyranometer; Measures sunlight, Interface hardware, 2 Digital Encoders
<i>2-149</i>	1	IT Eq.		HP	Compaq		Stand Alone Desktop Computer
<i>2-150</i>	1	IT Eq.		LG	W1942T		Flatron LCD Flat Screen Monitor Estimated 22"
<i>2-162</i>	2	IT Eq.		HP	XW4600		Computers Not in Use, Condition Unknown
<i>2-163</i>	2	IT Eq.		HP	Compaq		Computers Not in Use, Condition Unknown
<i>2-164</i>	1	IT Eq.		HP	ProDesk		Computers Not in Use, Condition Unknown
<i>2-165</i>	1	IT Eq.		HP			Computers Not in Use, Condition Unknown



DEED OF COMPANY ARRANGEMENT – Greatcell Solar Group  
Schedule 4 – Plant and Equipment

<i>asset #</i>	Qty	Type	DOM	Make	Model	VIN/S.No	Description
<i>2-166</i>	1	IT Eq.		Asus	Soprano		Computers Not in Use, Condition Unknown
<i>2-167</i>	3	IT Eq.		Samsung	943S		LCD Flat Screen Monitor Estimated 20" (Not in Use)
<i>2-168</i>	2	IT Eq.		Samsung	204B		LCD Flat Screen Monitor Estimated 20" (Not in Use)
<i>2-169</i>	1	IT Eq.		Samsung	740N		LCD Flat Screen Monitor Estimated 20" (Not in Use)

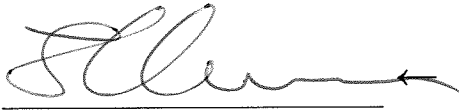


Signing Page:

*deed  
administrators*

EXECUTED AS A DEED by **Peter Paul Krejci** as a joint and several voluntary administrator of Greatcell Solar Limited (Administrators Appointed) (ACN 111 723 883) and Greatcell Solar Industries Pty Ltd (Administrators Appointed) (ACN 083 102 498) in the presence of:


\_\_\_\_\_  
Peter Krejci

←  →  
\_\_\_\_\_  
Signature of witness

Jonathon Keenan  
Full name of Witness (please print)

EXECUTED AS A DEED by **Andrew John Cummins** as a joint and several voluntary administrator of Greatcell Solar Limited (Administrators Appointed) (ACN 111 723 883) and Greatcell Solar Industries Pty Ltd (Administrators Appointed) (ACN 083 102 498) in the presence of:

\_\_\_\_\_  
Andrew Cummins

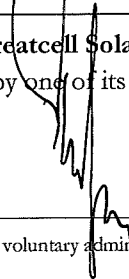
←  →  
\_\_\_\_\_  
Signature of Witness

Jonathon Keenan  
Full name of witness (please print)

*GSL*

EXECUTED AS A DEED for and on behalf of **Greatcell Solar Limited (Administrators Appointed) (ACN 111 723 883)** by one of its joint and several voluntary administrators in the presence of:

\_\_\_\_\_  
Signature of Witness

←  →  
\_\_\_\_\_  
Signature of voluntary administrator

Jonathon Keenan  
Full name of Witness (please print)

Peter Paul Krejci  
Full name of voluntary administrator (please print)

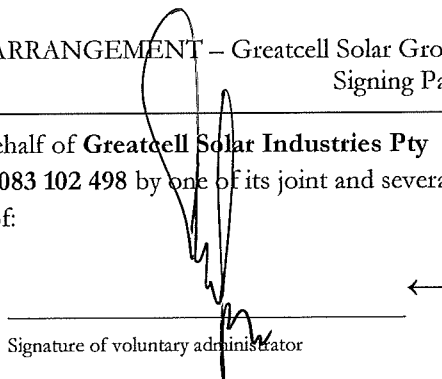


*GSI*

EXECUTED AS A DEED for and on behalf of **Greatcell Solar Industries Pty Ltd (Administrators Appointed) ACN 083 102 498** by one of its joint and several voluntary administrators in the presence of:



Signature of Witness



Signature of voluntary administrator

Jonathan Keenan

Full name of Witness (please print)

Peter Paul Krejci

Full name of voluntary administrator (please print)

*proponent*

EXECUTED AS A DEED by **Otsana Pty Ltd ACN 145 168 216** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_ ←

Signature of director

\_\_\_\_\_ ←

Signature of director/Secretary

\_\_\_\_\_

Full name of director

\_\_\_\_\_

Full name of director/Secretary

*syndicate*

EXECUTED AS A DEED by **GSL Rescue Group Pty Ltd ACN 624 710 041** as trustee for the **GSL Rescue Group Trust** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_ ←

Signature of director

\_\_\_\_\_ ←

Signature of director/Secretary

\_\_\_\_\_

Full name of director

\_\_\_\_\_

Full name of director/Secretary



DEED OF COMPANY ARRANGEMENT – Greatcell Solar Group  
Signing Page

**GSI**

EXECUTED AS A DEED for and on behalf of **Greatcell Solar Industries Pty Ltd (Administrators Appointed) ACN 083 102 498** by one of its joint and several voluntary administrators in the presence of:

←	←
_____ Signature of Witness	_____ Signature of voluntary administrator
_____ Full name of Witness (please print)	_____ Full name of voluntary administrator (please print)

**proponent**

EXECUTED AS A DEED by **Otsana Pty Ltd ACN 145 168 216** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

_____ Signature of director	_____ Signature of director/Secretary
Faldi Ismail	Zaakir Ismail
Full name of director	Full name of director/Secretary

**syndicate**

EXECUTED AS A DEED by **GSL Rescue Group Pty Ltd ACN 624 710 041** as trustee for the **GSL Rescue Group Trust** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

_____ Signature of director	_____ Signature of director/Secretary
Thomas Joseph Luytboom	Peter Martin Graham
Full name of director FONTAINE	Full name of director/Secretary RICHARDS



## Attachment – Creditors' Trust Deed

(attached as a separate document)

Execution version

[•] 2019

# CREDITORS' TRUST DEED

Greatcell Solar Limited Creditors' Trust

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Greatcell Solar Limited (Subject to Deed of  
Company Arrangement)

ACN 111 723 883

*GSL*

Greatcell Solar Industries Pty Ltd (Subject to  
Deed of Company Arrangement)

ACN 083 102 498

*GSI*

Peter Paul Krejci and Andrew John Cummins

*trustees*



AUSTRALIA | HONG KONG | UK

Level 26,  
140 St Georges Terrace  
Perth WA 6000

PO Box 8098  
Cloisters Square  
Perth WA 6850

**Ref:** 1903016

**Contact:** Chris Pearce  
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## Contents

PARTIES:.....	1
RECITALS:.....	1
OPERATIVE TERMS:.....	2
1. DECLARATION OF TRUST .....	2
1.1. Declaration .....	2
1.2. Name of trust .....	2
1.3. Powers of trustees .....	3
1.4. Perpetuity period .....	7
2. TRUST FUND .....	7
2.1. Trust Fund.....	7
2.2. Benefit to be held in accordance with deed.....	8
2.3. Distribution of the trust fund .....	8
2.4. Surplus in trust fund.....	9
2.5. Unclaimed funds.....	9
2.6. Postponement of distributions .....	9
2.7. Multiple claims arising from the same circumstances .....	9
3. TRUST CLAIMS.....	10
3.1. Admissibility of trust claims.....	10
3.2. Trustee's discretion .....	10
3.3. Determination of claims .....	10
3.4. Retention of and access to records .....	11
3.5. Superannuation debts not admissible .....	12
3.6. Creditors' costs and expenses .....	12
3.7. Abandonment of claims .....	12
3.8. Discharge of debts.....	12
3.9. Claims extinguished.....	13
3.10. Bar.....	13
3.11. Excluded claims .....	13
4. GST .....	13
5. MEETING OF ADMITTED CREDITORS.....	14
6. INDEMNITY AND REMUNERATION.....	14
6.1. Indemnity.....	14
6.2. Continuing indemnity .....	14
6.3. Indemnity not to be affected or prejudiced.....	15
6.4. Remuneration of trustees .....	15
7. LIABILITY .....	16



