

IN THE AUSTRALIAN COMPETITION TRIBUNAL  
AGL ENERGY LIMITED

of 2014

RE: PROPOSED ACQUISITION OF MACQUARIE GENERATION (A CORPORATION  
ESTABLISHED UNDER THE ENERGY SERVICES CORPORATIONS ACT 1995  
(NSW))

ANNEXURE CERTIFICATE

This is the annexure marked "BAR 12" annexed to the statement of BRETT ALAN REDMAN  
dated 23 March 2014

Annexure BAR 12

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Filed on behalf of (name & role of party)	AGL Energy Limited		
Prepared by (name of person/lawyer)	Liza Carver		
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[Form approved 01/08/2011]



## **REQUEST FOR EXPRESSIONS OF INTEREST**

July 2013

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## KEY CONTACTS INFORMATION

All communication in relation to the sale must be directed only to the personnel set out below.

### **Nicholas Forster**

Goldman Sachs Australia  
Managing Director  
Head of Infrastructure & Utilities  
Tel: +61 2 9320 1253  
Email: nick.forster@gs.com

### **Antony Steinberg**

Goldman Sachs Australia  
Executive Director  
Infrastructure & Utilities  
Tel: +61 2 9320 1041  
Email: antony.steinberg@gs.com

A probity advisor is overseeing the sale process to ensure the procedures adopted in the sale process are fair, equitable and conducted in accordance with the established probity framework ("**Probity Advisor**"). Interested parties who have any concerns about the conduct or probity of the sale process should direct their concerns (in appropriate detail) to:

### **Rory O'Connor**

O'Connor Marsden & Associates  
Probity Advisor  
Tel: +61 2 9252 2565  
Email: roconnor@ocm.net.au

Refer to Section 8 for further information on probity arrangements in relation to the sale.

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## IMPORTANT NOTICE

This Invitation to lodge Expressions of Interest ("**Invitation**") has been prepared by the State of New South Wales (the "**Government**" or "**State**") and is dated 30 July 2013.

**This Invitation is provided to interested parties only, and must not (whether in whole or part) be provided to any other person or entity, or reproduced in any form. The fact that the Invitation has been provided to interested parties is confidential.**

The purpose of this Invitation is to give to interested parties who are interested in participating in the competitive bidding process for the sale of Macquarie Generation's assets ("**Transaction**"), the opportunity to formally express their interest in participating in the transaction process ("**Bid Process**") outlined in this document ("**Expressions of Interest**" or "**EOI**"). As outlined in this Invitation, the Government will select parties to participate in the Bid Process ("**Bidders**") based on the Expressions of Interest received in response to this Invitation and the information provided therein.

This Invitation also provides preliminary and general information in relation to the proposed Bid Process and an overview of Macquarie Generation to assist interested parties to make an assessment of whether to submit an Expression of Interest. This Invitation does not purport to contain all the information that a person who receives it (a "**Recipient**") may require to decide whether to submit an EOI or to assess the business, financial performance and operations of Macquarie Generation. Recipients and their advisers should conduct their own independent review, investigation and analysis of the business, assets, operations and other data contained or referred to in this Invitation (including the information available through any hyperlinks or other sources referenced in this Invitation).

All Recipients should consider seeking appropriate professional advice in reviewing the Invitation and evaluating the information contained or referred to in this Invitation.

This Invitation is not a prospectus, product disclosure statement, profile statement or other offer statement (for the purposes of the *Corporations Act 2001* (Cth)) and does not contain all the information that would usually be contained in any such document. This Invitation does not constitute an offer, or form part of an offer, in Australia or in any other jurisdiction in relation to any asset, right, security, financial product or business which is capable of acceptance. This Invitation shall not form the basis of any contract or commitment.

In accepting this Invitation, the Recipient acknowledges and agrees that none of the State, Macquarie Generation, nor any of their respective directors, officers, officials, employees, advisers, consultants or agents (each an "**Associate**") make any representation or warranty, express or implied, as to the timeliness, accuracy, adequacy, reliability, reasonableness or completeness of any assumption or the information contained or referred to in this Invitation, or subsequently provided to any Recipient, in relation to Macquarie Generation, its assets and operations or any transaction contemplated or referred to in this Invitation.

Nothing contained in this Invitation is, or may be relied upon as a promise, representation or warranty, whether as to the past, present or future. By accepting the Invitation the Recipient acknowledges and agrees that the State, Macquarie Generation and their respective Associates hereby exclude all representations and warranties concerning this Invitation that can be excluded by law.

Any projections, estimates, opinions and forward-looking statements ("**Forward-Looking Statements**") provided by the State, Macquarie Generation or any of their respective Associates with respect to the Transaction are subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond the control of the State and Macquarie Generation. Unless stated otherwise, no representations or warranties are being made by the State, Macquarie Generation or any of their respective Associates or any other person as to the accuracy or reasonableness of any Forward-Looking Statements including whether they will be achieved. Accordingly, Recipients must not rely on any Forward-Looking Statements.

To the fullest extent permitted by law, the State, Macquarie Generation and each of their respective Associates, disclaims all responsibility, liability, direct, indirect or consequential loss (and whether or not arising out of the negligence, default or lack of care of the State, Macquarie Generation or any Associate) for any loss or damage suffered by a Recipient, or other persons arising out of, or in connection with, any use of or reliance on this Invitation. The State, Macquarie Generation and their Associates have not audited or verified the information contained in this Invitation. Information in this Invitation or available through hyperlinks or other sources may not be complete or up to date, and is subject to review. To the extent that the Invitation contains summaries, these are not a replacement for reading the underlying contract or source document and were not prepared for the purposes of the Recipient's use.

The State, Macquarie Generation and their Associates do not accept any responsibility or obligation to correct, update, revise or supplement this Invitation or to inform any Recipient of any matter arising or coming to their notice, after the date of this Invitation, which may affect any matter referred to in this Invitation. If further information in connection with this Invitation is provided by the State, Macquarie Generation or any Associate, the Recipient acknowledges that the Recipient receives that information as though it formed part of this Invitation.

Nothing contained in this Invitation constitutes financial product, taxation, investment, legal or other advice. In preparing this Invitation, no account was taken of the investment objectives, taxation position, financial situation and particular needs of any particular Recipient.

This Invitation is not a recommendation by the State, Macquarie Generation or any of their Associates to the Recipient or any other person to respond to this Invitation or seek to participate in any Transaction. All terms used in this Invitation have the meaning given to them in the text of this Invitation.

Goldman Sachs Australia Pty Ltd, in conjunction with its affiliates ("**GS**") is acting for the State and not the Recipient and the receipt of this Invitation by any Recipient is not to be taken as constituting the giving of investment or other advice by GS to that Recipient, nor to constitute such person a client of GS. Accordingly, GS will not be responsible to the recipient for providing protections afforded to its clients or advising the Recipient in relation to the matters the subject of this Invitation. Furthermore, without limitation to the foregoing, neither the receipt of this Invitation by any Recipient nor any other matter shall be deemed to create or give rise to a fiduciary, agency or similar relationship between GS and any Recipient.

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## INVITATION FROM THE PREMIER OF NEW SOUTH WALES

As Premier of NSW, one of my primary objectives is to ensure this great State attracts high quality investment as we continually work to build on our inherent strengths as Australia's largest economy.

We came into office with the commitment to make NSW number one again. As part of that drive, the Government has committed to major investment in our economic infrastructure, funded in part through the sale or lease of State-owned assets where it is clearly in the public interest. Investment from around the country and around the world is welcome.

These transactions, such as the recent long-term leases of the Sydney Desalination Plant, Port Botany and Port Kembla, will unlock funds for roads, schools, hospitals and transport.

The NSW Government is determined to fulfill this commitment through a sensible program of reforms and asset sales, delivering proceeds to Restart NSW. This fund is dedicated to delivering vital infrastructure for our State.

To enable us to continue delivering for the people of NSW, I welcome the opportunity to invite Expressions of Interest for the sale of the Macquarie Generation business.



**Barry O'Farrell**  
NSW Premier and Minister for Western Sydney

## FOREWORD

As the Minister responsible for the Electricity Generator Assets (Authorised Transactions) Act 2012 ('**the Act**'), I am pleased to join the Premier in calling for Expressions of Interest for the sale of the Macquarie Generation business.

Macquarie Generation, which includes the Bayswater and Liddell Power Stations in the Hunter Valley, is the most significant merchant generator in Australia, supplying generation capacity for 26 per cent of NSW and 9 per cent of the National Electricity Market.

The NSW Government announced it would proceed with the sale of Macquarie Generation following the successful passage of the Act through the NSW Parliament in May 2012.

The sale of the Macquarie Generation business is part of broader reform of the electricity generation sector which seeks to ensure greater competitiveness, and to maintain reliability, for the benefit of both domestic and commercial energy users.

On behalf of the people of NSW, I wish interested parties well in working with the Government to achieve a strong outcome for the State and the energy sector more broadly.



