

The logo for QUBE, featuring the word "QUBE" in a bold, yellow, sans-serif font against a dark grey rectangular background.

2 November 2015

Company Secretary  
Asciano Limited  
Level 4  
476 St Kilda Road  
Melbourne VIC 3004  
*By email:*  
*Lyndall\_Stoyles@asciano.com.au*

Market Announcements Office  
ASX Limited  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

QUBE HOLDINGS LIMITED  
ABN 141 497 230 53

Level 27, 45 Clarence Street  
Sydney NSW 2000

T: +61 2 9080 1900  
F: +61 2 9080 1999

[qube.com.au](http://qube.com.au)

Dear Sir / Madam,

**Form 603 (Notice of initial substantial holder) in relation to Asciano Limited (ASX: AIO)**

Attached is a Form 603 (Notice of initial substantial holder) in relation to Asciano Limited ("Asciano") given by the substantial holders outlined in the notice.

Qube Holdings Limited ("Qube") refers to the statement made in its announcement of 30 October 2015 that Qube, Global Infrastructure Partners and Canada Pension Plan Investment Board do not support the current Brookfield scheme proposal, and confirm that they intend to vote against that proposal at the 10 November Asciano Scheme Meeting.

Yours faithfully,

William Hara  
General Counsel & Company Secretary

**Form 603**  
Corporations Act 2001  
Section 671B

## Notice of initial substantial holder

To Company Name/Scheme ASCIANO LIMITED ("AIO")

ACN/ARSN ACN 123 652 862

### 1. Details of substantial holder (1)

Name Qube Holdings Limited and its controlled entities listed in paragraph 3 below.  
Global Infrastructure Management Participation, LLC and GIM Participation Fund Holding GP, Limited and their  
respective controlled entities listed in paragraph 3 below.

ACN/ARSN (if applicable) Qube Holdings Limited (ACN 149 723 053)

The holder became a substantial holder on 29/10/2015

### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares in AIO ("Shares")	194,979,591	194,979,591	19.99% (based on 975,385,664 Shares on issue)

### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Jingle SPV 1 Pty Limited (ACN 608 981 004)	Relevant interest arises under s608(1)(c) (power to control disposal of securities) of the Corporations Act by reason of being the purchaser of Shares pursuant to trades that have yet to settle.	80,214,604 Shares
Qube Holdings Limited (ACN 149 723 053)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Jingle SPV 1 Pty Limited.	
Global Infrastructure Management Australia Pty Limited (ACN 132 664 745) as trustee of the GIP Bell Australia Unit Trust	Relevant interest arises under s608(1)(b) & (c) (power to exercise or control the exercise of a power to dispose and / or vote securities) and s608(8) (extension to control in anticipation of performance of agreements) of the Corporations Act, under the Loan Agreement attached at Annexure A between Jingle SPV 1 Pty Limited and Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust, and in particular, the put and call options included in that Loan Agreement. For completeness, included in Annexure A are copies of the Security Trust Deed, the General Security Deed the Tripartite Deed described in that Loan Agreement.	
GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust II	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls GIP Bell Australia Unit Trust.	

GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust I	Relevant interest arises under s608(3)(b) of the Corporations Act as it has the capacity to control GIP Bell Australia Unit Trust.		
Global Infrastructure Management, LLC (incorporated in Delaware)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls GIP Bell Jersey Trustee Limited as trustee of GIP Bell Jersey Trust I and GIP Bell Jersey Trust II.		
Global Infrastructure Management Participation, LLC (incorporated in Delaware)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Global Infrastructure Management, LLC.		
Global Infrastructure Partners II-A1, L.P. (Guernsey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has, jointly with its associates GIP II-B Bell Jersey, L.P., GIP II-C Bell Jersey, L.P. , Global Infrastructure Partners II-D1, L.P. and GIP II Friends & Family Fund, L.P., the capacity to control GIP Bell Jersey Trust I, which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
GIP II-B Bell Jersey, L.P. (Jersey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has, jointly with its associates Global Infrastructure Partners II-A1, L.P. , GIP II-C Bell Jersey, L.P. , Global Infrastructure Partners II-D1, L.P. and GIP II Friends & Family Fund, L.P., the capacity to control GIP Bell Jersey Trust I, which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
GIP II-C Bell Jersey, L.P. (Jersey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has, jointly with its associates Global Infrastructure Partners II-A1, L.P. , GIP II-B Bell Jersey, L.P, Global Infrastructure Partners II-D1, L.P. and GIP II Friends & Family Fund, L.P., the capacity to control GIP Bell Jersey Trust I, which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
Global Infrastructure Partners II-D1, L.P. (Scotland)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has, jointly with its associates Global Infrastructure Partners II-A1, L.P. , GIP II-B Bell Jersey, L.P, GIP II-C Bell Jersey, L.P. and GIP II Friends & Family Fund, L.P., the capacity to control GIP Bell Jersey Trust I, which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
GIP II Friends & Family Fund, L.P. (Delaware)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has, jointly with its associates Global Infrastructure Partners II-A1, L.P. , GIP II-B Bell Jersey, L.P, GIP II-C Bell Jersey, L.P. and Global Infrastructure Partners II-D1, L.P., the capacity to control GIP Bell Jersey Trust I, which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
Global Infrastructure GP II, L.P. (Guernsey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it has the capacity to control GIP Bell Jersey Trust I (being the General Partner of Global Infrastructure Partners II-A1, L.P., GIP II-B Bell Jersey, L.P., GIP II-C Bell Jersey, L.P. , Global Infrastructure Partners II-D1, L.P. and GIP II Friends & Family Fund, L.P.), which has the capacity to control GIP Bell Australia Unit Trust under s608(3)(b) of the Corporations Act.		
Global Infrastructure Investors II, LLC	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Global Infrastructure GP II, L.P., as the General Partner of that entity.		

GIM Participation Fund Holding, L.P. (Guernsey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Global Infrastructure Investors II, LLC.	51,916,055 Shares
GIM Participation Fund Holding GP, Limited (incorporated in Guernsey)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls GIM Participation Fund Holding, L.P., as the General Partner of that entity.	
Canada Pension Plan Investment Board	Relevant interest arises under s608(1)(b) & (c) (power to control exercise of power to dispose and/or vote securities) of the Corporations Act, under the Memorandum of Understanding (MoU) in Annexure D.  Canada Pension Plan Investment Board is an associate of Global Infrastructure Management, LLC and Qube Holdings Limited, being parties to the MoU.	
Jingle SPV 2 Pty Limited (ACN 608 981 497)	Relevant interest arises under s608(1)(c) (power to control disposal of securities) of the Corporations Act by reason of being the purchaser of Shares pursuant to trades that have yet to settle.	
Qube Holdings Limited (ACN 149 723 053)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Jingle SPV 2 Pty Limited.	
Bar SPV Pty Limited (ACN 608 989 233)	Relevant interest arises under s608(1)(b) & (c) (power to control exercise of power to dispose and/or vote securities) and s608(8) (extension to control in anticipation of performance of agreements) of the Corporations Act, under the On-Loan Agreement attached at Annexure B between Bar SPV Pty Limited and Jingle SPV 2 Pty Limited, and in particular, the put and call options included in that On-Loan Agreement. For completeness, included in Annexure B are copies of the Security Trust Deed, Tripartite Deed and the General Security Deed described in that Loan Agreement.	
Global Infrastructure Management Australia Pty Limited (ACN 132 664 745)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Bar SPV Pty Limited.	
Global Infrastructure Management, LLC (incorporated in Delaware)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Global Infrastructure Management Australia Pty Limited.	
Global Infrastructure Management Participation, LLC (incorporated in Delaware)	Relevant interest arises under s608(3)(b) of the Corporations Act as it controls Global Infrastructure Management, LLC.	
Canada Pension Plan Investment Board	Relevant interest arises under s608(1)(b) and (c) (power to control exercise of power to dispose and/or vote securities) of the Corporations Act, through the rights held by the wholly owned subsidiary of CPPIB that is the sole unitholder of the CPPIB Australia Trust, with CPPIB Australia Trust having a relevant interest under s608(1)(c) (power to control exercise of power to dispose securities) and s608(8) (extension to control in anticipation of performance of agreements) of the Corporations Act, under the General Security Deed contained in Annexure B.  Canada Pension Plan Investment Board is an associate of Global Infrastructure Management, LLC and Qube Holdings Limited, being parties to the MoU in Annexure D.	



<p>Qube Holdings Limited (ACN 149 723 053)</p>	<p>Relevant interest arises under s608(8) (extension to control in anticipation of performance of agreements) of the Corporations Act, under an equity swap confirmation in Annexure C between Qube Holdings Limited and UBS AG, Australia Branch that has yet to settle.</p>	<p>61,301,584 Shares</p>	
<p>Global Infrastructure Management, LLC</p>	<p>Relevant interest arises under s608(1)(b) &amp; (c) (power to control exercise of power to dispose and/or vote securities) of the Corporations Act, under the MoU in Annexure D between Qube Holdings Limited, Canada Pension Plan Investment Board and Global Infrastructure Management, LLC.</p>		
<p>Canada Pension Plan Investment Board</p>	<p>Relevant interest arises under s608(1)(b) &amp; (c) (power to control exercise of power to dispose and/or vote securities) of the Corporations Act, under the MoU in Annexure D.  Canada Pension Plan Investment Board is an associate of Global Infrastructure Management, LLC and Qube Holdings Limited, being parties to the MoU.</p>		
<p>Canada Pension Plan Investment Board</p>	<p>Relevant interest arises under s608(1)(b) and (c) (power to control exercise of power to dispose and/or vote securities) and 608(3) of the Corporations Act.  Canada Pension Plan Investment Board is an associate of Global Infrastructure Management, LLC and Qube Holdings Limited, being parties to the MoU in Annexure D.</p>	<p>1,547,348 Shares</p>	

#### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
<p>Jingle SPV 1 Pty Limited</p> <p>Qube Holdings Limited</p> <p>Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust</p> <p>GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust II</p> <p>GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust I</p> <p>Global Infrastructure Management, LLC</p> <p>Global Infrastructure Management Participation, LLC</p> <p>Global Infrastructure Partners II-A1, L.P.</p> <p>GIP II-B Bell Jersey, L.P.</p> <p>GIP II-C Bell Jersey, L.P.</p> <p>Global Infrastructure Partners II-D1, L.P.</p> <p>GIP II Friends &amp; Family Fund, L.P.</p> <p>Global Infrastructure GP II, L.P.</p> <p>Global Infrastructure Investors II, LLC</p> <p>GIM Participation Fund Holding, L.P.</p> <p>GIM Participation Fund Holding GP, Limited</p> <p>Canada Pension Plan Investment Board</p>	Unknown	Jingle SPV 1 Pty Limited	80,214,604 Shares
<p>Jingle SPV 2 Pty Limited</p> <p>Qube Holdings Limited</p> <p>Bar SPV Pty Limited</p> <p>Global Infrastructure Management Australia Pty Limited</p> <p>Global Infrastructure Management, LLC</p> <p>Global Infrastructure Management Participation, LLC</p> <p>Canada Pension Plan Investment Board</p>	Unknown	Jingle SPV 2 Pty Limited	51,916,055 Shares
<p>Qube Holdings Limited</p> <p>Global Infrastructure Management, LLC</p> <p>Canada Pension Plan Investment Board</p>	Unknown	Qube Holdings Limited	61,301,584 Shares
Canada Pension Plan Investment Board	HSBC Custody Nominees (Australia) Limited	Canada Pension Plan Investment Board	1,547,348 Shares

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Jingle SPV 1 Pty Limited Qube Holdings Limited Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust II GIP Bell Jersey Trustee Limited as trustee of the GIP Bell Jersey Trust I Global Infrastructure Management, LLC Global Infrastructure Management Participation, LLC Global Infrastructure Partners II-A1, L.P. GIP II-B Bell Jersey, L.P. GIP II-C Bell Jersey, L.P. Global Infrastructure Partners II-D1, L.P. GIP II Friends & Family Fund, L.P. Global Infrastructure GP II, L.P. Global Infrastructure Investors II, LLC GIM Participation Fund Holding, L.P. GIM Participation Fund Holding GP, Limited Canada Pension Plan Investment Board	29 October 2015	\$A8.80		80,214,604 Shares
Jingle SPV 2 Pty Limited Qube Holdings Limited Bar SPV Pty Limited Global Infrastructure Management Australia Pty Limited Global Infrastructure Management, LLC Global Infrastructure Management Participation, LLC Canada Pension Plan Investment Board	29 October 2015	\$A8.80		51,916,055 Shares
Qube Holdings Limited Global Infrastructure Management, LLC Canada Pension Plan Investment Board	29 October 2015	\$A8.33305		61,301,584 Shares

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Canada Pension Plan Investment Board	Associate of Global Infrastructure Management, LLC. and Qube Holdings Limited under the MoU in Annexure D.


## 7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Global Infrastructure Management Participation, LLC	12 East 49th Street, 38th Floor, New York, New York 10017, USA
Global Infrastructure Management, LLC	12 East 49th Street, 38th Floor, New York, New York 10017, USA
GIM Participation Fund Holding GP, Limited	1st Floor, Les Echelons Court, Les Echelons, South Esplanade, St. Peter Port, Guernsey GY1 1AR
GIM Participation Fund Holding, L.P.	1st Floor, Les Echelons Court, Les Echelons, South Esplanade, St. Peter Port, Guernsey GY1 1AR
Global Infrastructure Investors II, LLC	12 East 49th Street, 38th Floor, New York, New York 10017, USA
Global Infrastructure GP II, L.P.	1st Floor, Les Echelons Court, Les Echelons, South Esplanade, St. Peter Port, Guernsey GY1 1AR
Global Infrastructure Partners II-A1, L.P.	1st Floor, Les Echelons Court, Les Echelons, South Esplanade, St. Peter Port, Guernsey GY1 1AR
GIP II-B Bell Jersey, L.P.	44 Esplanade, St. Helier, Jersey, JE4 9WG
GIP II-C Bell Jersey, L.P.	44 Esplanade, St. Helier, Jersey, JE4 9WG
Global Infrastructure Partners II-D1, L.P.	1st Floor, Les Echelons Court, Les Echelons, South Esplanade, St. Peter Port, Guernsey GY1 1AR
GIP II Friends & Family Fund, L.P.	12 East 49th Street, 38th Floor, New York, New York 10017, USA
Global Infrastructure Management Australia Pty Limited	Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000, Australia
Global Infrastructure Management Australia Pty Limited as trustee for the GIP Bell Australia Unit Trust	Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000, Australia
GIP Bell Jersey Trustee Limited	44 Esplanade, St. Helier, Jersey, JE4 9WG
GIP Bell Jersey Trust I	44 Esplanade, St. Helier, Jersey, JE4 9WG
GIP Bell Jersey Trust II	44 Esplanade, St. Helier, Jersey, JE4 9WG
Qube Holdings Limited	Level 22, 44 Market Street, Sydney, NSW, Australia, 2000
Jingle SPV 1 Pty Limited	Deutsche Bank Place, Level 5, 126-130 Phillip Street, Sydney NSW 2000
Jingle SPV 2 Pty Limited	Deutsche Bank Place, Level 5, 126-130 Phillip Street, Sydney NSW 2000
Bar SPV Pty Limited	Deutsche Bank Place, Level 5, 126-130 Phillip Street, Sydney NSW 2000
Canada Pension Plan Investment Board	One Queen Street East, Suite 2500, Toronto, Ontario M5C 2W5, Canada

## Signature

### Signed on behalf of the substantial holders

print name	Tom Story	capacity	Authorised representative
sign here		date	2 November 2015

### DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
  - (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
  - (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
  - (4) The voting shares of a company constitute one class unless divided into separate classes.
  - (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
  - (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
  - (7) Include details of:
    - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
    - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).
- See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
  - (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

## Annexure A

This is Annexure A of 117 pages (including this page) referred to in the accompanying Form 603.

**Signed on behalf of the Substantial Holders**

print name Tom Story capacity Authorised representative

sign here



date

2 November 2015

The copies attached to this Annexure A are true copies of the original.

Jingle SPV 1 Pty Limited

Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust

## Loan Agreement

Project Bell

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Agreement is made on 29 October 2015

**Parties**

- 1 **Jingle SPV 1 Pty Limited** (ACN 608 981 004) of Level 27, 45 Clarence Street, Sydney NSW 2000 and registered in Victoria (the **Borrower**).
- 2 **Global Infrastructure Management Australia Pty Limited** (ABN 72 132 664 745) as trustee of the **GIP Bell Australia Unit Trust** of Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 (the **Lender**).

**Recitals**

The Borrower has requested the Lender to provide the Borrower with a facility under which loans of up to the Commitment may be made available for the sole purpose set out in clause 1.6.

It is agreed as follows.

**1 Definitions and Interpretation**

**1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Authorisation** includes:

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

**Authorised Officer** means:

- (a) in respect of the Borrower, any director or secretary, or any person from time to time nominated as an Authorised Officer by it by a notice to the Lender accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Lender, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Partner, Principal** or **Vice-President** or cognate expressions, or any secretary or director.

**Brookfield** means Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P.

**Business Day** means a weekday on which banks are generally open for business in Sydney, New York and Toronto.

**Call Option** means the option granted under clause 12.1.

**Cash** means, at any time, all cash at hand or at bank and all other amounts held by the Borrower which constitutes 'Collateral' for the purposes of the General Security Deed.

**Commitment** means the amount specified in a side letter between the Borrower and the Lender dated on or about the date of this Agreement, as reduced or cancelled under this Agreement.

**Common Terms Deed** means the document entitled 'Common Terms Deed Poll' dated 11 December 2014 made by Qube and certain 'Original Guarantors' named therein, as amended

and/or restated from time to time.

**Consortium MoU** means the Project Bell Memorandum of Understanding entered into by GIM Advisory Services LLC (on behalf of itself and its managed funds and clients), Qube and Canada Pension Plan Investment Board dated on or about 29 October 2015.

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

**Dividend** means each payment in cash by the Target to its shareholders, whether by dividend, distribution, capital return, share buyback or otherwise (grossed-up for any franking credits which Qube is entitled to) in respect of the Target Shares.

**Drawdown Date** means the date on which any accommodation under this Agreement is or is to be drawn using any Undrawn Commitment.

**Drawdown Notice** means a notice under clause 3.

**Event of Default** means any of the events specified in clause 11.1.

**Exercise Price** means in respect of all the Option Shares, an amount equal to the aggregate principal amount of all outstanding Loans on the Option Delivery Date.

**Finance Debt** means indebtedness (whether actual or contingent) in respect of money borrowed or raised or other financial accommodation. It includes indebtedness under or in respect of:

- (a) a Guarantee of Finance Debt or a Guarantee given to a financier;
- (b) a finance Lease;
- (c) a swap, option, hedge, forward, futures or similar transaction;
- (d) an acceptance, endorsement or discounting arrangement;
- (e) a redeemable share or redeemable stock; or
- (f) the deferred purchase price (for more than 90 days) of an asset or service,

or an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

**Finance Document** means:

- (a) this Agreement;
- (b) the Security Trust Deed;
- (c) the General Security Deed;
- (d) the Tripartite Deed;
- (e) any agreement or document that the Borrower and the Lender agree is a Finance Document; or
- (f) a document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above.

**FIRB Condition** means the Treasurer of the Commonwealth of Australia gives the Lender advice in writing of a decision by the Treasurer that the Commonwealth Government has no objection to the acquisition of the Option Shares by the Lender or its nominee, or otherwise the Lender provides notice to the Borrower that in the Lender's opinion the Commonwealth Government's foreign investment policy no longer prevents the Lender or its nominee from acquiring the Option Shares.

**General Security Deed** means the general security deed dated on or about the date of this Agreement between the Borrower and the Security Trustee.

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

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Guarantee** means any guarantee, indemnity, letter of comfort or other assurance against loss. It includes any obligation to be responsible for the solvency or financial condition of another party, or for payment of Finance Debt of another party, either directly or indirectly (for example, by buying the Finance Debt).

**Lease** means an agreement under which an asset may be used, exploited, operated or managed by a person other than the owner. It includes a lease, licence, charter, hire purchase or hiring arrangement.

**Loan** means each loan lent or to be lent under this Agreement.

**Mandatory Repayment Date** means the date on which payment (including the provision of any non-monetary consideration) is received for the sale, disposal or transfer of the Target Shares (including any transfer of the Target Shares on the implementation of the Scheme or any other transaction in relation to the Target Shares including another scheme of arrangement or takeover bid for the Target) prior to the Option Delivery Date, by the Borrower (other than a disposal or transfer in accordance with this Agreement pursuant to the Put Option or the Call Option).

**Marketable Security** has the meaning given to *securities* in s92(3) of the Corporations Act, but also includes:

- (a) an undertaking referred to in the exceptions in paragraphs (a) and (b) of the definition of **debenture** in the Corporations Act;
- (b) a unit or other interest in a trust or partnership;
- (c) a negotiable instrument; and
- (d) a right or an option in respect of a Marketable Security, whether issued or unissued, including any of the above.

**Material Adverse Effect** means a material adverse effect on the ability of the Borrower to perform its obligations under a Finance Document or on the financial condition, business or prospects of the Borrower.

**New Rights** means all assets, rights, powers and proceeds of any nature at any time attaching to, or arising out of a holding in, any Target Shares or Other Shares. It includes:

- (a) any Marketable Security, any right to take up Marketable Securities or any allotment of further Marketable Securities;
- (b) any Marketable Security resulting from the conversion, consolidation or sub-division of a Marketable Security;
- (c) any certificate or other evidence of title to a Marketable Security or to anything specified in this definition; and
- (d) any distribution or dividend under, and any proceeds of, or of the disposal of, anything specified in this definition.

**Option** means the Call Option and the Put Option.

**Option Shares** means all of the Target Shares acquired by the Borrower and including any New Rights.

**Option Delivery Date** means the date that is two Business Days after the date of exercise of an

Option (or such other date as agreed by the Borrower and the Lender).

**Other Shares** means any Marketable Securities other than the Target Shares.

**Outstanding Principal Amount** means, at any time, the total principal amount owing under the Loans (excluding unpaid interest and the Special Interest Payment).

**Potential Event of Default** means anything which with notice, time or both would become an Event of Default.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPSA Deemed Security Interest** means an interest of the kind referred to in section 12(3) of the PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.

**Put Option** means the option granted under clause 12.2.

**Qube** means Qube Holdings Limited (ABN 141 497 230 53).

**Related Entity** means, in relation to an entity (the first entity):

- (a) a Subsidiary of the first entity;
- (b) an entity of which the first entity is a Subsidiary; or
- (c) a Subsidiary of another entity of which the first entity is also a Subsidiary.

**Scheme** means the scheme identified in the Scheme Implementation Deed.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 17 August 2015 between the Target and Brookfield.

**Security** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

It does not include a PPSA Deemed Security Interest.

**Security Trust Deed** means the security trust deed dated on or about the date of this Agreement between the Borrower, the Lender and the Security Trustee.

**Security Trustee** means PT Limited (ABN 67 004 454 666), or any other successor security trustee appointed in accordance with the Security Trust Deed.

**Special Interest Payment** means the amount determined in accordance with clause 6.3(a)(iii).

**Subsidiary** has the meaning given in the Corporations Act, but as if body corporate includes any entity.

**Target** means Asciano Limited (ACN 123 652 862).

**Target Shares** means any Marketable Securities issued by the Target in which the Borrower has an interest.

**Target Shares** means the fully paid ordinary shares in the capital of the Target.

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

**Transaction Document** means each Finance Document and the Consortium MoU.

**Tripartite Deed** means the tripartite deed – CHESS Sponsorship dated on or about the date of



this Agreement between the Borrower, the Security Trustee and UBS Securities Australia Limited (ABN 62 008 586 481).

**UBS Contract Note** means the standard settlement instructions of UBS Securities Australia Limited and accompanying invoice from UBS Securities Australia Limited confirming the details of the trade under which Target Shares are to be acquired with the proceeds of the Loan to be drawn.

**Undrawn Commitment** means the Commitment less the total principal amount of all outstanding Loans.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) Nothing in this Agreement is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and the converse.
  - (ii) A gender includes all genders.
  - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Agreement.
  - (vi) A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns.
  - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
  - (viii) A reference to *dollars* and \$ is to Australian currency.
  - (ix) A listing rule, business rule or market integrity rule of a financial market (as defined in the Corporations Act) will be regarded as a **law**.
  - (x) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
  - (xi) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
  - (xii) Each paragraph of a list is to be construed independently. None limits any other.

## 1.3 Lender limitation of liability

Except in the case of wilful misconduct or gross negligence on the part of the Lender, any liability incurred by the Lender under the Finance Documents will be limited to the extent to which the Lender is entitled to be indemnified out of the assets held as trustee of the GIP Bell Australia Unit Trust.

#### 1.4 Limited recourse to Borrower

Notwithstanding anything contained in the Finance Documents, the Lender acknowledges that in satisfying any demand or claim which the Lender may make on the Borrower in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Lender will be limited to the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed; and
- (b) the Borrower will in no circumstances have any liability whatsoever to the extent that the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security over all of the 'Collateral' (as defined in the General Security Deed) and distribution of the proceeds in accordance with the Security Trust Deed, or if the Borrower, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), the Borrower will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.4 limits the liability of the Borrower for any loss, cost or expenses suffered or incurred by the Lender arising from the Borrower's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.4 (*Limited recourse to Borrower*) is not severable from this agreement.

#### 1.5 Borrower acknowledgement

The Borrower acknowledges that the Lender does not hold an Australian Financial Services Licence authorising it to issue derivatives.

#### 1.6 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, the Borrower will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Borrower has not been reimbursed for.

### 2 Purpose

The Borrower shall use the net proceeds of any Loan for the following purposes:

- (a) funding the purchase price payable by the Borrower upon settlement of Target Shares acquired by the Borrower, provided that the aggregate number of Target Shares held by the Borrower does not at any time exceed 80,214,604 Target Shares; and
- (b) paying any transaction costs and expenses approved by the Lender in connection with the acquisition of any Target Shares by the Borrower in accordance with paragraph (a) above,

and for no other purpose.



### 3 Loan

- (a) Subject to this Agreement, if the Borrower requests a Loan in a Drawdown Notice, the Lender will make available that Loan on the relevant Drawdown Date by transferring the principal amount of that Loan to the account specified in the UBS Contract Note attached to the Drawdown Notice.
- (b) The amount of any Loan requested must be equal to:
  - (i) the aggregate purchase price payable upon settlement of the relevant Target Shares acquired by the Borrower; plus
  - (ii) the transaction costs and expenses approved by the Lender in connection with the acquisition of such Target Shares; less
  - (iii) any equalisation payment in relation to the Borrower that Qube or its Related Entity is obliged to pay.
- (c) The Lender is not obliged to make available a Loan if as a result its participation in all outstanding Loans would exceed the Commitment.
- (d) The Drawdown Notice is irrevocable. It must be substantially in the form of Schedule 2 and be received by the Lender as soon as practicable on the day of receipt by the Borrower of the UBS Contract Note, and in any event before 11am (Sydney time) three Business Days before the proposed Drawdown Date.

### 4 Interest

#### 4.1 Interest

- (a) Subject always to clause 1.4, Interest will be payable on the outstanding principal amount of each Loan in an amount equal to the amount of each Dividend paid or payable to the Borrower in relation to any Target Shares.
- (b) The interest referred to in paragraph (a) shall be payable on the date on which the Borrower receives the relevant Dividend (whether such date is before or after the Option Delivery Date).
- (c) The Borrower will ensure that any direction relating to Dividend payments by the Target being paid directly into a bank account specified by the Lender that is provided to the Borrower by the Lender is promptly given to the Target or any other person required by the Lender. Receipt by the Lender of such payment by the Target will discharge the Borrower's payment obligation under paragraph (b) to the extent of the amount received.
- (d) If any amount of a Dividend payment referable to any Target Shares is not deposited into the Lender's bank account referred to in paragraph (b) and is instead paid to the Borrower, the Borrower must ensure that the relevant amount is paid to the Lender within two Business Days after the date on which the Dividend payment was received by the Borrower (whether such date is before or after the Option Delivery Date).

#### 4.2 Special Interest

On the Mandatory Repayment Date, in addition to any interest payable under clause 4.1 the Borrower will pay to the Lender the Special Interest Payment (if any) in accordance with clause 6.3(a)(iii).

### 5 Cancellation of Commitment

The Commitment will be cancelled automatically at the close of business (Sydney time) on the date which is the earliest of:

- (a) the first date on which the Borrower has acquired 80,214,604 Target Shares;
- (b) the occurrence of an Event of Default; and
- (c) the Lender providing notice to the Borrower that the Commitment is cancelled.

## 6 Repayment

### 6.1 Repayment of each Loan

Subject always to clause 1.4, the Borrower shall repay each Loan, together with accrued but unpaid interest (including if applicable the Special Interest Payment), on the earlier of:

- (a) the date which is 9.5 years after the date of this Agreement;
- (b) the Option Delivery Date; and
- (c) the Mandatory Repayment Date.

### 6.2 Dividends after the Option Delivery Date

Notwithstanding any other provision of this Agreement, the Borrower must pay to the Lender the amount of any Dividend received by the Borrower in relation to the Target Shares on or after the Option Delivery Date. Such amounts must be paid to the Lender by no later than the date that is two Business Days after the date on which the Borrower receives the relevant Dividend.

### 6.3 Mandatory Repayment

- (a) Subject always to clause 1.4, on the Mandatory Repayment Date the Borrower shall apply all Cash (except to the extent that it otherwise pays it to the Lender) as follows:
  - (i) **(Interest)** first, to the Lender towards payment of all amounts due but unpaid interest under this Agreement (other than the Special Interest Payment);
  - (ii) **(Outstanding Principal Amount)** second, to the Lender towards payment of the Outstanding Principal Amount; and
  - (iii) **(Special Interest Payment)** third, the remainder (if any) to the Lender (the **Special Interest Payment**).
- (b) Subject to clause 6.2, if for any reason the Borrower receives any amount in respect of the Target Shares after the Mandatory Repayment Date, it must apply that amount as Cash on that date in accordance with clause 6.3(a) as if that date was the Mandatory Repayment Date.
- (c) If the Borrower receives any Other Shares in connection with any sale, disposal or transfer of the Target Shares (including any transfer of the Target Shares on the implementation of the Scheme or any other transaction in relation to the Target Shares including another scheme of arrangement or takeover bid for the Target), the Lender may direct the Borrower to:
  - (i) sell, transfer or dispose of the Other Shares and upon receipt of the proceeds, immediately apply the proceeds as Cash in accordance with clause 6.3(a) as if the date of receipt was the Mandatory Repayment Date; or
  - (ii) transfer the Other Shares to the Lender or any other person nominated by the Lender,

and the Borrower shall sell, transfer or dispose of the Other Shares in accordance with that notice and otherwise at the direction of and in the manner directed by the Lender.

## 6.4 Mandatory Prepayment Events

- (a) If the Scheme Implementation Deed is terminated and no other suitable competing proposal for the Target, identified by the Lender (in its sole discretion), is contemplated or on foot, the Lender may, by notice to the Borrower, require (if the FIRB Condition has been satisfied) or request (if the FIRB Condition has not been satisfied) the Borrower to sell, transfer or dispose of the Target Shares within 1 Business Day (or any longer period notified by the Lender), and the Borrower shall (if the FIRB Condition has been satisfied) or may (if the FIRB Condition has not been satisfied) sell, transfer or dispose of the Target Shares in accordance the Lender's notice.
- (b) Following a sale, transfer or disposal of the Target Shares in accordance with a notice from the Lender in accordance with clause 6.4(a), the Borrower must apply all Cash in accordance with clause 6.3(a).
- (c) If the Target Shares have not been sold, transferred or disposed of in accordance with any notice given by the Lender under clause 6.4(a), the Lender may by notice to the Borrower declare all sums actually or contingently owing under this Agreement immediately due and payable, and the Borrower shall immediately pay all such sums.

## 7 Payments

### 7.1 Manner

The Borrower shall make all payments under this Agreement:

- (a) by transfer of immediately available funds to the account specified by the Lender by 11am (local time) on the due date; and
- (b) without set-off, counterclaim or other deduction, except any compulsory deduction for Tax.

### 7.2 Payment to be made on Business Day

If any payment is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day.

### 7.3 Appropriation where insufficient money available

The Lender may appropriate amounts it receives among amounts due as it sees fit. This will override any appropriation made by the Borrower.

## 8 Conditions Precedent

### 8.1 Initial conditions precedent

The right of the Borrower to give a Drawdown Notice and the obligations of the Lender under this Agreement are subject to the condition precedent that the Lender receives all of the following items in form and substance satisfactory to the Lender:

- (a) **(verification certificate)** a certificate in relation to the Borrower given by a director of the Borrower substantially in the form of Schedule 3 with the attachments referred to and dated not earlier than three Business Days before the first Drawdown Date;
- (b) **(Finance Documents)** duly executed original counterparts of each Finance Document;
- (c) **(Legal opinion)** a legal opinion from the legal advisers to the Lender in relation to the Finance Documents; and

- (d) **(Excluded Subsidiary)** written evidence that the Borrower is an "Excluded Subsidiary" (as defined in the Common Terms Deed); and
- (e) **(registration)** evidence that the General Security Deed is (or is capable of being) registered under the PPSA free from any Security and third party rights and interests (other than any Security which arises by operation of law).

## 8.2 Further conditions precedent

The obligations of the Lender to make available financial accommodation under this Agreement are subject to the further conditions precedent that as at the date of the relevant Drawdown Date:

- (a) **(representations true)** the representations and warranties by the Borrower in the Finance Documents are true and not misleading as though they had been made at each date in respect of the facts and circumstances then subsisting;
- (b) **(no default)** no Event of Default or Potential Event of Default continues or will result from the provision of the financial accommodation;
- (c) **(price of Target Shares)** evidence that the price of the Target Shares to be acquired by the Borrower with the proceeds of the Loan is a price that is not greater than the price per share agreed by the Borrower and the Lender on or before the date of the Drawdown Notice; and
- (d) **(Excluded Subsidiary)** written confirmation from the Borrower's lawyers that the entry into and performance by the Borrower of the Finance Documents will not breach any provision under the Common Terms Deed or financing documents of Qube and its Subsidiaries.

## 9 Representations and Warranties

### 9.1 Representations and warranties

The Borrower makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation specified in this Agreement.
- (b) **(Power)** It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Documents binding)** Each Transaction Document to which it is expressed to be a party is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration and subject to equitable principles and any legal qualifications noted in any legal opinion provided to the Lender in connection with the Finance Documents.
- (e) **(Transactions permitted)** The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;

- (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets,
- and, except as provided by the Finance Documents, did not and will not:
- (iv) create or impose a Security on any of its assets; or
  - (v) allow a person to accelerate or cancel an obligation with respect to Finance Debt, or constitute an event of default, cancellation event, prepayment event or similar event (whatever called) under an agreement relating to Finance Debt, whether immediately or after notice or lapse of time or both.
- (f) **(No litigation)** No litigation, arbitration, Tax claim, dispute or administrative or other proceeding is current or pending or, to its knowledge, threatened .
- (g) **(No default)** No Event of Default or Potential Event of Default continues that has not been notified in writing to the Lender.
- (h) **(Solvency)** It is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable.
- (i) **(Ranking)** Its payment obligations under the Finance Documents rank at least equally and rateably with all of its other unsecured unsubordinated payment obligations, except those mandatorily preferred by law applying to companies generally or as agreed to by the Lender in writing.
- (j) **(Authorisations)** Each Authorisation which is required in relation to:
- (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents;
  - (ii) the validity and enforceability of those documents; and
  - (iii) its business as now conducted or contemplated and which is material,
- has been obtained or effected. Each is in full force and effect. It has complied with each of them.
- (k) **(No misrepresentation)** All factual and ascertainable (for the avoidance of doubt, excluding forecasts or anything in relation to the future) about Qube and the Borrower provided in writing by or on its behalf to the Lender is true in all material respects at the date of this Agreement or, if later, when provided. Neither that information nor its conduct and the conduct of anyone acting on its behalf on its instructions or directions in relation to the transactions contemplated by the Finance Documents, was or is misleading, by omission or otherwise.
- (l) **(Title)**
- (i) It is the sole legal and beneficial owner of all its assets free of any other third party right or interest whatever.
  - (ii) None of its assets is subject to a Security which is not permitted by clause 10.1(g) **(Negative pledge)**.
- (m) **(Law)** It has complied with all laws binding on it.
- (n) **(Trust)** It does not hold any assets as the trustee of any trust.
- (o) **(Excluded Subsidiary)** It is an "Excluded Subsidiary"(as defined in the Common Terms Deed).

- (p) **(Sponsorship agreement)** It has provided the Lender and the Security Trustee with a true and complete copy of each sponsorship agreement it has entered into with any controlling participant in relation to each Target Share it holds. Each such sponsorship agreement is in full force and effect and provides that the controlling participant has its authority to deal with each such Target Share in accordance with the Security Trustee's security interest.
- (q) **(Definitions)** Definitions in the ASX Settlement Operating Rules apply in paragraph (r) above, unless the context requires otherwise.
- (r) **(Direct wholly-owned Subsidiary)** All of the share capital in the Borrower is directly held by Jingle, both legally and beneficially.

## 9.2 Reliance on representations and warranties

The Borrower acknowledges that the Lender has entered the Transaction Documents in reliance on the representations and warranties in this clause.

## 10 Undertakings

### 10.1 General undertakings

The Borrower undertakes to the Lender as follows, except to the extent that the Lender consents.

- (a) **(Corporate reporting and information)** It will provide to the Lender:
  - (i) **(litigation)** promptly, written particulars of any litigation, arbitration, Tax claim, dispute or administrative or other proceeding in relation to the Borrower;
  - (ii) **(Government Agency)** promptly, any notice, order or material correspondence from or with a Government Agency relating to its business or assets;
  - (iii) **(documents issued to shareholders)** promptly, all documents provided by it to a stock exchange or holders of Marketable Securities issued by it; and
  - (iv) **(other information)** promptly, any other information in relation to its financial condition, business assets, operations or prospects which the Lender may reasonably request.
- (b) **(Use of proceeds)** It will ensure that proceeds from the facility made available under this Agreement are only used for the purposes set out in clause 2.
- (c) **(Authorisations)** It will ensure that each Authorisation required for:
  - (i) the execution, delivery and performance by it of the Finance Documents to which it is expressed to be a party and the transactions contemplated by those documents;
  - (ii) the validity and enforceability of those documents; and
  - (iii) the carrying on by it of its business as now conducted or contemplated, in compliance with clause 10.1(e),is obtained, complied with and promptly renewed and maintained in full force and effect. It will provide copies promptly to the Lender when they are obtained or renewed.
- (d) **(Notice to Lender)** It will notify the Lender as soon as it becomes aware of:
  - (i) any Event of Default or Potential Event of Default; and
  - (ii) any change in its Authorised Officers, giving specimen signatures of any new Authorised Officer appointed, and, where requested by the Lender, evidence satisfactory to the Lender of the authority of any Authorised Officer.

- (e) **(Single purpose company)** It will not carry on any business or other activity other than as contemplated in the Finance Documents and it will not acquire any assets other than the Target Shares, or incur any material liabilities other than as contemplated by the Finance Documents.
- (f) **(Disposal of assets)** It will not sell or otherwise dispose of, part with possession of, or create an interest in, any of its assets (including the Target Shares) or agree or attempt to do so (whether in one or more related or unrelated transactions) except as expressly permitted under the Finance Documents.
- (g) **(Negative pledge)** It will not create or allow to exist a Security over its assets other than:
  - (i) the General Security Deed or any Ancillary Security (as defined in the Security Trust Deed); and
  - (ii) a lien arising by operation of law in the ordinary course of day-to-day trading and not securing Finance Debt where it duly pays the indebtedness secured by that lien other than indebtedness contested in good faith.
- (h) **(Partnership and joint ventures)** It will not enter into a partnership or joint venture with another person.
- (i) **(Corporate existence)** It will do everything necessary to maintain its corporate existence in good standing. It will not transfer its jurisdiction of incorporation or enter any merger or consolidation.
- (j) **(Compliance with law)** It will comply with all laws binding on it to the extent that not doing so would have a Material Adverse Effect or adversely impact on the Lender's rights in relation to the Options or Secured Property (as defined in the Security Trust Deed).
- (k) **(Financial assistance)** It will not:
  - (i) advance money or make available financial accommodation to or for the benefit of; or
  - (ii) give a Guarantee or Security in connection with an obligation or liability of, any other person, but it may enter into the General Security Deed or any Ancillary Security (as defined in the Security Trust Deed).
- (l) **(Distributions)** It will not pay or distribute any money or other asset (including by management or other fee, interest, dividend, buy back, return of capital, repayment or redemption) to or for the benefit of a shareholder in that capacity or to an associate.
- (m) **(Finance Debt)** It will not incur any Finance Debt except under this Agreement.
- (n) **(Subsidiaries)** It will not create or acquire a Subsidiary.
- (o) **(Amendment of constitution)** It will not amend its constitution.
- (p) **(Issues)** It will not issue any shares or agree to do so or grant a person a right to take up any shares whether exercisable now or in the future or if a contingency occurs, except to its holding company.
- (q) [Not used]
- (r) **(Conversion)** It will not request nor will it permit the controlling participant to request that any of the Target Shares held by the Borrower be converted or transferred from a certificated holding to an uncertificated holding.
- (s) **(Discontinuation of certificated subregister)** It will as soon as reasonably practicable notify the Lender if it receives notice that an issuer of any of the Target Shares held by the Borrower intends to cease operating a certificated subregister.