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7.1.	Exclusion of Liability .....	16
7.2.	Proceedings against co-trustee.....	16
7.3.	Reliance on Advice.....	16
8.	TRUSTEES RESIGNATION.....	17
9.	TRUSTEES NOT OBLIGED TO TAKE ACTION.....	17
10.	TERMINATION.....	17
10.1.	General.....	17
10.2.	Meeting of admitted creditors .....	17
10.3.	Court order or admitted creditors' resolution .....	18
10.4.	Report to admitted creditors.....	18
10.5.	Previous operation of this deed preserved .....	18
11.	VARIATION OF DEED .....	18
12.	MISCELLANEOUS PROVISIONS.....	19
12.1.	Governing law.....	19
12.2.	Jurisdiction.....	19
12.3.	Severance .....	19
12.4.	Waiver .....	19
12.5.	Entire agreement .....	20
12.6.	Survival.....	20
12.7.	Time.....	20
12.8.	Merger .....	20
12.9.	Representations.....	20
12.10.	Further assurances .....	20
12.11.	Rights of third parties .....	21
12.12.	Notices .....	21
12.13.	Counterparts.....	22
13.	COMPANIES MAY EXECUTE THIS DEED .....	22
14.	STAMP DUTY.....	22
15.	INTERPRETATION .....	22
15.1.	Application .....	22
15.2.	General.....	22
15.3.	Headings .....	24
15.4.	DOCA terms.....	24
	SCHEDULE 1 – GLOSSARY .....	25
	SIGNING PAGE: .....	31



## Creditors' Trust Deed

Entered into on [●] 2019.

### Parties:

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<b><i>GSL</i></b>	<b>Name:</b> Greatcell Solar Limited (Subject to a Deed of Company Arrangement) (ACN 111 723 883)
	<b>Address:</b> c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b> c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b> Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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<b><i>GSI</i></b>	<b>Name:</b> Greatcell Solar Industries Pty Ltd (Subject to a Deed of Company Arrangement) (ACN 083 102 498)
	<b>Address:</b> c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b> c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b> Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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<b><i>trustees</i></b>	<b>Name:</b> Peter Paul Krejci and Andrew John Cummins
	<b>Address:</b> c/- BRI Ferrier (NSW) Pty Ltd, Level 30, Australia Square, 264 George Street, Sydney NSW 2000
	<b>Postal:</b> c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001
	<b>Email:</b> Katherine La: <a href="mailto:kla@brifnsw.com.au">kla@brifnsw.com.au</a> Kira Yu: <a href="mailto:kyu@brifnsw.com.au">kyu@brifnsw.com.au</a>

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### Recitals:

- A. On the *appointment date*, the *trustees* were appointed as joint and several voluntary *administrators* of *GSL* and *GSI* (together, the *companies*) pursuant to Part 5.3A of the *Corporations Act*.



- B. At a meeting of *creditors* held on 22 March 2019, convened pursuant to section 439A of the *Corporations Act*, it was resolved that the *companies* would execute a deed of company arrangement under section 444B(2)(b) of the *Corporations Act*, on the terms proposed by the *proponent* in the *proponent offer*.
- C. On [*date*] 2019, the *administrators*, the *proponent*, and the *companies* executed the *DOCA*, immediately following which the *administrators* became the joint and several *deed administrators*.
- D. Under clause 1.6.3 of the *DOCA*, the *deed administrators* may require the *companies* to execute, and the *deed administrators* may execute, a trust deed to establish a trust to hold the *trust fund* on the terms specified in the *DOCA*.
- E. The *deed administrators* are to become the *trustees*.
- F. The *trust fund* is to be transferred to the *trustees* and used to make various payments to the *admitted creditors* with *admitted claims*.
- G. By this *deed*, the *companies* and the *trustees* now establish the *trust* in accordance with the *DOCA*.
- H. Words in this *deed* that are italicised are defined in the Glossary located in Schedule 1.

## Operative Terms:

In consideration of the mutual covenants set out in this *deed*, this *deed* now provides:

# 1. DECLARATION OF TRUST

## 1.1. Declaration

The *trustees* acknowledge and declare that the *trust fund* will be held on trust by the *trustees* for the *admitted creditors* and, for any surplus remaining in the *trustees'* hands after all other proper payments required to be made under this *deed*, for the *companies*, on and subject to the terms of this *deed*.

## 1.2. Name of trust

The name of the *trust* constituted by this *deed* is the 'Greatcell Creditors' Trust'.



### 1.3. Powers of trustees

Without limiting the powers that the *trustees* have by operation of the *Trustee Act*, for the purposes of administering the *trust*, the *trustees* have the following powers:

- (a) **(administration)** to administer the *trust fund* in accordance with the provisions as set out in the *DOCA* and this *deed*;
- (b) **(companies' obligations)** to ensure that the duties and obligations of the *companies* to the *administrators*, the *deed administrators* and the *trustees* under the *DOCA* and this *deed* (if any) are fulfilled, and to take such legal proceedings or other steps as the *trustees* think fit to enforce those obligations;
- (c) **(trustee obligations)** to fulfil the *trustees'* obligations in terms of the *DOCA* and this *deed*;
- (d) **(admission of trust claims)** to admit *trust claims* to proof in accordance with the provisions of the *DOCA* and this *deed*;
- (e) **(attorney)** to act as attorney for the *companies* or any other person for any purpose associated with the *trust* or this *trust fund*;
- (f) **(enforcement)** to enforce compliance with the terms of this *deed* and the *DOCA*;
- (g) **(trust fund)** to enter upon or take possession of the *trust fund* and to collect the revenue or income from or interest on the *trust fund* and exercise any rights or powers relating to any part of the *trust fund*;
- (h) **(securities and investments)** in relation to all matters connected with any *securities* of whatever nature forming part of the *trust fund*:
  - (i) to demand, sue for and receive from any *body* or person all dividends, interest, bonuses or any other sums that may become due to the *trustees* in relation to any of the *securities* and likewise any capital sum represented by or comprised in any of the *securities* as and when the same is respectively payable or repayable;
  - (ii) for any of the purposes mentioned above to sign endorse and execute all receipts, dividends and interest warrants, cheques release, discharges, reconveyances or other deeds or documents that may be necessary or usual under the circumstances;
  - (iii) to attend vote at and otherwise take part in all meetings held in relation to any *body* with which the *trustees* are concerned or in relation to any of the *securities* and to delegate proxies for the purpose of voting at them or for any other purpose connected with them;



