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## **NOT FOR DISTRIBUTION OR RELEASE IN THE UNITED STATES OR TO U.S. PERSONS**

20 July 2015

### **ASX RELEASE**

#### **DUET PROPOSAL TO ACQUIRE ENERGY DEVELOPMENTS ANNOUNCES \$1.67 BILLION EQUITY RAISING**

DUET Group (DUET or the Group) is pleased to announce that it has entered into a scheme implementation deed with ASX-listed Energy Developments Limited (EDL, ASX:ENE) under which it is proposed that DUET will acquire 100% of EDL's shares on issue by way of a scheme of arrangement for \$8.00 per share payable in cash (the Proposed Acquisition). This price represents a multiple of 8.8 times EV to EDL's FY15 EBITDA<sup>1</sup>. Financial close is expected in October 2015 and will be subject to EDL shareholder approval, court approval and other necessary approvals and conditions precedent<sup>2</sup>.

The directors of EDL have unanimously recommended that EDL shareholders vote in favour of the scheme, subject to the absence of a superior proposal and to an independent expert concluding that the scheme is in the best interests of EDL's shareholders. DUET also notes that a number of EDL's largest shareholders who, in aggregate, hold more than 85% of EDL's shares on issue, have indicated to EDL their support for the Proposed Acquisition, in the absence of a superior proposal<sup>3</sup>.

To fund the Proposed Acquisition DUET has launched a fully underwritten \$1.67 billion equity raising via a cornerstone placement and a fully underwritten pro-rata accelerated non-renounceable entitlement offer (together, the Equity Raising).

DUET's Chairman, Mr Doug Halley said "Energy Developments is a strong strategic fit with DUET. The Proposed Acquisition will enhance the diversity of our operating cash flows and provide an attractive source of growth for the Group."

DUET's Chief Executive Officer, Mr David Bartholomew, said "EDL generates stable and predictable cash flows based on long dated contracts. The Proposed Acquisition provides us with full control over EDL's operations, cash flows and capital structure."

"On completion, the Proposed Acquisition will be immediately cashflow accretive. This has enabled DUET to upgrade its FY16 distribution guidance to 18.0 cents per stapled security, fully cash covered by operating cash flows, and establish DPS growth targets for FY17 and FY18, subject to the Proposed Acquisition successfully completing. The updated FY16 distribution guidance represents an 8.9% cash yield based on the entitlement offer issue price (Entitlement Offer Price)."

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<sup>1</sup> Excluding DUET's transaction costs. Based on EDL's updated unaudited FY15 EBITDA guidance of \$218 million, 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

<sup>2</sup> More information on the proposed scheme is in the joint announcement by EDL and DUET released to the ASX this morning

<sup>3</sup> See the joint announcement by EDL and DUET released to the ASX earlier this morning

## Highlights

EDL is a strong strategic fit with DUET:

- Long term, contracted energy infrastructure cash flows
- Further diversifies DUET's cash flows
- EDL's remote energy business is complementary to DDG
- Attractive growth platform
- Experienced management team with proven track record

Post the acquisition EDL will account for around 25% of DUET's proportionate EBITDA<sup>4</sup>.

## About Energy Developments

EDL has more than 900MW of installed generation capacity in Australia, the U.S. and UK/Europe. It has three business units.

In each of EDL's businesses, revenues are underpinned by contracts, mostly take-or-pay<sup>5</sup> or bilateral fixed price offtake contracts with blue chip customers at key sites.

**Remote Energy** - supplying remote mines and townships in regional Australia with power. The business is characterised by long dated offtake contracts, mostly take-or-pay or fixed price arrangements, providing revenue predictability. EDL is the market leader in the <100MW distributed generation sector in Australia. In Western Australia both EDL and DUET's gas pipeline business, DDG, have a common focus on remote power development and complementary expertise.

**Waste Coal Mine Gas (WCMG)** - utilises waste gas to supply power from high-grade metallurgical coal mines in Australia mostly sold to the host miner or under bilateral fixed price offtake contracts. EDL has long term contracts that grant it the exclusive right to use the waste gas at each site. EDL is the largest WCMG operator in Australia.

**Landfill Gas (LFG)** – utilises waste gas from landfill operations to supply power in Australia, the U.S. and UK/Europe mostly under bilateral fixed price offtake contracts. EDL has long term contracts that grant it the exclusive right to use the waste gas at each site. EDL is the number one LFG operator in Australia with more than 40% market share.

EDL has increased installed generation capacity across its portfolio by around 11% per annum over the last 5 years and is well placed to capture future growth opportunities.

To provide a strong balance sheet to fund future growth opportunities, DUET will degear EDL by \$150 million on completion of the Proposed Acquisition as we target a stable investment grade profile for EDL.

Please refer to the attached investor presentation for further details regarding the acquisition and EDL. The detailed terms and conditions governing the Proposed Acquisition are contained in the scheme implementation deed, a copy of which accompanies this announcement.

## Distribution Guidance

DUET has upgraded its FY16 distribution guidance to 18.0 cents per stapled security and is targeting growth in distributions to 18.5 cents per stapled security in FY17 and 19.0 cents per stapled security in FY18. The FY16 distribution guidance is expected to be fully covered by forecast operating cash flows and is subject to DUET's forecast assumptions being met, including successful completion of the Proposed Acquisition.

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<sup>4</sup> Based on DUET and EDL 1H15 results and pro forma HY run rate contribution from DDG

<sup>5</sup> 'Take-or-pay' refers to a revenue contract with a capacity charge but no minimum energy usage charge

## FY15F Performance

DUET has announced FY15 forecast unaudited EBITDA of between \$798 million and \$814 million and adjusted EBITDA less Interest of between \$408 million and \$424 million. Further, EDL has announced unaudited FY15 EBITDA of \$218 million<sup>6</sup>.

Audited results for the DUET Group will be released on 21 August 2015. Audited FY15 results for Energy Developments will be released on 17 August 2015.

The table below provides a summary of the forecast unaudited FY15 performance for both DUET (at an operating company level) and EDL.

| EBITDA                                |       |   | Adjusted EBITDA less Interest |                                     |               |
|---------------------------------------|-------|---|-------------------------------|-------------------------------------|---------------|
| (\$m, 100%)                           | FY14A | FY15F                                   | FY14A                         | FY15F                               | FY15 Guidance |
| DBP                                   | 349   | 313 to 317                              | 121                           | 128 to 132                          | 112           |
| United Energy                         | 334   | 357 to 361                              | 186                           | 204 to 208                          |               |
| Multinet Gas                          | 123   | 120 to 124                              | 65                            | 68 to 72                            |               |
| DDG                                   | 2     | 7 to 11                                 | 4                             | 8 to 12                             |               |
| <b>Total DUET Operating Companies</b> | 807   | <b>798 to 814</b><br>(Down 1% to Up 1%) | 377                           | <b>408 to 424</b><br>(Up 8% to 12%) |               |
| <b>Energy Developments</b>            | 182   | <b>218</b><br>(Up 20%)                  |                               |                                     |               |

## Equity Raising

To fund the Proposed Acquisition, degearing of EDL, associated transaction costs and corporate working capital, DUET will undertake an Equity Raising comprising a fully underwritten:

- Placement to cornerstone investors, including UniSuper, at \$2.02 per new stapled security (Placement Offer Price) to raise \$550 million; and
- Accelerated non-renounceable 1 for 2.69 pro rata entitlement offer (Entitlement Offer) to eligible stapled securityholders at an offer price of \$2.02 per new stapled security to raise \$1,122 million.

The Placement Offer Price and Entitlement Offer Price represents a 8.9% cash yield based on DUET's upgraded FY16 distribution guidance.

## Details of the Entitlement Offer

The Entitlement Offer will comprise a 1 for 2.69 accelerated non-renounceable pro-rata offer to raise approximately \$1,122 million at an Offer Price of \$2.02 per New Stapled Security, consisting of:

- an accelerated institutional component to be conducted today and tomorrow (Institutional Entitlement Offer); and
- a retail component which will open on Friday, 24 July 2015 and close at 5.00pm on Monday, 10 August 2015 (Retail Entitlement Offer).

<sup>6</sup> EBITDA and Adjusted EBITDA less net external interest (Adjusted EBITDA less Interest) are as defined in DUET's Management Information Report and presented on a 100% basis. Results consist of: (i) 6 months of actual results to 31 December 2014 based on the reviewed half year accounts; and (ii) 6 months of actual results to 30 June 2015 based on management reporting. EDL's \$218 million FY15 unaudited EBITDA is per their announcement to the ASX today.

The Entitlement Offer gives eligible DUET securityholders (Stapled Securityholders) the opportunity to subscribe for 1 New Stapled Security for every 2.69 existing stapled securities held at 7.00pm (AEST) on Thursday, 23 July 2015 (Record Date).

The Entitlement Offer Price of \$2.02 per New Stapled Security represents a discount of:

- 15.1% to the closing price of DUET on the last day of ASX trading before announcement of the Entitlement Offer, being \$2.38; and
- 10.3% to the theoretical ex-rights price reflecting both the Entitlement Offer and the Placement (TERP) of \$2.25.

New Stapled Securities will rank equally with existing DUET stapled securities on issue at the time of this announcement<sup>7</sup>.

### **Institutional Entitlement Offer**

Eligible institutional Stapled Security Holders will be invited to participate in the Institutional Entitlement Offer which opens today, and closes tomorrow.

Under the Institutional Entitlement Offer, eligible Institutional Stapled Securityholders can choose to take up all, part or none of their Entitlement. Entitlements not taken up under the Institutional Entitlement Offer will be offered to eligible institutional investors at the Entitlement Offer Price.

### **Retail Entitlement Offer**

Eligible Retail Stapled Securityholders with a registered address in Australia or New Zealand on the Record Date of 7.00pm (AEST), Thursday, 23 July 2015 (Eligible Retail Stapled Securityholders), have the opportunity to invest in New Stapled Securities at the Entitlement Offer Price, on the terms and conditions outlined in the Retail Entitlement Offer Booklet to be sent to Eligible Retail Stapled Security Holders on Tuesday, 28 July 2015.

Eligible Retail Stapled Securityholders may also apply for additional New Stapled Securities in excess of their Entitlement up to a maximum of 100% of their Entitlement. The allocation of additional New Stapled Securities will be subject to the availability of additional New Stapled Securities, and DUET retains the flexibility to scale back applications for additional New Stapled Securities at its discretion.

Please note that Stapled Securityholders with a registered address outside Australia or New Zealand on the Record Date are ineligible to participate in the Retail Entitlement Offer.

### **Retail Investor Enquiries**

For further information in regard to the Retail Entitlement Offer, please do not hesitate to contact the Offer Information Line on 1300 384 781 (local call cost within Australia) or +61 3 9415 4382 (from outside Australia) at any time between 9.00am and 5.00pm (AEST), Monday to Friday.

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<sup>7</sup> New Stapled Securities issued under the Placement and Entitlement Offer will not be eligible to receive DUET's final FY15 distribution of 8.75 cents per stapled security that is expected to be paid on 20 August 2015.



## Key Dates of the Entitlement Offer

| Event   | Date                                 |
|---|--------------------------------------|
| <b>Announcement</b>   | <b>Monday, 20 July 2015</b>          |
| Placement and Institutional Entitlement Offer   | Monday, 20 to Tuesday 21 July 2015   |
| Stapled Securities recommence trading on ASX on an "ex-entitlement" basis   | Wednesday 22 July 2015               |
| Record Date for determining entitlement to subscribe for New Stapled Securities   | 7.00pm, Thursday, 23 July 2015       |
| <b>Retail Entitlement Offer opens</b>   | <b>Friday, 24 July 2015</b>          |
| Retail Offer Booklet despatched   | Tuesday, 28 July 2015                |
| Early Retail Acceptance Date  | 5.00pm, Thursday, 30 July 2015       |
| Settlement of Placement and Institutional Entitlement Offer and New Stapled Securities issued under the Retail Entitlement Offer*                           | Friday, 31 July 2015                 |
| <b>Initial allotment and normal trading of New Stapled Securities under the Placement and Institutional Entitlement Offer and Retail Entitlement Offer*</b> | <b>Monday, 3 August 2015</b>         |
| <b>Retail Entitlement Offer closes</b>  | <b>5.00pm, Monday 10 August 2015</b> |
| <b>Final allotment of remaining New Stapled Securities</b>  | <b>Monday 17 August 2015</b>         |
| Despatch of holding statement and normal trading of New Stapled Securities issued under the Retail Entitlement Offer  | Tuesday 18 August 2015               |

\*For applications received via BPAY® by the Early Retail Acceptance Date

All dates and times referred to are based on Sydney time and are subject to change. DUET reserves the right to vary these dates or to withdraw the Entitlement Offer at any time.

For further enquiries, please contact

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Further information in relation to the specific details of the Entitlement Offer described in this announcement including important notices and key risks in relation to certain forward looking information (including the FY16 distribution guidance) is set out in an investor presentation released to ASX today by DUET. The information in the 'Disclaimer' and 'Key Risks' sections of the investor presentation applies to this announcement as if set out in full in this announcement.

This announcement includes "forward looking statements" within the meaning of securities laws of applicable jurisdictions. Forward looking statements can generally be identified by the use of the words "anticipate", "believe", "expect", "project", "forecast", "estimate", "likely", "intend", "should", "could", "may", "target", "plan", "guidance" and other similar expressions. Indications of, and guidance on, future earning or distributions and financial position and performance are also forward-looking statements. Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of DUET, and its officers, employees, agents or associates, that may cause actual results to differ materially from those expressed or implied in such statement. Actual results, performance or achievements may vary materially from any projections and forward looking statements and the assumptions on which those statements are based. Readers are cautioned not to place undue reliance on forward looking statements and DUET assumes no obligation to update such information.

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# Acquisition and Equity Raising

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# Disclaimer



## **Important information**

The DUET Group comprises DUET Company Limited (ABN 93 163 100 061) ("DUECo"), DUET Investment Holdings Limited ("DIHL") (ABN 22 120 456 573) and DUET Finance Limited (ABN 15 108 014 062) ("DFL") (AFSL 269287) in its personal capacity and as responsible entity of DUET Finance Trust (ARSN 109 363 135) ("DFT") (DUECo, DIHL, DFL and DFT are collectively referred to as "DUET" or "DUET Group"). DUET may refer to any entity of the DUET Group or all of them or any combination thereof. DUECo and DIHL (as the corporate arm) are responsible for all information contained in this document. DFL and DFT (as the funding arm) are only responsible for the pages numbered 6, 17, 20, 21, 22 and Appendices A1, B, F and I as well as statements regarding distribution guidance and growth targets.

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This document is not an offer to sell or a solicitation of an offer to subscribe or purchase or a recommendation of any securities and may not be distributed in any jurisdiction except in accordance with the legal requirements applicable in such jurisdiction. No action has been or will be taken that would permit a public offering of the securities referred to in this document ("New Securities") in any jurisdiction. Recipients of this document should inform themselves of the restrictions that apply in their own jurisdiction. In particular, this presentation does not constitute an offer to sell, or the solicitation of an offer to buy, any securities in the United States, or to, or for the account or benefit of, any "U.S. person" (as defined in Rule 902(k) under the U.S. Securities Act of 1933, as amended ("Securities Act") ("U.S. Person")). The New Securities have not been, and will not be, registered under the Securities Act or the securities laws of any state or other jurisdiction of the United States. In addition, none of the DUET entities have been or will be registered under the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act"), in reliance on the exception provided by Section 3(c)(7) thereof. Accordingly, the New Securities cannot be held by, or for the account or benefit of, any U.S. Person who is not both a "qualified institutional buyer", as defined under Rule 144A under the Securities Act ("QIB"), and a "qualified purchaser", as defined in section 2(a)(51) of the Investment Company Act ("QP"), at the time of the acquisition of the New Securities. Any U.S. Person who is not both a QIB and a QP (or any investor who holds New Securities for the account or benefit of any U.S. Person who is not both a QIB and a QP) is an "Excluded U.S. Person". DUET may require an investor to complete a statutory declaration as to whether they (or any person on whose account or benefit it holds New Securities) are an Excluded U.S. Person. DUET may treat any investor who does not comply with such a request as an Excluded U.S. Person. DUET has the right to: (i) refuse to register a transfer of New Securities to any Excluded U.S. Person; or (ii) require any Excluded U.S. Person to dispose of their New Securities; or (iii) if the Excluded U.S. Person does not do so within 30 business days, require the New Securities be sold by a nominee appointed by DUET. To monitor compliance with these foreign ownership restrictions, the ASX's settlement facility operator (ASTC) has classified the New Securities as Foreign Ownership Restricted financial products and put in place certain additional monitoring procedures. The New Securities may only be resold or transferred in regular brokered transactions on ASX in accordance with Regulation S under the Securities Act where neither such investor nor any person acting on its behalf knows, or has reason to know, that the sale has been pre-arranged with, or that the purchaser is, in the United States or a U.S. Person or is acting for the account or benefit of a person in the United States or a U.S. Person, in each case in an "offshore transaction" (as defined in Rule 902(h) under the Securities Act) in reliance on, and in compliance with, Regulation S under the Securities Act.

# Disclaimer (cont.)



## Forward looking statements

This presentation includes “forward looking statements” within the meaning of securities laws of applicable jurisdictions. Forward looking statements can generally be identified by the use of the words “anticipate”, “believe”, “expect”, “project”, “forecast”, “estimate”, “likely”, “intend”, “should”, “could”, “may”, “target”, “plan”, “guidance” and other similar expressions. Indications of, and guidance on, future earnings or distributions and financial position and performance are also forward-looking statements. Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of DUET, and its officers, employees, agents or associates, that may cause actual results to differ materially from those expressed or implied in such statement. Actual results, performance or achievements may vary materially from any projections and forward looking statements and the assumptions on which those statements are based. Past performance is not a reliable indicator of future performance and readers are cautioned not to place undue reliance on forward looking statements. DUET assumes no obligation to update such information.

## Financial information

Investors should note that this presentation contains pro forma financial information. In preparing the pro forma financial information, certain adjustments were made to the historical financial information of the DUET Group and Energy Developments Limited that DUET considered appropriate to reflect the application of the proceeds of the offer. The pro forma financial information does not purport to be in compliance with Article 11 of Regulation S-X of the rules and regulations of the U.S. Securities and Exchange Commission.