**Mike Baird**  
NSW Treasurer

# 1. INVESTMENT HIGHLIGHTS

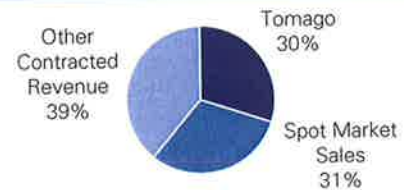


## 1.

### Diversified Sales Revenues, a Portion of which are Contracted

- Capacity to sell into a liquid forward electricity market
- Contract with Tomago Aluminium, currently one of Australia's most efficient aluminium smelters, contributed 30% to FY2013 sales revenue
- In addition to Tomago ~39% of revenues are derived through contracted sources with high credit quality counterparties such as AGL, Origin Energy, and EnergyAustralia

#### FY2013 Sales Revenues

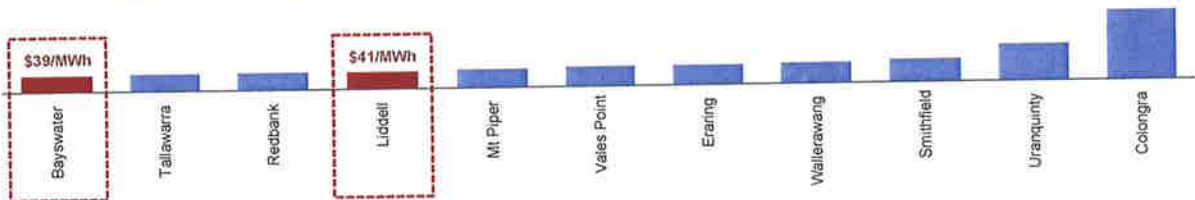


## 2.

### Lowest Marginal Costs in NSW

- Competitive market position given low short-run marginal costs (SRMC)

#### Top Generators in the NSW by Assumed SRMC including Carbon Tax (FY2013)<sup>1</sup>



## 3.

### Coal and Water Supply Security

- Fuel supply requirements are substantially contracted to 2025
- Long-term security of coal supply is reinforced by Macquarie Generation's access to existing rail and delivery infrastructure, proximity to coal mines in the Hunter Valley and existing relationships with major coal suppliers
- As an inland power station, Macquarie Generation's water supply security is underpinned by existing water licencing and title arrangements, as well as well-resourced and developed water infrastructure

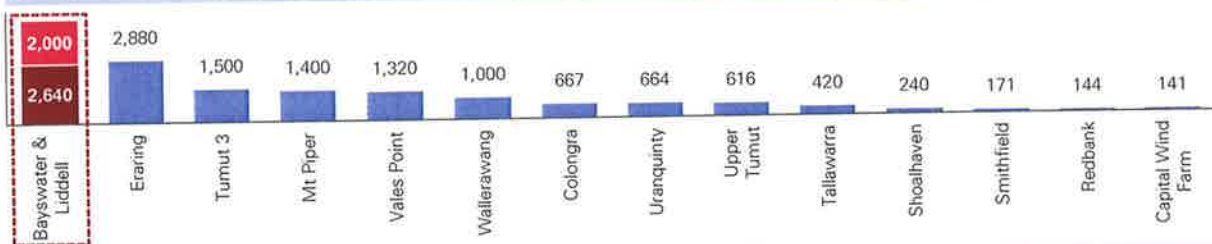


## 4.

### Baseload Generation with Significant Scale and Capacity

- Macquarie Generation provides the largest baseload generation capacity in the National Electricity Market ("NEM"), and is the largest generator by capacity in NSW, with Bayswater and Liddell having capacities of 2,640 and 2,000 MW respectively

#### NSW Generation Capacity by Power Station (MW)



## 5.

### Quality Generation Assets

- Recently refurbished turbines and significant historical capital investment in generation infrastructure
- Both power stations have been well maintained to meet their remaining economic lives, and potentially beyond

<sup>1</sup> Source: ACIL Tasman.

## 2. INTRODUCTION

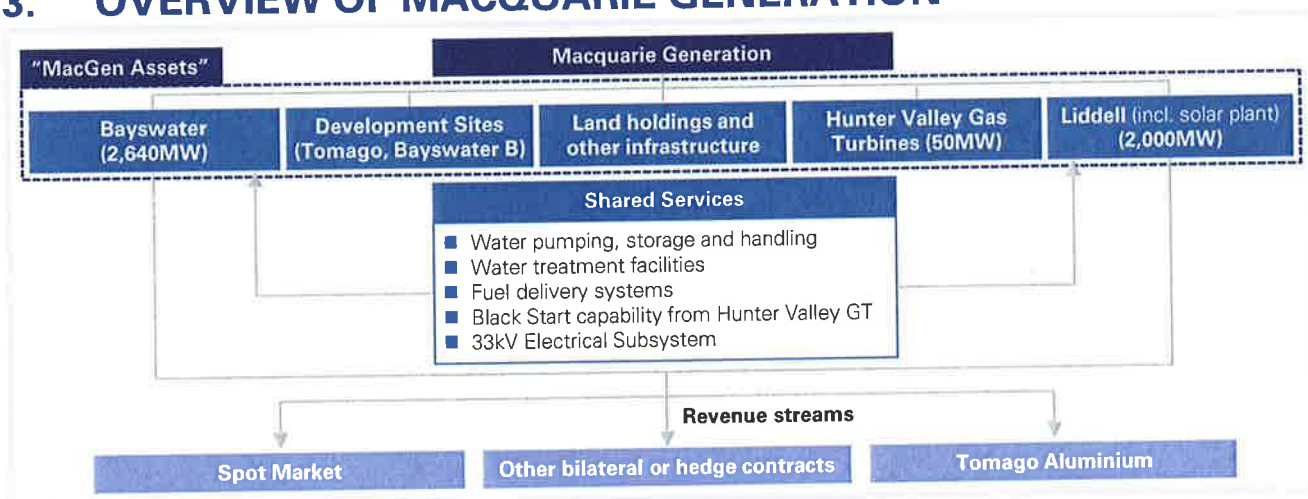
New South Wales Treasury ("NSW Treasury") is calling for Expressions of Interest for the sale of the Macquarie Generation business (the "Transaction"), which includes the 2,640 MW coal-fired Bayswater Power Station ("Bayswater") and the 2,000 MW coal-fired Liddell Power Station ("Liddell").

The NSW Government's key objectives for the Transaction ("Transaction Objectives") are to:

- Minimise on-going financial risks and liabilities for the State;
- Maintain the competitiveness of the NEM;
- Treat public sector employees fairly and equitably;
- Maximise the financial return for the NSW Government;
- Complete the project efficiently and in accordance with appropriate probity and accountability standards;
- Ensure that any power price increases to customers are minimised.

The NSW Government has enabling legislation allowing flexibility for the transaction to be structured in a manner that is best suited to achieving the Transaction Objectives.

## 3. OVERVIEW OF MACQUARIE GENERATION



Macquarie Generation owns and operates Bayswater and Liddell Power Stations, and the 50 MW Hunter Valley Gas Turbines. Macquarie Generation's 4,690 MW generation portfolio makes it the largest single participant in the NEM, representing approximately 26% of NSW's generation capacity and 9% of the NEM's generation capacity.<sup>1</sup> In addition, Macquarie Generation owns the Bayswater B and Tomago generation development sites.

Macquarie Generation's core business is the production, marketing and sale of electricity. Macquarie Generation's revenue from electricity sales is derived from output contracted to Tomago Aluminium, output contracted under bilateral hedges and futures contracts, and output sold in the spot market.

### Summary financials

\$m	FY13
<b>Revenue</b>	
<b>Total revenue (net Purchases)</b>	<b>1,078.4</b>
<b>Expenses</b>	
Fuel	(303.8)
Carbon (net)	(298.5)
Operating costs	(285.0)
<b>Total expenses</b>	<b>(887.3)</b>
<b>EBITDA</b>	<b>191.1</b>

*Note: Statutory unaudited financials.*

### Details

	Bayswater	Liddell
<b>Year of commissioning</b>	1985-1986	1971-1973
<b>Current assessed economic life</b>	2035	2022 <sup>2</sup>
<b>Fuel type</b>	Black coal	Black coal
<b>Generation type</b>	Baseload	Intermediate
<b>Generation capacity</b>	2,640 MW	2,000 MW
<b>Unit configuration</b>	4 x 660 MW	4 x 500 MW
<b>Emissions intensity</b>	0.88 tCO <sub>2</sub> /MWh	0.92 tCO <sub>2</sub> /MWh
<b>Coal consumption</b>	Up to 8 Mtpa	Up to 5 Mtpa
<b>% capacity in the NEM<sup>1</sup></b>	~5%	~4%
<b>% capacity in NSW<sup>1</sup></b>	~15%	~11%

<sup>1</sup> Registered capacity as at 2 July 2013, Australian Energy Market Operator.

<sup>2</sup> Whilst 2022 is the current Board approved economic life, Liddell's asset life may be extended to at least 2032 with appropriate maintenance and renewals.




## 4. DEVELOPMENT SITES

Macquarie Generation also owns the Bayswater B and Tomago generation development sites.

