

ENERGY DEVELOPMENTS BOARD RECOMMENDS A\$8.00 CASH PER SHARE PROPOSAL

20 July 2015: The Board of Energy Developments Limited (ASX:ENE) (“Energy Developments”) and the Boards of DUET Group (ASX:DUE) (“DUET”) announced today that they have entered into a Scheme Implementation Deed (“S.I.D.”) under which it is proposed that DUET will acquire all of the Energy Developments shares on issue by way of a Scheme of Arrangement (“Scheme”) for A\$8.00 cash per share (“Proposal”).

The cash payment of A\$8.00 per ENE share represents attractive value for ENE shareholders on key metrics:

- a 17% premium to the 6 month volume weighted average price of Energy Developments shares;¹
- a 28% premium to the 12 month volume weighted average price of Energy Developments shares;¹
- a 44% premium to the institutional placement conducted in February 2014 at a placement price of \$5.55;
- a multiple of 8.8x the unaudited FY15 EBITDA of A\$218m; and
- an implied market capitalisation of A\$1,407 million and an implied enterprise value of A\$1,919 million.²

Energy Developments Chairman, Rob Koczkar, said: “In recent years, Energy Developments has achieved significant growth in the business through expansions and acquisitions which is recognised by the Proposal”

“The Proposal offers ENE shareholders an attractive value proposition relative to investment analyst valuations and recent volume-weighted trading prices.” Mr Koczkar said.

Energy Developments Managing Director, Greg Pritchard, said: “The proposal from DUET recognises the attractive growth outlook for the business, the strong operational performance and is a robust endorsement of management’s ability to deliver against the strategic plan.”

“ENE’s management team looks forward to working with DUET and continuing to grow the business, should this attractive proposal be endorsed by ENE shareholders.” Mr Pritchard said.

In the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of ENE shareholders, the Board of Energy Developments unanimously recommends that ENE shareholders vote in favour of the Scheme. Subject to those

¹ Volume weighted average prices as at market close 17 July 2015.

² Excluding DUET’s transaction costs. Based on EDL’s updated unaudited FY15 EBITDA guidance of \$218m, as notified to the ASX today, acquisition equity value of \$1,407 million including EDL management options and performance rights, and forecast unaudited net drawn debt of \$512 million as at 30 June 2015, as adjusted for EDL’s expected transaction costs.

same qualifications, each director of Energy Developments intends to vote all the ENE shares held or controlled by them in favour of the Scheme.

In reaching its conclusion that the Proposal is in the best interests of shareholders, customers and employees, the Energy Developments Board has considered key alternative courses for the business including:

- continuing to deliver on growth prospects as an independent company;
- the potential for further beneficial capital management initiatives for shareholders; and
- competing incomplete, indicative proposals for the business and selected assets by a number of highly qualified parties.

Mr Koczkar said: “Following detailed evaluation of all options, including multiple alternative proposals with the support of management and external advisers, the ENE Board has unanimously concluded that the Proposal is the most attractive option to realise best value for shareholders.”

Energy Developments major shareholders Greenspark Power Holdings Limited (“Greenspark”) holding 114.8 million ENE shares (67.1%), Investors Mutual Ltd (“IML”) holding 16.3 million ENE shares (9.6%), Coopers Investors Pty Ltd (“Coopers Investors”) holding 7.9 million ENE shares (4.6%) and certain other shareholders³ holding in aggregate 7.5 million ENE shares (4.4%) have each indicated their support for the Proposal and their intention to, in the absence of a superior proposal, vote all the Energy Developments shares held or controlled by them (together representing 85.7% of ENE’s total shares on issue) in favour of the Scheme. Each of those shareholders has authorised Energy Developments to disclose their intentions.

Energy Developments has appointed Deloitte Corporate Finance Pty Limited as independent expert to prepare a report on whether the Proposal is in the best interests of Energy Developments shareholders. The independent expert’s report will be included in the Scheme Booklet which is expected to be distributed to shareholders in early September 2015.

DUET Chief Executive Officer, David Bartholomew, said: “Energy Developments is a strong strategic fit with DUET. The acquisition will enhance the diversity of our operating cash flows and is expected to provide an attractive source of growth for DUET. ENE has a high performing management team with excellent operational expertise that has delivered strong financial performance over the years. We look forward to welcoming the ENE team into the DUET Group and having our businesses work together.”

The implementation of the Scheme is subject to Energy Development shareholder approval of the Scheme; Court approval of the Scheme; there being no material adverse change or prescribed occurrence or regulatory restraint; and other conditions precedent.

Full details of the conditions precedent to the Scheme and other agreed terms are set out in the S.I.D., a copy of which is attached to this announcement.

The S.I.D. contains customary exclusivity provisions including no-shop and no-talk restrictions, a break fee, as well as a notification obligation and matching right, with the no-talk and notification obligation subject to the Energy Developments directors’ fiduciary obligations.

³ The other shareholders are Tribeca Investment Partners Pty Ltd and First Samuel Limited.

Under the terms of the S.I.D. Energy Developments is precluded from declaring or paying any dividends, including in respect of the 2015 financial year.

Timetable

Shareholders do not need to take any action at the present time.

A Scheme Booklet containing information relating to the Proposal, the reasons for the Directors' unanimous recommendation and details of the shareholder meeting is expected to be sent to Energy Developments shareholders in early September 2015.

It is anticipated that Energy Developments shareholders will have the opportunity to vote on the Proposal at a Scheme meeting to be held in early October 2015.

Subject to the conditions precedent to the Scheme being satisfied, the Scheme is expected to be implemented in late October 2015.

Energy Developments is being advised by Citi and Gilbert + Tobin.

Energy Developments Guidance Update

Energy Developments today increases its full-year guidance for the 2015 financial year and based on preliminary unaudited 30 June 2015 financials expects EBITDA to be \$218 million from the previous range of \$211 to \$216 million.

ENDS

Attached: Proposal to Acquire Energy Developments Limited: Scheme Implementation Deed

Further Information

Energy Developments

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Shareholder Information Line

ENE shareholders with any questions in relation to the DUET Proposal or their shareholdings are encouraged to call the Energy Developments Shareholder Information Line: 1300 657 159 (within Australia) or +61 1300 657 159 (outside Australia).

Energy Developments

Energy Developments Limited ABN 84 053 410 263 (EDL) is an international provider of safe, clean, low greenhouse gas (GHG) emissions energy and remote energy solutions. EDL currently owns and operates a diversified international portfolio of power stations in Australia, the United States, the United Kingdom and Greece from a range of fuel sources including landfill gas, waste coal mine gas, natural gas and liquefied natural gas.

In the year ended 30 June 2015:

- EDL's worldwide operations produced approximately 4 million MWh of energy, enough to power over 650,000 homes; and
- EDL's landfill gas power stations around the world, and waste coal mine power stations in Australia abated and avoided approximately 13 million tonnes of carbon dioxide equivalent of GHG emissions, equivalent to removing 3.8 million cars from the road.

DUET Group

DUET Group is an ASX-listed (ASX:DUE) owner and operator of energy utility businesses, with a market capitalisation of ~\$3.5 billion (as at 30 June 2015). DUET invests in energy infrastructure businesses that offer stable and predictable cash flows that underpin DUET's distributions to its securityholders. DUET's diversified portfolio of businesses comprises:

- **Dampier to Bunbury Pipeline (80%)** - the only natural gas pipeline connecting the natural gas reserves of the Carnarvon basin on Western Australia's North West Shelf with industrial, commercial and residential customers in Perth and the surrounding regions;
- **DBP Development Group (100%)** - the owner and operator of the Wheatstone Ashburton West Pipeline and the Fortescue River Gas Pipeline (in joint venture with TransAlta);
- **United Energy (66%)** – a Victorian electricity distribution network covering 1,472km² of southeast Melbourne and the Mornington Peninsula; and
- **Multinet Gas (100%)** - a Victorian gas distribution company with a network covering 1,860km² of the eastern and southeastern suburbs of Melbourne

Note: in this release, all amounts are Australian dollars unless otherwise specified, and all numbers are approximate unless otherwise specified.

Scheme implementation deed

A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited)

DUET Company Limited

Energy Developments Limited

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Parties

- 1 **A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited) (ACN 607 005 685)** of Level 15, 55 Hunter Street, Sydney, New South Wales 2000 (**Bidder**)
 - 2 **DUET Company Limited (ACN 163 100 061)** of Level 15, 55 Hunter Street, Sydney, New South Wales 2000 (**Bidder's Guarantor**)
 - 3 **Energy Developments Limited ACN 053 410 263** of Building 17, 2404 Logan Road, Eight Mile Plains, Queensland 4113 (**EDL**)
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Background

- A EDL has agreed to propose a members' scheme of arrangement under Part 5.1 of the Corporations Act pursuant to which Bidder will acquire all of the Scheme Shares.
- B The parties have agreed to implement the Scheme on and subject to the terms of this deed.
- C Bidder's Guarantor has agreed to guarantee the Bidder's obligations under this deed.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2 Agreement to proceed with Transaction

- (a) EDL agrees to propose the Scheme on and subject to the terms of this deed.
 - (b) Bidder agrees to assist EDL in proposing the Scheme on and subject to the terms of this deed.
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3 Conditions precedent

3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective until and unless each of the following conditions precedent is satisfied or waived in accordance with clause 3.3.

- (a) **(US CFIUS)** Before 5:00pm Sydney time on the Business Day before the Second Court Date, the parties shall have obtained from CFIUS the CFIUS Clearance.
- (b) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (c) **(Shareholder approval)** EDL Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act.
- (d) **(Restraints)** Before and as at 8:00am Sydney time on the Second Court Date:
 - (i) there is not in effect any temporary restraining order, preliminary or permanent injunction, decision, decree or other order issued by any court of competent jurisdiction or by any Government Agency, nor is there in effect any other legal restraint or prohibition; and
 - (ii) no action or investigation is announced or commenced by any Government Agency,

which restrains, prohibits or otherwise materially adversely impedes or impacts upon (or could reasonably be expected to restrain, prohibit or otherwise materially adversely impede or impact upon) the completion of the Transaction.
- (e) **(EDL Material Adverse Change)** No EDL Material Adverse Change occurs between the date of this deed and 8:00am Sydney time on the Second Court Date.
- (f) **(EDL Prescribed Occurrence)** No EDL Prescribed Occurrence occurs between the date of this deed and 8:00am Sydney time on the Second Court Date.
- (g) **(Key Contracts)** Before 5:00pm Sydney time on the Business Day before the Second Court Date, EDL or Bidder has not received notification from any person who is entitled to exercise any right under any provision of each of the Key Contracts as a result of the announcement or implementation of the Scheme, of that person's intention to refuse consent or of that person's decision to refuse consent to the change in control of EDL or to otherwise exercise any right to terminate the Key Contract as a result of the change in control of EDL, which occurs as a result of the Scheme.
- (h) **(Treatment of Options and Performance Rights)** Before 8:00am Sydney time on the Second Court Date, all Cancellation Deeds and Confirmation Deeds have been entered into in accordance with clause 4.3.

3.2 Reasonable endeavours

- (a) EDL must use reasonable endeavours to procure that the conditions precedent in clauses 3.1(e) and 3.1(f) are satisfied.
- (b) The parties must each use reasonable endeavours to procure that:
 - (i) the conditions precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(g) and 3.1(h) are satisfied; and
 - (ii) there is no occurrence or non-occurrence within the control of such party that prevents, or would be reasonably likely to prevent, the satisfaction of any condition precedent.

- (c) Without limiting clause 3.2(b), each party must keep the other party informed of the progress towards satisfaction of the conditions precedent.
- (d) As soon as practicable and in any event no later than three Business Days after the date of this deed, EDL and Bidder shall cooperate with respect to the preparation and submission of a voluntary notice and any requested supplemental information (collectively, the **Voluntary Notice**) to the Committee on Foreign Investment in the United States (**CFIUS**) under Section 721 of Title VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. § 2170 et seq.), with regard to the transactions contemplated by this deed. The parties shall promptly provide each other with all information necessary to complete preparation and submission of the Voluntary Notice and respond to any inquiries from CFIUS that there are no issues of national security sufficient to warrant further review or investigation of the transactions contemplated hereby (the **CFIUS Clearance**). Without limiting the foregoing, the requirement of Bidder to use its reasonable endeavours to obtain the CFIUS Clearance on or before the Second Court Date shall include negotiating and entering into one or more mitigation agreements with a federal Government Agency.
- (e) Without limiting clause 3.2(b), in respect of the condition precedent in clause 3.1(g):
 - (i) as soon as practicable after the date of this deed, EDL and Bidder must use reasonable endeavours to agree a course of action (including the form of any written correspondence) on seeking to satisfy the condition precedent;
 - (ii) EDL must take all reasonable action necessary to obtain the relevant waivers and consents as expeditiously as possible, including by promptly providing any information reasonably required by any counterparty to a Key Contract; and
 - (iii) the Bidder must cooperate with, and provide all reasonable assistance to, EDL to obtain the relevant waivers and consents as expeditiously as possible, including by promptly providing any information reasonably required by any counterparty to a Key Contract.