Investors should be aware that certain unaudited financial data included in this document are “non-GAAP financial measures” under Regulation G of the U.S. Securities Exchange Act of 1934. The disclosure of non-GAAP financial measures in the Presentation, such as EBITDA and other disclosures on slides 18 and 22 may not be permissible in a registration statement under the Securities Act. These non-GAAP financial measures do not have a standardised meaning prescribed by Australian Accounting Standards and therefore may not be comparable to similarly titled measures presented by other entities, and should not be construed as an alternative to other financial measures determined in accordance with Australian Accounting Standards. Although DUET believes these non-GAAP financial measures provide useful information to users in measuring the financial performance and condition of its business, investors are cautioned not to place undue reliance on any non-GAAP financial measures included in this document.

Investors should note that by the time EDL’s scheme offer booklet is lodged with ASX, FY15 financial information for both DUET and EDL would have been finalised. As a result, audited financial information may differ from unaudited financial information contained in this document.

## Glossary

A glossary of key terms included in this investor presentation is contained in Appendix H.

## Basis of preparation

The Forecast Financial Information is prepared in accordance with recognition and measurement principles contained in Australian Accounting Standards, which are consistent with International Financial Reporting Standards and the interpretations issued by the IASB.

Forecast unaudited EBITDA for the year ending 30 June 2015 is based on the following for both DUET and EDL:

- 6 months of actual results to 31 December 2014 based on the reviewed half year accounts; and
- 6 months of actual results to 30 June 2015 based on management reporting.

The Adjusted EBITDA less Interest disclosed for DUET’s operating companies is also based on the above, and is consistent with the presentation in the Management Information Report.

Forecast distribution guidance for DUET for the year ending 30 June 2016 is prepared at the DUET stapled entity level taking into account forecast distributions from the operating companies, including EDL, and DUET Board approved corporate operating expenses budget in a manner consistent with previous practices. The forecast financial information has been prepared by the Directors solely for inclusion in the investor presentation and Retail Offer Booklet, based on an assessment of current economic and operating conditions and the Directors best estimate of general and specific assumptions regarding future events and actions.



# Transaction Summary



- DUET Group (DUET) proposal to acquire 100% of ASX-listed Energy Developments Limited (EDL) via a Scheme of Arrangement for \$8.00 per EDL share<sup>1</sup> payable in cash (Proposed Acquisition)
  - Implied EV multiple of 8.8 times EDL's FY15 EBITDA<sup>2</sup>
- DUET has completed extensive due diligence
- EDL is a strong strategic fit with DUET:
  - Long term, contracted energy infrastructure cash flows
  - Further diversifies DUET's cash flows
  - EDL's remote energy business is complementary to DDG
  - Attractive growth platform
  - Experienced management team with proven track record
- Proposed Acquisition expected to deliver significant value to DUET securityholders
  - Immediately cashflow accretive<sup>3</sup>
  - DUET's FY16 distribution guidance upgraded to 18.0cpss
  - DPS growth target established



1. Refer Scheme Implementation Deed lodged with ASX today

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

3. From financial close, expected in October 2015, subject to EDL shareholder approval, court approval and other necessary approvals and conditions precedent

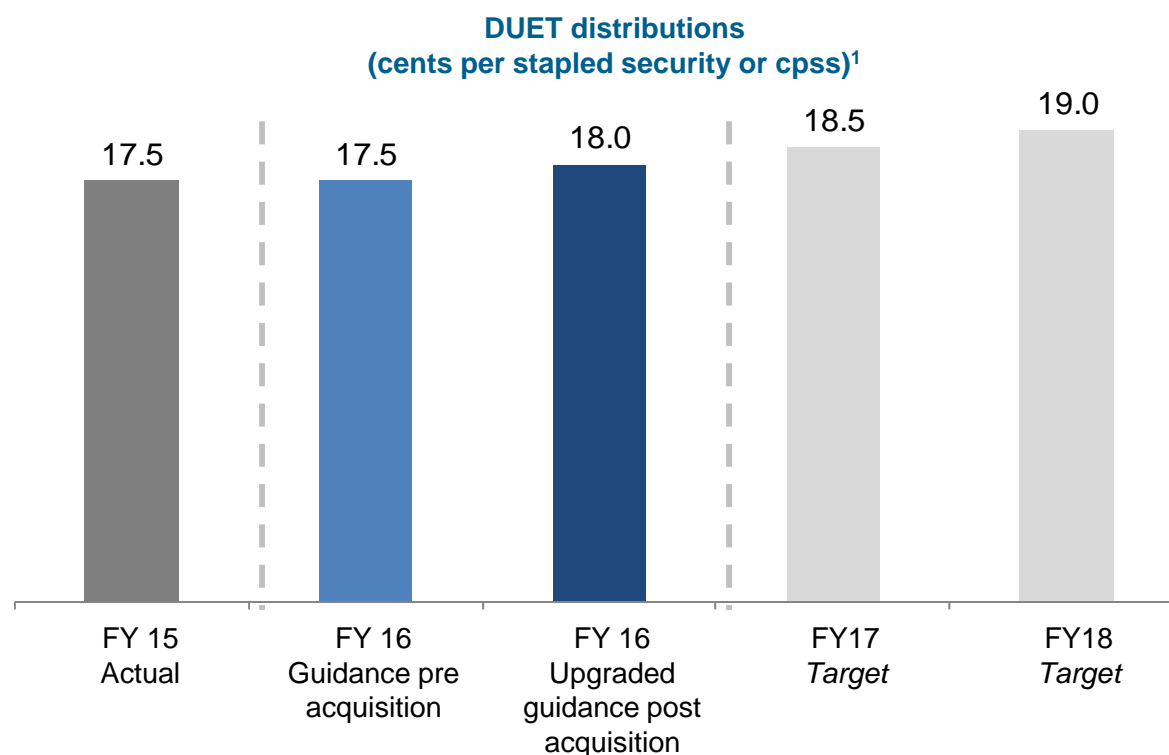
# Funding and Completion

- Proposed Acquisition to be funded through a fully underwritten \$1.67 billion equity capital raising
  - \$550m institutional placement; and
  - \$1,122m accelerated non-renounceable entitlement offer
- The underwritten placement and entitlement offer price (Offer Price) of \$2.02 represents a 15.1% discount to last traded price of \$2.38 and 10.3% discount to TERP<sup>1</sup>
- Financial close of the Proposed Acquisition is subject to EDL shareholder approval, court approval and other necessary approvals and conditions precedent<sup>2</sup>
  - Transaction unanimously recommended by EDL's board and a number of the company's largest shareholders (representing >85% of EDL's shares on issue)<sup>3</sup>
  - Financial close expected in October 2015

1. Theoretical ex rights price including New Securities to be issued under the Placement and the Offer  
2. Refer to Scheme Implementation Deed lodged with ASX today  
3. Refer to EDL's announcement lodged with the ASX today

# Transaction Immediately Accretive

- DUET's FY16 DPS guidance upgraded to 18.0cpss<sup>1</sup>
- Offer Price implies a cash yield of 8.9%<sup>2</sup>
- Guidance expected to be fully covered by forecast operating cash flows
- DPS growth target established



Forward looking statements by their very nature are subject to uncertainties and contingencies, many of which are outside the control of DUET

1. Refer to Appendix B (Distribution Guidance Key Assumptions) and Appendix A (Key Risks)
2. Based on DUET's upgraded FY16 distribution guidance of 18.0cpss and the \$2.02 Offer Price



# EDL: market leader in distributed generation

- **>900MW of generation:** #1 market position in core markets (focussed on sub 100MW market segment)
- **Predictable cash flows:** tolling services agreements, long term offtake and gas supply agreements deliver predictable cash flows
- **Blue chip customer base:** strong relationships with large scale customers
- **Recontracting track record:** the value of incumbency and competitive advantage
- **Attractive growth prospects:** experienced management team with proven ability to deliver growth

## EDL Business Units

### Remote Energy



- 389MW<sup>1</sup> installed (43%)
- A\$78m Operating EBITDA<sup>2</sup>
- Power for mines and remote towns
- Mostly tolling arrangements or Fixed Price Contracts with limited fuel or price risk at key sites
- #1 market position in <100 MW sector in Australia

### Waste Coal Mine Gas



- 253MW<sup>1</sup> installed (28%)
- A\$48m Operating EBITDA<sup>2</sup>
- Utilises waste gas from low-cost, long-life coking coal mines
- Mostly Fixed Price Contracts (offtake) at key sites
- #1 market position in Australia with 100% market share<sup>3</sup>

### Landfill Gas



- 262MW<sup>1</sup> installed (29%)
- A\$84m Operating EBITDA<sup>2</sup>
- Operations in Australia, US, UK/Europe
- Utilises waste gas from landfill sites
- Mostly Fixed Price Contracts (offtake) at key sites
- #1 Australian LFG generator with > 40% market share

1. As at 31 March 2015. Remote Energy includes 22MW which are operated and maintained only. WCMG includes 5MW which are operated and maintained only. LFG includes 24MW that is 50% owned via a Greece based joint venture

2. Operating EBITDA is pre operations support, corporate and development costs based on FY14A

3. Excludes miners with self managed WCMG operations

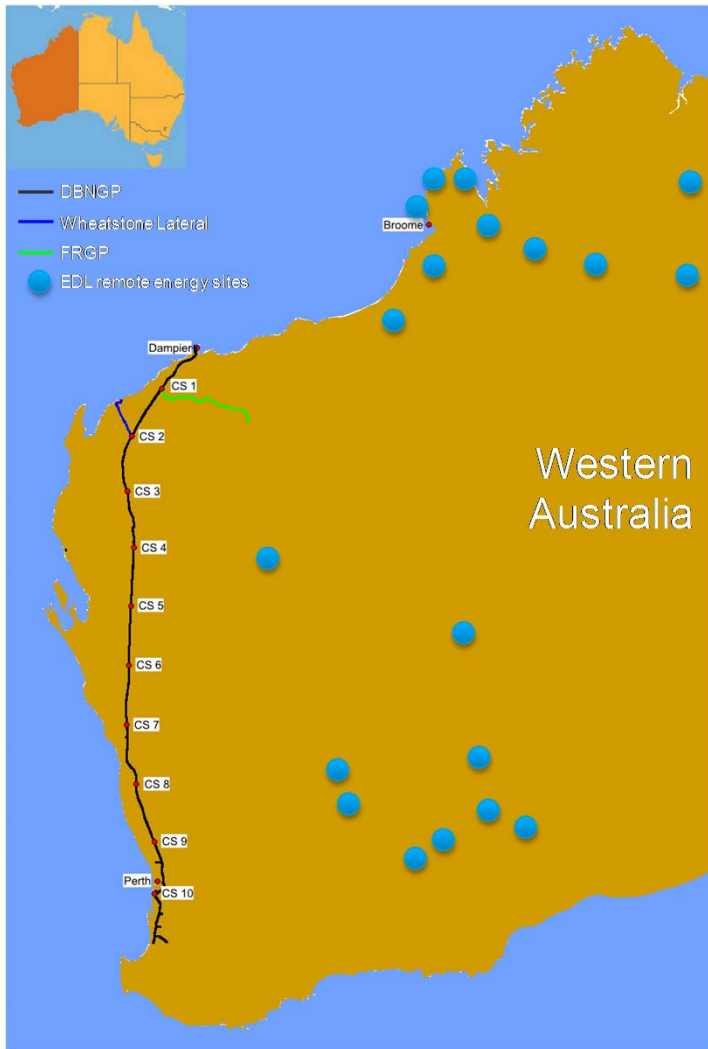
# Strong strategic fit with DUET



| Proposed Acquisition features/benefits <sup>1</sup>   | DUET investment mandate |
|---|-------------------------|
| <b>Long term, contracted energy sector cash flows</b> <ul style="list-style-type: none"> <li>▪ Mostly Take-or-Pay or Fixed Price Contracts<sup>1</sup> at key sites</li> <li>▪ Limited fuel cost exposure</li> <li>▪ High operating margins, low technology risk</li> <li>▪ Track record of successfully recontracting with blue chip counterparties</li> </ul> | ✓                       |
| <b>Established historical or contracted volume levels</b>   | ✓                       |
| <b>Enhances DUET's cash flow diversification</b>  | ✓                       |
| <b>Complementary operations to DDG</b>  | ✓                       |
| <b>Control of operations and cash flows</b>   | ✓                       |

1. Refer to Appendix A (Key Risks) and Appendix H (Definition of Key Terms) for a definition of contract attributes

# Complementary energy infrastructure expertise



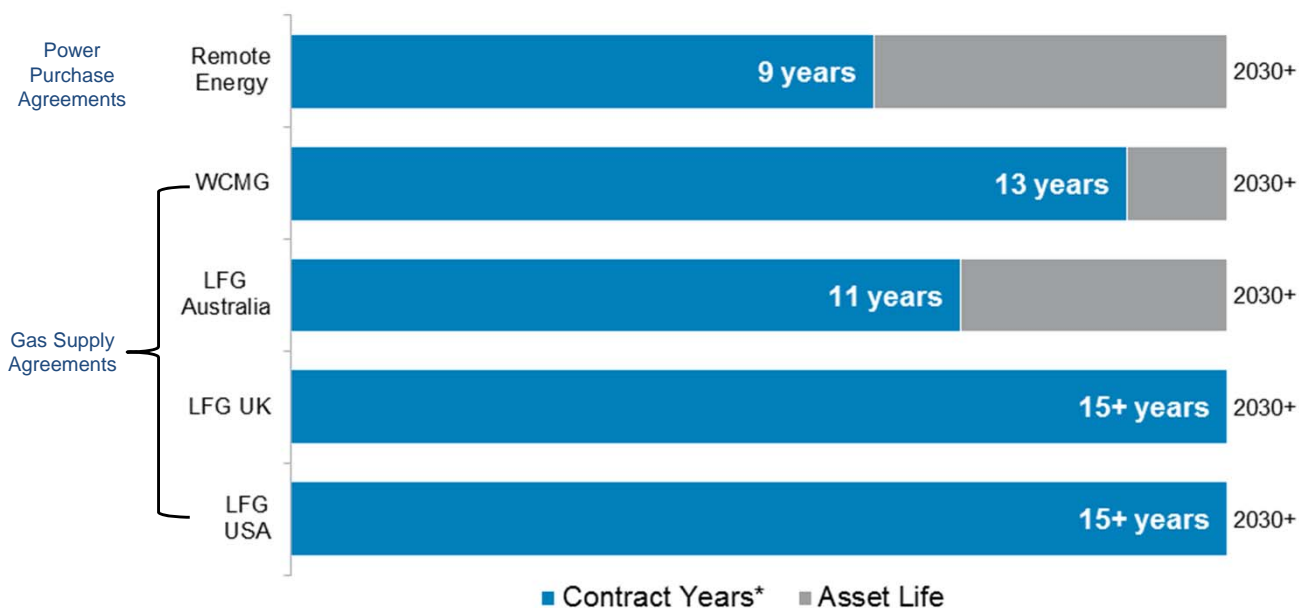
- Ability for DDG and EDL to provide complete gas infrastructure and power generation solution to remote sites
  - For example, gas transmission laterals to gas fired remote generation
- Complementary expertise:
  - Understanding of gas and remote energy infrastructure
  - Enhanced capability in managing large customers
  - Contracting/recontracting skills
  - Project development and management

# Long dated contracts

Expected to deliver highly predictable cashflow

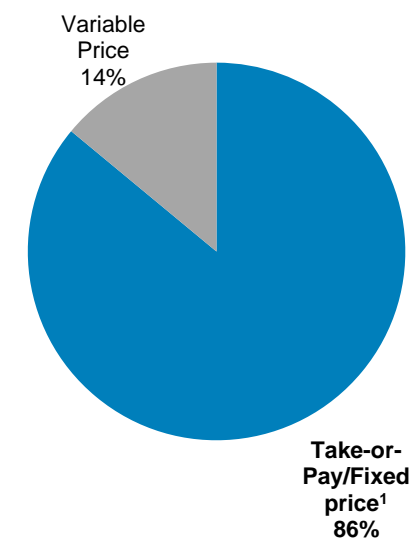


## EDL Weighted Average Contractual Years and Asset Life



## EDL FY15 revenue (%)

**86% of revenues  
Take-or-Pay/Fixed Price based**



1. Refer to Appendix A (Key Risks) and Appendix H (Definition of Key Terms) for a definition of contract attributes

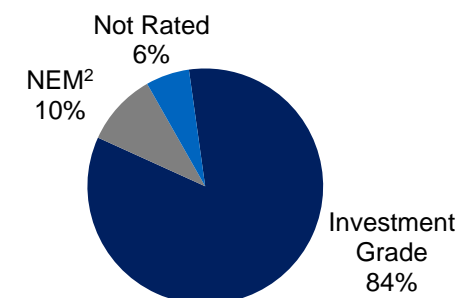
\* As at 30 June 2015. Based on PPA maturity date for Remote Energy, GSA/LFGA maturity for WCMG and LFG

# Strong record of recontracting with bluechip customers



- Reflects the benefit of incumbency – assets and people on the ground
- Strong relationships with large scale customers (26 in total)
- 147MW recontracted over the last 12 months<sup>1</sup> with weighted average contract extension of 11 years
  - More than >550MW of contracts extended over the last 4 years
- Recontracting actively pursued in advance of contract expiry
  - EDL well advanced with negotiations regarding upcoming contract maturities

Counterparty credit ratings by MW installed



## Remote Energy



## Waste Coal Mine Gas



## Landfill Gas



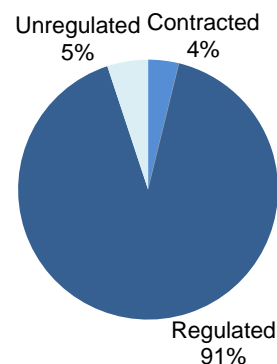
1. 12 month period ended 31 December 2014  
 2. National Electricity Market