- (iv) to give all notices, exercise all powers of sale, leasing or otherwise (whether express or statutory), commence any legal proceedings or use any other lawful means that may appear to the *trustees'* desirable or necessary in order to safeguard their interests or enforce their rights in or in relation to any of the *securities* with full power to prosecute or discontinue any of those proceedings and to compromise or submit to arbitration any matter in dispute or doubt;
- (v) out of any of the moneys in their hands or under their control to pay all calls that may be lawfully made upon them or other expenses that may be incurred in relation to any of the *securities* and to give security for that payment;
- (vi) to assent (if it seems to them necessary or desirable) to any arrangement modifying their rights privileges or duties in relation to any of the *securities* and to agree to and participate in any *reorganisation* or any scheme or arrangement for the increase or reduction of the value or amount of the *securities* or of the capital of any *body* and for any of those purposes to deposit surrender or exchange any of the *securities* or the documents of title relating to them and to pay any contribution or incur any other necessary expense in relation to that *reorganisation* or scheme or arrangement;
- (vii) to sell or re-invest any of the *securities* and for that purpose to employ and pay brokers and other agents in that behalf and to receive and give receipts for the purchase money payable in relation to those sales and to transfer any of the *securities* so sold to the purchaser of them or as he may direct and for these purposes to sign and execute all contracts, transfers, deeds, and other writings and do all other acts as may be necessary for effectually transferring those securities;
- (viii) to accept the transfer of any other *securities* of whatever nature that may at any time be transferred to them in their capacity as holders of *securities* in the *trust fund*; and
- (ix) generally, to exercise all rights and privileges and perform all duties which now or from now on may appertain to them in relation to any of the *securities* or as otherwise interested or concerned in any *body*;
- (i) **(transfer)** to reduce to their possession and to perfect and transfer title and ownership to themselves as *trustees* all such part of the *trust fund* as has not been reduced to their possession or perfected or transferred to them as trustees of the *trust* as at the date of this *deed* and for that purpose to sign and/or perform all other instruments, assurances, acts, matters, and things which in their opinion are or may be necessary, incidental or desirable in relation to the delivery or transfer or perfection of possession or ownership of the any part of the *trust fund* or any matter or transaction relating thereto;



- (j) **(lease)** to lease or let or hire the *trust fund*;
- (k) **(grant options)** to grant options over the *trust fund* on terms as the *trustees* consider fit;
- (l) **(insurance)** to insure the *trust fund*;
- (m) **(repair)** to repair, renew or enlarge the *trust fund*;
- (n) **(dealing)** to sell, call in, invest, re-invest, collect, or convert into money the *trust fund*;
- (o) **(purchase)** to purchase, hire, lease or otherwise acquire any property from any person;
- (p) **(borrow)** to borrow or raise money, whether secured upon the *trust fund* or unsecured, for any period and terms as the *trustees* consider fit and whether in substitution for any existing security or otherwise;
- (q) **(proceedings)** to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding in the *companies'* name (or the name of any of them) or (after assignment) in their own name, to enforce any right, claim or cause of action that forms part of the *trust fund*, and to that end
  - (i) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates, or judicial or other officers as they think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the *trust fund* and any claim, proceeding or action forming part of the *trust fund* and to prosecute, discontinue, compromise, stay, terminate, or abandon that proceeding or action as they think fit;
  - (ii) to appoint any solicitor and counsel to prosecute or defend in those proceedings as occasion may require; and
  - (iii) to take any other lawful ways and means for the recovering or getting in any of the *trust fund*;
- (r) **(meetings)** to convene and hold meetings of the *members* or *creditors* of the *companies* for any purpose as the *trustees* consider fit;
- (s) **(employees)** to engage or discharge employees or contractors on behalf of the *trust*;
- (t) **(bank accounts)** to permit any person authorised by the *trustees* to operate any bank or other account in the name of the *trust*;



- (u) **(receipts)** to do all acts and execute in the name and on behalf of the *trust* all deeds, receipts and other documents (including but not limited to those necessary or convenient to facilitate the arrangements for an *accepted proposal* under the *DOCA*);
- (v) **(prove in bankruptcy)** subject to the *Bankruptcy Act 1966* (Cth) to prove in the bankruptcy of or under any deed executed under the *Bankruptcy Act 1966* (Cth) by any contributory or debtor of the *trust*;
- (w) **(prove in winding up)** subject to the *Corporations Act* to prove in the winding up of or under any scheme of arrangement entered into by, or *DOCA* executed by, any contributory or debtor of the *trust*;
- (x) **(promissory documents)** to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the *trust*;
- (y) **(estates)** to take out letters of administration of the estate of a deceased contributory or debtor and to do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the *trust*;
- (z) **(vesting or winding up of trust)** to bring or defend an application for the vesting or winding up of the *trust*;
- (aa) **(business)** to carry on the *trust's* business on the terms and conditions and for the purpose and time and in the manner as the *trustees* consider fit;
- (bb) **(sale)** to sell any or all of the *trust fund* including the whole of the *trust's* business and undertaking at any time the *trustees* consider fit, either by public auction or by private auction, and either for a lump sum, for a sum payable by instalments or for a sum on account and to obtain a mortgage, charge or encumbrance on the balance or otherwise;
- (cc) **(cease trading)** to close down the *trust's* business;
- (dd) **(take security)** to take security for the discharge of any debt forming part of the *trust fund* as the *trustees* consider fit;
- (ee) **(pay admitted creditors)** subject to this *deed*, to pay any class of *admitted creditors* in full;
- (ff) **(distributions)** to make interim or other distributions of the *trust fund*;
- (gg) **(agents)** to appoint agents to do any business or attend to any matter or affairs of the *trust* that the *trustees* are unable to do, or that it is unreasonable to expect the *trustees* to do, in person;





- (hh) **(professional advisors)** to appoint a solicitor, accountant or other professionally qualified person to assist the *trustees*;
- (ii) **(compromise)** to compromise any claim, action, suit or proceeding brought by or against the *trustees* on such terms as the *trustees* consider fit, which power includes the power to compromise any claim, action, suit or proceeding referred to in paragraph (q) of this clause;
- (jj) **(incidental actions)** to do anything that is incidental to exercising a power set out in this clause, this *deed* or the *DOCA*; and
- (kk) **(other)** to do anything else that is necessary or convenient for administering the *trust*.

## 1.4. Perpetuity period

Notwithstanding any other provision in this *deed*, each:

- (a) interest in property; and
- (b) *trustees'* power over or in relation to property,

created or granted by this *deed* that, but for this provision, might vest, take effect, or be exercisable after the expiry of 80 years commencing on the date of this *deed*, but which has not vested nor taken effect by that date,

- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

# 2. TRUST FUND

## 2.1. Trust Fund

The *trust fund* comprises:

- (a) the amount of \$10.00 that was paid to it on or before the date of this *deed* by the *settlor*;
- (b) the *proponent payment*;
- (c) the *assets*;
- (d) the right, title, benefit or interest of the *companies* (or any of them) in relation to any and all claims or choses in action of the *companies* which are capable of being assigned to the *trustee*;



- (e) the benefits of the covenants made in the *trustees'* favour in the *DOCA* and in this *deed*;
- (f) any interest earned on the assets or property of the *trust*; and
- (g) any income accruing on the assets or property of the *trust* (such income to be applied in the same manner as the principal upon which it accrued).

## 2.2. Benefit to be held in accordance with deed

The *trust fund* is to be held by the *trustees* for the benefit of the following, on and subject to the terms of this *deed*:

- (a) discharging the costs of the *administration*, including the *administration liabilities*, the *administration and DOCA costs* and the *trustee costs*;
- (b) the *admitted creditors*; and
- (c) in relation to any surplus remaining in the *trustees'* hands after all other proper payments required to be made under this *deed*, for the *companies*.

## 2.3. Distribution of the trust fund

2.3.1. The *trustees* will declare and distribute the *trust fund* by way of interim or final *dividend* as if the provisions of the *Corporations Act* applied and in the same manner as if the *companies* were being wound up in insolvency and the relevant date of the winding up was the *appointment date* and the *admitted claims* were creditors in such winding up.

2.3.2. The *trustees* will not be required to make any distribution from the *trust fund* in accordance with this clause unless they are satisfied that there are sufficient assets in the *trust fund* to do so.