- (t) **(Conversion)** It will as soon as reasonably practicable notify the Lender if a request is made for the conversion or transfer of any Target Shares held by the Borrower from an uncertificated holding on the CHESSE subregister to a certificated holding on the certificated subregister or an uncertificated holding on the issuer sponsored subregister. It will ensure that the certificates issued on conversion or transfer of such Target Shares to the certificated subregister are immediately delivered to the Lender or its nominee.
- (u) **(Sponsorship agreement)** It will not amend, vary or terminate any sponsorship agreement in relation to the Target Shares.
- (v) **(Definitions)** Definitions in the ASX Settlement Operating Rules apply in paragraphs (t) to (v) above, unless the context requires otherwise.
- (w) **(Deed of Cross Guarantee)** It will not enter into, or become a party to, any Deed of Cross Guarantee (as defined in ASIC Class Order 98/1418).
- (x) **(Notify rights offered or accruing)** It will notify the Lender immediately if it becomes entitled to, or is offered, New Rights.
- (y) **(Subscribe to rights)** If the Lender directs, it will promptly subscribe to, take up or exercise New Rights.
- (z) **(Remedy defects)** It will remedy each defect in its holding of any Target Shares.
- (aa) **(Meetings of shareholders)** It will as soon as reasonably practicable provide to the Lender copies of all reports and other documents received by it in its capacity as the holder of the Target Shares including any report or notice of any meeting which the holder of Target Shares is entitled to attend or vote at or both.
- (bb) **(Vote)** On and from satisfaction of the FIRB Condition, it will:
  - (i) not vote or make any election in relation to the Target Shares (including making any election to receive Maximum Cash Consideration, Maximum Scrip Consideration, Standard Consideration (as defined in the Scheme Implementation Deed) or any other consideration in relation to the Scheme being implemented), except with the consent of the Lender; and
  - (ii) will vote or make an election in relation to the Target Shares at the direction of the Lender.
- (cc) **(Tax consolidation)** It will as soon as practicable after the date of this Agreement become party to valid tax sharing and tax funding agreements in respect of the tax consolidated group of which Qube is the 'head entity'.

## 10.2 Acquisition of Target Shares

Each of the Borrower and the Lender will notify the other party promptly after it becomes aware of any Target Shares being held by any of its Related Entities.

## 10.3 Term of undertakings

Each undertaking in this clause continues from the date of this Agreement until the Secured Money (as defined in the Security Trust Deed) has been fully and finally repaid or the Borrower ceases to have any liability under the Finance Documents.

## 11 Events of Default

### 11.1 Events of Default

Each of the following is an Event of Default (whether or not it is in the control of the Borrower).



- (a) **(Obligations under Finance Documents)** The Borrower fails:
- (i) to pay an amount payable by it under a Finance Document when due;
  - (ii) to comply with any of its other obligations under a Finance Document; or
  - (iii) to satisfy within the time stipulated anything which the Lender made a condition of its waiving compliance with a condition precedent or undertaking in a Finance Document.
- (b) **(Misrepresentation)** A representation, warranty or statement by or on behalf of the Borrower in a Finance Document, or in a document provided under or in connection with a Finance Document, is not true or is misleading when made or repeated.
- (c) **(Cross default)**
- (i) Finance Debt of the Borrower of any amount :
    - (A) is not paid when due (or within an applicable grace period); or
    - (B) becomes due and payable before its stated maturity or expiry; or
  - (ii) a facility or obligation granted or owed by a person to the Borrower to provide financial accommodation or to acquire or underwrite Finance Debt is prematurely terminated.

For the purpose of this paragraph, if a person is required to provide cash cover for Finance Debt as a result of an actual, likely or threatened default or an event of default or termination, cancellation, special prepayment or similar event, whatever called, that Finance Debt will be taken to be due and payable.

- (d) **(Administration, winding up, arrangements, insolvency etc)**
- (i) An administrator of the Borrower or Qube is appointed.
  - (ii) Except for the purpose of a solvent reconstruction or amalgamation previously approved by the Lender:
    - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
      - (1) the winding up, dissolution or administration of the Borrower or Jingle; or
      - (2) the Borrower or Qube entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,(other than frivolous or vexatious applications, proceedings, notices and steps); or
    - (B) the Borrower or Qube ceases, suspends or threatens to cease or suspend the conduct of all or substantially all of its business or disposes of or threatens to dispose of substantially all of its assets.
  - (iii) The Borrower or Jingle:
    - (A) is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or
    - (B) stops or suspends or threatens to stop or suspend payment of all or a class of its debts.

- (e) **(Enforcement against assets)**
  - (i) A receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) a Security becomes enforceable or is enforced over; or
  - (iii) a distress, attachment or other execution is levied or enforced or applied for over, all or any of the assets and undertaking of the Borrower or Jingle.
- (f) **(Reduction of capital)** Without the prior consent of the Lender, the Borrower:
  - (i) reduces its capital (including a purchase of its shares and a redemption of redeemable shares);
  - (ii) passes a resolution to reduce its capital or to authorise it to purchase its shares or a resolution under chapter 2J of the Corporations Act or an equivalent provision, or calls a meeting to consider such a resolution; or
  - (iii) applies to a court to call any such meeting or to sanction any such resolution or reduction.
- (g) **(Analogous process)** Anything analogous to anything referred to in paragraphs (d) to (f) inclusive, or which has substantially similar effect, occurs with respect to the Borrower or (other than with respect to paragraph (f)) Jingle.
- (h) **(Obligations under Consortium MoU)** Qube fails to comply with any of its obligations under the Consortium MoU.
- (i) **(Vitiation of documents)**
  - (i) All or any part of a Finance Document is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect;
  - (ii) a party becomes entitled to terminate, rescind or avoid all or part of a Finance Document; or
  - (iii) a party other than the Lender alleges or claims that an event described in sub-paragraph (i) has occurred or that it is entitled as described in sub-paragraph (ii).
- (j) **(Amendment of constitution)** The constitution of the Borrower is amended without the prior consent of the Lender (which will not be withheld unreasonably).
- (k) **(Control of Borrower)** Without the prior consent of the Lender:
  - (i) the Borrower becomes a Subsidiary of another person other than Qube or any other wholly-owned Subsidiary of Jingle; or
  - (ii) a person and its associates have a relevant interest in 20% or more, or 50% or more, of the shares (as to votes or paid up value) of Qube having had a relevant interest in less than 20 or 50% of the shares (as to votes or paid up value) of Jingle. Relevant interest and associate have the same meaning as in chapter 6 of the Corporations Act; or
  - (iii) in the opinion of the Lender there is a material change in the ownership, management or control of the Borrower.
- (l) **(Compulsory acquisition)**
  - (i) All or any substantial part of the assets of the Borrower is compulsorily acquired by or by order of a Government Agency or under law;

- (ii) a Government Agency orders the sale, vesting or divesting of all or any substantial part of the assets of the Borrower; or
- (iii) a Government Agency takes a step for the purpose of any of the above or proposes or threatens to do any of the above.
- (m) **(Governmental interference)** A law or anything done by a Government Agency wholly or partially to a material extent renders illegal, prevents or restricts the performance or effectiveness of a Transaction Document.
- (n) **(Material adverse change)** Any other event or series of events, whether related or not, occurs (including a material adverse change in the business, assets or financial condition of the Borrower), which in the reasonable opinion of the Lender is likely to have a Material Adverse Effect.

## 11.2 Consequences

In addition to any other rights provided by law or any Finance Document, at any time after an Event of Default (whether or not it is continuing) the Lender may do all or any of the following:

- (a) by notice to the Borrower declare all sums actually or contingently owing under this Agreement immediately due and payable, and the Borrower shall immediately pay the total principal amount of all outstanding Loans together with accrued interest and all other sums (subject always to clause 1.4);
- (b) if the FIRB Condition has been satisfied, by notice to the Borrower, require the Borrower to sell, transfer or dispose of the Target Shares within 1 Business Day (or any longer period notified by the Lender) and the Borrower shall sell, transfer or dispose of the Target Shares in accordance with that notice;
- (c) by notice to the Borrower cancel the Commitment;
- (d) direct the Security Trustee to take enforcement action under the General Security Deed in accordance with the Security Trust Deed.

## 12 Option

### 12.1 Call Option

- (a) In consideration of the Lender entering into the Finance Documents, the Borrower grants to the Lender or its nominee an option to purchase the Option Shares in accordance with this Agreement.
- (b) The Lender may exercise the Call Option by notice to the Borrower at any time following satisfaction of the FIRB Condition.

### 12.2 Put Option

- (a) In consideration of the Borrower entering into the Finance Documents, the Lender grants to the Borrower an option to require the Lender or its nominee to purchase the Option Shares in accordance with this Agreement.
- (b) The Borrower may exercise the Put Option by notice to the Lender at any time following satisfaction of the FIRB Condition.

### 12.3 Free from Securities

The Option Shares shall be sold free of any Security at the date of exercise of an Option.

## 12.4 Option Delivery Date

Completion of the exercise of an Option shall take place on the Option Delivery Date at the location and time agreed by the Borrower and the Lender. At that time:

- (a) the Borrower shall deliver each relevant CHESS holding statement to the Lender on or before the Option Delivery Date; and
- (b) the Lender shall pay the Exercise Price to the Borrower.

## 12.5 Set-off

- (a) On the Option Delivery Date, the Lender's obligation to pay the Exercise Price to the Borrower will be set-off against the Borrower's obligation to repay the aggregate principal amount of all outstanding Loans.
- (b) After the set-off referred to in paragraph (a) above:
  - (i) the Lender's obligation to pay the Exercise Price to the Borrower in accordance with clause 12.4(b); and
  - (ii) the Borrower's obligation to repay each Loan in accordance with clause 6.1, will each be fully discharged.
- (c) For the avoidance of doubt, nothing in this clause 12.5 discharges the obligations of the Borrower under clause 4 or 6.2.

## 13 Interest on Overdue Amounts

### 13.1 Accrual

Subject always to clause 1.4, except where the relevant Finance Document provides otherwise, interest accrues on each unpaid amount which is due and payable by the Borrower under or in respect of any Finance Document (including interest under this clause):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate of 7% per annum.

### 13.2 Payment

The Borrower shall pay interest accrued under this clause on demand and on the last Business Day of each calendar quarter. That interest is payable in the currency of the unpaid amount on which it accrues.

## 14 GST

All payments (including the provision of any non-monetary consideration) to be made by an entity (the **Payer**) to another entity (the **Payee**) under or in connection with any Finance Document have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when the Payer makes the payment:
  - (i) it must pay to the Payee an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and

- (ii) the Payee will promptly provide to the Payer a tax invoice complying with the relevant GST legislation.
- (b) Where under any Finance Document the Payer is required to reimburse or indemnify for an amount, the Payer will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Payee determines that it is entitled to claim in respect of that amount.

## 15 General PPSA Provisions

To the extent that a security interest (as defined in the PPSA) is created under a Finance Document, the following applies.

- (a) The Lender need not give any notice under the PPSA (including a notice of a verification statement) under or arising out of anything relating to that security interest or Finance Document unless the notice is required by the PPSA and the giving of it cannot be excluded.
- (b) The Borrower waives its right to receive anything from the Lender under section 275 of the PPSA, and shall not make any request of the Lender under that section.
- (c) The Borrower authorises and requests the Lender under section 275(7)(c) of the PPSA to obtain from the holder of any other Security or PPSA Deemed Security Interest over the relevant collateral any of the information referred to in section 275(1) of the PPSA.
- (d) Each party contracts out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1) and 135. However, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an express or implied right on the part of the Lender provided for in the relevant Finance Document.
- (e) Any disposal or other exercise of any right, power or remedy under this Agreement will only be taken to be made under a provision which has not been excluded in paragraph (d), if the Lender so elects.

## 16 Waivers, Remedies Cumulative

- (a) No failure to exercise and no delay in exercising any right, power or remedy under any Finance Document operates as a waiver, nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Lender in the Finance Documents are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

## 17 Severability of Provisions

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

## 18 Survival of Obligations

- (a) **(Representations and warranties)** Each representation or warranty in a Finance Document survives the execution and delivery of the Finance Documents and the provision of financial accommodation.
- (b) **(Indemnity)** Each indemnity, reimbursement or similar obligation in a Finance Document:

- (i) is a continuing, separate and independent obligation;
- (ii) is payable on demand; and
- (iii) survives termination or discharge of the relevant Finance Document and repayment of financial accommodation.

Where a party is obliged to indemnify another party against a loss, cost, charge, liability, expense, deficiency or other amount, it shall pay on demand from time to time the amount stated by the other party to be the amount indemnified against.

## **19 Moratorium Legislation**

To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Borrower any obligation under a Finance Document; or
- (b) delays, prevents or prejudicially affects the exercise by the Lender of any right, power or remedy conferred by a Finance Document,

is excluded from the Finance Documents.

## **20 Further Assurances**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## **21 Assignments**

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior consent of the other party.

## **22 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Agreement:

- (a) must be in writing signed by an Authorised Officer of the sender (or in the case of an email message, sent from the email address of an Authorised Officer of the sender); and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address, email address or fax number of the recipient shown in Schedule 1 or to any other address, fax number or email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **23 Confidentiality**

### **23.1 Confidentiality**

Except as permitted in clause 23.2:

- (a) neither party shall disclose information and documents supplied by the other party in connection with the Finance Documents which are specifically indicated by the other party to be confidential and are not in the public domain; and

- (b) no party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.

### **23.2 Permitted disclosure**

A party may disclose information or documents:

- (a) for the purpose of attempting to satisfy the FIRB Condition;
- (b) in enforcing a Finance Document, in a proceeding arising out of or connected with a Finance Document or to the extent that disclosure is regarded by the party as necessary to protect its interests;
- (c) as required under an order of a Government Agency or any procedure for discovery in any proceedings;
- (d) as required under any law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) or under any administrative guideline, directive, request or policy with which responsible corporations similarly situated would normally comply;
- (e) as required or permitted by any Finance Document;
- (f) to a trustee associated with any financing conduit and its advisers;
- (g) to its legal advisers and its consultants; or
- (h) with the prior consent of the other party.

### **23.3 Survival of obligation**

This clause survives the termination of this Agreement.

### **24 Authorised Officers**

The Borrower irrevocably authorises the Lender to rely on a certificate by a person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. The Borrower warrants that those persons have been authorised to give notices and communications under or relating to the Finance Documents.

### **25 Governing Law and Jurisdiction**

This Agreement is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The parties irrevocably accept the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

### **26 Counterparts**

This Agreement may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

## Schedule 1

### Notice Details

#### 1 Borrower

Jingle SPV1 Pty Limited

Address: Level 27, 45 Clarence Street, Sydney NSW 2000

Fax number: +61 2 9080 1999

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara, General Counsel/Company Secretary

#### 2 Lender

Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust

Address: Level 17, Gateway Building  
1 Macquarie Place  
Sydney NSW 2000

Fax number: +61 2 8259 4259

Email: [jonathan.oh@global-infra.com](mailto:jonathan.oh@global-infra.com) / [nick.hume@global-infra.com](mailto:nick.hume@global-infra.com)

Attention: Jonathan Oh / Nick Hume



## Schedule 2

### Drawdown Notice

#### PROJECT BELL - DRAWDOWN NOTICE NO. [\*]

We refer to the Loan Agreement dated [\*] (the *Loan Agreement*).

1 We wish to draw on [\*] (the *Drawdown Date*).

**Note: Date is to be the business day before the 'T+3' settlement date noted in the settlement instructions of UBS Securities Australia Limited to be attached to this notice.**

2 The total principal amount to be drawn is [\*].

**Note: Amount to comply with the limits in clause 2.**

3 Please remit the proceeds to the account of UBS Securities Australia Limited, the details of which are in the attached standard settlement instructions of UBS Securities Australia Limited.

4 We represent and warrant as follows.

(a) The representations and warranties in the Loan Agreement are true as though they had been made at the date of this Drawdown Notice and the Drawdown Date specified above in respect of the facts and circumstances then subsisting.

(b) No Event of Default or Potential Event of Default continues or will result from the drawing.

5 Annexed to this notice is a copy of the:

(a) standard settlement instructions of UBS Securities Australia Limited; and

(b) invoice from UBS Securities Australia Limited confirming the details of the trade under which Target Shares are to be acquired with the proceeds of the Loan to be drawn.

Definitions in, and clause 1.4 of, the Loan Agreement apply in this Drawdown Notice.

On behalf of **Jingle SPV1 Pty Limited**

By: [Authorised Officer]

DATED [\*]

**Annexure**

**Copies of UBS standard settlement instructions and trade confirmation for Target Shares**

### Schedule 3

#### Verification Certificate

**Note: To be signed by a secretary or director of the relevant company.**

TO: [\*]

[Date]

[A\$\*] Loan Agreement for [\*]

I [\*] am a director of Jingle SPV1 Pty Limited (the **Company**).

I refer to the Loan Agreement dated [\*] (the **Loan Agreement**) between the Company and Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust.

Definitions in the Loan Agreement apply in this Certificate.

Attached are true, up-to-date and complete copies of the following.

- (a) [A power of attorney under which the Company executed any Finance Document to which it is expressed to be a party relating to the above facility. That power of attorney has not been revoked by the Company and remains in full force and effect.]
- (b) A certificate of incorporation and constitution for the Company.
- (c) Specimen signatures of all those authorised to give drawdown and other notices for the Company.

The Company is solvent.

The Company does not have any interest, right or claim in relation to any property, assets or undertaking that is, or is regarded under the applicable stamp duty laws as, situated in New South Wales.


---

[Director]

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

**Executed** as an agreement.

Executed in accordance with section 127 of  
the *Corporations Act 2001* by **Jingle SPV 1 Pty  
Limited:**

  
\_\_\_\_\_  
Director Signature

PAUL LEWIS  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature

WILLIAM HARA  
\_\_\_\_\_  
Print Name

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Global Infrastructure Management Australia Pty Limited** as trustee of the **GIP Bell Australia Unit Trust**:



Director Signature

ARI DROGA

Print Name



Director / Secretary Signature

ROBERT STEWART

Print Name

Jingle SPV 1 Pty Limited

Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust  
PT Limited

## Security Trust Deed

Project Bell

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on 29 October 2015

**Parties**

- 1 **Jingle SPV 1 Pty Limited** (ACN 608 981 004) of Level 27, 45 Clarence Street, Sydney NSW 2000 (the **Borrower**).
- 2 **Global Infrastructure Management Australia Pty Limited** (ABN 72 132 664 745) as trustee of the **GIP Bell Australia Unit Trust** of Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 (the **Lender**).
- 3 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Security Trustee**).

**Recital**

The Security Trustee has agreed to hold the assets referred to in clause 2.1 on trust for the Beneficiaries as set out in this Deed.

**It is agreed** as follows.

**1 Definitions and Interpretations**

**1.1 Definitions**

Definitions in the Loan Agreement and following definitions apply unless the context requires otherwise.

**ADI** has the meaning given to it in the PPSA.

**Ancillary Security** means any Security, Guarantee or other document or agreement at any time created or entered into as security for any Secured Money.

**Attorney** means any attorney appointed under this Deed, any Security Interest or any Ancillary Security.

**Authorised Officer** means:

- (a) in respect of the Borrower, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Borrower by a notice to the Security Trustee accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of a Beneficiary, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Principal** or **President** or cognate expressions, or any secretary or director.

**Beneficiary** means each of the following (subject to clause 4.4):

- (a) the Security Trustee;
- (b) the Lender;
- (c) any New Financier; or
- (d) any successor or permitted substitute or assign of any of the above,

where that person (except the Security Trustee or the Lender) has agreed to comply with the obligations of a Beneficiary under this Deed by executing and delivering to the Security Trustee a deed poll substantially in the form of Schedule 2 or another document acceptable to the Security Trustee.

**Commitment** means:

- (a) in respect of the Lender, its Commitment as defined in the Loan Agreement; and
- (b) in respect of a New Financier, its commitment or facility limit under the relevant financing document entered into with the Borrower as determined by the Security Trustee based on a written statement signed by both the New Financier and the Borrower stating such amount.

**Consortium MoU** means the Project Bell Memorandum of Understanding entered into by GIM Advisory Services LLC (on behalf of itself and its managed funds and clients), Qube Holdings Limited and Perpetual Corporate Trustee Limited (ABN 99 000 341 533) as trustee of the CPPIB Australia Trust dated on or about 29 October 2015.

**Event of Default** means an event of default as defined in any Finance Document.

**Excluded Tax** means a Tax imposed by a jurisdiction on the net income of a Beneficiary because the Beneficiary has a connection with that jurisdiction but not a Tax:

- (a) which is calculated by reference to the gross amount of a payment derived under a Finance Document or another document referred to in a Finance Document (without the allowance of a deduction); or
- (b) which is imposed as a result of the Beneficiary being considered to have a connection with that jurisdiction solely as a result of it being a party to a Finance Document or a transaction contemplated by a Finance Document.

**Exposure** means at any time (but without double counting):

- (a) in the case of the Security Trustee, the Secured Money which the Borrower is at that time actually or contingently liable to pay to or for the account of it (but not Secured Money payable to it for the account of any other Beneficiary or in any other capacity);
- (b) in the case of the Lender, the undrawn Commitment of the Lender plus the amount of the Lender's participation in the total principal amount outstanding under the Loan Agreement; or
- (c) in the case of a New Financier, the undrawn Commitment of the New Financier plus the amount of that New Financier's participation in the total principal amount outstanding under the New Financier's financing agreement with the Borrower.

**Finance Document** means

- (a) this Deed;
- (b) a Security Interest;
- (c) the Loan Agreement;
- (d) the Tripartite Deed;
- (e) a document defined in the Loan Agreement as a Finance Document;
- (f) a Recognition Certificate;
- (g) a Guarantee in respect of any of the Secured Money;
- (h) a New Finance Document;
- (i) another document which the parties to this Deed agree is a Finance Document; or
- (j) a document or agreement entered into or provided under or in connection with, or for the purpose of amending, assigning or novating, any of the above. It includes a written undertaking by or to a party or its lawyers under or in relation to any of the above.

**Guarantee** means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or insolvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

**Liquidation** includes receivership or other appointment of a controller, deregistration, compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy.

**Loan Agreement** means the loan agreement between the Borrower and the Lender dated on or about the date of this Deed.

**Loss** means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

**Majority Beneficiaries** means a Beneficiary or Beneficiaries whose Exposures are more than two thirds of the total Exposures of all Beneficiaries.

**New Finance Document** means a document relating to the financing arrangements between the Borrower and a New Financier recognised in a Recognition Certificate issued under clause 4.

**New Financier** means a financier recognised in a Recognition Certificate issued under clause 4.

**Nominated Account** means:

- (a) any bank account opened by the Borrower before or after the execution of this Deed nominated by the Lender; or
- (b) if no such account is nominated:
  - (i) an account of the Borrower with the Lender specified by the Borrower; or
  - (ii) any other ADI Account (as defined in the PPSA) over which the Lender has control (as defined in section 341 of the PPSA), specified by the Borrower.

**Potential Event of Default** means anything which with time, notice or both would become an Event of Default.

**Power** means a power, right, authority, discretion or remedy which is conferred on a Beneficiary or a Receiver or Attorney:

- (a) by this Deed or any Security Interest; or
- (b) by law in relation to this Deed or any Security Interest.

**PPS Register** has the meaning given to the term 'register' in the PPSA.

**Receiver** means a receiver or receiver and manager appointed under any Security Interest.

**Recognition Certificate** means a certificate substantially in the form of Schedule 3 or any other document recognising a New Financier which is executed by the Security Trustee and which states that it is a Recognition Certificate.

**Secured Money** means all money which the Borrower (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of a Beneficiary (whether alone or not) for any reason whatever under or in connection with a Finance Document, whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with a

Finance Document, or as a result of a breach of or default under or in connection with a Finance Document.

Where the Borrower would have been liable but for its Liquidation or a set-off claimed by it, it will be taken still to be liable.

**Secured Property** means the property mortgaged or charged by a Security Interest.

**Security Interest** means:

- (a) the General Security Deed between the Borrower and the Security Trustee dated on or about the date of this Deed; and
- (b) any Ancillary Security.

**Security Trust** means the trust known as the Project Bell Security Trust established under this Deed.

**Tripartite Deed** means the tripartite deed – CHESS Sponsorship dated on or about the date of this Deed between the Borrower, the Security Trustee and UBS Securities Australia Limited (ABN 62 008 586 481).

**Trust Fund** means:

- (a) any Security, Guarantee or right of the Security Trustee or obligation to the Security Trustee, in each case arising in its capacity as trustee under this Deed;
- (b) any proceeds of the above or any investment of the proceeds;
- (c) the sum of A\$10 referred to in clause 2.1; and
- (d) any other assets which the Security Trustee acquires as trustee under this Deed.

**Wilful Default** means, in respect of the Security Trustee, any wilful failure to comply with, or wilful breach by, the Security Trustee of any of its obligations under any Finance Document to which the Security Trustee is a party, other than a failure or breach which:

- (a) arises as a result of a breach of a Finance Document by a person other than the Security Trustee and (subject to any provisions of the Finance Documents which limit its liability in respect of the acts and omissions thereof) its agents and delegates;
- (b) is in accordance with a lawful court order or direction or is required by law; or
- (c) is in accordance with a proper instruction or direction of the Beneficiaries instructing it in accordance with this Deed.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) Nothing in this Deed is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and the converse.
  - (ii) A gender includes all genders.
  - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (v) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Deed.
- (vi) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
- (viii) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (ix) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (x) Each paragraph in a list is to be construed independently. None limits any other.
- (xi) All references to **time** are to Melbourne time.

### 1.3 Document or agreement

A reference to:

- (a) an **agreement** includes a Security, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

### 1.4 Listing requirements included as *law*

A listing rule, business rule or market integrity rule of a financial market (as defined in the *Corporations Act 2001*) will be regarded as a **law**.

### 1.5 Beneficiaries' obligations

The obligations and rights of each Beneficiary under this Deed are several and:

- (a) failure of a Beneficiary to carry out its obligations does not relieve any other Beneficiary of its obligations;
- (b) no Beneficiary is responsible for the obligations of any other Beneficiary or the Security Trustee; and
- (c) subject to the Finance Documents, each Beneficiary may separately enforce its rights under this Deed.

### 1.6 Business Day

If any thing is to be done on a day which is not a Business Day, that thing must be done on or by the next Business Day in the same calendar month or, if none, the preceding Business Day except where a Finance Document provides otherwise.

### 1.7 Inconsistency

This Deed prevails over the other Finance Documents to the extent of any inconsistency (in the sense that it is impossible to comply with both) unless otherwise expressly provided.



## 1.8 Consents and Opinion

Except where expressly stated any Beneficiary may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions, and may exercise its Powers, at its absolute discretion.

## 1.9 Limited recourse to Borrower

Notwithstanding anything contained in the Finance Documents, each Beneficiary acknowledges that in satisfying any demand or claim which the Beneficiary may make on the Borrower in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Beneficiaries will be limited to the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed; and
- (b) the Borrower will in no circumstances have any liability whatsoever to the extent that the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security over all of the 'Collateral' (as defined in the General Security Deed) and distribution of the proceeds in accordance with this Deed, or if the Borrower, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), the Borrower will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.9 limits the liability of the Borrower for any loss, cost or expenses suffered or incurred by a Beneficiary arising from the Borrower's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.9 (*Limited recourse to Borrower*) is not severable from this Deed.

## 1.10 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, the Borrower will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Borrower has not been reimbursed for.

## 2 Declaration of Trust

### 2.1 Declaration of trust

The Security Trustee declares that it holds on trust for the Beneficiaries:

- (a) the sum of A\$10 in Victoria; and
- (b) any other assets which the Security Trustee acquires as trustee under this Deed, including:
  - (i) any Security, Guarantee or right of the Security Trustee or obligation to the Security Trustee; and
  - (ii) any proceeds of the above or any investment of the proceeds.



## 2.2 Term of trust

The trust commences on the date of this Deed and, unless terminated earlier, ends on the day before the 80th anniversary of the date of this Deed.

## 2.3 Name of trust

The trust is to be known as the Project Bell Security Trust.

## 2.4 Nature of interest of Beneficiaries

If, but only so long as, the acquisition of, transfer to or holding (**Dealing**) by a Beneficiary of a right or interest as a secured party in property comprised in the Secured Property (**Property**) would give rise to:

- (a) ad valorem stamp duty in any jurisdiction in Australia as administered by the relevant Government Agency for that jurisdiction; or
- (b) a contravention of any law or policy or directive of a Government Agency in Australia (which, if not having the force of law, is one with which prudent persons have the custom of complying),

then:

- (c) that Beneficiary will not hold any beneficial interest in that Property, but will hold a beneficial interest in any proceeds of the sale of that Property by the Security Trustee.

Without limitation, if the Dealing would contravene or give rise to a notification requirement under Australia's Foreign Investment Policy, as published by the Treasurer of the Commonwealth of Australia from time to time, or the *Foreign Acquisitions and Takeovers Act 1975* (Cth), paragraph (c) will apply until the Treasurer has stated that there is no objection to the Beneficiary's Dealing in the Property.

## 3 Relationship of Beneficiaries to Security Trustee

### 3.1 Authority

Subject to clause 3.22, the Security Trustee is irrevocably appointed and authorised to enter into the Finance Documents and act as trustee for the Beneficiaries.

### 3.2 Limitation of liability

- (a) The Security Trustee enters into each Finance Document (other than this Deed) only in its capacity as trustee of the Security Trust and in no other capacity. Notwithstanding any other provisions of this Deed or any other Finance Document, a liability arising under or in connection with this Deed or any other Finance Document is limited to and can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the property of the Trust Fund out of which the Security Trustee is actually indemnified for the liability. This limitation of the Security Trustee's liability applies despite any other provision of this Deed or any other Finance Document and extends to all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or any Finance Document.
- (b) The parties other than the Security Trustee may not sue the Security Trustee in any capacity other than as trustee of the Security Trust, including seek the appointment of a receiver (except in relation to the Trust Fund), a liquidator, an administrator or any similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Trust Fund).

- (c) The provisions of this clause 3.2 shall not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Trust Fund as a result of the Security Trustee's fraud, gross negligence or Wilful Default.
- (d) No act or omission of the Security Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed or any other Finance Document) will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 3.2(c) to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Security Trust or by any other act or omission of any other person.
- (e) No attorney, agent, delegate, receiver or receiver and manager appointed in accordance with this Deed or any other Finance Document has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 3.2(c).
- (f) For the avoidance of doubt, the Security Trustee is not obliged to use its own funds in performing obligations under any Finance Document (including this Deed).

### 3.3 Limitation of liability

Subject to clause 3.4, the Security Trustee is not, and its directors, Authorised Officers, employees, agents and attorneys are not, liable to any party for:

- (a) any Loss occurring as a result of it exercising, failing to exercise or purporting to exercise any Power under this Deed or in relation to the Security Interests;
- (b) subject to this Deed, the actions of any agent, delegate, Authorised Officer or employee of the Security Trustee;
- (c) any mistake or omission made by it or its agent, delegate, Authorised Officer or employee;
- (d) any other matter or thing done, or not done, in relation to the Security Interests;
- (e) any absence of, or defect in title or for its inability to exercise any of its Powers under the Security Interests;
- (f) any failure by the Borrower to perform its obligations under any Finance Document or Security Interest;
- (g) any failure by a Beneficiary to:
  - (i) perform its obligations under any other Finance Document; or
  - (ii) provide instructions where requested by the Security Trustee in accordance with this Deed;
- (h) the financial condition or solvency of the Borrower;
- (i) any statement, representation or warranty of the Borrower being incorrect or misleading in any respect;
- (j) any failure or delay in performing its duties or obligations where it is impossible for the Security Trustee to act or to act lawfully due to any cause beyond its control (including but not limited to act of God, war, riot, terrorism, fire, natural disaster, labour dispute or law taking effect after the date of this Deed);

- (k) acting in accordance with the instructions of the Beneficiaries in accordance with this Deed, or in the absence of instructions in accordance with clause 3.6, or for refraining from acting:
  - (i) in accordance with the instructions of the Beneficiaries, in accordance with this Deed; or
  - (ii) where there are no instructions which are required by this Deed for the Security Trustee to act or refrain from acting;
- (l) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Security or any other Finance Document or any other certificate or document given under any of them; and
- (m) any recitals, statements, representations or warranties contained in any Finance Document or in any certificate or other document referred to in or provided for in, or received by it under, any Finance Document.

### **3.4 Exceptions to limit on liability**

Clause 3.2 will not apply to the extent that the Security Trustee or, as the case may be, any of its employees, agents or Authorised Officers has been guilty of fraud, gross negligence or Wilful Default. None of the following of itself will amount to fraud, gross negligence or Wilful Default of the Security Trustee:

- (a) failure by the Security Trustee to act due to lack of instructions or lack of proper or clear instructions from the Beneficiaries instructing it; or
- (b) any act or omission, to the extent caused or contributed to by any failure by any other person (other than the Security Trustee's employee or officer).

### **3.5 Powers**

The Powers of the Security Trustee include power to do anything which is incidental or desirable to give effect to any Power.

### **3.6 Instructions; extent of discretion**

- (a) In the exercise of all rights, powers and discretions on behalf of the Beneficiaries under the Finance Documents, the Security Trustee shall act in accordance with the instructions (if any) of the Majority Beneficiaries or (where so specified) of all Beneficiaries.
- (b) If it neither seeks (not being obliged to) nor receives those instructions, the Security Trustee need not act. However, it may act as it sees fit in the best interests of all Beneficiaries.
- (c) Except as expressly provided in a Finance Document to which it is a party, the Security Trustee need not seek the instructions of, or consult with, any Beneficiaries (but may do so).
- (d) Any action taken by the Security Trustee in accordance with the Finance Documents binds all the Beneficiaries.

### **3.7 No obligation to investigate authority**

- (a) No Borrower need enquire whether any instructions from Beneficiaries have been given to the Security Trustee or as to the terms of those instructions.
- (b) As between the Borrower on the one hand and the Security Trustee and the Beneficiaries on the other, all action taken by the Security Trustee under the Finance Documents will be taken to be authorised.

### 3.8 Duties

The Security Trustee has no duties or responsibilities except those expressly provided in the Finance Documents to which it is a party.

### 3.9 No liability

None of the Security Trustee nor any of its directors, officers, employees, agents, attorneys or Related Entities is responsible to the Beneficiaries for, or will be liable (whether in negligence or on any other ground) in respect of any of the following whether before or after the date of this Deed.

- (a) Any conduct relating to any loan proposal, prospectus, offering circular, information memorandum or other information, any document or agreement or any transaction.
- (b) The value, validity, effectiveness, genuineness, enforceability or sufficiency of any document or agreement or any transaction.
- (c) Any default by the Borrower.
- (d) Any action taken or not taken by it or them under any Finance Document except in the case of its or their own Wilful Default or gross negligence.

### 3.10 Delegation

The Security Trustee may employ agents and attorneys.

### 3.11 Reliance on documents and experts

The Security Trustee may rely on:

- (a) any document or communication (including any electronic transmission) believed by it to be genuine and correct; and
- (b) advice and statements of lawyers, independent accountants and other experts selected by the Security Trustee.

### 3.12 Notice of transfer

The Security Trustee may treat each Beneficiary as the holder of the Beneficiary's rights under the Finance Documents until the Security Trustee has received notice of assignment satisfactory to the Security Trustee.

### 3.13 Security Trustee as Beneficiary and banker

- (a) The Security Trustee may be a Beneficiary in its private or another capacity. As a Beneficiary, the Security Trustee has the same rights and powers as any other Beneficiary. It may exercise them as if it were not the Security Trustee.
- (b) The Security Trustee may conduct any business with the Borrower (or any of its Subsidiaries), or any person who gives or creates a Guarantee or Security which secures any Secured Money, as if it were not the Security Trustee. It does not have to account to the Beneficiaries for any fees or profit relating to that other business.

### 3.14 Indemnity out of Trust Fund

Subject to clause 3.16, the Security Trustee is and will be indemnified out of any money from time to time received or recovered by the Security Trustee under each Security in respect of all Losses, fees and expenses (including any moneys paid or to be paid for the employment or appointment of any agent and including legal costs and expenses on a full indemnity basis) incurred by or payable to it:

- (a) in the exercise, protection or defence of any Powers or in performing any of its obligations, duties or responsibilities; or
- (b) otherwise in relation to a Security or other Finance Document.

The Security Trustee may, from time to time, retain and pay out of any moneys recovered from the Securities an amount to satisfy such indemnity.

### **3.15 Indemnity by Beneficiaries**

- (a) Each Beneficiary (other than the Security Trustee) separately (in accordance with its pro rata proportion of the total Commitment) indemnifies the Security Trustee against, and must pay to the Security Trustee within 2 Business Days after demand the amount equal to, any Loss incurred by the Security Trustee (otherwise than by reason of the Security Trustee's fraud, Wilful Default or gross negligence) in acting as Security Trustee under the Finance Documents. For the avoidance of doubt, "Loss" for the purpose of this clause 3.15 will include so much of any amount due by the Borrower to the Security Trustee under any Finance Document which is not paid when due or which is paid but which the Security Trustee is subsequently obliged to repay or refund (including by reason of the operation of any intercreditor deed or other Finance Document or any law relating to insolvency or any other law).
- (b) The indemnity in clause 3.15(a) is in addition to, and without prejudice to, any right of indemnity available to the Security Trustee in law or equity or in any other Finance Document.

### **3.16 Exceptions to indemnities**

The indemnity in clause 3.14 does not apply to the extent of any Loss of the Security Trustee as a result of the Security Trustee's fraud, gross negligence or Wilful Default.

### **3.17 Deemed Secured Money**

Any amount the Lender and any New Financier is required to pay under clause 3.15(a) is deemed to be Secured Money and payable subject to clause 1.9 (**Limited Recourse to Borrower**).

### **3.18 Knowledge and awareness of Security Trustee**

- (a) For the purposes of each Finance Document, the Security Trustee will only be considered to have knowledge, notice of or awareness of any matter or thing to the extent of actual knowledge, actual notice of or actual awareness of the officers or employees of the Security Trustee who have day to day responsibility for the administration of the Security Trustee's obligations under this Deed or the Security Trust.
- (b) The Security Trustee is deemed not to know of a breach of a Finance Document, an Event of Default or a Potential Event of Default unless the Security Trustee has received Notice from a Beneficiary or the Borrower stating that the breach, Event of Default or Potential Event of Default has occurred.
- (c) Clause 21.1(b) does not apply for the purposes of this clause 3.18.
- (d) Until it becomes aware of a breach of a Finance Document, an Event of Default or Potential Event of Default in accordance with this clause 3.18, the Security Trustee may assume that no breach, Event of Default or Potential Event of Default has occurred and that all obligations of the Borrower in connection with the Finance Documents are being observed, and need not inquire whether this is true.

**3.19 Independent investigation of credit**

Each Beneficiary has made and will continue to make, independently and without reliance on the Security Trustee or any other Beneficiary:

- (a) its own investigations into the affairs of the Borrower; and
- (b) its own analyses and decisions whether to enter the Finance Documents or to take or not take action under them.

**3.20 No monitoring**

The Security Trustee is not required to monitor compliance with any document or agreement or to do any inspections.

**3.21 Information**

- (a) The Security Trustee will provide to each Beneficiary a copy of each notice, report and other document given to it under any Finance Document to which it is a party in sufficient copies for the Beneficiaries.
- (b) The Borrower authorises the Security Trustee to provide any Beneficiary with any information concerning it. The Security Trustee need not do so.
- (c) The Security Trustee need not disclose any information if in the opinion of the Security Trustee (on the advice of its legal advisers) disclosure might breach a law or obligation of confidentiality.