# Enhanced cash flow diversity

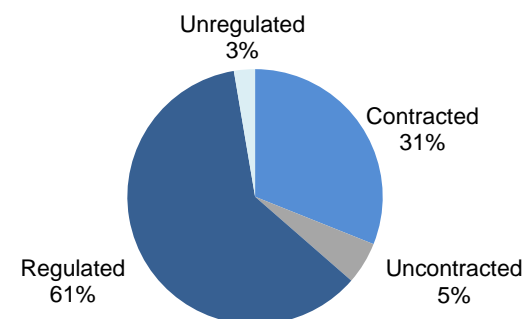
## Group Proportionate Revenue

By type, %

**DUET Current <sup>1</sup>**



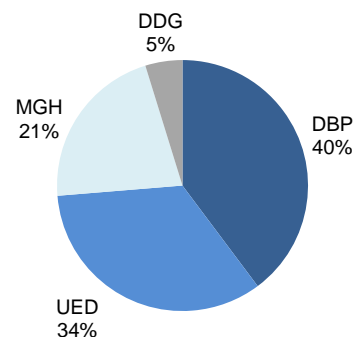
**Pro Forma with EDL <sup>2</sup>**



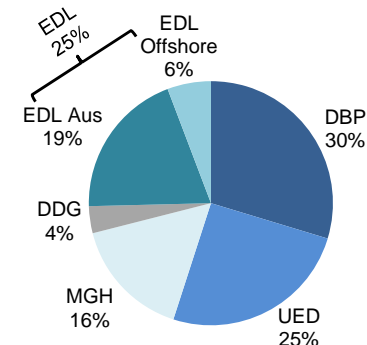
## Group Proportionate EBITDA<sup>3</sup>

By business, %

**DUET Current<sup>1</sup>**



**Pro Forma with EDL <sup>2</sup>**



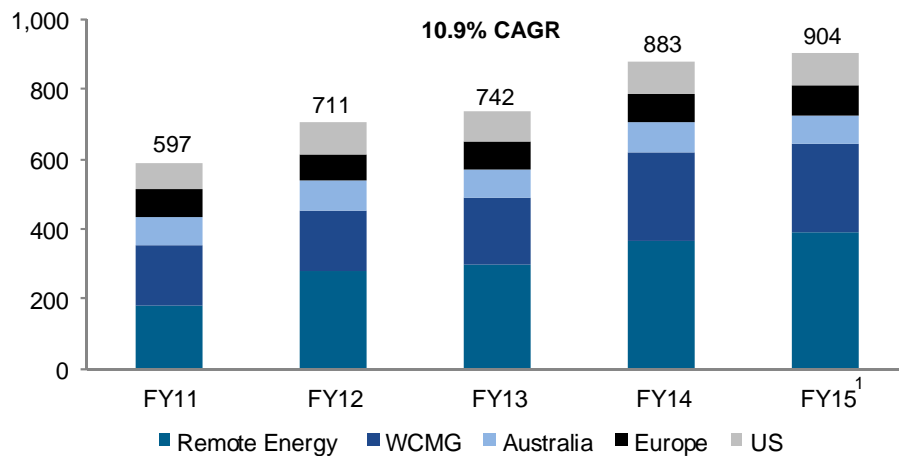
1. Based on DUET Group 1H15 results and pro forma HY run rate contribution from DDG. DBP is not treated as contracted for purposes of this analysis
2. Includes EDL 1H15 results and expected HY equivalent results from existing DDG projects
3. EBITDA is prior to corporate costs

# Track record of delivering growth

- ~\$440m investment made by EDL over FY11 – FY15 period on growth projects

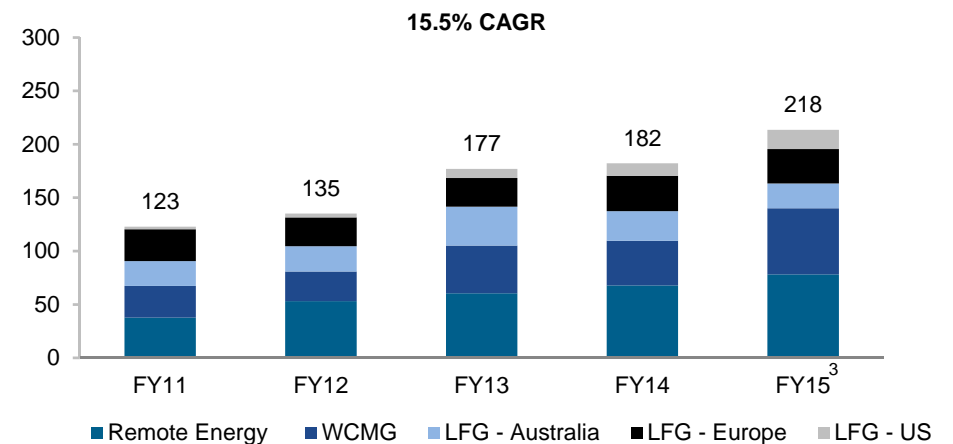
## Installed generation capacity

By business unit, MW



## EBITDA

By business unit<sup>2</sup>, \$m



- Installed capacity as at 31 March 2015, includes 27MW which are operated and maintained only. Includes 50% of 24MW that is owned via a Greek joint venture
- Corporate, development and operations support costs apportioned by business unit Operating EBITDA
- Based on EDL's updated unaudited FY15 EBITDA guidance of \$218m, as notified to the ASX today

# Growth prospects

## Waste Coal Mine Gas

- Add capacity at existing sites to fully utilise gas flows and match mine plan
- Potential to develop power hubs (e.g. Bowen Basin region)

## Land Fill Gas

- Add capacity to match increasing gas flows from large open sites
- Potential for bolt-on acquisitions

## Remote Energy

- Acquire and develop adjacent infrastructure on existing sites
- Develop distributed generation to support existing electricity distribution networks
- Development of power islands (e.g. recently announced Coober Pedy project)

## EDL is well placed to capture this future growth through:

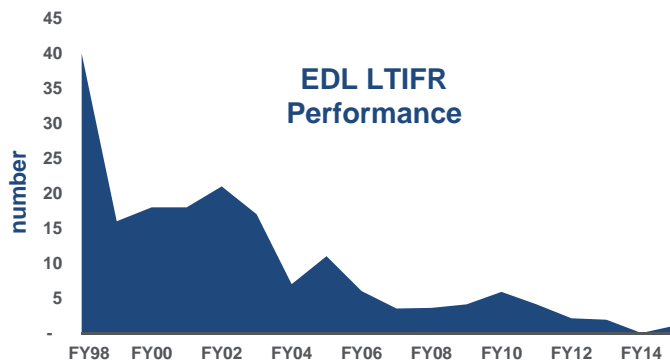
- Strong commercial and operating relationships with key customers
- Incumbency provides competitive advantage for brownfield expansions on existing sites
- EDL seeks to leverage its relationships to be the 'provider of choice' when customers develop new sites (sub 100MW sector)



# Proven operational expertise

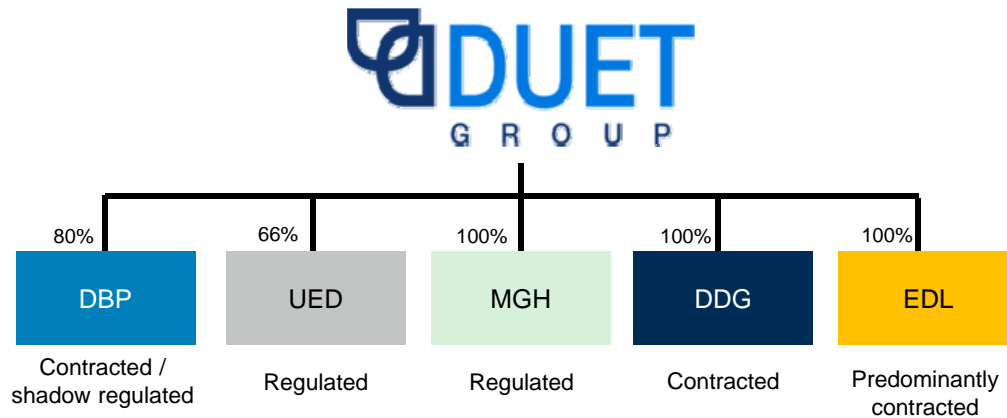


- Strong operating culture with established systems and processes
- Pioneered modular engine approach: matching generation capacity with gas load
- Limited number of engine types deployed
  - Workforce mostly broadly skilled, providing maintenance of standardised equipment
  - Centralised control, asset management and maintenance increases efficiency and reduces risk
  - Optimised approach to engine maintenance frequency based on Condition Based Monitoring
- Significant improvement in health and safety performance



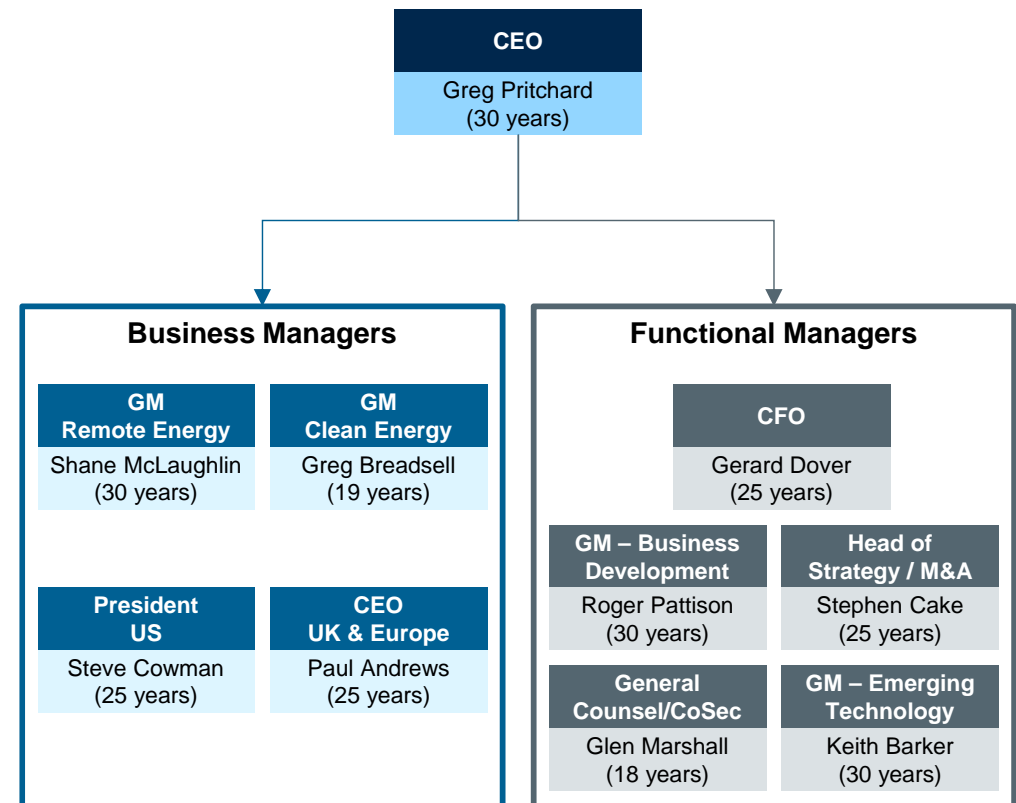
# Integration Plan

EDL will be managed as a standalone DUET business



- EDL has well established reporting lines and governance arrangements
- DUET senior management will be actively involved in EDL operations and governance
- DUET will have full control of EDL operations, cashflow and capital management decisions
- An appropriate retention and incentive package has been put in place to retain and incentivise key EDL executives post completion

## EDL's current management structure<sup>1</sup>



<sup>1</sup>. Denotes years of industry experience

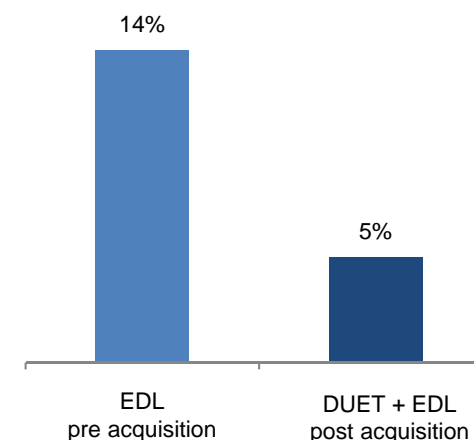
# Risk Management Plan

DUET's approach is expected to improve cash flow predictability

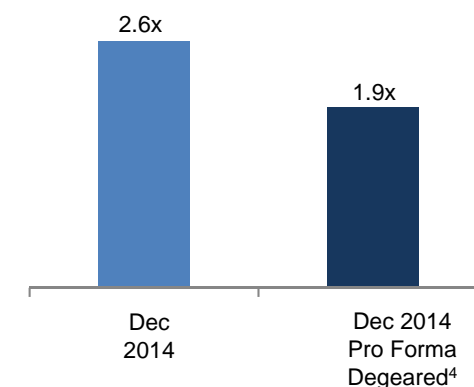


- DUET intends to implement medium term price hedging for EDL's current variable merchant volumes to enhance EDL's overall cash flow predictability
  - FY15 unhedged Variable Price exposure represents 14% of EDL's revenue and 5% of DUET's revenue<sup>1</sup>
  - Variable Price exposure is intended to be hedged post acquisition
- Interest rate exposures to be hedged
- Foreign exchange exposures to be hedged
- EDL's debt facilities will be refinanced on attractive underwritten terms
  - EDL will be degearred by \$150 million to create an investment grade profile
  - Provides balance sheet flexibility for growth opportunities

**EDL Variable Price<sup>2</sup> Revenue**  
as % of Total Revenue<sup>1</sup>  
(FY15)



**EDL Net Debt/EBITDA<sup>3</sup>**  
(last 12 months)



<sup>1</sup> Based on DUET Group and EDL unaudited FY15 revenue

<sup>2</sup> Refer Appendix H (Definition of Key Terms)

<sup>3</sup> Net Debt/EBITDA based on net debt at 31 December 2014 and 12 months EBITDA to 31 December 2014

<sup>4</sup> EDL Pro Forma Net Debt/EBITDA in 3 above, adjusted for the \$150m degearing

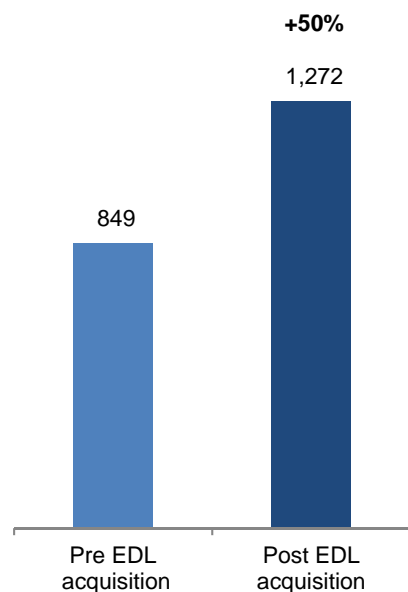
# Transaction impact on DUET

Pro forma financial information



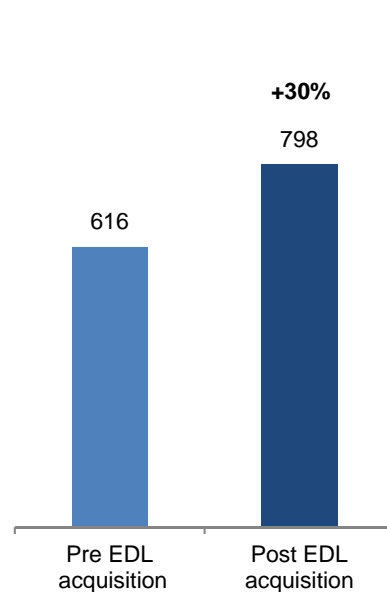
## Group Proportionate Revenue<sup>1</sup>

\$m



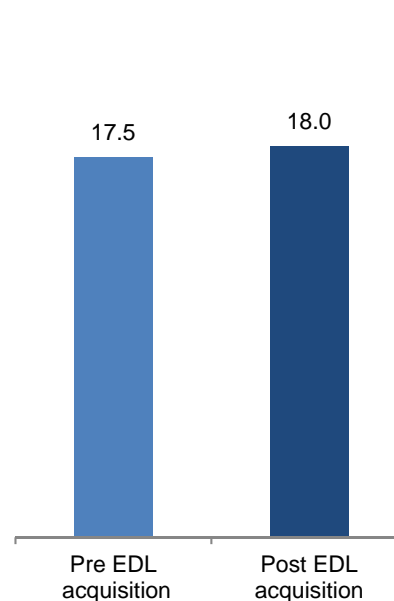
## Group Proportionate EBITDA<sup>1</sup>

\$m



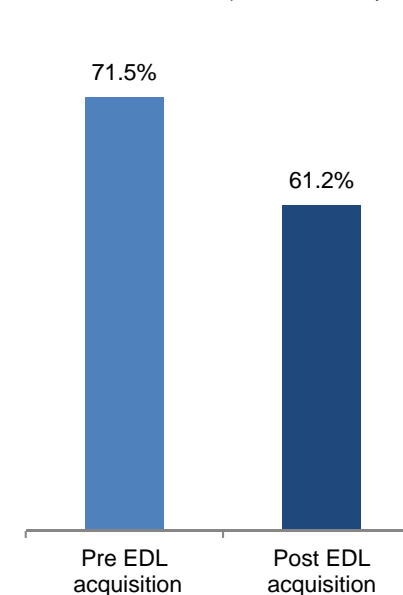
## FY16 Distribution Guidance<sup>2</sup>

cpss



## Gearing<sup>3</sup>

Consolidated Net Debt/(Net Debt + Equity), %



1. Based on FY14 reported results
2. Forward looking statements by their very nature are subject to uncertainties and contingencies, many of which are outside the control of DUET. Refer to Appendix B (Distribution Guidance Key Assumptions) and Appendix A (Key Risks)
3. Refer to Appendix F3 (Pro forma Statutory Consolidated Balance Sheet)