Bayswater B has Concept Approval under the former Part 3A of the *Environmental Planning and Assessment Act 1979* for the development of a new base load power station with a maximum generating capacity of 2,000MW powered by either pulverised coal using ultra super critical generation technology or natural gas using a combined cycle gas turbine plant.

The Tomago generation development site is ideally located to source gas from a proposed gas pipeline to the Port of Newcastle. The project has identified a series of required easements and has purchased the required land for the project. Project Approval for this project was granted in 2003 but lapsed in 2008.

	Details		Location
	Bayswater B	Tomago	
<b>Location</b>	4km west of Bayswater Muswellbrook, Hunter Valley	15km northwest of Newcastle	
<b>Size</b>	311 hectares	26 hectares	
<b>Capacity</b>	2,000 MW	260 MW to 790 MW	
<b>Generation Type</b>	Ultra supercritical coal-fired CCGT	OCGT CCGT possible	
<b>Approval status</b>	Concept Approval received Project Approval required	Project Approval has expired	

## 5. TRANSACTION TIMETABLE

The indicative process timetable is set out below:

Transaction Milestone	Date
■ Request for expressions of interest	Tuesday, 30 July 2013
■ Expressions of interest due	Monday, 19 August 2013
■ Sale process commencement	August 2013

The State reserves the right to modify these dates throughout the course of the sale process.

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## 6. EXPRESSION OF INTEREST REQUIREMENTS

Expressions of Interest should, at a minimum, address the matters below, in the order listed. These matters will form the basis of consideration by an evaluation panel to progression through the sale process.

Expressions of interest should be no more than 20 pages. Other material may be provided as an appendix, but will not necessarily form part of the evaluation.

### A. General information

- **Name:** Name of interested party.
- **Overview of interested party:** A brief description of the interested party's business and operations, legal status, including if domiciled in Australia, ABN or ACN or evidence of incorporation within other jurisdictions, governance structure (including details of directors and senior management) and capital structure.
- **Participation as a consortium:** Confirm whether the interested party is acting or is intending to act alone or in conjunction with, or as agent or broker for, any other person or company.
- **Ownership structure:** Identify any and all individuals and / or entities directly or indirectly holding or otherwise controlling a major interest (>5%) or a controlling interest in the interested party or each member of a consortium, and any of their close associates and whether any related body corporate is joining a competing interested party. If an interested party requires the approval of any holding company or entity to participate in the transaction process, evidence of the approval of the holding company or entity.
- **Agent or trustee:** Identify if the interested party is acting as an agent or trustee for or jointly with another party.
- **Key contact:** Nominate a single contact person and his or her contact details for all future communication between NSW Treasury and the interested party.

### B. Interest

- **Interest:** A statement of serious, bona fide and genuine interest to undertake the Transaction. Interest may be expressed for one or more of the assets of Bayswater, Liddell, Bayswater B development site, and the Tomago development site, or for the whole Macquarie Generation business.
- **Strategic rationale:** The strategic rationale of the interested party in undertaking the Transaction.

### C. Financial capacity

- **Financial Resources:** Information to support that the interested party has sufficient financial resources to undertake the Transaction and support the ongoing operations of the Macquarie Generation business.

### D. Preparedness for transaction

- **Transaction team:** Provide details of the team members and key personnel involved in the Transaction as well as the name and key contact of any legal, financial or other advisers to the interested party. Where an interested party's consultant or advisor also advises a competing interested party, provide details of the arrangements that have been developed to minimise potential probity and competitiveness issues.
- **Internal approvals:** A signed declaration confirming the board(s) (or equivalent governance body or bodies) of the interested party have approved the Expression of Interest and the participation of the interested party in the Transaction, if selected.
- **Approval and Completion Requirements:** Identify any further, internal or external, approvals that the interested party requires in order to submit a binding bid. If a party believes that it may require Australian Competition & Consumer Commission ("ACCC") or Foreign Investment Review Board ("FIRB") approval, the interested party should identify its proposed approach to obtain any such approvals.

### E. Suitability

- Information supporting that the interested party is a fit and proper person and is not subject to any material regulatory or other proceedings under any laws.

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## F. Compliance with process requirements

- **Confirmation statement:** A signed declaration confirming the factual information provided by the interested party is accurate.
- **Executed Confidentiality Deed:** An executed copy of the Confidentiality Deed attached at Appendix 3.

## 7. LODGEMENT DETAILS

Expressions of Interest (together with a copy of an executed Confidentiality Deed) should be lodged electronically to **nswgeneration@gs.com** no later than 10am (Australian Eastern Standard Time) on Monday, 19 August 2013. A detailed outline of Expression of Interest requirements can be found in Section 6.

An original Confidentiality Deed should be delivered to the following address by 10am (Australian Eastern Standard Time) on Monday, 19 August 2013.

c/ - Nicholas Forster and Antony Steinberg  
Goldman Sachs Australia Pty Ltd  
Level 46, Governor Phillip Tower  
1 Farrer Place, Sydney NSW 2000, Australia

NSW Treasury reserves the right to accept or reject Expressions of Interest lodged, either in part or in whole, after the specified lodgement time and date.

## 8. PROBITY AND OTHER MATTERS

### A. Probity of Transaction

As outlined in the Key Contacts Information page above, the Probity Advisor has been engaged to provide assurance to NSW Treasury and the NSW Government that appropriate probity procedures have been followed in accordance with the established probity framework.

The Probity Advisor's role will not include consideration of Expressions of Interest, selection of shortlisted bidders and the successful bidder, or consideration or determination of the binding bids. The Probity Advisor will act as an independent observer of the phases of the Transaction.

Should interested parties have any probity concerns about this invitation or any other aspect of the Transaction, they should be submitted to the Probity Advisor in writing by email to the address specified on the Key Contacts Information page. The Probity Advisor will raise all matters with NSW Treasury, making recommendations where necessary. Action taken as a result of such process will be at the discretion of NSW Treasury.

### B. Expression of Interest documents

All Expressions of Interest become the property of NSW Treasury on lodgment.

Any intellectual property rights existing in Expressions of Interest should be clearly identified by the interested party and will remain the property of the interested party. However, by lodging an Expression of Interest, the interested party, licenses NSW Treasury and its Associates to, without limitation, copy, adapt, disclose or do anything else to the intellectual property contained in the submitted documents for the purposes of the Transaction.

By submitting an Expression of Interest, the interested party warrants to NSW Treasury that the information contained in its Expression of Interest is true, accurate and complete on the date of lodgment, and may be relied upon by NSW Treasury.

Interested parties must advise NSW Treasury promptly of any material changes, perceived errors, ambiguities or discrepancies in their Expression of Interest.

### C. Anti-competitive conduct

Interested parties and their Representatives must not engage in any anti-competitive conduct or any other similar conduct with any other person in relation to their participation in the Transaction. Interested parties and their

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Representatives must not enter into exclusivity arrangements (written or otherwise) with their proposed financiers for the Transaction.

#### D. Conflict of interest

Interested parties must expressly identify where:

- it, or any of its related bodies corporate, is in a consortium or otherwise associated with any other interested party in respect of the Transaction;
- any consultant, financier, adviser or other Representative of the interested party is also a consultant, financier, adviser or other Representative for any other interested party in respect of the Transaction; or
- any consultant, financier, adviser or other Representative is also a consultant, financier, adviser or other Representative to Macquarie Generation or to any party that has a material contractual or other commercial relationship with Macquarie Generation.

Where any of the above relationships exist or arise, interested parties must identify the steps that will be taken to minimise the potential probity and competitiveness issues associated with those relationships. The State may impose conditions on the involvement of such interested parties, consultants, financiers, advisers or other Representatives in the Transaction.

Recipients should note that these are continuing obligations and an interested party must immediately notify the State should any of the above relationships arise, or potentially arise, during the course of the Transaction.

#### E. Changes to bidding consortium

After submission of an Expression of Interest, the formation of, or changes to, a bidding consortium is only permitted with the consent of NSW Treasury. Each member of a consortium is required to execute a Confidentiality Deed.

#### F. Probity checks

The interested party consents to, and will procure the consent from any individual requested by NSW Treasury to, probity checks (including, but not limited to, investigations into commercial structure, business and credit history, prior contract compliance and any criminal records or pending charges) being conducted prior to any evaluation being finalised.

#### G. Miscellaneous terms and conditions

- The invitation to lodge an Expression of Interest is not an offer or an invitation to treat and no contract exists or will arise between NSW Treasury or any interested party on the basis of such offer, or throughout any stage of the Transaction until Transaction documents are executed with the successful bidder.
- From the date of receipt of this invitation, NSW Treasury requires that as a condition of participation in the Transaction that, other than as permitted with NSW Treasury's prior written consent, each interested party and their Representatives must not have any contact with any Restricted Person in connection with the Transaction. Restricted Persons are Macquarie Generation, the Premier of New South Wales, the Treasurer of New South Wales, the Minister for Finance and Services and each of their departments, officers and employees, and each of these parties related bodies corporate and any of their agents, employees, auditors, financiers, advisers, consultants, joint venturers, partners, contractors or sub-contractors involved in connection with the Transaction.
- By lodging an Expression of Interest, each interested party, their consortium members and their subcontractors are bound by the terms of this invitation and the Confidentiality Deed.
- In conducting the Transaction, NSW Treasury may have regard to the New South Wales Code of Practice for Procurement dated 18 January 2005.
- Participation in the Transaction is at the sole risk and expense of interested parties. The obligations and liabilities of an interested party under the invitation apply to each person or entity comprising that interested party, jointly and severally.