2.3.3. The *trust fund* will be available for distribution in the following order of precedence:

- (a) first, to the extent that the *administrators* or the *deed administrators* have not previously been paid or allowed, in payment of the *administration and DOCA costs*;
- (b) secondly, in payment of the *trustee costs* or other amounts provided for in clause 6 of this *deed*;
- (c) thirdly, in payment of all *admitted claims* which are *priority claims*;
- (d) fourthly, in payment of all other *admitted claims*; and
- (e) finally, any remaining balance to be paid to *GSL*.



## 2.4. Surplus in trust fund

Any surplus or balance in the *trust fund* after the relevant beneficiaries have received their distributions in accordance with clause 2.3, including payment to the *admitted creditors* of 100 cents in each dollar of their *admitted claims*, will be paid by the *trustees* as in the following order of priority:

- (a) firstly, in payment to any person who has a subordinate claim within the meaning of section 563A of the *Corporations Act*; and
- (b) secondly, to *GSL*.

## 2.5. Unclaimed funds

In the event that the *trustees*, for any reason, are unable to locate an *admitted creditor*, or if any cheque sent by the *trustees* to an *admitted creditor* has not been presented within 12 months (*stale cheque*), then:

- (a) the *trustees* will stop payment of the *stale cheque*;
- (b) the moneys represented by a *stale cheque* or held by the *trustees* on behalf of the *admitted creditor* will be paid to *ASIC*; and
- (c) the provisions of sections 544(1) and 544(3) of the *Corporations Act* will apply, with such modifications as are necessary, to such payment as if references in those sections to 'liquidator' were references to the *trustees*.

## 2.6. Postponement of distributions

2.6.1. The *trustees* may, at their sole discretion, determine to postpone the payment of any *dividend* if:

- (a) proceedings are brought by any person in relation to the distribution of the *trust fund*; and
- (b) the *trustees* have made or apprehend that they will make a claim on the indemnity under clause 6.

2.6.2. Postponement of a *dividend* under clause 2.6.1 will continue until the *trustees* determine whether they will make a claim on the indemnity under clause 6 and, if so determined, the amount of such claim.

## 2.7. Multiple claims arising from the same circumstances

If a *trust claimant* is a creditor of more than one of the *companies* in respect of *admitted claims* arising from the same circumstances (for example, where one *company* is a guarantor or co-obligor of an obligation or debt owing by another *company*), then the



*trust claimant* is only entitled to receive a distribution for one of those *admitted claims*, and where they are for different amounts, for the largest *admitted claim*.

## 3. TRUST CLAIMS

### 3.1. Admissibility of trust claims

- 3.1.1. On effectuation of the *DOCA* in accordance with clause 11 of the *DOCA* and establishment of the *trust*, all *claims* will be converted to and become *trust claims* under this *deed*.
- 3.1.2. Unless *claims* have already been admitted or rejected by the *administrators* or the *deed administrators*, the *trustees* will consider the *claims* as *trust claims* for the purposes of deciding whether to admit them under this *deed*.
- 3.1.3. Interest from the *appointment date* does not accrue, nor is it payable, on any *trust claim*.

### 3.2. Trustee's discretion

The trustees may, in their absolute discretion, do any of the following in accordance with the provisions of this *deed*:

- (a) admit all or part of a *trust claim*;
- (b) reject all or part of a *trust claim*; or
- (c) pay any *admitted claim*.

### 3.3. Determination of claims

- 3.3.1. Subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the *Corporations Act* (except sections 554A(3) to 554A(8) inclusive and section 556 (other than to the extent expressly incorporated) of the *Corporations Act*) apply to *trust claims* under this *deed*:
- (a) as if the reference to the 'liquidator' were references to the *trustees*;
  - (b) as if the references to 'winding up' were references to this *deed*;
  - (c) with such other modifications as are necessary to give effect to this *deed*; and
  - (d) except to the extent that those provisions are varied expressly or impliedly by this *deed*.
- 3.3.2. Regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.53 (inclusive), and 5.6.55 to 5.6.72 (inclusive) of the *Corporations Regulations* apply to this *deed* and to the *trustees*:



- (a) as if the reference to the 'liquidator' were references to the *trustees*;
- (b) as if the references to 'winding up' were references to this *deed*;
- (c) with such other modifications as are necessary to give effect to this *deed*; and
- (d) except to the extent that those provisions are varied expressly or impliedly by this *deed*.

- 3.3.3. Any notice (call for proofs) given by the *deed administrators* in accordance with the terms of the *DOCA* requiring a *creditor* to submit particulars of the *creditor's claim*, or to formally prove the *creditor's claim*, will be treated for the purpose of this *deed* as sufficient to comply with regulations 5.6.39 and 5.6.49 of the *Corporations Regulations* respectively as applied by this clause 3.3.
- 3.3.4. The *trustees* may make interim distributions of assets from the *trust fund* under this *deed*.
- 3.3.5. The *trustees* must declare and distribute the *trust fund* under this *deed* as soon as practicable after the *trust* comes into effect under clause 1.1.
- 3.3.6. Subject to clauses 3.3.1 and 3.3.2, the *trustees* have an absolute and unfettered discretion as to the admission of *claims*, and the amount and timing of the distribution of the *trust fund* in payment of *admitted claims*.
- 3.3.7. Where the *trustees* propose to reject a *claim*, whether in part or in full, the *trustees* must send a notice to the *trust claimant* informing the *trust claimant* of the proposed rejection and giving the *trust claimant* at least 14 days within which to make an application to the *court* to determine the questions relating to the rejected *claim*.
- 3.3.8. The *trustees* are entitled to rely upon any steps and determinations made by the *deed administrators* for the purposes of this clause 3.3 in relation to whether a *trust claim* asserted for the purposes of claiming under this *deed* is an *admitted claim*, together with any information, and proofs or particulars or debt provided to the *deed administrators*.

## 3.4. Retention of and access to records

- 3.4.1. The *trustees* may at any time inspect the books and records of the *companies*.
- 3.4.2. The *companies* authorise the *trustees* and their staff to enter the *companies'* premises on any *business day* between the hours of 9.00am and 5.00pm upon at least 48 hours' prior notice for the purpose of conducting such an inspection and for the purpose of doing anything necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as *trustees* under this *deed*.



### 3.5. Superannuation debts not admissible

For the purposes of section 444DB of the *Corporations Act*, the *trustees* must determine that a *claim* (or part thereof) by way of a *superannuation contribution* is not admissible to proof as an *admitted claim* if:

- (a) that *claim* (or part of the debt) by way of *superannuation guarantee charge*:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible against, the *companies* (or any of them); and
- (b) the *trustees* are satisfied that the *superannuation guarantee charge* is attributable to the whole of that first-mentioned debt in the case of the whole of a debt or part of the first mentioned debt in the case of a part of a debt.

### 3.6. Creditors' costs and expenses

Any costs and expenses incurred by an *admitted creditor* in asserting a *trust claim* under this *deed* will be borne by that *admitted creditor* and will not form part of that *trust claim* under this *deed*.

### 3.7. Abandonment of claims

A *trust claimant* will have abandoned, and will be taken for all purposes to have abandoned, all *trust claims* and all other entitlements (if any) in the *trust fund*:

- (a) which are not the subject of a proof of debt lodged with the *administrator, deed administrators* or the *trustees* in the form required by the *trustees* prior to the declaration of the *final dividend*; or
- (b) which have been rejected by the *administrators, deed administrators* or the *trustees* and which are not the subject of any appeal or application to the *court* within the time allowed for appeals by clause 3.3.7.