3.3 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(b) and 3.1(c) cannot be waived.
- (b) The condition precedent in clause 3.1(d) is for the benefit of EDL and Bidder and any breach or non-fulfilment of that condition precedent may only be waived with the written consent of both EDL and Bidder (not to be unreasonably withheld).
- (c) The conditions precedent in clauses 3.1(a), 3.1(e), 3.1(f), 3.1(g) and 3.1(h) are for the sole benefit of Bidder and any breach or non-fulfilment of any of these conditions precedent may only be waived with the written consent of Bidder, which Bidder may give or withhold in its absolute discretion.
- (d) If a party waives the breach or non-fulfilment of a condition precedent, such waiver will not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-fulfilment of the condition precedent.
- (e) Waiver of breach or non-fulfilment of a condition precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event; or

- (ii) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.

3.4 Termination on failure of condition precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a condition precedent and:
 - (A) the breach or non-fulfilment is not waived in accordance with clause 3.3 or cannot be waived because of clause 3.3(a); or
 - (B) each party having the benefit of that condition precedent confirms in writing to the other party that it will not waive the breach or non-fulfilment in accordance with clause 3.3; or
 - (ii) a condition precedent becomes incapable of satisfaction and:
 - (A) the breach or non-fulfilment of that condition precedent that has occurred or would otherwise occur is not (or cannot be) waived in accordance with clause 3.3; or
 - (B) each party having the benefit of that condition precedent confirmed in writing to the other party that it will not waive the breach or non-fulfilment of that condition precedent that has occurred or would otherwise occur in accordance with clause 3.3; or
 - (iii) the Scheme has not become Effective by the End Date,

then either party may give the other party written notice (**Consultation Notice**) within 10 Business Days after the relevant event (**Termination Event**). The parties must then consult in good faith with a view to determining whether they can reach agreement with respect to:

- (iv) an extension of the time for satisfaction of the relevant condition precedent or an extension of the End Date (as the case may be); or
- (v) the Transaction proceeding by way of alternative means or methods.

If the parties are not able to reach such agreement within 10 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within 10 Business Days after a Termination Event, either party (in this clause 3.4, the **Terminating Party**) may terminate this deed by giving written notice (**Termination Notice**) to the other party provided that:

- (vi) if the basis upon which the Terminating Party is seeking to terminate this deed is the occurrence of an event described in clause 3.4(a)(i) or 3.4(a)(ii), the Terminating Party has the benefit of the relevant condition precedent or the condition precedent is one referred to in clause 3.3(a); and
- (vii) there has been no failure by the Terminating Party to comply with its obligations under this deed, where that failure directly and materially contributed to the circumstances forming the basis upon which the Consultation Notice was given.

Where a notice is validly given under clause 3.4(a), this deed will terminate with immediate effect and clause 12.5 shall apply.

3.5 Certain notices

Each party must promptly notify the other party in writing if:

- (a) a condition precedent has been satisfied, in which case that party must comply with any reasonable request for evidence of such satisfaction made by the other party;
- (b) there is a breach or non-fulfilment of a condition precedent; or
- (c) it becomes aware of any fact, matter or circumstance that has resulted, will result or is reasonably likely to result in:
 - (i) a condition precedent becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms; or
 - (ii) a material breach of this deed by that party.

4 Transaction steps

4.1 Scheme

- (a) EDL agrees to propose the Scheme on and subject to the terms of this deed.
- (b) EDL must not consent to any modification of, or amendment to, the Scheme by the Court, or to the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Bidder (not to be unreasonably withheld).

4.2 Scheme Consideration

- (a) Under the Scheme, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.
- (b) Bidder covenants in favour of EDL (in its own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Bidder of all the Scheme Shares, it will:
 - (i) accept that transfer; and
 - (ii) provide, or procure the provision of, the Scheme Consideration to each such Scheme Shareholder by depositing, or procuring the deposit of, the Aggregate Scheme Consideration,in each case in accordance with the terms of the Scheme.
- (c) Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

4.3 Treatment of Options and Performance Rights

- (a) EDL must use its reasonable endeavours to, before 8:00am Sydney time on the Second Court Date:
- (i) procure that binding deeds are entered into:
 - (A) between EDL and each holder of Options; and
 - (B) between EDL and each holder of Performance Rights (other than the Performance Rights which are TSR PRs and ROE PRs),

to cancel all Options and Performance Rights (other than the Performance Rights which are TSR PRs and ROE PRs) upon, or prior to, implementation of the Scheme for consideration, and to waive any right they have or may have to participate in any incentive plan which provides for the issue of options or performance rights or to receive any incentive in the form of equity, and otherwise on such terms agreed between EDL and Bidder prior to the entry into this deed (or as may otherwise be agreed between EDL and the Bidder) (together, the **Cancellation Deeds**), such cancellations to be subject only to:
 - (C) the Scheme becoming Effective; and
 - (D) either:
 - (1) the ASX granting a waiver from ASX Listing Rule 6.23, and any conditions to such waiver being satisfied or waived by ASX; or
 - (2) EDL Shareholders giving any necessary approvals under ASX Listing Rule 6.23; and
 - (ii) use all reasonable endeavours to ensure that clause 4.3(a)(i)(D) is satisfied before 8:00am on the Second Court Date.
- (b) No Cancellation Deed can be amended or terminated without Bidder's prior written consent (acting reasonably).
- (c) If required by EDL, Bidder must provide EDL with sufficient funds to pay, or at the direction of EDL pay, to any holder of Options or Performance Rights any consideration that, under the terms of their Cancellation Deed, is to be paid upon implementation of the Scheme.
- (d) EDL must use its reasonable endeavours to, before 8:00am on the Second Court Date, procure that binding deeds are entered into between:
- (i) EDL and each holder of a TSR PR Performance Right; and
 - (ii) EDL and each holder of an ROE PR Performance Right,
- which contains a mutual acknowledgement and confirmation that the TSR PR Performance Rights and ROE PR Performance Rights will lapse and be extinguished for nil consideration upon implementation of the Scheme (the **Confirmation Deeds**).

5 Implementation

5.1 EDL obligations

EDL must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on and subject to the terms of this deed. Without limiting the foregoing, EDL must (to the fullest extent applicable):

- (a) **(Independent Expert)** appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (and any update or variation to that report);
- (b) **(promotion of Transaction)** provide all reasonable co-operation in the promotion of the Transaction to EDL Shareholders, including procuring that senior EDL Group employees meet with key EDL Shareholders and communicate with employees, customers and suppliers in a manner which is supportive of the Scheme;
- (c) **(preparation of Scheme Booklet)**
 - (i) prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules; and
 - (ii) provide Bidder with drafts of the Scheme Booklet and a near-final draft of the factual sections of the Independent Expert's Report and, acting reasonably and in good faith, take into account all reasonable comments from Bidder and its Representatives on those drafts, where such comments are provided in a timely manner;
- (d) **(lodgement of Regulator's Draft)**
 - (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and
 - (ii) keep Bidder informed of any material issues raised by ASIC in relation to the Regulator's Draft and consult with Bidder in good faith as to how any such issues should be addressed (provided that, where such issues relate to Bidder Information, EDL must not take any steps to address them without Bidder's prior written consent not to be unreasonably withheld);
- (e) **(no objection statement)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) **(First Court Hearing)** apply to the Court for orders under section 411(1) of the Corporations Act directing EDL to convene the Scheme Meeting;
- (g) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the EDL Information;

- (h) **(approval and registration of Scheme Booklet)**
- (i) procure that a meeting of the EDL Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to EDL Shareholders; and
 - (ii) after receipt from Bidder of the written confirmation referred to in clause 5.2(f), request that, in accordance with section 412(6) of the Corporations Act, ASIC register the Scheme Booklet;
- (i) **(Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to EDL Shareholders, and convene and hold the Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;
- (j) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, it becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to EDL Shareholders under any applicable law and RG 60 but was not included in the Scheme Booklet,
- promptly consult with Bidder in good faith as to the need for, and form of, any supplementary disclosure to EDL Shareholders, and make any such disclosure that it considers reasonably necessary in the circumstances, having regard to applicable laws and RG 60;
- (k) **(conditions precedent certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate confirming (in respect of matters within its knowledge) whether or not the conditions precedent (other than the condition precedent in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Bidder by 5:00pm Sydney time on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Bidder pursuant to clause 5.2(h);
- (l) **(Second Court Hearing)** subject to the conditions precedent (other than the condition precedent in clause 3.1(b)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (m) **(Court Documents)** prepare the Court Documents, provide drafts of those documents to Bidder and, acting reasonably and in good faith, take into account all reasonable comments from Bidder and its Representatives on those drafts, where such comments are provided in a timely manner;
- (n) **(Bidder representation at Court Hearings)** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;
- (o) **(lodgement of Court order)** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of orders made by the Court

under section 411(4)(b) of the Corporations Act approving the Scheme before 5:00pm Sydney time on the Business Day following the day on which it receives such office copy;

- (p) **(quotation of EDL Shares and ASX listing)** apply to ASX to have:
- (i) trading in EDL Shares suspended from the close of trading on the Effective Date; and
 - (ii) EDL removed from the official list of ASX, and quotation of EDL Shares on the ASX terminated, with effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date,
- and not do anything to cause any of these things to happen before the date specified in this clause 5.1(p);
- (q) **(information)** provide Bidder with such information, including a copy of the EDL Share Register, as Bidder requests in each case in a form requested by Bidder for the purpose of soliciting votes in favour of the Scheme;
- (r) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy; and
- (s) **(implementation)** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) necessary to lawfully give effect to the Scheme.

5.2 Bidder obligations

Bidder must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on and subject to the terms of this deed. Without limiting the foregoing, Bidder must (to the fullest extent applicable):

- (a) **(prepare Bidder Information)**
- (i) as soon as reasonably practicable after the date of this deed, prepare the Bidder Information for inclusion in the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules; and
 - (ii) provide EDL with drafts of the Bidder Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from EDL and its Representatives on those drafts, where such comments are provided in a timely manner;
- (b) **(review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by EDL and provide comments in a timely manner on those drafts in good faith;
- (c) **(assistance)** provide any assistance or information reasonably requested by EDL or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to EDL Shareholders) or any Court Documents or otherwise in connection with implementation of the Transaction;
- (d) **(Independent Expert's Report)** provide any assistance or information reasonably requested by EDL or its Representatives, or by the Independent Expert directly, in

connection with the preparation of the Independent Expert's Report (and any update or variation to that report);

- (e) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information, and, once such processes have been completed, provide written confirmation to EDL of the completion of such processes;
- (f) **(confirmation of Bidder Information)** promptly after EDL requests that it do so, confirm in writing to EDL that:
 - (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which it appears; and
 - (ii) the Bidder Information, in that form and context, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (g) **(update Bidder Information)** promptly advise EDL in writing if it becomes aware:
 - (i) of information which should have been included in any Bidder Information previously provided to EDL (including if known at the time); or
 - (ii) that any Bidder Information previously provided to EDL is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide EDL with any information required to correct the misleading or deceptive statements;
- (h) **(conditions precedent certificate)** before 8:00am Sydney time on the Second Court Date, provide to EDL for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within its knowledge) whether or not the conditions precedent (other than the condition precedent in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to EDL by 5:00pm Sydney time on the Business Day prior to the Second Court Date;
- (i) **(representation at Court)** ensure that it is represented by counsel at the First and Second Court Hearing and give such undertakings (if any) to the Court (through its counsel) as are reasonably necessary and within its power to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (j) **(Scheme Consideration)** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and in the amount contemplated by clause 4 of this deed, the terms of the Scheme and the Deed Poll (and EDL holds this promise on trust for EDL Shareholders);
- (k) **(share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.2(b) and execute instruments of transfer in respect of the Scheme Shares;
- (l) **(Deed Poll)** before 5:00pm Sydney time on the Business Day prior to the First Court Date, enter into the Deed Poll and deliver it to EDL and, if the Scheme becomes Effective, fully comply with its obligations under the Deed Poll; and
- (m) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy.

5.3 Bidder's Guarantor obligations

Before 5:00pm Sydney time on the Business Day prior to the First Court Date, Bidder's Guarantor will enter into the Deed Poll and deliver it to EDL and, if the Scheme becomes Effective, comply with its obligations under the Deed Poll.