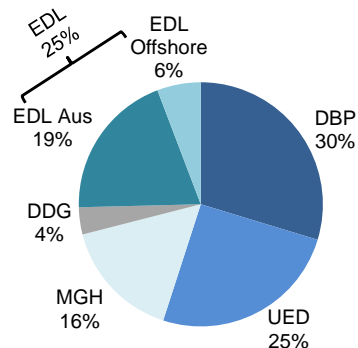
# Diversity, Growth and Accretion

Attractive opportunity with manageable risks under DUET ownership



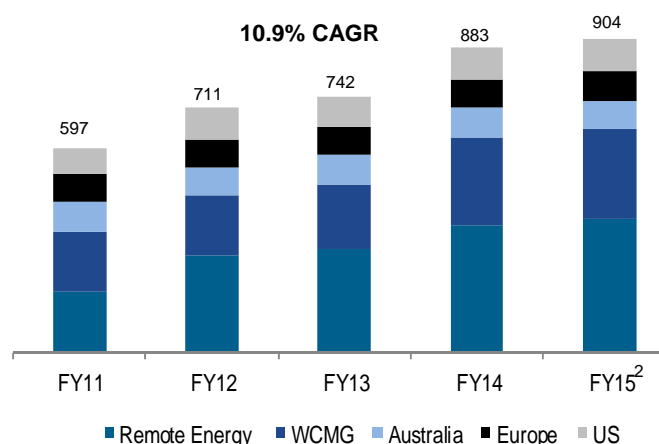
## EDL enhances Group DIVERSITY

EBITDA, pro forma, DUET with EDL<sup>1</sup>



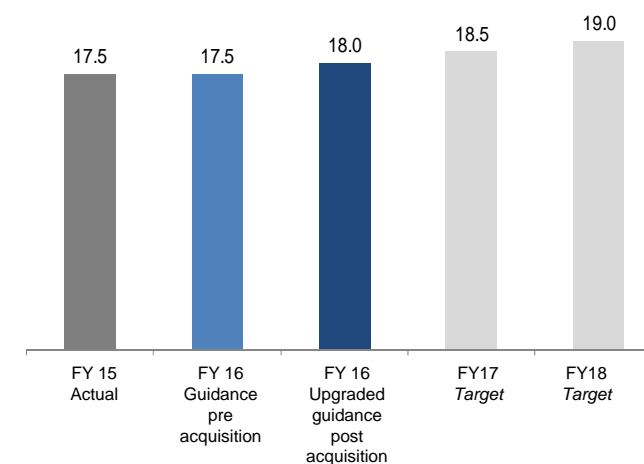
## EDL provides GROWTH opportunities

EDL installed generation capacity, by business unit, MW



## EDL is immediately ACCRETIVE<sup>3</sup>

DUET Group distributions, cps<sup>4</sup>



## Manageable Risk Profile

| EDL Business Unit                                      | Remote Energy  | Waste Coal Mine Gas   | Landfill Gas  |   |   |
|--|--|---|---|---|---|
| Location   | Australia  | Australia   | Australia   | US  | UK  |
| Key risks  | <ul style="list-style-type: none"> <li>Recontracting</li> <li>Counterparty risk</li> <li>Operational complexity</li> </ul>   | <ul style="list-style-type: none"> <li>Gas flow / generation volume</li> <li>Wholesale electricity pricing</li> <li>Green credit pricing/policy</li> </ul>  | Gas flow / generation volume  |   |   |
|  |  |   | <ul style="list-style-type: none"> <li>LGC pricing</li> <li>Wholesale electricity pricing</li> </ul>  | <ul style="list-style-type: none"> <li>Renewable Energy pricing/policy</li> <li>FX fluctuations</li> </ul>  | <ul style="list-style-type: none"> <li>Renewable Energy pricing/policy</li> <li>FX fluctuations</li> </ul>  |
| Key Risk Mitigants (today and/or under DUET ownership) | <ul style="list-style-type: none"> <li>Incumbency</li> <li>Good relationships with large, creditworthy customers</li> <li>Strong recontracting track record</li> <li>Strong operations and safety performance</li> </ul> | <ul style="list-style-type: none"> <li>Active engagement with mine owner to forecast gas flow</li> <li>Modular generation capacity to match actual gas flow rates</li> <li>Electricity price hedging</li> </ul> | <ul style="list-style-type: none"> <li>Active engagement with site owner to forecast gas flow</li> <li>Legislated 2020 RET target</li> <li>Electricity price and FX hedging</li> </ul>                |   |   |
|  |  |   | <ul style="list-style-type: none"> <li>Active engagement with site owner to secure/increase predictability of gas flow and generation capacity</li> <li>Long-term PPAs</li> <li>FX hedging</li> </ul> | <ul style="list-style-type: none"> <li>Active engagement with site owner to secure/increase predictability of gas flow and generation capacity</li> <li>Legislated renewable pricing</li> <li>FX hedging</li> </ul> | <ul style="list-style-type: none"> <li>Active engagement with site owner to secure/increase predictability of gas flow and generation capacity</li> <li>Legislated renewable pricing</li> <li>FX hedging</li> </ul> |

1. Based on DUET and EDL 1H15 results and pro forma HY run rate contribution from DDG

2. As at 31 March 2015

3. From financial close, expected in October 2015, subject to EDL shareholder approval, court approval and other necessary approvals and conditions precedent

4. Forward looking statements by their very nature are subject to uncertainties and contingencies, many of which are outside the control of DUET. Refer to Appendix B (Distribution Guidance Key Assumptions) and Appendix A (Key Risks)

# Details of the capital raising



|  |  |              |                           |              |
|--|--|--------------|---------------------------|--------------|
| <b>Placement and Offer size and structure</b>  | <ul style="list-style-type: none"> <li>▪ \$550 million fully underwritten placement at \$2.02 per new stapled security (Placement Price)</li> <li>▪ Fully underwritten 1 for 2.69 accelerated pro-rata non-renounceable entitlement offer to raise approximately \$1,122 million (Offer)</li> <li>▪ Approximately 828 million new stapled securities (New Stapled Securities) to be issued (equivalent to 55.4% of current issued stapled securities)</li> </ul> |              |                           |              |
| <b>Offer Price</b>                             | <ul style="list-style-type: none"> <li>▪ \$2.02 per new stapled security (Offer Price)</li> <li>▪ 15.1% discount to the last traded price of \$2.38 on 17 July 2015</li> <li>▪ 10.3% discount to TERP (\$2.25<sup>1</sup>)</li> </ul>  |              |                           |              |
| <b>Retail Entitlement Offer</b>                | <ul style="list-style-type: none"> <li>▪ Eligible Retail Stapled Securityholders may also apply for additional New Stapled Securities in excess of their Entitlement up to a maximum of 100% of their Entitlement</li> </ul>   |              |                           |              |
| <b>Use of proceeds</b>                         | <b>Source of funds (\$m)</b>   |              | <b>Use of funds (\$m)</b> |              |
|  | Institutional placement  | 550          | EDL acquisition           | 1,407        |
|  | Entitlement offer  | 1,122        | EDL degearing             | 150          |
|  |  |              | Transaction costs         | 95           |
|  |  |              | Working capital           | 20           |
|  | <b>Total sources</b>   | <b>1,672</b> | <b>Total uses</b>         | <b>1,672</b> |
| <b>Distribution guidance and growth target</b> | <ul style="list-style-type: none"> <li>▪ Updated FY16 guidance<sup>2</sup> of 18.0 cpss</li> <li>▪ Represents a yield of 8.9% based on the underwritten Offer Price of \$2.02<sup>3</sup></li> <li>▪ Distribution growth target established to FY18</li> </ul>   |              |                           |              |
| <b>Ranking</b>                                 | <ul style="list-style-type: none"> <li>▪ New stapled securities issued will rank pari passu with existing stapled securities<sup>4</sup></li> </ul>  |              |                           |              |

1. TERP reflects the impact of all New Stapled Securities issued (including the Offer and the Placement)

2. Distribution guidance is subject to DUET's assumptions being met. Please refer to Appendix A (Key Risks) and Appendix B (Distribution Guidance Key Assumptions)

3. Based on FY16 distribution guidance of 18.0 cpss

4. New Stapled Securities issued under the Placement and Entitlement Offer will not be eligible to receive DUET's final FY15 distribution of 8.75 cpss that is expected to be paid on 20 August 2015

# Offer Timetable



| Event  | Date <sup>1</sup>                     |
|--|---------------------------------------|
| <b>Announcement of the Offer</b>   | <b>Monday, 20 July 2015</b>           |
| Placement and Institutional Entitlement Offer  | Monday, 20 to Tuesday, 21 July 2015   |
| Stapled Securities recommence trading on ASX on an 'ex-entitlement' basis  | Wednesday, 22 July 2015               |
| Record date for determining entitlement to subscribe for New Stapled Securities  | 7.00pm, Thursday, 23 July 2015        |
| <b>Retail Entitlement Offer opens</b>  | <b>Friday, 24 July 2015</b>           |
| Retail offer booklet despatched  | Tuesday, 28 July 2015                 |
| Early Retail Acceptance Date   | 5.00pm, Thursday, 30 July 2015        |
| Settlement of Placement and Institutional Entitlement Offer and New Stapled Securities issued under the Retail Entitlement Offer <sup>1</sup>                          | Friday, 31 July 2015                  |
| <b>Initial allotment and normal trading of New Stapled Securities under the Placement and Institutional Entitlement Offer and Retail Entitlement Offer<sup>1</sup></b> | <b>Monday, 3 August 2015</b>          |
| <b>Retail Entitlement Offer closes</b>   | <b>5.00pm, Monday, 10 August 2015</b> |
| Final allotment of remaining New Stapled Securities  | Monday, 17 August 2015                |
| Despatch of holding statements and normal trading of remaining New Stapled Securities issued under the Retail Entitlement Offer  | Tuesday, 18 August 2015               |
| Expected scheme meeting  | October 2015                          |
| Expected financial close <sup>2</sup>  | October 2015                          |

Note: All dates and times referred to are based on Sydney time and are subject to change. DUET reserves the right to vary these dates or to withdraw the Offer at any time

1. For BPAY® applications received by the Early Retail Acceptance Date

2. Refer to Appendix A2 (Key Risks – Proposed Acquisition). This date may be delayed by up to 6 months after the date of announcement of the Offer, subject to variables such as the satisfaction of conditions precedent

# FY15 Performance Preview

|  | EBITDA <sup>1</sup> |   | Adjusted EBITDA less Interest <sup>1</sup> |                                     |               |
|--|---------------------|---|--|-------------------------------------|---------------|
| (\$m, 100%)                            | FY14A               | FY15F                                   | FY14A                                      | FY15F                               | FY15 Guidance |
| DBP                                    | 349                 | 313 to 317                              | 121  | 128 to 132                          | 112           |
| United Energy                          | 334                 | 357 to 361                              | 186  | 204 to 208                          |               |
| Multinet Gas                           | 123                 | 120 to 124                              | 65   | 68 to 72                            |               |
| DDG                                    | 2                   | 7 to 11                                 | 4  | 8 to 12                             |               |
| <b>Total DUET Operating Companies</b>  | 807                 | <b>798 to 814</b><br>(Down 1% to Up 1%) | 377  | <b>408 to 424</b><br>(Up 8% to 12%) |               |
| <b>Energy Developments<sup>2</sup></b> | 182                 | <b>218</b><br>(Up 20%)                  |  |                                     |               |

- Audited FY15 results will be released in August 2015
  - Energy Developments: 17 August 2015
  - DUET Group: 21 August 2015

1. EBITDA and Adjusted EBITDA less net external interest are as defined in DUET's MIR. Results consist of: (i) interim results reported for the 6 months to 31 December 2014; (ii) results from the respective operating company management accounts for the 6 months to 30 June 2015

2. As released by EDL to the ASX on 20 July 2015 consisting of: (i) interim results reported for the 6 months to 31 December 2014; (ii) results from management accounts for the 6 months to 30 June 2015



# Summary and Outlook

- Immediately accretive acquisition<sup>1</sup>
  - Upgraded FY16 DUET distribution guidance<sup>2</sup>
  - Distribution growth target established<sup>2</sup>
- Strong strategic fit
  - Predictable, long term, contracted revenues
  - Increased diversity of cash flows
  - Full control of operations and cashflow
- EDL - market leader in core markets
  - Strong customer relationships and recontracting history
  - Incumbency
  - Strong operating track record
- Attractive growth potential across all of EDL's businesses
- DUET continues to actively look for other accretive opportunities to develop and/or acquire energy infrastructure<sup>3</sup>



1. From financial close, expected in October 2015, subject to EDL shareholder approval, court approval and other necessary approvals and conditions precedent

2. Forward looking statements by their very nature are subject to uncertainties and contingencies, many of which are outside the control of DUET. Refer to Appendix B (Distribution Guidance Key Assumptions) and Appendix A (Key Risks)

3. Any significant successful opportunities are likely to require further capital contributions from DUET, possibly involving the raising of additional capital

# Appendix A1

## Key Risks – DUET Group



Appendix A discusses some of the key risks associated with an investment in DUET Group (A1), the Proposed Acquisition (A2) and an investment in EDL (which will become a DUET Group risk if the Proposed Acquisition is successful) (A3). Before investing in the New Stapled Securities, you should consider whether the investment is suitable for you. You should consider publicly available information on DUET (both in its current form and if the Proposed Acquisition is successful) and EDL (such as that available on the websites of DUET, EDL and the ASX), carefully consider your personal circumstances and decide if you should consult with your stockbroker, lawyer, accountant or other professional adviser before making an investment decision. DUET's financial performance, distributions and the market price of Stapled Securities may be adversely affected, sometimes materially, by a number of risk factors. These risks include, but are not limited to, the risks set out in this Appendix.

### CURRENT DUET GROUP RISKS

#### Regulatory risk

DUET Group operates in regulated industries and carries out its business activities under various permits, licences, approvals and authorities from regulatory bodies. Regulatory bodies are responsible for setting tariffs which directly impact a significant proportion of the DUET Group's revenue and therefore any adverse change to regulatory tariffs would negatively impact DUET's revenues, which in turn could affect DUET's ability to pay distributions to Stapled Security Holders. In addition, if any permits, licences, approvals or authorities are revoked, or if DUET breaches its permitted operating conditions, this would adversely impact DUET's operations and profitability. DUET's operating companies (namely United Energy, DBP, Multinet Gas (together, "Operating Companies")) must satisfy a prudency test for network and non-network expenditure (including expenditure related to the roll-out of advanced metering infrastructure) to be recovered through the regulatory revenue mechanism. There is a risk that despite expenditure being incurred by DUET's Operating Companies, the recovery of this expenditure may be disallowed by the relevant regulatory body.

Regulatory determinations affecting DUET's Operating Companies over the coming years include:

- United Energy's 2016-2020 Electricity Distribution Price Review and Advanced Metering Infrastructure Price Review by the Australian Energy Regulator ("AER") with a draft determination of the former expected in October 2015;
- The outcome of the NSW electricity distributors' appeal of their 2015–2020 regulatory resets to the Australian Competition Tribunal, as it may create a precedent for future DUET Group Operating Company regulatory resets. United Energy is considering intervening in the NSW electricity distribution appeal process with the aim of protecting its rights in future regulatory decisions;
- Multinet Gas' 2018 – 2022 Gas Access Arrangement Review by the AER; and
- Dampier to Bunbury's 2016-2020 Gas Access Arrangement Review by the Economic Regulation Authority of Western Australia ("ERA"), with a draft ERA determination expected in Q42015.

#### Project development risk

Normal approvals risks associated with the construction and operation phases of greenfield development projects include four main categories of approvals, namely those related to native title, land access (including easements), pipeline licence and environmental matters. Should any delays be encountered in obtaining those approvals this may adversely affect DUET's return on DDG development projects. There is also a risk that the actual cost of projects exceed the budgeted and recoverable amounts, which may also impact DUET's returns.

#### Health and safety claims

Failure to implement effective workplace health and safety (WHS) and public safety procedures at DUET's Operating Companies would give rise to WHS and/or public safety risks which in turn may create reputational or regulatory risk. United Energy has been, and may in future be, subject to asbestos related claims resulting from historical activities on the electricity distribution network.

#### Risk of co-ownership

Each of DBP and UED have minority co-owners. This imposes restrictions which would not apply if DUET owned 100% of DBP and UED, including in relation to changes in the relevant Operating Company business plan, dividend policy, share capital, borrowings and capital expenditure. DBP's and UED's minority co-owners also have pre-emptive and default rights to acquire DUET's interests in the Operating Companies in certain circumstances. Periodic investments in DBP and United Energy will require approval of their relevant minority co-owners.

# Appendix A1

## Key Risks – DUET Group (cont'd)



### **Operating and capital expenditure**

Unforeseen operating expenses could adversely affect the cash flows available from the Operating Companies. Expenses associated with regulatory change (including change to interpretations or requirements for compliance by regulators), major network incidents or disruptions could result in additional expenses being incurred. Increased capital expenditure by the Operating Companies may reduce DUET's ability to make distributions to Stapled Security Holders. The forecasts relating to the Operating Companies are based on certain assumptions (which may differ from actual events) regarding the level of capital expenditure required to maintain the assets, meet demand from their customers and regulatory requirements, and connect new customers.

### **Senior debt distribution lock up**

The Operating Companies' senior debt facilities provide for certain circumstances in which Operating Companies could be prevented from paying distributions and interest to DUET, such as when cash flows are not sufficient to comply with the respective interest coverage ratio (ICR) covenant. This could impact on the cash available for distributions to Stapled Security Holders.

### **Refinancing and credit ratings**

The Operating Companies maintain credit ratings with recognised credit rating agencies. The Operating Companies also have significant external borrowing commitments and regularly raise and refinance debt in domestic and global markets. There is a risk that credit rating agency criteria may change in the future resulting in credit rating downgrades for one or more of the Operating Companies. Any downgrade would increase the cost of borrowing and/or impact the availability of certain capital markets for their funding needs and could require the Operating Company to reduce distributions to DUET and hence to Stapled Security Holders.

### **Climate and demand risks**

Changes in weather patterns as a result of climate change could have an adverse effect on the DUET Group's Operating Companies (such as the impact on UED's electricity distribution business of an increase in the frequency and duration of storms and weather conditions in Western Australia delaying future DDG development projects) increasing both capital and operating costs. Volumes carried on the networks may vary due to weather conditions (as well as due to other factors such as changes in industrial use, seasonality, general economic conditions, government policy, the use of competing sources of energy or customers bypassing the distribution network or pipeline). Reductions in volume generally reduce revenue. However, a high proportion of DBP's revenue is not affected by volume, and United Energy and Multinet Gas are compensated for the effect of any projected volume reductions at each regulatory reset date.

### **Counterparty risk**

DUET and its Operating Companies are exposed to credit-related losses if counterparties to contracts (including counterparties to derivative instruments which DUET and its Operating Companies use to manage financial and commodity price risks) fail to meet their obligations. This could occur if a gas shipper, retailer, co-owner or operating partner were to become insolvent or not meet its financial obligations to DUET and/or the Operating Companies, including relinquishment or termination of contract terms (for DBP Shippers, see ASX release dated 7 August 2014).

### **Litigation, disputes and default**

There is a risk that DUET will become involved in litigation or disputes, which could adversely affect financial performance. Further, if DUET and/or its Western Australian Operating Companies default on certain obligations, certain shippers may have recourse to parent company guarantees from DIHL and may step-in as operator or buy out the relevant gas transmission pipeline at a pre-determined price.

# Appendix A1

## Key Risks – DUET Group (cont'd)



### **Cancellation of licence**

If an Operating Company breaches its licence, including its network performance obligations, it may be subject to a financial penalty, or, in the extreme, its licence may be subject to cancellation.