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- It is the responsibility of interested parties throughout the procurement process to observe all regulatory, statutory and legal requirements, including taxation laws.
  - All monetary amounts referred to in this invitation are in Australian dollars unless otherwise stated.
  - The Transaction, this invitation, and the Expression of Interest Phase will be governed by the laws of NSW, and by lodging a Expression of Interest, the interested party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW.
  - In this invitation for Expressions of Interest, the following are "**Associates**" of NSW Treasury: the NSW Government (including its agencies, departments and Ministers), Macquarie Generation, and any associates, agents, advisers, contractors and employees of any of them. In this invitation, the "**Representatives**" of an interested party includes the persons so defined in the Confidentiality Deed.
  - NSW Treasury reserves the right to consider EOIs received after the due date specified in this document

# APPENDIX 1: DETAILED PROFILE OF MACQUARIE GENERATION

## A. Overview of Macquarie Generation and Associated Infrastructure

<b>Overview</b>	<ul style="list-style-type: none"> <li>■ Macquarie Generation's core business is the production, marketing and sale of electricity</li> <li>■ Currently Macquarie Generation provides ~26% and ~9% of NSW's and the NEM's electricity generation capacity, respectively<sup>1</sup></li> </ul>
<b>Business Strategy</b>	<ul style="list-style-type: none"> <li>■ Macquarie Generation's electricity sales revenues are derived from output sold in the NEM and from output contracted under bilateral hedges and futures contracts, and output contracted to Tomago Aluminium</li> <li>■ Macquarie Generation's core strategy targets generation levels that optimise the trade off between gross margins and optimises EBITDA, taking into account tradeoffs between production and revenue versus maintenance costs, fuel and carbon costs</li> </ul>
<b>Marketing and Trading</b>	<ul style="list-style-type: none"> <li>■ Macquarie Generation manages and optimises gross margin through: <ul style="list-style-type: none"> <li>— The development of a revenue strategy that supports long-term value maximisation, subject to risk and reward trade-offs; and</li> <li>— Following strategy definition, implementation of strategy by trading in both forward and spot markets</li> </ul> </li> </ul>
<b>Rail Unloading Facilities</b>	<ul style="list-style-type: none"> <li>■ <b>Antiene rail unloader:</b> 15 Mtpa facility on the North Western side of Lake Liddell costing \$104m, which commenced operation in 2007 <ul style="list-style-type: none"> <li>— Facility consists of a 6 km rail track configured as a loop, train provisioning and service facilities, a 2,000 tonne dump hopper, 6 km of 4,000 tonne per hour conveyor, a 700 tonne bin, control room, office, amenities, and maintenance buildings</li> <li>— Designed for the Hunter Valley's large trains which are 1.6 km long (96 wagons) and carry approximately 9,000 tonnes of coal in total</li> </ul> </li> <li>■ <b>Ravensworth rail unloader:</b> 7 Mtpa facility costing around \$23m and constructed adjacent to the New England Highway, approximately 10 km south of Bayswater and Liddell, which commenced operations in 1999 <ul style="list-style-type: none"> <li>— Primarily used as a back-up in the event of a major failure of the Antiene facility</li> <li>— Facility consists of 2.5 km of rail track configured as two dead-end sidings, a 200 tonne dump hopper, 2.7 km of 2,500 tonnes per hour conveyor, a control room and amenities buildings</li> <li>— Designed for a combination of 800 m (48 wagon) and 600 m (32 wagons) long trains</li> </ul> </li> </ul>
<b>Coal Conveyor System</b>	<ul style="list-style-type: none"> <li>■ Coal supply infrastructure at Macquarie Generation includes an extensive network of integrated conveyor belts</li> <li>■ Infrastructure can access fuel supplies from various local mines directly by conveyor</li> <li>■ Transports coal from the Antiene and Ravensworth rail unloaders as well as coal from local mines to the Bayswater and Liddell Coal Handling Plants</li> </ul>
<b>Coal Handling Plant</b>	<ul style="list-style-type: none"> <li>■ Two coal handling plants, one at Bayswater and one at Liddell, which consist of: <ul style="list-style-type: none"> <li>— <b>Bayswater &amp; Liddell Coal Storage Plant</b> for storage, handling and subsequent reclaiming of coal</li> <li>— <b>Bayswater &amp; Liddell Station Bunkering Plant</b> for coal delivery from the receival and storage plant to the boiler bunkers</li> </ul> </li> </ul>
<b>Coal Supply</b>	<ul style="list-style-type: none"> <li>■ Macquarie Generation maintains a portfolio of geographically diverse coal supply contracts</li> <li>■ Coal is currently sourced from three mines: Ravensworth,<sup>2</sup> Mt Arthur and Wilpinjong</li> </ul>
<b>On-Site Water Storage</b>	<ul style="list-style-type: none"> <li>■ <b>Lake Liddell:</b> originally constructed in 1969 as part of the infrastructure for Liddell <ul style="list-style-type: none"> <li>— Supplies cooling water for Liddell and is capable of supplying 50% of the make-up water to Bayswater's cooling tower make-up reservoir</li> <li>— Full supply level of ~150,000 ML</li> <li>— Water sourced from the Jerrys Plains river pumping pipeline and from its own catchment area</li> <li>— Provides security of water supply during periods in which supply from the Hunter River is interrupted and acts as a cooling pond for Liddell</li> </ul> </li> <li>■ <b>Freshwater Dam:</b> full supply level of ~4,000 ML and is supplied with lime softened water via an open canal <ul style="list-style-type: none"> <li>— Supplies water to both Liddell and Bayswater for domestic purposes, for fire fighting supplies, and for raw water feed to the demineralised water treatment plants</li> </ul> </li> <li>■ <b>Plashett Dam:</b> full supply level of ~64,000 ML, which is used to store raw river water</li> <li>■ <b>Bayswater Cooling Water Make-up reservoir:</b> current capacity of 360 ML and is supplied via the river pumping system and from Lake Liddell via the make-up water pumping station <ul style="list-style-type: none"> <li>— Used for cooling tower make-up, wash down water and ash and dust return-water tank make-up water</li> </ul> </li> </ul>

<sup>1</sup> Registered capacity as at 2 July 2013, Australian Energy Market Operator.

<sup>2</sup> Supplies from Ravensworth mine are scheduled to continue until the end of 2014. Deliveries from Mangoola mine are forecast to commence thereafter.

## B. Overview of Bayswater and Liddell

	Bayswater	Liddell
<b>Size</b>	<ul style="list-style-type: none"> <li>4 x 660 MW units</li> </ul>	<ul style="list-style-type: none"> <li>4 x 500 MW units</li> </ul>
<b>Current Assessed Economic Life</b>	<ul style="list-style-type: none"> <li>2035, may be able to be extended subject to the results of Life Extension studies and associated projects</li> </ul>	<ul style="list-style-type: none"> <li>2022, Liddell's asset life may be extended to at least 2032 with appropriate maintenance and renewals as detailed in completed Life Extension Studies</li> </ul>
<b>Boilers</b>	<ul style="list-style-type: none"> <li>Steam pressure 16,550 kPa</li> <li>Steam temperature 540 degrees</li> <li>Height 80 metres</li> </ul>	<ul style="list-style-type: none"> <li>Steam pressure 16,547 kPa</li> <li>Steam temperature 540 degrees</li> <li>Height 73 metres</li> </ul>
<b>Turbo Generators</b>	<ul style="list-style-type: none"> <li>Operating speed 3,000 rpm</li> <li>Generator Voltage 23 kV</li> </ul>	<ul style="list-style-type: none"> <li>Operating speed 3,000 rpm</li> <li>Generator Voltage 23 kV</li> </ul>
<b>Turbine House</b>	<ul style="list-style-type: none"> <li>Length 510 metres</li> <li>Height 38 metres</li> <li>Width 40 metres</li> </ul>	<ul style="list-style-type: none"> <li>Length 302 metres</li> <li>Height 34 metres</li> <li>Width 40 metres</li> </ul>
<b>Chimneys</b>	<ul style="list-style-type: none"> <li>Height 248 metres</li> <li>Diameter at base 23 metres</li> <li>Diameter at top 12 metres</li> </ul>	<ul style="list-style-type: none"> <li>Height 168 metres</li> <li>Diameter at base 19 metres</li> <li>Diameter at top 10 metres</li> </ul>
<b>Cooling</b>	<ul style="list-style-type: none"> <li>Forced draft cooling towers</li> <li>Height 132 metres</li> <li>Diameter at base 100 metres</li> <li>Diameter at top 52 metres</li> </ul>	<ul style="list-style-type: none"> <li>Natural evaporation from Lake Liddell</li> <li>Surface area 1,100 hectares</li> <li>Length and width 5 kilometres</li> <li>Depth 35 metres</li> </ul>
<b>Coal Consumption</b>	<ul style="list-style-type: none"> <li>Up to 8 Mtpa</li> </ul>	<ul style="list-style-type: none"> <li>Up to 5 Mtpa</li> </ul>
<b>Coal Stockpile</b>	<ul style="list-style-type: none"> <li>Coal stockpiling capacity at Bayswater is ~2.2 Mt which is equivalent to approximately four months normal operation</li> <li>Bayswater also maintains approximately 30 kt in a covered dry storage</li> </ul>	<ul style="list-style-type: none"> <li>Coal stockpiling capacity at Liddell is 1.0 Mt which is equivalent to approximately three months normal operation</li> <li>Liddell also maintains approximately 25 kt in a covered dry storage.</li> </ul>
<b>Grid Connection</b>	<ul style="list-style-type: none"> <li>Output is stepped up in voltage by generator transformers and is connected by overhead conductors to adjacent TransGrid switchyard and transmitted at 330 kV from Units 1 and 2, and 500 kV from Units 3 and 4 into the interconnected high-voltage national transmission system</li> <li>Units 3 and 4 at Bayswater have been recently reconnected at 500 kV to reduce transmission constraints within NSW</li> </ul>	<ul style="list-style-type: none"> <li>Output is stepped up in voltage by generator transformers and is connected by overhead conductors to adjacent TransGrid switchyard and transmitted at 330 kV into the interconnected high-voltage national transmission system</li> <li>Liddell is connected to the 330 kV network at the adjacent TransGrid 330 kV Liddell switchyard which is directly connected to the nearby TransGrid 330 kV Bayswater switchyard, and through that, to the 500 kV network</li> </ul>