5.4 Scheme Booklet

- (a) If the parties are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
 - (i) if the relevant part of the Scheme Booklet is Bidder Information, EDL will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith); and
 - (ii) if the relevant part of the Scheme Booklet is EDL Information, EDL (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) The parties agree that the Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) EDL is responsible for the EDL Information contained in the Scheme Booklet;
 - (ii) Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert has provided, and is responsible for, the Independent Expert's Report,and none of EDL, Bidder or their respective directors and officers assume any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (c) Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

5.5 Conduct of business

- (a) Subject to clauses 5.5(c) and 5.5(d), from the date of this deed up to and including the Implementation Date, EDL must:
 - (i) ensure that the business of the EDL Group is conducted:
 - (A) in the usual and ordinary course; and
 - (B) in a manner generally consistent with the manner in which such business has been conducted, and at the same locations in which such business has been conducted, in the 12 months prior to the date of this deed; and
 - (C) in accordance with all applicable laws in all material respects;
 - (ii) keep the Bidder informed and reasonably consider the Bidder's views about:
 - (A) material developments in the business of the EDL Group;

- (B) any significant discussions and correspondence between the EDL Group and Government Agencies;
 - (iii) promptly notify the Bidder if anything material occurs in respect of the conduct of the EDL Group's business and operations that is not in the usual and ordinary course;
 - (iv) make reasonable efforts to:
 - (A) preserve intact current business organisations;
 - (B) retain the services of the key management personnel of the EDL Group; and
 - (C) maintain and preserve the EDL Group's relationships with customers, suppliers, investors, Government Agencies, and others with whom it has business dealings;
 - (D) maintain its business, and assets, including maintaining at least its current level of insurance;
 - (v) ensure that no EDL Prescribed Occurrence occurs.
- (b) Without limiting clause 5.5(a), but except as specified in clause 5.5(c) and subject always to clause 5.5(d), from the date of this deed up to and including the Implementation Date, EDL must not, and must ensure that each of its Related Bodies Corporate do not:
- (i) **(acquisitions)** acquire, agree to acquire or offer to acquire one or more companies, entities, securities, businesses or assets including capital expenditure of a growth nature (or any interest in any of the foregoing), or any interest in any joint venture or partnership (other than such acquisitions, agreements or offers between EDL and one or more wholly-owned Subsidiaries of EDL, or between wholly-owned Subsidiaries of EDL), in any such case having a value or consideration of at least \$5 million individually or \$10 million when aggregated with all other such acquisitions, agreements or offers;
 - (ii) **(disposals)** dispose of, agree to dispose of or offer to dispose of (whether by way of sale, transfer, joint venture or otherwise) one or more companies, entities, securities, businesses or assets (or any interest in any of the foregoing), or any interest in any joint venture or partnership (other than such disposals, agreements or offers between EDL and one or more wholly-owned Subsidiaries of EDL, or between wholly-owned Subsidiaries of EDL), in any such case having a value or consideration of at least \$5 million, either individually or when aggregated with all other such disposals, agreements or offers;
 - (iii) **(capital expenditure, financial indebtedness and other liabilities)** incur or commit to, or bring forward the time for incurring or committing to, or grant to another person a right the exercise of which could be reasonably expected to involve or result in any member of the EDL Group incurring or committing to:
 - (A) any maintenance or 'stay in business' capital expenditure;
 - (B) any operating expenditure;

- (C) financial indebtedness (including borrowings, loans and advances);
- (D) liability (whether actual or contingent), excluding any liability incurred involuntarily; or
- (E) foregoing any revenue or income, excluding any revenue or income foregone involuntarily,

for one or more related items or amounts of in aggregate more than \$5 million;

(iv) **(new financing)** without limiting clause 5.5(b)(iii):

- (A) enter into any new financing arrangement or agreement or otherwise provide financial accommodation, or amend the pricing terms, leverage ratio or principal amount of any existing financing arrangement, agreement or instrument; or
- (B) announce, raise or attempt to raise or, to the extent it could reasonably be expected to jeopardise the prospects of a potential lender from entering into the Facilities referred to in clause 5.8(b), enter into discussions to raise, any other finance in the international or any relevant domestic syndicated loan market (including, but not limited to, any bilateral or syndicated facility, bond or note issuance or private placement);

(v) **(contracts)** vary or terminate any contract or commitment which:

- (A) is for a duration of over 1 year involving total expenditure, revenue or income greater than \$5 million individually or \$10 million when aggregated with all such contracts and commitments; or
- (B) would give rise to the EDL Group incurring or committing to any additional expenditure, additional liability or foregoing of revenue or income of, greater than:
 - (1) \$1,000,000 for any one-off, non-recurring expenditure, liability or foregoing of revenue or income; and
 - (2) \$500,000 on an annualised basis for any recurring expenditure, liability or foregoing of revenue or income,

but excluding any contract or commitment in respect of an action permitted under clauses 5.5(b)(i), 5.5(b)(ii), 5.5(b)(iii) or 5.5(b)(iv);

(vi) **(derivatives)** enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges (including basis swaps on interest rates, such that the net period for the floating interest on the swaps is the same period as the net floating interest period on the relevant loan) made in the usual and ordinary course generally consistent with the practice in the 18 month period prior to the date of this deed;

(vii) **(new business lines)** enter into any lines of business or other activities in which the EDL Group is not engaged as at the date of this deed;

- (viii) **(compromises)** accept as a compromise of a matter less than the full compensation due to it or any other member(s) of the EDL Group where the compromise (when aggregated with all other such compromises) is more than \$1,000,000 or waives any material Third Party default where the financial impact upon the EDL Group (when aggregated with all other such waivers) would be in excess of \$1,000,000;
- (ix) **(settlement of litigation)** settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount payable by or to any entity within the EDL Group (when aggregated with all other such offers and settlements) exceeds \$500,000;
- (x) **(employees and directors)**
 - (A) enter into a new employment contract with a potential employee of an EDL Group entity (other than to replace an employee who has ceased to be an employee of an EDL Group entity);
 - (B) enter into a new employment contract or amend an employment contract with an existing employee of an EDL Group entity; or
 - (C) increase the remuneration or benefits of, or pay any bonus to, an existing director or employee of an EDL Group entity; or
 - (D) pay or agree to pay a director or employee of an EDL Group entity a termination or retention payment or benefit (including a 'golden parachute'),

other than:

- (E) in circumstances where the entry into a new employment contract, the amendment of an existing employment contract or the increase in remuneration or benefits relates to:
 - (1) filling a position marked as 'vacant' on the organisational chart in the EDL Disclosure Materials, which has been initialled by the parties' legal advisers for the purposes of identification;
 - (2) filling an existing position vacated due to a resignation;
 - (3) filling any temporary vacancy such as an employee on parental leave or leave of absence; or
 - (4) filling a new position, provided that the total employment costs for all individuals fillings new positions do not exceed \$1 million in aggregate;

(in respect of any employee who is not an 'executive') as part of any annual salary review conducted in the ordinary course so long as all increases from those salary reviews do not in aggregate exceed the Consumer Price Index. A reference to an 'executive' in this clause 5.5(b)(x) is a reference to the Managing Director and Chief Executive Officer of EDL and each employee who is a direct report to the Managing Director and Chief Executive Officer.

- (xi) **(incentives)** issue any securities, options or performance rights to any director or employee of an EDL Group entity;

- (xii) (actions impacting Scheme) do or cause to be done, or fail to do or cause not to be done, anything that would or may result in the Scheme not being implemented or being implemented otherwise than in accordance with the terms of this deed provided that this clause 5.5(b)(xiii) does not require a standard of conduct higher than that set out in clause 3.2 in respect of the satisfaction of the conditions precedent in clause 3.1; or
 - (xiii) authorise, commit or agree to do any of the matters set out above.
- (c) Subject always to clause 5.5(d), nothing in clause 5.5(a) or 5.5(b) restricts the ability of EDL to take any action which:
- (i) is expressly required or permitted by this deed or the Scheme;
 - (ii) has been consented to in writing by Bidder (not to be unreasonably withheld or delayed);
 - (iii) is in respect of a proposal that has been or is required pursuant to any existing contract, agreement or arrangement to which EDL or a member of the EDL Group is a party that has been:
 - (A) fairly disclosed to Bidder in the EDL Disclosure Materials; or
 - (B) in any announcement to or filing with ASX that is publicly available prior to the date of this deed, or in a document lodged by EDL with ASIC that is publicly available prior to the date of this deed,and which is not an action of a type described in clause 5.5(b)(iv);
 - (iv) satisfies the following requirements:
 - (A) the action is of a type described in clause 5.5(b)(i), 5.5(b)(ii), 5.5(b)(iii) or 5.5(b)(v);
 - (B) the action is taken in respect of a proposal that has been disclosed to Bidder in the Business Plan, other than that the relevant dollar amount, value or consideration for or relating to the action is not:
 - (1) in the case of an action taken in respect of a type described in clause 5.5(b)(i), 5.5(b)(iii) or 5.5(b)(v), more than \$2,500,000 higher than the dollar amount, value or consideration disclosed in the Business Plan; and
 - (2) in the case of an action taken in respect of a type described in clause 5.5(b)(ii), more than \$2,500,000 less than the dollar amount, value of consideration disclosed in the Business Plan;
 - (v) ensures that directors' and officers' run-off insurance cover for the directors and officers of EDL and each member of the EDL Group is maintained on terms and at such costs which are reasonable and standard for a company similar to EDL or a member of the EDL Group (as the case may be) for a period of 7 years from the resignation or retirement date of each such director and officer; or
 - (vi) any action as required by law or by any applicable governmental or other regulatory authority.

- (d) Notwithstanding anything in clauses 5.5(a), 5.5(b) and 5.5(c), EDL must not, and must ensure that each of its Related Bodies Corporate do not:
- (i) cause the EDL Group to incur (other than involuntarily) expenditure, indebtedness and liabilities or forego any revenue or income which in aggregate on a net basis results or would result in an adverse impact of more than \$10,000,000 (or such other amount agreed between the parties) on the aggregate of:
 - (A) consolidated earnings before interest, tax, depreciation and amortisation of the EDL Group in any financial year; and
 - (B) maintenance or 'stay in business' capital expenditure in any financial year,
 when compared to the Business Plan; or
 - (ii) take any action of a type described in clause 5.5(b)(i) (acquisitions) or 5.5(b)(ii) (disposals) which, when aggregated with all actions of all types described in those clauses and all actions referred to in clause 5.5(d)(i), results or would result in the EDL Group incurring expenditure, indebtedness and liabilities or foregoing any revenue or income which on a net basis results in an adverse difference of more than \$20,000,000 (or such other amount agreed between the parties) to the aggregate amount disclosed in the Business Plan for actions of the types described in clause 5.5(b)(i) (acquisitions), 5.5(b)(ii) (disposals) and clause 5.5(d)(i) on a net basis.
- (e) In the event of any inconsistency between clauses 5.5(a) and 5.5(b), clause 5.5(b) prevails.
- (f) In the event of any inconsistency between (on the one hand) clause 5.5(a), 5.5(b) or 5.5(c) and (on the other) clause 5.5(d), clause 5.5(d) prevails.
- (g) In this deed, unless the context requires otherwise, references to the business or assets of the EDL Group are to that business or those assets taken as a whole.

5.6 Access

Between the date of this deed and the Implementation Date (both dates inclusive), EDL must use reasonable endeavours to procure that Bidder is provided with reasonable access to information, premises and senior executives of any member of the EDL Group, where Bidder requests such access for the purposes of:

- (a) implementation of the Scheme;
- (b) obtaining an understanding, or furthering its understanding, of the EDL Group or its business, financial position, prospects, affairs or assets in order to allow Bidder to develop, finalise and implement its plans for the EDL Group following implementation of the Transaction; or
- (c) clause 5.8,

provided that compliance with any such request would not, in the reasonable opinion of EDL (acting in good faith), result in undue disruption to the EDL Group's business, and provided that nothing in this clause 5.6 shall require EDL to provide Bidder with any information:

- (d) in breach of an obligation of confidentiality to any person; or
- (e) concerning the consideration of the Transaction or any actual or potential Competing Proposal by the EDL Board (or a sub-committee of the board) or EDL management.

5.7 Resignation of directors

Subject to the provision of the Scheme Consideration in accordance with clause 4.2, EDL must procure that, with effect on and from the Implementation Date:

- (a) those persons nominated by Bidder are appointed to the EDL Board and the boards of other members of the EDL Group, provided that:
 - (i) such persons sign consents to act as a director of the relevant member(s) of the EDL Group; and
 - (ii) such consents to act are provided to EDL before the Implementation Date; and
- (b) all EDL Directors and directors of other members of the EDL Group, resign as a director of the relevant member(s) of the EDL Group by notice in writing which acknowledges that each such individual has no outstanding claims against any EDL Group entity as at the date of the resignation.