### **Employees**

DUET's continued success is dependent on the ability to recruit, train, retain and motivate senior executives and employees. There is a risk that DUET may be unable to attract or retain key personnel and specialist skills and may lose corporate memory.

### **Interest rates**

The risk that changes in the Operating Companies' credit ratings, prevailing market interest rates and the strength of capital markets will influence the Operating Companies' interest costs and their ability to refinance debt respectively.

### **Inflation**

Lower than expected inflation rates generally or specific to the sectors in which DUET operates could reduce the rate of increase in inflation-linked revenues. Higher than expected inflation is likely to increase operating and development costs. Such changes could adversely impact DUET's financial performance.

### **Tax**

The risk that changes in tax law (including goods and services taxes and stamp duties), or changes in the way tax laws are interpreted in the various jurisdictions in which DUET operates, may impact the tax liabilities of DUET and its Operating Companies.

### **Changes in law, accounting standards or policy**

DUET and its Operating Companies are subject to the usual business risk that there may be changes in law, regulations, accounting standards or their own accounting policies which may have an adverse impact on them.

### **ASX Listing**

The members of the DUET Group being listed on ASX imposes various listing obligations with which they must comply on an ongoing basis. Whilst they must comply with their listing obligations, there can be no assurance that the requirements necessary to maintain the listing of New Stapled Securities will continue to be met or will remain unchanged.

### **Stapled structure**

There are inherent risks associated with a stapled structure. For example, the boards of the various stapled entities comprising the DUET Group may not agree on certain matters that involve the approval of all of these boards.

### **No assurance of distributions on securities**

DUET's future distribution levels will be determined having regard to future operating results and financial position of the Operating Companies and of DUET, and are not guaranteed. There can be no assurance that any distributions will be paid or, if paid, that they will be paid at previous levels or consistent with any distribution guidance.

### **No assurance of liquidity or trading price**

There can be no assurance that the Stapled Securities will trade at any particular price or as to liquidity of trading or that any capital growth in the Operating Companies will translate into a higher price at which the Stapled Securities trade. The historical performance of Stapled Securities provides no guidance as to the future performance of Stapled Securities.

# Appendix A1

## Key Risks – DUET Group (cont'd)



### Other factors

Other factors that may impact on performance include changes or disruptions to political, regulatory, legal or economic conditions or to the national or international financial markets, including as a result of terrorist attacks or war.

### Market risks

The price at which New Stapled Securities trade on ASX may be determined by a range of factors, in addition to those detailed above, for example:

- changes to local and international stock markets;
- changes in interest rates;
- changes to the relevant indices in which the DUET Group may participate, the weighting that DUET has in the indices and the implication of those matters for institutional investors that impact their investment holdings in New Stapled Securities;
- global geo-political events and hostilities;
- investor perceptions;
- changes in government, fiscal, monetary and regulatory policies; and
- demand and supply of listed infrastructure and utility securities.

### General economic conditions

DUET's operating and financial performance is influenced by a variety of general economic and business conditions, including interest rates, exchange rates, inflation rates, commodity prices, ability to access funding, oversupply and demand conditions, government fiscal, monetary and regulatory policies, changes in gross domestic product and economic growth, employment levels and consumer spending, consumer and investment sentiment and property market volatility. Prolonged deterioration in these conditions, including an increase in interest rates, a reduction in the rate of inflation, an increase in the cost of capital or a decrease in consumer demand, could have a materially adverse impact on DUET's operating and financial performance.

# Appendix A2

## Key Risks – Proposed Acquisition



### **Risk that material issues may not have been identified by due diligence investigations**

DUET has undertaken financial, operational, asset condition, business and other analysis in respect of EDL and its key sites in order to determine its attractiveness to DUET and whether to pursue the Proposed Acquisition. It is possible that the analysis undertaken by DUET, and the best estimates assumptions made by DUET, draw conclusions and forecasts which are inaccurate or which are not realised in due course (whether because of flawed methodology, misinterpretation of economic circumstances, differing actual plant capacity factors and gas curves from those assumed, or otherwise).

To the extent that the actual results achieved by EDL are weaker than those indicated by DUET's analysis, there is a risk that there may be an adverse impact on the financial position and performance of DUET.

### **Completion risks**

Completion of the Proposed Acquisition is conditional on certain matters including EDL shareholder approval, court approval and other necessary approvals and conditions precedent (including some counterparty consents and cancellation of EDL options and performance rights) being satisfied within 6 months after the date of announcement of the Offer. If any of the conditions are waived and the Proposed Acquisition proceeds, there may be an adverse impact on the financial position and performance of EDL and DUET. If any EDL options or performance rights are not cancelled by the completion date, the options may be the subject of compulsory acquisition under Part 6A.2 of the Corporations Act. If any of the conditions are not satisfied or waived within that time, the Proposed Acquisition may not proceed or may be delayed. If this occurs, DUET will consider ways to return the proceeds (net of transaction costs) of any subscriptions received from holders of Stapled Securities under the placement and Offer. Subject to consideration at the relevant time, DUET expects that those proceeds will be returned to holders of Stapled Securities by way of a distribution of capital from DUET Finance Trust and an equal capital reduction by DUET Company Limited, DUET Investment Holdings Limited and DUET Finance Limited. In that case, the relevant amounts will be paid to all holders of Stapled Securities pro rata (whether or not they participated in the placement or the Offer), investors who have paid subscription money under the placement or the Offer will not receive their full subscription price and will retain the Stapled Securities issued to them under the placement or the Offer, and the investment of existing holders of Stapled Securities who do not participate in the Offer will remain diluted. Failure to complete the Proposed Acquisition and/or any action required to be taken to return capital to holders of Stapled Securities may have a material adverse effect on DUET's financial performance, financial position and Stapled Security price.

Either party may terminate the Scheme Implementation Deed if certain events occur, including a material breach or breach of a material term of the Scheme Implementation Deed by the other party. EDL may terminate the Scheme Implementation Deed in some circumstances where a majority of EDL directors publicly: (a) withdraw or adversely change their recommendation or voting intention; or (b) recommend a competing proposal. A.C.N. 607 005 685 Pty Limited may terminate the Scheme Implementation Deed if (among other things) there is a material adverse change in relation to EDL's consolidated net assets or earnings which meets the definition of an 'Emperor Material Adverse Change' in the Scheme Implementation Deed, or an EDL director publicly: (a) withdraws or adversely changes his or her recommendation or voting intention; or (b) recommends a competing proposal. In all of these circumstances the Proposed Acquisition would be unlikely to proceed and DUET may incur significant costs and be exposed to material liabilities.

### **Post acquisition performance**

If the Proposed Acquisition is successful EDL will become an 'Operating Company' of DUET. In that case, the risks identified above in relation to DUET's Operating Companies – including 'Health and safety claims', 'Operating and Capital Expenditure', 'Senior Debt distribution lock up', Refinancings and credit ratings', 'Climate and Demand Risks', Counterparty risk', Litigation and disputes and default' – will apply also to EDL and DUET's ownership of EDL.

### **Reliance on information provided**

DUET has undertaken a due diligence investigation process in respect of this acquisition and was provided with the opportunity to review certain detailed information provided by or on behalf of EDL and third parties. While DUET considers that this review was adequate, certain non-public information was provided by EDL and its advisers. Consequently, DUET has not been able to verify the accuracy, reliability or completeness of all the information which was provided to it against independent data and there is no assurance that the due diligence conducted was conclusive and that all material issues and risks in respect of the Proposed Acquisition have been identified. Similarly, financial information in respect of the Proposed Acquisition has been derived from audit reviewed and unaudited financial information. DUET is unable to verify the accuracy or completeness of this information. It should be noted that limited contractual representations or warranties have been obtained by DUET in respect of the adequacy and accuracy of information disclosed during the due diligence process. If any of the information provided by or on behalf of EDL or third parties as part of the due diligence process is shown to be incomplete, incorrect, inaccurate or misleading, this may consequently have an adverse impact on the actual performance of EDL compared to the performance expected of it as part of DUET's analysis and assessment of the Proposed Acquisition. This may therefore have an adverse impact on the financial position and performance of DUET.



# Appendix A2

## Key Risks - Proposed Acquisition (cont'd)



### Integration risk

The Proposed Acquisition involves a level of integration of businesses and infrastructure that have previously operated independently. There are risks that the integration of EDL may encounter unexpected challenges or issues including (but not limited to) delays in consents and approvals, diversion of management attention, or the acquisition does not deliver the benefits that were expected at the time the acquisition was agreed (or delivers benefits to a lesser extent than expected). A failure to fully integrate the operations of EDL, or a delay in the integration process, could impose unexpected costs that may adversely affect the financial performance and position of DUET.

### Debt funding risk

DUET has entered into underwritten financing arrangements with key relationship banks pursuant to which those banks have agreed to refinance the majority of EDL's existing corporate debt facilities and provide associated hedging arrangements. In the unlikely event of certain conditions precedent not being satisfied to enable financial close of those arrangements, the banks may terminate their obligation. This may have an adverse impact on the Proposed Acquisition in the event that other banks who may step into the shoes of the departing underwriting banks may not provide financing on equivalent terms or, in the case of no banks stepping into those shoes, that an existing lender or lenders to EDL do not consent to the change of control provisions that are triggered by the completion of DUET's acquisition of EDL under EDL's existing corporate debt facilities.

### ASX Listing

EDL is currently listed on the ASX and as such the price of EDL shares may fall before DUET's proposed acquisition is completed in circumstances where DUET may be unable to change the price it has agreed to pay for EDL shares.

### Equity raising and underwriting risk

DUET has entered into an underwriting agreement under which the two underwriters have agreed to fully underwrite the Offer, subject to the terms and conditions of the underwriting agreement between the parties. If certain conditions are not satisfied or certain events occur, the underwriters may terminate the underwriting agreement. Termination of the underwriting agreement would have an adverse impact on the proceeds raised under the Offer and DUET's sources of funding for the Proposed Acquisition. If the underwriting agreement is terminated DUET may not be able to complete the Proposed Acquisition, which may have a material adverse effect on DUET's financial performance, financial position and stapled security price.

The underwriters' obligations to underwrite the Offer are conditional on certain matters. The events which may trigger termination of the underwriting agreement include where:

- an event occurs which entitles a party to terminate the scheme implementation deed or a debt financing agreement under which financiers are to provide or arrange debt financing for certain of EDL's affiliates (Debt Financing Agreements), any of those documents are terminated or rescinded or found to be void or voidable, or a condition precedent to any party's obligations under any of those documents (in the reasonable opinion of an underwriter) becomes incapable of being satisfied;
- the scheme implementation deed or a Debt Financing Agreement for the Proposed Acquisition is altered or amended in any material respect without the underwriters' prior written consent;
- the provider of the debt funding under the Debt Financing Agreements or the provider of debt or other financial accommodation to certain of EDL's affiliates terminates or cancels its commitment to provide that financial accommodation (without a replacement provider stepping in to provide such accommodation), or the availability period of that financial accommodation expires without it being provided, or a condition precedent to drawdown of any part of that financial accommodation is not satisfied or waived or becomes incapable of being satisfied, in each case on or prior to the EDL acquisition taking effect;
- DUET is suspended from the official list of the ASX or its securities are suspended from that quotation;
- there is an adverse change or development in the condition, financial or otherwise or in the assets, earnings, business, operations, management or prospects of DUET or the Proposed Acquisition;
- subject to limited exceptions, DUET alters its capital structure;
- DUET or a subsidiary of DUET is or becomes insolvent;
- DUET contravenes its constituent documents, the Corporations Act, the ASX Listing Rules or other applicable law; or
- DUET's directors engage in fraud or commit certain offences.

The ability of the underwriters to terminate the underwriting agreement in respect of some events will depend on whether the event has or is likely to have a material adverse effect on the success, marketing or settlement of the Offer, or where they may give rise to liability for the underwriters.

# Appendix A3

## Key Risks - EDL Specific Risks



### **Regulatory risk**

EDL may be affected by changes in legislation, taxes, and governmental or regulatory policies. The introduction of, changes to or repeal of policy, legislation and regulations pertaining, but not limited, to schemes governing emissions trading and renewable energy incentives, may have a material impact on EDL's outlook and may also create uncertainty concerning EDL, which in turn may adversely affect EDL's share price. A number of such schemes currently exist in various jurisdictions in which EDL operates, including the Emissions Reduction Fund and the Australian Renewable Energy Target (for which legislation has been passed to reduce the 2020 renewable energy target from 41,000GW to 33,000GW). Further, transitional challenges may arise when EDL, and the markets in which it operates, need to transition from one existing legal framework to a new framework. It is not possible to accurately predict or quantify the potential impact of currently proposed legislative and regulatory changes on the operations, performance, profitability or prospects of EDL.

### **Electricity and Green Certificate price volatility**

While the majority of EDL's operations generate electricity under contract, EDL is exposed to spot pricing for black power where it may be unhedged at certain sites. Spot power prices fluctuate based on peak loading and market demand. A reduction in demand may affect EDL's revenues and subsequently impact the financial performance of EDL.

EDL generates green credits across a number of its sites, through the abatement of methane and the production of renewable electricity, and sells them under forward contracts and in spot markets. Green credit prices and market demand depth can fluctuate greatly and are subject to significant Government policy influence. A downturn in green credit prices and market depth may result in lower than expected prices being achieved, which in turn may have an adverse impact on the financial performance of EDL.

### **Contracting risk**

As a producer of electricity, EDL is exposed to production risks, risks that counterparties are not obliged to take a minimum amount of electricity (which could reduce EDL's expected revenue), as well as various risks associated with sourcing the 'raw materials' required for production – in particular gas supply rights. Interruption to EDL's supply chain or other operational incidents, may result in unplanned operational shutdowns. Such shutdowns may adversely affect EDL's financial performance. EDL is party to a number of long-term gas supply agreements at its sites. EDL's ability to secure long-term gas rights is a fundamental aspect of EDL's business. Failure to secure these rights following the contract end date may adversely affect EDL's performance. The majority of EDL's revenues are under long-term contracts. As these contracts approach expiry, EDL will be required to renegotiate the contracts with its counterparties. In the event that EDL is unable to secure the renewal of these contracts on favourable terms or at all, EDL's financial performance may be adversely affected. Further, a number of EDL's customers operate projects that may be shutdown or have their production levels reduced temporarily or permanently in the event of falls in commodity prices or economic downturns. There are also some contracts that have step-in and buy-out rights at pre-determined prices. This can result in early termination of long term agreements or payments that are lower than expected. Certain contracts may also terminate if contracts between third parties terminate or expire - EDL is not a party to these third party contracts and has no legal control over their termination.

### **Gas availability and quality**

Gas supply constraints or the quality of gas supplied could reduce generation and revenue in EDL's clean energy business or require the use of higher cost generation alternatives for EDL's remote energy business.

### **Health safety and environment**

Failure to implement effective workplace health and safety and environmental (OHSE) and public safety procedures at EDL's operations could give rise to OHSE and/or public safety risks which in turn may create reputational or regulatory risk.

### **Insurance**

EDL uses insurance as a means of transferring and mitigating certain business risks. Insurance market changes may result in certain types of insurance coverage historically used by EDL becoming unavailable, limited, or only being available at increased prices or with an increased deductible, and which may result in EDL incurring higher insurance costs or having a higher risk profile in future periods. Further, there are some business risks applicable to EDL which are uninsured, including where there is no available insurance coverage or no insurance coverage available on terms considered reasonable by EDL.



# Appendix A3

## Key Risks - EDL Specific Risks (cont'd)



### **Asset management and operating costs**

Asset management risk could impact operating costs and increase downtime, reducing revenue and earnings. Increases in operations and maintenance costs may occur for various reasons. In addition, unforeseen operating risks or incidents may result in additional maintenance costs to EDL. Additional unplanned maintenance costs may have an adverse impact on the financial performance of EDL.

### **Capital expenditure**

As EDL undertakes significant capital investments – for example through the expansion of existing site capacity – there is a risk that the actual cost of capital expenditure may be greater than the projected cost, adversely affecting the financial performance of EDL. There is also the risk that EDL may not be able to effect an expansion of an existing project as quickly as projected or for the same expenditure and cost as projected, which may adversely affect the financial performance of EDL.

### **Key personnel risk**

The successful operation of EDL depends in part upon the contribution and expertise of its management and employees. Therefore, should certain key people become unavailable and EDL cannot replace them or the specialist skills, this may adversely affect EDL's business and it may lose its corporate memory.

### **Disputes and litigation**

EDL may be exposed to potential legal claims, disputes and litigation in the future, with respect to its operations, suppliers or customers in the ordinary course of business. Proceedings may result in high legal costs, adverse monetary judgments and/or damage to EDL's reputation, which could have an adverse effect on EDL and its financial performance. Certain counterparties may have recourse to EDL via parent company guarantees, letters of credit or the ASIC Deed of Cross Guarantee.

### **Economic conditions**

EDL may be affected by general economic conditions. Changes in the broader economic and financial climate (such as a decrease in mining activity) may adversely affect the conduct of EDL's operations. In particular, sustained economic downturns in areas where EDL's revenues are based on market pricing may adversely affect EDL's financial performance. Changes in economic factors affecting general business cycles, inflation, legislation, monetary and regulatory policy in Australia and overseas, as well as changes to accounting standards, may affect the performance of EDL.

### **Authorisations and permits**

If EDL does not obtain/renew all necessary permits and/or licences for its businesses including power development projects (such as native title, land access, licenses and environmental matters) on acceptable terms, there is a risk that the assets will not be built or will be materially delayed, and/or existing assets will be impaired which will subsequently impact the financial performance of EDL. In addition, if any permits, licenses, approvals or authorities are revoked, or if EDL breaches its permitted operating conditions, this would adversely impact EDL's operations and profitability.

### **Climate risks**

Changes in weather patterns as a result of climate change could have an adverse effect on EDL's operating businesses increasing both capital and operating costs. Volumes carried on electricity networks may vary due to weather conditions (as well as due to other factors such as changes in industrial use, seasonality, general economic conditions and use of competing sources of energy). Significant weather events such as severe storms or cyclones may affect the operation of EDL's businesses.

### **Tax**

The risk that changes in tax law (including goods and services taxes and stamp duties), or changes in the way tax laws are interpreted or applied in the various jurisdictions in which the Company operates, may impact the tax liabilities of EDL and the assets in which it holds an interest.

### **Counterparty risk**

EDL is exposed to credit-related losses if counterparties to contracts (including counterparties to derivative instruments which EDL use to manage financial risks) fail to meet their obligations. This could occur if a purchaser of electricity or key supplier or other key counterparty were to become insolvent or not meet its financial obligations to EDL.