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## APPENDIX 2: PUBLICLY AVAILABLE DOCUMENTS

### Description

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<b>Financial Information</b>	<ul style="list-style-type: none"><li>■ The website below contains the following financial information for Macquarie Generation:<ul style="list-style-type: none"><li>— Audited annual reports: FY 2002 to FY 2012</li><li>— Statements of Corporate Intent: FY 2009 to FY 2013</li></ul></li><li>■ <b>Website:</b> <a href="http://www.macgen.com.au/About-Us/Annual-Reports.aspx">http://www.macgen.com.au/About-Us/Annual-Reports.aspx</a></li></ul>
<b>Operational Information</b>	<ul style="list-style-type: none"><li>■ Statement of business ethics<ul style="list-style-type: none"><li>— <b>Website:</b> <a href="http://www.macgen.com.au/Resources/Documents/Statement-of-Business-Ethics.pdf">http://www.macgen.com.au/Resources/Documents/Statement-of-Business-Ethics.pdf</a></li></ul></li><li>■ Occupational health and safety policy<ul style="list-style-type: none"><li>— <b>Website:</b> <a href="http://www.macgen.com.au/About-Us/Occupational-Health-Safety-Policy.aspx">http://www.macgen.com.au/About-Us/Occupational-Health-Safety-Policy.aspx</a></li></ul></li></ul>
<b>Environmental Information</b>	<ul style="list-style-type: none"><li>■ The website below contains the following environmental monitoring documentation:<ul style="list-style-type: none"><li>— Liddell Power Station Monitoring Data Report: Apr-2012 to Apr-2013</li><li>— Bayswater Power Station Monitoring Data Report: Apr-2012 to Apr-2013</li><li>— Macquarie Generation's Pollution Incident Response Management Plan</li><li>— EPL Licence – Bayswater 779</li><li>— EPL Licence – Liddell 2122</li><li>— Map EPA Licence Boundary BW 807453 6 2009</li><li>— Map EPQ Licence Boundary LD 800474 2003</li></ul></li><li>■ <b>Website:</b> <a href="http://www.macgen.com.au/Environment/Environmental-Monitoring.aspx">http://www.macgen.com.au/Environment/Environmental-Monitoring.aspx</a></li></ul>

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## APPENDIX 3: CONFIDENTIALITY DEED

## **Instructions for execution of Confidentiality Deed**

Please complete and execute the attached Confidentiality Deed as follows:

1. Insert Interested Party name on the Cover Page.
2. Insert date of execution, Interested Party name, ACN and address on page 1 where indicated.
3. Insert address, name and fax number of individual to receive notices where indicated on page 13.

Should you wish to disclose Confidential Information to any Permitted Disclosees (e.g. related bodies corporate, professional advisers or proposed financiers) as permitted under clause 5.1 please arrange for completion and execution of each required Permitted Disclosee Undertaking as follows:

4. Insert Interested Party name in Recital A.
5. Insert date of execution of the Confidentiality Deed in Recital A.
6. Complete appropriate execution block with Permitted Disclosee's details
7. Arrange for execution of the Permitted Disclosee Undertaking by Permitted Disclosee

Please return the executed Confidentiality Deed and any executed Permitted Disclosee Undertakings to Goldman Sachs.

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# Confidentiality Deed

By   
in favour of the Beneficiaries (as defined by this Deed).

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## Contents

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Date This Deed is dated \_\_\_\_\_ [date]

By \_\_\_\_\_ [Recipient]  
(ACN/ABN \_\_\_\_\_) of \_\_\_\_\_  
\_\_\_\_\_ [Address]  
(Recipient)

In Favour of **Macquarie Generation** (ABN 18 402 904 344) of 13 Griffiths Road, Lambton, New South Wales, 2305 (*Macquarie Generation*)

**The Crown in the Right of the State of New South Wales**, acting through New South Wales Treasury of Level 31, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (*State*)

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## Recitals

- A The Recipient intends to engage in the Sale Process.
- B The State and Macquarie Generation may provide Confidential Information to the Recipient during the Sale Process.
- C The Recipient undertakes to keep confidential any Confidential Information provided to it and to use such information only for the Permitted Purpose and on the terms and conditions of this Deed.

## Operative provisions

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### 1 Definitions and interpretation

#### Definitions

1.1 In this Deed the following definitions apply, unless the context requires otherwise:

**Beneficiaries** means the State and Macquarie Generation, and each is a **Beneficiary**.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Sydney.

**Confidential Information** means:

- (a) all information concerning the Sale Process and a Proposed Transaction;
- (b) the terms and status of the Sale Process and the Recipient's participation in the Sale Process or withdrawal from the Sale Process by the Recipient;
- (c) the existence and contents of this Deed and the contents of any discussions or correspondence between the State, Macquarie Generation or their Representatives and the Recipient or any of its Representatives relating to the Sale Process or a Proposed Transaction;
- (d) all information (whether written or verbal and regardless of its material form) disclosed or otherwise made available by the State, Macquarie Generation or their Representatives to the Recipient or any of its Representatives (whether before, on or

after the date of this Deed) pursuant to the Sale Process, including the content of any management presentation or similar or related materials provided or presented to the Recipient or any of its Representatives;

- (e) information which, by its nature or the circumstances surrounding its disclosure, is or could reasonably be expected to be regarded as confidential to a Beneficiary or any third party with whose consent or approval a Beneficiary uses that information; and
- (f) information (including any reports, valuations, summaries, conclusions, analyses, advice, memoranda, working papers, calculations, spreadsheet contents and formulae, and any computer model or data) developed or created by the Recipient or any of its Representatives, either alone or in collaboration with a Beneficiary or its Representatives which is based on, derived from, includes or refers to any of the Confidential Information in paragraphs (a) to (e),

but excludes:

- (g) any information which is in or becomes part of the public domain other than by reason of a breach of this Deed or because of any other breach of an obligation of confidence by the Recipient or any Permitted Disclosee;
- (h) information which was already known by the Recipient at the time of disclosure by a Beneficiary or its Representatives; and
- (i) information which the Recipient acquires from a third party entitled to disclose it on a non-confidential basis.

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

**Deed** means this Confidentiality Deed.

**Government Agency** means any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity and also includes a State owned corporation, company or business.

**Permitted Disclosee** has the meaning given in clause 5.1.

**Permitted Disclosees List** means a list of all individuals who are Permitted Disclosees and to whom the Recipient has disclosed Confidential Information in accordance with the terms and conditions of this Deed.

**Permitted Purpose** means the sole purpose of the Recipient considering whether to make an offer in relation to a Proposed Transaction, the making of that offer, the negotiation of the terms of a Proposed Transaction and the completion or performance of a Proposed Transaction.

**Personal Information** means information or an opinion about an individual whose identity is apparent or reasonably ascertainable from that information or opinion.

**Proposed Transaction** means the possible sale of some or all of the assets, rights and liabilities of Macquarie Generation.

**Related Body Corporate:**

- (a) generally, has the meaning given to it in the Corporations Act; and
- (b) when used in relation to the State, means any Government Agency of the State and includes Macquarie Generation.

**Representative** of a person means a director, officer, employee, professional adviser, consultant, financier or potential financier of the person.

**Request for EOI** means the request for expressions of interest in respect of the Proposed Transaction issued by the State and dated 29 July 2013.