5.8 Assistance with proposed refinancing

- (a) EDL acknowledges that, if the Transaction is implemented, Bidder proposes to refinance the EDL Group's debt facilities and to the extent necessary, hedging arrangements and, to this end:
 - (i) Bidder has on or prior to the date of this deed entered into a commitment letter with National Australia Bank Limited and Westpac Banking Corporation (the **Mandated Lead Arrangers and Underwriters**) (the **Commitment Letter**);
 - (ii) Bidder has on or prior to the date of this deed agreed with the Mandated Lead Arrangers and Underwriters on a form of syndicated facility agreement (the **Facility Agreement**);
 - (iii) Bidder has on or prior to the date of this deed entered into with one or more of the Mandated Lead Arrangers and Underwriters a fee letter (the **Fee Letter**); and
 - (iv) Bidder has on or prior to the date of this deed provided EDL with a copy of the Commitment Letter, Facility Agreement and Fee Letter (together the **Commitment Documents**).
- (b) Subject to the proviso that applies to clause 5.6, between the date of this deed and the Implementation Date (both dates inclusive), EDL must give, and must procure that each other member of the EDL Group gives, any assistance which the Bidder or the Mandated Lead Arrangers and Underwriters reasonably request in relation to the refinancing of the EDL Group's debt facilities and hedging arrangements and the syndication of the Facilities (as defined in the Commitment Letter), including:
 - (i) the preparation by the Mandated Lead Arrangers and Underwriters, of a presentation containing all relevant information (including projections),

including information about the EDL Group and how the proceeds of the Facilities will be applied (the **Presentation**);

- (ii) providing any information reasonably requested by the Mandated Lead Arrangers and Underwriters or potential lenders in connection with syndication that is available to the EDL Group;
 - (iii) making available the senior management of the EDL Group to support the senior management of the Bidder for the purposes of giving presentations to, and participating in meetings with, potential lenders at such times and places as the Mandated Lead Arrangers and Underwriters may reasonably request;
 - (iv) using reasonable efforts to ensure that syndication of the Facilities benefits from the EDL Group's existing lending relationships; and
 - (v) procuring that the members of the EDL Group who are borrowers under the Facility Agreement, as soon as possible and in any event no later than 5 Business Days after the execution of this deed, sign and return to the Mandated Lead Arrangers, Underwriters and Bookrunners a letter in the form of Attachment D inviting each Mandated Lead Arranger, Underwriter and Bookrunner to be 'Syndicated Facility Lenders' under the Facility Agreement and authorising each Mandated Lead Arranger, Underwriter and Bookrunner to make invitations on their behalf to financial institutions to become 'Syndicated Facility Lenders' under the Facility Agreement.
- (c) All assistance given by the EDL Group pursuant to clause 5.8(b) shall be at the cost of Bidder and subject to the proviso that the EDL Group is not required to do anything which is against its reasonable commercial interests.
- (d) EDL must not, and must procure that each other member of EDL Group does not, without the prior written consent of Bidder, disclose the Commitment Documents or their contents to any person except:
- (i) as required by law or by any applicable governmental or other regulatory authority or by any applicable stock exchange;
 - (ii) to its employees or professional advisers for the purposes of the Transaction who have been made aware of and, in the case of professional advisers, who agree to be bound by the obligations under this paragraph or are in any event subject to confidentiality obligations as a matter of law or professional practice; or
 - (iii) to the extent required by this deed.

6 Announcements

- (a) Immediately after execution of this deed, EDL must issue the EDL Announcement.
- (b) Subject to clauses 6(c) and 6(d), before making any public announcement in respect of the Transaction (whether through the ASX or otherwise), a party must provide the other party with a draft copy of such public announcement as soon as reasonably practicable before it is proposed that such public announcement is made, and, where the proposed public announcement relates or refers to the Transaction (or may have a material effect on the Transaction or any aspect of it), must give the other party a reasonable opportunity to comment on the form and

content of the draft announcement and must take into account all reasonable comments from that party and its Representatives on the draft.

- (c) A party will be required to comply with clause 6(b) only if and to the extent that compliance would not, in the reasonable opinion of that party, be likely to result in that party breaching its continuous disclosure or similar obligations.
- (d) Neither Bidder nor Bidder Guarantor is required to comply with clause 6(b) in respect of public announcements relating solely or principally to the equity raising announced by the Bidder Group on or about the date of this deed (including ASX Appendix 3B's, 'cleansing' statements, the retail entitlement offer booklet and announcements regarding the outcome of the equity raising or any part of it).

7 Board support of Transaction

7.1 Confirmation of Recommendations and Voting Intentions

EDL represents and warrants to Bidder that each EDL Director has confirmed (by way of a unanimous resolution of the EDL Board) that:

- (a) his recommendation in respect of the Scheme is that EDL Shareholders vote in favour of the Scheme at the Scheme Meeting (**Recommendation**); and
- (b) he intends to vote, or cause to be voted all EDL Shares in which he has a Relevant Interest in favour of the Scheme at the Scheme Meeting (**Voting Intention**),

in each case in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of EDL Shareholders.

7.2 Maintenance of Recommendation and Voting Intentions

- (a) EDL must use reasonable endeavours to procure that no EDL Director withdraws, changes or modifies his Recommendation, or his Voting Intention, unless:
 - (i) a Superior Proposal is made and the EDL Board does not make the determination set out in clause 8.7(a)(iii) (**Matching Right Determination**) after EDL has given a Matching Right Notice to Bidder; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of EDL Shareholders.
- (b) Subject to an EDL Director withdrawing, changing or modifying his Recommendation or Voting Intention following the occurrence of one of the events referred to in clause 7.2(a), EDL must ensure that:
 - (i) the Scheme Booklet includes statements to the effect that each EDL Director gives the Recommendation and has the Voting Intention; and
 - (ii) no public announcement by EDL includes a statement that is inconsistent with any EDL Director giving the Recommendation and having the Voting Intention.

For the purposes of this clause, customary qualifications and explanations contained in the Scheme Booklet in relation to a Recommendation to the effect that

the Recommendation is made in the absence of a Superior Proposal will not be regarded as a failure to make or the withdrawal of a Recommendation.

7.3 Bidder acknowledgement

Bidder acknowledges that without derogating from a party's rights or obligations under clause 9 or 12, if any of the events referred to in clause 7.2(a) occur, any EDL Director may withdraw, change or modify his Recommendation or Voting Intention.

8 Exclusivity

8.1 Termination of existing discussions and return of information

- (a) On the date of this deed:
 - (i) EDL must, and must ensure that its Representatives, cease any discussions with any Third Party in relation to a potential Competing Proposal;
 - (ii) EDL must, and must ensure that its Representatives, cease the provision of any due diligence access and the making available of any non-public information in relation to the EDL Group to any Third Party, where the due diligence access and provision of non-public information was for the purposes of a potential Competing Proposal (a **Relevant Third Party**); and
 - (iii) EDL must require any Third Party to whom non-public information has been provided or made available to immediately return or destroy that non-public information in accordance with any agreed terms of confidentiality, where the non-public information was provided or made available for the purposes of a potential Competing Proposal.
- (b) EDL must fully enforce, and not waive any breach of, the terms of any confidentiality agreement with and any standstill obligations imposed on a Third Party (including a Relevant Third Party) as contemplated in clause 6(c) of the Confidentiality Deed.
- (c) In circumstances where, during the Exclusivity Period, EDL has provided due diligence access and made available non-public information to a Third Party in accordance with clause 8.6 and discussions between EDL (or its Representatives) with that Third Party have ceased or the EDL Board makes the Matching Right Determination, EDL must immediately require the Third Party to immediately return or destroy that non-public information.

8.2 No-shop

During the Exclusivity Period, EDL must not, and must ensure that its Representatives do not:

- (a) directly or indirectly solicit, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicate to any person any intention to do any of the things referred to in clause 8.2(a).

Nothing in this clause 8.2 prevents EDL from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme.

8.3 No-talk

Subject always to clause 8.6 (but without limiting clause 8.1), during the Exclusivity Period, EDL must not, and must ensure that its Representatives do not:

- (a) directly or indirectly participate in any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) disclose any non-public information about the business or affairs of EDL to a Third Party with a view to obtaining or which may reasonably be expected to lead to receipt of a Competing Proposal, other than in the ordinary course of business or as required by law; or
- (c) communicate to any person any intention to do any of the things referred to in clauses 8.3(a) or 8.3(b).

8.4 No due diligence

Without limiting clause 8.3 but subject to clause 8.6, during the Exclusivity Period, EDL must not:

- (a) solicit, initiate, facilitate or encourage any party (other than Bidder or its Representatives) to undertake due diligence on EDL or any member of the EDL Group; or
- (b) make available to any other person (other than Bidder or its Representatives) or permit such person to receive any non-public information relating to EDL or any member of the EDL Group.

This clause 8.4 does not prevent EDL from providing information to ASX or EDL's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this deed.

8.5 Notification obligation

Subject to clause 8.6, during the Exclusivity Period, EDL must notify Bidder in writing as soon as practicable and any event within 2 Business Days if EDL is approached, or if any of EDL's Representatives is approached, by any person in relation to a Competing Proposal, and such notice must set out the material details of the approach and the key terms of any Competing Proposal (such as, if specified, the consideration, timing, conditions and structure).

8.6 Fiduciary exception

In respect of a bona fide Competing Proposal that is or may be received by, or become known to, EDL without any breach by EDL of its obligations under this clause 8, EDL may undertake any action (**prohibited action**) that would otherwise be prohibited by clause 8.3 or 8.4 or refrain from giving notice under clause 8.5, if (and only to the extent that) the EDL Board determines, acting in good faith and after obtaining legal advice, that not undertaking the prohibited action, or undertaking the required action, would be likely to result in a breach by an EDL Director of his fiduciary or statutory duties.

8.7 Matching right

- (a) Without limiting any other part of this clause 8.7, EDL must not enter into any agreement or arrangement in relation to or in connection with the implementation of a Competing Proposal (in this clause 8.7, a **Rival Proposal**) unless:
 - (i) the Rival Proposal is a Superior Proposal;
 - (ii) EDL has given Bidder written notice (**Matching Right Notice**) of the consideration, conditions, structure and other key terms of the Rival Proposal; and
 - (iii) Bidder does not, within 5 Business Days after receiving the Matching Right Notice, make a written proposal (**Bidder Proposal**) to EDL in respect of an improvement to the Scheme Consideration or an alternative transaction or arrangement that the EDL Board determines, acting in good faith, would result in an outcome more favourable or no less favourable for EDL Shareholders as would result from the Rival Proposal (assuming that both the Bidder Proposal and Rival Proposal would be implemented in accordance with their terms).
- (b) EDL must ensure that, as soon as practicable after:
 - (i) receipt of a Bidder Proposal, the EDL Board considers whether the Matching Right Determination can be made; and
 - (ii) the EDL Board has considered this matter, Bidder is notified of the EDL Board's decision in writing.
- (c) If the EDL Board makes the Matching Right Determination, Bidder and EDL must use reasonable endeavours to promptly agree such matters, and take such other steps, as are reasonably necessary to give effect to the Bidder Proposal (including entering into an amending deed in respect of amendments to this deed).

9 Break Fee

9.1 Background

This clause 9 has been agreed to in circumstances where:

- (a) each party believes it and its shareholders will derive significant benefits from the implementation of the Scheme;
- (b) Bidder has incurred and will further incur, significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (c) Bidder has requested that provision be made for the payment of the Break Fee by EDL, and would not have entered into this deed had such provision not been made;
- (d) EDL believes that it is appropriate to agree to pay a Break Fee to secure Bidder's entry into this deed; and
- (e) each party has received separate legal advice in relation to this deed and the operation of this clause 9.

The parties acknowledge and agree that the costs referred to in clause 9.1(b) are of such a nature that they cannot be precisely quantified, but that the Break Fee is a genuine and reasonable pre-estimate of those costs.

9.2 Payment of Break Fee by EDL

Subject to clauses 9.3, 9.5, 9.6 and 9.7, EDL must pay Bidder the Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder, if the Scheme does not proceed because:

- (a) at any time before the end of the Exclusivity Period, a Competing Proposal is made or announced by a Third Party, and, within 12 months thereafter:
 - (i) a Competing Proposal by the Third Party or any associate of the Third Party of the kind referred to in either of paragraphs (b) or (c) of the definition of Competing Proposal is completed, implemented or consummated; or
 - (ii) the Third Party or an associate of the Third Party acquires Control of, or merges with, EDL;
- (b) Bidder becomes entitled to terminate this deed under clause 12.1(b); or
- (c) any EDL Director publicly withdraws or adversely changes his or her Recommendation or Voting Intention, other than:
 - (i) where the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of EDL Shareholders, other than where the reason for that conclusion is a Competing Proposal; or
 - (ii) in circumstances where EDL is entitled to terminate this deed under clause 12.1(a) or 12.1(b).

9.3 Payment conditions

- (a) Notwithstanding the occurrence of any event referred to in clause 9.2, the Break Fee will not be payable under the relevant clause if the Scheme becomes Effective.
- (b) EDL can only ever be liable to pay a Break Fee once.

9.4 Nature of payment

The Break Fee is an amount to compensate Bidder for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed or pursued.