**3.22 Replacement of Security Trustee**

- (a) Subject to the appointment of its successor:
  - (i) the Security Trustee may resign by giving not less than 30 days prior notice to the Beneficiaries and the Borrower; and
  - (ii) the Majority Beneficiaries may remove the Security Trustee by giving at least 30 days prior notice to the Borrower and the Security Trustee.
- (b) After that notice is given, the Majority Beneficiaries may appoint a successor Security Trustee unless the Security Trustee has resigned under sub-paragraph (a)(i) and appointed a Related Entity as its successor.
- (c) If no successor Security Trustee is appointed within 30 days after notice the retiring Security Trustee may appoint a successor without any person's approval but only after consultation with the Beneficiaries.
- (d) On its appointment, the successor will have all the rights, powers and obligations of the retiring Security Trustee. The retiring Security Trustee will be discharged from its rights, powers and obligations (other than liabilities preserved under paragraph (f)).
- (e) The retiring Security Trustee shall execute and deliver all documents or agreements which are necessary or in its opinion desirable to transfer to the successor all assets (including each Security and Guarantee) held by the retiring Security Trustee as Security Trustee or to effect the appointment of the successor Security Trustee. It shall deliver to its successor all its documents and external communications it received or gave as Security Trustee.
- (f) After any retiring Security Trustee's resignation or removal, this Deed will continue to apply to anything done or not done by it before then as Security Trustee.
- (g) The Borrower need not pay the cost of the appointment of a successor Security Trustee. That cost will be borne:

- (i) where the Security Trustee has resigned or has been removed because it has failed to perform its obligations or has been negligent as Security Trustee, by the retiring Security Trustee; and
- (ii) where the Security Trustee has been otherwise removed by the Majority Beneficiaries, by those Majority Beneficiaries.

At the successor Security Trustee's request, the Beneficiaries (other than the Security Trustee) shall negotiate in good faith the fees to be paid to the Security Trustee. Until they are agreed, the Beneficiaries will pay the successor the same fees at the same times as it agreed with the retiring Security Trustee.

### 3.23 Amendment of Finance Documents

- (a) Subject to paragraph (b), the Security Trustee is authorised on behalf of the Beneficiaries to amend any Finance Document to which it is a party or to grant any waiver or release under those Finance Documents if:
  - (i) the Security Trustee is satisfied that it corrects a manifest or minor error or is of a formal or technical nature only;
  - (ii) it is necessary to permit a transaction which complies with the Finance Documents; or
  - (iii) the Majority Beneficiaries have notified the Security Trustee of their agreement to it.
- (b) The Security Trustee shall not amend a Finance Document, or grant a waiver or release under a Finance Document, if it would:
  - (i) increase the obligations or Exposure of any Beneficiary without the consent of that Beneficiary;
  - (ii) change the date, amount, priority or order of any payment to any Beneficiary without the consent of that Beneficiary;
  - (iii) discharge or release any Guarantee or Security existing for the benefit of a Beneficiary without the consent of that Beneficiary, other than to permit a transaction which complies with the Finance Documents (including on enforcement);
  - (iv) change the definition of Majority Beneficiaries, without the consent of all Beneficiaries; or
  - (v) change any requirement for the agreement or instructions of all or a specified majority of Beneficiaries (or any category of them) to be obtained, without the consent of each Beneficiary entitled to be counted in determining whether that requirement is satisfied.
- (c) In making an assessment for the purposes of clause 3.23(a)(ii) or clause 3.23(b), the Security Trustee may require a written statement from each Beneficiary party to such Finance Document or the Majority Beneficiaries (as applicable) as to the compliance or otherwise of the proposed amendment, waiver or release under the terms of the Finance Documents (among other things).
- (d) Each Beneficiary will be bound by any amendment, waiver or release by the Security Trustee in accordance with this clause 3.
- (e) Nothing in this clause 3 limits the right of a Beneficiary to grant a waiver or release.



### 3.24 Security Trustee's fees

The Beneficiaries shall pay the Security Trustee fees as agreed from time to time between the Beneficiaries and the Security Trustee.

### 3.25 No obligations

Despite any other provision of the Finance Documents, the Security Trustee need not do anything under a Finance Document (including enforcement and even where instructed to do so) if it believes:

- (a) the proceeds will not be sufficient to reimburse the Security Trustee for its costs, charges or expenses or to indemnify it; or
- (b) it is impossible to act or to act lawfully due to any cause beyond its control.

### 3.26 Security Trustee dealings

Except where expressly provided otherwise:

- (a) all correspondence under or in relation to the Finance Documents to which the Security Trustee is a Party, as between a Beneficiary on the one hand and the Borrower on the other, will be made through the Security Trustee; and
- (b) the Beneficiaries and the Borrower severally agree to deal with and through the Security Trustee in accordance with this Deed.

### 3.27 Distribution of Marketable Securities

The Security Trustee agrees that, in the exercise of any Powers, it will not make any in specie distribution of Marketable Securities to any Beneficiary without the consent of that Beneficiary.

## 4 New Financiers

### 4.1 Request for recognition of New Financiers

If the Borrower wishes any financier to be recognised as a New Financier, it must provide the Security Trustee with:

- (a) details of the new financing arrangements, including the name of each financier;
- (b) a copy, certified by an Authorised Officer of the Borrower, of each document relating to the financing arrangements with each financier; and
- (c) any additional information requested by the Security Trustee.

### 4.2 Recognition of New Financier

If the Security Trustee is satisfied that:

- (a) recognising the new financier as a New Financier and the relevant documents as New Finance Documents and the incurring under them of Finance Debt secured by the Security Interests is permitted under the Finance Documents to which it is a party;
- (b) neither the proposed Exposure of the financier nor the financier becoming a Beneficiary will require any Finance Document to which it is a party to be stamped with ad valorem stamp duty, or if it does, that the Borrower, the new financier or another person has paid that stamp duty, or undertakes to the satisfaction of the Security Trustee to pay it; and
- (c) all of the Beneficiaries agree to recognise the new financier as a New Financier and the relevant documents as New Finance Documents,



the Security Trustee will issue a Recognition Certificate recognising the new financier as a New Financier and the relevant documents as New Finance Documents.

#### **4.3 Recognition Certificate conclusive**

A Recognition Certificate will be conclusive evidence of the matters stated in it, in the absence of manifest error.

#### **4.4 Ceasing to be a Beneficiary**

- (a) The Security Trustee may by notice request a Beneficiary to confirm whether at the time of the notice:
  - (i) that Beneficiary's Exposure has been reduced to nil; and
  - (ii) no Borrower has any unsatisfied obligations (present or future, actual or contingent) to that Beneficiary under or in connection with any Finance Document.
- (b) If a Beneficiary gives the Security Trustee an affirmative confirmation in writing under paragraph (a), whether on request by the Security Trustee or otherwise, then on receipt of that confirmation by the Security Trustee, the Beneficiary will cease to be a Beneficiary.

### **5 Distribution of Money**

#### **5.1 Overriding application**

This clause applies despite any rule of law or equity to the contrary or the respective dates on which anything is done.

#### **5.2 Distribution by Security Trustee**

The Security Trustee shall apply all money received or recovered by it which is available for distribution in or towards payment or repayment of the Secured Money in the following order.

- (a) First: all costs, charges and expenses of the Security Trustee or any Receiver or Attorney which are incurred in or are incidental to the actual or attempted exercise or performance of a Power or otherwise in relation to any Finance Document, including any fees.
- (b) Second: any other outgoings which the Security Trustee or any Receiver or Attorney thinks fit to pay.
- (c) Third: any Receiver's remuneration.
- (d) Fourth: to each holder of a Security of which the Security Trustee is aware and which has priority in relation to the relevant Secured Property, to the extent, and in order, of priority.
- (e) Fifth: to itself for the account of the Beneficiaries towards satisfaction of the Secured Money rateably among the Beneficiaries according to their amounts outstanding or in any other manner agreed by the Security Trustee and all Beneficiaries.
- (f) Sixth: to each holder of a Security of which the Security Trustee is aware and which ranks after any Security Interest in relation to the relevant Secured Property, to the extent, and in order, of priority.
- (g) Seventh: the surplus (if any) belongs to the Borrower. The surplus will not carry interest.

If the Security Trustee pays the total amount referred to in paragraph (f) and (g) to the credit of an account in the name of the next ranking holder of a Security or if none, in the name of the Borrower with any bank carrying on business in Australia, the Security Trustee, Receiver or Attorney (as the case may be) will be under no further liability in respect of it.

### 5.3 Money actually received

In applying any money toward satisfaction of the Secured Money the Borrower will be credited only with the money available for that purpose which is actually received by the Security Trustee. The credit will date from the time of receipt.

### 5.4 Amounts contingently due

If any Secured Money is contingently owing to any Beneficiary at the time of a distribution of an amount under clause 5.2, the Security Trustee may retain any of that amount. If it does, it shall place the amount retained on short term interest bearing deposit until the relevant Secured Money becomes actually due or ceases to be contingently owing, and the Security Trustee will then:

- (a) pay to that Beneficiary the amount which becomes actually due to it; and
- (b) apply the balance of the amount retained (together with interest earned on the deposit) in accordance with clause 5.2.

### 5.5 Payments through Security Trustee

- (a) If so instructed by the Majority Beneficiaries after an Event of Default has occurred the Security Trustee shall direct the Borrower to make all payments of Secured Money through the Security Trustee.
- (b) Subject always to clause 1.9, on receipt of that direction the Borrower will make all payments under the Finance Documents to the Security Trustee on behalf of the Beneficiaries until directed otherwise by the Security Trustee acting on the instructions of the Majority Beneficiaries.
- (c) Subject to clause 5.2, the Security Trustee shall distribute the amount paid in accordance with the Finance Documents among the Beneficiaries rateably according to their Exposures.

### 5.6 Conversion of currencies on application

For the purpose of making an application under clause 5.2 the Security Trustee, or any Receiver or Attorney, may purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and at the time it thinks fit.

### 5.7 Statement of Secured Money

- (a) If requested by the Security Trustee each Beneficiary shall promptly provide it with:
  - (i) a statement showing details of the Secured Money owing to that Beneficiary or its Exposure at the date of the statement; and
  - (ii) any information which the Security Trustee reasonably requests in relation to the calculation of the amounts referred to in sub-paragraph (i).
- (b) The Security Trustee may rely on any statement given by a Beneficiary under paragraph (a) as conclusive evidence of the amount of Secured Money owing to the Beneficiary or its Exposure on the date of the statement and may assume the amount of Secured Money owing to a Beneficiary or its Exposure remains unchanged until it is otherwise notified in writing by the Beneficiary. This will not prejudice any rights of the Borrower against the Beneficiary.

## 5.8 Other Securities over Secured Property

- (a) The Security Trustee, any Beneficiary and any Receiver or Attorney may rely on the certificate of a holder of another Security affecting or purporting to affect any Secured Property as to the amount and property secured by the Security.
- (b) After having received instructions from the Majority Beneficiaries to do so, the Security Trustee or any Receiver may pay or agree to pay at any time the amount certified by the holder of a Security or purported Security to be necessary to discharge it or some of the indebtedness secured by it, or to acquire it. From the date of payment that amount will be part of the Secured Money and the Beneficiaries (pro rata according to their Commitments) shall indemnify the Security Trustee and the Receiver against that amount. This applies whether or not that Security or purported Security was valid or prior, equal or subsequent ranking or the property or money stated in the certificate was secured by it.

## 6 Tax

If the Borrower is required to deduct any Tax from any payment (except an Excluded Tax), then:

- (a) it shall pay that amount to the appropriate authority and promptly give the Beneficiary evidence of payment; and
- (b) the amount payable is increased so that (after deducting that tax and paying any taxes on the increased amount) the Beneficiary receives the same amount it would have received had no deduction been made.

## 7 Interest on Overdue Amounts

### 7.1 Accrual and payment

- (a) **(Accrual)** Except where the relevant Finance Document provides otherwise, interest accrues on each unpaid amount which is due and payable by the Borrower under or in respect of any Finance Document (including interest under this clause):
  - (i) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
  - (ii) both before and after judgment (as a separate and independent obligation); and
  - (iii) at the rate of 7% pa.
- (b) **(Payment)** Subject always to clause 1.9, the Borrower shall pay interest accrued under this clause on demand by the Beneficiary to whom the unpaid amount is payable and on the last Business Day of each calendar quarter. That interest is payable in the currency of the unpaid amount on which it accrues.

## 8 Expenses, Indemnities

### 8.1 Expenses

The Beneficiaries (pro rata according to their Commitments) must pay or reimburse on demand by the Security Trustee all costs and expenses of the Security Trustee, a Receiver and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, any Finance Document;

- (b) a variation, release or discharge of any Finance Document and the production of any title document;
- (c) preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPSA) (including pursuant to section 167 of the PPSA);
- (d) complying with any amendment demand (as defined in the PPSA) in accordance with Part 5.6 of the PPSA; and
- (e) giving a consent or approval or waiving a requirement in connection with a Finance Document.

This includes legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

## 8.2 Indemnities

The Beneficiaries (pro rata according to their Commitments) shall indemnify the Security Trustee against any Loss, liability or expense (including legal costs on a full indemnity basis) which the Security Trustee (or any its officers or employees) incurs as a result of or in connection with:

- (a) any Event of Default or breach of the Finance Documents;
- (b) any exercise or attempted exercise of any Power under any Finance Document or any failure to exercise any Power; and
- (c) the Secured Property or the existence of any interest in or control or Power with respect to the Secured Property.

## 8.3 As between Borrower and Beneficiaries

The Beneficiaries (other than the Security Trustee) must indemnify the Borrower (pro rata according to their Commitments) for the Borrower's properly incurred costs and expenses (other than any costs in relation to in-house legal counsel) and all stamp, transaction, registration and similar Taxes in relation to any Finance Document, to the extent that the Borrower does not have funds available to it to meet such costs and expenses. The obligations of the Beneficiaries under this clause apply notwithstanding any arrangement to the contrary as set out in the Consortium MoU.

## 9 Control Accounts

The accounts kept by the Security Trustee constitute sufficient evidence, unless proven wrong, of the amount at any time due from the Borrower under this Deed.

## 10 Personal Property Securities (PPS) Law

### 10.1 General PPSA Provisions

To the extent that a security interest (as defined in the PPSA) is created under a Finance Document, the following applies.

- (a) No Beneficiary need give any notice under the PPSA (including a notice of a verification statement) under or arising out of anything relating to that security interest or Finance Document unless the notice is required by the PPSA and the giving of it cannot be excluded.
- (b) The Borrower waives its right to receive anything from any Beneficiary under section 275 of the PPSA, and shall not make any request of any Beneficiary under that section.
- (c) The Borrower authorises and requests each Beneficiary under section 275(7)(c) of the PPSA to obtain from the holder of any other Security or PPSA Deemed Security Interest

over the relevant collateral any of the information referred to in section 275(1) of the PPSA.

- (d) Each party contracts out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1) and 135. However, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an express or implied right on the part of a Beneficiary provided for in the relevant Finance Document.
- (e) Any disposal or other exercise of any right, power or remedy under this Deed will only be taken to be made under a provision which has not been excluded in paragraph (d), if the relevant secured party so elects.

## 10.2 Perfection of Security Interests

The Security Trustee will act on the instructions of the Majority Beneficiaries in determining whether or not to perfect, for the purposes of the PPSA, any Security Interest created under a Finance Document.

## 10.3 Security Trustee obligations

- (a) The Security Trustee agrees to comply with any reasonable instructions given to it by the Majority Beneficiaries under this clause 10, on the condition that:
  - (i) the instructions contain sufficient detail as to the action required of the Security Trustee;
  - (ii) if the instructions are not sufficiently detailed to enable the Security Trustee to comply, the Security Trustee is not required to take any action other than to inform the Beneficiaries that this is the case and specify the reason the Security Trustee is unable to comply; and
  - (iii) in the absence of any such instructions, the Security Trustee is not required to take any action with respect to the PPSA.
- (b) The Security Trustee is not responsible or liable to any person for any Loss arising in relation to the Securities or the Security Trust in connection with the registration, perfection, enforceability or priority of any security interest under the PPSA, the new PPS Register, any defect in registration or loss of priority in connection therewith, acting on any directions given to it under this clause 10 or any failure of the Majority Beneficiaries to comply with its obligations under this clause 10, except to the extent that such Loss is as a result of a breach by the Security Trustee of its obligations under this clause 10.
- (c) Despite any other provision of this Deed or any other Finance Document, the Security Trustee is not required to:
  - (i) take any action with respect to the PPSA, other than in compliance with a direction given under this clause 10 and subject to this clause 10;
  - (ii) make enquiries or satisfy itself that an instruction purported to be given under this clause 10 has been given in accordance with this clause; or
  - (iii) ensure the PPSA is complied with in relation to the Securities or the Security Trust (other than as contemplated by this clause 10).

## 10.4 Beneficiary assistance

Each Beneficiary agrees to provide all assistance reasonably requested by the Security Trustee to enable the Security Trustee to comply with its obligations under the PPSA. This includes, without limitation, providing any information reasonably requested by the Security Trustee:

- (a) to enable the Security Trustee to comply with any obligation under Chapter 4 of the PPSA; or
- (b) to enable to the Security Trustee to respond to a request made of it under section 275 of the PPSA,

in each case, by the time reasonably specified by the Security Trustee.

## **11 Duties and GST**

### **11.1 Duties**

- (a) The Beneficiaries (pro rata according to their Commitments) shall pay or reimburse the Security Trustee for all stamp, transaction, registration and similar Taxes (including fines and penalties) on or in relation to the execution, delivery, performance or enforcement of any Finance Document or any payment, receipt or other transaction contemplated by any Finance Document.
- (b) The Beneficiaries (pro rata according to their Commitments) shall indemnify the Security Trustee against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by the Security Trustee to pay any Tax after having been put in funds (with all necessary documents) to do so by the Beneficiaries.

### **11.2 GST**

All payments (including the provision of any non-monetary consideration) to be made by the Borrower under or in connection with any Finance Document have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when the Borrower makes the payment:
  - (i) it must pay to the Beneficiary an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) the Beneficiary will promptly provide to the Borrower a tax invoice complying with the relevant GST legislation.
- (b) Where under any Finance Document the Borrower is required to reimburse or indemnify for an amount, the Borrower will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the relevant Beneficiary determines that it is entitled to claim in respect of that amount.

## **12 Set-Off**

- (a) Each Beneficiary may set-off any obligation of any type in any currency that it owes the Borrower (including any credit balance in any account of the Borrower with any branch of that Beneficiary (whether or not matured)) against any obligation of the Borrower to that Beneficiary under or in relation to any Finance Document to pay any sum then payable. No Beneficiary need make that set-off. This right is independent of any security interest granted under the Finance Documents.
- (b) A Beneficiary may exchange currencies to make that set-off. Any right of set-off will extinguish the relevant obligations only to the extent of that set-off.

### 13 Waivers, Remedies Cumulative

- (a) No failure to exercise and no delay in exercising a Power under any Finance Document operates as a waiver, nor does any single or partial exercise of a Power preclude any other or further exercise of that or any other Power.
- (b) The Powers provided to the Beneficiaries in each Finance Document are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

### 14 Severability of Provisions

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

### 15 Survival of Obligations

- (a) **(Representations and warranties)** Each representation or warranty in a Finance Document survives the execution and delivery of the Finance Documents and the provision of financial accommodation.
- (b) **(Indemnity)** Each indemnity, reimbursement or similar obligation in a Finance Document:
  - (i) is a continuing, separate and independent obligation;
  - (ii) is payable on demand; and
  - (iii) survives termination or discharge of the relevant Finance Document and repayment of financial accommodation.

Where a party is obliged to indemnify another party against a loss, cost, charge, liability, expense, deficiency or other amount, it shall pay on demand from time to time the amount stated by the other party to be the amount indemnified against.

### 16 Moratorium Legislation

To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Borrower any obligation under a Finance Document; or
- (b) delays, prevents or prejudicially affects the exercise by any Beneficiary of any Power conferred by any Finance Document,

is excluded from the Finance Documents.

### 17 Determination, Statement or Certificate

Except where otherwise provided in this Deed, any determination, statement or certificate by the Security Trustee or an Authorised Officer of the Security Trustee provided for in this Deed is conclusive evidence against the Borrower in the absence of manifest error. It will be sufficient evidence against all parties as to the amount of Secured Money stated in the certificate unless proven wrong.

### 18 Other Security Interests

No Power and nothing in this Deed or any Security Interest merges in, or in any other way prejudicially affects or is prejudicially affected by:

- (a) any other Security; or



- (b) any judgment, right or remedy against any person, which any Beneficiary or any person claiming through any Beneficiary may have at any time.

## **19 Assignments**

- (a) The Borrower may only transfer or assign any of its rights or obligations under this Deed with the prior written consent of the Security Trustee on the instructions of all Beneficiaries.
- (b) Subject to the other Finance Documents, a Beneficiary may assign all or any of its rights or transfer all or any of its obligations under this Deed. If a Beneficiary's rights under this Deed are assigned, the Secured Money will include all actual and contingent liability of the Borrower to the assignee, whether or not it was incurred before the assignment or in contemplation of it.

## **20 Confidentiality**

### **20.1 Confidentiality**

Except as permitted in clause 20.2:

- (a) no Beneficiary shall disclose information and documents supplied by the Borrower in connection with the Finance Documents which are specifically indicated by the Borrower to be confidential and are not in the public domain; and
- (b) no party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.

### **20.2 Permitted disclosure**

A Beneficiary may disclose information or documents:

- (a) in enforcing a Finance Document, in a proceeding arising out of or connected with a Finance Document or to the extent that disclosure is regarded by the Beneficiary as necessary to protect its interests;
- (b) as required under an order of a Government Agency or any procedure for discovery in any proceedings;
- (c) as required under any law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) or under any administrative guideline, directive, request or policy with which responsible financial institutions similarly situated would normally comply;
- (d) as required or permitted by any Finance Document;
- (e) to its legal advisers and its consultants; or
- (f) with the prior consent of the Borrower.

### **20.3 Survival of obligation**

This clause survives the termination of this Deed.

## **21 Notices**

### **21.1 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:



- (a) must be in writing signed by an Authorised Officer of the sender (or in the case of an email, sent from the email address of an Authorised Officer of the sender); and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or email address of the recipient shown in Schedule 1 or to any other address or email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **22 Authorised Officers**

The Borrower irrevocably authorises each Beneficiary to rely on a certificate by any person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. It warrants that those persons have been authorised to give notices and communications under or relating to the Finance Documents.

## **23 Governing Law and Jurisdiction**

This Deed is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters, and any security interest (as defined by the PPSA) under it. The Borrower irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

## **24 Counterparts**

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

## **25 Acknowledgement by Borrower**

The Borrower confirms that:

- (a) it has not entered into any Finance Document in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of any Beneficiary or any Related Entity of any Beneficiary (including any advice, warranty, representation or undertaking); and
- (b) neither any Beneficiary nor any Related Entity of any Beneficiary is obliged to do anything (including disclose anything or give advice),

except as expressly set out in the Finance Documents.

## Schedule 1

### Details of Parties

#### 1 Borrower

Jingle SPV 1 Pty Limited

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000

Email: William.Hara@qube.com.au

Attention: William Hara, General Counsel/Company Secretary

#### 2 Lender

Global Infrastructure Management Australia Pty Limited as trustee of the GIP Bell Australia Unit Trust

Address: Level 17, Gateway Building  
1 Macquarie Place  
Sydney NSW 2000

Email: [jonathan.oh@global-infra.com](mailto:jonathan.oh@global-infra.com) / [nick.hume@global-infra.com](mailto:nick.hume@global-infra.com)

Attention: Jonathan Oh / Nick Hume

#### 3 Security Trustee

PT Limited

Address: Level 12, Angel Place  
123 Pitt Street  
Sydney NSW 2000

Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

Attention: Senior Manager, CSF Team

## Schedule 2

### Deed Poll by Beneficiary

Date

20[\*]

Deed Poll by:

[\*] ([ABN|ACN]) incorporated in [\*] of [\*] (the **Beneficiary**).

It is declared as follows.

#### 1 Definitions and Interpretation

##### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Security Trustee** means [\*].

**Security Trust Deed** means the security trust deed dated [\*] between the Security Trustee and [\*].

##### 1.2 Definitions

Definitions in the Security Trust Deed and clause 1.2 of the Security Trust Deed apply in this Deed.

##### 1.3 Deed poll

This is a deed poll. It may be relied on and enforced by the Security Trustee.

#### 2 Beneficiary Bound by Security Trust Deed

With effect from and including [the date of this Deed]:

- (a) the Beneficiary agrees to be bound by, and to comply with the obligations of a Beneficiary in, the Security Trust Deed, as if it were a party to the Security Trust Deed in that capacity; and
- (b) each other party to the Security Trust Deed acquires corresponding rights against, and assumes corresponding obligations to, the Beneficiary.

#### 3 Notices

The address for correspondence of the Beneficiary is the address set out below.

[\*]

#### 4 Law

This Deed is governed by the laws of [\*].

#### Executed and delivered as a deed poll.

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

[\*]

### Schedule 3

#### Recognition Certificate

We refer to the Security Trust Deed (the **Security Trust Deed**) dated [\*] between [\*] as Borrower and [\*] as Security Trustee establishing the Project Bell Security Trust.

Under clause 4.2 of the Security Trust Deed, the Security Trustee certifies as follows.

1 The following person is recognised as a New Financier:

[\*].

2 The following documents are recognised as New Finance Documents:

[\*].

]Definitions in the Security Trust Deed apply in this Certificate.

On behalf of

[\*]

By: [Authorised Officer]

Dated:

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

**Executed and delivered as a Deed.**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 1 Limited**:



Director Signature

PAUL LEWIS

Print Name



Director/Secretary Signature

WILLIAM HARA

Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Global Infrastructure Management Australia Pty Ltd as trustee of the GIP Bell Australia Unit Trust:**



Director Signature

ARI DROGA

Print Name



Director / Secretary Signature

ROBERT STEWART.

Print Name


**Signed Sealed and Delivered** for  
**PT Limited** by its attorneys under a power of  
attorney dated 16 September 2014 in the  
presence of:



Witness Signature

Nora McDonnell  
Manager

Print Name



Attorney Signature

Craig Cullen  
Senior Manager


Print Name



Witness Signature

Nora McDonnell  
Manager

Print Name



Attorney Signature

Hagbarth Strom  
Senior Transaction Manager

Print Name



Jingle SPV 1 Pty Limited

PT Limited

## General Security Deed

Project Bell

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on 29 October 2015

**Parties**

- 1 **Jingle SPV 1 Pty Limited** of Level 27, 45 Clarence Street, Sydney NSW 2000 (the **Grantor**).
- 2 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Secured Party**).

**Recitals**

- A From time to time, the Grantor may wish one or more Beneficiaries to provide financial accommodation to or for the account of the Grantor or another person.
- B This Deed is given to secure repayment of that accommodation, among other things.

It is agreed as follows.

**1 Definitions and Interpretation**

**1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Ancillary Collateral** means any asset subject to an Ancillary Security granted by the Grantor.

**Collateral** means all the Grantor's present and after-acquired property in respect of the Target Shares, Other Shares and New Rights and any proceeds (as defined in the PPSA) of them (as the terms 'Target Shares', 'Other Shares' and 'New Rights' are defined in the Loan Agreement as at the date of this Deed or otherwise as such terms are amended with the consent of the Secured Party). It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest in respect of that property.

**Control Event** means:

- (a) in respect of any Collateral that is, or would have been, a Revolving Asset:
  - (i) the Grantor breaches, or attempts to breach clause 3.1 (**Restricted dealings**) in respect of the Collateral or takes any step which would result in it doing so;
  - (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this Deed;
  - (iii) distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral; or
  - (iv) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset. (However, the Secured Party may only give a notice if the Secured Party considers (acting on the instructions of the Majority Beneficiaries) that it is necessary to do so to protect its rights under this Deed or if an Event of Default is continuing); or
- (b) in respect of all Collateral that is or would have been Revolving Assets:
  - (i) an administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or

- (ii) a receiver, receiver and manager or controller is appointed to any of the Grantor's property; or
- (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law.

**Controller** means a Receiver or a person appointed as the Secured Party's agent under this Deed or any Ancillary Security.

**Featherweight Collateral** means any property of the Grantor that is not Collateral.

**Non-PPSA Collateral** means Collateral in relation to which for any reason the PPSA does not apply to the security interest granted under this Deed.

**Revolving Asset** means any Collateral:

- (a) which is:
  - (i) inventory;
  - (ii) a negotiable instrument;
  - (iii) machinery, plant, or equipment which is not inventory and has a value of less than A\$1,000 or its equivalent;
  - (iv) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and
- (b) in relation to which no Control Event has occurred, subject to clause 3.5 (**Conversion to Revolving Assets**).

**Security Trust Deed** means the security trust deed dated on or about the date of this Deed between, among others, the Grantor and the Security Party.

**Unpaid Capital** means any uncalled or unpaid share capital or premiums of the Grantor.

## 1.2 Security Trust Deed definitions

Definitions in the Security Trust Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

## 1.3 Interpretation

Clauses 1.2 (*Interpretation*) to 1.4 (*Listing requirements included as law*), 1.6 (*Business Day*) and 1.8 (*Consent and Opinion*) of the Security Trust Deed apply as if set out in full in this Deed.

## 1.4 Benefit of security interest

The security interest under this Deed is held by the Secured Party as trustee under the Security Trust Deed.

## 1.5 Limited recourse to Grantor

Notwithstanding anything contained in the Finance Documents, the Secured Party acknowledges that in satisfying any demand or claim which the Secured Party may make on the Grantor in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Security Trustee will be limited to the Collateral and any other amount recoverable under clause 2.4 of this Deed; and

- (b) the Grantor will in no circumstances have any liability whatsoever to the extent that the Collateral and any other amount recoverable under clause 2.4 of this Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the security interest over all of the Collateral and distribution of the proceeds in accordance with the Security Trust Deed, or if the Grantor, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual Collateral, the Grantor will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.5 limits the liability of the Grantor for any loss, cost or expenses suffered or incurred by a Beneficiary arising from the Grantor's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.5 (*Limited recourse to Grantor*) is not severable from this Deed.

## 1.6 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, the Borrower will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Borrower has not been reimbursed for.

## 2 Grant of Security Interest

### 2.1 Security interest

The Grantor grants a security interest in the Collateral to the Secured Party (for itself and as trustee for the Beneficiaries) to secure payment of the Secured Money.

This security interest is a transfer by way of security of Collateral consisting of accounts and chattel paper (each as defined in the PPSA) which are not, or cease to be, Revolving Assets. To the extent any Collateral is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.

### 2.2 Security interest – Featherweight Collateral

The Grantor also grants a security interest in the Featherweight Collateral to the Secured Party (for itself and as trustee for the Beneficiaries) to secure payment of the Secured Money.

This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge.

### 2.3 Consideration

The Grantor enters this Deed in consideration of the Beneficiaries entering the Finance Documents, providing or continuing financial accommodation from time to time, or agreeing to do so (whether or not subject to conditions), or for other valuable consideration received.

### 2.4 Limit

The amount recoverable under the security interest created under clause 2.2 (*Security Interest – Featherweight Collateral*) is limited to the last A\$1,000 of the Secured Money owing.

### **3 Dealings with Collateral**

#### **3.1 Restricted dealings**

The Grantor must not do, or agree to do, any of the following unless it is permitted to do so by clause 3.2 (*Dealing with Featherweight Collateral*) or in a Finance Document:

- (a) create or allow another interest in any Collateral or Ancillary Collateral; or
- (b) dispose, or part with possession, of any Collateral or Ancillary Collateral.

#### **3.2 Dealing with Featherweight Collateral**

The Grantor may do anything described in clause 3.1 with respect to any Featherweight Collateral, unless:

- (a) it is prohibited from doing so by another provision in a Finance Document; or
- (b) an administrator is appointed in respect of the Grantor.

#### **3.3 Cessation of right to deal with Featherweight Collateral**

If an administrator is appointed in respect of the Grantor then automatically:

- (a) any floating charge over the Featherweight Collateral immediately operates as a fixed charge; and
- (b) the Grantor may no longer deal with the Featherweight Collateral under clause 3.2.

#### **3.4 Collateral ceasing to be Revolving Assets**

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge; and
- (c) if the Collateral is accounts or chattel paper (each as defined in the PPSA), it is transferred to the Secured Party by way of security.

#### **3.5 Conversion to Revolving Assets**

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 3, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

#### **3.6 Inventory**

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this Deed. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

#### **3.7 Dealing with proceeds**

- (a) Subject to any other provision of a Finance Document, the Grantor shall ensure that all proceeds received by it or for its account from any disposal or other dealing with Collateral or Ancillary Collateral and which are not immediately applied in acquiring another similar asset or in payment of the Secured Money or obligations ranking ahead of the Secured Money, are immediately credited to the Nominated Account.
- (b) If the Secured Party requires, Authorised Officers of the Secured Party will be the only signatories to the Nominated Account.

- (c) The Grantor shall give notices and directions necessary or requested by the Secured Party to ensure paragraph (a) is complied with.
- (d) Failure by any Beneficiary to require the Grantor to comply with this clause will not constitute a waiver.
- (e) Without prejudice to paragraph (d), if for any reason any Beneficiary waives or is taken to have waived the requirements of this clause in relation to debt which is Non-PPSA Collateral, the security interest granted under this Deed will still operate as a fixed charge in respect of the relevant debt or other asset which gives rise to the relevant proceeds.

#### **4 Undertakings and Warranty**

- (a) Subject always to paragraph (b), and clause 1.5, the Grantor shall duly and punctually pay the Secured Money. Subject always to paragraph (b) and clause 1.5, after an Event of Default (whether or not it is still continuing) the Grantor shall pay all Secured Money to the Secured Party on demand.
- (b) Notwithstanding anything contained in the Finance Documents, the total amount payable by the Grantor under or in respect of paragraph (a) (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise) will not exceed the total amount recoverable by enforcement of this Deed or any Ancillary Security. No Beneficiary shall have any recourse to the Grantor in respect of any such amount except by enforcing this Deed or any Ancillary Security.
- (c) Subject always to clauses 1.5 and 1.6, the Grantor shall ensure that no Event of Default occurs.
- (d) The Grantor warrants and undertakes that the security interest granted under this Deed is and will remain a first-ranking Security with respect to all Collateral, ranking ahead of all other Securities except those expressly permitted in the Finance Documents.

#### **5 Further Assurances**

##### **5.1 Further assurances**

Subject always to clauses 1.5 and 1.6, whenever the Secured Party requests the Grantor to do anything:

- (a) to ensure each of this Deed, each Ancillary Security and each Security granted under them is fully effective, enforceable and perfected with the stated priority;
- (b) for more satisfactorily assuring or securing the Collateral or Ancillary Collateral to the Beneficiaries in a manner not inconsistent with this Deed or any Ancillary Security; or
- (c) for aiding the exercise of any Power,

the Grantor shall, at the cost of the Secured Party (subject to indemnification from the Beneficiaries under the Security Trust Deed), do it as soon as reasonably practicable. That may include, for that purpose:

- (d) doing anything to make, procure or obtain any Authorisation (including registration) in respect of anything, or to facilitate it;
- (e) creating, procuring or executing any document, including any notice, consent or agreement, or (except with respect to the Featherweight Collateral) legal or statutory mortgage or transfer; and



- (f) delivering documents or evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any Collateral or Ancillary Collateral (other than with respect to the Featherweight Collateral).

## 5.2 Appointment of nominee for registration

For the purposes of section 153 of the PPSA, the Secured Party appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Grantor which is:

- (a) evidenced or created by chattel paper;
- (b) perfected by registration under the PPSA; and
- (c) transferred to the Secured Party under this Deed.

This authority ceases when the registration is transferred to the Secured Party.

## 6 Enforcement

### 6.1 Powers on enforcement

To the extent permitted by law, at any time after an Event of Default (whether or not it is still continuing) the Secured Party or any Authorised Officer of the Secured Party may exercise any of the Powers with respect to the Collateral set out in Schedule 1, without any need to take possession and without being liable as mortgagee in possession. It may exercise those Powers with respect to the Featherweight Collateral after an administrator is appointed to the Grantor. It may also exercise those Powers through one or more agents, in which case anything done or incurred by an agent will be taken to be done or incurred by the Secured Party.

### 6.2 Receivership

To the extent permitted by law, at any time after an Event of Default (whether or not it still continues), the Secured Party may:

- (a) appoint any person or any two or more persons jointly or severally or both to be a receiver or receiver and manager of all or any of the Collateral or Ancillary Collateral or to act as agent of the Secured Party to exercise any of the Powers in Schedule 1 with respect to all or any of the Collateral or Ancillary Collateral;
- (b) remove any Controller;
- (c) appoint another Controller in addition to or in place of any Controller; and
- (d) fix or vary the remuneration of any Controller,

but it may only exercise those Powers with respect to the Featherweight Collateral after an administrator is appointed to the Grantor.

An appointment may be made on any terms the Secured Party thinks fit and whether or not any Beneficiary or any Authorised Officer of a Beneficiary at any time has exercised any Power in Schedule 1. Without limiting any other method of appointment permitted by law, an appointment may be made by an instrument signed by an Authorised Officer of the Secured Party or by, or on behalf of, the Secured Party.

The Power to appoint a Receiver may be exercised even if the Liquidation of the Grantor has occurred or will occur.

Except to the extent otherwise provided by any law relating to Liquidation, every Receiver appointed under this Deed is the agent of the Grantor. The Grantor alone is responsible for a Receiver's acts and defaults.

### 6.3 Termination

The Secured Party may give up possession of any Collateral or Ancillary Collateral and terminate any receivership or agency at any time.

## 7 Power of Attorney

- (a) For valuable consideration and by way of security, the Grantor irrevocably appoints each Authorised Officer of the Secured Party severally its attorney to do anything which:
- (i) the Grantor is obliged, but has failed, to do under or in relation to any Finance Document; or
  - (ii) any Beneficiary or Receiver is authorised or empowered to do under any Finance Document or any law, but only at the times that that Beneficiary or Receiver (if a Receiver had been appointed) would have been able to do it.
- (b) Without limitation, the Attorney may at any time:
- (i) delegate the Attorney's powers (including delegation); and
  - (ii) do anything which in the opinion of the Secured Party or the Attorney is necessary or expedient to secure, preserve, perfect or give effect to the security contained in this Deed (including anything under clause 5 (**Further Assurances**), 8 (**Completion of Documents**) or 9 (**Performance of Grantor's Obligations**)). For example, it may execute a legal mortgage, transfer, assignment or other assurance in favour of the Secured Party of any of the Collateral or Ancillary Collateral (except the Featherweight Collateral) or give control (as defined in section 25 or 341A of the PPSA).
- (c) No Attorney appointed under this Deed may act, nor has power to act, inconsistently with this Deed or any other Finance Document to which the Security Trustee is a party.

## 8 Completion of Documents

If an Event of Default occurs (whether or not it is still continuing), the Secured Party, any Authorised Officer of the Secured Party, any Receiver or any Attorney may complete any document executed by or on behalf of the Grantor and deposited with any Beneficiary. It may complete it in favour of any Beneficiary, any appointee of any Beneficiary or any purchaser.

## 9 Performance of Grantor's Obligations

If at any time the Grantor fails to duly perform any obligation in any Finance Document, the Secured Party or any person it authorises may do anything which in the Secured Party's opinion is necessary or expedient to make good or to attempt to make good that failure to the Secured Party's satisfaction.

## 10 Inspection

The Secured Party or any person it authorises may inspect and copy the records of the Grantor related to any Collateral or Ancillary Collateral (except the Featherweight Collateral) and inspect the premises of the Grantor and inspect the Collateral or Ancillary Collateral at any time after an Event of Default (whether or not it is continuing). The Grantor shall, at the cost of the Secured Party (subject to indemnification from the Beneficiaries under the Security Trust Deed), do everything in its power to assist that inspection and copying and ensure that its employees and officers do the same.

## **11 Statutory Powers and Notices**

### **11.1 Powers in augmentation**

The powers conferred on a secured party or a Receiver by law:

- (a) except as specified in clause 11.2, are in addition to the Powers conferred by this Deed or any Ancillary Security;
- (b) to the extent permitted by law, may be exercised immediately after an Event of Default occurs and at any time subsequently but in the case of the Featherweight Collateral only after an administrator is appointed to the Grantor; and
- (c) are excluded or varied only so far as they are inconsistent with the express terms of this Deed or any Ancillary Security.

### **11.2 Exclusion of PPSA provisions**

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this Deed to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantor by the Secured Party; and
- (d) the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

### **11.3 Exercise of Powers by Secured Party**

If the Secured Party exercises a Power in connection with this Deed, that exercise is taken not to be an exercise of a Power under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a Power which can only be exercised under the PPSA.

### **11.4 No notice required unless mandatory**

To the extent the law permits, the Grantor waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a secured party or Receiver exercises a Power; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a Power.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

## **12 Application of Money Received**

### **12.1 Order**

To the extent permitted by law, all money received by a Controller, an Attorney or any Beneficiary under or arising out of this Deed or any Ancillary Security created by the Grantor will be applied in the manner and order set out in the Security Trust Deed.