**Restricted Person** means each of:

- (a) any person designated as such by the State by notice to the Recipient;
- (b) any supplier, customer or creditor of the State or Macquarie Generation or a former officer or employee of the State or Macquarie Generation; and
- (c) any Representative of the State, Macquarie Generation or their Related Bodies Corporate.

**Rules** means the rules issued by the State governing the conduct of the Sale Process, including:

- (a) any data room protocols issued to the Recipient by the State and all amendments to such document issued by the State from time to time;
- (b) the Request for EOI and any subsequent bid rules or similar or equivalent documents issued by the State to any participant governing the making of offers in relation to a Proposed Transaction; and
- (c) any other requirements of the State in connection with the Sale Process as advised to the Recipient from time to time.

**Sale Process** means the process being conducted by or on behalf of the State in connection with the Proposed Transaction as described in the Request for EOI and in any subsequent bid rules or equivalent or like documents issued by the State to the Recipient.

## **Interpretation**

1.1 In this Deed, unless the context requires another meaning, a reference:

- (a) to the singular includes the plural and vice versa;
- (b) to a gender includes all genders;
- (c) to a document (including this Deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
- (d) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (e) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Deed;
- (f) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Deed;
- (g) to a person includes:
  - (i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and

- (ii) the person's successors, permitted assigns, substitutes, executors and administrators;
  - (h) to a law includes any legislation, judgment, rule of common law or equity, and is a reference to that law as amended, consolidated, supplemented or replaced, and includes a reference to any regulation, by-law or other subordinate legislation;
  - (i) to time is to Sydney time; and
  - (j) to the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively.
- 1.2 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.3 Headings are for convenience only and do not affect the interpretation of this Deed.
- 1.4 If a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- 1.5 Where any clause of this Deed refers to a decision or action of the Beneficiaries, that decision or action may be made or taken by the Secretary of NSW Treasury on behalf of all Beneficiaries.
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## **2 Rights in Confidential Information and acknowledgements**

- 2.1 The Recipient acknowledges that the Confidential Information and all intellectual property rights of each Beneficiary in the Confidential Information are, and will remain, the exclusive property of the relevant Beneficiary.
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## **3 Recipient's confidentiality obligations**

### **Disclosure and use of Confidential Information**

- 3.1 The Recipient undertakes to:
- (a) maintain the confidential nature of the Confidential Information;
  - (b) not, without the Beneficiaries' prior written consent, disclose any of the Confidential Information to any person, except as expressly permitted under this Deed;
  - (c) if requested, notify the Beneficiaries of any Permitted Disclosee to whom it discloses Confidential Information;
  - (d) only use the Confidential Information for the Permitted Purpose;
  - (e) not use or exploit the Confidential Information for its own benefit (except as expressly permitted by this Deed) or to the competitive disadvantage of any of the Beneficiaries; and
  - (f) not, without the Beneficiaries' prior written consent, copy or reproduce any of the Confidential Information for any purpose other than the Permitted Purpose.

### **Security and control over Confidential Information**

- 3.2 The Recipient undertakes to:



- (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, disclosure, use, copying or reproduction;
- (b) ensure it maintains control over the Confidential Information;
- (c) immediately notify the Beneficiaries of any suspected or actual unauthorised access, disclosure, use, copying or reproduction of the Confidential Information; and
- (d) promptly do anything the Beneficiaries reasonably require to prevent or restrain a breach of this Deed, or any infringement of any Beneficiary's rights arising out of this Deed.

### **Privacy and data protection**

- 3.3 If, and to the extent that, any of the Confidential Information disclosed to the Recipient contains any Personal Information, the Recipient must:
- (a) comply with all privacy or data protection laws regulating the collection, storage, use and disclosure of information that a Beneficiary is subject to in relation to the Confidential Information, as if it were subject to those laws;
  - (b) immediately notify the Beneficiaries if it becomes aware of any misuse, loss, unauthorised access or disclosure of the Personal Information, or of any complaint or investigation under, or relating to, any of the laws referred to in paragraph (a) above; and
  - (c) co-operate with the Beneficiaries in the resolution of any such complaint or investigation.

### **Term of confidentiality obligations**

- 3.4 The Recipient's obligations under this Deed continue for two years from the earlier of:
- (a) the completion of the Proposed Transaction; and
  - (b) an announcement made by the State that it does not intend to proceed with the Proposed Transaction,

provided that where the State or a Business is itself bound by a confidentiality obligation in respect of any Confidential Information which extends beyond this time, then the Recipient's obligations under this Deed will endure for this extended period of time in respect of that Confidential Information.

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## **4 Disclosure required by law**

- 4.1 Subject to clause 4.2, this Deed does not prevent the disclosure of Confidential Information to the extent it is required to be disclosed by the Recipient or a Permitted Disclosee under any law, regulation or order of any Government Agency or the rules of any stock exchange.
- 4.2 Before disclosing any of the Confidential Information under clause 4.1, the Recipient must, to the extent that it does not conflict with the Recipient's or the Permitted Disclosee's obligations under any such law, regulation, order or rule:
- (a) immediately notify the State of the requirement to disclose the Confidential Information and provide full details of the circumstances of the proposed disclosure;
  - (b) give the State:

- (i) a reasonable opportunity to challenge or restrict the requirement, including in a court of law or other appropriate body; and
- (ii) all reasonable assistance and co-operation which the State considers necessary to prevent or minimise disclosure of the Confidential Information;
- (c) consult with the State as to the form and content of the proposed disclosure; and
- (d) use its best endeavours to obtain confirmation that the Confidential Information required to be disclosed will be treated confidentially,

and must only disclose (or allow its Permitted Disclosee to disclose) the minimum amount of Confidential Information required to comply with the applicable law, regulation, order or rule (as advised in writing by its external legal advisers).

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## 5 Disclosure by Recipient to Permitted Disclosees

5.1 Subject to clauses 5.2 and 5.3, the Recipient may disclose Confidential Information to:

- (a) its Related Bodies Corporate; and
- (b) the respective Representatives, financiers (and/or proposed financiers) and insurance companies of the Recipient and its Related Bodies Corporate,

(each a *Permitted Disclosee*) to the extent the disclosure is necessary for the Permitted Purpose and the Recipient informs its Permitted Disclosees of the confidential nature of the Confidential Information and the obligations of this Deed.

5.2 The Recipient:

- (a) must (at its own expense) procure that its Representatives (whether or not still employed or engaged by the Recipient or any of its Related Bodies Corporate) and other Permitted Disclosees (including Related Bodies Corporate, financiers (and/or proposed financiers), insurance companies) do not do, or omit to do, anything which if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this Deed; and
- (b) shall be liable for any act or omission of its Permitted Disclosees which would be a breach of any obligation in this Deed as if the act or omission had been done or omitted to be done by the Recipient.

### Confidentiality undertakings

5.3 Prior to disclosing any Confidential Information to:

- (a) a Representative that is a body corporate, partnership or organisation of any kind;
- (b) a Representative who is an individual but who is not employed by, or otherwise connected in any way to, the Recipient or a Related Body Corporate of the Recipient; or
- (c) any financier (and/or potential financier) or insurance company,

the Recipient must (at its own expense) procure that such person executes a confidentiality undertaking in the form set out in Schedule 1 (or as agreed by the other parties), which the Recipient must provide to the Beneficiaries on request.

## Permitted Disclosees List

- 5.4 The Recipient must maintain a Permitted Disclosees List, which it must provide to the Beneficiaries on request.

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## 6 Return and destruction of Confidential Information

- 6.1 Subject to clause 6.2, the Recipient must:

- (a) promptly return to the Beneficiaries or, at the election of the Recipient, destroy all documents and other materials constituting Confidential Information in the possession or control of the Recipient or its Permitted Disclosees;
- (b) promptly delete all of the Confidential Information in the possession or control of the Recipient or its Permitted Disclosees, which is stored in an electronic or other medium and retrievable in perceivable form; and
- (c) despite anything else in this Deed, stop, and procure that its Permitted Disclosees stop, using the Confidential Information,

on the earlier of:

- (d) demand by a Beneficiary; and
- (e) the time the Confidential Information is no longer required for the Permitted Purpose.

- 6.2 Despite clause 6.1, the Recipient and each of its Permitted Disclosees may retain:

- (a) if the Permitted Disclosee is a professional advisor to the Recipient, that Permitted Disclosee may retain such Confidential Information as is necessary to support any written advice provided to the Recipient;
- (b) if the Permitted Disclosee is a financier to the Recipient, that Permitted Disclosee may retain credit records and papers containing Confidential Information as necessary to accord with its customary information retention policies;
- (c) such Confidential Information as it is required to retain pursuant to applicable law or regulation;
- (d) any Confidential Information that is stored in any automatic electronic archiving or back-up system where it is not reasonably practicable to delete the same; and
- (e) any Confidential Information that is contained in any board minutes or papers of the Recipient (or in any board committee minutes or papers) that were prepared in connection with the Permitted Purpose and that the Recipient is required to retain for corporate governance purposes,

provided that the Recipient notifies the State in writing of all of the Confidential Information retained pursuant to this clause 6.2 and takes such additional steps to safeguard the confidentiality of the Confidential Information as the Beneficiaries may reasonably require.