9.5 Compliance with law

This clause 9 imposes obligations on EDL only to the extent that the performance of all or part of those obligations:

- (a) does not constitute unacceptable circumstances as declared by the Takeovers Panel;
- (b) does not breach the fiduciary or statutory duties of any EDL Director; and
- (c) is not otherwise unlawful or held to be unenforceable by a court.

If the Break Fee is paid to Bidder and clause 9.5(a), 9.5(b) or 9.5(c) applies, Bidder must refund the relevant part of the Break Fee (if any) to EDL within 10 Business Days after receipt of a written demand from EDL.

9.6 Other claims

The maximum aggregate amount which EDL is required to pay in relation to a breach of this deed (including in respect of a breach or representation and warranty, but excluding wilful or intentional breaches of this deed by EDL) is an amount equal to the Break Fee and in no event, except with respect to wilful or intentional breaches of this deed by EDL, will the aggregate liability of EDL under or in connection with a breach of this deed exceed an amount equal to the Break Fee.

9.7 Exclusive remedy

Notwithstanding any other provision under this deed, where the Break Fee becomes payable to Bidder under this deed (or would be payable if a demand were made), Bidder cannot make any claim against EDL in relation to any event or occurrence referred to in clause 9.2(a) or for any material breach referred to in clause 12.1 (but excluding wilful or intentional breach).

10 Representations and Warranties

10.1 Bidder and Bidder's Guarantor Representations and Warranties

Bidder represents and warrants, and Bidder's Guarantor jointly and severally represents and warrants where applicable in respect of Bidder's Guarantor as well as Bidder, to EDL that:

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll;
- (c) **(corporate action)** it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll;
- (d) **(binding)** this deed constitutes legal, valid and binding obligations on it, enforceable in accordance with its terms;

- (e) **(performance)** the execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate or breach any provision of:
 - (i) an agreement, law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution;
- (f) **(Bidder Information)** the Bidder Information included in the Scheme Booklet with its consent pursuant to clause 5.2(f)(i), and any other information pursuant to clause 5.2(g), will be provided and will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules and all information provided by or on behalf of the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information;
- (g) **(financing)** Bidder has:
 - (i) as at the date of this deed, legally binding financing arrangements; and
 - (ii) as at 8:00am Sydney time on the Second Court Date, sufficient funds available,

to fund the Scheme Consideration in accordance with Bidder's obligations under this deed and the Deed Poll; and
- (h) **(insolvency)** neither the Bidder or Bidder Guarantor is the subject of an Insolvency Event.

10.2 Bidder's indemnity

Bidder agrees, and Bidder's Guarantor jointly and severally agrees, with EDL (in its own right and separately as trustee or nominee for each of the other EDL Indemnified Parties) to indemnify EDL and each of the EDL Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that EDL or any of the other EDL Indemnified Parties suffers, incurs or is liable for arising out of:

- (a) any breach of any of the Bidder Representations and Warranties; and
- (b) any assistance given by the EDL Group pursuant to clause 5.8(b).

10.3 EDL Representations and Warranties

EDL represents and warrants to Bidder that:

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme;
- (c) **(corporate action)** it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme;

- (d) **(binding)** this deed is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(solvency)** it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up, dissolution or termination or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (f) **(performance)** the execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate or breach any provision of:
 - (i) an agreement, law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution;
- (g) **(capital structure)** its capital structure is as set out in Schedule 2 and, subject to clause 4.3, no member of the EDL Group has issued or agreed to issue any other securities, options, performance rights or instruments which are still outstanding (or become outstanding) and may convert into EDL Shares;
- (h) **(EDL Information)** the EDL Information included in the Scheme Booklet despatched to EDL Shareholders, and any supplementary disclosure made to EDL Shareholders pursuant to clause 5.1(j) (excluding any information provided by Bidder), will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules and all information provided by or on behalf of the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information;
- (i) **(compliance)** so far as EDL is aware, each member of the EDL Group has complied in all material respects with all laws and regulations applicable to them and orders of any Government Agencies having jurisdiction over them and have all material licences, authorisations and permits necessary for them to conduct the business of the EDL Group as presently being conducted;
- (j) **(EDL Disclosure Materials)** the EDL Disclosure Materials were compiled and made available to Bidder and its Representatives in good faith and, so far as EDL is aware, the EDL Disclosure Materials are materially true and accurate and not materially misleading or deceptive, including by omission;
- (k) **(publicly available information)** EDL is not aware of any information in any document or announcement which EDL or any of its Related Bodies Corporate has lodged or filed with, or otherwise given to, any Government Agency (or which has been so lodged, filed or given on its behalf or on behalf of any of its Related Bodies Corporate), and which is publicly available or otherwise in the public domain, where such information is misleading or deceptive in any material respect (whether by omission or otherwise);
- (l) **(continuous disclosure)** it has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, following release of the EDL Announcement, there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A; and
- (m) **(insolvency)** no member of the EDL Group is the subject of an Insolvency Event.

10.4 EDL's indemnity

Subject to 9.6, EDL agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the EDL Representations and Warranties.

10.5 Qualifications to Representations and Warranties

- (a) The EDL Representations and Warranties are subject to matters which have been fairly disclosed in:
 - (i) the EDL Disclosure Materials;
 - (ii) any announcement to or filing with ASX that is publicly available prior to the date of this deed; or
 - (iii) a document lodged by EDL with ASIC that is publicly available prior to the date of this deed.
- (b) In respect of the matters in clause 10.5(a), Bidder agrees that there will be no breach of an EDL Representation and Warranty, and it will not have any claim against EDL or any EDL Indemnified Party, if and to the extent that such a matter would make an EDL Representation and Warranty untrue or incorrect or misleading or deceptive in any respect.

10.6 Survival of Representations and Warranties

Each Representation and Warranty:

- (a) is severable;
- (b) survives termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

10.7 Timing of Representations and Warranties

- (a) Each Representation and Warranty is given at the date of this deed and again at 8:00am Sydney time on the Second Court Date, except that the EDL Representation and Warranty in clause 10.3(l) is only given at the date of this deed.
- (b) For the purposes of clause 10.7(a), a Representation and Warranty shall be read with any necessary adjustments to the tense used in the Representation and Warranty.

11 Releases

11.1 Release of EDL Indemnified Parties

- (a) Subject to clause 11.1(b), Bidder releases any and all rights that it may have, and agrees with EDL that it will not make any claim, against any EDL Indemnified Party as at the date of this deed and from time to time in connection with:
- (i) any breach of any covenant, representation or warranty given by EDL or any EDL Indemnified Party under this deed;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise);
 - (iii) any failure to provide information;
 - (iv) any assistance given by the EDL Group pursuant to clause 5.8(b); or
 - (v) any other conduct in connection with this deed or the Scheme or the transactions contemplated by it,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the EDL Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. To avoid doubt, nothing in this clause 11.1(a) limits the rights of Bidder to terminate this deed under clause 12.

- (b) The release in clause 11.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) EDL receives and holds the benefit of clause 11.1(a) as trustee for each EDL Indemnified Party.

11.2 Release of Bidder Indemnified Parties

- (a) Subject to clause 11.2(b), EDL releases any and all rights that it may have, and agrees with Bidder that it will not make any claim, against any Bidder Indemnified Party as at the date of this deed and from time to time in connection with:
- (i) any breach of any covenant, representation or warranty given by Bidder or any Bidder Indemnified Party under this deed;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise);
 - (iii) any failure to provide information; or
 - (iv) any other conduct in connection with this deed or in the Scheme or the transactions contemplated by it,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. To avoid doubt, nothing in this clause 11.2 limits the rights of EDL to terminate this deed under clause 12.

- (b) The release in clause 11.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 11.2(a) as trustee for each Bidder Indemnified Party.

11.3 Deeds of indemnity and insurance

- (a) Subject to implementation of the Scheme and to clause 11.3(b), Bidder undertakes that it will:
 - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of EDL and the other members of the EDL Group continue to contain such rules as are contained in those constitutions at the date of this deed in respect of the indemnification of directors and officers; and
 - (ii) procure that EDL and each member of the EDL Group complies with and preserves the rights under any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time; and
 - (iii) without limiting clause 11.3(a)(ii) and to the extent it is not already in existence, ensure that directors' and officers' run-off insurance cover for the directors and officers referred to in that clause is maintained for a period of 7 years from the resignation or retirement date of each such director and officer.
- (b) The undertaking in clause 11.3(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) To the extent that this clause 11.3 relates to an EDL Indemnified Party, EDL receives and holds the benefit of the clause as trustee for that EDL Indemnified Party.
- (d) The undertakings in clause 11.3(a) are given until the end of the relevant period specified in clause 11.3(a) or the relevant EDL Group Member ceasing to be part of the EDL Group.

12 Termination

12.1 Termination by either party

- (a) Either party may terminate this deed in accordance with clause 3.4.
- (b) At any time before 8:00am Sydney time on the Second Court Date, either party may terminate this deed if the other party (**Defaulting Party**) commits a material breach of or is in material breach of this deed, provided that:
 - (i) it has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (ii) the relevant circumstances have continued to exist for 10 Business Days from the time such notice is given (or any shorter period ending at 5:00pm Sydney time on the Business Day before the Second Court Date).

- (c) Termination under clause 12.1(b) will be deemed to take effect at the expiry of the period referred to in clause 12.1(b)(ii).

12.2 Termination by Bidder

Bidder may terminate this deed, with immediate effect, at any time before 8:00am Sydney time on the Second Court Date by notice in writing to EDL if:

- (a) EDL materially breaches clause 8;
 - (b) EDL commits a breach, or is in breach, of clause 5.5(d);
 - (c) an EDL Prescribed Occurrence occurs which will have a materially adverse effect on the EDL Group;
 - (d) there is an EDL Material Adverse Change;
 - (e) any member of the EDL Group is the subject of an Insolvency Event;
 - (f) any EDL Director publicly:
 - (i) withdraw or adversely changes his or her Recommendation or Voting Intention; or
 - (ii) recommends a Competing Proposal,
- in each case in any circumstances (including following the occurrence of one of the events referred to in clause 7.2(a)); or
- (g) in any circumstances (including where permitted by clause 8.7(a)), EDL enters into any agreement or arrangement in relation to the implementation of any Competing Proposal.

12.3 Termination by EDL

EDL may terminate this deed, with immediate effect, by notice in writing to Bidder if:

at any time before 8:00am Sydney time on the Second Court Date, a majority of the EDL Directors publicly:

- (a) withdraw or adversely change their Recommendation or Voting Intention; or
- (b) recommend a Competing Proposal,

in each case provided that this happens following the occurrence of one of the events referred to in clause 7.2(a) and provided also that EDL has not materially breached clause 8.

12.4 Termination by written agreement

This deed may be terminated by the written agreement of the parties, on such terms as the parties agree.

12.5 Effect of termination

If this deed is terminated in accordance with this clause 12, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 12.5 and clauses 9, 10, 11, 13, 14, 15, 16 and 17, and Schedule 1, will survive termination; and
- (b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

13 Confidentiality

Each party acknowledges and agrees that nothing in this deed derogates from the rights and obligations of EDL or Bidder under the Confidentiality Deed, provided that this deed prevails to the extent of any inconsistency with the Confidentiality Deed.

14 Duty, costs and expenses

14.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed or any transaction effected under it; and
- (b) indemnifies EDL against any liability arising from or in connection with any failure by it to comply with clause 14.1(a).

14.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of the Transaction.

15 GST

- (a) In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that legislation.
- (b) If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 15(b) (**GST exclusive consideration**) is increased by an amount (**additional GST amount**) equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount equal to any input tax credit the other party, or the representative member of the GST group of which the other party is a member, is entitled to with respect to the loss, cost or expense, and then increased in accordance with clause 15(b) if such amount is consideration for a taxable supply made under or in connection with this deed.
- (d) A party need not make a payment of the additional GST amount until it receives a tax invoice or adjustment note (as appropriate) for the supply to which the payment relates.

16 Guarantee by Bidder's Guarantor

16.1 Guarantee and indemnity

Bidder's Guarantor:

- (a) unconditionally and irrevocably guarantees to EDL on demand, the due and punctual performance of Bidder's obligations under this deed; and
- (b) as a separate and additional liability, indemnifies EDL against all loss, actions, proceedings and judgements of any nature, incurred by, brought, made or recovered against EDL arising from any default or delay in the due and punctual performance of Bidder's obligations under this deed.