### **12.2 Notice of subsequent Securities**

- (a) If any Beneficiary receives actual or constructive notice of a subsequent Security affecting any Collateral or Ancillary Collateral other than the Featherweight Collateral, it may open a separate account in the name of the Grantor in the books of that Beneficiary.
- (b) If that Beneficiary does not open a new account it will be treated as if it had done so at the time it received actual or constructive notice of the Security.
- (c) From the time the new account is opened or is taken to be opened:
  - (i) all advances and accommodation made available by that Beneficiary to the Grantor;
  - (ii) all payments and repayments made by the Grantor to that Beneficiary; and
  - (iii) money to be applied towards the Secured Money in accordance with the Security Trust Deed,

will be or will be taken to be debited or credited, as appropriate, to the new account. Payments, repayments and other money will only be applied in reduction of other Secured Money to the extent that there is no debit balance in that account.

## **13 Other Securities Over Collateral or Ancillary Collateral**

- (a) Any Beneficiary, Controller or Attorney may rely on the certificate of a holder of another Security affecting or purporting to affect the Collateral or Ancillary Collateral as to the amount and property secured by that Security.
- (b) After having received instructions from the Majority Beneficiaries to do so, the Secured Party or any Controller may pay or agree to pay at any time the amount certified by the holder of a Security or purported Security to be necessary to discharge it or some of the indebtedness secured by it or to acquire it. From the date of payment that amount will be part of the Secured Money and the Secured Party and the Controller will, in accordance with the Security Trust Deed, be indemnified by the Beneficiaries (pro rata according to their Commitments) against that amount. This applies whether or not that Security or purported Security was valid or prior, equal or subsequent ranking or the property or money stated in the certificate was secured by it.

## **14 Protection of Beneficiaries, Controllers and Attorneys**

To the extent permitted by law, no Beneficiary, nor any Controller or Attorney appointed under this Deed, will be liable:

- (a) in respect of any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Power; nor
  - (b) for any loss (including indirect loss) which results,
- except where it arises from fraud or gross negligence on the part of any Beneficiary, Controller or Attorney.

## 15 Protection of Third Parties

### 15.1 No enquiry

No party to any Dealing (as defined below) and no person asked to register a Dealing:

- (a) is bound to enquire:
  - (i) whether an Event of Default has occurred or whether this Deed has become enforceable;
  - (ii) whether a person who is, or, purports or is purported to be, a Controller or Attorney is duly appointed;
  - (iii) as to the amount of Secured Money and whether Secured Money is due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing; or
- (b) is affected by notice that the Dealing is unnecessary or improper.

For the protection of any party to a Dealing or a person registering a Dealing, the Dealing will be taken to be authorised by this Deed and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.

In this clause a **Dealing** is:

- (a) any payment, or any delivery or handing over of an asset, to; or
- (b) any acquisition, incurring of Finance Debt, receipt, sale, Lease, disposal or other dealing, by,

any Beneficiary, Controller or Attorney, or any person who purports or is purported to be a Controller or Attorney.

### 15.2 Receipt

The receipt of any Authorised Officer of any Beneficiary, or any Controller or Attorney appointed under this Deed (or person who purports, or is purported, to be such a Controller or Attorney), for any money or assets payable to or receivable or received by it, exonerates the person paying that money or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.

## 16 Certificate as to Amount of Secured Money

A certificate signed by an Authorised Officer of a Beneficiary will be conclusive evidence against the Grantor, in the absence of manifest error:

- (a) that the relevant Beneficiary is of the opinion stated in the certificate; or
- (b) if the Beneficiary is the Secured Party:
  - (i) as to the amount of Secured Money stated in that certificate;
  - (ii) that a document specified in that certificate is a Finance Document.

## 17 Continuing Security

Each of this Deed and each Ancillary Security is a continuing security despite any settlement of account, intervening payment or anything else until a final discharge of this Deed and each Ancillary Security has been given to the Grantor.

## 18 Restricted Collateral

(a) If the security interest granted under this Deed with respect to any Collateral would:

- (i) otherwise be ineffective with respect to the Collateral; or
- (ii) breach any law or (if that Collateral is a right under a document or agreement) that document or agreement,

then if it would render the security interest with respect to that Collateral effective and not in breach, the security interest will operate as a fixed charge with respect to the Collateral, failing which, it will operate as a floating charge with respect to that Collateral, failing which it will not apply to that Collateral.

(b) The Grantor must use its best efforts promptly to obtain any consents and do anything else needed to ensure the security interest can apply to that Collateral and not operate as a floating charge.

## 19 Assignments

- (a) Subject to the other Finance Documents, the Secured Party may assign or novate all or any of its rights or novate all or any of its obligations under this Deed and each Ancillary Security to another person. On that person agreeing in a deed in favour of the Grantor to assume all obligations of the Secured Party novated to it, the Secured Party will be relieved of those obligations.
- (b) Subject to the other Finance Documents, any other Beneficiary may assign all or any of its rights under this Deed.
- (c) If a Beneficiary's rights under this Deed are assigned or novated, the Secured Money will include all actual and contingent liability of the Grantor to the assignee, whether or not it was incurred before the assignment or novation or in contemplation of it.
- (d) The Grantor may only assign or novate any of its rights or obligations under this Deed or any Ancillary Security with the prior consent of the Secured Party. Any purported assignment or novation without such consent will be ineffective.

## 20 General

Clauses 21 (*Notices*) to 24 (*Counterparts*) of the Security Trust Deed apply as if set out in full in this Deed.

## Schedule 1

### Powers on Enforcement

Subject always to clause 1.5 and 1.6, the Secured Party or (except to the extent specifically excluded by the terms of appointment) a Controller has Power to do anything in respect of the Collateral or Ancillary Collateral that an absolute beneficial legal owner of the property could do. That includes Power to do any of the following, in each case on any terms the Secured Party or Controller thinks fit.

- 1 **(Seize, possess and manage)** Seize, take and retain possession of, get in and manage the Collateral or Ancillary Collateral.
- 2 **(Sell)**
  - (a) Sell any of the Collateral or Ancillary Collateral (whether or not physical possession has been taken by the Secured Party or Controller).
  - (b) Without limitation, any sale may be made:
    - (i) by public auction, private treaty or tender;
    - (ii) for cash or on credit;
    - (iii) in one lot or in parcels;
    - (iv) either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise;
    - (v) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security); and
    - (vi) whether or not in conjunction with the sale of any property by any person.
- 3 **(Options)** Grant or take put or call options.
- 4 **(Lease)** Lease any of the Collateral or Ancillary Collateral for any term (whether or not the Secured Party or Controller has taken possession).
- 5 **(Carry on business)** Carry on or concur in carrying on any business.
- 6 **(Acquire any asset)** Acquire in any manner any asset (including to take it on Lease). After that acquisition, it will be included in the Collateral or Ancillary Collateral.
- 7 **(Maintain and improve the Collateral or Ancillary Collateral)** Anything to maintain, protect or improve any of the Collateral or Ancillary Collateral or to obtain income or returns from any of the Collateral or Ancillary Collateral (including by development, sub-division, construction, alteration, or repair, of any property or by demolishing, dismantling or scrapping, any property).
- 8 **(Raise money)**
  - (a) Borrow or raise any money from the Secured Party or any other person approved by the Secured Party;
  - (b) give Guarantees; and
  - (c) grant any Security over any of the Collateral or Ancillary Collateral to secure that money or Guarantee. That Security may rank in priority to or equally with or after, the security interest granted under this Deed. It may be given in the name of the Grantor or otherwise.
- 9 **(Lend)** Lend money or provide financial accommodation.
- 10 **(Sever fixtures)** Sever fixtures and crops.



- 11 **(Employ)** Employ or discharge any person as employee, contractor, agent, professional adviser, consultant or auctioneer for any purpose and at any remuneration and on any other terms as the Secured Party or Controller thinks fit.
- 12 **(Compromise)** Make or accept any arrangement or compromise.
- 13 **(Give receipts)** Give receipts for money and other assets.
- 14 **(Authorisation)** Apply for, take up, transfer or surrender any Authorisation or any variation of any Authorisation.
- 15 **(Perform and enforce agreements)**
- (a) Perform or enforce;
  - (b) exercise or refrain from exercising the Grantor's rights and powers under; or
  - (c) obtain the benefit in other ways of,
- any documents or agreements or rights which form part of the Collateral or Ancillary Collateral and any documents or agreements entered into in exercise of any Power.
- 16 **(Vary and terminate agreements)** Vary, rescind or terminate any document or agreement (including surrender or accept the surrender of Leases).
- 17 **(Take insolvency proceedings)** Make debtors bankrupt, wind up corporations and do any thing in relation to any actual or contemplated Liquidation (including attend and vote at meetings of creditors and appointing proxies for meetings).
- 18 **(Take proceedings)** Commence, defend, conduct, settle, discontinue or compromise proceedings in the name of the Grantor or otherwise.
- 19 **(Execute documents)** Enter into and execute documents or agreements on behalf of the Grantor or the Secured Party or Controller. This includes using the Grantor's seal and signing, accepting and endorsing cheques, promissory notes and bills of exchange.
- 20 **(Operate bank accounts)** Operate any bank account comprising part of the Collateral or Ancillary Collateral and open and operate any further bank account.
- 21 **(Surrender Collateral or Ancillary Collateral)** Surrender, release or transfer any of the Collateral or Ancillary Collateral or exchange it with any person for other property.
- 22 **(Promote corporations)** Promote the formation of any corporation with a view to purchasing any of the Collateral or Ancillary Collateral or assuming the obligations of the Grantor or otherwise.
- 23 **(Delegate)** Delegate to any person acceptable to the Secured Party any Power conferred on the Secured Party or Controller (including delegation).
- 24 **(Have access)** Have access to and make use of the premises, plant, equipment, and records and accounting and other services of the Grantor and the services of its staff.
- 25 **(Vote)** Exercise any voting or other rights or powers.
- 26 **(Other outgoing)** Pay any outgoing or indebtedness of the Grantor or any other person.
- 27 **(Securities)** Redeem any Security or acquire it and any debt secured by it.
- 28 **(Make calls)** Make calls on the members of the Grantor in respect of any Unpaid Capital.
- 29 **(Insure)** Take out insurance and make, enforce, compromise and settle all claims in respect of insurance.
- 30 **(Incidental power)** Do anything incidental to the exercise of any other Power.




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

**Executed and delivered as a Deed.**

**The Grantor**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 1 Limited**:

  
\_\_\_\_\_  
Director Signature

PAUL LEWIS  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature

William Park  
\_\_\_\_\_  
Print Name

**The Security Trustee**

**Signed Sealed and Delivered** for  
**PT Limited** by its attorneys under a power of  
attorney dated 16 September 2014 in the  
presence of:



---

Witness Signature

Nora McDonnell  
Manager

---

Print Name



---

Attorney Signature

Craig Cullen  
Senior Manager

---

Print Name




---

Witness Signature

Nora McDonnell  
Manager

---

Print Name



---

Attorney Signature

Hagbarth Strom  
Senior Transaction Manager

---

Print Name

Jingle SPV 1 Pty Limited  
PT Limited  
UBS Securities Australia Limited

## Tripartite Deed – CHESSE Sponsorship

Project Bell

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on 29 October 2015

## Parties

- 1 **Jingle SPV 1 Pty Limited** (ACN 608 981 004) of Level 27, 45 Clarence Street, Sydney NSW 2000 (the **Mortgagor**).
- 2 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Security Trustee**).
- 3 **UBS Securities Australia Limited** (ABN 62 008 586 481) of Level 16, Chifley Tower, 2 Chifley Square, Sydney NSW 2000 (the **Participant**).

## Recitals

- A The Mortgagor and the Participant, as Broker, are parties to the Sponsorship Agreement.
- B The Mortgagor and the Security Trustee are parties to the General Security Deed.
- C The Mortgagor, the Security Trustee and the Participant have agreed to enter into this Deed to protect and preserve the Security Trustee's interest in the Mortgaged Securities.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**ASX Clear** means ASX Clear Pty Limited (ACN 001 314 503).

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**ASX Settlement Rules** means the ASX Settlement Operating Rules and any other operating rules, procedures, direction, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Mortgagor by a notice to the Security Trustee accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Security Trustee or the Participant, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Principal** or **President** or cognate expressions, or any secretary or director.

**Beneficiary** has the meaning given in the Security Trust Deed.

**CHESS** means the settlement system for share transfers run by ASX Clear.

**General Security Deed** means the general security deed dated on or about the date of this Deed between the Mortgagor and the Security Trustee.

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Finance Document** has the meaning given in the Security Trust Deed.

**Loss** means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or

unascertained, actual or contingent.

**Instruction** means an instruction given in accordance with clause 5.1.

**Mortgaged Securities** means the securities (or any part thereof) specified in the Mortgaged Securities Schedule, and any rights which may arise in relation to those securities.

**Mortgaged Securities Schedule** means Schedule 2 to this Deed.

**Security Trust** means the trust known as the Project Bell Security Trust established under the Security Trust Deed.

**Security Trust Fund** means the property held on trust by the Security Trustee pursuant to the Security Trust Deed.

**Security Trust Deed** means the security trust deed dated on or about the date of this Deed between, among others, the Mortgagor and the Security Trustee.

**Sponsorship Agreement** means the sponsorship agreement dated on or about the date of this Deed between the Participant and the Mortgagor, a copy of which is annexed to this Deed as Schedule 3.

**Wilful Default** means, in respect of the Security Trustee, any wilful failure to comply with, or wilful breach by, the Security Trustee of any of its obligations under any Finance Document to which the Security Trustee is a party, other than a failure or breach which:

- (a) arises as a result of a breach of a Finance Document by a person other than the Security Trustee and (subject to any provisions of the Finance Documents which limit its liability in respect of the acts and omissions thereof) its agents and delegates;
- (b) is in accordance with a lawful court order or direction or is required by law; or
- (c) is in accordance with a proper instruction or direction of the Beneficiaries instructing it in accordance with the Security Trust Deed.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) Any gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted assigns.
- (g) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) The meaning of terms is not limited by specific examples introduced by including, or for example, or similar expressions.



- (j) Any terms not defined in this Deed have the same meaning as in the ASX Settlement Rules, and if not defined in the ASX Settlement Rules, in the *Corporations Act 2001*.

### 1.3 Document or agreement

A reference to:

- (a) an agreement includes a security interest, guarantee, undertaking, deed agreement or legally enforceable arrangement whether or not in writing; and
- (b) a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes that agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

### 1.4 Inconsistency

- (a) The terms of this Deed prevail over the terms of the Sponsorship Agreement to the extent of any inconsistency.
- (b) The ASX Settlement Rules and applicable law prevail over the terms of this Deed and the Sponsorship Agreement to the extent of any inconsistency.

### 1.5 Limited recourse to Mortgagor

Notwithstanding anything contained in the Finance Documents, the Security Trustee acknowledges that in satisfying any demand or claim which the Security Trustee may make on the Mortgagor in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Security Trustee will be limited to the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed; and
- (b) the Mortgagor will in no circumstances have any liability whatsoever to the extent that the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the security interest over all of the 'Collateral' (as defined in the General Security Deed) and distribution of the proceeds in accordance with the Security Trust Deed, or if the Mortgagor, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), the Mortgagor will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.5 limits the liability of the Mortgagor for any loss, cost or expenses suffered or incurred by a Beneficiary arising from the Mortgagor's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.5 (*Limited recourse to Mortgagor*) is not severable from this Deed.

## 2 Security Trustee

### 2.1 Limitation on liability

- (a) The Security Trustee enters into this Deed (and each Finance Document other than the Security Trust Deed) only in its capacity as trustee of the Security Trust and in no other capacity. Notwithstanding any other provisions of this Deed or any other Finance Document, a liability arising under or in connection with this Deed or any other Finance Document is limited to and can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the property of the Security Trust Fund out of which the Security Trustee is actually indemnified for the liability. This limitation of the Security Trustee's liability applies despite any other provision of this Deed or any other Finance Document and extends to all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or any Finance Document.
- (b) The parties other than the Security Trustee may not sue the Security Trustee in any capacity other than as trustee of the Security Trust, including seek the appointment of a receiver (except in relation to the Security Trust Fund), a liquidator, an administrator or any similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Security Trust Fund).
- (c) The provisions of this clause 2 shall not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because under the Security Trust Deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Security Trust Fund as a result of the Security Trustee's fraud, gross negligence or Wilful Default.
- (d) No act or omission of the Security Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed or any other Finance Document) will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 2.1(c) to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Security Trust or by any other act or omission of any other person.
- (e) No attorney, agent, delegate, receiver or receiver and manager appointed in accordance with this Deed or any other Finance Document has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 2.1(c).
- (f) For the avoidance of doubt, the Security Trustee is not obliged to use its own funds in performing obligations under any Finance Document (including this Deed).

### 2.2 Novation

- (a) The parties other than the Security Trustee acknowledge and agree that the Security Trustee may assign its rights and novate or otherwise transfer its Obligations under this Deed to any replacement security trustee that is appointed under the Security Trust Deed.
- (b) The parties agree that they will enter into a novation deed with any replacement security trustee that is appointed under the Security Trust Deed (in a form acceptable to the Security Trustee and the replacement security trustee).

- (c) In this clause 2.2, **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Security Trustee under or in respect of this Deed.

### **3 Mortgaged Securities**

#### **3.1 Variation of the Mortgaged Securities Schedule**

The Security Trustee may at any time vary the Mortgaged Securities Schedule by giving an Instruction to the Participant.

#### **3.2 Limitation**

The Mortgaged Securities Schedule may only comprise securities which are or which the Mortgagor and Security Trustee intend to be:

- (a) subject to the General Security Deed; and
- (b) controlled by the Participant pursuant to the Sponsorship Agreement.

#### **3.3 Interest of ASX Clear**

Nothing in this Deed operates to override any interest of ASX Clear in the Mortgaged Securities.

### **4 Sponsorship Agreement**

#### **4.1 Appointment as Participant**

The Mortgagor and Participant confirm that the Participant has been appointed as its Controlling Participant on the terms of the Sponsorship Agreement and the ASX Settlement Rules in relation to the Mortgaged Securities.

#### **4.2 Warranty**

The Mortgagor and the Participant severally represent and warrant that the Sponsorship Agreement constitutes their respective legal, valid and binding obligations.

#### **4.3 Termination or variation**

Without the prior written consent of the Security Trustee, the Mortgagor shall not take any action which would or may:

- (a) remove the Participant as the Controlling Participant of the Mortgaged Securities;
- (b) terminate or vary the Sponsorship Agreement including any action otherwise permitted under the Sponsorship Agreement; or
- (c) amend or waive its rights (or agree to any such termination, amendment or waiver) under the Sponsorship Agreement.

The Mortgagor undertakes to provide to the Security Trustee a copy of any amendment to the Sponsorship Agreement as soon as reasonably practicable.

#### **4.4 Undertaking**

The Mortgagor shall not arrange with ASX Clear or any other person to lodge securities in the Mortgagor's holding covered by the Sponsorship Agreement as cover for any position in the Australian options market.

## **5 Instructions**

### **5.1 Requirements**

An Instruction to the Participant to take or refrain from taking any action in respect of the Mortgaged Securities or to vary the Mortgaged Securities Schedule must be:

- (a) in writing;
- (b) signed by an Authorised Officer of the Security Trustee; and
- (c) copied to the Mortgagor.

### **5.2 No duty to enquire**

The Participant is under no duty to enquire whether the Security Trustee is entitled to give any Instruction, and may rely on any Instruction which purports to comply with clause 5.1.

### **5.3 Limitation on Participant's liability**

Notwithstanding any other term of this Deed or the terms of the Sponsorship Agreement, the Participant shall have no liability to the Mortgagor for any liability, loss, cost or expense suffered or incurred by the Mortgagor as a result of action taken (or refrained from being taken) by the Participant in good faith under this Deed pursuant to an Instruction.

### **5.4 Indemnity**

The Mortgagor indemnifies the Participant against, and must pay to the Participant on demand, amounts equal to, any liability, loss, cost or expense suffered or incurred by the Participant as a result of action taken (or refrained from being taken) by the Participant in good faith under this Deed pursuant to an Instruction. These amounts are not payable to the extent such liability, loss, cost or expense is caused by the fraud, gross negligence or wilful misconduct of the Participant or by the failure of the Participant to comply with its obligations under an Instruction (unless permitted to do so by this Deed).

## **6 Authority and Duty of the Participant**

### **6.1 Authorisation**

The Mortgagor authorises and directs the Participant to act in accordance with an Instruction.

### **6.2 Acting on instructions**

The Participant will act at all times in accordance with an Instruction unless by doing so the Participant would breach the ASX Settlement Rules or any applicable law. If the Participant is unable to comply with an Instruction it will promptly notify the Mortgagor and the Security Trustee.

### **6.3 Restrictions on action**

Without limiting the generality of clause 6.2 the Participant shall not:

- (a) transfer, dispose of or otherwise deal with the Mortgaged Securities;
- (b) take any direct or indirect action to retire or resign as the Controlling Participant in respect of the Mortgaged Securities; or
- (c) vary the Sponsorship Agreement,

except in accordance with an Instruction unless by doing so (or not doing so), the Participant would breach the ASX Settlement Rules or any applicable law.

## 6.4 Notice by the Participant

If the Participant:

- (a) wants to terminate the Sponsorship Agreement;
- (b) receives from any party any notice or request to act otherwise than in accordance with the terms of this Deed; or
- (c) is required by the ASX Settlement Rules or applicable law to take any action which would otherwise require an Instruction under the terms of this Deed,

the Participant will promptly notify the Security Trustee and:

- (d) in the case of termination of the Sponsorship Agreement by the Participant under paragraph (a), such notification shall be at least 20 business days prior to the effective date of termination; and
- (e) in the case of a requirement under paragraph (c), the Security Trustee is deemed to have provided the Participant with an Instruction authorising the Participant to take that action.

Such notification is not required in respect of the provision of information by the Participant to any party as required by the ASX Settlement Rules or applicable law.

## 6.5 Holding of Mortgaged Securities

- (a) **(Conversion of holding)** Where the ASX Settlement Rules require that the Mortgaged Securities be converted to another form of holding other than a CHESS sponsored holding:
  - (i) the Mortgagor authorises and directs the Participant to initiate such conversion of the securities;
  - (ii) the Participant shall promptly notify the Security Trustee of the proposed conversion; and
  - (iii) the Participant shall initiate the conversion in accordance with the ASX Settlement Rules.

The Mortgagor agrees that only the Participant may initiate a transfer or conversion of the Mortgaged Securities.

- (b) **(Removal from CHESS)** The Participant shall notify the Security Trustee immediately upon becoming aware that the Mortgaged Securities have ceased or will cease to be on a CHESS subregister.

## 6.6 No set-off

The Participant shall not exercise any right (whether under the ASX Settlement Rules or otherwise) of set-off, deduction or combination of accounts or similar right or procedure in respect of its obligations under the Sponsorship Agreement.

## 7 Preservation of Security

### 7.1 Changes in circumstances

In the event of a change in circumstances which, in the sole opinion of the Security Trustee (determined in its absolute discretion), adversely affects the Security Trustee's rights over the Mortgaged Securities (including conversion of the form of holding of the Mortgaged Securities under clause 6.5), the Mortgagor shall, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), take all action required by

the Security Trustee so that the Security Trustee is (in its absolute discretion) secured in respect of the Mortgaged Securities as effectively as it was before the change.

## 7.2 Subpositions

Where the Security Trustee determines (in its absolute discretion) that the reservation of the Mortgaged Securities in a Subposition may be used to protect its security interest, the Security Trustee may, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), require the Mortgagor and the Participant to cause the Mortgaged Securities specified by the Security Trustee to be reserved in a Subposition on terms specified by the Security Trustee (in its absolute discretion).

## 8 Termination

### 8.1 Right of replacement

- (a) **(Security Trustee's right)** If the Security Trustee determines (in its absolute discretion) that it is necessary to remove the Participant as Controlling Participant of the Mortgaged Securities in order better to protect its interest in the Mortgaged Securities, it may direct the Mortgagor to give immediate notice to the Participant to terminate the Sponsorship Agreement.
- (b) **(Mortgagor's undertaking)** On receipt of a direction given under this clause the Mortgagor shall comply as soon as reasonably practicable with that direction.
- (c) **(Power of Attorney)** The Mortgagor irrevocably for valuable consideration appoints each Authorised Officer of the Security Trustee severally as its attorney:
  - (i) to notify the Participant at any time that a Sponsorship Agreement is terminated (and the Participant will accept such notice of termination); and
  - (ii) to do anything (including but not limited to any CHESS notifications and any change of HIN) which in the opinion of the Security Trustee or attorney (in its absolute discretion) is necessary or expedient to effect the termination of the Participant's appointment under this Deed and Sponsorship Agreement and the execution of a similar Deed and Sponsorship Agreement with a Controlling Participant acceptable to the Security Trustee.

The Mortgagor has no liability with respect to any action or inaction taken by the Security Trustee or any of its Authorised Officers pursuant to this paragraph (c).

### 8.2 Replacement of Controlling Participant

If:

- (a) the Participant is unable to perform its obligation under the Sponsorship Agreement (including because ASX Settlement suspends, restricts or terminates the participation of the Participant as an authorised participant under the ASX Settlement Rules); or
- (b) the Participant terminates the Sponsorship Agreement or ceases to be the Controlling Participant of the Mortgaged Securities for any reason, including action under clause 8.1;

the Mortgagor shall, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), ensure that another Broker acceptable to the Security Trustee (in its absolute discretion):

- (c) becomes the Sponsoring Broker and Controlling Participant of the Mortgaged Securities; and

- (d) enters into a Sponsorship Agreement with the Mortgagor and into a Deed in substantially the same form as this Deed.

### 8.3 Termination

- (a) This Deed will terminate on:
  - (i) receipt by the Participant of an Instruction that the General Security Deed is fully discharged; or
  - (ii) the Participant ceasing to be the Controlling Participant of the Mortgaged Securities for any reason or in any manner permitted under this Deed.
- (b) This Deed is not terminated by any other event including the winding up or dissolution of the Mortgagor. The termination of this Deed does not affect the rights or obligations of the parties which have accrued before that time.

## 9 Information

The Mortgagor shall provide all information and documents which the Security Trustee or the Participant may reasonably require to:

- (a) establish a participant-sponsored CHESS holding of the Mortgaged Securities;
- (b) conduct the Sponsored Holding as set out in the Sponsorship Agreement, this Deed and the ASX Settlement Rules; and
- (c) keep such information up to date.

The Mortgagor irrevocably consents to the exchange of information concerning the Mortgagor and the Mortgaged Securities between the Security Trustee and the Participant.

## 10 GST

All payments (including the provision of any non-monetary consideration) to be made by the Mortgagor under or in connection with this Deed have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when the Mortgagor makes the payment:
  - (i) it must pay to the Security Trustee or the Participant an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) the Security Trustee or the Participant will promptly provide to the Mortgagor a tax invoice complying with the relevant GST legislation.
- (b) Where under this Deed the Mortgagor is required to reimburse or indemnify for an amount, the Mortgagor will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Security Trustee or the Participant determines that it is entitled to claim in respect of that amount.

## 11 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender; and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or electronic mail address of the recipient shown in Schedule 1 or to any other address which it may have notified the sender but, if delivery or receipt is on a day on

which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

## **12 Governing Law and Jurisdiction**

This Deed is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The parties irrevocably accept the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

## **13 Counterparts**

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.



## Schedule 1

### Notice Details

#### Mortgagor

Jingle SPV 1 Pty Limited

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara, General Counsel/Company Secretary

#### Security Trustee

PT Limited

Address: Level 12, Angel Place  
123 Pitt Street  
Sydney NSW 2000

Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

Attention: Senior Manager, CSF Team

#### Participant

UBS Securities Australia Limited

Address: Level 16, Chifley Tower, 2 Chifley Square, Sydney NSW 2000

Email: [scott.hanlon@ubs.com](mailto:scott.hanlon@ubs.com)

Attention: Scott Hanlon/David Costa

**Schedule 2**

**Mortgaged Securities**

Shares in the capital of Asciano Limited (ACN 123 652 862).

**Schedule 3**

**Sponsorship Agreement**

---

UBS Securities Australia Limited  
ABN 62 008 586 481

## CHES Sponsorship Agreement

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# UBS Securities Australia Limited

ABN 62 008 586 481

## CHESSE Sponsorship Agreement

### Details

**Sponsor:**  
("we")

UBS Securities Australia Limited  
ABN 62 008 586 481  
Address: Level 16 Chifley Tower  
2 Chifley Square, Sydney NSW 2000  
Phone: (02) 9324 2000  
Fax: (02) 9324 2669

**Client:**  
("you")

Name: JINGLE SPV 1 PTY LIMITED  
.....  
ACN: 608 981 004  
(if a corporation)  
Address: Level 27, 45 Clarence Street, Sydney NSW 2000  
Fax: +61 2 9080 1999

**Date:**

29 October 2015

**Account No:**

**Holding:**

This agreement relates to your *holding* with the following holder identification numbers (or HINs):  
.....  
.....  
(If these HINs are not known at the time you sign this agreement, you authorise us to insert them.)

If you would like to discuss the effect of this agreement and the terms and conditions, please contact Scott Hanlon on +61 2 9324 3594

---

## Provisions

### Key Words

The meaning of words printed like *this* and of some other key terms is set out at the end of this agreement.

### What is *CHESS*?

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1. *CHESS* is a system of registering *financial products* on computer. It is operated by *ASX Settlement* under the *ASX Settlement Rules*. Instead of receiving a share certificate, you receive a holding statement.

Only certain categories of people may control *financial products* on *CHESS* (we fall within one of these categories). Other people who have *financial products* on *CHESS* need their holding “sponsored” by a “controlling participant” for the purposes of *CHESS*. This agreement relates to your appointment of us as your “controlling participant”.

### Our Authority and Obligations

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2. You appoint us as your “controlling participant” for the purposes of *CHESS* with respect to your *holding* with the holder identification number(s) (HIN(s)) specified or to be specified in the Details section on the first page of this agreement. A holder identification number is a number that is used to identify a *holding* in *CHESS*. You authorise us as your agent to do any act under *CHESS* relating to your *holding*.
3. We will not initiate any *transfer* or *conversion* into or out of your *holding* sponsored under this agreement without your express authority.
4. Subject to clause 5, we are not obliged to transfer *financial products* into your *holding* until we receive payment for those *financial products*.
5. If we demand that you pay for *financial products*, but the contract for the purchase of those *financial products* remains unpaid, we may sell those *financial products* at your risk

and expense (including any brokerage and stamp duty).

6. If we claim that you have not paid us an amount lawfully owed to us, we can refuse to comply with your *withdrawal instructions* (but only to the extent necessary to retain in your *holding* sponsored under this agreement *financial products* with a value equal to 120% of the current market value of the amount claimed).
7. Subject to clauses 5 and 6, we will initiate any *transfer*, *conversion* or other action necessary to give effect to *withdrawal instructions* within the *scheduled time*.

You agree that we are able to initiate or control the sending of electronic messages or electronic communications in relation to which your orders may be transferred or otherwise dealt with.

### Acknowledgements by You

---

8. You acknowledge that:
  - (a) before you signed this agreement one of our responsible officers explained the effect of this agreement to you and that you understood the effect of this agreement; and
  - (b) if you die or become *bankrupt*, a *holder record lock* will be applied to all your *holdings* sponsored under this agreement in accordance with the *ASX Settlement Rules* (unless your legally appointed representative or trustee elects to remove those *holdings* from the *CHESS subregister*); and
  - (c) if you die, this agreement is deemed to remain in operation in respect of the legally appointed representative authorised to administer your estate for a period of up to 3 calendar months after the removal of the *holder record lock* pursuant to the *ASX Settlement Rules* (unless your legally appointed representative elects to remove the



*holdings* sponsored under this agreement from the *CHESS subregister*).

- (d) the regulatory regime which applies to us is Chapter 7 of the *Corporations Act*, the *ASX Settlement Rules* and the *Market Integrity Rules*;
- (e) information about our status can also be obtained from *ASX Settlement* and *ASIC*;
- (f) a complaint against us may be lodged by you with us, *ASIC* or *ASX Settlement*;
- (g) no external compensation arrangements, other than those listed in clauses 20 and 21A below, apply to you in relation to this agreement;
- (h) if a *transfer* is taken to be effected by us under section 9 of the *ASX Settlement Rules*, then:

- a. you may not assert or claim against *ASX Settlement* or the relevant Issuer (as defined in the *ASX Settlement Rules*) that the *transfer* was not effected by us or we were not authorised by you to effect the *transfer*; and
- b. you have no claim arising out of the *transfer* against a *Compensation Fund* that relates to a *Relevant Exchange* as described in clause 20 below, unless the *transfer* was also taken to be effected by a Market Participant of that *Relevant Exchange* or a Clearing Participant of *ASX Clear*.

9. If you are a joint holder, you also acknowledge that:

- (a) if one of the joint holders dies, all *holdings* under the joint *holder record* will be transferred into new *holdings* under a new *holder record* in the name of the surviving holders (this

agreement remains valid for the new *holdings* under the new *holder record*); and

- (b) if one of you becomes *bankrupt*, we will:
  - (i) establish a new *holder record* in the name of the *bankrupt* holder, transfer that person's interest into new *holdings* under the new *holder record*, and request *ASX Settlement* to apply a *holder record lock* to all *holdings* under that *holder record* (unless the legally appointed representative of the *bankrupt* holder elects to remove the *holdings* from the *CHESS subregister*); and
  - (ii) establish a new *holder record* in the names of the other joint holders and transfer their interest into new *holdings* under the new *holder record*.

## Security, Other Interests and Subpositions

- 10. If you tell us that *financial products* are to be lodged with *ASX Clear* as cover for written positions in *derivatives products* registered with *ASX Clear*, you authorise us to take whatever action is required by *ASX Clear* or the *ASX Settlement Rules* to give effect to that cover.
- 11. If you tell us that a charge or other interest in *financial products* has been or is to be given to a person, then you authorise us to take whatever action is required by that person in accordance with the *ASX Settlement Rules* to give effect to or record that interest.
- 12. We may take steps to create a *subposition* over your *holding* in the circumstances contemplated by clauses 10 or 11. We may also create a *subposition* if you consent. If we do this, your ability to *transfer*, *convert* or otherwise deal with the *financial products* will be restricted in accordance with the *ASX Settlement Rules*.

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## Information

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13. You must promptly give us any information or documents we ask for to enable us to:
- (a) perform our obligations or to act as your “controlling participant” or agent under this agreement; or
  - (b) comply with the requirements of *ASX Settlement* or the *ASX Settlement Rules*.
14. Information or documents you give us may be disclosed:
- (a) to any person for these purposes;
  - (b) if required by any regulatory authority (including *ASX Settlement*) or if allowed or required by law; or
  - (c) to our officers, employees, advisers and agents; or
  - (d) if you consent; or
  - (e) to enable us to enforce our rights.

## Fees and Indemnities

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15. You must pay us the following fees in connection with these sponsorship arrangements:
- (a) normal brokerage as notified to you from time to time; and
  - (b) fail fees, where applicable.
16. You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* (including consequential or economic loss) we suffer or incur:
- (a) in connection with our performing our obligations under this agreement; or
  - (b) in connection with our acting as your “controlling participant” or agent for the purposes of *CHESS*; or
  - (c) if you do something you agree not to do, or do not do something you agree to do, under this agreement.

17. You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us even if we do not expressly ask you to pay us.

The indemnity in clause 16 is a continuing obligation, independent of your other obligations to us. It continues even after this agreement is terminated. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

## Suspension from CHESS

---

18. If we are suspended from *CHESS* participation, then (subject to the assertion by our liquidator, receiver, administrator or trustee of an interest in *financial products* controlled by us) you may within 20 *business days* of *ASX Settlement* giving notice of the suspension give a notice to *ASX Settlement* requesting that your *holdings* sponsored under this agreement be removed either:
- (a) from the *CHESS subregister*; or
  - (b) from our control to the control of another “sponsoring participant” with whom you have entered into a valid sponsorship agreement pursuant to the *ASX Settlement Rules*.

If you do not give *ASX Settlement* such a notice, *ASX Settlement* may change your *CHESS* sponsor under the *ASX Settlement Rules*, in which case you will be deemed to have entered into a new sponsorship agreement with the substitute “sponsoring participant” on the same terms as this agreement.

- 18A. If you are deemed to have entered into a new sponsorship agreement with a new “controlling participant” because we are suspended from *CHESS*, the new “controlling participant” must enter into a new sponsorship agreement with you within 10 *business days* of the change of “controlling participant”.



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## Complaint Procedures

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19. If you make a claim for compensation, our ability to satisfy that claim will depend upon our financial circumstances.
20. You may make a claim on a Compensation Fund in the circumstances specified under Part 7.5, of the *Corporations Regulations*.
21. If we breach this agreement, you may refer that breach to any regulatory authority, including *ASX Settlement*.
- 21A. If we are required to lodge a Sponsorship Bond (as defined in the *ASX Settlement Rules*) you may be entitled to make a claim to *ASX Settlement* under our Sponsorship Bond.

## Termination

---

22. This agreement is terminated if:
- (a) either party notifies the other in writing that it wants to terminate this agreement (in which case this agreement is terminated from the time the notice is received unless a later time is specified in the notice);
  - (b) we become insolvent;
  - (c) our participation as a broker in *CHESS* is terminated or suspended;
  - (d) you give an effective withdrawal instruction to us pursuant to clause 23B below.
23. The termination of this agreement does not affect any rights or obligations that have accrued before that time.

## Change of "Controlling Participant"

---

- 23A. If you receive a *participant change notice* from us and the *participant change notice* was received by you no later than 20 *business days* prior to the date of the proposed change of "controlling participant" specified in the notice, you are under no obligation to agree to the change of "controlling participant" and may choose to

do any of the things set out in clause 23B or 23C.

- 23B. You may choose to terminate this agreement by giving withdrawal instructions (as defined in the *ASX Settlement Rules*) to the participant indicating whether you wish to:
- (a) transfer your *holding* to another "controlling participant"; or
  - (b) transfer your *holding* to one or more issuer sponsored holdings (as defined in the *ASX Settlement Rules*).
- 23C. If you do not take any action to terminate this agreement in accordance with clause 23B, and do not give any other instructions to us which would indicate that you do not agree to the change of "controlling participant" then, on the *effective date*, this agreement will have been taken to have been novated to the new "controlling participant" and will be binding on all parties as if, on the *effective date*:
- (a) the new "controlling participant" is a party to this agreement in substitution for us; and
  - (b) we are released by you from any obligations arising on or after the *effective date*.
- 23D. Novation under this section will not take effect until you have received a notice from the new "controlling participant" confirming that the new "controlling participant" consents to act as the "controlling participant" for you. The *effective date* may as a result be later than the date set out in the *participant change notice*.
- 23E. You will be taken to have consented to the events referred to in clause 23D by the doing of any act which is consistent with the novation of this agreement to the new "controlling participant" (for example by giving an instruction to the new "controlling participant"), on or after the *effective date*, and such consent will be taken to be given as of the *effective date*.

23F. This agreement continues for the benefit of us in respect of any rights and obligations accruing before the *effective date* and, to the extent that any law or provision of any agreement makes the novation in clause 23D not binding or effective on the *effective date*, then this agreement will continue for the benefit of us until such time as novation is effective, and we will hold the benefit of this agreement on trust for the new “controlling participant”.

23G. Nothing in this section will prevent the completion of *CHESS* transactions by us where the obligation to complete those transactions arises before the *effective date* and this agreement will continue to apply to the completion of those transactions, notwithstanding the novation of this agreement to the new “controlling participant” under this section.

### **ASX Settlement Rules**

24. This agreement is subject to the *ASX Settlement Rules*. You must not do anything that would prevent or hinder us from complying with our obligations under the *ASX Settlement Rules*.

25. If this agreement is inconsistent with the *ASX Settlement Rules*, the *ASX Settlement Rules* prevail to the extent of the inconsistency.

### **Miscellaneous**

#### **Notices and Other Communications**

26. Unless otherwise required or permitted by us or by the *ASX Settlement Rules*, notices and other communications must be in writing.

Written notices or other communications may be:

- (a) sent or faxed to the address or fax number last notified (which at the date of this agreement is the address or fax number in the Details section); or
- (b) left at, or sent by courier or post to, (in the case of a company) the company’s head office or principal place of

business or (in the case of an individual) the individual’s place of residence or business last known to the person sending the document.

They take effect from the time received unless a later time is specified in them. If sent by post, they are taken to be received on the second *business day* after a correctly addressed and stamped envelope is posted. If sent by courier, they are taken to be received when delivered to the correct address. If sent by fax, they are taken to be received when the sender’s fax machine indicates a successful transmission to the correct fax number.

#### **Waiver and Variation**

27. We can vary this agreement by giving you written notice of the variation. We will give you:

- (a) at least 7 *business days*’ notice of the variation if the variation is, in our reasonable opinion, to remove any inconsistency between this agreement and the *ASX Settlement Rules*; and
- (b) at least 20 *business days*’ notice in other cases.

28. Subject to clause 27, a provision of this agreement, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

#### **Overdue Interest**

29. If you do not pay us an amount when it is due, we can charge interest on the overdue amount. We do this using the method and interest rate we determine from time to time.