### 3.8. Discharge of debts

All *trust claimants* having a *trust claim* must accept their entitlements under this *deed* (if any) in full satisfaction and complete discharge of all *claims* which they have or claim to have against the *trustees* or the *trust fund* and each of them will, if called upon to do so, execute and deliver to the *trustees* such forms of release of any such *claim* as the *trustees* require.



### 3.9. Claims extinguished

On distribution of the *final dividend* to the *admitted creditors*, all *trust claims* are extinguished.

### 3.10. Bar

After distribution of the *final dividend* to the *admitted creditors*, the *trustees* may plead this *deed* in bar to any *trust claim*.

### 3.11. Excluded claims

A person is not entitled to participate in or receive any distribution from, and will not prove to recover any *excluded claim* for the purpose of, or in relation to, the *trust fund*, in respect of an *excluded claim*. For the avoidance of doubt, a person with an *excluded claim* is entitled to make a claim against the *trust fund* for any *trust claim* that is not an *excluded claim*.

## 4. GST

- 4.1. Words used in this clause 4 which have a defined meaning in the *A New Tax System GST Act*, have the same meaning as in the *GST Act* unless the context otherwise indicates.
- 4.2. Unless expressly included, the consideration for any supply under or in connection with this *deed* is exclusive of *GST*.
- 4.3. To the extent that any supply is made by a party (***supplier***) under or in connection with this *deed* is a taxable supply, the consideration for that supply is increased by, and the recipient of the supply (***recipient***) must pay to the Supplier, an additional amount equal to the *GST* payable on the supply (***additional amount***).
- 4.4. The *recipient* need not pay the *additional amount* until it receives a tax invoice from the Supplier for the relevant taxable supply.
- 4.5. It is noted that the *trust* is not carrying on a business for *GST* purposes, and therefore cannot claim income tax credits. However, it is a separate reporting entity for which the *trustees* are responsible from a taxation perspective, and therefore the *trustees* must lodge tax returns each financial year for the *trust*.



## 5. MEETING OF ADMITTED CREDITORS

- 5.1. The *trustees* may at any time convene a meeting of *admitted creditors* (*creditor meetings*).
- 5.2. Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this *deed*, Division 75 of the *Insolvency Practice Schedule* and Division 75 of the *Insolvency Practice Rules* apply, with such modifications as are necessary, to *creditor meetings* as if the references to an 'external administrator' or 'chairperson' were references to the *trustees*.

## 6. INDEMNITY AND REMUNERATION

### 6.1. Indemnity

- 6.1.1. Subject to clause 6.1.2, the *administrators*, *deed administrators* and *trustees* are entitled to be indemnified out of the *trust fund* for:
- (a) their reasonable remuneration, costs, fees and expenses payable pursuant to clause 6.4; and
  - (b) all actions, suits, proceedings, accounts, claims and demands arising out of or relating to this *deed* or the *DOCA* which may be commenced, incurred by or made on the *trustees* by any person and against all reasonable costs, charges and expenses incurred by the *trustees* in relation to them.
- 6.1.2. The *trustees* are not entitled to an indemnity under clause 6.1.1 in relation to any liabilities or demands to the extent that:
- (a) the indemnification contravenes the *Corporations Act* or the *Trustee Act*; or
  - (b) the *trustees* or any partner, officer, employee, authorised agent or delegate of the *trustees* have acted dishonestly, negligently, in breach of fiduciary duty or in breach of trust.

### 6.2. Continuing indemnity

The indemnity under clause 6.1:

- (a) takes effect on and from the *commencement date*;
- (b) will be without limitation as to time; and
- (c) operates notwithstanding:





- (i) the removal of the *administrators*, the *deed administrators*, or the *trustees* and the appointment of a replacement(s) in that role; or
- (ii) the termination of the *DOCA* or the *trust* for any reason whatsoever.

### 6.3. Indemnity not to be affected or prejudiced

The indemnity under clause 6.1 will:

- (a) not be affected, limited, or prejudiced in any way by any irregularity, defect, or invalidity in the appointment of the *trustees*, the *administrators*, or *deed administrators* (as applicable);
- (b) extend to all actions, suits, proceedings, accounts, liabilities, claims, and demands relating to or arising in any way out of any defect in the appointment of the *trustees*, the approval and execution of this *deed*, or otherwise; and
- (c) not affect nor prejudice all or any rights that the *trustees* may have against the *company* or any other person to be indemnified against the reasonable costs, charges, expenses, and liabilities incurred by the *trustees* of or incidental to the exercise or performance of any of the powers of authorities conferred on the *trustees* by the *DOCA*, this *deed*, or otherwise.

### 6.4. Remuneration of trustees

6.4.1. The *trustees* are to be:

- (a) reasonably remunerated from the *trust fund* at the usual rates charged by BRI Ferrier (NSW) Pty Ltd from time to time on a "time-cost" basis in relation to any work done by the *trustees*, and any officer, partner or employee of the *trustees*, in relation to:
  - (i) the calling for and adjudicating upon the proofs of *trust claims* under this *deed*;
  - (ii) the distribution of the *trust fund* under this *deed*;
  - (iii) the exercise of the *trustees'* powers and discretions under this *deed*; and
  - (iv) the performance of the *trustees'* duties, obligations and responsibilities under this *deed*; and
- (b) reimbursed from the *trust fund* in relation to all reasonable costs, fees and expenses incurred in relation to the foregoing including any *stamp duty* payable in relation to this *deed* and the *DOCA*.

6.4.2. The *trustees'* remuneration, costs, fees and expenses must:



- (a) be paid from the *trust fund* periodically in arrears; and
- (b) must be paid or provided for in full before payment of the *final dividend*.

6.4.3. The *trustees* shall be entitled to call a meeting of *admitted creditors* in accordance with clause 5 for the purpose of seeking further remuneration approval in respect of any work done by the *trustees*, the *deed administrators* or the *administrators*.

## 7. LIABILITY

### 7.1. Exclusion of Liability

7.1.1. The *trustees* (including their partners, officers, employees, contractors and advisors, as applicable) are not liable for any loss, damages, costs or expenses that may result to the *trust fund* or any person by any of the following, in the absence of wilful default, fraud, gross negligence or breach of trust:

- (a) the exercise of any discretion or power conferred by this *deed* or by law on the *trustees* or any delay or failure to exercise any of those discretions or powers; or
- (b) any disclosure by the *trustees* of any document, matter or thing relating to the *trust*, the *trust fund* or any *trust claimant* or other beneficiary.

7.1.2. All persons claiming any interest in the *trust fund* must be treated as taking it with and subject to notice of the protection conferred by this clause 7.

### 7.2. Proceedings against co-trustee

A *trustee* is not bound to take any proceeding against the other *trustee* for any breach or alleged breach of trust committed by the second-mentioned *trustee*.

### 7.3. Reliance on Advice

Where the *Trustee Act* in reliance upon the advice of any lawyer instructed on behalf of the *trust* obtained in relation to the interpretation of the provisions of this *deed* or any document or statute or any matter concerning the administration of the *trust*, the *trustees* are not liable to any person in relation to any act done or omitted to be done by the *trustees* in accordance with the advice.



## 8. TRUSTEES RESIGNATION

A *trustee* may resign or retire at any time by giving at least 14 days' prior written notice to the *companies* unless that resignation or retirement would result in there being no remaining *trustee*, in which event the *trustees* must:

- (a) convene a meeting of *admitted creditors* in accordance with clause 5 of this *deed* for the purpose of approving the appointment of a replacement trustee;
- (b) assign and transfer to a replacement trustee appointed by the *admitted creditors* all of the *trustees'* rights, title and benefit under this *deed*; and
- (c) do all things reasonably necessary to effect the assignment and transfer referred to in clause 8(b).