16.2 Extent of guarantee and indemnity

The liability of Bidder's Guarantor under this clause 16 is not affected by anything that, but for this clause 16, might operate to release or exonerate Bidder's Guarantor in whole or in part from its obligations including any of the following, whether with or without the consent of Bidder's Guarantor:

- (a) the grant to Bidder, Bidder's Guarantor or any other person of any time, waiver or other indulgence, or the discharge or release of Bidder, Bidder's Guarantor or any other person from any liability or obligation;
- (b) any transaction or arrangement that may take place between EDL, Bidder or Bidder's Guarantor or any other person;
- (c) EDL exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against Bidder, Bidder's Guarantor or any other person;
- (d) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part and either with or without consideration, of any security now or in the future held by EDL from Bidder, Bidder's Guarantor or any other person or by the taking of or failure to take any security;
- (e) the failure or omission or any delay by EDL or Bidder to give notice to Bidder's Guarantor of any default by Bidder or any other person under this agreement; and
- (f) any legal limitation, disability, incapacity or other circumstances related to Bidder, Bidder's Guarantor or any other person.

16.3 Principal and independent obligation

This clause 16 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover this agreement as amended, varied, supplemented, renewed or replaced.

16.4 Continuing guarantee and indemnity

This clause 16 is a continuing obligation of Bidder's Guarantor, despite Implementation, and remains in full force and effect for so long as Bidder has any liability or obligation to EDL or a Scheme Shareholder under:

- (a) this deed; and
 - (b) any other agreement entered into by Bidder in connection with the Transaction,
- and until all of those liabilities or obligations have been fully discharged.

16.5 No withholdings

- (a) Bidder's Guarantor must make all payments that become due under this clause 16, free and clear and without deduction of all present and future withholdings (including taxes, duties, levies, imposts, deductions and charges of Australia or any other jurisdiction).
- (b) If Bidder's Guarantor is compelled by law to deduct any withholding, then in addition to any payment due under this clause 16, it must pay to EDL such amount as is necessary to ensure that the net amount received by EDL after withholding equals the amount EDL would otherwise have been entitled to if not for the withholding.

16.6 No set off

Bidder's Guarantor has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this clause 16, against any moneys that EDL or any other member of the EDL Group may be or become liable to pay to a member of the Bidder Group whether under this deed or otherwise.

16.7 Bidder's Guarantor's liability

Bidder's Guarantor's liability in respect of any claim will not exceed Bidder's liability in respect of that claim.

17 General

17.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
 - (i) in writing;
 - (ii) sent by an authorised representative of the sender; and
 - (iii) marked for the attention of the person named below,and must be:
 - (iv) left at, or sent by prepaid ordinary post (or by airmail if posted to or from a place outside Australia) to, the address set out below;
 - (v) sent by fax to the number set out below; or
 - (vi) sent by email to the address set out below.

EDL

Attention: Glen Marshall, General Counsel

Address: Building 17, 2404 Logan Road
Eight Mile Plains QLD 4113

Fax: +61 7 3341 5150

Email: glen.marshall@edl.com.au

with a copy (for information purposes only) to:

HNarushima@gtlaw.com.au (by email)

Bidder and Bidder's Guarantor

Attention: Leanne Pickering, General Counsel

Address: Level 15, 55 Hunter Street, Sydney NSW 2000

Fax: +61 2 8224 2779

Email: l.pickering@duet.net.au

with a copy (for information purposes only) to:

Marc.Kemp@allens.com.au (by email)

- (b) Subject to clause 17.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered;
 - (ii) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
 - (iii) if sent by fax, at the time shown in the transmission report produced by the machine from which the fax was sent as the time the fax was sent in its entirety; or
 - (iv) if sent by email:
 - (A) when the sender receives an email from the recipient confirming receipt of the email; or
 - (B) when the sender receives an automated message from the intended recipient's information system confirming delivery of the email,whichever happens first.
- (c) If a Notice is taken to be received under clause 17.1(b):
- (i) before 9:00am Sydney time on a Business Day, it will be taken to be received at 9:00am Sydney time on that Business Day; or
 - (ii) after 5:00pm Sydney time on a Business Day or on a day other than a Business Day, it will be taken to be received at 9:00am Sydney time on the next Business Day.

17.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

17.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this deed.

17.4 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

17.5 Waivers and consents

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent of a party is required under this deed, such consent may be given or withheld in that party's absolute discretion.

17.6 Variation

This deed may only be varied by a document signed by or on behalf of each of the parties.

17.7 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other party.

17.8 Further action

Each party will do all things and execute all further documents necessary to give full effect to this deed, at their own expense.

17.9 Entire agreement

This deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed) in respect of its subject matter and embodies the entire agreement between the parties.

17.10 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction. Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed will have full force and effect in that (and any other) jurisdiction.

This clause 17.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

17.11 Counterparts

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

17.12 Remedies and indemnities

The rights and remedies in this deed are in addition to other rights and remedies given by law independently of this deed. The indemnities in this deed are continuing obligations, independent from the other obligations of the parties under this deed and continue after this deed ends. It is not necessary for a party to incur an expense or make payment before enforcing a right to an indemnity under this deed.

For the purpose of this deed EDL is taken to be acting as agent and trustee on behalf of and for the benefit of all EDL Indemnified Parties, and all those persons are to this extent taken to be parties to this deed.

Schedule 1 — Dictionary

1 Dictionary

additional GST amount has the meaning given in clause 15(b).

Aggregate Scheme Consideration means the amount calculated by multiplying the number of Scheme Shares by the Scheme Consideration.

ASIC means the Australian Securities and Investments Commission.

associate has the meaning given in section 12 of the Corporations Act where, for the purposes of sections 12(2)(b) and 12(2)(c) of the Corporations Act, the 'designated body' is EDL.

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

Bidder Group means, collectively, Bidder and each of its Related Bodies Corporate, and **member of the Bidder Group** means any of those entities.

Bidder Indemnified Party means a Related Body Corporate of Bidder or a director, officer, employee or adviser of a member of the Bidder Group.

Bidder Information means information regarding the Bidder Group provided by or on behalf of Bidder to EDL in writing for inclusion in the Scheme Booklet, which must include information in relation to Bidder, the funding of the Scheme Consideration and Bidder's intentions in relation to the EDL Group and its business (including the EDL Group's employees and assets), and includes any information contained in the Scheme Booklet that is solely based on any information so provided by Bidder.

Bidder Proposal has the meaning given in clause 8.7(a)(iii).

Bidder and Bidder's Guarantor Representations and Warranties means the representations and warranties set out in clause 10.1.

Break Fee means \$13,688,727.

Business Day means a week day on which trading banks in Sydney are open for trading and the ASX is open for trading.

Business Plan means the document titled 'Business plan for scheme implementation deed' in the EDL Disclosure Materials. Where the Business Plan contains two or more documents within it that refer to substantially the same proposal, the information in the document that is chronologically last in time prevails to the extent of any inconsistency.

Cancellation Deeds has the meaning given in clause 4.3(a), and **Cancellation Deed** has a corresponding meaning.

CFIUS means the Committee on Foreign Investment in the United States.

CFIUS Clearance has the meaning given in clause 3.2(d).

Competing Proposal means any proposed or potential transaction or arrangement (including any takeover bid, scheme of arrangement, share or asset sale, capital reduction or buy back, joint venture or dual listed company structure, recapitalisation, establishment of a new holding company for the EDL Group or other synthetic merger, or any other means) under which a Third Party would, if completed:

- (a) directly or indirectly acquire an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or a Relevant Interest in 20% or more of EDL Shares;
- (b) directly or indirectly acquire, become the holder of or have a right to acquire or an economic interest in all or a substantial part of the business, or any of the material assets, of the EDL Group (where a substantial part of the business or a material asset of the EDL Group will include rights in respect of assets representing 50% or more of the value of the EDL Group's total assets); or
- (c) otherwise acquiring Control of or merging or amalgamating with EDL whether by way of takeover bid, scheme of arrangement, share or asset sale, capital reduction or buy back, joint venture or dual listed company structure, recapitalisation, establishment of a new holding company for the EDL Group or other synthetic merger, or any other means.

condition precedent means a condition set out in clause 3.1.

Confidentiality Deed means the confidentiality deed between Bidder and EDL dated 15 April 2015.

Confirmation Deeds has the meaning given in clause 4.3(d), and **Confirmation Deed** has a corresponding meaning.

Consultation Notice has the meaning set out in clause 3.4.

Control has the meaning given in section 50AA of the Corporations Act.

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

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by EDL and Bidder.

Court Documents means the documents which EDL determines (acting reasonably) are required for the purposes of a Court Hearing, which may include originating process, affidavits, submissions and draft minutes of Court orders.

Court Hearing means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

Deed Poll means the deed poll to be entered into by Bidder pursuant to clause 5.2(l), and Bidder's Guarantor pursuant to clause 5.3, under which Bidder covenants, and Bidder's Guarantor jointly and severally covenants, in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of the Scheme, in the form of Attachment C.

Defaulting Party has the meaning set out in clause 12.1(b).

EDL Announcement means an announcement in relation to the Transaction to be made by EDL following execution of this deed in accordance with clause 6, the form of which has been agreed with the Bidder prior to execution of this deed.

EDL Board means the board of directors of EDL.

EDL Director means a director of EDL.

EDL Disclosure Materials means the documents, information and responses to questions contained in the online data room set up by EDL and made available to Bidder and its Representatives prior to the date of this deed (a USB of which has been initialised by the parties' legal advisers for the purposes of identification).

EDL Group means EDL and each of its Subsidiaries, and **member of the EDL Group** means any of those entities.

EDL Indemnified Party means a Subsidiary of EDL or a director, officer, employee or adviser of EDL or a Subsidiary of EDL.

EDL Information means all the information in the Scheme Booklet other than the Bidder Information and Independent Expert's Report (or any update or variation to that report).

EDL Material Adverse Change means:

- (a) a change, event, circumstance, occurrence or matter which (whether individually or when aggregated with all such changes, events, circumstances, occurrences or matters of a like kind) has had or is reasonably likely to have:
 - (i) the effect of a diminution in the value of the consolidated net assets (but not including any diminution in intangible assets) of the EDL Group, taken as a whole, by at least \$25 million against what it would reasonably be expected to have been but for that change, event, circumstance, occurrence or matter; or
 - (ii) the effect of a diminution in the consolidated earnings before interest, tax, depreciation and amortisation of the EDL Group, taken as a whole, by at least \$25 million in recurring financial years for the EDL Group against what it would reasonably be expected to have been but for that change, event, circumstance, occurrence or matter,

provided that any events which have a positive effect on the consolidated net assets or earnings before interest, tax, depreciation and amortisation of the EDL Group are taken into account in calculating whether a threshold in paragraphs (a)(i) and (a)(ii) has been reached, and in each case other than changes, events, occurrences or matters:

- (b) expressly required or permitted by this deed or the Scheme;
- (c) fairly disclosed to Bidder in the EDL Disclosure Materials;
- (d) fairly disclosed by EDL in any announcement to or filing with ASX that is publicly available prior to the date of this deed, or in a document lodged by EDL with ASIC that is publicly available prior to the date of this deed;
- (e) consented to in writing by Bidder; or
- (f) which arise from:

- (i) changes in commodity prices, exchange rates or interest rates;
- (ii) general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), natural disaster or the like; or
- (iii) changes to accounting standards, laws or policies of a Government Agency in Australia,

but excluding any change, event, circumstance, occurrence or matter which has a disproportionate effect on the EDL Group, taken as a whole, as compared to other participants in the industries in which the EDL Group operates.

EDL Prescribed Occurrence means the occurrence of any of the following:

- (a) EDL converting all or any of its shares into a larger or smaller number of shares;
- (b) EDL resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) EDL:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the EDL Group issuing shares or securities convertible into shares, or granting rights which are convertible into shares, or granting an option over its shares, or agreeing to make such an issue or grant such a right or option other than to a member of the EDL Group, or EDL or the EDL Board accelerating the vesting of any securities, options or performance rights (including of any Options or Performance Rights);
- (e) EDL declaring, paying or distributing any dividend, bonus shares or other share of its profits or assets;
- (f) one or more members of the EDL Group disposing, or agreeing to dispose, of the whole, or a material part, of the business or property of the EDL Group;
- (g) one or more members of the EDL Group creating, or agreeing to create, any Encumbrance over the whole, or a material part, of the business or property of the EDL Group other than a lien which arises by operation of law or legislation;
- (h) a member of the EDL Group resolving that it be wound up or the making of an application or order for the insolvent winding up or dissolution of a member of the EDL Group other than where the application or order (as the case may be) is set aside within 14 days;
- (i) a liquidator or provisional liquidator of a member of the EDL Group being appointed;
- (j) a court making an order for the winding up of a member of the EDL Group;
- (k) an administrator of a member of the EDL Group being appointed under the Corporations Act;

- (l) a member of the EDL Group is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act unless that company has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;
- (m) a member of the EDL Group making any change to its constitution;
- (n) a member of the EDL Group executing a deed of company arrangement;
- (o) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the EDL Group;
- (p) a Default as defined in the Common Terms Deed dated 8 July 2011 between, among others, the Initial Borrowers, the Initial Guarantors, the Initial Term Facility Lenders, the Initial Revolving Facility Lenders, the Initial Working Capital Facility Lenders, the Initial Agent and the Security Trustee (each as defined in that document) as amended or amended and restated from time to time other than any Default arising as a result of the Bidder acquiring the Scheme Shares or the Bidder becoming entitled to the Scheme Shares as a result of the Scheme becoming Effective; or
- (q) any member of the EDL Group authorises, procures or commits or agrees to do any of the matters set out above,

but does not include any matter:

- (r) relating to cancellation of Options or Performance Rights to the extent contemplated in clause 4.3;
- (s) expressly required or permitted by this deed or the Scheme;
- (t) agreed to in writing by Bidder;
- (u) fairly disclosed to Bidder in the EDL Disclosure Materials; or
- (v) fairly disclosed by EDL in an announcement to or filing with ASX that is publicly available prior to the date of this deed, or in a document lodged by EDL with ASIC that is publicly available prior to the date of this deed.