#### **Applicable Law**

30. This agreement is governed by the laws in force in New South Wales. You and we submit to the non-exclusive jurisdiction of the courts of New South Wales. This agreement constitutes the entire agreement of the parties about its subject matters and supersedes all previous agreements.



understandings and negotiations on that matter.

### Trade Cancellation Powers

31. Where we enter into a transaction in respect of your holding under this agreement and the transaction is subject to the *Exchange Rules*, we may request, agree to or effect the cancellation of the transaction without your consent in the following circumstances:

- (a) we consider cancellation appropriate, having regard to the desirability of maintaining a fair and orderly market;
- (b) where *ASIC*, a *Relevant Exchange*, *ASX Clear* or *ASX Settlement* request or direct that the transaction be cancelled; or
- (c) where the *ASX Settlement Rules*, the *Market Integrity Rules* or the *ASX Clear Rules* require or contemplate that the transaction will be cancelled.

Your obligations in relation to the settlement of a transaction which is cancelled cease to apply in respect of that cancelled transaction from the time it is cancelled (whether or not we have given you a confirmation in respect of the affected transaction).

32. You acknowledge that a *Relevant Exchange* has a range of powers under the *Exchange Rules*, including the power to amend or cancel a transaction. You agree not to make, and to release us from any right you may have to make, any claim against us for any loss incurred by you which may arise in connection with the exercise by a *Relevant Exchange* of those powers.

### Wholesale Client Status

33. You represent that:

- (a) you are, as at the date of this agreement, a *Wholesale Client*;
- (b) you will continue to be so for the duration of this agreement; and

(c) you will do all things necessary to maintain your status as a *Wholesale Client* for the duration of this agreement.

33. You agree to:

- (a) provide to us on a continuing basis all information and documentation that we may require or request from you for the purposes of confirming your status as a *Wholesale Client*, including, but not limited to, providing us on request with an "accountant's certificate" upon entering into this agreement and on a six monthly basis for the term of this agreement which satisfies the *Wholesale Client* requirements under the *Corporations Act*; and
- (b) promptly advise us if at any future time you cease to be a *Wholesale Client*.

34. You acknowledge that if you either advise us that you are no longer a *Wholesale Client*, or are unable to satisfy us (acting reasonably) that you are a *Wholesale Client*, we may, without consulting or further consulting you, take such action as we deem reasonable in the circumstances. We may also, if we choose, terminate this agreement without consulting or further consulting you.

### Meaning of Words

*ASIC* means the Australian Securities and Investments Commission.

*ASX* means ASX Limited (ABN 98 008 624 691);

*ASX Clear* means ASX Clear Pty Limited (ABN 48 001 314 503).

*ASX Clear Rules* means the operating rules of ASX Clear, as amended from time to time.

*ASX Market Integrity Rules* means the ASIC Market Integrity Rules (ASX Market) 2010, as amended from time to time.

---

**ASX Settlement** means ASX Settlement Pty Limited (ACN 008 504 532) and its agents appointed under the *ASX Settlement Rules*.

**ASX Settlement Rules** means the operating rules of *ASX Settlement* as amended from time to time.

**bankrupt** means being in a state of “bankruptcy” as that term is defined in the *ASX Settlement Rules*.

**business day** has the meaning in the *ASX Settlement Rules*. Generally, it means any day other than a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and a day that *ASX Settlement* declares is not a business day.

**CHESS** stands for Clearing House Electronic Subregister System and has the meaning in the *ASX Settlement Rules*. It is a system of registering *financial products* on computer.

**CHESS subregister** has the meaning in the *ASX Settlement Rules*. Generally, it means that part of a register of *financial products* that is administered by *ASX Settlement*.

**Chi-X** means *Chi-X Australia Pty Ltd* ABN 47 129 584 667.

**Chi-X Market Integrity Rules** means the ASIC Market Integrity Rules (Chi-X Australia Market) 2011, as amended from time to time:

**Compensation Fund** means a compensation fund required to be established by a Relevant Exchange under Part 7.5 of the Corporations Act, and includes the National Guarantee Fund and the Chi-X fidelity fund.

**conversion** has the meaning in the *ASX Settlement Rules*. Generally, it means the movement of *financial products* from one *holding* on one subregister to another *holding* on another subregister without a change in legal ownership.

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

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

**costs** includes charges and expenses (including stamp duty and other government charges); and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis.

**derivatives products** means a Derivative Market Contract, other than a Futures Market Contract (each as defined in the *ASX Market Integrity Rules*).

**effective date** has the meaning in the *ASX Settlement Rules*.

**Exchange Rules** means the rules governing trading on a *Relevant Exchange*, as amended from time to time, including the *Market Integrity Rules* and the operating rules of *ASX* and *Chi-X*.

**financial products** means a Cash Market Product (as defined in the *ASX Market Integrity Rules*) and an Equity market Product (as defined in the *Chi-X Market Integrity Rules*).

**holder record** has the meaning in the *ASX Settlement Rules*. Generally, it means the details recorded by *ASX Settlement* in *CHESS* for the purpose of operating one or more *holdings*.

**holder record lock** has the meaning in the *ASX Settlement Rules*. Generally, it means the facility in *CHESS* for preventing *financial products* from being deducted from a *holding*.

**holding** has the meaning in the *ASX Settlement Rules*. Generally, it means a holding of *financial products* by a person.

**including** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**Market Integrity Rules** means any market integrity rules made by ASIC in accordance with Part 7.2A of the Corporations Act, as amended



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from time to time, that apply to a Relevant Exchange.

*participant change notice* has the meaning in the *ASX Settlement Rules*.

*Relevant Exchange* means:

- (a) the financial markets operated by *ASX* and *Chi-X* (as the case may be); and
- (b) any other financial market (whether or not licensed under Part 7.2 of the *Corporations Act*) to which orders may be transmitted for execution, or which provides clearing or settlement services in respect of transactions on such a market (whether or not licensed under Part 7.3 of the *Corporations Act*).

*scheduled time* has the meaning given in the *ASX Settlement Rules*. The scheduled time varies depending on the act to which it relates.

*subposition* has the meaning given in the *ASX Settlement Rules*. Generally, it means an arrangement under which activity relating to the *financial products* may be restricted and access to the *financial products* given to a person other than your normal sponsor.

*transfer* has the meaning in the *ASX Settlement Rules*. Generally, it means a transfer of *financial products* to or from a *holding* on *CHESS*.

*you* or *client* means the person named in this agreement as client. If there are more than one, *you* means each of them separately and every two or more of them jointly. *You* includes your successors and assigns.

*Wholesale Client* has the meaning given to it in section 761G of the *Corporations Act*.

*withdrawal instructions* has the meaning in the *ASX Settlement Rules*. Generally, it means the instructions by a person who is sponsored on *CHESS* for the withdrawal of *financial products* from the sponsored *holdings*.

*we* or *sponsor* means UBS Securities Australia Limited (ABN 62 008 586 481) and its successors and assigns.

Certain definitions refer to the *ASX Settlement Rules*. You should read those rules for the full terms of the definition. The definition may change from time to time if the *ASX Settlement Rules* are changed.

The singular includes the plural and vice versa.

A reference to:

- a document (including the *ASX Settlement Rules*) or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it.

---

**Signing page**

Signed as an agreement.

**Client's signature . . .**

**. . . if an individual**

Signed by the client:

.....  
Signature of client

**. . . if under common seal**

The common seal of the client is affixed in )  
accordance with its articles of )  
association:

.....  
Signature of office holder

.....  
Signature of office holder

.....  
Name (please print)

.....  
Name (please print)

.....  
Office held (please print)

.....  
Office held (please print)

**. . . if under power of attorney**

Signed for the client by its attorney (the  
attorney declares the attorney has had  
no notice of the revocation of the power  
of attorney)

.....  
Signature of attorney

.....  
Name (please print)

.....  
Date of power of attorney

---

**... if by an authorised officer**

Signed by the client by its authorised officer

  
.....  
Signature of authorised officer

PAUL LEWIS  
.....  
Name (please print)

**Sponsor's signature ...**

Signed for the sponsor by its attorneys  
(the attorneys each declare it has had no  
notice of the revocation of the power of  
attorney)

  
.....  
Signature of attorney

CANAL FOLET  
.....  
Name (please print)

.....  
Date of power of attorney

  
.....  
Signature of attorney

CHRIS WILLIAMS  
.....  
Name (please print)

.....  
Date of power of attorney


**Executed and delivered as a Deed.**

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



**The Mortgagor**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 1 Limited**:

  
\_\_\_\_\_  
Director Signature

PAUL LEWIS  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature


WILLIAM HARA  
\_\_\_\_\_  
Print Name


**The Security Trustee**

**Signed Sealed and Delivered for  
PT Limited** by its attorneys under a power of  
attorney dated 16 September 2014 in the  
presence of:

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Nora McDonnell  
Manager  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Nora McDonnell  
Manager  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature  
\_\_\_\_\_  
Craig Cullen  
Senior Manager  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature  
\_\_\_\_\_  
Hagbarth Strom  
Senior Transaction Manager  
\_\_\_\_\_  
Print Name

**The Participant**

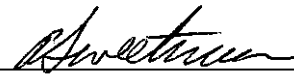
**Signed Sealed and Delivered for UBS  
Securities Australia Limited** by its attorneys  
under power of attorney dated 3 June 2015 in  
the presence of:



Witness Signature

ANTONY RUMBOLL

Print Name



Attorney Signature

ANTHONY SWEETMAN

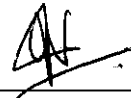
Print Name



Witness Signature

ANTONY RUMBOLL

Print Name



Attorney Signature


CHRIS WILLIAMS

Print Name

## Annexure B

This is Annexure B of 127 pages (including this page) referred to in the accompanying Form 603.

Signed on behalf of the Substantial Holders

print name	Tom Story	capacity	Authorised representative
sign here		date	2 November 2015

The copies attached to this Annexure B are true copies of the original.

Jingle SPV 2 Pty Limited

and

Bar SPV Pty Limited

## On-Loan Agreement

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Agreement is made on 29 October 2015

## Parties

- 1 **Jingle SPV 2 Pty Limited** (ACN 608 981 497) of Level 27, 45 Clarence Street Sydney NSW 2000 (the **Borrower**).
- 2 **Bar SPV Pty Limited** (ACN 608 989 233) of Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 (the **Lender**).

## Recitals

The Borrower has requested the Lender to provide the Borrower with a facility under which loans of up to the Commitment may be made available for the sole purpose set out in clause 2.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Authorisation** includes:

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

**Authorised Officer** means:

- (a) in respect of the Borrower, any director or secretary, or any person from time to time nominated as an Authorised Officer by it by a notice to the Lender accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Lender, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Partner, Principal** or **Vice President** or cognate expressions, or any secretary or director.

**Brookfield** means Brookfield Infrastructure Partners Limited as general partner of Brookfield Infrastructure Partners L.P.

**Business Day** means a weekday on which banks are generally open for business in Sydney, New York and Toronto.

**Call Option** means the option granted under clause 12.1.

**Cash** means, at any time, all cash at hand or at bank and all other amounts held by the Borrower which constitutes 'Collateral' for the purposes of the General Security Deed.

**Commitment** means the amount agreed between the Borrower, and the Lender and CPPIB Trust, as reduced or cancelled under this Agreement.

**Common Terms Deed** means the document entitled 'Common Terms Deed Poll' dated 11 December 2014 made by Qube and certain 'Original Guarantors' named therein, as amended and/or restated from time to time.



**Consortium MoU** means the Project Bell Memorandum of Understanding entered into by GIM Advisory Services LLC (on behalf of itself and its managed funds and clients), Qube and Canada Pension Plan Investment Board dated on or about 29 October 2015.

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

**CPPIB Trust** means Perpetual Corporate Trust Limited (ABN 99 000 341 533) as trustee for the CPPIB Australia Trust.

**Dividend** means each payment in cash by the Target to its shareholders, whether by dividend, distribution, capital return, share buyback or otherwise (grossed-up for any franking credits which the Jingle is entitled to) in respect of the Target Shares.

**Drawdown Date** means the date on which any accommodation under this Agreement is or is to be drawn using any Undrawn Commitment.

**Drawdown Notice** means a notice under clause 3.

**Event of Default** means any of the events specified in clause 11.1.

**Exercise Price** means in respect of all the Option Shares, an amount equal to the aggregate principal amount of all outstanding Loans on the Option Delivery Date.

**Expenses** means any unpaid and properly incurred fees, costs, Taxes or charges by the Borrower in connection with the sale, transfer or disposal of the Target Shares (if any) or the administration of this Agreement.

**Finance Debt** means indebtedness (whether actual or contingent) in respect of money borrowed or raised or other financial accommodation. It includes indebtedness under or in respect of:

- (a) a Guarantee of Finance Debt or a Guarantee given to a financier;
- (b) a finance Lease;
- (c) a swap, option, hedge, forward, futures or similar transaction;
- (d) an acceptance, endorsement or discounting arrangement;
- (e) a redeemable share or redeemable stock; or
- (f) the deferred purchase price (for more than 90 days) of an asset or service,

or an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

**Finance Document** means:

- (a) this Agreement;
- (b) any agreement or document that the Borrower and the Lender agree is a Finance Document; or
- (c) a document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above.

**FIRB Condition** means the Treasurer of the Commonwealth of Australia gives the Lender advice in writing of a decision by the Treasurer that the Commonwealth Government has no objection to the acquisition of the Option Shares by the Lender or its nominee, or otherwise the Lender provides notice to the Borrower that in the Lender's opinion the Commonwealth Government's foreign investment policy no longer prevents the Lender or its nominee from acquiring the Option Shares.

**General Security Deed** means the general security deed dated on or about the date of this Agreement between, among others, the Borrower and the Security Trustee.

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

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Guarantee** means any guarantee, indemnity, letter of comfort or other assurance against loss. It includes any obligation to be responsible for the solvency or financial condition of another party, or for payment of Finance Debt of another party, either directly or indirectly (for example, by buying the Finance Debt).

**Lease** means an agreement under which an asset may be used, exploited, operated or managed by a person other than the owner. It includes a lease, licence, charter, hire purchase or hiring arrangement.

**Loan** means each loan lent or to be lent under this Agreement.

**Loan Agreement** means:

- (a) the Loan Agreement – Facility A; or
- (b) the Loan Agreement – Facility B.

**Loan Agreement – Facility A** means the Loan Agreement – Facility A dated on or about the date of this Agreement between CPPIB Trust and the Lender.

**Loan Agreement – Facility B** means the Loan Agreement – Facility B dated on or about the date of this Agreement between CPPIB Trust and the Lender.

**Mandatory Repayment Date** means the date on which payment (including the provision of any non-monetary consideration) is received for the sale, disposal or transfer of the Target Shares (including any transfer of the Target Shares on the implementation of the Scheme or any other transaction in relation to the Target Shares including another scheme of arrangement or takeover bid for the Target) prior to the Option Delivery Date, by the Borrower (other than a disposal or transfer in accordance with this Agreement pursuant to the Put Option or the Call Option).

**Marketable Security** has the meaning given to *securities* in s92(3) of the Corporations Act, but also includes:

- (a) an undertaking referred to in the exceptions in paragraphs (a) and (b) of the definition of **debenture** in the Corporations Act;
- (b) a unit or other interest in a trust or partnership;
- (c) a negotiable instrument; and
- (d) a right or an option in respect of a Marketable Security, whether issued or unissued, including any of the above.

**Material Adverse Effect** means a material adverse effect on the ability of the Borrower to perform its obligations under a Finance Document or on the financial condition, business or prospects of the Borrower.

**New Rights** means all assets, rights, powers and proceeds of any nature at any time attaching to, or arising out of a holding in, any Target Shares or Other Shares. It includes:

- (a) any Marketable Security, any right to take up Marketable Securities or any allotment of further Marketable Securities;
- (b) any Marketable Security resulting from the conversion, consolidation or sub-division of a Marketable Security;

- (c) any certificate or other evidence of title to a Marketable Security or to anything specified in this definition; and
- (d) any distribution or dividend under, and any proceeds of, or of the disposal of, anything specified in this definition.

**Option** means the Call Option and the Put Option.

**Option Shares** means all of the Target Shares acquired by the Borrower and including any New Rights.

**Option Delivery Date** means the date that is two Business Days after the date of exercise of an Option (or such other date as agreed by the Borrower and the Lender).

**Other Shares** means any Marketable Securities other than the Target Shares.

**Outstanding Principal Amount** means, at any time, the total principal amount owing under the Loans (excluding unpaid interest and the Special Interest Payment).

**Potential Event of Default** means anything which with notice, time or both would become an Event of Default.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPSA Deemed Security Interest** means an interest of the kind referred to in section 12(3) of the PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.

**Put Option** means the option granted under clause 12.2.

**Qube** means Qube Holdings Limited (ABN 141 497 230 53).

**Related Entity** means, in relation to an entity (the first entity):

- (a) a Subsidiary of the first entity;
- (b) an entity of which the first entity is a Subsidiary; or
- (c) a Subsidiary of another entity of which the first entity is also a Subsidiary.

**Scheme** means the scheme identified in the Scheme Implementation Deed.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 17 August 2015 between the Target and Brookfield.

**Security** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

It does not include a PPSA Deemed Security Interest.

**Security Trust Deed** means the security trust deed dated on or about the date of this Agreement between, among others, CPPIB Trust, the Lender and the Security Trustee.

**Security Trustee** means PT Limited (ABN 67 004 454 666), or any other successor security trustee appointed in accordance with the Security Trust Deed.

**Special Interest Payment** means the amount determined in accordance with clause 6.3(a)(iv).

**Subsidiary** has the meaning given in the Corporations Act, but as if body corporate includes any entity.

**Target** means Asciano Limited (ACN 123 652 862).

**Target Shares** means any Marketable Securities issued by the Target in which the Borrower has an interest.

**Target Shares** means the fully paid ordinary shares in the capital of the Target.

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

**Transaction Document** means each Finance Document and the Consortium MoU.

**Tripartite Deed** means the tripartite deed – CHESS Sponsorship dated on or about the date of this Agreement between the Borrower, the Security Trustee and UBS Securities Australia Limited (ABN 62 008 586 481).

**UBS Contract Note** means the standard settlement instructions of UBS Securities Australia Limited and accompanying invoice from UBS Securities Australia Limited confirming the details of the trade under which Target Shares are to be acquired with the proceeds of the Loan to be drawn.

**Undrawn Commitment** means the Commitment less the total principal amount of all outstanding Loans.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) Nothing in this Agreement is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and the converse.
  - (ii) A gender includes all genders.
  - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Agreement.
  - (vi) A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns.
  - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
  - (viii) A reference to *dollars* and \$ is to Australian currency.
  - (ix) A listing rule, business rule or market integrity rule of a financial market (as defined in the Corporations Act) will be regarded as a **law**.
  - (x) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.

- (xi) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (xii) Each paragraph of a list is to be construed independently. None limits any other.

### 1.3 Limited recourse to Borrower

Notwithstanding anything contained in the Finance Documents, the Lender acknowledges that in satisfying any demand or claim which the Lender may make on the Borrower in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Lender will be limited to the 'Collateral' (as defined in the General Security Deed); and
- (b) the Borrower will in no circumstances have any liability whatsoever to the extent that the 'Collateral' (as defined in the General Security Deed) is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security over all of the 'Collateral' (as defined in the General Security Deed) and distribution of the proceeds in accordance with the Security Trust Deed, or if the Borrower, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), the Borrower will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.3 limits the liability of the Borrower for any loss, cost or expenses suffered or incurred by the Lender arising from the Borrower's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.3 (*Limited recourse to Borrower*) is not severable from this agreement.

### 1.4 Borrower acknowledgement

The Borrower acknowledges that the Lender does not hold an Australian Financial Services Licence authorising it to issue derivatives.

### 1.5 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, the Borrower will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Borrower has not been reimbursed for.

## 2 Purpose

The Borrower shall use the net proceeds of any Loan for the following purposes:

- (a) funding the purchase price payable by the Borrower upon settlement of Target Shares acquired by the Borrower, provided that the aggregate number of Target Shares held by the Borrower does not at any time exceed 51,916,055 Target Shares; and
- (b) paying any transaction costs and expenses approved by the Lender in connection with the acquisition of any Target Shares by the Borrower in accordance with paragraph (a) above,

and for no other purpose.

### 3 Loan

- (a) Subject to this Agreement, if the Borrower requests a Loan in a Drawdown Notice, the Lender will make available that Loan on the relevant Drawdown Date by transferring the principal amount of that Loan to the account specified in the UBS Contract Note attached to the Drawdown Notice.
- (b) The amount of any Loan requested must be equal to:
  - (i) the aggregate purchase price payable upon settlement of the relevant Target Shares acquired by the Borrower; plus
  - (ii) the transaction costs and expenses approved by the Lender in connection with the acquisition of such Target Shares; less
  - (iii) any equalisation payment in relation to the Borrower that Qube or its Related Entity is obliged to pay.
- (c) The Lender is not obliged to make available a Loan if as a result its participation in all outstanding Loans would exceed the Commitment.
- (d) The Drawdown Notice is irrevocable. It must be substantially in the form of Schedule 2 and be received by the Lender as soon as practicable on the day of receipt by the Borrower of the UBS Contract Note, and in any event before 11am (Sydney time) two Business Days before the proposed Drawdown Date.

### 4 Interest

#### 4.1 Interest

- (a) Subject always to clause 1.3, interest will be payable on the outstanding principal amount of each Loan in an amount equal to the amount of each Dividend paid or payable to the Borrower in relation to any Target Shares.
- (b) The interest referred to in paragraph (a) shall be payable on the date on which the Borrower receives the relevant Dividend (whether such date is before or after the Option Delivery Date).
- (c) The Borrower will ensure that any direction relating to Dividend payments by the Target being paid directly into a bank account specified by the Lender that is provided to the Borrower by the Lender is promptly given to the Target or any other person required by the Lender. Receipt by the Lender of such payment by the Target will discharge the Borrower's payment obligation under paragraph (b) to the extent of the amount received.
- (d) If any amount of a Dividend payment referable to any Target Shares is not deposited into the Lender's bank account referred to in paragraph (c) and is instead paid to the Borrower, the Borrower must ensure that the relevant amount is paid to the Lender within two Business Days after the date on which the Dividend payment was received by the Borrower (whether such date is before or after the Option Delivery Date).

#### 4.2 Special Interest

In addition to any interest payable under clause 4.1 the Borrower will pay to the Lender the Special Interest Payment (if any) in accordance with clause 6.3(a)(iv).

### 5 Cancellation of Commitment

The Commitment will be cancelled automatically at the close of business (Sydney time) on the date which is the earliest of:

- (a) the first date on which the Borrower has acquired 51,916,055 Target Shares;
- (b) the occurrence of an Event of Default; and
- (c) the Lender providing notice to the Borrower that the Commitment is cancelled.

## 6 Repayment

### 6.1 Repayment of each Loan

Subject always to clause 1.3, the Borrower shall repay each Loan, together with accrued but unpaid interest (including if applicable the Special Interest Payment), on the earlier of:

- (a) the date which is 9.5 years after the date of this Agreement;
- (b) the Option Delivery Date;
- (c) the Mandatory Repayment Date; and
- (d) the date that CPPIB Trust provides notice to the Lender under clause 6.2 (*Mandatory Prepayment Events*) or 11.2 (*Consequences*) of a Loan Agreement demanding that the money outstanding under that Loan Agreement be repaid.

### 6.2 Dividends after the Option Delivery Date

Notwithstanding any other provision of this Agreement, the Borrower must pay to the Lender the amount of any Dividend received by the Borrower in relation to the Target Shares on or after the Option Delivery Date. Such amounts must be paid to the Lender by no later than the date that is two Business Days after the date on which the Borrower receives the relevant Dividend.

### 6.3 Mandatory Repayment

- (a) Subject always to clause 1.3, on the Mandatory Repayment Date the Borrower shall apply all Cash (except to the extent that it otherwise pays it to the Lender) as follows:
  - (i) **(Expenses)** first, toward payment of all Expenses then due (including Taxes that are, or will become, due in respect of the Mandatory Repayment Date);
  - (ii) **(Interest)** first, to the Lender towards payment of all amounts due but unpaid interest under this Agreement (other than the Special Interest Payment);
  - (iii) **(Outstanding Principal Amount)** second, to the Lender towards payment of the Outstanding Principal Amount; and
  - (iv) **(Special Interest Payment)** third, the remainder (if any) to the Lender as the Special Interest Payment.
- (b) Subject to clause 6.2, if for any reason the Borrower receives any amount in respect of the Target Shares after the Mandatory Repayment Date, it must apply that amount as Cash on that date in accordance with clause 6.3(a) as if that date was the Mandatory Repayment Date.
- (c) If the Borrower receives any Other Shares in connection with any sale, disposal or transfer of the Target Shares (including any transfer of the Target Shares on the implementation of the Scheme or any other transaction in relation to the Target Shares including another scheme of arrangement or takeover bid for the Target), the Lender may direct the Borrower to:
  - (i) sell, transfer or dispose of the Other Shares and upon receipt of the proceeds, immediately apply the proceeds as Cash in accordance with clause 6.3(a) as if the date of receipt was the Mandatory Repayment Date; or



- (ii) transfer the Other Shares to the Lender or any other person nominated by the Lender,

and the Borrower shall sell, transfer or dispose of the Other Shares in accordance with that notice and otherwise at the direction of and in the manner directed by the Lender.

## 7 Payments

### 7.1 Manner

The Borrower shall make all payments under this Agreement:

- (a) by transfer of immediately available funds to the account specified by the Lender by 11am (local time) on the due date; and
- (b) without set-off, counterclaim or other deduction, except any compulsory deduction for Tax.

### 7.2 Payment to be made on Business Day

If any payment is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day.

### 7.3 Appropriation where insufficient money available

The Lender may appropriate amounts it receives among amounts due as it sees fit. This will override any appropriation made by the Borrower.

## 8 Conditions Precedent

### 8.1 Initial conditions precedent

The right of the Borrower to give a Drawdown Notice and the obligations of the Lender under this Agreement are subject to the condition precedent that the Lender receives all of the following items in form and substance satisfactory to the Lender:

- (a) **(verification certificate)** a certificate in relation to the Borrower given by a director of the Borrower substantially in the form of Schedule 3 with the attachments referred to and dated not earlier than three Business Days before the first Drawdown Date;
- (b) **(Finance Documents)** duly executed original counterparts of each Finance Document;
- (c) **(Legal opinion)** a legal opinion from the legal advisers to the Lender in relation to the Finance Documents;
- (d) **(Excluded Subsidiary)** written evidence that the Borrower is an "Excluded Subsidiary" (as is defined in the Common Terms Deed); and
- (e) **(CPPIB Trust loan conditions precedent)** evidence that CPPIB Trust has confirmed that the conditions precedent in:
  - (i) Clause 8.1 of the Loan Agreement – Facility A; and
  - (ii) Clause 8.1 of the Loan Agreement – Facility B,have been satisfied or waived;

### 8.2 Further conditions precedent

The obligations of the Lender to make available financial accommodation under this Agreement are subject to the further conditions precedent that as at the date of the relevant Drawdown Notice (and in respect of clause 8.2(c) as at the Drawdown Date):



- (a) **(representations true)** the representations and warranties by the Borrower in the Finance Documents are true and not misleading as though they had been made at each date in respect of the facts and circumstances then subsisting;
- (b) **(no default)** no Event of Default or Potential Event of Default continues or will result from the provision of the financial accommodation;
- (c) **(funding received)** that the Lender has received funds from CPPIB Trust under the Loan Agreements (being funds that it has not previously lent to the Borrower under this Agreement) in an aggregate amount equal to the amount specified in the Drawdown Notice;
- (d) **(price of Target Shares)** evidence that the price of the Target Shares to be acquired by the Borrower with the proceeds of the Loan is a price that is not greater than the price per share agreed by the Borrower and the Lender on or before the date of the Drawdown Notice; and
- (e) **(Excluded Subsidiary)** written confirmation from the Borrower's lawyers that the entry into and performance by the Borrower of the Finance Documents will not breach any provision under the Common Terms Deed or financing documents of Qube and its Subsidiaries;

## 9 Representations and Warranties

### 9.1 Representations and warranties

The Borrower makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation specified in this Agreement.
- (b) **(Power)** It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Documents binding)** Each Transaction Document to which it is expressed to be a party is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration and subject to equitable principles and any legal qualifications noted in any legal opinion provided to the Lender in connection with the Finance Documents.
- (e) **(Transactions permitted)** The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets,and, except as provided by the Finance Documents, did not and will not:
  - (iv) create or impose a Security on any of its assets; or

- (v) allow a person to accelerate or cancel an obligation with respect to Finance Debt, or constitute an event of default, cancellation event, prepayment event or similar event (whatever called) under an agreement relating to Finance Debt, whether immediately or after notice or lapse of time or both.
- (f) **(No litigation)** No litigation, arbitration, Tax claim, dispute or administrative or other proceeding is current or pending or, to its knowledge, threatened.
- (g) **(No default)** No Event of Default or Potential Event of Default continues that has not been notified in writing to the Lender.
- (h) **(Solvency)** It is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable.
- (i) **(Ranking)** Its payment obligations under the Finance Documents rank at least equally and rateably with all of its other unsecured unsubordinated payment obligations, except those mandatorily preferred by law applying to companies generally or as agreed to by the Lender in writing.
- (j) **(Authorisations)** Each Authorisation which is required in relation to:
  - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents;
  - (ii) the validity and enforceability of those documents; and
  - (iii) its business as now conducted or contemplated and which is material,has been obtained or effected. Each is in full force and effect. It has complied with each of them.
- (k) **(No misrepresentation)** All factual and ascertainable information (for the avoidance of doubt, excluding forecasts or anything in relation to the future) about Qube and the Borrower provided in writing by or on its behalf to the Lender is true in all material respects at the date of this Agreement, or if later, when provided. Neither that information nor its conduct and the conduct of anyone acting on its behalf on its instructions or directions in relation to the transactions contemplated by the Finance Documents, was or is misleading, by omission or otherwise.
- (l) **(Title)**
  - (i) It is the sole legal and beneficial owner of all its assets free of any other third party right or interest whatever.
  - (ii) None of its assets is subject to a Security which is not permitted by clause 10.1(g) **(Negative pledge)**.
- (m) **(Law)** It has complied with all laws binding on it.
- (n) **(Trust)** It does not hold any assets as the trustee of any trust.
- (o) **(Excluded Subsidiary)** It is an "Excluded Subsidiary" (as defined in the Common Terms Deed).
- (p) **(Sponsorship agreement)** It has provided the Lender and the Security Trustee with a true and complete copy of each sponsorship agreement it has entered into with any controlling participant in relation to each Target Share it holds. Each such sponsorship agreement is in full force and effect and provides that the controlling participant has its authority to deal with each such Target Share in accordance with the Security Trustee's security interest.

- (q) **(Definitions)** Definitions in the ASX Settlement Operating Rules apply in paragraph (p), above, unless the context requires otherwise.
- (r) **(Direct wholly-owned Subsidiary)** All of the share capital in the Borrower is directly held by Qube, both legally and beneficially.

## 9.2 Reliance on representations and warranties

The Borrower acknowledges that the Lender has entered the Transaction Documents in reliance on the representations and warranties in this clause.

## 10 Undertakings

### 10.1 General undertakings

The Borrower undertakes to the Lender as follows, except to the extent that the Lender consents.

- (a) **(Corporate reporting and information)** It will provide to the Lender:
  - (i) **(litigation)** promptly, written particulars of any litigation, arbitration, Tax claim, dispute or administrative or other proceeding in relation to the Borrower;
  - (ii) **(Government Agency)** promptly, any notice, order or material correspondence from or with a Government Agency relating to its business or assets;
  - (iii) **(documents issued to shareholders)** promptly, all documents provided by it to a stock exchange or holders of Marketable Securities issued by it; and
  - (iv) **(other information)** promptly, any other information in relation to its financial condition, business assets, operations or prospects which the Lender may reasonably request.
- (b) **(Use of proceeds)** It will ensure that proceeds from the facility made available under this Agreement are only used for the purposes set out in clause 2.
- (c) **(Authorisations)** It will ensure that each Authorisation required for:
  - (i) the execution, delivery and performance by it of the Finance Documents to which it is expressed to be a party and the transactions contemplated by those documents;
  - (ii) the validity and enforceability of those documents; and
  - (iii) the carrying on by it of its business as now conducted or contemplated, in compliance with clause 10.1(e),is obtained, complied with and promptly renewed and maintained in full force and effect. It will provide copies promptly to the Lender when they are obtained or renewed.
- (d) **(Notice to Lender)** It will notify the Lender as soon as it becomes aware of:
  - (i) any Event of Default or Potential Event of Default; and
  - (ii) any change in its Authorised Officers, giving specimen signatures of any new Authorised Officer appointed, and, where requested by the Lender, evidence satisfactory to the Lender of the authority of any Authorised Officer.
- (e) **(Single purpose company)** It will not carry on any business or other activity other than as contemplated in the Finance Documents and it will not acquire any assets other than the Target Shares or incur any material liabilities other than as contemplated by the Finance Documents.

- (f) **(Disposal of assets)** It will not sell or otherwise dispose of, part with possession of, or create an interest in, any of its assets (including the Target Shares) or agree or attempt to do so (whether in one or more related or unrelated transactions) except as expressly permitted under the Finance Documents.
- (g) **(Negative pledge)** It will not create or allow to exist a Security over its assets other than:
  - (i) the General Security Deed or any Ancillary Security (as defined in the Security Trust Deed); and
  - (ii) a lien arising by operation of law in the ordinary course of day-to-day trading and not securing Finance Debt where it duly pays the indebtedness secured by that lien other than indebtedness contested in good faith.
- (h) **(Partnership and joint ventures)** It will not enter into a partnership or joint venture with another person.
- (i) **(Corporate existence)** It will do everything necessary to maintain its corporate existence in good standing. It will not transfer its jurisdiction of incorporation or enter any merger or consolidation.
- (j) **(Compliance with law)** It will comply with all laws binding on it to the extent that not doing so would have a Material Adverse Effect or adversely impact on the Lender's rights in relation to the Option.
- (k) **(Financial assistance)** It will not:
  - (i) advance money or make available financial accommodation to or for the benefit of; or
  - (ii) give a Guarantee or Security in connection with an obligation or liability of, any other person, but it may enter into the General Security Deed or any Ancillary Security (as defined in the Security Trust Deed).
- (l) **(Distributions)** It will not pay or distribute any money or other asset (including by management or other fee, interest, dividend, buy back, return of capital, repayment or redemption) to or for the benefit of a shareholder in that capacity or to an associate.
- (m) **(Finance Debt)** It will not incur any Finance Debt except under this Agreement.
- (n) **(Subsidiaries)** It will not create or acquire a Subsidiary.
- (o) **(Amendment of constitution)** It will not amend its constitution.
- (p) **(Issues)** It will not issue any shares or agree to do so or grant a person a right to take up any shares whether exercisable now or in the future or if a contingency occurs, except to its holding company.
- (q) **(Conversion)** It will not request nor will it permit the controlling participant to request that any of the Target Shares held by the Borrower be converted or transferred from a certificated holding to an uncertificated holding.
- (r) **(Discontinuation of certificated subregister)** It will as soon as reasonably practicable notify the Lender if it receives notice that an issuer of any of the Target Shares held by the Borrower intends to cease operating a certificated subregister.
- (s) **(Conversion)** It will as soon as reasonably practicable notify the Lender if a request is made for the conversion or transfer of any Target Shares held by the Borrower from an uncertificated holding on the CHES subregister to a certificated holding on the certificated subregister or an uncertificated holding on the issuer sponsored subregister. It

will ensure that the certificates issued on conversion or transfer of such Target Shares to the certificated subregister are immediately delivered to the Lender or its nominee.

- (t) **(Sponsorship agreement)** It will not amend, vary or terminate any sponsorship agreement in relation to the Target Shares.
- (u) **(Definitions)** Definitions in the ASX Settlement Operating Rules apply in paragraphs (s) to (t) above, unless the context requires otherwise.
- (v) **(Deed of Cross Guarantee)** It will not enter into, or become a party to, any Deed of Cross Guarantee (as defined in ASIC Class Order 98/1418).
- (w) **(Notify rights offered or accruing)** It will notify the Lender immediately if it becomes entitled to, or is offered, New Rights.
- (x) **(Subscribe to rights)** If the Lender directs, it will promptly subscribe to, take up or exercise New Rights.
- (y) **(Remedy defects)** It will remedy each defect in its holding of any Target Shares.
- (z) **(Meetings of shareholders)** It will as soon as reasonably practicable provide to the Lender copies of all reports and other documents received by it in its capacity as the holder of the Target Shares including any report or notice of any meeting which the holder of Target Shares is entitled to attend or vote at or both.
- (aa) **(Vote)** On and from satisfaction of the FIRB Condition, it will:
  - (i) not vote or make any election in relation to the Target Shares (including making any election to receive Maximum Cash Consideration, Maximum Scrip Consideration, Standard Consideration (each as defined in the Scheme Implementation Deed) or any other consideration in relation to the Scheme being implemented), except with the consent of the Lender; and
  - (ii) vote or make an election in relation to the Target Shares only at the direction of the Lender.
- (bb) **(Tax consolidation)** it will as soon as practicable after the date of this Agreement become party to the valid tax sharing and tax funding agreements in respect of the tax consolidated group of which Qube is the 'head entity'.

## 10.2 Acquisition of Target Shares

Each of the Borrower and the Lender will notify the other party promptly after it becomes aware of any Target Shares being held by any of its Related Entities.

## 10.3 Term of undertakings

Each undertaking in this clause continues from the date of this Agreement until the Borrower ceases to have any liability under the Finance Documents.

## 11 Events of Default

### 11.1 Events of Default

Each of the following is an Event of Default (whether or not it is in the control of the Borrower).

- (a) **(Obligations under Finance Documents)** The Borrower fails:
  - (i) to pay an amount payable by it under a Finance Document when due;
  - (ii) to comply with any of its other obligations under a Finance Document; or

- (iii) to satisfy within the time stipulated anything which the Lender made a condition of its waiving compliance with a condition precedent or undertaking in a Finance Document.
- (b) **(Misrepresentation)** A representation, warranty or statement by or on behalf of the Borrower in a Finance Document, or in a document provided under or in connection with a Finance Document, is not true or is misleading when made or repeated.
- (c) **(Cross default)**
  - (i) Finance Debt of the Borrower of any amount:
    - (A) is not paid when due (or within an applicable grace period); or
    - (B) becomes due and payable before its stated maturity or expiry; or
  - (ii) a facility or obligation granted or owed by a person to the Borrower to provide financial accommodation or to acquire or underwrite Finance Debt is prematurely terminated.

For the purpose of this paragraph, if a person is required to provide cash cover for Finance Debt as a result of an actual, likely or threatened default or an event of default or termination, cancellation, special prepayment or similar event, whatever called, that Finance Debt will be taken to be due and payable.

- (d) **(Administration, winding up, arrangements, insolvency etc)**
  - (i) An administrator of the Borrower or Qube is appointed.
  - (ii) Except for the purpose of a solvent reconstruction or amalgamation previously approved by the Lender:
    - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
      - (1) the winding up, dissolution or administration of the Borrower or Qube; or
      - (2) the Borrower or Qube entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,

(other than frivolous or vexatious applications, proceedings, notices and steps); or
    - (B) the Borrower or Qube ceases, suspends or threatens to cease or suspend the conduct of all or substantially all of its business or disposes of or threatens to dispose of substantially all of its assets.
  - (iii) The Borrower or Qube:
    - (A) is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or
    - (B) stops or suspends or threatens to stop or suspend payment of all or a class of its debts.
- (e) **(Enforcement against assets)**
  - (i) A receiver, receiver and manager, administrative receiver or similar officer is appointed to;

- (ii) a Security becomes enforceable or is enforced over; or
  - (iii) a distress, attachment or other execution is levied or enforced or applied for over, all or any of the assets and undertaking of the Borrower or Qube.
- (f) **(Reduction of capital)** Without the prior consent of the Lender, the Borrower:
  - (i) reduces its capital (including a purchase of its shares and a redemption of redeemable shares);
  - (ii) passes a resolution to reduce its capital or to authorise it to purchase its shares or a resolution under chapter 2J of the Corporations Act or an equivalent provision, or calls a meeting to consider such a resolution; or
  - (iii) applies to a court to call any such meeting or to sanction any such resolution or reduction.
- (g) **(Analogous process)** Anything analogous to anything referred to in paragraphs (d) to (f) inclusive, or which has substantially similar effect, occurs with respect to the Borrower or (other than with respect to paragraph (f)) Qube.
- (h) **(Obligations under Consortium MoU)** Qube fails to comply with any of its obligations under the Consortium MoU.
- (i) **(Vitiation of documents)**
  - (i) All or any part of a Finance Document is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect;
  - (ii) a party becomes entitled to terminate, rescind or avoid all or part of a Finance Document; or
  - (iii) a party other than the Lender alleges or claims that an event described in sub-paragraph (i) has occurred or that it is entitled as described in sub-paragraph (ii).
- (j) **(Amendment of constitution)** The constitution of the Borrower is amended without the prior consent of the Lender (which will not be withheld unreasonably).
- (k) **(Control of Borrower)** Without the prior consent of the Lender:
  - (i) the Borrower becomes a Subsidiary of another person other than Qube or any other wholly-owned Subsidiary of Qube; or
  - (ii) a person and its associates have a relevant interest in 20% or more, or 50% or more, of the shares (as to votes or paid up value) of Qube having had a relevant interest in less than 20 or 50% of the shares (as to votes or paid up value) of Qube. Relevant interest and associate have the same meaning as in chapter 6 of the Corporations Act; or
  - (iii) in the opinion of the Lender there is a material change in the ownership, management or control of the Borrower.
- (l) **(Compulsory acquisition)**
  - (i) All or any substantial part of the assets of the Borrower is compulsorily acquired by or by order of a Government Agency or under law;
  - (ii) a Government Agency orders the sale, vesting or divesting of all or any substantial part of the assets of the Borrower; or
  - (iii) a Government Agency takes a step for the purpose of any of the above or proposes or threatens to do any of the above.