### No release from obligations

- 6.3 The return, destruction, deletion or retention of Confidential Information in accordance with clauses 6.1 and 6.2 does not release the Recipient from its obligations under this Deed.

## **Recipient to give certificate**

- 6.4 Promptly following the completion of the return, destruction or deletion of the Confidential Information, the Recipient must give the State a certificate signed by a director of the Recipient confirming that the Recipient and its Permitted Disclosees have complied with clause 6.1.

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## **7 No Reliance on Confidential Information**

### **General acknowledgements**

- 7.1 The Recipient acknowledges and agrees that:
- (a) the Beneficiaries and their Representatives may not provide all information that may be required by the Recipient for the Permitted Purpose or that the Recipient or its Permitted Disclosees may require or expect to find in order to evaluate a Proposed Transaction properly;
  - (b) neither the supply of the Confidential Information to the Recipient or its Permitted Disclosees nor anything contained in this Deed or in the Confidential Information constitutes an offer, recommendation or invitation by the Beneficiaries or their Representatives to any person;
  - (c) to maximum extent permitted by law and subject to any express provisions to the contrary in any definitive agreement relating to a Proposed Transaction, the Confidential Information may not be relied on in any way by the Recipient or any other person in assuming any contractual or other obligations or liability;
  - (d) nothing in this Deed confers any rights of exclusivity on the Recipient, or prevents the Beneficiaries or their Representatives from disclosing any of the Confidential Information to any other person;
  - (e) the Beneficiaries and their Representatives are under no obligation in relation to the Confidential Information, including any obligation to update, notify or provide any information to a Recipient if a Beneficiary or one of their Representatives becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; and
  - (f) any opinions expressed in the Confidential Information are based on the knowledge and approach of the persons forming the opinion at the date that the opinion was formed and may have ceased or may in the future cease to be appropriate in the light of subsequent knowledge or approaches.

### **No representation or warranties**

- 7.2 The Recipient acknowledges that none of the Beneficiaries or their Representatives has made or makes any representation or warranty, express or implied:
- (a) as to the accuracy, content or completeness of the Confidential Information;
  - (b) that the Confidential Information has been audited, independently verified or prepared or compiled, prepared or made available with reasonable care;
  - (c) to the extent that the Confidential Information includes any projection, forecast or estimate concerning any future event or matter, that any such projection, forecast or estimate will occur or is reasonably likely to occur or that the assumptions on which the projection, forecast or estimate are based are correct or reasonable;

- (d) to the extent that the Confidential Information includes any report or opinion, that any such report or opinion is accurate, current or addresses issues that may be of concern or relevant to the Recipient or its circumstances, or that the assumptions on which the report or opinion are based are correct or reasonable,

and the Recipient fully accepts these risks when relying on the Confidential Information.

### **Recipient to make own assessment**

7.3 The Recipient acknowledges and agrees that:

- (a) it must make its own assessment of the Confidential Information and satisfy itself as to the accuracy, content, legality and completeness of that information;
- (b) it will rely solely on its own investigations and analysis in connection with the Permitted Purpose and in assuming any obligations or liabilities in relation to a Proposed Transaction, and its decision to do so will be based solely on the terms of any definitive agreement entered into to effect a Proposed Transaction and on the Recipient's own investigation, analysis, verification and assessment of the Proposed Transaction;
- (c) if the Recipient or any of its Related Bodies Corporate enters into a definitive agreement with the State, a Business or any other person in respect of the Proposed Transaction following the Recipient's inspection of the Confidential Information, its decision to do so will be based solely on the terms of that agreement and on the Recipient's own investigation, analysis, verification and assessment of the Proposed Transaction;
- (d) any reliance by the Recipient or any of its Permitted Disclosees on any Confidential Information is solely at their own risk and the Beneficiaries and their Representatives assume no duty of care towards the Recipient or any of its Permitted Disclosees; and
- (e) the Beneficiaries and their Representatives do not accept responsibility for any interpretation that the Recipients or any other person may place on the Confidential Information or for any opinion or conclusion that the Recipient or any other person may form as a result of examining the Confidential Information.

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## **8 Disclaimer in favour of Beneficiaries**

- 8.1 The Recipient acknowledges and agrees that, to the maximum extent permitted by law but subject to any express provisions to the contrary in any definitive agreement relating to a Proposed Transaction, the Beneficiaries and their Representatives will not be liable for, and the Recipient releases the Beneficiaries and their Representatives from, and will not sue or seek to hold any of them liable for, any loss (including loss of profits or opportunity) or damage (whether foreseeable or not) suffered by any person using, disclosing or acting on any Confidential Information, whether the loss or damage arises in connection with any negligence, default or lack of care on the part of the Beneficiaries or their Representatives, or from any misrepresentation or any other cause.
- 8.2 To the maximum extent permitted by law, the Recipient waives any right it may have to bring an action under the Corporations Act, the *Australian Securities and Investments Commission Act 2001*, the *Trade Practices Act 1974* or the *Fair Trading Act* (of any State or Territory) or common law in respect of any representation or statement made by the State, Macquarie Generation or their Representatives in connection with the Sale Process, this Deed or the Confidential Information.

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## **9 Undertakings regarding the Sale Process**

### **No unauthorised contact**

- 9.1 Subject to clause 9.4, the Recipient will not, and will procure that its Permitted Disclosees do not, without the State's prior written consent, have contact of any kind with any Restricted Person in connection with the Sale Process, or in relation to any of the Confidential Information, unless such contact is in accordance with the Rules.

### **No discussion**

- 9.2 The Recipient will not (and will procure that its Permitted Disclosees do not), without the prior written consent of the State or save as provided in this Deed or the Rules, directly or indirectly solicit, initiate or hold any discussions or negotiations with any person regarding their joint investment in a Proposed Transaction or otherwise act in concert with any person in connection with the Permitted Purpose.

### **Non-solicitation**

- 9.3 Subject to clause 9.4, for a period of two years after the date of this Deed the Recipient will not, and will procure that its Permitted Disclosees do not, directly or indirectly, without the State's prior written consent:
- (a) solicit, offer to employ, employ, hire as a contractor, agent or consultant, or otherwise procure services from any person who is an officer or employee of a Business or a Related Body Corporate of a Business (at any time during the term of this Deed); or
  - (b) interfere with the relationship any other Restricted Person maintains with Macquarie Generation as at the date of this Deed.
- 9.4 The Recipient and its Permitted Disclosees may employ, contract or have contact with an officer or employee of a Business, a Related Body Corporate of a Business or any other Restricted Person:
- (a) where that officer, employee or other Restricted Person is engaged as a consequence of a bona fide advertising or recruitment campaign targeted to a wide range of potential applicants;
  - (b) in response to an unsolicited approach made by the officer, employee or other Restricted Person;
  - (c) pursuant to a pre-existing relationship with the officer, employee or other Restricted Person (as evidenced in writing);
  - (d) pursuant to dealings in the ordinary course of business that are consistent with the past practice of the Recipient (or Permitted Disclosee) and which are not connected with the Recipient's (or Permitted Disclosee's) use or knowledge of the Confidential Information; or
  - (e) as a result of the execution, completion and implementation of a Proposed Transaction by the Recipient.

### **Compliance with Rules and involvement in Sale Process**

- 9.5 The Recipient, acknowledges, undertakes and agrees that:
- (a) it will comply, and will procure that its Permitted Disclosees comply, with the Rules in full and that its, or its Permitted Disclosees, failure to comply with the Rules may

result in the State (in its sole discretion) excluding the Recipient and its Permitted Disclosees from continued participation in the Sale Process and/or deny the Recipient and its Permitted Disclosees any access or further access to Confidential Information;

- (b) the State may, at any time and in the State's absolute discretion, discontinue the Sale Process, end the Recipient's involvement in the Sale Process, deny the Recipient and its Permitted Disclosees any access or further access to Confidential Information and/or end negotiations with the Recipient with no further obligation to accept or consider any offer made in connection with the Proposed Transaction by the Recipient; and
- (c) any action taken by the State under this clause 9.5 is without prejudice to any other rights which the State may have in respect of any breach of this Deed.

#### **No exclusivity with debt financiers**

- 9.6 The Recipient will not, and will procure that its Permitted Disclosees do not, enter into any agreement, arrangement or understanding with, or otherwise provide any inducement to, any debt financier or proposed debt financier of the Recipient or Related Body Corporate that would prevent or restrict, directly or indirectly, that financier or proposed financier from providing or participating in providing any debt funding or assistance to any other person in connection with the Sale Process.

#### **Covenants fair and reasonable**

- 9.7 The Recipient acknowledges and agrees that the undertakings contained in this clause 9 are fair and reasonable in all respects, and are reasonably required by the State and Macquarie Generation to protect their business.