## 9. TRUSTEES NOT OBLIGED TO TAKE ACTION

The *trustees* are not obliged to take any action under this *deed* until such time as there are sufficient immediately available funds in hand to pay, without prior or apprehended claim as referred to in clauses 2.4 and 2.5, their remuneration, costs, fees, and expenses.

## 10. TERMINATION

### 10.1. General

This *trust* will terminate upon the first of the following to occur:

- (a) when the whole of the *trust fund* has been distributed in accordance with this *deed*;  
or
- (b) upon the expiry of the perpetuity period referred to in clause 1.4.

### 10.2. Meeting of admitted creditors

The *trustees* must convene a meeting of *admitted creditors* to consider a resolution to vary this *deed* or terminate the *trust* if:

- (a) at any time prior to the termination of the *trust*, the *trustees* determine that it is no longer practicable or desirable to continue to implement or carry out this *deed*;  
or



(b) the *court* so orders.

### 10.3. Court order or admitted creditors' resolution

10.3.1. This *trust* will terminate if:

(a) a *court* so orders; or

(b) the *admitted creditors* pass a resolution terminating this *trust* at a meeting of the *admitted creditors* duly convened under clause 10.2(a).

10.3.2. If the *trust* is terminated under clause 10.3.1, the undistributed balance of the *trust fund* must be paid to *the Court* in accordance with section 95 of the *Trustee Act* and will not be available for distribution to *admitted creditors* or other beneficiaries under this *deed*.

### 10.4. Report to admitted creditors

10.4.1. Upon a meeting being convened pursuant to clause 10.2(a), the *trustees* must send each *admitted creditor* prior to the meeting a report as to the state of affairs of the *trust* accompanied by such financial statements as the *trustees* think fit.

10.4.2. A report under clause 10.4.1 must include:

(a) a statement explaining the circumstances which have caused the *trustee* to convene the meeting pursuant to clause 10.2(a);

(b) a statement that this *trust* will be terminated if the *admitted creditors* so resolve.

### 10.5. Previous operation of this deed preserved

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

## 11. VARIATION OF DEED

11.1. This *deed* may be varied with the consent of the *trustees* by resolution passed at a meeting of *admitted creditors* by a majority of such *admitted creditors* in number and value, but only if the variation:

(a) is not materially different from the proposed variation set out in the notice of that meeting; and

(b) does not materially prejudice the interests of any class of *admitted creditors* without the approval of a majority of that class in number and value.



- 11.2. Subject to the provisions of the *Corporations Act* and the *Trustee Act* (as applicable), a variation of any term of this *deed* must be in writing and signed by all *parties*.

## 12. MISCELLANEOUS PROVISIONS

### 12.1. Governing law

The laws of the State of New South Wales govern this *deed*.

### 12.2. Jurisdiction

12.2.1. The *parties* submit to the exclusive jurisdiction of the *courts*.

12.2.2. Any legal proceedings in relation to this *deed* must be held in Sydney, New South Wales unless otherwise agreed between the *parties* in writing.

### 12.3. Severance

12.3.1. Subject to clause 12.3.2, if any provision of this *deed* is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of this deed to the minimum extent necessary and with the intent that the remaining provisions of this *deed* remain in full force and effect.

12.3.2. Any provision of this *deed* or any right, power, authority, discretion or remedy of a *party* under this *deed* which is:

- (a) prohibited in a jurisdiction, is ineffective in that jurisdiction only to the extent of that prohibition; or
- (b) invalid, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

12.3.3. The application of clause 12.3.2 is not limited by any other provision of this *deed* in relation to severability, prohibition or enforceability.

### 12.4. Waiver

12.4.1. A *party* granting a waiver of a right under this *deed* must give written notice of that waiver to the *party* which benefits from the waiver.

12.4.2. A *party's* failure, partial failure or delay in exercising a right relating to this *deed* is not a waiver of that right.



- 12.4.3. A *party* may not claim that another *party's* delay or failure to exercise a right relating to this *deed*:
- (a) constitutes a waiver of that right; or
  - (b) is a defence to its own action or inaction.

## 12.5. Entire agreement

This *deed* constitutes the entire agreement between the *parties* and supersedes all previous discussions, undertakings and agreements in relation to the subject matter of this *deed*.

## 12.6. Survival

- 12.6.1. Each indemnity survives the performance of obligations relating to this *deed* and the termination of this *deed*.
- 12.6.2. To the extent that a *party* has not satisfied an obligation, or it is a continuing obligation, that obligation survives termination of this *deed*.

## 12.7. Time

Time is of the essence in relation to this *deed*.

## 12.8. Merger

A *party's* rights and obligations in relation to this *deed* do not merge on the execution of this *deed* or the completion of a transaction under this *deed*.

## 12.9. Representations

Subject to the express provisions in this *deed*:

- (a) neither a *party* nor its representative has made any representation to another *party* to induce that other *party* to execute this *deed*; and
- (b) neither a *party* nor a person acting on a *party's* behalf was induced to execute this *deed* by relying on a representation that another *party* has made.

## 12.10. Further assurances

Each *party* at its own expense must exercise such powers as are available to them, do all such acts, sign, execute and deliver such documents or instruments, provide all such assistance, and otherwise do everything necessary to give full effect to this *deed*.



## 12.11. Rights of third parties

- 12.11.1. Subject to the rights of *creditors* under the *Corporations Act*, to the extent permitted by law, a person who is not a *party* to this *deed* does not have any right to enforce any term of this *deed* pursuant to the laws of any jurisdiction, except where and to the extent expressly set out in this *deed*.
- 12.11.2. Notwithstanding any rights of persons who are not *parties* to enforce this *deed*, this *deed* may be:
- (a) varied by the *parties* in accordance with clause 11 without the consent of any person who is not a *party*; and
  - (b) terminated in any manner and circumstance in which termination is allowed under this *deed*, without the consent of any person who is not a *party*.

## 12.12. Notices

- 12.12.1. Each communication (including each notice, consent, approval, request and demand) given by a *party* to another *party* in relation to this *deed*:
- (a) must be in writing and in the English language;
  - (b) must be addressed to the recipient *party* using the contact details of the recipient *party* specified in this deed or as otherwise notified by the recipient *party* to each other *party* from time to time;
  - (c) must be signed by the *party* making it or by that *party's* lawyer, attorney, director, secretary or authorised agent;
  - (d) must be delivered by hand, sent by prepaid post, or sent by email to the recipient *party* at the address or using the contact details specified in this *deed*; and
  - (e) is taken to be received by the recipient *party*:
    - (i) in the case of delivery by hand, upon delivery;
    - (ii) in the case of prepaid post sent to a recipient *party* in the same country as the sending *party*, on the 2<sup>nd</sup> *business day* after the date of posting;
    - (iii) in the case of prepaid post sent to a recipient *party* in another country to the sending *party*, on the 5<sup>th</sup> *business day* after the date of posting;
    - (iv) in the case of email, at the time it is delivered to the recipient *party's* host server.
- 12.12.2. Notwithstanding clause 12.12.1(e), if a communication given under clause 12.12.1 is taken to be received on a day that is not a *business day* or after 5.00pm in the place where



the communication is received, it will be taken to be received at 9.00am on the next *business day*.

## 12.13. Counterparts

- 12.13.1. This *deed* may be executed in any number of counterparts which taken together are one and the same document.
- 12.13.2. This *deed* is binding on the *parties* on the exchange of counterparts.
- 12.13.3. A copy of an entire signed counterpart of this *deed* sent by facsimile or email must be treated as an original counterpart.

# 13. COMPANIES MAY EXECUTE THIS DEED

The *companies* are authorised by the *deed administrators* to execute this *deed*.