# Appendix A3

## Key Risks - EDL Specific Risks (cont'd)



### **Acquisitions and expansions**

EDL regularly examines new acquisition and expansion opportunities, where the acquisitions or expansions would complement or enhance EDL's existing operations. There can be no assurance that EDL will successfully identify, acquire and integrate acquired businesses, or successfully implement expansions on time and on budget. Furthermore, there is no guarantee that any acquisition will perform as expected or that EDL will be able to realise expected synergies. Acquisitions and expansions may also expose EDL to unanticipated business risks and liabilities. The process of integrating new businesses into EDL's existing operations may result in unforeseen operating difficulties and may require significant management, financial or personnel resources that would otherwise be available for on-going development or expansion of existing operations. If any of these occur, it may have a material adverse impact on EDL's financial position and performance.

### **Inflation**

Lower than expected inflation rates generally or specific to the sectors in which EDL operates could be expected to reduce the rate of increase in inflation-linked revenues. Higher than expected inflation may increase operating and development costs. Such changes could adversely impact EDL's financial performance.

### **Changes in accounting standards**

EDL will be subject to the usual business risk that there may be changes in accounting standards or its own accounting policies which have an adverse impact on it.

### **Foreign exchange risk**

Movements in foreign exchange rates (particularly the British pound and US dollar) could adversely affect EDL's financial performance. EDL generally does not hedge its foreign exchange movements in the ordinary course of its business operations.

### **Refinancing risk**

If the proposed acquisition of EDL is successful, change of control provisions in EDL's existing corporate debt facilities will be triggered. Under those provisions, an existing lender may require EDL to refinance the debt provided by that lender and terminate associated hedging facilities provided by it. To address this, DUET has entered into underwritten financing arrangements with certain banks under which, subject to satisfaction or waiver of a limited number of conditions precedent, those banks have agreed to refinance EDL's existing corporate debt facilities and associated hedging arrangements. The new corporate debt facilities will have maturities ranging from three to five years and will need to be refinanced on their respective maturity dates. EDL may incur increased borrowing costs, or may even be unable to refinance on maturity of the new corporate debt facilities if its credit profile has deteriorated materially, or if there are reductions in debt market liquidity at or around the time that EDL needs to refinance its various debt tranches. Whether this occurs will depend on numerous factors, some of which are outside EDL's control, such as the prevailing economic, political and capital market conditions and credit availability.

### **Interest rate risk**

Movements in interest rates could also adversely affect EDL's financial performance. Although EDL's financing facilities are largely hedged, sustained prolonged increases in interest rates, particularly if they coincide with the timing of EDL's refinancing requirements, may affect EDL's financial performance.

### **Other financing risks**

EDL is also obliged to adhere to covenants in its debt facilities, including financial undertakings. If EDL's performance is materially below expectations, there is a risk that it may not comply with its borrowing covenants which may result in it being required to repay its debt facilities earlier than their scheduled maturities.

### **No assurance of earnings and distributions on securities**

EDL's earnings levels will be determined having regard to future operating results and financial position of the assets and of EDL, and are not guaranteed. There can also be no assurance that any distributions will be paid or, if paid, that they will be paid at previous levels or consistent with any distribution guidance.

### **Other factors**

Other factors that may impact on an entity's performance include changes or disruptions to political, regulatory, legal or economic conditions or to the national or international financial markets, including as a result of terrorist attacks or war.

# Appendix B

## Distribution Guidance Key Assumptions



DUET's upgraded FY16 distribution guidance of 18.0 cpss is based on a number of key assumptions, including:

- Completion of the EDL acquisition in October 2015 on terms consistent with those set out in the Scheme Implementation Deed
- No significant change in current Australian economic conditions
- No material change in the annual budgets prepared by DUET's Operating Companies (including EDL)
- No credit rating downgrades of any of DUET's Operating Companies
- No senior debt lock-up of any of DUET's Operating Companies
- Forecast debt refinancing interest margins and associated costs based on current and expected market conditions assuming no material deterioration in the current state of global capital markets
- Completion of DUET's risk management plan for EDL as detailed on page 17
- No material changes to, or repeal of, current government policy or legislation relating to emissions trading and pricing arrangements for renewable energy incentives
- No loss of a material existing EDL customer contract before its contracted end date
- No significant change in the budgeted regulatory decision outcomes for each of United Energy and DBP that will determine their FY16 regulated tariffs from 1 January 2016
- No additional Stapled Securities being issued in the period to 30 June 2016 other than under the Offer
- Cash cover of the FY16 guidance calculated based on the expected weighted average number of Stapled Securities on issue

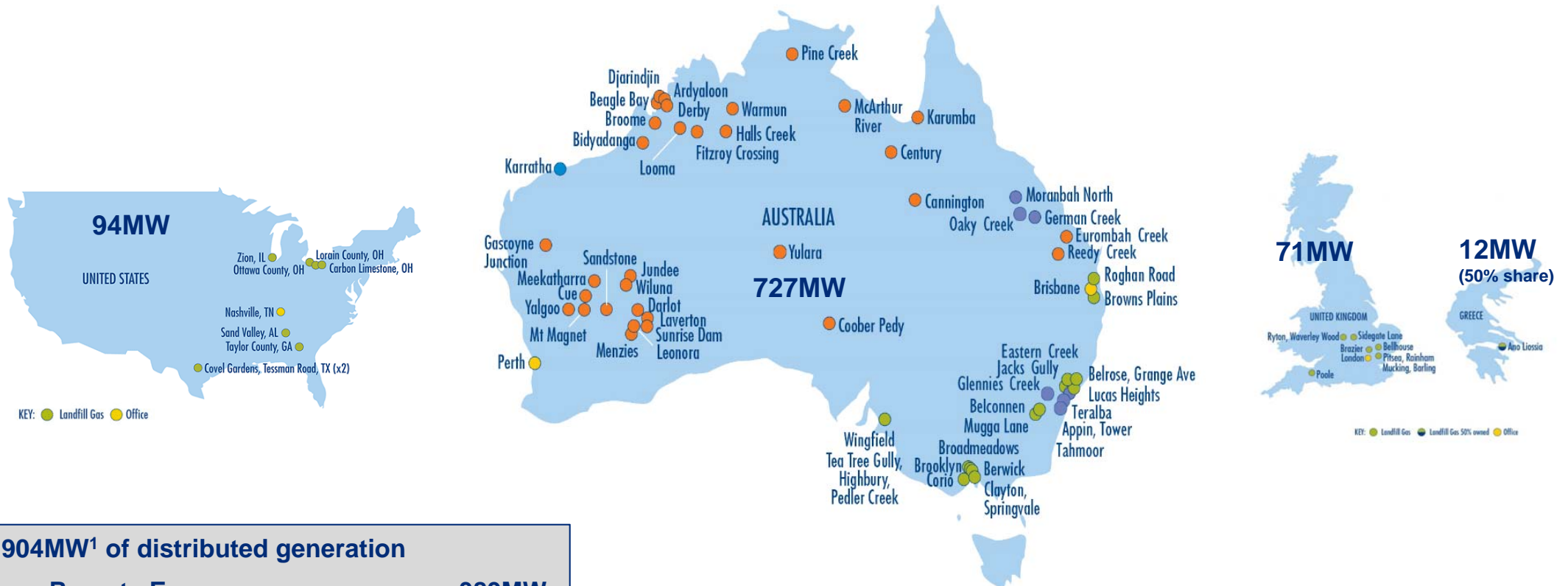
There is a risk that one or more of these assumptions may prove to be incorrect and that may affect whether the guidance is achieved.

Please also refer to 'Key Risks' in Appendix A. To the extent that one or more of those risks are realised, that may adversely affect whether the guidance is achieved.

As a result of the transaction, DUET's distribution guidance for FY16 is upgraded from 17.5 cpss to 18.0cpss. This reflects EDL's forecast full year contribution to DUET Group's net operating cash flows on a de-geared basis, with refinanced debt facilities and DUET's hedging and financial risk management policies applied and with the benefits expected to be available to EDL as a member of DUET Company Limited's tax consolidated group.

# Appendix C

## EDL Operating Locations



| 904MW <sup>1</sup> of distributed generation |       |
|--|-------|
| • Remote Energy                              | 389MW |
| • Waste Coal Mine Gas                        | 253MW |
| • Landfill Gas                               | 262MW |

KEY: ● Landfill Gas ● Waste Coal Mine Gas ● Remote Energy ● Liquefied Natural Gas / Compressed Natural Gas ● Office

1. Installed capacity as at 31 March 2015, includes 27MW which are operated and maintained only. Includes 24MW that is 50% owned via a Greek Joint Venture

2. Source: Energy Developments Limited website

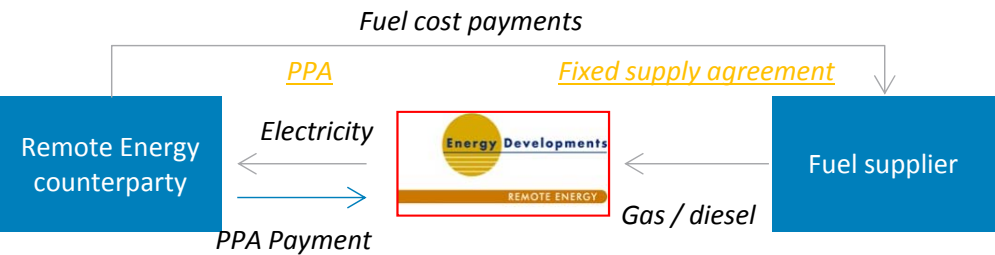
# Appendix D

## EDL Operating Model



### Remote Energy

#### Typical Contractual Mechanism

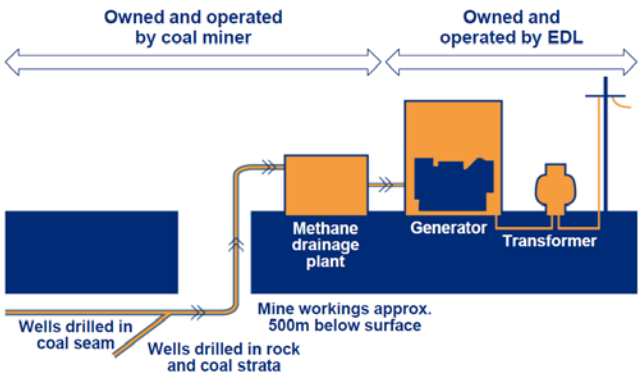


Contracts are typically long-term (5-10 year+) with the following characteristics

- Power sold under off-take contracts based on capacity style revenues
- No price risk on the power supply agreement (PPA)
- Fuel cost passed through to customer
- Majority of revenue is a fixed capacity charge
- Variable energy charge for the provision of generation to cover variable costs

### Waste Coal Mine Gas

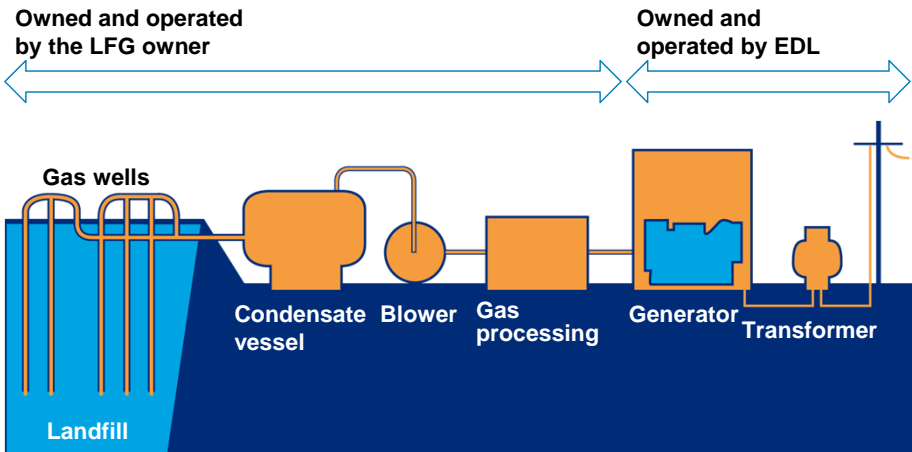
#### Generation Process



| Contract Model       | TSA               | GSA               |
|----------------------|-------------------|-------------------|
| Title to Gas         | Miner             | EDL               |
| Title to Electricity | Miner             | EDL               |
| EDL Service          | Energy Conversion | Gas Purchases     |
| EDL Revenue          | Tolling Charges   | Electricity Sales |

### Land Fill Gas

#### Generation Process



# Appendix E

## Green Schemes



| Australia    |                                 |
|--------------|---------------------------------|
| <b>ACCUs</b> | <b>2.4% of EDL 1H15 revenue</b> |

- Australian Carbon Credit Units (**ACCUs**) for abatement of greenhouse gases, including methane emissions are auctioned by the Emissions Reduction Fund (**ERF**)
- EDL has 10 eligible LFG projects grandfathered from the Carbon Farming Initiative
- Majority of forecast ACCUs were recently contracted at a fixed price to the ERF for 7 years
- New WCMG expansions/greenfield projects eligible for ERF under new methodology released in Feb 2015

|             |                                 |
|-------------|---------------------------------|
| <b>LGCs</b> | <b>7.6% of EDL 1H15 revenue</b> |
|-------------|---------------------------------|

- Large-scale Generation Certificates (**LGCs**) are issued under the Large-scale Renewable Energy Target (**LRET**) scheme based on the amount of renewable electricity a generator produces above its historical baseline
- EDL has 21 LFG projects eligible for LGCs of which 17 projects are currently generating above the historical baseline
- Bi-partisan agreement recently reached for a 33 TWh LRET

| UK          |                                 |
|-------------|---------------------------------|
| <b>NFFO</b> | <b>2.1% of EDL 1H15 revenue</b> |
| <b>ROCs</b> | <b>3.8% of EDL 1H15 revenue</b> |

- The Non-Fossil Purchasing Agency (**NFPA**) contracts for generation with EDL at an inflation-linked price under the Non-Fossil Fuel Obligation (**NFFO**) scheme
- Excess generation attracts the Additional Metered Output (**AMO**) revenue under the Renewables Obligation (**RO**) scheme
- The last of EDL's NFFO contracts expire in 2018, but have been grandfathered into the RO scheme (generating higher revenue for EDL)
- All of EDL's UK projects are eligible for Renewable Obligation Certificates (**ROCs**)
- The UK supports a renewable energy target of 15% by 2020 with the RO scheme

| USA         |                                 |
|-------------|---------------------------------|
| <b>RECs</b> | <b>1.5% of EDL 1H15 revenue</b> |

- EDL generates Renewable Energy Certificates (**RECs**) which can be traded in various state and multi-state markets
- RECs from EDL's 3 Ohio sites can be traded in Ohio, Pennsylvania and Maryland (which form part of the PJM multi-state accreditation market)
- RECs from EDL's Illinois site can be traded in Illinois and Pennsylvania
- EDL is seeking certification for the above sites so their RECs can also be traded in other PJM states

# Appendix F1

## Pro forma Financial Information - Basis of Preparation



This section has been prepared to illustrate the pro forma historical financial information of the DUET Group post acquisition of EDL (Combined Group). The source of the pro forma financial information is the 31 December 2014 interim financial results for each of DUET and EDL, which were prepared in accordance with the recognition and measurement principles of Australian Accounting Standards, which are consistent with International Financial Reporting Standards and the interpretations issued by the IASB. It is presented in an abbreviated form and does not contain all the disclosures that are usually provided in an annual report prepared in accordance with the Corporations Act. The pro forma adjustments (and assumptions) have been made to illustrate the financial effect of the completion of the Scheme as if the Scheme was effective from 1 July 2014. Both the DUET Group and EDL 31 December 2014 interim financial reports were reviewed by EY but are unaudited. The pro forma historical financial information has been prepared to provide participating DUET Group stapled securityholders with an indication of the scale and size of the Combined Group and the illustrative financial effect on the DUET Group if the Scheme is implemented. It does not necessarily illustrate the financial information that would have been prepared had DUET Group acquired EDL on or before 31 December 2014. The pro forma financial information does not include the income tax effect relating to any pro forma adjustment. The pro forma historical financial information should be read in conjunction with the risk factors set out in Appendix A1 as well as the accounting policies of DUET Group and EDL as disclosed in their most recent financial reports.



# Appendix F2

## Pro forma Statutory Income Statement



|  | DUET<br>6 months –<br>31 Dec 14 | EDL<br>6 months -<br>31 Dec 14 | Pro forma<br>Adjustments <sup>1-4</sup> | Combined Group<br>Pro forma<br>6 months -<br>31 Dec 14 |
|--|---------------------------------|--------------------------------|---|--|
| \$m  |                                 |                                |   |  |
| Revenue  | 616                             | 209                            | -                                       | 825  |
| Other income                                   | -                               | 3                              | -                                       | 3  |
| <b>Total Revenue and Other Income</b>          | <b>616</b>                      | <b>212</b>                     | <b>-</b>                                | <b>828</b>   |
| Equity-accounted income                        | -                               | 1                              | -                                       | 1  |
| Operating expenses                             | (243)                           | (117)                          | (64)                                    | (424)  |
| Depreciation and amortisation expenses         | (135)                           | (45)                           | -                                       | (180)  |
| Finance costs                                  | (241)                           | (24)                           | -                                       | (265)  |
| <b>Total Expenses</b>                          | <b>(619)</b>                    | <b>(186)</b>                   | <b>(64)</b>                             | <b>(869)</b>   |
| <b>Profit/(Loss) before income tax expense</b> | <b>(3)</b>                      | <b>27</b>                      | <b>(64)</b>                             | <b>(40)</b>  |
| Income tax expense                             | (7)                             | (8)                            | -                                       | (15)   |
| <b>Profit/(Loss) for the period</b>            | <b>(10)</b>                     | <b>19</b>                      | <b>(64)</b>                             | <b>(55)</b>  |

- The Combined Group pro forma income statement does not reflect (i) transaction costs incurred by EDL; (ii) any costs associated with the Scheme; and (iii) any potential acceleration of deferred borrowing costs associated with pre acquisition debt facilities as a consequence of the \$150m de-gear of EDL.
- Results for the period will only include the acquisition of EDL from the date DUET Group obtains control.
- No pro forma adjustments have been made for potential synergy benefits as DUET Group has not had access to sufficient information to identify, confirm and quantify all available synergies, or to assess any costs to be incurred to achieve the synergies.
- DUET Group transaction costs totalling \$133m will be funded from proceeds received from the DUET Group capital raising and existing cash reserves and will be accounted for as follows:
  - \$64m (before tax) of transaction costs are expected to be expensed;
  - \$31m (before tax) of transaction costs associated with the DUET Group capital raising are expected to be charged against equity; and
  - \$38m of transaction costs are expected to be capitalised by DUET Group to the cost of the investment in EDL and will be eliminated on consolidation of EDL.