EDL Representations and Warranties means the representations and warranties set out in clause 10.3.

EDL Share means a fully paid ordinary share in the capital of EDL.

EDL Share Register means the register of EDL Shareholders maintained by (or on behalf of) EDL in accordance with the Corporations Act.

EDL Unquoted Share means an unquoted ordinary share in the capital of EDL.

EDL Shareholder means a holder of one or more EDL Shares, as shown in the EDL Share Register.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means the date six months from the date of execution of this deed or such later date as agreed by EDL and Bidder.

Exclusivity Period means the period from 9:00am Sydney time on the date of execution of this deed to the earlier of:

- (a) the valid termination of this deed under clause 12; and
- (b) the End Date.

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing EDL to convene the Scheme Meeting is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **First Court Hearing**.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel) and any stock exchange (including ASX).

GST exclusive consideration has the meaning given in clause 15(b).

Implementation Date means the fifth Business Day after the Scheme Record Date or such other day as the parties agree in writing.

Independent Expert means the independent expert to be appointed by EDL to prepare the Independent Expert's Report (and any update or variation to that report) in accordance with clause 5.1(a).

Independent Expert's Report means the report to be prepared and issued by the Independent Expert in respect of the Scheme for inclusion in the Scheme Booklet.

Insolvency Event, in respect of an entity, means:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed under the Corporations Act;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under

the Corporations Act unless that entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;

- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of the entity;
- (h) the entity being deregistered as a company or otherwise dissolved except in the case of a company with less than \$10,000 in net assets as at the date of this deed; or
- (i) anything having a substantially similar effect to any event or circumstance referred to in subparagraphs (a) to (h) above happens in respect of the entity under the law of any jurisdiction.

Key Contract means each contract that is identified by Bidder to EDL on or about the date of this deed.

Listing Rules means the official listing rules of ASX.

Matching Right Notice has the meaning given in clause 8.7(a)(ii).

Matching Right Determination has the meaning given in clause 7.2(a)(i).

Notice has the meaning given in clause 17.1(a).

Option means an option to acquire an EDL Share, as set out in Schedule 2.

Performance Right means a performance right to acquire an EDL Share, as set out in Schedule 2.

prohibited action has the meaning given in clause 8.4.

Recommendation has the meaning given in clause 7.1(a).

Regulator's Draft has the meaning given in clause 5.1(d)(i).

Related Body Corporate has the meaning given in section 50 of the Corporations Act and **Related Bodies Corporate** has a corresponding meaning and, in respect of Bidder, also includes:

- (a) each entity that is a partly or wholly subsidiary of:
 - (i) Bidder's Guarantor, DUET Finance Limited ACN 108 014 062 or DUET Investment Holding Limited ACN 120 456 573;
- (b) each entity that is an associated entity of Bidder; and
- (c) each entity for which Bidder is the responsible entity or trustee.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representation and Warranty means a Bidder and Bidder's Guarantor Representation and Warranty or an EDL Representation and Warranty (as applicable).

Representative means, in respect of a party, a Related Body Corporate, an employee, agent, officer, director, of that party (or of a Related Body Corporate of that party), or an adviser or financier of that party (or of a Related Body Corporate of that party) in relation to the Transaction, and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

Rival Proposal has the meaning given in clause 8.7.

RG 60 means Regulatory Guide 60 issued by ASIC and dated September 2011.

Scheme means a members' scheme of arrangement under Part 5.1 of the Corporations Act between EDL and the Scheme Shareholders, in the form of Attachment B, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and EDL.

Scheme Booklet means the explanatory statement in respect of the Scheme to be prepared by EDL pursuant to section 412 of the Corporations Act and in accordance with clause 5.1(c), and to be despatched to EDL Shareholders in accordance with clause 5.1(i), which will contain (among other things) the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

Scheme Consideration means, in respect of each Scheme Share, A\$8.00.

Scheme Meeting means the meeting of EDL Shareholders ordered by the Court to be convened at the First Court Hearing.

Scheme Record Date means 7:00pm Sydney time on the third Business Day after the Effective Date.

Scheme Share means an EDL Share held by a Scheme Shareholder as at the Scheme Record Date.

Scheme Shareholder means an EDL Shareholder as at the Scheme Record Date.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a bona fide Competing Proposal that the EDL Board determines, acting in good faith and after taking written advice from EDL's legal and financial advisers:

- (a) is reasonably capable of being implemented within six months, taking into account all aspects of the Competing Proposal, including its proponent(s), conditionality, structure and financing; and
- (b) would, if completed substantially in accordance with its terms, produce an outcome for EDL Shareholders that is superior to the outcome that would be produced by the Scheme.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Terminating Party has the meaning given in clause 3.4.

Termination Event has the meaning given in clause 3.4.

Termination Notice has the meaning given in clause 3.4.

Third Party means a person other than Bidder and its associates.

Timetable means the indicative timetable for the implementation of the Transaction set out in Attachment A.

Trading Day has the meaning given in the Listing Rules.

Transaction means the acquisition of EDL by Bidder by means of the Scheme.

Voluntary Notice has the meaning given in clause 3.2(d).

Voting Intention has the meaning given in clause 7.1(b).

2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words "include", "including", "such as", "to avoid doubt" and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
 - (vi) this deed includes all schedules and attachments to it;

- (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (x) a monetary amount is in Australian dollars;
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) In determining the time of day, where relevant to this deed, the time of day is:
- (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

**Schedule 2 —
EDL capital structure**

Security	Total number on issue	Exercise price	Expiry date
Shares			
EDL Shares (quoted)	170,359,095		
EDL Shares (unquoted)	750,000		
Options			
Series A Options	2,292,000	\$4.12	13 Oct 19
Series B Options	11,736,000	\$6.87	13 Oct 19
Series A (August 2012) Options	324,000	\$4.12	30 Aug 20
Series B (August 2012) Options	1,800,000	\$6.87	30 Aug 20
Series A (March 2013) Options	756,000	\$4.80	25 Mar 21
Series B (March 2013) Options	2,520,000	\$6.87	25 Mar 21
Performance Rights			
Performance Rights to employee participants	42,500 (maximum number of Shares to be issued)		
Tranche 1 Series A FVPRs	6,295,766		
Tranche 1 Series B FVPRs	20,985,882		
Tranche 2 Series A FVPRs	4,688,060		
Tranche 2 Series B FVPRs	20,985,882		
Tranche 3 Series A FVPRs	4,688,060		
Tranche 3 Series B FVPRs	20,985,882		
TSR PRs	327,328		
ROE PRs	327,328		

Execution page

Executed and delivered as a deed.

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

Signed, sealed and delivered for **A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited)** by its attorney under power of attorney in the presence of:



Signature of attorney

Leanne Pickering

Name of attorney (print)



Signature of witness

MARC KEMP

Name of witness (print)

Signed, sealed and delivered for **DUET Company Limited** by its attorney under power of attorney in the presence of:



Signature of attorney

Leanne Pickering

Name of attorney (print)



Signature of witness

MARC KEMP

Name of witness (print)

Signed and delivered by **Energy Developments Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Name of director (print)

Signature of director/secretary

Name of director/secretary (print)

Execution page

Executed and delivered as a deed.

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

Signed, sealed and delivered for **A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited)** by its attorney under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney (print)

Name of witness (print)

Signed, sealed and delivered for **DUET Company Limited** by its attorney under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney (print)

Name of witness (print)

Signed and delivered by **Energy Developments Limited** in accordance with section 127 of the *Corporations Act 2001 (Cth)* and by:

Signature of director

Gregory James Pritchard

Name of director (print)

Signature of director/secretary

Glen Elliott Marshall

Name of director/secretary (print)

**Attachment A —
Timetable**

Event	EDL date
Release of EDL Announcement	20 July 2015
Regulator's Draft provided to ASIC	Mid-August 2015
First Court Hearing	Early to mid September 2015
Scheme Meeting	Early to mid October 2015
Second Court Hearing	Early to mid October 2015
Effective Date	Mid October 2015
Scheme Record Date	Mid to late October 2015
Implementation Date	Late October 2015

**Attachment B —
Scheme**

Scheme of arrangement

Energy Developments Limited

**Each person registered as a holder of fully paid ordinary shares in EDL as at the
Scheme Record Date**

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Date:

Parties

- 1 **Energy Developments Limited ACN 053 410 263** of Building 17, 2404 Logan Road, PO Box 4046, Eight Mile Plains, NSW, Australia, 2113 (**EDL**)
- 2 Each person registered as a holder of fully paid ordinary shares in EDL as at the Scheme Record Date (**Scheme Shareholders**)

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

2 Preliminary matters

- (a) EDL is an Australian public company limited by shares, and has been admitted to the official list of ASX. EDL Shares are quoted for trading on the ASX.
- (b) As at [●], there were [●] EDL Shares.
- (c) Bidder's Guarantor is DUET Company Limited (ACN 163 100 061) an Australian public company, which is part of a stapled group listed on the ASX.
- (d) Bidder is an unlisted Australian proprietary limited company.
- (e) If this Scheme becomes Effective:
 - (i) Bidder must (and Bidder's Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to) provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
 - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder and EDL will enter the name of Bidder in the Share Register in respect of all the Scheme Shares.
- (f) Bidder, Bidder's Guarantor and EDL have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
- (g) This Scheme attributes actions to Bidder's Guarantor and Bidder but does not itself impose any obligations on either of them to perform those actions. By executing the Deed Poll, Bidder and Bidder's Guarantor have agreed to perform the actions attributed to them under this Scheme. By executing the Deed Poll, Bidder agrees to (and Bidder's Guarantor guarantees that Bidder will) perform its obligations

under the Deed Poll, including payment of the Scheme Consideration in accordance with the terms of this Scheme.

3 Conditions

3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(b) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8.00am on the Second Court Date;
- (c) this Scheme is approved by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to EDL and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to EDL and Bidder are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme comes into effect pursuant to section 411(10) of the Corporations Act.

3.2 Certificates

- (a) Each of EDL and Bidder will provide a certificate to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived.
- (b) The certificates given by the EDL and Bidder constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived.

3.3 End Date

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless the Bidder and EDL otherwise agree in writing.

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

For the purposes of section 411(10) of the Corporations Act, EDL must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme before 5:00pm Sydney time on the Business Day following the day on which such office copy is received by EDL or such later date as EDL and Bidder agree in writing.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2(a), the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by EDL as attorney and agent for Scheme Shareholders under clause 8.5), by:
 - (i) EDL duly completing and executing the Scheme Transfer, duly executed on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
 - (ii) Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to EDL for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), EDL must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to \$8.00 for each Scheme Share.

5.2 Provision of Scheme Consideration

- (a) Bidder will (and Bidder's Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to) provide the Scheme Consideration by depositing (or procuring the deposit) in cleared funds an amount equal to the Aggregate Scheme Consideration into the Trust Account before 5:00pm on the day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder).
- (b) Subject to Bidder (and Bidder's Guarantor, if applicable) having complied with clause 5.2(a), EDL must, on the Implementation Date and from the Trust Account, pay to each Scheme Shareholder the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of

Scheme Shares held by that Scheme Shareholder as at the Scheme Record Date, which obligation will be satisfied by EDL:

- (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from EDL by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 5.2(b)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
- (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or
 - (B) EDL as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.4(a),

EDL as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of EDL (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995 (NSW)*. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995 (NSW)*.

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995 (NSW)*, EDL must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). EDL must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by EDL as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by EDL as the trustee for the Scheme Shareholders to Bidder following the satisfaction of EDL's obligations as the trustee for the Scheme Shareholders under this clause 5.2.

- (e) EDL must pay any Accrued Interest to any account nominated by Bidder following satisfaction of EDL's obligations under clause 5.2(b) (and, in any event, on the Implementation Date).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Scheme Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

5.4 Cancellation and re-issue of cheques

- (a) EDL may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to EDL; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to EDL (or the Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.4(a) must be reissued.

5.5 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

5.6 Orders of a court

If written notice is given to EDL (or the Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by EDL in accordance with this clause 5, then EDL will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents EDL from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, EDL will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or otherwise by law.