# 14. STAMP DUTY

Any *stamp duty* assessed on this *deed* is to be paid out of the *trust fund*.

# 15. INTERPRETATION

## 15.1. Application

This clause 15 applies to the interpretation of this *deed* unless inconsistent with the context.

## 15.2. General

- 15.2.1. If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- 15.2.2. The singular includes the plural and vice versa.
- 15.2.3. A reference to a gender includes any gender.
- 15.2.4. A reference to a living thing includes a reference to an inanimate thing and vice versa.
- 15.2.5. A reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this *deed*.





- 15.2.6. The words “includes”, “including” and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this *deed*.
- 15.2.7. A reference to a document includes a variation or replacement of it.
- 15.2.8. A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- 15.2.9. A reference to this *deed* includes an annexure.
- 15.2.10. A reference to person includes a reference to:
- (a) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
  - (b) if the person is an individual, the person’s personal representatives and assigns; and
  - (c) if the person is not an individual, the person’s successors and assigns.
- 15.2.11. A reference to a thing, including a right, is a reference to either the whole thing or a part of the thing.
- 15.2.12. Part performance of an obligation does not constitute performance of an obligation.
- 15.2.13. A term, condition or warranty in this deed in favour of or on the part of two or more people benefits or binds them jointly and severally.
- 15.2.14. A reference to currency is to Australian currency.
- 15.2.15. A reference to time is to Australian Eastern Standard Time unless the context otherwise requires.
- 15.2.16. If the date on which a thing must be done is not a *business day*, then that thing must be done on the next *business day*.
- 15.2.17. A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.
- 15.2.18. If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- 15.2.19. A clause is not to be construed against a *party* solely on the ground that the *party* is responsible for the preparation of this *deed* or that clause.
- 15.2.20. A reference to a right includes a benefit, remedy, discretion or power.



15.2.21. The phrase “in relation to” has the widest possible import and encompasses the phrases “in relation to”, “in connection with”, “in respect of”, “arising out of”, “caused by” and “resulting from”.

### 15.3. Headings

A heading in this *deed* is for convenience only and does not affect the interpretation of this *deed*.

### 15.4. DOCA terms

Unless defined differently in this *deed* or the context otherwise requires, words and phrases defined in the *DOCA* have the same meaning when used in this *deed*.



## Schedule 1 – Glossary

In this *deed*, the terms set out below have the following meanings:

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- |   |   |
|---|---|
| <b><i>administration and DOCA costs</i></b> | (a) the remuneration payable to the <i>administrators</i> and the <i>deed administrators</i> (or either of them) for work performed by them or any of their partners, officers, employees, contractors or advisers in relation to the <i>administration period</i> and the <i>DOCA period</i> (or either period) as determined Division 60 of the <i>Insolvency Practice Schedule</i> ;   |
|   | (b) costs, charges, fees (including legal fees), government charges, taxes (including any <i>stamp duty</i> and taxes required to be paid by the <i>deed administrators</i> under the <i>DOCA</i> ) and expenses incurred by the <i>administrators</i> or the <i>deed administrators</i> , including: <ul style="list-style-type: none"><li>(i) those incurred in connection with advisers, incurred in connection with the performance or as a result of any actual or attempted execution or exercise or failure to execute or exercise of the <i>administrators'</i> and/or the <i>deed administrators'</i> duties, obligations and responsibilities under the <i>Corporations Act</i> and the <i>DOCA</i> during the <i>administration period</i> and the <i>DOCA period</i>; and</li><li>(ii) preparation, approval and implementation of the <i>DOCA</i> and of the preparation and implementation of any documents necessary to or associated with approval of the <i>DOCA</i>,</li></ul> other than <i>administration liabilities</i> ; and |
|   | (c) <i>administration liabilities</i> .   |
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<b><i>administration liabilities</i></b>	all amounts, debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments in relation to which the <i>administrators</i> and the <i>deed administrators</i> (or either of them) are entitled to be indemnified under the <i>DOCA</i> .
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<b><i>administration period</i></b>	the period starting on the <i>appointment date</i> and ending on the date that the <i>DOCA</i> is executed.
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<b><i>administrators</i></b>	Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several voluntary administrators of the <i>companies</i> under Part 5.3A of the <i>Corporations Act</i> .
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<b><i>admitted claim</i></b>	a <i>claim</i> by a <i>creditor</i> , the proof of debt for which has been accepted fully or contingently by the <i>administrators</i> , the <i>deed administrators</i> or the <i>trustees</i> (as the case may be).
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<b><i>admitted creditor</i></b>	a <i>creditor</i> with an <i>admitted claim</i> .
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<b><i>appointment date</i></b>	10 December 2018, being the date on which the <i>administrators</i> were appointed or were taken to be appointed pursuant to section 436A of the <i>Corporations Act</i> .
<b><i>ASIC</i></b>	the Australian securities & Investments Commission.
<b><i>assets</i></b>	has the meaning given to that term in the <i>DOCA</i> .
<b><i>body</i></b>	any one or more of the following: <ul style="list-style-type: none"><li>(a) a corporation, company or other body corporate;</li><li>(b) a managed investment scheme within the meaning of the <i>Corporations Act</i>, or</li><li>(c) a unit trust or fixed entitlement trust.</li></ul>
<b><i>business day</i></b>	a day other than a Saturday, a Sunday or a public holiday in Sydney, New South Wales Australia.
<b><i>claim</i></b>	<p>a debt payable by, or a liability of or claim against, the <i>companies</i> (or any of them) (whether present or future, certain or contingent, ascertained, or sounding only in damages) being a debt, liability or claim:</p> <ul style="list-style-type: none"><li>(a) the circumstances giving rise to which occurred on or before the <i>appointment date</i>; or</li><li>(b) which was due or arising or which may become due or arise because of anything done or omitted by or on behalf of a <i>company</i> or the <i>companies</i> on or before the <i>appointment date</i>,</li></ul> <p>(whether arising under common law, equity or statute) and which would be admissible to proof against the <i>companies</i> (or any of them, as the case may be) under Division 6, Part 5.6 of the <i>Corporations Act</i> had the <i>companies</i> (or any of them, as the case may be) been wound up and the winding up was taken to have commenced on the <i>appointment date</i>, including but not limited to:</p> <ul style="list-style-type: none"><li>(c) debts, liabilities or claims against the <i>companies</i> (or any of them, as the case may be) in relation to a <i>pre-administration contract</i>, including by way of a lease or a convertible note;</li><li>(d) claims relating to the termination of the employment of <i>employees</i>;</li><li>(e) a debt by way of a <i>superannuation contribution</i>; and</li><li>(f) a debt by way of a <i>superannuation guarantee charge</i>.</li></ul>
<b><i>commencement date</i></b>	the date of execution of the <i>DOCA</i> by the <i>companies</i> .
<b><i>companies</i></b>	<i>GSL</i> and <i>GSI</i> , or any of them, as the context requires