- (m) **(Governmental interference)** A law or anything done by a Government Agency wholly or partially to a material extent renders illegal, prevents or restricts the performance or effectiveness of a Transaction Document.
- (n) **(Loan Agreement default)** An "Event of Default" as defined in a Loan Agreement occurs.
- (o) **(Material adverse change)** Any other event or series of events, whether related or not, occurs (including a material adverse change in the business, assets or financial condition of the Borrower), which in the reasonable opinion of the Lender is likely to have a Material Adverse Effect.

## 11.2 Consequences

In addition to any other rights provided by law or any Finance Document, at any time after an Event of Default (whether or not it is continuing) the Lender may do all or any of the following:

- (a) by notice to the Borrower declare all sums actually or contingently owing under this Agreement immediately due and payable, and the Borrower shall immediately pay the total principal amount of all outstanding Loans together with accrued interest and all other sums (subject always to clause 1.3);
- (b) by notice to the Borrower, require the Borrower to sell, transfer or dispose of the Target Shares within 1 Business Day (or any longer period notified by the Lender) and the Borrower shall sell, transfer or dispose of the Target Shares in accordance with that notice; or
- (c) by notice to the Borrower cancel the Commitment;

## 12 Option

### 12.1 Call Option

- (a) In consideration of the Lender entering into the Finance Documents, the Borrower grants to the Lender or its nominee an option to purchase the Option Shares in accordance with this Agreement.
- (b) The Lender may exercise the Call Option by notice to the Borrower at any time following satisfaction of the FIRB Condition.

### 12.2 Put Option

- (a) In consideration of the Borrower entering into the Finance Documents, the Lender grants to the Borrower an option to require the Lender or its nominee to purchase the Option Shares in accordance with this Agreement.
- (b) The Borrower may exercise the Put Option by notice to the Lender at any time following satisfaction of the FIRB Condition.

### 12.3 Free from Securities

The Option Shares shall be sold free of any Security at the date of exercise of an Option.

### 12.4 Option Delivery Date

Completion of the exercise of an Option shall take place on the Option Delivery Date at the location and time agreed by the Borrower and the Lender. At that time:

- (a) the Borrower shall deliver each relevant CHESS holding statement to the Lender on or before the Option Delivery Date; and
- (b) the Lender shall pay the Exercise Price to the Borrower.



## 12.5 Set-off

- (a) On the Option Delivery Date, the Lender's obligation to pay the Exercise Price to the Borrower will be set-off against the Borrower's obligation to repay the aggregate principal amount of all outstanding Loans.
- (b) After the set-off referred to in paragraph (a) above:
  - (i) the Lender's obligation to pay the Exercise Price to the Borrower in accordance with clause 12.4(b); and
  - (ii) the Borrower's obligation to repay each Loan in accordance with clause 6.1, will each be fully discharged.
- (c) For the avoidance of doubt, nothing in this clause 12.5 discharges the obligations of the Borrower under clause 4 or 6.2.

## 13 Interest on Overdue Amounts

### 13.1 Accrual

Subject always to clause 1.3, except where the relevant Finance Document provides otherwise, interest accrues on each unpaid amount which is due and payable by the Borrower under or in respect of any Finance Document (including interest under this clause):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate of 2% pa above the Interest Rate (as defined in the Loan Agreement – Facility A).

### 13.2 Payment

The Borrower shall pay interest accrued under this clause on demand and on the last Business Day of each calendar quarter. That interest is payable in the currency of the unpaid amount on which it accrues.

## 14 GST

All payments (including the provision of any non-monetary consideration) to be made by an entity (the **Payer**) to another entity (the **Payee**) under or in connection with any Finance Document have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when the Payer makes the payment:
  - (i) it must pay to the Payee an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) the Payee will promptly provide to the Payer a tax invoice complying with the relevant GST legislation.
- (b) Where under any Finance Document the Payer is required to reimburse or indemnify for an amount, the Payer will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Payee determines that it is entitled to claim in respect of that amount.

## 15 General PPSA Provisions

To the extent that a security interest (as defined in the PPSA) is created under a Finance Document, the following applies.

- (a) The Lender need not give any notice under the PPSA (including a notice of a verification statement) under or arising out of anything relating to that security interest or Finance Document unless the notice is required by the PPSA and the giving of it cannot be excluded.
- (b) The Borrower waives its right to receive anything from the Lender under section 275 of the PPSA, and shall not make any request of the Lender under that section.
- (c) The Borrower authorises and requests the Lender under section 275(7)(c) of the PPSA to obtain from the holder of any other Security or PPSA Deemed Security Interest over the relevant collateral any of the information referred to in section 275(1) of the PPSA.
- (d) Each party contracts out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1) and 135. However, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an express or implied right on the part of the Lender provided for in the relevant Finance Document.
- (e) Any disposal or other exercise of any right, power or remedy under this Agreement will only be taken to be made under a provision which has not been excluded in paragraph (d), if the Lender so elects.

## 16 Waivers, Remedies Cumulative

- (a) No failure to exercise and no delay in exercising any right, power or remedy under any Finance Document operates as a waiver, nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Lender in the Finance Documents are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

## 17 Severability of Provisions

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

## 18 Survival of Obligations

- (a) **(Representations and warranties)** Each representation or warranty in a Finance Document survives the execution and delivery of the Finance Documents and the provision of financial accommodation.
- (b) **(Indemnity)** Each indemnity, reimbursement or similar obligation in a Finance Document:
  - (i) is a continuing, separate and independent obligation;
  - (ii) is payable on demand; and
  - (iii) survives termination or discharge of the relevant Finance Document and repayment of financial accommodation.

Where a party is obliged to indemnify another party against a loss, cost, charge, liability, expense, deficiency or other amount, it shall pay on demand from time to time the amount stated by the other party to be the amount indemnified against.

## **19 Moratorium Legislation**

To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Borrower any obligation under a Finance Document; or
- (b) delays, prevents or prejudicially affects the exercise by the Lender of any right, power or remedy conferred by a Finance Document,

is excluded from the Finance Documents.

## **20 Further Assurances**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## **21 Assignments**

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior consent of the other party.

## **22 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Agreement:

- (a) must be in writing signed by an Authorised Officer of the sender (or in the case of an email message, sent from the email address of an Authorised Officer of the sender); and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address, email address or fax number of the recipient shown in Schedule 1 or to any other address, fax number or email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **23 Confidentiality**

### **23.1 Confidentiality**

Except as permitted in clause 23.2:

- (a) neither party shall disclose information and documents supplied by the other party in connection with the Finance Documents which are specifically indicated by the other party to be confidential and are not in the public domain; and
- (b) no party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.

### **23.2 Permitted disclosure**

A party may disclose information or documents:

- (a) for the purpose of attempting to satisfy the FIRB Condition;

- (b) in enforcing a Finance Document, in a proceeding arising out of or connected with a Finance Document or to the extent that disclosure is regarded by the party as necessary to protect its interests;
- (c) as required under an order of a Government Agency or any procedure for discovery in any proceedings;
- (d) as required under any law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) or under any administrative guideline, directive, request or policy with which responsible corporations similarly situated would normally comply;
- (e) as required or permitted by any Finance Document;
- (f) to a trustee associated with any financing conduit and its advisers;
- (g) to its legal advisers and its consultants; or
- (h) with the prior consent of the other party.

### **23.3 Survival of obligation**

This clause survives the termination of this Agreement.

### **24 Authorised Officers**

The Borrower irrevocably authorises the Lender to rely on a certificate by a person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. The Borrower warrants that those persons have been authorised to give notices and communications under or relating to the Finance Documents.

### **25 Governing Law and Jurisdiction**

This Agreement is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The parties irrevocably accept the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

### **26 Counterparts**

This Agreement may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

## Schedule 1

### Notice Details

#### 1 Borrower

Jingle SPV 2 Pty Limited

Address: Level 27  
Clarence Street  
Sydney NSW 2000

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara

#### 2 Lender

Bar SPV Pty Limited

Address: Level 17, Gateway Building  
1 Macquarie Place  
Sydney NSW 2000

Email: [jonathan.oh@global-infra.com](mailto:jonathan.oh@global-infra.com); [nick.hume@global-infra.com](mailto:nick.hume@global-infra.com)

Attention: Jonathan Oh and Nick Hume

## Schedule 2

### Drawdown Notice

#### [\*] - DRAWDOWN NOTICE NO. [\*]

We refer to the Loan Agreement dated [\*] (the *Loan Agreement*).

1 We wish to draw on [\*] (the *Drawdown Date*).

**Note: Date is to be the business day before the 'T+3' settlement date noted in the settlement instructions of UBS Securities Australia Limited to be attached to this notice.**

2 The total principal amount to be drawn is [\*].

**Note: Amount to comply with the limits in clause 2.**

3 Please remit the proceeds to the account of UBS Securities Australia Limited, the details of which are in the attached standard settlement instructions of UBS Securities Australia Limited.

4 We represent and warrant as follows.

(a) The representations and warranties in the Loan Agreement are true as though they had been made at the date of this Drawdown Notice and the Drawdown Date specified above in respect of the facts and circumstances then subsisting.

(b) No Event of Default or Potential Event of Default continues or will result from the drawing.

5 Annexed to this notice is a copy of the:

(a) standard settlement instructions of UBS Securities Australia Limited; and

(b) invoice from UBS Securities Australia Limited confirming the details of the trade under which Target Shares are to be acquired with the proceeds of the Loan to be drawn.

Definitions and clause 1.3 in the Loan Agreement apply in this Drawdown Notice.

On behalf of [\*]

By: [Authorised Officer]

DATED [\*]

**Annexure**

**Copies of UBS standard settlement instructions and trade confirmation for Target Shares**

### Schedule 3

#### Verification Certificate

**Note: To be signed by a secretary or director of the relevant company.**

TO: [\*]

[Date]

[A\$\*] Loan Agreement for [\*]

I [\*] am a director of Jingle SPV 2 Pty Limited (the **Company**).

I refer to the Loan Agreement dated [\*] (the **Loan Agreement**) between the Company and [\*].

Definitions in the Loan Agreement apply in this Certificate.

Attached are true, up-to-date and complete copies of the following.

- (a) [A power of attorney under which the Company executed any Finance Document to which it is expressed to be a party relating to the above facility. That power of attorney has not been revoked by the Company and remains in full force and effect.]
- (b) A certificate of incorporation and constitution for the Company.
- (c) Specimen signatures of all those authorised to give drawdown and other notices for the Company.

The Company is solvent.

The Company does not have any interest, right or claim in relation to any property, assets or undertaking that is, or is regarded under the applicable stamp duty laws as, situated in New South Wales.

---

[Director]



**Executed** as an agreement.


**Executed** in accordance with section 127 of  
the *Corporations Act 2001* by **Jingle SPV 2 Pty**  
**Limited:**



\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
PAUL LEWIS

Print Name



\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
C. KARA

Print Name

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Bar SPV Pty Limited**:




Director Signature



Director / Secretary Signature



Print Name



Print Name

Bar SPV Pty Limited

Each party listed in Schedule 1 as Security Provider

Perpetual Corporate Trust Limited as trustee of the CPPIB Australia Trust

PT Limited

## Security Trust Deed

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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**This Deed** is made on 29 October 2015

### Parties

- 1 **Bar SPV Pty Limited** (ACN 608 989 233) of Level 17, Gateway Building, 1 Macquarie Place, Sydney NSW 2000 (the **Borrower**).
- 2 Each party listed in Schedule 1 as Security Provider (each, a **Security Provider**).
- 3 **Perpetual Corporate Trust Limited** (ABN 99 000 341 533) of Level 12, 123 Pitt Street, Sydney NSW 2000 as trustee of the CPPIB Australia Trust (the **Lender**).
- 4 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Security Trustee**).

### Recital

The Security Trustee has agreed to hold the assets referred to in clause 2.1 on trust for the Beneficiaries as set out in this Deed.

**It is agreed** as follows.

## 1 Definitions and Interpretations

### 1.1 Definitions

Definitions in each Loan Agreement and following definitions apply unless the context requires otherwise. In the event of any inconsistency, the following order of precedence applies:

- (a) Loan Agreement – Facility A; and
- (b) Loan Agreement – Facility B.

**ADI** has the meaning given to it in the PPSA.

**Ancillary Security** means any Security, Guarantee or other document or agreement at any time created or entered into as security for any Secured Money.

**Attorney** means any attorney appointed under this Deed, any Security Interest or any Ancillary Security.

**Authorised Officer** means:

- (a) in respect of an Obligor, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Obligor by a notice to the Security Trustee accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of a Beneficiary, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Principal** or **President** or cognate expressions, or any secretary or director.

**Beneficiary** means each of the following (subject to clause 4.4):

- (a) the Security Trustee;
- (b) the Lender;
- (c) any New Financier; or
- (d) any successor or permitted substitute or assign of any of the above,

where that person (except the Security Trustee or the Lender) has agreed to comply with the obligations of a Beneficiary under this Deed by executing and delivering to the Security Trustee a



deed poll substantially in the form of Schedule 2 or another document acceptable to the Security Trustee.

**Commitment** means:

- (a) in respect of the Lender, its Commitment as defined in each Loan Agreement; and
- (b) in respect of a New Financier, its commitment or facility limit under the relevant financing document entered into with the Borrower as determined by the Security Trustee based on a written document signed by both the New Financier and the Borrower stating such amount.

**Consortium MoU** means the Project Bell Memorandum of Understanding entered into by GIM Advisory Services LLC (on behalf of itself and its managed funds and clients), Jingle and Canada Pension Plan Investment Board dated on or about 29 October 2015.

**Event of Default** means an event of default as defined in any Finance Document.

**Excluded Tax** means a Tax imposed by a jurisdiction on the net income of a Beneficiary because the Beneficiary has a connection with that jurisdiction but not a Tax:

- (a) which is calculated by reference to the gross amount of a payment derived under a Finance Document or another document referred to in a Finance Document (without the allowance of a deduction); or
- (b) which is imposed as a result of the Beneficiary being considered to have a connection with that jurisdiction solely as a result of it being a party to a Finance Document or a transaction contemplated by a Finance Document.

**Exposure** means at any time (but without double counting):

- (a) in the case of the Security Trustee, the Secured Money which an Obligor is at that time actually or contingently liable to pay to or for the account of it (but not Secured Money payable to it for the account of any other Beneficiary or in any other capacity);
- (b) in the case of the Lender, the undrawn Commitment of the Lender plus the amount of the Lender's participation in the total principal amount outstanding under each Loan Agreement; or
- (c) in the case of a New Financier, the undrawn Commitment of the New Financier plus the amount of that New Financier's participation in the total principal amount outstanding under the New Financier's financing agreement with the Borrower.

**Finance Document** means:

- (a) this Deed;
- (b) a Security Interest;
- (c) a Loan Agreement;
- (d) a document defined in a Loan Agreement as a Finance Document;
- (e) a Tripartite Deed;
- (f) a Recognition Certificate;
- (g) a Guarantee in respect of any of the Secured Money;
- (h) a New Finance Document;
- (i) another document which the parties to this Deed agree is a Finance Document; or

- (j) a document or agreement entered into or provided under or in connection with, or for the purpose of amending, assigning or novating, any of the above. It includes a written undertaking by or to a party or its lawyers under or in relation to any of the above.

**Liquidation** includes receivership or other appointment of a controller, deregistration, compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy.

**Loan Agreement** means:

- (a) the Loan Agreement – Facility A; or  
(b) the Loan Agreement – Facility B.

**Loan Agreement – Facility A** means the Loan Agreement – Facility A dated on or about the date of this Deed between the Borrower and the Lender.

**Loan Agreement – Facility B** means the Loan Agreement – Facility B dated on or about the date of this Deed between the Borrower and the Lender.

**Loss** means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

**Majority Beneficiaries** means a Beneficiary or Beneficiaries whose Exposures are more than two thirds of the total Exposures of all Beneficiaries.

**New Finance Document** means a document relating to the financing arrangements between the Borrower and a New Financier recognised in a Recognition Certificate issued under clause 4.

**New Financier** means a financier recognised in a Recognition Certificate issued under clause 4.

**Nominated Account** means:

- (a) any bank account opened by an Obligor before or after the execution of this Deed nominated by the Lender; or  
(b) if no such account is nominated:  
(i) an account of an Obligor with the Lender specified by an Obligor; or  
(ii) any other ADI Account (as defined in the PPSA) over which the Lender has control (as defined in section 341 of the PPSA), specified by an Obligor.

**Obligor** means the Borrower or a Security Provider.

**Potential Event of Default** means anything which with time, notice or both would become an Event of Default.

**Power** means a power, right, authority, discretion or remedy which is conferred on a Beneficiary or a Receiver or Attorney:

- (a) by this Deed or any Security Interest; or  
(b) by law in relation to this Deed or any Security Interest.

**PPS Register** has the meaning given to the term 'register' in the PPSA.

**Receiver** means a receiver or receiver and manager appointed under any Security Interest.

**Recognition Certificate** means a certificate substantially in the form of Schedule 3 or any other document recognising a New Financier which is executed by the Security Trustee and which states that it is a Recognition Certificate.

**Secured Money** means all money which an Obligor (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of a Beneficiary (whether alone or not) for any reason whatever under or in connection with a Finance Document, whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with a Finance Document, or as a result of a breach of or default under or in connection with a Finance Document.

Where an Obligor would have been liable but for its Liquidation or a set-off claimed by it, it will be taken still to be liable.

**Secured Property** means the property mortgaged or charged by a Security Interest.

**Security Interest** means:

- (a) the General Security Deed dated on or about the date of this Deed between, among others, the Borrower and the Security Trustee; and
- (b) any Ancillary Security.

**Security Trust** means the trust known as the CPPIB Australia 2015 Security Trust established under this Deed.

**Tripartite Deed** means:

- (a) the tripartite deed – CHESS sponsorship dated on or about the date of this Deed between Jingle SPV 2, the Security Trustee and UBS Securities Australia Limited (ABN 62 008 586 481); or
- (b) the tripartite deed – CHESS sponsorship dated on or about the date of this Deed between the Borrower, the Security Trustee and UBS Securities Australia Limited (ABN 62 008 586 481).

**Trust** means the CPPIB Australia Trust.

**Trust Fund** means:

- (a) any Security, Guarantee or right of the Security Trustee or obligation to the Security Trustee, in each case arising in its capacity as trustee under this Deed;
- (b) any proceeds of the above or any investment of the proceeds;
- (c) the sum of A\$10 referred to in clause 2.1; and
- (d) any other assets which the Security Trustee acquires as trustee under this Deed.

**Wilful Default** means, in respect of the Security Trustee, any wilful failure to comply with, or wilful breach by, the Security Trustee of any of its obligations under any Finance Document to which the Security Trustee is a party, other than a failure or breach which:

- (a) arises as a result of a breach of a Finance Document by a person other than the Security Trustee and (subject to any provisions of the Finance Documents which limit its liability in respect of the acts and omissions thereof) its agents and delegates;
- (b) is in accordance with a lawful court order or direction or is required by law; or
- (c) is in accordance with a proper instruction or direction of the Beneficiaries instructing it in accordance with this Deed.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) Nothing in this Deed is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and the converse.
  - (ii) A gender includes all genders.
  - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Deed.
  - (vi) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
  - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
  - (viii) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
  - (ix) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
  - (x) Each paragraph in a list is to be construed independently. None limits any other.
  - (xi) All references to **time** are to Melbourne time.

## 1.3 Document or agreement

A reference to:

- (a) an **agreement** includes a Security, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

## 1.4 Listing requirements included as *law*

A listing rule, business rule or market integrity rule of a financial market (as defined in the *Corporations Act 2001*) will be regarded as a **law**.

## 1.5 Obligors' obligations

The obligations of the Obligors under this Deed are joint and several. Nothing relating to one or more Obligors, such as:

- (a) failure to execute this Deed;

- (b) this Deed not being enforceable against them;
  - (c) their release or Liquidation,
- will prejudice or diminish the obligations of the other Obligors under this Deed.

### **1.6 Beneficiaries' obligations**

The obligations and rights of each Beneficiary under this Deed are several and:

- (a) failure of a Beneficiary to carry out its obligations does not relieve any other Beneficiary of its obligations;
- (b) no Beneficiary is responsible for the obligations of any other Beneficiary or the Security Trustee; and
- (c) subject to the Finance Documents, each Beneficiary may separately enforce its rights under this Deed.

### **1.7 Business Day**

If any thing is to be done on a day which is not a Business Day, that thing must be done on or by the next Business Day in the same calendar month or, if none, the preceding Business Day except where a Finance Document provides otherwise.

### **1.8 Inconsistency**

This Deed prevails over the other Finance Documents to the extent of any inconsistency (in the sense that it is impossible to comply with both) unless otherwise expressly provided.

### **1.9 Consents and Opinion**

Except where expressly stated any Beneficiary may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions, and may exercise its Powers, at its absolute discretion.

### **1.10 Limited recourse to Obligors**

Notwithstanding anything contained in the Finance Documents, each Beneficiary acknowledges that in satisfying any demand or claim which the Beneficiary may make on an Obligor in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Beneficiaries will be limited to the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed;
- (b) no Obligor will in any circumstances have any liability whatsoever to the extent that its 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security Interest over all of the 'Collateral' (as defined in the General Security Deed) of an Obligor and distribution of the proceeds in accordance with this Deed, or if an Obligor, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), that Obligor will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.10 limits the liability of an Obligor for any loss, cost or expenses suffered or incurred by a Beneficiary arising from an Obligor's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.10 (*Limited recourse to Obligors*) is not severable from this Deed.

### 1.11 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, an Obligor will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Obligor has not been reimbursed for.

### 1.12 Lender limitation of liability

Notwithstanding any other provision in this Deed:

- (a) The Lender enters into this Deed only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Deed is limited to and can be enforced against the Lender only to the extent to which it can be satisfied out of property of the Trust out of which the Lender is actually indemnified for the liability. This limitation of the Lender's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Lender in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- (b) The parties other than the Lender may not sue the Lender in any capacity other than as trustee of the Trust, including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Lender or prove in any liquidation, administration or arrangement of or affecting the Lender (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Lender to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Lender's indemnification out of the assets of the Trust, as a result of the Lender's fraud, negligence or wilful default.
- (d) No act or omission of the Lender (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default of the Lender for the purpose of paragraph (c) of this clause to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Lender in a way which exposes the Lender to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Lender for the purpose of paragraph (c) of this clause.
- (f) The Lender is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Lender's liability is limited in the same manner as set out in paragraphs (a) to (c) of this clause.

## 2 Declaration of Trust

### 2.1 Declaration of trust

The Security Trustee declares that it holds on trust for the Beneficiaries:

- (a) the sum of A\$10 in Victoria; and
- (b) any other assets which the Security Trustee acquires as trustee under this Deed, including:
  - (i) any Security, Guarantee or right of the Security Trustee or obligation to the Security Trustee; and
  - (ii) any proceeds of the above or any investment of the proceeds.

### 2.2 Term of trust

The trust commences on the date of this Deed and, unless terminated earlier, ends on the day before the 80th anniversary of the date of this Deed.

### 2.3 Name of trust

The trust is to be known as the CPPIB Australia 2015 Security Trust.

### 2.4 Nature of interest of Beneficiaries

If, but only so long as, the acquisition of, transfer to or holding (**Dealing**) by a Beneficiary of a beneficial interest in an interest as a secured party in property comprised in the Secured Property (**Property**) would give rise to:

- (a) ad valorem stamp duty in any jurisdiction in Australia as administered by the relevant Government Agency for that jurisdiction; or
- (b) a contravention of any contractual arrangement or any law or policy or directive of a Government Agency in Australia (which, if not having the force of law, is one with which prudent persons have the custom of complying),

then:

- (c) that Beneficiary will not hold any beneficial interest in that Property, but will hold a beneficial interest in any proceeds of the sale of that Property by the Security Trustee.

Without limitation, if the Dealing would contravene or give rise to a notification requirement under Australia's Foreign Investment Policy, as published by the Treasurer of the Commonwealth of Australia from time to time, or the *Foreign Acquisitions and Takeovers Act 1975* (Cth), paragraph (c) will apply until the Treasurer has stated that there is no objection to the Beneficiary's Dealing in the Property.

## 3 Relationship of Beneficiaries to Security Trustee

### 3.1 Authority

Subject to clause 3.22, the Security Trustee is irrevocably appointed and authorised to enter into the Finance Documents and act as trustee for the Beneficiaries.

### 3.2 Limitation of liability

- (a) The Security Trustee enters into each Finance Document (other than this Deed) only in its capacity as trustee of the Security Trust and in no other capacity. Notwithstanding any other provisions of this Deed or any other Finance Document, a liability arising under or in connection with this Deed or any other Finance Document is limited to and can be



enforced against the Security Trustee only to the extent to which it can be satisfied out of the property of the Trust Fund out of which the Security Trustee is actually indemnified for the liability. This limitation of the Security Trustee's liability applies despite any other provision of this Deed or any other Finance Document and extends to all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or any Finance Document.

- (b) The parties other than the Security Trustee may not sue the Security Trustee in any capacity other than as trustee of the Security Trust, including seek the appointment of a receiver (except in relation to the Trust Fund), a liquidator, an administrator or any similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Trust Fund).
- (c) The provisions of this clause 3.2 shall not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Trust Fund as a result of the Security Trustee's fraud, gross negligence or Wilful Default.
- (d) No act or omission of the Security Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed or any other Finance Document) will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 3.2(c) to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Security Trust or by any other act or omission of any other person.
- (e) No attorney, agent, delegate, receiver or receiver and manager appointed in accordance with this Deed or any other Finance Document has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 3.2(c).
- (f) For the avoidance of doubt, the Security Trustee is not obliged to use its own funds in performing obligations under any Finance Document (including this Deed).

### 3.3 Limit on liability

Subject to clause 3.4, the Security Trustee is not, and its directors, Authorised Officers, employees, agents and attorneys are not, liable to any party for:

- (a) any Loss occurring as a result of it exercising, failing to exercise or purporting to exercise any Power under this Deed or in relation to the Security Interest;
- (b) subject to this Deed, the actions of any agent, delegate, Authorised Officer or employee of the Security Trustee;
- (c) any mistake or omission made by it or its agent, delegate, Authorised Officer or employee;
- (d) any other matter or thing done, or not done, in relation to the Security Interest;
- (e) any absence of, or defect in title or for its inability to exercise any of its Powers under the Security Interest;
- (f) any failure by an Obligor to perform its obligations under any Finance Document or Security Interest;
- (g) any failure by a Beneficiary to:
  - (i) perform its obligations under any other Finance Document; or



- (ii) provide instructions where requested by the Security Trustee in accordance with this Deed;
- (h) the financial condition or solvency of an Obligor;
- (i) any statement, representation or warranty of an Obligor being incorrect or misleading in any respect;
- (j) any failure or delay in performing its duties or obligations where it is impossible for the Security Trustee to act or to act lawfully due to any cause beyond its control (including but not limited to act of God, war, riot, terrorism, fire, natural disaster, labour dispute or law taking effect after the date of this Deed);
- (k) acting in accordance with the instructions of the Beneficiaries in accordance with this Deed, or in the absence of instructions in accordance with clause 3.6, or for refraining from acting:
  - (i) in accordance with the instructions of the Beneficiaries, in accordance with this Deed; or
  - (ii) where there are no instructions which are required by this Deed for the Security Trustee to act or refrain from acting;
- (l) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Security or any other Finance Document or any other certificate or document given under any of them; and
- (m) any recitals, statements, representations or warranties contained in any Finance Document or in any certificate or other document referred to in or provided for in, or received by it under, any Finance Document.

### 3.4 Exceptions to limit on liability

Clause 3.2 will not apply to the extent that the Security Trustee or, as the case may be, any of its employees, agents or Authorised Officers has been guilty of fraud, gross negligence or Wilful Default. None of the following of itself will amount to fraud, gross negligence or Wilful Default of the Security Trustee:

- (a) failure by the Security Trustee to act due to lack of instructions or lack of proper or clear instructions from the Beneficiaries instructing it; or
- (b) any act or omission, to the extent caused or contributed to by any failure by any other person (other than the Security Trustee's employee or officer).

### 3.5 Powers

The Powers of the Security Trustee include power to do anything which is incidental or desirable to give effect to any Power.

### 3.6 Instructions; extent of discretion

- (a) In the exercise of all rights, powers and discretions on behalf of the Beneficiaries under the Finance Documents, the Security Trustee shall act in accordance with the instructions (if any) of the Majority Beneficiaries or (where so specified) of all Beneficiaries.
- (b) If it neither seeks (not being obliged to) nor receives those instructions, the Security Trustee need not act. However, it may act as it sees fit in the best interests of all Beneficiaries.

- (c) Except as expressly provided in a Finance Document to which it is a party, the Security Trustee need not seek the instructions of, or consult with, any Beneficiaries (but may do so).
- (d) Any action taken by the Security Trustee in accordance with the Finance Documents binds all the Beneficiaries.

### **3.7 No obligation to investigate authority**

- (a) No Obligor need enquire whether any instructions from Beneficiaries have been given to the Security Trustee or as to the terms of those instructions.
- (b) As between any Obligor on the one hand and the Security Trustee and the Beneficiaries on the other, all action taken by the Security Trustee under the Finance Documents will be taken to be authorised.

### **3.8 Duties**

The Security Trustee has no duties or responsibilities except those expressly provided in the Finance Documents to which it is a party.

### **3.9 No liability**

None of the Security Trustee nor any of its directors, officers, employees, agents, attorneys or Related Entities is responsible to the Beneficiaries for, or will be liable (whether in negligence or on any other ground) in respect of any of the following whether before or after the date of this Deed.

- (a) Any conduct relating to any loan proposal, prospectus, offering circular, information memorandum or other information, any document or agreement or any transaction.
- (b) The value, validity, effectiveness, genuineness, enforceability or sufficiency of any document or agreement or any transaction.
- (c) Any default by any Obligor.
- (d) Any action taken or not taken by it or them under any Finance Document except in the case of its or their own fraud, Wilful Default or gross negligence.

### **3.10 Delegation**

The Security Trustee may employ agents and attorneys.

### **3.11 Reliance on documents and experts**

The Security Trustee may rely on:

- (a) any document or communication (including any electronic transmission) believed by it to be genuine and correct; and
- (b) advice and statements of lawyers, independent accountants and other experts selected by the Security Trustee.

### **3.12 Notice of transfer**

The Security Trustee may treat each Beneficiary as the holder of the Beneficiary's rights under the Finance Documents until the Security Trustee has received notice of assignment satisfactory to the Security Trustee.

### 3.13 Security Trustee as Beneficiary and banker

- (a) The Security Trustee may be a Beneficiary in its private or another capacity. As a Beneficiary, the Security Trustee has the same rights and powers as any other Beneficiary. It may exercise them as if it were not the Security Trustee.
- (b) The Security Trustee may conduct any business with any Obligor (or any of its Subsidiaries), or any person who gives or creates a Guarantee or Security, as if it were not the Security Trustee. It does not have to account to the Beneficiaries for any fees or profit relating to that other business.

### 3.14 Indemnity out of Trust Fund

Subject to clause 3.16, the Security Trustee is and will be indemnified out of any money from time to time received or recovered by the Security Trustee under each Security in respect of all Losses, fees and expenses (including any moneys paid or to be paid for the employment or appointment of any agent and including legal costs and expenses on a full indemnity basis) incurred by or payable to it:

- (a) in the exercise, protection or defence of any Powers or in performing any of its obligations, duties or responsibilities; or
- (b) otherwise in relation to a Security or other Finance Document.

The Security Trustee may, from time to time, retain and pay out of any money recovered from the Securities an amount to satisfy such indemnity.

### 3.15 Indemnity by Beneficiaries

- (a) The Beneficiaries (other than the Security Trustee) shall indemnify the Security Trustee separately (pro rata proportion according to their Commitments) against, and must pay to the Security Trustee within 2 Business Days after demand the amount equal to, any Loss incurred by the Security Trustee (otherwise than by reason of the Security Trustee's fraud, Wilful Default or gross negligence) in acting as Security Trustee under the Finance Documents. For the avoidance of doubt, "Loss" for the purpose of this clause 3.15 will include so much of any amount due by an Obligor to the Security Trustee under any Finance Document which is not paid when due or which is paid but which the Security Trustee is subsequently obliged to repay or refund (including by reason of the operation of any intercreditor deed or other Finance Document or any law relating to insolvency or any other law).
- (b) The indemnity in clause 3.15(a) is in addition to, and without prejudice to, any right of indemnity available to the Security Trustee in law or equity or in any other Finance Document.

### 3.16 Exceptions to indemnities

The indemnity in clause 3.14 does not apply to the extent of any Loss of the Security Trustee as a result of the Security Trustee's fraud, gross negligence or Wilful Default.

### 3.17 Deemed Secured Money

Any amount a Beneficiary is required to pay under clause 3.15(a) is deemed to be Secured Money and payable subject to clause 1.10 (*Limited Recourse to Obligors*).

### 3.18 Knowledge and awareness of Security Trustee

- (a) For the purposes of each Finance Document, the Security Trustee will only be considered to have knowledge, notice of or awareness of any matter or thing to the extent of actual

knowledge, actual notice of or actual awareness of the officers or employees of the Security Trustee who have day to day responsibility for the administration of the Security Trustee's obligations under this Deed or the Security Trust.

- (b) The Security Trustee is deemed not to know of a breach of a Finance Document, an Event of Default or a Potential Event of Default unless the Security Trustee has received notice from a Beneficiary or an Obligor stating that the breach, Event of Default or Potential Event of Default has occurred.
- (c) Clause 22.1(b) does not apply for the purposes of this clause 3.18.
- (d) Until it becomes aware of a breach of a Finance Document, an Event of Default or Potential Event of Default in accordance with this clause 3.18, the Security Trustee may assume that no breach, Event of Default or Potential Event of Default has occurred and that all obligations of each Obligor in connection with the Finance Documents are being observed, and need not inquire whether this is true.
- (e) If the Security Trustee becomes aware of an Event of Default or Potential Event of Default under paragraph (a) it shall promptly notify the Beneficiaries.

### **3.19 Independent investigation of credit**

Each Beneficiary has made and will continue to make, independently and without reliance on the Security Trustee or any other Beneficiary:

- (a) its own investigations into the affairs of the Obligors; and
- (b) its own analyses and decisions whether to enter the Finance Documents or to take or not take action under them.

### **3.20 No monitoring**

The Security Trustee is not required to monitor compliance with any document or agreement or to do any inspections.

### **3.21 Information**

- (a) The Security Trustee will provide to each Beneficiary a copy of each notice, report and other document given to it under any Finance Document to which it is a party in sufficient copies for the Beneficiaries.
- (b) Each Obligor authorises the Security Trustee to provide any Beneficiary with any information concerning it. The Security Trustee need not do so.
- (c) The Security Trustee need not disclose any information if in the opinion of the Security Trustee (on the advice of its legal advisers) disclosure might breach a law or obligation of confidentiality.

### **3.22 Replacement of Security Trustee**

- (a) Subject to the appointment of its successor:
  - (i) the Security Trustee may resign by giving not less than 30 days prior notice to the Beneficiaries and the Borrower; and
  - (ii) the Majority Beneficiaries may remove the Security Trustee by giving at least 30 days prior notice to the Borrower and the Security Trustee.
- (b) After that notice is given, the Majority Beneficiaries may appoint a successor Security Trustee unless the Security Trustee has resigned under sub-paragraph (a)(i) and appointed a Related Entity as its successor.

- (c) If no successor Security Trustee is appointed within 30 days after notice the retiring Security Trustee may appoint a successor without any person's approval but only after consultation with the Beneficiaries.
- (d) On its appointment, the successor will have all the rights, powers and obligations of the retiring Security Trustee. The retiring Security Trustee will be discharged from its rights, powers and obligations (other than liabilities preserved under paragraph (f)).
- (e) The retiring Security Trustee shall execute and deliver all documents or agreements which are necessary or in its opinion desirable to transfer to the successor all assets (including each Security and Guarantee) held by the retiring Security Trustee as Security Trustee or to effect the appointment of the successor Security Trustee. It shall deliver to its successor all its documents and external communications it received or gave as Security Trustee.
- (f) After any retiring Security Trustee's resignation or removal, this Deed will continue to apply to anything done or not done by it before then as Security Trustee.
- (g) The Borrower need not pay the cost of the appointment of a successor Security Trustee. That cost will be borne:
  - (i) where the Security Trustee has resigned or has been removed because it has failed to perform its obligations or has been negligent as Security Trustee, by the retiring Security Trustee; and
  - (ii) where the Security Trustee has been otherwise removed by the Majority Beneficiaries, by those Majority Beneficiaries.

At the successor Security Trustee's request, the Beneficiaries (other than the Security Trustee) shall negotiate in good faith the fees to be paid to the Security Trustee. Until they are agreed, the Beneficiaries will pay the successor the same fees at the same times as it agreed with the retiring Security Trustee.

### 3.23 Amendment of Finance Documents

- (a) Subject to paragraph (b), the Security Trustee is authorised on behalf of the Beneficiaries to amend any Finance Document to which it is a party or to grant any waiver or release under those Finance Documents if:
  - (i) the Security Trustee is satisfied that it corrects a manifest or minor error or is of a formal or technical nature only;
  - (ii) it is necessary to permit a transaction which complies with the Finance Documents; or
  - (iii) the Majority Beneficiaries have notified the Security Trustee of their agreement to it.
- (b) The Security Trustee shall not amend a Finance Document, or grant a waiver or release under a Finance Document, if it would:
  - (i) increase the obligations or Exposure of any Beneficiary without the consent of that Beneficiary;
  - (ii) change the date, amount, priority or order of any payment to any Beneficiary without the consent of that Beneficiary;
  - (iii) discharge or release any Guarantee or Security existing for the benefit of a Beneficiary without the consent of that Beneficiary, other than to permit a

transaction which complies with the Finance Documents (including on enforcement);

- (iv) change the definition of Majority Beneficiaries, without the consent of all Beneficiaries; or
  - (v) change any requirement for the agreement or instructions of all or a specified majority of Beneficiaries (or any category of them) to be obtained, without the consent of each Beneficiary entitled to be counted in determining whether that requirement is satisfied.
- (c) In making an assessment for the purposes of clause 3.23(a)(ii) or clause 3.23(b), the Security Trustee may require a written statement from each Beneficiary party to such Finance Document or the Majority Beneficiaries (as applicable) as to the compliance or otherwise of the proposed amendment, waiver or release under the terms of the Finance Documents (among other things).
- (d) Each Beneficiary will be bound by any amendment, waiver or release by the Security Trustee in accordance with this clause 3.
- (e) Nothing in this clause 3 limits the right of a Beneficiary to grant a waiver or release.

### **3.24 Security Trustee's fees**

The Beneficiaries shall pay the Security Trustee fees as agreed from time to time between the Beneficiaries and the Security Trustee.

### **3.25 No obligations**

Despite any other provision of the Finance Documents, the Security Trustee need not do anything under a Finance Document (including enforcement and even where instructed to do so) if it believes:

- (a) the proceeds will not be sufficient to reimburse the Security Trustee for its costs, charges or expenses or to indemnify it; or
- (b) it is impossible to act or to act lawfully due to any cause beyond its control.

### **3.26 Security Trustee dealings**

Except where expressly provided otherwise:

- (a) all correspondence under or in relation to the Finance Documents to which the Security Trustee is a party, as between a Beneficiary on the one hand, and an Obligor on the other, will be made through the Security Trustee; and
- (b) the Beneficiaries and the Obligors severally agree to deal with and through the Security Trustee in accordance with this Deed.

### **3.27 Distribution of Marketable Securities**

The Security Trustee agrees that, in the exercise of any Powers, it will not make any in specie distribution of Marketable Securities to any Beneficiary without the prior consent of that Beneficiary.