6 Dealings in EDL Shares

6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in EDL Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Share Register as the holder of the relevant EDL Shares at or before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received at or before the Scheme Record Date at the place where the Share Register is kept,

and EDL must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received on or after the Scheme Record Date, or received prior to the Scheme Record Date but not in registrable or actionable form.

6.2 Share Register

- (a) EDL must register registrable transmission applications or transfers of EDL Shares in accordance with clause 6.1(b) at or before the Scheme Record Date, provided that nothing in this clause 6.2(a) requires EDL to register a transfer that would result in an EDL Shareholder holding a parcel of EDL Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and EDL will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, EDL must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for EDL Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the EDL Shares relating to that entry.
- (e) As soon as possible after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, EDL will ensure that details of the names, Registered Addresses and holdings of EDL Shares for each Scheme Shareholder as shown in the Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

7 Quotation of EDL Shares

- (a) EDL will apply to ASX to suspend trading in EDL Shares with effect from the close of trading on the Effective Date.
- (b) EDL will apply:
 - (i) for termination of the official quotation of EDL Shares on the ASX; and
 - (ii) to have itself removed from the official list of ASX,

in each case with effect on and from the close of trading on the trading day immediately following, or shortly after, the Implementation Date.

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) EDL may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for EDL has consented to.

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their EDL Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their EDL Shares constituted by or resulting from this Scheme; and
 - (iii) acknowledges that this Scheme binds EDL and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Bidder, and appointed and authorised EDL as its attorney and agent to warrant to Bidder, that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (B) restrictions on transfer of any kind; and

- (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those shares.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
 - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.
- (b) Upon the Scheme becoming Effective, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by EDL of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

8.4 Appointment of sole proxy

Upon the Scheme becoming Effective and until EDL registers Bidder as the holder of all Scheme Shares in the Share Register:

- (a) each Scheme Shareholder is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) no Scheme Shareholder may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) each Scheme Shareholder must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) each Scheme Shareholder acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to EDL

On the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints EDL and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against Bidder's Guarantor and Bidder; and

- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer,

and EDL accepts such appointment. EDL, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.6 Binding effect of this Scheme

This Scheme binds EDL and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of EDL.

9 General

9.1 Stamp duty

Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

Each Scheme Shareholder consents to EDL doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to EDL, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at EDL's registered office or at the office of the Share Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an EDL Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.4 Governing law and jurisdiction

- (a) This Scheme is governed by the laws in force in New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal

process in these courts on the basis that the process has been brought in an inconvenient forum.

9.5 Further action

EDL must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

9.6 No liability when acting in good faith

None of EDL, Bidder, Bidder's Guarantor or any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Schedule 1 — Dictionary

1 Dictionary

Accrued Interest has the meaning given in clause 5.2(a).

Aggregate Scheme Consideration means the amount calculated by multiplying the number of Scheme Shares by the Scheme Consideration.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market operated by it known as the "Australian Securities Exchange".

Bidder means A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited) (ACN 607 005 685) of Level 15, 55 Hunter Street, Sydney, New South Wales 2000.

Bidder's Guarantor means DUET Company Limited (ACN 163 100 061) of Level 15, 55 Hunter Street, Sydney, New South Wales 2000.

Business Day means a week day on which trading banks in Sydney are open for trading and the ASX is open for trading.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by EDL and Bidder.

Deed Poll means the deed poll dated [●] under which Bidder covenants, and Bidder's Guarantor jointly and severally covenants, in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of this Scheme.

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

Effective Date means the date on which this Scheme becomes Effective.

EDL Share means a fully paid ordinary share in the capital of EDL.

EDL Shareholder means a holder of one or more EDL Shares, as shown in the Share Register.

End Date means the date six months from the date of execution of the Implementation Deed or such later date as agreed by EDL and Bidder.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory

organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel) and any stock exchange (including ASX).

Implementation Deed means the scheme implementation deed dated 20 July 2015 between Bidder, Bidder's Guarantor and EDL relating to (among other things) the implementation of this Scheme.

Implementation Date means the fifth Business Day after the Scheme Record Date or such other date as the parties to the Implementation Deed agree in writing.

Listing Rules means the official listing rules of ASX.

Registered Address means, in relation to an EDL Shareholder, the address shown in the Share Register as at the Scheme Record Date.

Scheme means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and EDL.

Scheme Consideration means, in respect of each Scheme Share, A\$8.00.

Scheme Meeting means the meeting of EDL Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Record Date means 7:00pm Sydney time on the third Business Day after the Effective Date.

Scheme Share means an EDL Share held by a Scheme Shareholder as at the Scheme Record Date.

Scheme Shareholder means an EDL Shareholder as at the Scheme Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

Share Register means the register of EDL Shareholders maintained in accordance with the Corporations Act.

Share Registry means Link Market Services Limited ABN 54 083 214 537, of Level 12, 680 George Street, Sydney NSW 2000.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by EDL as trustee for the Scheme Shareholders, details of which EDL must notify to Bidder no later than 5 Business Days before the Implementation Date. To avoid doubt, any Accrued Interest on funds in the Trust Account will not be held by EDL on trust for the Scheme Shareholders but rather will be held by EDL on trust for Bidder.

2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words "include", "including" and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, estate of a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
 - (vi) this Scheme includes all schedules to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (x) a monetary amount is in Australian dollars.

**Attachment C —
Deed Poll**

Deed poll

A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited)

DUET Company Limited

In favour of each person registered as a holder of fully paid ordinary shares in Emperor as at the Scheme Record Date

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Date:

Parties

- 1 **A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited) (ACN 607 005 685)** of Level 15, 55 Hunter Street, Sydney, New South Wales 2000 (**Bidder**)
 - 2 **DUET Company Limited (ACN 163 100 061)** of Level 15, 55 Hunter Street, Sydney, New South Wales 2000 (**Bidder's Guarantor**)
 - 3 In favour of each person registered as a holder of fully paid ordinary shares in Emperor as at the Scheme Record Date (**Scheme Shareholders**)
-

Background

- A Bidder, Bidder's Guarantor and Emperor have entered into the Implementation Deed, under which Bidder is to pay the Scheme Consideration and acquire all Scheme Shares held by Scheme Shareholders under the Scheme, and also under which Bidder and Bidder's Guarantor have agreed to enter into this deed poll.
- B Bidder and Bidder's Guarantor are entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to procure and undertake the actions attributed to Bidder and Bidder's Guarantor under the Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

1.3 Nature of deed poll

Bidder and Bidder's Guarantor acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Emperor and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and Bidder's Guarantor.

2 Conditions

2.1 Conditions

The obligations of Bidder and Bidder's Guarantor under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Bidder and Bidder's Guarantor under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other available rights, powers or remedies:

- (a) Bidder and Bidder's Guarantor are released from their obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against Bidder and Bidder's Guarantor in respect of any breach of this deed poll which occurs before it was terminated.

3 Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to, and Bidder's Guarantor undertakes in favour of each Shareholder to unconditionally and irrevocably guarantee the obligation of Bidder to:

- (a) deposit (or procure the deposit of) the Aggregate Scheme Consideration payable to all of the Scheme Shareholders in cleared funds into the Trust Account; and
- (b) undertake all other actions attributed to it under the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

4 Warranties

Each of the Bidder and Bidder's Guarantor represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll;

- (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder and Bidder's Guarantor have each fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

6 Further assurances

Bidder and Bidder's Guarantor will do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

7 General

7.1 Stamp duty

Bidder must (and Bidder's Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to):

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Notices

- (a) Any notice or other communication to Bidder or Bidder's Guarantor in connection with this deed poll must be:
 - (i) in legible writing in English;
 - (ii) signed by the person making the communication or that person's duly authorised agent; and
 - (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

Bidder / Bidder's Guarantor

Attention: Leanne Pickering, General Counsel
Address: Level 15, 55 Hunter Street, Sydney NSW 2000
Fax: +61 2 8224 2779
Email: l.pickering@duet.net.au
with a copy (for information purposes only) to:
Marc.Kemp@allens.com.au (by email)

- (b) Subject to clause 7.2(c), any notice or other communication given in accordance with clause 7.2(a) will be deemed to have been duly given as follows:
- (i) if delivered by hand, on delivery;
 - (ii) if sent by pre-paid post, on receipt; and
 - (iii) if sent by email:
 - (A) when the sender receives an email from the recipient confirming receipt of the email; or
 - (B) when the sender receives an automated message from the intended recipient's information system confirming delivery of the email,
- whichever happens first.
- (c) Any notice or other communication that, pursuant to clause 7.2(b), would be deemed to be given:
- (i) other than on a Business Day or after 5:00pm on a Business Day is regarded as given at 9:00am on the following Business Day; and
 - (ii) before 9:00am on a Business Day is regarded as given at 9:00am on that Business Day,

where references to time are to time in the place the recipient is located.

7.3 Cumulative rights

The rights, powers and remedies of Bidder's Guarantor, Bidder and the Scheme Shareholders under this deed poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this deed poll.

7.4 Waiver and variation

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed poll by any party will not in any way preclude, or operate as a waiver of,

any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A provision of this deed poll may not be varied unless:
- (i) if before the First Court Date (as defined in the Implementation Deed), the variation is agreed to by Emperor in writing; or
 - (ii) if on or after the First Court Date (as defined in the Implementation Deed), the variation is agreed to by Emperor in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Bidder's Guarantor and Bidder must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

7.5 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this deed poll. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.6 Assignment

- (a) The rights created by this deed poll are personal to Bidder's Guarantor, Bidder and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder's Guarantor and Bidder.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

7.7 Joint and several obligations

Bidder's Guarantor and Bidder are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

7.8 Further action

Bidder's Guarantor and Bidder must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

Execution page

Executed as a deed

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

Signed sealed and delivered for **A.C.N. 607 005 685 Pty Limited (to be renamed DUET EDL Pty Limited)** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed sealed and delivered for **DUET Company Limited** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Attachment D — Letter referred to in clause 5.8(b)(v)

National Australia Bank Limited (NAB)
[insert address]

[insert date] 2015

Westpac Banking Corporation
[insert address]

Dear Sirs

Confidential

Project Emperor – Borrowers' authority to make invitations to become Syndicated Facility Lenders under the MOSFA

1 Definitions

In this letter:

"**Borrowers**" means each of:

- EDL Holdings (Australia) Pty Ltd (ABN 67 058 224 481);
- Bio Energy (UK) Limited (Company Number 03340045); and
- Bio Energy (US), LLC (a limited liability company formed in Delaware, US).

"**Common Terms Deed**" means the document entitled 'Common Terms Deed' originally dated 8 July 2011 between, amongst others, the Borrowers, each Initial Guarantor (as defined therein), each Initial Term Facility Lender (as defined therein), each Initial Revolving Facility Lender (as defined therein), each Initial Working Capital Facility Lender (as defined therein) and NAB as Initial Agent and Security Trustee in the form as amended by the Deed of Amendment – Common Terms Deed.

"**Deed of Amendment – Common Terms Deed**" means the document so entitled amending and restating the Common Terms Deed, to be entered on or about the date of the MOSFA, between, amongst others, the Borrowers and the Mandated Lead Arrangers, Underwriters and Bookrunners.

"**Mandated Lead Arrangers, Underwriters and Bookrunners**" means National Australia Bank Limited and Westpac Banking Corporation.

"**MOSFA**" means the document entitled 'Multi-Option Syndicated Facility Agreement' to be entered into, between, amongst others, the Borrowers, each Initial Guarantor (as defined therein) and the Mandated Lead Arrangers, Underwriters and Bookrunners.

"**Syndicated Facility Lender**" has the meaning given to that term under the Common Terms Deed.

**2 Borrowers' authority to make invitations to become Syndicated Facility
Lenders under the MOSFA**

The Borrowers:

- (a) invite each Mandated Lead Arranger, Underwriter and Bookrunner, acting in the capacity as a dealer, manager or underwriter, to become a Syndicated Facility Lender under the MOSFA; and
- (b) authorise each Mandated Lead Arranger, Underwriter and Bookrunner to make invitations on its behalf to financial institutions to become Syndicated Facility Lenders under the MOSFA.

Each Mandated Lead Arranger, Underwriter and Bookrunner agrees to make on behalf of the Borrowers, jointly with each other Mandated Lead Arranger, Underwriter and Bookrunner, invitations to become a Syndicated Facility Lender under the MOSFA to at least 10 invitees before the date 30 days after the date of the MOSFA.

Yours faithfully

.....
For and on behalf of
EDL Holdings (Australia) Pty Ltd

.....
For and on behalf of
Bio Energy (UK) Limited

.....
For and on behalf of
Bio Energy (US), LLC

We acknowledge and agree to the above:

.....
National Australia Bank Limited
Mandated Lead Arranger, Underwriter and Bookrunner

- 2 Borrowers' authority to make invitations to become Syndicated Facility Lenders under the MOSFA

Westpac Banking Corporation

Mandated Lead Arranger, Underwriter and Bookrunner