# Appendix F3

## Pro forma Statutory Consolidated Balance Sheet



| \$m                              | DUET<br>31 Dec 14 | EDL<br>31 Dec 14 | Adjustments <sup>1</sup> | Acquisition <sup>2</sup> | Combined Group<br>Pro forma<br>31 Dec 14 |
|----------------------------------|-------------------|------------------|--------------------------|--------------------------|--|
| Cash (including deposits)        | 440               | 37               | (165)                    | 20                       | 332                                      |
| Receivables and other assets     | 158               | 98               | -                        | -                        | 256                                      |
| Inventories                      | 25                | 18               | -                        | -                        | 43                                       |
| Derivative financial instruments | 10                | 3                | -                        | -                        | 13                                       |
| <b>Total Current Assets</b>      | <b>633</b>        | <b>156</b>       | <b>(165)</b>             | <b>20</b>                | <b>644</b>                               |
| Receivables and other assets     | 20                | 3                | -                        | -                        | 23                                       |
| Property, plant and equipment    | 5,966             | 806              | -                        | -                        | 6,772                                    |
| Deferred tax assets              | 270               | 37               | -                        | -                        | 307                                      |
| Intangible assets <sup>3</sup>   | 2,051             | 43               | -                        | 1,008                    | 3,102                                    |
| Equity-accounted investments     | -                 | 21               | -                        | -                        | 21                                       |
| Derivative financial instruments | 86                | -                | -                        | -                        | 86                                       |
| <b>Total Non-current Assets</b>  | <b>8,393</b>      | <b>910</b>       | <b>-</b>                 | <b>1,008</b>             | <b>10,311</b>                            |
| <b>Total Assets</b>              | <b>9,026</b>      | <b>1,066</b>     | <b>(165)</b>             | <b>1,028</b>             | <b>10,955</b>                            |

1. Pro forma adjustments include the DUET FY15 interim distribution of 8.75cps paid in February 2015 and EDL's 20 cent dividend per share paid in April 2015.

2. Proceeds of \$1.54bn (net of \$133m transaction costs) from the DUET Group capital raising applied to the acquisition of EDL which includes a \$150m degearing of EDL. The DUET Group will retain \$20m of the capital raising proceeds for working capital purposes.

3. The purchase price accounting for the acquisition has been determined on a provisional (illustrative) basis by allocating the difference between the purchase consideration and the carrying value of assets and liabilities in the 31 December 2014 consolidated balance sheet of EDL (adjusted for the April 2015 dividend paid by EDL) to intangibles. The pro forma adjustments to reflect the estimated financial effect of the accounting for the business combination are illustrative only. Australian Accounting Standards require an allocation of fair value of assets and liabilities acquired. DUET Group will undertake a formal allocation of its acquisition subsequent to the date when the Scheme is implemented. Accordingly that allocation may give rise to material differences in values allocated to the above balance sheet line items and may also give rise to fair value being allocated to other balance sheet items.

# Appendix F3 (cont.)

## Pro forma Statutory Consolidated Balance Sheet (cont.)



| \$m                                       | DUET<br>31 Dec 14 | EDL<br>31 Dec 14 | Adjustments <sup>1</sup> | Acquisition <sup>2</sup> | Combined Group<br>Pro forma<br>31 Dec 14 |
|---|-------------------|------------------|--------------------------|--------------------------|--|
| Payables and other liabilities            | 419               | 75               | (165)                    | -                        | 329                                      |
| Interest bearing liabilities <sup>3</sup> | 812               | 4                | -                        | -                        | 816                                      |
| Derivative financial instruments          | 95                | 8                | -                        | -                        | 103                                      |
| <b>Total Current Liabilities</b>          | <b>1,326</b>      | <b>87</b>        | <b>(165)</b>             | <b>-</b>                 | <b>1,248</b>                             |
| Interest bearing liabilities <sup>3</sup> | 4,767             | 545              | -                        | (150)                    | 5,162                                    |
| Deferred tax liabilities                  | 610               | 7                | -                        | -                        | 617                                      |
| Derivative financial instruments          | 185               | 24               | -                        | -                        | 209                                      |
| Payables and other liabilities            | 94                | 42               | -                        | -                        | 136                                      |
| <b>Total Non-current Liabilities</b>      | <b>5,656</b>      | <b>618</b>       | <b>-</b>                 | <b>(150)</b>             | <b>6,124</b>                             |
| <b>Total Liabilities</b>                  | <b>6,982</b>      | <b>705</b>       | <b>(165)</b>             | <b>(150)</b>             | <b>7,372</b>                             |
| <b>Equity</b>                             | <b>2,044</b>      | <b>361</b>       | <b>-</b>                 | <b>1,178</b>             | <b>3,583</b>                             |

1. Pro forma adjustments include the DUET FY15 interim distribution of 8.75cps paid in February 2015 and EDL's 20 cent dividend per share paid in April 2015.

2. Proceeds of \$1.54bn (net of \$133m transaction costs) from the DUET Group capital raising applied to the acquisition of EDL which includes a \$150m degearing of EDL. The DUET Group will retain \$20m of the capital raising proceeds for working capital purposes.

3. Includes the outside minority interest in United Energy Redeemable Preference Shares of \$195m.

# Appendix G1

## DUET pre-acquisition of EDL



| Operating Companies  | <b>United Energy</b><br>(66%)  | <b>Multinet Gas</b><br>(100%)   | <b>DBP</b><br>(80%)   | <b>DDG</b><br>(100%)  |
|--|--|---|---|---|
| <b>Predictable/Long Term Contracted/Regulated Revenues</b> | <ul style="list-style-type: none"> <li>Stable regulation</li> </ul>                | <ul style="list-style-type: none"> <li>Stable regulation</li> </ul>   | <ul style="list-style-type: none"> <li>Long term contracts strong counterparties</li> <li>Regulated tariffs in 2021 (unless re-contracted)</li> </ul> | <ul style="list-style-type: none"> <li>20-30 year contracts, strong counterparties</li> </ul>                         |
| <b>Limited Volume Risk</b>                                 | <ul style="list-style-type: none"> <li>Revenue cap to limit volume risk</li> </ul> | <ul style="list-style-type: none"> <li>Banded tariffs reduce volume risk</li> <li>Tariffs set on 5 year forecast volumes</li> </ul> | <ul style="list-style-type: none"> <li>80% take-or-pay</li> </ul>   | <ul style="list-style-type: none"> <li>100% Take-or-pay</li> </ul>  |
| <b>High EBITDA Margins<sup>1</sup></b>                     | <ul style="list-style-type: none"> <li>66%</li> </ul>                              | <ul style="list-style-type: none"> <li>68%</li> </ul>   | <ul style="list-style-type: none"> <li>79%</li> </ul>   | <ul style="list-style-type: none"> <li>nm</li> </ul>  |
| <b>Limited Energy Risk</b>                                 | <ul style="list-style-type: none"> <li>No electricity exposure</li> </ul>          | <ul style="list-style-type: none"> <li>Gas exposure limited to UAFG<sup>1</sup></li> </ul>  | <ul style="list-style-type: none"> <li>Gas exposure limited to fuel gas</li> </ul>  | <ul style="list-style-type: none"> <li>No gas exposure</li> </ul>   |
| <b>Incremental Growth</b>                                  | <ul style="list-style-type: none"> <li>~6%pa RAB growth</li> </ul>                 | <ul style="list-style-type: none"> <li>Stable RAB</li> </ul>  | <ul style="list-style-type: none"> <li>Stable RAB</li> <li>Potential development opportunities</li> </ul>   | <ul style="list-style-type: none"> <li>Actively pursuing development/acquisition opportunities<sup>4</sup></li> </ul> |

1. Based on FY15 Interim results

2. Unaccounted-for-gas

3. Forward looking statements by their very nature are subject to uncertainties and contingencies, many of which are outside the control of DUET.

4. Any significant successful opportunities are likely to require further capital contributions from DUET, possibly involving the raising of additional capital

# Appendix G2

## DUET Operating Company Statistics



| Operating Company                     | United Energy                      | Multinet Gas               | DBP  | DDG  |
|---------------------------------------|------------------------------------|----------------------------|--|--|
| DUET's Ownership Interest             | 66%                                | 100%                       | 80%  | 100%   |
| Business Description                  | Victorian electricity distribution | Victorian gas distribution | Western Australia's principal gas transmission pipeline        | Developer, owner and operator of gas transmission pipelines                    |
| Location                              | Victoria                           | Victoria                   | Western Australia  | Western Australia  |
| Length / Area of Network <sup>1</sup> | 1,472 sq km                        | 1,860 sq km                | 1,539 km (mainline)<br>1,228 km (looping)<br>300 km (laterals) | 109km Wheatstone Ashburton West Pipeline<br>270km Fortescue River Gas Pipeline |
| Load <sup>1</sup>                     | 7,752 GWh <sup>4</sup>             | 51.9 PJ <sup>4</sup>       | 845 TJ/day <sup>2</sup>  | n/a  |
| Connections <sup>1</sup>              | 659,696                            | 684,752                    | n/a  | 2  |
| Next Regulatory Reset Date            | January 2016                       | January 2018               | January 2016 <sup>3</sup>                                      | n/a  |

(1) As at 30 June 2014

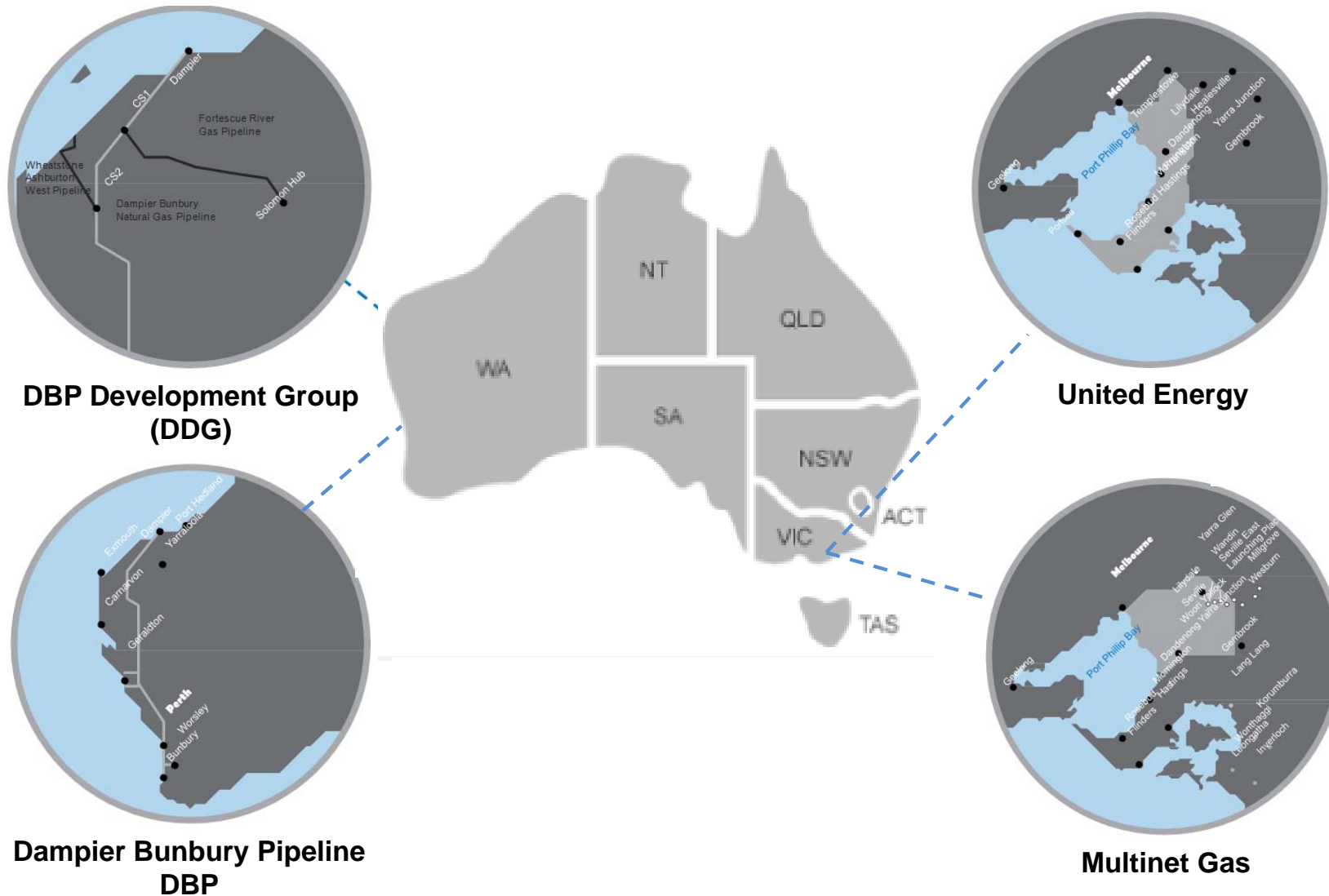
(2) Full-haul firm capacity per day

(3) The reference tariffs from 1 January 2016 will only apply to approximately 15% of existing firm full haul gas transportation contracts. On 1 January 2020 the tariffs will revert to the regulated tariff for all shippers other than Alcoa

(4) For the 12 months to 30 June 2014

# Appendix G3

## DUET Operating Company Locations



# Appendix H

## Definition of Key Terms



| Key Term  | Definition   |
|---|--|
| <b>Conditioned Based Monitoring</b>               | The process of monitoring the condition of a piece of machinery, such that a significant change is indicative of a developing failure and thus requires maintenance.   |
| <b>DBP</b>  | Collectively DBNGP Holdings Pty Limited (ACN 110 721 081) in its personal capacity and as trustee of DBNGP Trust (and their subsidiaries)  |
| <b>DBP Development Group (DDG)</b>                | Collectively DBP Development Group Pty Limited (ACN 153 396 911) in its personal capacity and as trustee of DBP Development Group Trust (and their subsidiaries)   |
| <b>DUET Group (or DUET or Group)</b>              | Collectively or individually (as the context requires), DUET Company Limited (ACN 163 100 061), DUET Investment Holdings Limited (ACN 120 456 573), DUET Finance Limited (ACN 120 456 573) in its personal capacity and as responsible entity of DUET Finance Trust (ARSN 109 363 135) (and their subsidiaries)  |
| <b>EBITDA</b>                                     | Earnings Before Interest, Tax, Depreciation and Amortisation. EBITDA excludes the impact of any changes in the fair value of derivatives. Refer also to DUET's MIR   |
| <b>Fixed Price revenue</b>                        | EDL revenue from Black and Green revenue contracts where the price attached to generated volumes has been contractually fixed for a period of time with the counterparty.  |
| <b>Institutional Entitlement Offer</b>            | The accelerated non-renounceable pro rata entitlement offer of New Securities, to eligible institutional holders and institutional investors   |
| <b>MIR</b>  | DUET's Management Information Report issued every six months to coincide with the release of the annual and interim results  |
| <b>Multinet Gas (or MG or MGH)</b>                | Multinet Group Holdings Pty Limited (ACN 104 036 937) (and each of its subsidiaries)   |
| <b>Offer</b>                                      | The offer of New Securities under the Institutional Entitlement Offer and Retail Entitlement Offer   |
| <b>New Securities (or New Stapled Securities)</b> | New Stapled Securities issued under the Offer  |
| <b>Operating Company</b>                          | Any of DBP, DBP Development Group, United Energy or Multinet Gas   |
| <b>Proportionate EBITDA</b>                       | Proportionate EBITDA information contained in this document is unaudited and involves the aggregation of the EBITDA of DUET's energy utility assets in the relevant proportions that DUET holds beneficial ownership interests. Proportionate EBITDA may differ from EBITDA calculated using statutory information prepared under the applicable Australian Accounting Standards |
| <b>Proportionate Revenue</b>                      | As defined in DUET's MIR   |
| <b>Stapled Security</b>                           | One DFT unit and one ordinary share in in each of DIHL, DUECo and DFL which are stapled together and traded as a single stapled security on ASX  |
| <b>Scheme Implementation Deed</b>                 | The Scheme Implementation Deed signed between DUET Group and EDL and lodged with the ASX on 20 July 2015   |
| <b>Take-or-Pay revenue</b>                        | Capacity charge but no minimum usage charge  |
| <b>Underwriters</b>                               | The equity capital markets divisions of two Australian investment banking corporations who have accepted liability (for a fee) to take up any New Stapled Securities not applied for by existing and new securityholders at the Offer Price.   |
| <b>United Energy (or UED)</b>                     | United Energy Distribution Holdings Pty Limited (ACN 104 381 660) and each of its subsidiaries   |
| <b>Variable Price revenue</b>                     | EDL revenue which is not Fixed Price or Take-or-Pay revenue  |



# Appendix I

## Offer Jurisdictions



### **Australia**

This presentation has not been lodged with the Australian Securities and Investments Commission. This presentation does not constitute a prospectus or product disclosure statement for the purposes of the Corporations Act and does not purport to include all the information required for a prospectus or product disclosure statement under the Corporations Act. The provision of this presentation to any person does not constitute an offer of or an invitation to apply for New Stapled Securities in Australia. Any offer in Australia of New Stapled Securities may only be made to a person who is a "wholesale client" within the meaning of section 761G of the Corporations Act or otherwise pursuant to one of more exemptions contained in Chapter 6D and Part 7.9 of the Corporations Act so that it is lawful to offer the securities without disclosure to investors under the Corporations Act. This presentation contains general information only and does not take into account the investment objectives, financial situation or particular needs of any particular person. Before acting on the information contained in this presentation, investors should consider its appropriateness having regard to their investment objectives, financial situations and needs, and, if necessary, seek expert advice.

This document does not constitute an offer of new stapled securities ("New Stapled Securities") of the Group in any jurisdiction in which it would be unlawful. New Stapled Securities may not be offered or sold in any country outside Australia except to the extent permitted below.