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<b><i>court</i></b>	any court having jurisdiction to hear and determine matters under the <i>Corporations Act</i> and the <i>Trustee Act</i> and includes both the Supreme Court of New South Wales and the Federal Court of Australia.
<b><i>Corporations Act</i></b>	the <i>Corporations Act 2001</i> (Cth).
<b><i>creditor</i></b>	any person who would have been entitled to prove in a winding up of any of the <i>companies</i> if the relevant <i>company</i> had been wound up and the winding up was taken to have commenced on the <i>appointment date</i> , including <i>employees</i> and <i>priority creditors</i> .
<b><i>deed administrators</i></b>	Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several administrators of the <i>DOCA</i> .
<b><i>dividend</i></b>	any amount paid by the <i>trustee</i> from the <i>trust fund</i> in relation to an <i>admitted claim</i> of an <i>admitted creditor</i> .
<b><i>DOCA</i></b>	the deed of company arrangement entered into by the <i>companies</i> , the <i>administrators</i> , and the <i>proponent</i> dated [●] 2019.
<b><i>DOCA period</i></b>	the period starting on the date that the <i>DOCA</i> is executed and ending on that date that the <i>DOCA</i> is terminated.
<b><i>deed</i></b>	this creditors' trust deed as amended from time to time.
<b><i>employee</i></b>	current or former employees of the <i>companies</i> (or any one of them).
<b><i>excluded claim</i></b>	has the meaning given to it in the <i>DOCA</i> .
<b><i>final dividend</i></b>	the last <i>dividend</i> from the <i>trust fund</i> by which either: (a) all of the <i>admitted creditors</i> receive (in aggregate with prior distributions) 100 cents in the dollar on their <i>admitted claims</i> ; or (b) the <i>trustees</i> distribute to the <i>admitted creditors</i> the whole of the <i>trust fund</i> or remainder of the <i>trust fund</i> after prior <i>dividends</i> .
<b><i>GSI</i></b>	Greatcell Solar Industries Pty Ltd (Subject to a Deed of Company Arrangement) (ACN 083 102 498).
<b><i>GSL</i></b>	Greatcell Solar Limited (Subject to a Deed of Company Arrangement) (ACN 111 723 883).
<b><i>GST</i></b>	goods and services tax levied or imposed pursuant to the <i>GST Act</i> .
<b><i>GST Act</i></b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

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<b><i>Insolvency Practice Rules</i></b>	has the meaning given to that term in the <i>Corporations Act</i> .
<b><i>Insolvency Practice Schedule</i></b>	Schedule 2 of the <i>Corporations Act</i> .
<b><i>member</i></b>	in relation to any <i>company</i> , a person who is a member of the <i>company</i> under section 231 of the <i>Corporations Act</i> .
<b><i>party</i></b>	a party to this <i>deed</i> .
<b><i>pre-administration contract</i></b>	a contract, agreement, deed, lease or legally binding commitment entered into by the <i>companies</i> (or any of them) on or prior to the <i>appointment date</i> .
<b><i>priority claim</i></b>	<i>claim</i> (including a <i>priority employee claim</i> ) which, if the <i>companies</i> (or any of them) had been wound up with the winding up taken to have commenced on the <i>appointment date</i> , would have been a <i>claim</i> payable in priority to all other unsecured <i>claims</i> against the relevant <i>company</i> by reason of sections 556(1)(df), (e), (f), (g), (h), (1A), (1B), (1C), 560 or 561 of the <i>Corporations Act</i> .
<b><i>priority employee claim</i></b>	any <i>employee Entitlements</i> of any <i>employee</i> for which the <i>employee</i> would be entitled to prove in priority to other unsecured <i>creditors</i> as a <i>claim</i> against the <i>companies</i> (or any of them) pursuant to section 556 of the <i>Corporations Act</i> had that the relevant <i>company</i> been wound up and the winding up was taken to have commenced on the <i>appointment date</i> , save that such right or entitlement is subject to the limitations in section 556 of the <i>Corporations Act</i> , including in particular sections 556(1A) and (1B) of the Act.
<b><i>priority employee creditor</i></b>	a <i>creditor</i> who is an <i>employee</i> and who has a <i>priority employee claim</i> .
<b><i>proponent</i></b>	Otsana Pty Ltd ACN 145 168 216.
<b><i>proponent offer</i></b>	the binding offer for the recapitalisation of the <i>companies</i> by way of the <i>DOCA</i> , made by the <i>proponent</i> in its letter to the <i>administrators</i> dated 22 March 2019.
<b><i>proponent payment</i></b>	the sum of \$1,425,000 payable by the <i>proponent</i> to the <i>trustees</i> under the <i>proponent offer</i> .
<b><i>Corporations Regulations</i></b>	the <i>Corporations Regulations 2001</i> (Cth).

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- reorganisation** in relation to any corporation, any one of more of the following:
- (a) a bonus issue by way of capitalisation of profits or reserves;
  - (b) a consolidation, subdivision or reduction of capital dividend or other reconstruction or adjustment relating to the share capital of the corporation (or any shares or stock derived from it);
  - (c) a buy back by the corporation of its own shares;
  - (d) an amalgamation or reconstruction affecting the share capital of the corporation (or any shares or stock derived from it);
  - (e) an issue of rights, options or other interest to shareholders or stockholders in the corporation;
  - (f) any other issue or equity *securities* with rights of conversion to equity by the corporation; or
  - (g) a call by the corporation for unpaid amounts on any of its share capital.
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- securities** any one or more of the following:
- (a) a security within the meaning given to that term in section 92(3) of the *Corporations Act*;
  - (b) units in a unit trust;
  - (c) beneficial entitlements or other interests in a fixed entitlement trust; or
  - (d) to the extent not covered by paragraphs (a), (b) or (c) of this definition, shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature.
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- security interest**
- (a) a 'security interest' for the purposes of the *Personal Property securities Act 2009* (Cth); or
  - (b) any other security for payment of money, performance of obligations or protection against default, including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements (as applicable).
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**settlor** *GSL* as settlor of the *trust*.

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**stamp duty** any stamp, transfer, landholder, transaction, loan, mortgage, instrument or other duty of a like kind.

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**superannuation contribution** has the meaning given to it in section 556 of the *Corporations Act*.

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<b><i>superannuation guarantee charge</i></b>	has the meaning given to it in the <i>Superannuation Guarantee (administration) Act 1992</i> (Cth).
<b><i>trust</i></b>	the trust established by this deed.
<b><i>trust claim</i></b>	a <i>claim</i> against the <i>trust fund</i> .
<b><i>trust claimant</i></b>	a person who has, or claims to have, a <i>trust claim</i> .
<b><i>trust fund</i></b>	the trust fund referred to in clause 2.1.
<b><i>trustee costs</i></b>	(a) all costs, charges, fees (including legal fees), government charges, taxes (including any <i>stamp duty</i> required to be paid in accordance with clause 14) and expenses incurred by the <i>trustees</i> in the performance of their duties, obligations and responsibilities under this <i>deed</i> and the <i>Trustee Act</i> , and  (b) the <i>trustees'</i> remuneration under clause 6.4.
<b><i>trustees</i></b>	Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several trustees of the <i>trust</i> .
<b><i>Trustee Act</i></b>	the <i>Trustee Act 1925</i> (NSW).

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## Signing Page:

**GSL**

EXECUTED AS A DEED for and on behalf of **Greatcell Solar Limited (Subject to Deed of Company Arrangement) ACN 111 723 883** by one of its deed administrators in the presence of:

_____ ←	_____ ←
Signature of Witness	Signature of deed administrator
_____	_____
Full name of Witness (please print)	Full name of deed administrator (please print)

**GSI**

EXECUTED AS A DEED for and on behalf of **Greatcell Solar Industries Pty Ltd (Subject to Deed of Company Arrangement) ACN 083 102 498** by one of its deed administrators in the presence of:

_____ ←	_____ ←
Signature of Witness	Signature of deed administrator
_____	_____
Full name of Witness (please print)	Full name of deed administrator (please print)

**trustees**

EXECUTED AS A DEED by **Peter Paul Krejci** in the presence of:

_____ ←	_____ ←
Peter Paul Krejci	Signature of witness
	_____
	Full name of Witness (please print)

EXECUTED AS A DEED by **Andrew John Cummins** in the presence of:

_____ ←	_____ ←
Andrew John Cummins	Signature of Witness
	_____
	Full name of witness (please print)