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## **10 Warranties, indemnities and remedies for breach**

### **General warranties**

- 10.1 The Recipient warrants to the Beneficiaries that, as at the date of this Deed:
- (a) its execution of this Deed has been properly authorised by all necessary corporate or other action by it;
  - (b) it has full corporate authority or statutory power, as the case may be, and lawful authority, to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
  - (c) this Deed constitutes a full and binding legal obligation upon it;
  - (d) this Deed does not conflict with or result in the breach of or default under the provision of the constitution or other constituent documents or any material term or provision of any agreement or deed or any law to which it is a party or is subject or by which it is bound; and
  - (e) to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it which may have a material effect upon the subject matter of this Deed.

## Trustee warranties

- 10.2 The Recipient warrants and represents to the Beneficiaries that where the Recipient enters into this Deed in its capacity as the trustee of a trust (*Trust*), the following provisions apply in relation to the Recipient:
- (a) in its capacity as trustee of the Trust (*Trustee*), the Trustee warrants that:
    - (i) it is the sole trustee of the Trust;
    - (ii) it has the power under the Trust to:
      - (A) execute and deliver this Deed; and
      - (B) perform its obligations under this Deed;
    - (iii) no action is currently taking place or pending to remove the Trustee as trustee of the Trust or to appoint a new or additional trustee of the Trust;
    - (iv) it is not and has never been in breach of the Trust's trust deed and has complied with its obligations in connection with the Trust;
    - (v) it has entered into this Deed on behalf of and for the benefit of the Trust; and
    - (vi) as far as it is aware, no action is pending to terminate the Trust.

## Equitable relief

- 10.3 The Recipient acknowledges that:
- (a) any breach of this Deed may cause irreparable harm to the Beneficiaries for which damages would not be a sufficient remedy; and
  - (b) the Beneficiaries, severally, are entitled to claim specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Deed by the Recipient or Permitted Disclosee, in addition to any other remedies available to the Beneficiaries at law or in equity.

## Indemnity

- 10.4 The Recipient agrees to indemnify, hold harmless and keep indemnified each of the Beneficiaries against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:
- (a) any breach of this Deed;
  - (b) any act or omission by any of its Permitted Disclosees which, if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this Deed;
  - (c) any warranty given by the Recipient being untrue, inaccurate or misleading; or
  - (d) the enforcement by a Beneficiary of its rights under this Deed.
- 10.5 For the purposes of clause 10.4 and without limiting clause 12.1, the Recipient acknowledges that it has entered into this Deed for the benefit of each Beneficiary and agrees that each Beneficiary may enforce the indemnity in clause 10.4 in its own name.



## Prompt disclosure of breach

- 10.6 The Recipient must promptly disclose to the State anything which may arise or become known to it which is, or may be reasonably expected to lead to, a breach of this Deed, including anything which is inconsistent with any warranty given by it (as if each warranty were repeated on each day during the term of this Deed).
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## 11 No derogation of other rights

- 11.1 The Recipient acknowledges that the covenants contained in this Deed are additional to, and do not derogate from, the Recipient's obligations in respect of secret and confidential information at common law or under any statute.
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## 12 Benefit of Deed

- 12.1 The Recipient acknowledges and agrees that:
- (a) the benefit of this Deed is held severally by the Beneficiaries and may be enforced by any one of the Beneficiaries acting alone and the Recipient has no right or objection to enquire into the dealings between Beneficiaries in relation to any matter the subject of this Deed;
  - (b) the State is entitled to enforce the rights of any Beneficiary under this Deed (and such enforcement may, without limitation, be initiated by a notice signed by a Minister or the Secretary or a Deputy Secretary of NSW Treasury); and
  - (c) its undertakings in this Deed are irrevocable and may only be varied, and the Recipient may only be released from them, with the written consent of the Beneficiaries.
- 

## 13 Notices

### Requirements

- 13.1 All notices must be:
- (a) in legible writing and in English;
  - (b) addressed to the receiving party at the address set out below or to any other address that a party may notify to the other:
    - to the Beneficiaries:  
Address: Level 27, Governor Macquarie Tower  
1 Farrer Place, Sydney, NSW 2000  
Attention: The Secretary  
NSW Treasury
    - to the Recipient (for itself and as agent for its Beneficiaries and Permitted Disclosees):  
[Address]:  
[Attention]:
  - (c) signed by the sender or, where the sender is a company, by an authorised officer or under the common seal of the sender; and

- (d) sent to the receiving party by hand.

### **Receipt**

- 13.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received when left at the address of the receiving party but if a notice is served on a day that is not a Business Day, or after 5:00pm on a Business Day, the notice will be considered to have been received by the receiving party at 9.00am on the next Business Day.

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## **14 General provisions**

### **Further assurances**

- 14.1 The Recipient must, at its own expense, whenever reasonably requested by the Beneficiaries, promptly do or arrange for others, including its Permitted Disclosees, to do, everything reasonably necessary or desirable to give full effect to this Deed.

### **Assignment**

- 14.2 The parties acknowledge and agree that the Beneficiaries may assign their rights under this Deed without the Recipient's consent.

### **Waiver and exercise of rights**

- 14.3 A waiver by the Beneficiaries of a provision of or of a right under this Deed is binding on the Beneficiaries only if it is given in writing and is signed on behalf of the Beneficiaries by the Secretary of the NSW Treasury. Any waiver is effective only in the specific instance and for the specific purpose for which it is given.

### **Rights cumulative**

- 14.4 The rights, remedies and powers of the parties under this Deed are cumulative and do not exclude any other rights, remedies or powers provided by law and in equity independently of this Deed.

### **Indemnities**

- 14.5 Each indemnity in this Deed is a continuing obligation, separate from and independent of the other obligations and survives the termination of this Deed.
- 14.6 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

### **Invalid or unenforceable provisions**

- 14.7 If a provision of this Deed is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
  - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

### **Amendment of Deed and addition of new Beneficiaries**

- 14.8 Subject to clause 14.9, this Deed may be amended only by a document signed by the Recipient and the State.

- 14.9 The Recipient will, at the State's request, agree to the addition of new Beneficiaries and will execute a deed poll to such effect in such form as is acceptable to the State. A new Beneficiary shall be admitted upon execution by the Recipient of such a deed poll.
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## **15 Governing law**

- 15.1 This Deed is governed by the laws of New South Wales.
- 15.2 The courts of New South Wales (and courts of appeal from them) have exclusive jurisdiction to settle any dispute arising from or in connection with this Deed, including a dispute regarding its existence, validity or termination or the consequences of its nullity. The parties waive any rights they have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- 15.3 The parties acknowledge that the documents which start any proceedings and any other documents required to be served in relation to those proceedings may be served in accordance with clause 13. These documents may, however, be served in any other manner allowed by law. This clause 15.3 applies to all proceedings wherever started.

## Schedule 1

### Permitted Disclosee undertaking

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**Date** This Deed Poll is made on [REDACTED]  
**By** [REDACTED] (the *Permitted Disclosee*)  
**In favour of** **The Beneficiaries** (as defined in the Confidentiality Deed).

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### Recitals

- A [REDACTED] (the *Recipient*) has received certain Confidential Information in accordance with the terms of a Confidentiality Deed entered into by it on [REDACTED] (the *Confidentiality Deed*).
- B The Recipient wishes to make Confidential Information available to the Permitted Disclosee for the Permitted Purpose and is permitted to do so under the Confidentiality Deed provided that it obtains an undertaking from the Permitted Disclosee to treat the Confidential Information disclosed to it as confidential in the same manner and to the same extent as is provided under the Confidentiality Deed.

### Operative provisions

#### 1 Definitions

- 1.1 Terms and expressions defined in the Confidentiality Deed have the same meaning in this undertaking (the *Undertaking*) unless the context otherwise requires.

#### 2 Confidentiality obligations

- 2.1 The Permitted Disclosee acknowledges that Confidential Information has been, or may be, made available to the Recipient under the Confidentiality Deed.
- 2.2 The Permitted Disclosee has been provided with a copy of the Confidentiality Deed.
- 2.3 In consideration of Confidential Information being made available to it, the Permitted Disclosee agrees that it will treat Confidential Information supplied or disclosed to it as confidential in the same manner and to the same extent as is provided by the Recipient under the Confidentiality Deed.

#### 3 Application of other Confidentiality Deed provisions

The Permitted Disclosee acknowledges and agrees that the provisions of the Confidentiality Deed have effect as if set out in this Undertaking, with all the necessary changes.

**Executed** as a Deed Poll

**[Use if Permitted Disclosee is an individual.]**

**Signed sealed and delivered** )  
by \_\_\_\_\_ )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

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

\_\_\_\_\_  
Name of witness (please print)

**[Use if Permitted Disclosee is a company.]**

**Signed sealed and delivered** )  
for \_\_\_\_\_ )  
by a director and secretary / director:

\_\_\_\_\_  
Signature of secretary / director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of secretary/director (please print)

\_\_\_\_\_  
Name of director (please print)

## Execution

Executed as a Deed Poll.

Signed sealed and delivered  
for



by a director and secretary / director:

\_\_\_\_\_  
Signature of secretary / director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of secretary/director (please print)

\_\_\_\_\_  
Name of director (please print)