### **Canada (British Columbia, Ontario and Quebec provinces)**

This document constitutes an offering of New Stapled Securities only in the Provinces of British Columbia, Ontario and Quebec (the "Provinces") and to those persons to whom they may be lawfully distributed in the Provinces, and only by persons permitted to sell such New Stapled Securities. This document is not, and under no circumstances is to be construed as, an advertisement or a public offering of securities in the Provinces. This document may only be distributed in the Provinces to persons that are "accredited investors" within the meaning of NI 45-106 – *Prospectus and Registration Exemptions*, of the Canadian Securities Administrators.

No securities commission or similar authority in the Provinces has reviewed or in any way passed upon this document, the merits of the New Stapled Securities or the offering of New Stapled Securities and any representation to the contrary is an offence.

No prospectus has been, or will be, filed in the Provinces with respect to the offering of New Stapled Securities or the resale of such securities. Any person in the Provinces lawfully participating in the offer will not receive the information, legal rights or protections that would be afforded had a prospectus been filed and receipted by the securities regulator in the applicable Province. Furthermore, any resale of the New Stapled Securities in the Provinces must be made in accordance with applicable Canadian securities laws which may require resales to be made in accordance with exemptions from dealer registration and prospectus requirements. These resale restrictions may in some circumstances apply to resales of the New Stapled Securities outside Canada and, as a result, Canadian purchasers should seek legal advice prior to any resale of the New Stapled Securities.

The Group, and the directors and officers of the Company, may be located outside Canada, and as a result, it may not be possible for Canadian purchasers to effect service of process within Canada upon the Group or its directors or officers. All or a substantial portion of the assets of the Group and such persons may be located outside Canada, and as a result, it may not be possible to satisfy a judgment against the Group or such persons in Canada or to enforce a judgment obtained in Canadian courts against the Group or such persons outside Canada.

Any financial information contained in this document has been prepared in accordance with Australian Accounting Standards and also comply with International Financial Reporting Standards and interpretations issued by the International Accounting Standards Board.

Unless stated otherwise, all dollar amounts contained in this document are in Australian dollars.

### *Statutory rights of action for damages or rescission*

Securities legislation in certain of the Provinces may provide purchasers with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, when an offering memorandum that is delivered to purchasers contains a misrepresentation. These rights and remedies must be exercised within prescribed time limits and are subject to the defenses contained in applicable securities legislation. Prospective purchasers should refer to the applicable provisions of the securities legislation of their respective Province for the particulars of these rights or consult with a legal adviser.

# Appendix I

## Offer Jurisdictions (cont'd)



The following is a summary of the statutory rights of rescission or to damages, or both, available to purchasers in Ontario. In Ontario, every purchaser of the New Stapled Securities purchased pursuant to this document (other than (a) a "Canadian financial institution" or a "Schedule III bank" (each as defined in NI 45-106), (b) the Business Development Bank of Canada or (c) a subsidiary of any person referred to in (a) or (b) above, if the person owns all the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of that subsidiary) shall have a statutory right of action for damages and/or rescission against the Group if this document or any amendment thereto contains a misrepresentation. If a purchaser elects to exercise the right of action for rescission, the purchaser will have no right of action for damages against the Group. This right of action for rescission or damages is in addition to and without derogation from any other right the purchaser may have at law. In particular, Section 130.1 of the Securities Act (Ontario) provides that, if this document contains a misrepresentation, a purchaser who purchases the New Stapled Securities during the period of distribution shall be deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages or, alternatively, may elect to exercise a right of rescission against the Group, provided that (a) the Group will not be liable if it proves that the purchaser purchased the New Stapled Securities with knowledge of the misrepresentation; (b) in an action for damages, the Group is not liable for all or any portion of the damages that the Group proves does not represent the depreciation in value of the New Stapled Securities as a result of the misrepresentation relied upon; and (c) in no case shall the amount recoverable exceed the price at which the New Stapled Securities were offered.

Section 138 of the *Securities Act* (Ontario) provides that no action shall be commenced to enforce these rights more than (a) in the case of any action for rescission, 180 days after the date of the transaction that gave rise to the cause of action or (b) in the case of any action, other than an action for rescission, the earlier of (i) 180 days after the purchaser first had knowledge of the fact giving rise to the cause of action or (ii) three years after the date of the transaction that gave rise to the cause of action. These rights are in addition to and not in derogation from any other right the purchaser may have.

*Certain Canadian income tax considerations.* Prospective purchasers of the New Stapled Securities should consult their own tax adviser with respect to any taxes payable in connection with the acquisition, holding, or disposition of the New Stapled Securities as any discussion of taxation related matters in this document is not a comprehensive description and there are a number of substantive Canadian tax compliance requirements for investors in the Provinces.

*Language of documents in Canada.* Upon receipt of this document, each investor in Canada hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the New Stapled Securities (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *Par la réception de ce document, chaque investisseur canadien confirme par les présentes qu'il a expressément exigé que tous les documents faisant foi ou se rapportant de quelque manière que ce soit à la vente des valeurs mobilières décrites aux présentes (incluant, pour plus de certitude, toute confirmation d'achat ou tout avis) soient rédigés en anglais seulement.*

### **European Economic Area - Germany, Luxembourg and Netherlands**

The information in this document has been prepared on the basis that all offers of New Stapled Securities will be made pursuant to an exemption under the Directive 2003/71/EC ("Prospectus Directive"), as amended and implemented in Member States of the European Economic Area (each, a "Relevant Member State"), from the requirement to produce a prospectus for offers of securities.

An offer to the public of New Stapled Securities has not been made, and may not be made, in a Relevant Member State except pursuant to one of the following exemptions under the Prospectus Directive as implemented in that Relevant Member State:

- to any legal entity that is authorised or regulated to operate in the financial markets or whose main business is to invest in financial instruments;
- to any legal entity that satisfies two of the following three criteria: (i) balance sheet total of at least €20,000,000; (ii) annual net turnover of at least €40,000,000 and (iii) own funds of at least €2,000,000 (as shown on its last annual unconsolidated or consolidated financial statements);
- to any person or entity who has requested to be treated as a professional client in accordance with the EU Markets in Financial Instruments Directive (Directive 2004/39/EC, "MiFID"); or
- to any person or entity who is recognised as an eligible counterparty in accordance with Article 24 of the MiFID.

# Appendix I

## Offer Jurisdictions (cont'd)



### France

This document is not being distributed in the context of a public offering of financial securities (offre au public de titres financiers) in France within the meaning of Article L.411-1 of the French Monetary and Financial Code (Code monétaire et financier) and Articles 211-1 *et seq.* of the General Regulation of the French Autorité des marchés financiers ("AMF"). The New Stapled Securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.

This document and any other offering material relating to the New Stapled Securities have not been, and will not be, submitted to the AMF for approval in France and, accordingly, may not be distributed (directly or indirectly) to the public in France. Such offers, sales and distributions have been and shall only be made in France to qualified investors (investisseurs qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2, D.411-1, L.533-16, L.533-20, D.533-11, D.533-13, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation.

Pursuant to Article 211-3 of the General Regulation of the AMF, investors in France are informed that the New Stapled Securities cannot be distributed (directly or indirectly) to the public by the investors otherwise than in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code.

### Hong Kong

**WARNING:** This document has not been, and will not be, authorized by the Securities and Futures Commission in Hong Kong pursuant to the Securities and Futures Ordinance (Cap. 571) of the Laws of Hong Kong (the "SFO"). No action has been taken in Hong Kong to authorize this document or to permit the distribution of this document or any documents issued in connection with it.

Accordingly, the New Stapled Securities have not been and will not be offered or sold in Hong Kong other than to "professional investors" (as defined in the SFO).

No advertisement, invitation or document relating to the New Stapled Securities has been or will be issued, or has been or will be in the possession of any person for the purpose of issue, in Hong Kong or elsewhere that is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the New Stapled Securities which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors as defined in the SFO and any rules made under that ordinance.

The contents of this document have not been reviewed by any Hong Kong regulatory authority. You are advised to exercise caution in relation to the offer. If you are in doubt about any contents of this document, you should obtain independent professional advice.

### Ireland

The information in this document does not constitute a prospectus under any Irish laws or regulations and this document has not been filed with or approved by any Irish regulatory authority as the information has not been prepared in the context of a public offering of securities in Ireland within the meaning of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005, as amended (the "Prospectus Regulations").

The New Stapled Securities have not been offered or sold, and will not be offered, sold or delivered directly or indirectly in Ireland by way of a public offering, except to (i) "qualified investors" as defined in Regulation 2(l) of the Prospectus Regulations. If you (or any person for whom you are acquiring the New Stapled Securities) are in Ireland, you (and any such person) represent that you are a "qualified investor" as defined in the Irish Prospectus (Directive 2003/71/ED) Regulations 2005, as amended.

### Japan

The New Stapled Securities have not been and will not be registered under Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948), as amended (the "FIEL") pursuant to an exemption from the registration requirements applicable to a private placement of securities to Qualified Institutional Investors (as defined in and in accordance with Article 2, paragraph 3 of the FIEL and the regulations promulgated thereunder). Accordingly, the New Stapled Securities may not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan other than Qualified Institutional Investors. Any Qualified Institutional Investor who acquires New Stapled Securities may not resell them to any person in Japan that is not a Qualified Institutional Investor, and acquisition by any such person of New Stapled Securities is conditional upon the execution of an agreement to that effect.

# Appendix I

## Offer Jurisdictions (cont'd)



### New Zealand

This document has not been registered, filed with or approved by any New Zealand regulatory authority under the Financial Markets Conduct Act 2013 (**FMC Act**).

The New Stapled Securities are not being offered to the public within New Zealand other than to existing securityholders of the DUET Group with registered addresses in New Zealand to whom the offer of these securities is being made in reliance on the transitional provisions of the FMC Act and the Securities Act (Overseas Companies) Exemption Notice 2013.

Other than in the entitlement offer, the New Stapled Securities may only be offered or sold in New Zealand (or allotted with a view to being offered for sale in New Zealand) to a person who:

- is an investment business within the meaning of clause 37 of Schedule 1 of the FMC Act;
- meets the investment activity criteria specified in clause 38 of Schedule 1 of the FMC Act;
- is large within the meaning of clause 39 of Schedule 1 of the FMC Act;
- is a government agency within the meaning of clause 40 of Schedule 1 of the FMC Act; or
- is an eligible investor within the meaning of clause 41 of Schedule 1 of the FMC Act.

### Norway

This document has not been approved by, or registered with, any Norwegian securities regulator under the Norwegian Securities Trading Act of 29 June 2007. Accordingly, this document shall not be deemed to constitute an offer to the public in Norway within the meaning of the Norwegian Securities Trading Act of 2007. The New Stapled Securities may not be offered or sold, directly or indirectly, in Norway except to "professional clients" (as defined in Norwegian Securities Regulation of 29 June 2007 no. 876 and including non-professional clients having met the criteria for being deemed to be professional and for which an investment firm has waived the protection as non-professional in accordance with the procedures in this regulation).

### Singapore

This document has not been registered as a prospectus with the Monetary Authority of Singapore ("MAS") and, accordingly, statutory liability under the Securities and Futures Act, Chapter 289 (the "SFA") in relation to the content of prospectuses does not apply, and you should consider carefully whether the investment is suitable for you. The issuer is not authorised or recognised by the MAS and the New Stapled Securities are not allowed to be offered to the retail public. This document and any other document or material in connection with the offer or sale, or invitation for subscription or purchase of the New Stapled Securities may not be circulated or distributed, nor may the New Stapled Securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore except to "institutional investors" (as defined in the SFA), or otherwise pursuant to, and in accordance with the conditions of, any other applicable provisions of the SFA.

This document has been given to you on the basis that you are an "institutional investor" (as defined under the SFA). In the event that you are not an institutional investor, please return this document immediately. You may not forward or circulate this document to any other person in Singapore.

Any offer is not made to you with a view to the New Stapled Securities being subsequently offered for sale to any other party. You are advised to acquaint yourself with the SFA provisions relating to resale restrictions in Singapore and comply accordingly.

### Switzerland

The New Stapled Securities may not be distributed in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the New Stapled Securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the New Stapled Securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of New Stapled Securities will not be supervised by, the Swiss Financial Market Supervisory Authority (FINMA), and the offer of New Stapled Securities has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of New Stapled Securities.

This document is personal to the recipient only and not for general circulation in Switzerland.

# Appendix I

## Offer Jurisdictions (cont'd)



### Taiwan

The New Stapled Securities have not been registered in Taiwan nor approved by the Financial Supervisory Commission, Executive Yuan, the Republic of China. Holders of the New Stapled Securities may not resell them in Taiwan nor solicit any other purchasers in Taiwan for this offering. If you (or any person for whom you are acquiring the New Stapled Securities) are in Taiwan, you (and any such person) represent that you:

(a) are one of the institutional investors set out below:

- (i) banks, bill finance enterprises, trust enterprises, insurance enterprises, securities enterprises, financial holding companies or other institutional investors approved by the Financial Supervisory Commission (the "FSC"); or
- (ii) sophisticated institutional investors that meet the qualifications promulgated by the FSC by the relevant regulations of Taiwan; and

(b) acknowledge that the offer and any offer to resell the New Stapled Securities are subject to restrictions set out in the Securities and Exchange Act and relevant regulations of Taiwan.

### United Kingdom

Neither the information in this document nor any other document relating to the offer has been delivered for approval to the Financial Conduct Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended ("FSMA")) has been published or is intended to be published in respect of the New Stapled Securities.

This document is issued on a confidential basis to "qualified investors" (within the meaning of section 86(7) of FSMA) in the United Kingdom, and the New Stapled Securities may not be offered or sold in the United Kingdom by means of this document, any accompanying letter or any other document, except in circumstances which do not require the publication of a prospectus pursuant to section 86(1) FSMA. This document should not be distributed, published or reproduced, in whole or in part, nor may its contents be disclosed by recipients to any other person in the United Kingdom.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) received in connection with the issue or sale of the New Stapled Securities has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) of FSMA does not apply to the issuer.

In the United Kingdom, this document is being distributed only to, and is directed at, persons (i) who have professional experience in matters relating to investments falling within Article 19(5) (investment professionals) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 ("FPO"), (ii) who fall within the categories of persons referred to in Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the FPO or (iii) to whom it may otherwise be lawfully communicated (together "relevant persons"). The investments to which this document relates are available only to, and any invitation, offer or agreement to purchase will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

### United States

This document does not constitute an offer to sell, or the solicitation of an offer to buy, any securities in the United States or to, or for the account or benefit of, any U.S. Person. This document may not be distributed or released in the United States or to U.S. Persons, or persons who are acting for the account or benefit of persons in the United States or U.S. Persons.

The New Securities have not been, and will not be, registered under the Securities Act or the securities laws of any state or other jurisdiction of the United States and accordingly may not be offered or sold in the United States or to, or for the account or benefit of, U.S. Persons, except in a transaction exempt from, or not subject to, the registration requirements of the Securities Act. In addition, none of the DUET entities have been or will be registered under the Investment Company Act, in reliance on the exception provided by Section 3(c)(7) thereof. Accordingly, the New Securities cannot be held by, or for the account or benefit of, any U.S. Person who is not both a QIB and QP, at the time of the acquisition of the New Securities. Any U.S. Person who is not both a QIB and a QP (or any investor who holds New Securities for the account or benefit of any U.S. Person who is not both a QIB and a QP) is an "Excluded U.S. Person". DUET may require an investor to complete a statutory declaration as to whether they (or any person on whose account or benefit it holds New Securities) are an Excluded U.S. Person. DUET may treat any investor who does not comply with such a request as an Excluded U.S. Person. DUET has the right to: (i) refuse to register a transfer of New Securities to any Excluded U.S. Person; or (ii) require any Excluded U.S. Person to dispose of their New Securities; or (iii) if the Excluded U.S. Person does not do so within 30 business days, require the New Securities be sold by a nominee appointed by DUET. To monitor compliance with these foreign ownership restrictions, the ASX's settlement facility operator (ASTC) has classified the New Securities as Foreign Ownership Restricted financial products and put in place certain additional monitoring procedures. The New Securities may only be resold or transferred in regular brokered transactions on ASX in accordance with Regulation S under the Securities Act where neither such investor nor any person acting on its behalf knows, or has reason to know, that the sale has been pre-arranged with, or that the purchaser is, in the United States or a U.S. Person or is acting for the account or benefit of a person in the United States or a U.S. Person, in each case in an "offshore transaction" (as defined in Rule 902(h) under the Securities Act) in reliance on, and in compliance with, Regulation S under the Securities Act.

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## **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**)
- 

## 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.
- 

## 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.

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## 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).

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## 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.

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## **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).

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## 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).

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# 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.

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## 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.

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## 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.

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## 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.

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## 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.

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## 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.

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## **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.

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## **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.

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## Schedule 1 — Dictionary

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### 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).

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## 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 |
|---|--|----------------|-------------|
| <b>Shares</b>                               |  |                |             |
| EDL Shares (quoted)                         | 170,359,095                                    |                |             |
| EDL Shares (unquoted)                       | 750,000  |                |             |
| <b>Options</b>                              |  |                |             |
| 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   |
| <b>Performance Rights</b>                   |  |                |             |
| 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  |                |             |

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## Execution page

Executed and delivered as a deed.

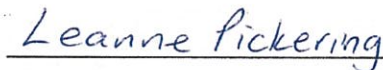
Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

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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



Name of attorney (print)



Signature of witness



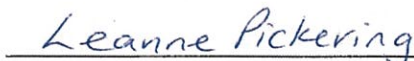
Name of witness (print)

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



Signature of attorney



Name of attorney (print)



Signature of witness



Name of witness (print)

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

---

Signature of director

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Signature of director/secretary

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Name of director (print)

---

Name of director/secretary (print)

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## 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.

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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:

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Signature of attorney

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Signature of witness

---

Name of attorney (print)

---

Name of witness (print)

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

---

Signature of attorney

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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:

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Signature of director

Gregory James Pritchard

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Name of director (print)

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Signature of director/secretary

Glen Elliott Marshall

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Name of director/secretary (print)

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## 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           |

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**Attachment B —  
Scheme**



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## **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:

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## 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**

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## 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.

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## 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.

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### **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.

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## 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.



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## 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 CHESS, 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.

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## **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.



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## Schedule 1 — Dictionary

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### 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.

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## 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.



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**Attachment C —  
Deed Poll**

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## 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: \_\_\_\_\_

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

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## 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

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## 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.

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## 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.

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## 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.

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## 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.

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## **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.

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## **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.

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## **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.



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## 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.

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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:

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Signature of witness

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Signature of attorney

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Name of witness (print)

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Name of attorney (print)

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

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Signature of witness

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Signature of attorney

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Name of witness (print)

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Name of attorney (print)

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**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