## **4 New Financiers**

### **4.1 Request for recognition of New Financiers**

If the Borrower wishes any financier to be recognised as a New Financier, it must provide the Security Trustee with:

- (a) details of the new financing arrangements, including the name of each financier;
- (b) a copy, certified by an Authorised Officer of the Borrower, of each document relating to the financing arrangements with each financier; and
- (c) any additional information requested by the Security Trustee.

#### **4.2 Recognition of New Financier**

If the Security Trustee is satisfied that:

- (a) recognising the new financier as a New Financier and the relevant documents as New Finance Documents and the incurring under them of Finance Debt secured by the Security Interests is permitted under the Finance Documents to which it is a party;
- (b) neither the proposed Exposure of the financier nor the financier becoming a Beneficiary will require any Finance Document to which it is a party to be stamped with ad valorem stamp duty, or if it does, that the Borrower, the new financier or another person has paid that stamp duty, or undertakes to the satisfaction of the Security Trustee to pay it; and
- (c) all of the Beneficiaries agree to recognise the new financier as a New Financier and the relevant documents as New Finance Documents,

the Security Trustee will issue a Recognition Certificate recognising the new financier as a New Financier and the relevant documents as New Finance Documents.

#### **4.3 Recognition Certificate conclusive**

A Recognition Certificate will be conclusive evidence of the matters stated in it, in the absence of manifest error.

#### **4.4 Ceasing to be a Beneficiary**

- (a) The Security Trustee may by notice request a Beneficiary to confirm whether at the time of the notice:
  - (i) that Beneficiary's Exposure has been reduced to nil; and
  - (ii) no Obligor has any unsatisfied obligations (present or future, actual or contingent) to that Beneficiary under or in connection with any Finance Document.
- (b) If a Beneficiary gives the Security Trustee an affirmative confirmation in writing under paragraph (a), whether on request by the Security Trustee or otherwise, then on receipt of that confirmation by the Security Trustee, the Beneficiary will cease to be a Beneficiary.

### **5 Distribution of Money**

#### **5.1 Overriding application**

This clause applies despite any rule of law or equity to the contrary or the respective dates on which anything is done.

#### **5.2 Distribution by Security Trustee**

The Security Trustee shall apply all money received or recovered by it which is available for distribution in or towards payment or repayment of the Secured Money in the following order.

- (a) First: all costs, charges and expenses of the Security Trustee or any Receiver or Attorney which are incurred in or are incidental to the actual or attempted exercise or performance of a Power or otherwise in relation to any Finance Document, including any fees.



- (b) Second: any other outgoings which the Security Trustee or any Receiver or Attorney thinks fit to pay.
- (c) Third: any Receiver's remuneration.
- (d) Fourth: to each holder of a Security of which the Security Trustee is aware and which has priority in relation to the relevant Secured Property, to the extent, and in order, of priority.
- (e) Fifth: to itself for the account of the Beneficiaries towards satisfaction of the Secured Money rateably among the Beneficiaries according to their amounts outstanding or in any other manner agreed by the Security Trustee and all Beneficiaries.
- (f) Sixth: to each holder of a Security of which the Security Trustee is aware and which ranks after any Security Interest in relation to the relevant Secured Property, to the extent, and in order, of priority.
- (g) Seventh: the surplus (if any) belongs to the relevant Obligor. The surplus will not carry interest.

If the Security Trustee pays the total amount referred to in paragraph (f) and (g) to the credit of an account in the name of the next ranking holder of a Security or if none, in the name of the relevant Obligor with any bank carrying on business in Australia, the Security Trustee, Receiver or Attorney (as the case may be) will be under no further liability in respect of it.

### **5.3 Money actually received**

In applying any money toward satisfaction of the Secured Money an Obligor will be credited only with the money available for that purpose which is actually received by the Security Trustee. The credit will date from the time of receipt.

### **5.4 Amounts contingently due**

If any Secured Money is contingently owing to any Beneficiary at the time of a distribution of an amount under clause 5.2, the Security Trustee may retain any of that amount. If it does, it shall place the amount retained on short term interest bearing deposit until the relevant Secured Money becomes actually due or ceases to be contingently owing, and the Security Trustee will then:

- (a) pay to that Beneficiary the amount which becomes actually due to it; and
- (b) apply the balance of the amount retained (together with interest earned on the deposit) in accordance with clause 5.2.

### **5.5 Payments through Security Trustee**

- (a) If so instructed by the Majority Beneficiaries after an Event of Default has occurred the Security Trustee shall direct each Obligor to make all payments of Secured Money through the Security Trustee.
- (b) Subject always to clause 1.10, on receipt of that direction each Obligor will make all payments under the Finance Documents to the Security Trustee on behalf of the Beneficiaries until directed otherwise by the Security Trustee acting on the instructions of the Majority Beneficiaries.
- (c) Subject to clause 5.2, the Security Trustee shall distribute the amount paid in accordance with the Finance Documents among the Beneficiaries rateably according to their Exposures.



## 5.6 Conversion of currencies on application

For the purpose of making an application under clause 5.2 the Security Trustee, or any Receiver or Attorney, may purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and at the time it thinks fit.

## 5.7 Statement of Secured Money

- (a) If requested by the Security Trustee each Beneficiary shall promptly provide it with:
  - (i) a statement showing details of the Secured Money owing to that Beneficiary or its Exposure at the date of the statement; and
  - (ii) any information which the Security Trustee reasonably requests in relation to the calculation of the amounts referred to in sub-paragraph (i).
- (b) The Security Trustee may rely on any statement given by a Beneficiary under paragraph (a) as conclusive evidence of the amount of Secured Money owing to the Beneficiary or its Exposure on the date of the statement and may assume the amount of Secured Money owing to a Beneficiary or its Exposure remains unchanged until it is otherwise notified in writing by the Beneficiary. This will not prejudice any rights of an Obligor against the Beneficiary.

## 5.8 Other Securities over Secured Property

- (a) The Security Trustee, any Beneficiary and any Receiver or Attorney may rely on the certificate of a holder of another Security affecting or purporting to affect any Secured Property as to the amount and property secured by the Security.
- (b) After having received instructions from the Majority Beneficiaries to do so, the Security Trustee or any Receiver may pay or agree to pay at any time the amount certified by the holder of a Security or purported Security to be necessary to discharge it or some of the indebtedness secured by it, or to acquire it. From the date of payment that amount will be part of the Secured Money and the Beneficiaries (pro rata according to their Commitments) shall indemnify the Security Trustee and the Receiver against that amount. This applies whether or not that Security or purported Security was valid or prior, equal or subsequent ranking or the property or money stated in the certificate was secured by it.

## 6 On-Loan Agreement restrictions

- (a) **(Compliance and enforcement of On-Loan Agreement)** Each of the Borrower and Jingle SPV 2 will:
  - (i) comply with its obligations under the On-Loan Agreement;
  - (ii) in the case of the Borrower, enforce the On-Loan Agreement and exercise its rights, authorities and discretions under the On-Loan Agreement prudently and, while an Event of Default or Potential Event of Default continues, in accordance with the directions (if any) of the Security Trustee; and
  - (iii) use its best endeavours to keep the On-Loan Agreement valid and enforceable.
- (b) **(Variation of On-Loan Agreements)** Each of the Borrower and Jingle SPV 2 will not and cannot:
  - (i) do anything which has the effect of varying or supplementing;
  - (ii) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;

- (iii) do or permit anything which would entitle another party to do anything referred to in sub paragraph (ii) in relation to; or
- (iv) expressly or impliedly grant any waiver, consent, release, time or indulgence under or in respect of,

the On-Loan Agreement without the prior consent of the Security Trustee. Any such thing without that consent will be ineffective.

## 7 Tax

If an Obligor is required to deduct any Tax from any payment (except an Excluded Tax), then:

- (a) it shall pay that amount to the appropriate authority and promptly give the Beneficiary evidence of payment; and
- (b) the amount payable is increased so that (after deducting that tax and paying any taxes on the increased amount) the Beneficiary receives the same amount it would have received had no deduction been made.

## 8 Interest on Overdue Amounts

### 8.1 Accrual and payment

- (a) **(Accrual)** Except where the relevant Finance Document provides otherwise, interest accrues on each unpaid amount which is due and payable by an Obligor under or in respect of any Finance Document (including interest under this clause):
  - (i) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
  - (ii) both before and after judgment (as a separate and independent obligation); and
  - (iii) at the rate of 7% pa.
- (b) **(Payment)** Subject always to clause 1.10, each Obligor shall pay interest accrued under this clause on demand by the Beneficiary to whom the unpaid amount is payable and on the last Business Day of each calendar quarter. That interest is payable in the currency of the unpaid amount on which it accrues.

## 9 Expenses, Indemnities

### 9.1 Expenses

The Beneficiaries (pro rata according to their Commitments) must pay or reimburse on demand by the Security Trustee all costs and expenses of the Security Trustee, a Receiver and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, any Finance Document;
- (b) a variation, release or discharge of any Finance Document and the production of any title document;
- (c) preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPSA) (including pursuant to section 167 of the PPSA);
- (d) complying with any amendment demand (as defined in the PPSA) in accordance with Part 5.6 of the PPSA; and

- (e) giving a consent or approval or waiving a requirement in connection with a Finance Document.
- (f) This includes legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

## 9.2 Indemnities

The Beneficiaries (other than the Security Trustee) shall indemnify the Security Trustee (pro rata according to their Commitments) against any Loss, liability or expense (including legal costs on a full indemnity basis) which the Security Trustee (or any its officers or employees) incurs as a result of or in connection with:

- (a) any Event of Default or breach of the Finance Documents;
- (b) any exercise or attempted exercise of any Power under any Finance Document or any failure to exercise any Power; and
- (c) the Secured Property or the existence of any interest in or control or Power with respect to the Secured Property.

## 9.3 As between Obligors and Beneficiaries

The Beneficiaries (other than the Security Trustee) must indemnify each Obligor (pro rata according to their Commitments) for an Obligor's properly incurred costs and expenses (other than any costs in relation to in-house legal counsel) and all stamp, transaction, registration and other Taxes in relation to any Finance Document, to the extent that an Obligor does not have funds available to it to meet such costs and expenses. The obligations of the Beneficiaries under this clause apply notwithstanding any arrangement to the contrary as set out in the Consortium MoU.

## 10 Control Accounts

The accounts kept by the Security Trustee constitute sufficient evidence, unless proven wrong, of the amount at any time due from any Obligor under this Deed.

## 11 Personal Property Securities (PPS) Law

### 11.1 General PPSA Provisions

To the extent that a security interest (as defined in the PPSA) is created under a Finance Document, the following applies.

- (a) No Beneficiary need give any notice under the PPSA (including a notice of a verification statement) under or arising out of anything relating to that security interest or Finance Document unless the notice is required by the PPSA and the giving of it cannot be excluded.
- (b) The Borrower waives its right to receive anything from any Beneficiary under section 275 of the PPSA, and shall not make any request of any Beneficiary under that section.
- (c) The Borrower authorises and requests each Beneficiary under section 275(7)(c) of the PPSA to obtain from the holder of any other Security or PPSA Deemed Security Interest over the relevant collateral any of the information referred to in section 275(1) of the PPSA.
- (d) Each party contracts out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1) and 135. However, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an

express or implied right on the part of a Beneficiary provided for in the relevant Finance Document.

- (e) Any disposal or other exercise of any right, power or remedy under this Deed will only be taken to be made under a provision which has not been excluded in paragraph (d), if the relevant secured party so elects.

## 11.2 Perfection of Security Interests

The Security Trustee will act on the instructions of the Majority Beneficiaries in determining whether or not to perfect, for the purposes of the PPSA, any Security Interest created under a Finance Document.

## 11.3 Security Trustee obligations

- (a) The Security Trustee agrees to comply with any reasonable instructions given to it by the Majority Beneficiaries under this clause 11, on the condition that:
  - (i) the instructions contain sufficient detail as to the action required of the Security Trustee;
  - (ii) if the instructions are not sufficiently detailed to enable the Security Trustee to comply, the Security Trustee is not required to take any action other than to inform the Beneficiaries that this is the case and specify the reason the Security Trustee is unable to comply; and
  - (iii) in the absence of any such instructions, the Security Trustee is not required to take any action with respect to the PPSA.
- (b) The Security Trustee is not responsible or liable to any person for any Loss arising in relation to the Securities or the Security Trust in connection with the registration, perfection, enforceability or priority of any security interest under the PPSA, the new PPS Register, any defect in registration or loss of priority in connection therewith, acting on any directions given to it under this clause 11 or any failure of the Majority Beneficiaries to comply with its obligations under this clause 11, except to the extent that such Loss is as a result of a breach by the Security Trustee of its obligations under this clause 11.
- (c) Despite any other provision of this Deed or any other Finance Document, the Security Trustee is not required to:
  - (i) take any action with respect to the PPSA, other than in compliance with a direction given under this clause 11 and subject to this clause 11;
  - (ii) make enquiries or satisfy itself that an instruction purported to be given under this clause 11 has been given in accordance with this clause; or
  - (iii) ensure the PPSA is complied with in relation to the Securities or the Security Trust (other than as contemplated by this clause 11).

## 11.4 Beneficiary assistance

Each Beneficiary agrees to provide all assistance reasonably requested by the Security Trustee to enable the Security Trustee to comply with its obligations under the PPSA. This includes, without limitation, providing any information reasonably requested by the Security Trustee:

- (a) to enable the Security Trustee to comply with any obligation under Chapter 4 of the PPSA; or
- (b) to enable the Security Trustee to respond to a request made of it under section 275 of the PPSA,

in each case, by the time reasonably specified by the Security Trustee.

## 12 Duties and GST

### 12.1 Duties

- (a) The Beneficiaries (other than the Security Trustee) shall (pro rata according to their Commitments) pay or reimburse the Security Trustee for all stamp, transaction, registration and similar Taxes (including fines and penalties) on or in relation to the execution, delivery, performance or enforcement of any Finance Document or any payment, receipt or other transaction contemplated by any Finance Document.
- (b) The Beneficiaries (other than the Security Trustee) shall (pro rata according to their Commitments) indemnify the Security Trustee against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by the Security Trustee to pay any Tax after having been put in funds (with all necessary documents) to do so by the Beneficiaries.

### 12.2 GST

All payments (including the provision of any non-monetary consideration) to be made by each Obligor under or in connection with any Finance Document have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when each Obligor makes the payment:
  - (i) it must pay to the Beneficiary an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) the Beneficiary will promptly provide to each Obligor a tax invoice complying with the relevant GST legislation.
- (b) Where under any Finance Document each Obligor is required to reimburse or indemnify for an amount, each Obligor will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the relevant Beneficiary determines that it is entitled to claim in respect of that amount.

## 13 Set-Off

- (a) Each Beneficiary may set-off any obligation of any type in any currency that it owes an Obligor (including any credit balance in any account of an Obligor with any branch of that Beneficiary (whether or not matured)) against any obligation of that Obligor to that Beneficiary under or in relation to any Finance Document to pay any sum then payable. No Beneficiary need make that set-off. This right is independent of any security interest granted under the Finance Documents.
- (b) A Beneficiary may exchange currencies to make that set-off. Any right of set-off will extinguish the relevant obligations only to the extent of that set-off.

## 14 Waivers, Remedies Cumulative

- (a) No failure to exercise and no delay in exercising a Power under any Finance Document operates as a waiver, nor does any single or partial exercise of a Power preclude any other or further exercise of that or any other Power.
- (b) The Powers provided to the Beneficiaries in each Finance Document are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

## 15 Severability of Provisions

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

## 16 Survival of Obligations

- (a) **(Representations and warranties)** Each representation or warranty in a Finance Document survives the execution and delivery of the Finance Documents and the provision of financial accommodation.
- (b) **(Indemnity)** Each indemnity, reimbursement or similar obligation in a Finance Document:
  - (i) is a continuing, separate and independent obligation;
  - (ii) is payable on demand; and
  - (iii) survives termination or discharge of the relevant Finance Document and repayment of financial accommodation.

Where a party is obliged to indemnify another party against a loss, cost, charge, liability, expense, deficiency or other amount, it shall pay on demand from time to time the amount stated by the other party to be the amount indemnified against.

## 17 Moratorium Legislation

To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of any Obligor any obligation under a Finance Document; or
- (b) delays, prevents or prejudicially affects the exercise by any Beneficiary of any Power conferred by any Finance Document,

is excluded from the Finance Documents.

## 18 Determination, Statement or Certificate

Except where otherwise provided in this Deed, any determination, statement or certificate by the Security Trustee or an Authorised Officer of the Security Trustee provided for in this Deed is conclusive evidence against any Obligor in the absence of manifest error. It will be sufficient evidence against all parties as to the amount of Secured Money stated in the certificate unless proven wrong.

## 19 Other Security Interests

No Power and nothing in this Deed or any Security Interest merges in, or in any other way prejudicially affects or is prejudicially affected by:

- (a) any other Security; or
- (b) any judgment, right or remedy against any person,

which any Beneficiary or any person claiming through any Beneficiary may have at any time.

## 20 Assignments

- (a) An Obligor may only transfer or assign any of its rights or obligations under this Deed with the prior written consent of the Security Trustee on the instructions of all Beneficiaries.

- (b) Subject to the other Finance Documents, a Beneficiary may assign all or any of its rights or transfer all or any of its obligations under this Deed. If a Beneficiary's rights under this Deed are assigned, the Secured Money will include all actual and contingent liability of an Obligor to the assignee, whether or not it was incurred before the assignment or in contemplation of it.

## **21 Confidentiality**

### **21.1 Confidentiality**

Except as permitted in clause 21.2:

- (a) no Beneficiary shall disclose information and documents supplied by an Obligor in connection with the Finance Documents which are specifically indicated by the Obligor to be confidential and are not in the public domain; and
- (b) no party shall disclose any information of the kind mentioned in section 275(1) of the PPSA.

### **21.2 Permitted disclosure**

A Beneficiary may disclose information or documents:

- (a) in enforcing a Finance Document, in a proceeding arising out of or connected with a Finance Document or to the extent that disclosure is regarded by the Beneficiary as necessary to protect its interests;
- (b) as required under an order of a Government Agency or any procedure for discovery in any proceedings;
- (c) as required under any law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) or under any administrative guideline, directive, request or policy with which responsible financial institutions similarly situated would normally comply;
- (d) as required or permitted by any Finance Document;
- (e) to its legal advisers and its consultants; or
- (f) with the prior consent of the Borrower.

### **21.3 Survival of obligation**

This clause survives the termination of this Deed.

## **22 Notices**

### **22.1 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender (or in the case of an email, sent from the email address of an Authorised Officer of the sender); and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or email address of the recipient shown in Schedule 1 or to any other address or email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at



the commencement of business on the next day on which business is generally carried on in that place.

### **23 Authorised Officers**

Each Obligor irrevocably authorises each Beneficiary to rely on a certificate by any person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. It warrants that those persons have been authorised to give notices and communications under or relating to the Finance Documents.

### **24 Governing Law and Jurisdiction**

This Deed is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters, and any security interest (as defined by the PPSA) under it. Each Obligor irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

### **25 Counterparts**

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

### **26 Acknowledgement by Obligors**

Each Obligor confirms that:

- (a) it has not entered into any Finance Document in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of any Beneficiary or any Related Entity of any Beneficiary (including any advice, warranty, representation or undertaking); and
- (b) neither any Beneficiary nor any Related Entity of any Beneficiary is obliged to do anything (including disclose anything or give advice),

except as expressly set out in the Finance Documents.



## Schedule 1

### Details of Parties

#### 1 Borrower

Bar SPV Pty Limited

Address: Level 17, Gateway Building  
1 Macquarie Place  
Sydney NSW 2000

Email: [jonathan.oh@global-infra.com](mailto:jonathan.oh@global-infra.com); [nick.hume@global-infra.com](mailto:nick.hume@global-infra.com)

Attention: Jonathan Oh and Nick Hume

#### 2 Security Providers

Jingle SPV 2 Pty Limited

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara

#### 3 Lender

Perpetual Corporate Trust Limited as trustee of the CPPIB Australia Trust

Address: Level 12, 123 Pitt Street  
Sydney, NSW 2000, Australia

Email: [john.oconnell@perpetual.com.au](mailto:john.oconnell@perpetual.com.au)

Attention John O'Connell, Senior Corporate Clients New Business Manager

*With copy to:*

Address: One Queen Street East, Suite 2500  
Toronto, Ontario, M5C 2W5, Canada

Email: [bhogg@cppib.com](mailto:bhogg@cppib.com); [pbernath@cppib.com](mailto:pbernath@cppib.com)

Attention: Bruce Hogg and Paul Bernath

*With copy to:*

Address: Level 33, 101 Collins Street  
Melbourne VIC 3000, Australia

Email: [Wendy.Rae@allens.com.au](mailto:Wendy.Rae@allens.com.au)

Attention: Wendy Rae (Partner), Allens

**4 Security Trustee**

PT Limited

Address: Level 12, Angel Place

123 Pitt Street

Sydney NSW 2000

Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

Attention: Senior Manager, CSF Team

## Schedule 2

### Deed Poll by Beneficiary

Date

20[\*]

Deed Poll by:

[\*] ([ABN|ACN]) incorporated in [\*] of [\*] (the **Beneficiary**).

It is declared as follows.

#### 1 Definitions and Interpretation

##### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Security Trustee** means [\*].

**Security Trust Deed** means the security trust deed dated [\*] between the Security Trustee and [\*].

##### 1.2 Definitions

Definitions in the Security Trust Deed and clause 1.2 of the Security Trust Deed apply in this Deed.

##### 1.3 Deed poll

This is a deed poll. It may be relied on and enforced by the Security Trustee.

#### 2 Beneficiary Bound by Security Trust Deed

With effect from and including [the date of this Deed]:

- (a) the Beneficiary agrees to be bound by, and to comply with the obligations of a Beneficiary in, the Security Trust Deed, as if it were a party to the Security Trust Deed in that capacity; and
- (b) each other party to the Security Trust Deed acquires corresponding rights against, and assumes corresponding obligations to, the Beneficiary.

#### 3 Notices

The address for correspondence of the Beneficiary is the address set out below.

[\*]

#### 4 Law

This Deed is governed by the laws of [\*].

#### Executed and delivered as a deed poll.

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

[\*]

### Schedule 3

#### Recognition Certificate

We refer to the Security Trust Deed (the **Security Trust Deed**) dated [\*] between [\*] as Borrower and [\*] as Security Trustee and others establishing the CPPIB Australia 2015 Security Trust.

Under clause 4.2 of the Security Trust Deed, the Security Trustee certifies as follows.

1 The following person is recognised as a New Financier:

[\*].

2 The following documents are recognised as New Finance Documents:

[\*].

]Definitions in the Security Trust Deed apply in this Certificate.

On behalf of

[\*]

By: [Authorised Officer]

Dated:

**Executed and delivered as a Deed.**

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

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Bar SPV Pty Limited**:



Director Signature

ARI DROGA

Print Name

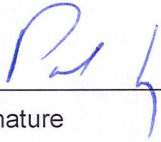


Director / Secretary Signature

ROBERT STEWART.

Print Name

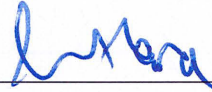
**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 2 Pty Limited**:



\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
PAUL LEWIS

\_\_\_\_\_  
Print Name

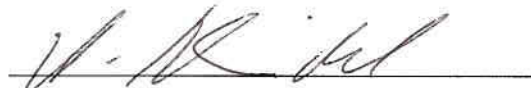



\_\_\_\_\_  
Director/Secretary Signature


\_\_\_\_\_  
WILLIAM HARR

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered for Perpetual  
Corporate Trust Limited as trustee of the  
CPPIB Australia Trust** by its attorneys under  
power of attorney in the presence of:

  
\_\_\_\_\_  
Witness Signature  
Annett Schmiedel  
\_\_\_\_\_  
Print Name

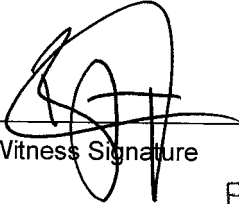
  
\_\_\_\_\_  
Witness Signature  
Annett Schmiedel  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature      John O'Connell  
Senior Manager  
\_\_\_\_\_  
Print Name

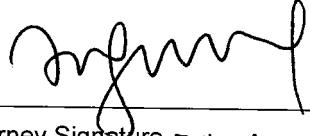
  
\_\_\_\_\_  
Attorney Signature  
VICKI RICCIO Head of L.T.  
\_\_\_\_\_  
Print Name

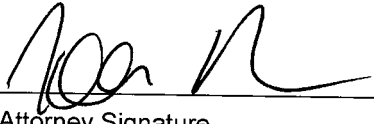


**Signed Sealed and Delivered for PT Limited**  
by its attorneys under power of attorney dated  
16 September 2014 in the presence of:

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Attorney Signature Esther Ang  
Senior Transaction Manager

\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Attorney Signature  
\_\_\_\_\_  
Print Name Nora McDonnell  
Manager

Each entity listed in Schedule 1

PT Limited

## General Security Deed

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on 29 October 2015

## Parties

- 1 Each entity listed in Schedule 1 (each a **Grantor**).
- 2 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Secured Party**).

## Recitals

- A From time to time, the Grantors may wish one or more of the Beneficiaries to provide financial accommodation to or for the account of a Grantor or another person.
- B This Deed is given to secure repayment of that accommodation, among other things.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Ancillary Collateral** means any asset subject to an Ancillary Security granted by a Grantor.

**Collateral** means, in relation to a Grantor, all the Grantor's present and after acquired property in respect of the Target Shares, Other Shares and New Rights and any proceeds (as defined in the PPSA) of them. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest in respect of that property.

**Control Event** means, in relation to Collateral of a Grantor:

- (a) in respect of any Collateral that is, or would have been, a Revolving Asset:
  - (i) the Grantor breaches, or attempts to breach clause 3.1 (**Restricted dealings**) in respect of the Collateral or takes any step which would result in it doing so;
  - (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this Deed;
  - (iii) distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral; or
  - (iv) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset. (However, the Secured Party may only give a notice if the Secured Party considers (acting on the instructions of the Majority Beneficiaries) that it is necessary to do so to protect its rights under this Deed or if an Event of Default is continuing); or
- (b) in respect of all Collateral that is or would have been Revolving Assets:
  - (i) an administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or
  - (ii) a receiver, receiver and manager or controller is appointed to any of the Grantor's property; or

- (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law.

**Controller** means a Receiver or a person appointed as the Secured Party's agent under this Deed or any Ancillary Security.

**Featherweight Collateral** means any property of a Grantor that is not Collateral.

**New Rights** has the meaning given in the Loan Agreement – Facility A (as that term is defined in the Loan Agreement – Facility A as at the date of this Deed or otherwise as such term is amended with the consent of the Secured Party).

**Non-PPSA Collateral** means Collateral in relation to which for any reason the PPSA does not apply to the security interest granted under this Deed.

**Other Shares** has the meaning given in the On-Loan Agreement (as that term is defined in the On-Loan Agreement as at the date of this Deed or otherwise as such term is amended with the consent of the Secured Party).

**Revolving Asset** means any Collateral:

- (a) which is:
  - (i) inventory;
  - (ii) a negotiable instrument;
  - (iii) machinery, plant, or equipment which is not inventory and has a value of less than A\$1,000 or its equivalent;
  - (iv) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and
- (b) in relation to which no Control Event has occurred, subject to clause 3.5 (**Conversion to Revolving Assets**).

**Security Trust Deed** means the security trust deed dated on or about the date of this Deed between, among others, each Grantor and the Secured Party.

**Target Shares** has the meaning given in the Loan Agreement – Facility A (as that term is defined in the Loan Agreement – Facility A as at the date of this Deed or otherwise as such term is amended with the consent of the Secured Party).

**Unpaid Capital** means any uncalled or unpaid share capital or premiums of a Grantor.

## 1.2 Security Trust Deed definitions

Definitions in the Security Trust Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

## 1.3 Interpretation

Clauses 1.2 (*Interpretation*) to 1.4 (*Listing requirements included as law*), 1.7 (*Business Day*) and 1.9 (*Consent and Opinion*) of the Security Trust Deed apply as if set out in full in this Deed.

## 1.4 Several obligations

The obligations of each Grantor under this Deed are several (except where the Grantors are obliged to pay the same money in which case they are joint and several). This Deed will be binding on each Grantor despite anything done or omitted to be done by any other Grantor or by the Secured Party in relation to any Grantor.

### 1.5 Benefit of security interest

The security interest under this Deed is held by the Secured Party as trustee under the Security Trust Deed.

### 1.6 Limited recourse to Grantors

Notwithstanding anything contained in the Finance Documents, the Secured Party acknowledges that in satisfying any demand or claim which the Secured Party may make on the Grantors in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):

- (a) the recourse of the Security Trustee will be limited to the Collateral and any other amount recoverable under clause 2.4 of this Deed;
- (b) no Grantor will in any circumstances have any liability whatsoever to the extent that its Collateral and any other amount recoverable from it under clause 2.4 of this Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security Interest over all of the Collateral of a Grantor and distribution of the proceeds in accordance with the Security Trust Deed, or if the Grantor, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual Collateral, that Grantor will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.6 limits the liability of a Grantor for any loss, cost or expenses suffered or incurred by a Beneficiary arising from the Grantor's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.6 (*Limited recourse to Grantors*) is not severable from this Deed.

### 1.7 Obligation to transfer

Notwithstanding anything contained in the Finance Documents, a Grantor will not have any obligation to transfer any property to any person if to do so would:

- (a) breach any applicable law; or
- (b) give rise to any liability, whether for Taxes or otherwise, that the Grantor has not been reimbursed for.

## 2 Grant of Security Interest

### 2.1 Security interest

- (a) Each Grantor grants a security interest in the Collateral to the Secured Party (for itself and as trustee for the Beneficiaries) to secure payment of the Secured Money.
- (b) This security interest is a transfer by way of security of Collateral consisting of accounts and chattel paper (each as defined in the PPSA) which are not, or cease to be, Revolving Assets.
- (c) To the extent any Collateral is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.

## 2.2 Security interest – Featherweight Collateral

Each Grantor also grants a security interest in the Featherweight Collateral to the Secured Party (for itself and as trustee for the Beneficiaries) to secure payment of the Secured Money.

This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge.

## 2.3 Consideration

Each Grantor enters this Deed in consideration of the Beneficiaries entering the Finance Documents, providing or continuing financial accommodation from time to time, or agreeing to do so (whether or not subject to conditions), or for other valuable consideration received.

## 2.4 Limit

The amount recoverable under the security interest created under clause 2.2 (*Security Interest – Featherweight Collateral*) is limited to the last A\$1,000 of the Secured Money owing.

## 3 Dealings with Collateral

### 3.1 Restricted dealings

Each Grantor must not do, or agree to do, any of the following unless it is permitted to do so by clause 3.2 (*Dealing with Featherweight Collateral*) or in a Finance Document:

- (a) create or allow another interest in any Collateral or Ancillary Collateral; or
- (b) dispose, or part with possession, of any Collateral or Ancillary Collateral.

### 3.2 Dealing with Featherweight Collateral

Each Grantor may do anything described in clause 3.1 with respect to any of its Featherweight Collateral, unless:

- (a) it is prohibited from doing so by another provision in a Finance Document; or
- (b) an administrator is appointed in respect of the Grantor.

### 3.3 Cessation of right to deal with Featherweight Collateral

If an administrator is appointed in respect of a Grantor then automatically:

- (a) any floating charge over the Featherweight Collateral of that Grantor immediately operates as a fixed charge; and
- (b) the Grantor may no longer deal with the Featherweight Collateral under clause 3.2.

### 3.4 Collateral ceasing to be Revolving Assets

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge; and
- (c) if the Collateral is accounts or chattel paper (each as defined in the PPSA), it is transferred to the Secured Party by way of security.

### 3.5 Conversion to Revolving Assets

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 3, the Secured Party may give the relevant Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a



Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

### 3.6 Inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this Deed. No Grantor may remove it without obtaining the specific and express authority of the Secured Party to do so.

### 3.7 Dealing with proceeds

- (a) Subject to any other provision of a Finance Document, each Grantor shall ensure that all proceeds received by it or for its account from any disposal or other dealing with Collateral or Ancillary Collateral and which are not immediately applied in acquiring another similar asset or in payment of the Secured Money or obligations ranking ahead of the Secured Money, are immediately credited to the relevant Nominated Account.
- (b) If the Secured Party requires, Authorised Officers of the Secured Party will be the only signatories to each Nominated Account.
- (c) Each Grantor shall give notices and directions in relation to its Collateral necessary or requested by the Secured Party to ensure paragraph (a) is complied with.
- (d) Failure by any Beneficiary to require a Grantor to comply with this clause will not constitute a waiver.
- (e) Without prejudice to paragraph (d), if for any reason any Beneficiary waives or is taken to have waived the requirements of this clause in relation to a debt which is Non-PPSA Collateral, the security interest granted under this Deed will still operate as a fixed charge in respect of the relevant debt or other asset which gives rise to the relevant proceeds.

## 4 Undertakings and Warranty

- (a) Subject always to paragraph (b), each Grantor shall duly and punctually pay the Secured Money. Subject always to paragraph (b), after an Event of Default (whether or not it is still continuing) each Grantor shall pay all Secured Money to the Secured Party on demand.
- (b) Notwithstanding anything contained in the Finance Documents, the total amount payable by a Grantor under or in respect of paragraph (a) (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise) will not exceed the total amount recoverable by enforcement of this Deed or any Ancillary Security in respect of its Collateral. No Beneficiary shall have any recourse to the Grantor in respect of any such amount except by enforcing this Deed or any Ancillary Security.
- (c) Each Grantor shall ensure that no Event of Default occurs.
- (d) Each Grantor warrants and undertakes that the security interest granted under this Deed is and will remain a first-ranking Security with respect to all Collateral, ranking ahead of all other Securities except those expressly permitted in the Finance Documents.

## 5 Further Assurances

### 5.1 Further assurances

Subject always to clauses 1.6 and 1.7, whenever the Secured Party requests a Grantor to do anything:

- (a) to ensure each of this Deed, each Ancillary Security and each Security granted under them is fully effective, enforceable and perfected with the stated priority;

- (b) for more satisfactorily assuring or securing the Collateral or Ancillary Collateral to the Beneficiaries in a manner not inconsistent with this Deed or any Ancillary Security; or
- (c) for aiding the exercise of any Power,

the Grantor shall, at the cost of the Secured Party (subject to indemnification from the Beneficiaries under the Security Trust Deed), do it as soon as reasonably practicable. That may include, for that purpose:

- (d) doing anything to make, procure or obtain any Authorisation (including registration) in respect of anything, or to facilitate it;
- (e) creating, procuring or executing any document, including any notice, consent or agreement, or (except with respect to its Featherweight Collateral) legal or statutory mortgage or transfer; and
- (f) delivering documents or evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any Collateral or Ancillary Collateral (other than with respect to its Featherweight Collateral).

## 5.2 Appointment of nominee for registration

For the purposes of section 153 of the PPSA, the Secured Party appoints each Grantor as its nominee, and authorises that Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Grantor which is:

- (a) evidenced or created by chattel paper;
- (b) perfected by registration under the PPSA; and
- (c) transferred to the Secured Party under this Deed.

This authority ceases when the registration is transferred to the Secured Party.

## 6 Enforcement

### 6.1 Powers on enforcement

To the extent permitted by law, at any time after an Event of Default (whether or not it is still continuing) the Secured Party or any Authorised Officer of the Secured Party may exercise any of the Powers with respect to the Collateral set out in Schedule 2, without any need to take possession and without being liable as mortgagee in possession. It may exercise those Powers with respect to the Featherweight Collateral of a Grantor after an administrator is appointed to that Grantor. It may also exercise those Powers through one or more agents, in which case anything done or incurred by an agent will be taken to be done or incurred by the Secured Party.

### 6.2 Receivership

To the extent permitted by law, at any time after an Event of Default (whether or not it still continues), the Secured Party may:

- (a) appoint any person or any two or more persons jointly or severally or both to be a receiver or receiver and manager of all or any of the Collateral or Ancillary Collateral or to act as agent of the Secured Party to exercise any of the Powers in Schedule 2 with respect to all or any of the Collateral or Ancillary Collateral;
- (b) remove any Controller;
- (c) appoint another Controller in addition to or in place of any Controller; and
- (d) fix or vary the remuneration of any Controller,

but it may only exercise those Powers with respect to the Featherweight Collateral of a Grantor after an administrator is appointed to that Grantor.

An appointment may be made on any terms the Secured Party thinks fit and whether or not any Beneficiary or any Authorised Officer of a Beneficiary at any time has exercised any Power in Schedule 2. Without limiting any other method of appointment permitted by law, an appointment may be made by an instrument signed by an Authorised Officer of the Secured Party or by, or on behalf of, the Secured Party.

The Power to appoint a Receiver may be exercised even if the Liquidation of the relevant Grantor has occurred or will occur.

Except to the extent otherwise provided by any law relating to Liquidation, every Receiver appointed under this Deed is the agent of the relevant Grantor. That Grantor alone is responsible for a Receiver's acts and defaults.

### 6.3 Termination

The Secured Party may give up possession of any Collateral or Ancillary Collateral and terminate any receivership or agency at any time.

## 7 Power of Attorney

- (a) For valuable consideration and by way of security, each Grantor irrevocably appoints each Authorised Officer of the Secured Party severally its attorney to do anything which:
- (i) that Grantor is obliged, but has failed, to do under or in relation to any Finance Document; or
  - (ii) any Beneficiary or Receiver is authorised or empowered to do under any Finance Document or any law, but only at the times that that Beneficiary or Receiver (if a Receiver had been appointed) would have been able to do it.
- (b) Without limitation, the Attorney may at any time:
- (i) delegate the Attorney's powers (including delegation); and
  - (ii) do anything which in the opinion of the Secured Party or the Attorney is necessary or expedient to secure, preserve, perfect or give effect to the security contained in this Deed (including anything under clause 5 (**Further Assurances**), 8 (**Completion of Documents**) or 9 (**Performance of Grantor's Obligations**)). For example, it may execute a legal mortgage, transfer, assignment or other assurance in favour of the Secured Party of any of the Collateral or Ancillary Collateral (except the Featherweight Collateral) or give control (as defined in section 25 or 341A of the PPSA).
- (c) No Attorney appointed under this Deed may act, nor has power to act, inconsistently with this Deed or any other Finance Document to which the Security Trustee is a party.

## 8 Completion of Documents

If an Event of Default occurs (whether or not it is still continuing), the Secured Party, any Authorised Officer of the Secured Party, any Receiver or any Attorney may complete any document executed by or on behalf of a Grantor and deposited with any Beneficiary. It may complete it in favour of any Beneficiary, any appointee of any Beneficiary or any purchaser.

## 9 Performance of Grantor's Obligations

If at any time a Grantor fails to duly perform any obligation in any Finance Document, the Secured Party or any person it authorises may do anything which in the Secured Party's opinion

is necessary or expedient to make good or to attempt to make good that failure to the Secured Party's satisfaction.

## 10 Inspection

The Secured Party or any person it authorises may inspect and copy the records of any Grantor related to any Collateral or Ancillary Collateral (except the Featherweight Collateral) and inspect the premises of any Grantor and inspect the Collateral or Ancillary Collateral at any time after an Event of Default (whether or not it is continuing). Each Grantor shall, at the cost of the Secured Party (subject to indemnification from the Beneficiaries under the Security Trust Deed), do everything in its power to assist that inspection and copying and ensure that its employees and officers do the same.

## 11 Statutory Powers and Notices

### 11.1 Powers in augmentation

The powers conferred on a secured party or a Receiver by law:

- (a) except as specified in clause 11.3, are in addition to the Powers conferred by this Deed or any Ancillary Security;
- (b) to the extent permitted by law, may be exercised immediately after an Event of Default occurs and at any time subsequently but in the case of the Featherweight Collateral of a Grantor only after an administrator is appointed to that Grantor; and
- (c) are excluded or varied only so far as they are inconsistent with the express terms of this Deed or any Ancillary Security.

### 11.2 Leasing

A Grantor may not surrender any Lease, accept any surrender of Lease or exercise any power of Leasing conferred on the Grantor by law except as expressly permitted or contemplated in any Finance Document.

### 11.3 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this Deed to permit the Grantors and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantors that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantors by the Secured Party; and
- (d) each Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

#### 11.4 Exercise of Powers by Secured Party

If the Secured Party exercises a Power in connection with this Deed, that exercise is taken not to be an exercise of a Power under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a Power which can only be exercised under the PPSA.

#### 11.5 No notice required unless mandatory

To the extent the law permits, each Grantor waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a secured party or Receiver exercises a Power; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a Power.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

### 12 Application of Money Received

#### 12.1 Order

To the extent permitted by law, all money received by a Controller, an Attorney or any Beneficiary under or arising out of this Deed or any Ancillary Security created by a Grantor will be applied in the manner and order set out in the Security Trust Deed.

#### 12.2 Notice of subsequent Securities

- (a) If any Beneficiary receives actual or constructive notice of a subsequent Security affecting any Collateral or Ancillary Collateral of a Grantor (other than the Featherweight Collateral), it may open a separate account in the name of that Grantor or the Borrower in the books of that Beneficiary.
- (b) If that Beneficiary does not open a new account it will be treated as if it had done so at the time it received actual or constructive notice of the Security.
- (c) From the time the new account is opened or is taken to be opened:
  - (i) all advances and accommodation made available by that Beneficiary to that Grantor or the Borrower;
  - (ii) all payments and repayments made by that Grantor or the Borrower to that Beneficiary; and
  - (iii) money to be applied towards the Secured Money in accordance with the Security Trust Deed,

will be or will be taken to be debited or credited, as appropriate, to the new account. Payments, repayments and other money will only be applied in reduction of other Secured Money to the extent that there is no debit balance in that account.

### 13 Other Securities Over Collateral or Ancillary Collateral

- (a) Any Beneficiary, Controller or Attorney may rely on the certificate of a holder of another Security affecting or purporting to affect the Collateral or Ancillary Collateral of a Grantor as to the amount and property secured by that Security.
- (b) After having received instructions from the Majority Beneficiaries to do so, the Secured Party or any Controller may pay or agree to pay at any time the amount certified by the holder of a Security or purported Security to be necessary to discharge it or some of the indebtedness secured by it or to acquire it. From the date of payment that amount will be part of the Secured Money and the Secured Party and the Controller will, in accordance with the Security Trust Deed, be indemnified by the Beneficiaries (pro rata according to their Commitments) against that amount. This applies whether or not that Security or purported Security was valid or prior, equal or subsequent ranking or the property or money stated in the certificate was secured by it.

### 14 Protection of Beneficiaries, Controllers and Attorneys

To the extent permitted by law, no Beneficiary, nor any Controller or Attorney appointed under this Deed, will be liable:

- (a) in respect of any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Power; nor
  - (b) for any loss (including indirect loss) which results,
- except where it arises from fraud or gross negligence on the part of any Beneficiary, Controller or Attorney.

### 15 Protection of Third Parties

#### 15.1 No enquiry

No party to any Dealing (as defined below) and no person asked to register a Dealing:

- (a) is bound to enquire:
  - (i) whether an Event of Default has occurred or whether this Deed has become enforceable;
  - (ii) whether a person who is, or, purports or is purported to be, a Controller or Attorney is duly appointed;
  - (iii) as to the amount of Secured Money and whether Secured Money is due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing; or
- (b) is affected by notice that the Dealing is unnecessary or improper.

For the protection of any party to a Dealing or a person registering a Dealing, the Dealing will be taken to be authorised by this Deed and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.

In this clause a **Dealing** is:

- (a) any payment, or any delivery or handing over of an asset, to; or
- (b) any acquisition, incurring of Finance Debt, receipt, sale, Lease, disposal or other dealing, by,  
  
any Beneficiary, Controller or Attorney, or any person who purports or is purported to be a Controller or Attorney.

## 15.2 Receipt

The receipt of any Authorised Officer of any Beneficiary, or any Controller or Attorney appointed under this Deed (or person who purports, or is purported, to be such a Controller or Attorney), for any money or assets payable to or receivable or received by it exonerates the person paying that money or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.

## 16 Certificate as to Amount of Secured Money

A certificate signed by an Authorised Officer of a Beneficiary will be conclusive evidence against each Grantor, in the absence of manifest error:

- (a) that the relevant Beneficiary is of the opinion stated in the certificate; or
- (b) if the Beneficiary is the Secured Party:
  - (i) as to the amount of Secured Money stated in that certificate;
  - (ii) that a document specified in that certificate is a Finance Document.

## 17 Continuing Security

Each of this Deed and each Ancillary Security is a continuing security despite any settlement of account, intervening payment or anything else until a final discharge of this Deed and each Ancillary Security has been given to each Grantor.

### 17.1 Restricted Collateral

- (a) If the security interest granted under this Deed with respect to any Collateral would:
  - (i) otherwise be ineffective with respect to the Collateral; or
  - (ii) breach any law or (if that Collateral is a right under a document or agreement) that document or agreement,then if it would render the security interest with respect to that Collateral effective and not in breach, the security interest will operate as a fixed charge with respect to the Collateral, failing which, it will operate as a floating charge with respect to that Collateral, failing which it will not apply to that Collateral.
- (b) Each Grantor must use its best efforts promptly to obtain any consents and do anything else needed to ensure the security interest can apply to that Collateral and not operate as a floating charge.

## 18 Assignments

- (a) Subject to the other Finance Documents, the Secured Party may assign or novate all or any of its rights or novate all or any of its obligations under this Deed and each Ancillary Security to another person. On that person agreeing in a deed in favour of each Grantor to assume all obligations of the Secured Party novated to it, the Secured Party will be relieved of those obligations.
- (b) Subject to the other Finance Documents, any other Beneficiary may assign all or any of its rights under this Deed.
- (c) If a Beneficiary's rights under this Deed are assigned or novated, the Secured Money will include all actual and contingent liability of each Grantor to the assignee, whether or not it was incurred before the assignment or novation or in contemplation of it.



- (d) A Grantor may only assign or novate any of its rights or obligations under this Deed or any Ancillary Security with the prior consent of the Secured Party. Any purported assignment or novation without such consent will be ineffective.

## 19 General

Clause 22 (*Notices*) to 25 (*Counterparts*) of the Security Trust Deed apply as if set out in full in this Deed.

## 20 Third Party Provisions

### 20.1 Security not to be affected

None of this Deed, any Ancillary Security or any Power nor the obligations of any Grantor under this Deed will be affected by any thing which but for this provision might operate to release, prejudicially affect or discharge them or in any way relieve a Grantor from any obligation including:

- (a) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person;
- (b) any transaction or arrangement that may take place between any Beneficiary and any person;
- (c) the Liquidation of any person;
- (d) any Beneficiary becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to any person;
- (e) any Beneficiary exercising or delaying or refraining from exercising any other security or any right, power or remedy conferred on it by law or by any Finance Document or by any other document or agreement with any person;
- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, assignment or transfer, in whole or in part and with or without consideration, of any Finance Document, or of any other Security or Guarantee or other document or agreement held by any Beneficiary at any time or of any right, obligation, power or remedy;
- (g) the taking or perfection of or failure to take or perfect a Security or Guarantee or other document or agreement;
- (h) the failure by any Beneficiary or any other person to notify a Grantor of any default by any person under any Finance Document or any other document or agreement with any Beneficiary;
- (i) any Beneficiary obtaining a judgment against any person for the payment of any Secured Money;
- (j) any legal limitation, disability, incapacity or other circumstance relating to any person;
- (k) any change in circumstance (including any change in the members or constitution of any person);
- (l) any Guarantee or Security or other document or agreement not being valid or executed by, or binding on, any person; or
- (m) any increase in the Secured Money for any reason (including as a result of anything referred to above),



whether with or without the consent of the Grantor. Without limitation, this Deed binds a Grantor even if it is, or has become, the only Grantor bound. References to **any person** include another Grantor, the Borrower or any other person.

## 20.2 Principal and independent obligation

This Deed and each Ancillary Security is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or collateral to any other Security, right or obligation.

## 20.3 No marshalling

No Beneficiary is obliged to marshal or appropriate in favour of a Grantor or to exercise, apply or recover:

- (a) any Security or Guarantee (including any Finance Document) held by a Beneficiary at any time; or
- (b) any of the funds or assets that a Beneficiary may be entitled to receive or have a claim on.

## 20.4 No competition

Until the Secured Money has been irrevocably paid and discharged in full no Grantor is entitled to and no Grantor shall:

- (a) be subrogated to any Beneficiary or any person who has any rights against the Borrower, another Grantor or any provider of Ancillary Security or claim the benefit of any Security or Guarantee held by any Beneficiary or any such person at any time;
- (b) either directly or indirectly prove in, claim or receive the benefit of, any distribution, dividend or payment arising out of or relating to the Liquidation of the Borrower, another Grantor or any provider of Ancillary Security; or
- (c) have or claim any right of contribution or indemnity for any reason (whether or not relating to this Deed) from the Borrower, another Grantor or any provider of Ancillary Security,

except as directed by the Secured Party.

The receipt of any distribution, dividend or other payment by any Beneficiary out of or relating to any Liquidation will not prejudice the right of any Beneficiary to recover the Secured Money by enforcement of this Deed and each Ancillary Security.

Each Grantor shall comply with any direction under this clause.

If a Grantor receives any proceeds from the Liquidation of the Borrower or any other security provider (whether following a direction of the Secured Party or otherwise) it shall immediately pay those proceeds to the Secured Party in reduction of the Secured Money.

Until it makes that payment, those proceeds will be held in trust for the Secured Party for the account of the Beneficiaries.

## 20.5 Suspense of amounts received

Until the Secured Money has been paid in full or each Beneficiary has received or recovered money that (after any applicable expenses and exchanges) is sufficient to pay the Secured Money in full, each Beneficiary may:

- (a) appropriate at its discretion any money received or recovered in respect of the Secured Money under this Deed or otherwise, including money received or recovered by way of set-off or as a dividend in a Liquidation; and

- (b) refrain from applying the money in reduction of the Secured Money, and claim against any person (including by proving in any Liquidation) in respect of the full amount of the Secured Money disregarding the money received or recovered.

## 20.6 Rescission of payment

Whenever for any reason (including under any law relating to Liquidation, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including any payment or transfer) made during the term of this Deed which affects or relates in any way to the Secured Money is void, set aside or voidable;
- (b) any claim that anything contemplated by paragraph (a) is upheld, conceded or compromised; or
- (c) any Beneficiary is required to return or repay any money or asset received by it under any such transaction or the equivalent in value of that money or asset,

each Beneficiary will immediately become entitled against each Grantor to all rights in respect of the Secured Money and the Collateral or Ancillary Collateral which it would have had if all or the relevant part of the transaction or receipt had not taken place. Each Grantor shall indemnify each Beneficiary against any resulting loss, cost or expense. This clause continues to apply after this Deed is discharged.

## 20.7 Variation

This Deed and any Ancillary Security covers the Secured Money as varied from time to time including as a result of:

- (a) any new Finance Document or any amendment to any Finance Document; or
- (b) the provision of further accommodation to the Borrower,

and whether or not with the consent of or notice to any Grantor. This does not limit any other provision.

## 20.8 Indemnity

If any Secured Money (including money which would have been Secured Money if they were recoverable) is not recoverable from the Borrower for any reason, including any legal limitation, disability or incapacity affecting the Borrower or an obligation in any Finance Document being or becoming unenforceable, void or illegal and whether or not:

- (a) any transaction relating to the Secured Money was void or illegal or has been subsequently avoided; or
- (b) any matter or fact relating to that transaction was or ought to have been within the knowledge of any Beneficiary,

each Grantor shall indemnify each Beneficiary in respect of that money and shall pay that money to the relevant Beneficiary but only to the extent that the indemnity may be satisfied out of the Collateral or Ancillary Collateral.

**Schedule 1**

**Grantors**

<b>1</b> <b>Grantor</b>	<b>2</b> <b>ACN</b>
Bar SPV Pty Limited	608 989 233
Jingle SPV 2 Pty Limited	608 981 497

## Schedule 2

### Powers on Enforcement

The Secured Party or (except to the extent specifically excluded by the terms of appointment) a Controller has Power to do anything in respect of the Collateral or Ancillary Collateral that an absolute beneficial legal owner of the property could do. That includes Power to do any of the following, in each case on any terms the Secured Party or Controller thinks fit.

- 1 **(Seize, possess and manage)** Seize, take and retain possession of, get in and manage the Collateral or Ancillary Collateral.
- 2 **(Sell)**
  - (a) Sell any of the Collateral or Ancillary Collateral (whether or not physical possession has been taken by the Secured Party or Controller).
  - (b) Without limitation, any sale may be made:
    - (i) by public auction, private treaty or tender;
    - (ii) for cash or on credit;
    - (iii) in one lot or in parcels;
    - (iv) either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise;
    - (v) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security); and
    - (vi) whether or not in conjunction with the sale of any property by any person.
- 3 **(Options)** Grant or take put or call options.
- 4 **(Lease)** Lease any of the Collateral or Ancillary Collateral for any term (whether or not the Secured Party or Controller has taken possession).
- 5 **(Carry on business)** Carry on or concur in carrying on any business.
- 6 **(Acquire any asset)** Acquire in any manner any asset (including to take it on Lease). After that acquisition, it will be included in the Collateral or Ancillary Collateral.
- 7 **(Maintain and improve the Collateral or Ancillary Collateral)** Anything to maintain, protect or improve any of the Collateral or Ancillary Collateral or to obtain income or returns from any of the Collateral or Ancillary Collateral (including by development, sub-division, construction, alteration, or repair, of any property or by demolishing, dismantling or scrapping, any property).
- 8 **(Raise money)**
  - (a) Borrow or raise any money from the Secured Party or any other person approved by the Secured Party;
  - (b) give Guarantees; and
  - (c) grant any Security over any of the Collateral or Ancillary Collateral to secure that money or Guarantee. That Security may rank in priority to or equally with or after, the security interest granted under this Deed. It may be given in the name of the relevant Grantor or otherwise.
- 9 **(Lend)** Lend money or provide financial accommodation.
- 10 **(Sever fixtures)** Sever fixtures and crops.

- 11 **(Employ)** Employ or discharge any person as employee, contractor, agent, professional adviser, consultant or auctioneer for any purpose and at any remuneration and on any other terms as the Secured Party or Controller thinks fit.
- 12 **(Compromise)** Make or accept any arrangement or compromise.
- 13 **(Give receipts)** Give receipts for money and other assets.
- 14 **(Authorisation)** Apply for, take up, transfer or surrender any Authorisation or any variation of any Authorisation.
- 15 **(Perform and enforce agreements)**
- (a) Perform or enforce;
  - (b) exercise or refrain from exercising the relevant Grantor's rights and powers under; or
  - (c) obtain the benefit in other ways of,
- any documents or agreements or rights which form part of the Collateral or Ancillary Collateral and any documents or agreements entered into in exercise of any Power.
- 16 **(Vary and terminate agreements)** Vary, rescind or terminate any document or agreement (including surrender or accept the surrender of Leases).
- 17 **(Take insolvency proceedings)** Make debtors bankrupt, wind up corporations and do any thing in relation to any actual or contemplated Liquidation (including attend and vote at meetings of creditors and appointing proxies for meetings).
- 18 **(Take proceedings)** Commence, defend, conduct, settle, discontinue or compromise proceedings in the name of the relevant Grantor or otherwise.
- 19 **(Execute documents)** Enter into and execute documents or agreements on behalf of the relevant Grantor or the Secured Party or Controller. This includes using the relevant Grantor's seal and signing, accepting and endorsing cheques, promissory notes and bills of exchange.
- 20 **(Operate bank accounts)** Operate any bank account comprising part of the Collateral or Ancillary Collateral and open and operate any further bank account.
- 21 **(Surrender Collateral or Ancillary Collateral)** Surrender, release or transfer any of the Collateral or Ancillary Collateral or exchange it with any person for other property.
- 22 **(Promote corporations)** Promote the formation of any corporation with a view to purchasing any of the Collateral or Ancillary Collateral or assuming the obligations of the relevant Grantor or otherwise.
- 23 **(Delegate)** Delegate to any person acceptable to the Secured Party any Power conferred on the Secured Party or Controller (including delegation).
- 24 **(Have access)** Have access to and make use of the premises, plant, equipment, and records and accounting and other services of the relevant Grantor and the services of its staff.
- 25 **(Vote)** Exercise any voting or other rights or powers.
- 26 **(Other outgoing)** Pay any outgoing or indebtedness of any Grantor or any other person.
- 27 **(Securities)** Redeem any Security or acquire it and any debt secured by it.
- 28 **(Make calls)** Make calls on the members of the relevant Grantor in respect of any Unpaid Capital.
- 29 **(Insure)** Take out insurance and make, enforce, compromise and settle all claims in respect of insurance.
- 30 **(Incidental power)** Do anything incidental to the exercise of any other Power.

### Schedule 3

#### Notice Details

##### Grantors

Bar SPV Pty Limited

Address: Level 17, Gateway Building  
1 Macquarie Place  
Sydney NSW 2000

Email: [jonathan.oh@global-infra.com](mailto:jonathan.oh@global-infra.com); [nick.hume@global-infra.com](mailto:nick.hume@global-infra.com)

Attention: Jonathan Oh and Nick Hume

Jingle SPV 2 Pty Limited

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara

##### Secured Party

PT Limited

Address: Level 12, Angel Place  
123 Pitt Street  
Sydney NSW 2000

Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

Attention: Senior Manager, CSF Team

**Executed and delivered as a Deed.**

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

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Bar SPV Pty Limited**:



Director Signature

ARI DROGA

Print Name




Director / Secretary Signature


ROBERT STEWART.

Print Name

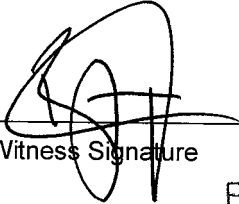


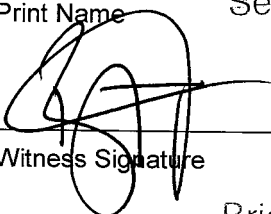
**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 2 Pty Limited**:

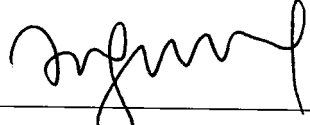
  
\_\_\_\_\_  
Director Signature  
PAUL LEWIS  
\_\_\_\_\_  
Print Name

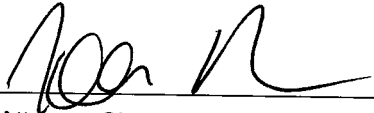
  
\_\_\_\_\_  
Director/Secretary Signature  
William HARA  
\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered for PT Limited**  
by its attorneys under power of attorney dated  
16 September 2014 in the presence of:

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Attorney Signature Esther Ang  
Senior Transaction Manager

\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Attorney Signature  
\_\_\_\_\_  
Print Name Nora McDonnell  
Manager

Jingle SPV 2 Pty Limited  
PT Limited  
UBS Securities Australia Limited

## Tripartite Deed – CHESS Sponsorship

101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on 29 October 2015

### Parties

- 1 **Jingle SPV 2 Pty Limited** (ACN 608 981 497) of Level 27, 45 Clarence Street, Sydney NSW 2000 (the **Mortgagor**).
- 2 **PT Limited** (ABN 67 004 454 666) of Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000 (the **Security Trustee**).
- 3 **UBS Securities Australia Limited** (ABN 62 008 586 481) of Level 16, Chifley Tower, 2 Chifley Square, Sydney NSW 2000 (the **Participant**).

### Recitals

- A The Mortgagor and the Participant, as Broker, are parties to the Sponsorship Agreement.
- B The Mortgagor and the Security Trustee are parties to the General Security Deed.
- C The Mortgagor, the Security Trustee and the Participant have agreed to enter into this Deed to protect and preserve the Security Trustee's interest in the Mortgaged Securities.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**ASX Clear** means ASX Clear Pty Limited (ACN 001 314 503).

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**ASX Settlement Rules** means the ASX Settlement Operating Rules and any other operating rules, procedures, direction, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Mortgagor by a notice to the Security Trustee accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Security Trustee or the Participant, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager, Principal** or **President** or cognate expressions, or any secretary or director.

**Bar SPV** means Bar SPV Pty Limited (ACN 608 989 233).

**Beneficiary** has the meaning given in the Security Trust Deed.

**CHESS** means the settlement system for share transfers run by ASX Clear.

**General Security Deed** means the general security deed dated on or about the date of this Deed between, among others, the Mortgagor and the Security Trustee.

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Finance Document** has the meaning given in the Security Trust Deed.

**Loss** means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges,

expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

**Instruction** means an instruction given in accordance with clause 5.1.

**Mortgaged Securities** means the securities (or any part thereof) specified in the Mortgaged Securities Schedule, and any rights which may arise in relation to those securities.

**Mortgaged Securities Schedule** means Schedule 2 to this Deed.

**On-Loan Agreement** means the loan agreement dated on or about the date of this Deed between the Mortgagor and Bar SPV.

**Option Delivery Date** means the date on which the Mortgaged Securities are transferred from the Mortgagor to Bar SPV in accordance with the On-Loan Agreement.

**Option Exercise Notice** means:

- (a) the notice provided by Bar SPV to the Mortgagor notifying the Mortgagor that it wishes to exercise its option to purchase the Mortgaged Securities in accordance with the On-Loan Agreement; or
- (b) the notice provided by the Mortgagor to Bar SPV notifying Bar SPV that it wishes to exercise its option to require Bar SPV to purchase the Mortgaged Securities in accordance with the On-Loan Agreement.

**Option Exercise Notice Date** means:

- (a) the date on which Bar SPV notifies the Mortgagor that it wishes to exercise its option to purchase the Mortgaged Securities in accordance with the On-Loan Agreement; or
- (b) the date on which the Mortgagor notifies Bar SPV that it wishes to exercise its option to require Bar SPV to purchase the Mortgaged Securities in accordance with the On-Loan Agreement.

**Security Trust** means the trust known as the CPPIB Australia 2015 Security Trust established under the Security Trust Deed.

**Security Trust Deed** means the security trust deed dated on or about the date of this Deed between, among others, the Mortgagor and the Security Trustee.

**Security Trust Fund** means the property held on trust by the Security Trustee pursuant to the Security Trust Deed.

**Sponsorship Agreement** means the sponsorship agreement dated on or about the date of this Deed between the Participant and the Mortgagor, a copy of which is annexed to this Deed as Schedule 3.

**Wilful Default** means, in respect of the Security Trustee, any wilful failure to comply with, or wilful breach by, the Security Trustee of any of its obligations under any Finance Document to which the Security Trustee is a party, other than a failure or breach which:

- (a) arises as a result of a breach of a Finance Document by a person other than the Security Trustee and (subject to any provisions of the Finance Documents which limit its liability in respect of the acts and omissions thereof) its agents and delegates;
- (b) is in accordance with a lawful court order or direction or is required by law; or
- (c) is in accordance with a proper instruction or direction of the Beneficiaries instructing it in accordance with the Security Trust Deed.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) Any gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted assigns.
- (g) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) The meaning of terms is not limited by specific examples introduced by including, or for example, or similar expressions.
- (j) Any terms not defined in this Deed have the same meaning as in the ASX Settlement Rules, and if not defined in the ASX Settlement Rules, in the *Corporations Act 2001*.

## 1.3 Document or agreement

A reference to:

- (a) an agreement includes a security interest, guarantee, undertaking, deed agreement or legally enforceable arrangement whether or not in writing; and
- (b) a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes that agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

## 1.4 Inconsistency

- (a) The terms of this Deed prevail over the terms of the Sponsorship Agreement to the extent of any inconsistency.
- (b) The ASX Settlement Rules and applicable law prevail over the terms of this Deed and the Sponsorship Agreement to the extent of any inconsistency.

## 1.5 Limited recourse to Mortgagor

Notwithstanding anything contained in the Finance Documents, the Security Trustee acknowledges that in satisfying any demand or claim which the Security Trustee may make on the Mortgagor in respect of an amount outstanding or any liability whatsoever under or in respect of the Finance Documents (whether constituting principal, interest, charges, taxes, damages, losses, costs, expenses or otherwise):



- (a) the recourse of the Security Trustee will be limited to the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed;
- (b) the Mortgagor will in no circumstances have any liability whatsoever to the extent that the 'Collateral' (as defined in the General Security Deed) and any other amount recoverable under clause 2.4 of the General Security Deed is insufficient to satisfy any such liability, claim or demand; and
- (c) at the completion of enforcement of the Security Interest (as defined in the Security Trust Deed) over all of the 'Collateral' (as defined in the General Security Deed) and distribution of the proceeds in accordance with the Security Trust Deed, or if the Mortgagor, following the sale, transfer or disposal of any property and distribution of the proceeds in accordance with the Finance Documents, holds no residual 'Collateral' (as defined in the General Security Deed), the Mortgagor will no longer have any liability whatsoever under or in respect of the Finance Documents.

Nothing in this clause 1.5 limits the liability of the Mortgagor for any loss, cost or expenses suffered or incurred by a Beneficiary arising from the Mortgagor's fraud or wilful misconduct under or in connection with any Finance Document.

This clause 1.5 (*Limited recourse to Mortgagor*) is not severable from this Deed.

## **2 Security Trustee**

### **2.1 Limitation on liability**

- (a) The Security Trustee enters into this Deed (and each Finance Document other than the Security Trust Deed) only in its capacity as trustee of the Security Trust and in no other capacity. Notwithstanding any other provisions of this Deed or any other Finance Document, a liability arising under or in connection with this Deed or any other Finance Document is limited to and can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the property of the Security Trust Fund out of which the Security Trustee is actually indemnified for the liability. This limitation of the Security Trustee's liability applies despite any other provision of this Deed or any other Finance Document and extends to all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or any Finance Document.
- (b) The parties other than the Security Trustee may not sue the Security Trustee in any capacity other than as trustee of the Security Trust, including seek the appointment of a receiver (except in relation to the Security Trust Fund), a liquidator, an administrator or any similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Security Trust Fund).
- (c) The provisions of this clause 2 shall not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because under the Security Trust Deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Security Trust Fund as a result of the Security Trustee's fraud, gross negligence or Wilful Default.
- (d) No act or omission of the Security Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed or any other Finance Document) will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 2.1(c) to the extent to which the act or omission was

caused or contributed to by any failure by any other person to fulfil its obligations relating to the Security Trust or by any other act or omission of any other person.

- (e) No attorney, agent, delegate, receiver or receiver and manager appointed in accordance with this Deed or any other Finance Document has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or Wilful Default of the Security Trustee for the purpose of clause 2.1(c).
- (f) For the avoidance of doubt, the Security Trustee is not obliged to use its own funds in performing obligations under this Deed.

## 2.2 Novation

- (a) The parties other than the Security Trustee acknowledge and agree that the Security Trustee may assign its rights and novate or otherwise transfer its Obligations under this Deed to any replacement security trustee that is appointed under the Security Trust Deed.
- (b) The parties agree that they will enter into a novation deed with any replacement security trustee that is appointed under the Security Trust Deed (in a form acceptable to the Security Trustee and the replacement security trustee).
- (c) In this clause 2, **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Security Trustee under or in respect of this Deed.

## 3 Mortgaged Securities

### 3.1 Variation of the Mortgaged Securities Schedule

The Security Trustee may at any time vary the Mortgaged Securities Schedule by giving an Instruction to the Participant.

### 3.2 Limitation

The Mortgaged Securities Schedule may only comprise securities which are or which the Mortgagor and Security Trustee intend to be:

- (a) subject to the General Security Deed; and
- (b) controlled by the Participant pursuant to the Sponsorship Agreement.

### 3.3 Interest of ASX Clear

Nothing in this Deed operates to override any interest of ASX Clear in the Mortgaged Securities.

## 4 Sponsorship Agreement

### 4.1 Appointment as Participant

The Mortgagor and Participant confirm that the Participant has been appointed as its Controlling Participant on the terms of the Sponsorship Agreement and the ASX Settlement Rules in relation to the Mortgaged Securities.

### 4.2 Warranty

The Mortgagor and the Participant severally represent and warrant that the Sponsorship Agreement constitutes their respective legal, valid and binding obligations.

#### **4.3 Termination or variation**

Without the prior written consent of the Security Trustee, the Mortgagor shall not take any action which would or may:

- (a) remove the Participant as the Controlling Participant of the Mortgaged Securities;
- (b) terminate or vary the Sponsorship Agreement including any action otherwise permitted under the Sponsorship Agreement; or
- (c) amend or waive its rights (or agree to any such termination, amendment or waiver) under the Sponsorship Agreement.

The Mortgagor undertakes to provide to the Security Trustee a copy of any amendment to the Sponsorship Agreement as soon as reasonably practicable.

#### **4.4 Undertaking**

The Mortgagor shall not arrange with ASX Clear or any other person to lodge securities in the Mortgagor's holding covered by the Sponsorship Agreement as cover for any position in the Australian options market.

### **5 Instructions**

#### **5.1 Requirements**

An Instruction to the Participant to take or refrain from taking any action in respect of the Mortgaged Securities or to vary the Mortgaged Securities Schedule must be:

- (a) in writing;
- (b) signed by an Authorised Officer of the Security Trustee; and
- (c) copied to the Mortgagor.

#### **5.2 No duty to enquire**

The Participant is under no duty to enquire whether the Security Trustee is entitled to give any Instruction, and may rely on any Instruction which purports to comply with clause 5.1

#### **5.3 Instruction to be given to transfer Mortgaged Securities on the Option Delivery Date**

- (a) The Mortgagor must provide the Security Trustee with a copy of an Option Exercise Notice on the Option Exercise Notice Date.
- (b) If no Event of Default (as defined in the On-Loan Agreement) is continuing, within two Business Days after an Option Exercise Notice is provided to the Security Trustee, the Security Trustee must provide an Instruction to the Participant to transfer the Mortgaged Securities from the Mortgagor to Bar SPV on the Option Delivery Date.

The Mortgagor irrevocably authorises and directs the Security Trustee to give the Instruction contemplated by this clause 5.3.

#### **5.4 Limitation on Participant's liability**

Notwithstanding any other term of this Deed or the terms of the Sponsorship Agreement, the Participant shall have no liability to the Mortgagor for any liability, loss, cost or expense suffered or incurred by the Mortgagor as a result of action taken (or refrained from being taken) by the Participant in good faith under this Deed pursuant to an Instruction.

## 5.5 Indemnity

The Mortgagor indemnifies the Participant against, and must pay to the Participant on demand, amounts equal to, any liability, loss, cost or expense suffered or incurred by the Participant as a result of action taken (or refrained from being taken) by the Participant in good faith under this Deed pursuant to an Instruction. These amounts are not payable to the extent such liability, loss, cost or expense is caused by the fraud, gross negligence or wilful misconduct of the Participant or by the failure of the Participant to comply with its obligations under an Instruction (unless permitted to do so by this Deed).

## 6 Authority and Duty of the Participant

### 6.1 Authorisation

The Mortgagor authorises and directs the Participant to act in accordance with an Instruction.

### 6.2 Acting on instructions

The Participant will act at all times in accordance with an Instruction unless by doing so the Participant would breach the ASX Settlement Rules or any applicable law. If the Participant is unable to comply with an Instruction it will promptly notify the Mortgagor and the Security Trustee.

### 6.3 Restrictions on action

Without limiting the generality of clause 6.2 the Participant shall not:

- (a) transfer, dispose of or otherwise deal with the Mortgaged Securities;
- (b) take any direct or indirect action to retire or resign as the Controlling Participant in respect of the Mortgaged Securities; or
- (c) vary the Sponsorship Agreement,

except in accordance with an Instruction unless by doing so (or not doing so), the Participant would breach the ASX Settlement Rules or any applicable law.

### 6.4 Notice by the Participant

If the Participant:

- (a) wants to terminate the Sponsorship Agreement;
- (b) receives from any party any notice or request to act otherwise than in accordance with the terms of this Deed; or
- (c) is required by the ASX Settlement Rules or applicable law to take any action which would otherwise require an Instruction under the terms of this Deed,

the Participant will promptly notify the Security Trustee and:

- (d) in the case of termination of the Sponsorship Agreement by the Participation under paragraph (a), such notification shall be at least 20 business days prior to the effective date of termination; and
- (e) in the case of a requirement under paragraph (c), the Security Trustee is deemed to have provided the Participant with an Instruction authorising the Participant to take that action.

Such notification is not required in respect of the provision of information by the Participant to any party as required by the ASX Settlement Rules or applicable law.

## 6.5 Holding of Mortgaged Securities

- (a) **(Conversion of holding)** Where the ASX Settlement Rules require that the Mortgaged Securities be converted to another form of holding other than a CHESS sponsored holding:
- (i) the Mortgagor authorises and directs the Participant to initiate such conversion of the securities;
  - (ii) the Participant shall promptly notify the Security Trustee of the proposed conversion; and
  - (iii) the Participant shall initiate the conversion in accordance with the ASX Settlement Rules.

The Mortgagor agrees that only the Participant may initiate a transfer or conversion of the Mortgaged Securities.

- (b) **(Removal from CHESS)** The Participant shall notify the Security Trustee immediately upon becoming aware that the Mortgaged Securities have ceased or will cease to be on a CHESS subregister.

## 6.6 No set-off

The Participant shall not exercise any right (whether under the ASX Settlement Rules or otherwise) of set-off, deduction or combination of accounts or similar right or procedure in respect of its obligations under the Sponsorship Agreement.

## 7 Preservation of Security

### 7.1 Changes in circumstances

In the event of a change in circumstances which, in the sole opinion of the Security Trustee (determined in its absolute discretion), adversely affects the Security Trustee's rights over the Mortgaged Securities (including conversion of the form of holding of the Mortgaged Securities under clause 6.5), the Mortgagor shall, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), take all action required by the Security Trustee so that the Security Trustee is (in its absolute discretion) secured in respect of the Mortgaged Securities as effectively as it was before the change.

### 7.2 Subpositions

Where the Security Trustee determines (in its absolute discretion) that the reservation of the Mortgaged Securities in a Subposition may be used to protect its security interest, the Security Trustee may, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), require the Mortgagor and the Participant to cause the Mortgaged Securities specified by the Security Trustee to be reserved in a Subposition on terms specified by the Security Trustee (in its absolute discretion).

## 8 Termination

### 8.1 Right of replacement

- (a) **(Security Trustee's right)** If the Security Trustee determines (in its absolute discretion) that it is necessary to remove the Participant as Controlling Participant of the Mortgaged Securities in order better to protect its interest in the Mortgaged Securities, it may direct the Mortgagor to give immediate notice to the Participant to terminate the Sponsorship Agreement.

- (b) **(Mortgagor's undertaking)** On receipt of a direction given under this clause the Mortgagor shall comply immediately with that direction.
- (c) **(Power of Attorney)** The Mortgagor irrevocably for valuable consideration appoints each Authorised Officer of the Security Trustee severally as its attorney:
  - (i) to notify the Participant at any time that a Sponsorship Agreement is terminated (and the Participant will accept such notice of termination); and
  - (ii) to do anything (including but not limited to any CHESS notifications and any change of HIN) which in the opinion of the Security Trustee or attorney (in its absolute discretion) is necessary or expedient to effect the termination of the Participant's appointment under this Deed and Sponsorship Agreement and the execution of a similar deed and Sponsorship Agreement with a Controlling Participant acceptable to the Security Trustee.

The Mortgagor has no liability with respect to any action or inaction taken by the Security Trustee or any of its Authorised Officers pursuant to this paragraph (c).

## 8.2 Replacement of Controlling Participant

If:

- (a) the Participant is unable to perform its obligation under the Sponsorship Agreement (including because ASX Settlement suspends, restricts or terminates the participation of the Participant as an authorised participant under the ASX Settlement Rules); or
- (b) the Participant terminates the Sponsorship Agreement or ceases to be the Controlling Participant of the Mortgaged Securities for any reason, including action under clause 8.1;

the Mortgagor shall, at the cost of the Security Trustee (subject to indemnification from the Beneficiaries under the Security Trust Deed), ensure that another Broker acceptable to the Security Trustee (in its absolute discretion):

- (c) becomes the Sponsoring Broker and Controlling Participant of the Mortgaged Securities; and
- (d) enters into a Sponsorship Agreement with the Mortgagor and into a deed in substantially the same form as this Deed.

## 8.3 Termination

- (a) This Deed will terminate on:
  - (i) the Option Delivery Date immediately after the Mortgaged Securities are transferred to Bar SPV pursuant to the Instruction given under clause 5.3;
  - (ii) receipt by the Participant of an Instruction that the General Security Deed is fully discharged; or
  - (iii) the Participant ceasing to be the Controlling Participant of the Mortgaged Securities for any reason or in any manner permitted under this Deed.
- (b) This Deed is not terminated by any other event including the winding up or dissolution of the Mortgagor. The termination of this Deed does not affect the rights or obligations of the parties which have accrued before that time.

## 9 Information

The Mortgagor shall provide all information and documents which the Security Trustee or the Participant may reasonably require to:

- (a) establish a participant-sponsored CHESS holding of the Mortgaged Securities;
- (b) conduct the Sponsored Holding as set out in the Sponsorship Agreement, this Deed and the ASX Settlement Rules; and
- (c) keep such information up to date.

The Mortgagor irrevocably consents to the exchange of information concerning the Mortgagor and the Mortgaged Securities between the Security Trustee and the Participant.

## 10 GST

All payments (including the provision of any non-monetary consideration) to be made by the Mortgagor under or in connection with this Deed have been calculated without regard to GST.

- (a) If all or part of that payment is the consideration for a taxable supply for GST purposes then, when the Mortgagor makes the payment:
  - (i) it must pay to the Security Trustee or the Participant an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) the Security Trustee or the Participant will promptly provide to the Mortgagor a tax invoice complying with the relevant GST legislation.
- (b) Where under this Deed the Mortgagor is required to reimburse or indemnify for an amount, the Mortgagor will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Security Trustee or the Participant determines that it is entitled to claim in respect of that amount.

## 11 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender; and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or electronic mail address of the recipient shown in Schedule 1 or to any other address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

## 12 Governing Law and Jurisdiction

This Deed is governed by the laws of Victoria and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The parties irrevocably accept the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

## 13 Counterparts

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.



## Schedule 1

### Notice Details

#### Mortgagor

Jingle SPV 2 Pty Limited

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000

Email: [william.hara@qube.com.au](mailto:william.hara@qube.com.au)

Attention: William Hara

#### Security Trustee

PT Limited

Address: Level 12, Angel Place  
123 Pitt Street  
Sydney NSW 2000

Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

Attention: Senior Manager, CSF Team

#### Participant

UBS Securities Australia Limited

Address: Level 16, Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

Email: [scott.hanlon@ubs.com](mailto:scott.hanlon@ubs.com)

Attention: Scott Hanlon/David Costa



**Schedule 2**

**Mortgaged Securities**

Shares in the capital of Asciano Limited (ACN 123 652 862).

**Schedule 3**

**Sponsorship Agreement**

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UBS Securities Australia Limited  
ABN 62 008 586 481

## CHES Sponsorship Agreement

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# UBS Securities Australia Limited

ABN 62 008 586 481

## CHESSE Sponsorship Agreement

### Details

**Sponsor:**  
("we")

UBS Securities Australia Limited  
ABN 62 008 586 481  
Address: Level 16 Chifley Tower  
2 Chifley Square, Sydney NSW 2000  
Phone: (02) 9324 2000  
Fax: (02) 9324 2669

**Client:**  
("you")

Name: JINGLE SPV 1 PTY LIMITED  
.....  
ACN: 608 981 004  
(if a corporation)  
Address: Level 27, 45 Clarence Street, Sydney NSW 2000  
Fax: +61 2 9080 1999

**Date:**

29 October 2015

**Account No:**

**Holding:**

This agreement relates to your *holding* with the following holder identification numbers (or HINs):

.....  
.....

(If these HINs are not known at the time you sign this agreement, you authorise us to insert them.)

If you would like to discuss the effect of this agreement and the terms and conditions, please contact Scott Hanlon on +61 2 9324 3594

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## Provisions

### Key Words

The meaning of words printed like *this* and of some other key terms is set out at the end of this agreement.

### What is *CHESS*?

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1. *CHESS* is a system of registering *financial products* on computer. It is operated by *ASX Settlement* under the *ASX Settlement Rules*. Instead of receiving a share certificate, you receive a holding statement.

Only certain categories of people may control *financial products* on *CHESS* (we fall within one of these categories). Other people who have *financial products* on *CHESS* need their holding “sponsored” by a “controlling participant” for the purposes of *CHESS*. This agreement relates to your appointment of us as your “controlling participant”.

### Our Authority and Obligations

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2. You appoint us as your “controlling participant” for the purposes of *CHESS* with respect to your *holding* with the holder identification number(s) (HIN(s)) specified or to be specified in the Details section on the first page of this agreement. A holder identification number is a number that is used to identify a *holding* in *CHESS*. You authorise us as your agent to do any act under *CHESS* relating to your *holding*.
3. We will not initiate any *transfer* or *conversion* into or out of your *holding* sponsored under this agreement without your express authority.
4. Subject to clause 5, we are not obliged to transfer *financial products* into your *holding* until we receive payment for those *financial products*.
5. If we demand that you pay for *financial products*, but the contract for the purchase of those *financial products* remains unpaid, we may sell those *financial products* at your risk

and expense (including any brokerage and stamp duty).

6. If we claim that you have not paid us an amount lawfully owed to us, we can refuse to comply with your *withdrawal instructions* (but only to the extent necessary to retain in your *holding* sponsored under this agreement *financial products* with a value equal to 120% of the current market value of the amount claimed).
7. Subject to clauses 5 and 6, we will initiate any *transfer*, *conversion* or other action necessary to give effect to *withdrawal instructions* within the *scheduled time*.

You agree that we are able to initiate or control the sending of electronic messages or electronic communications in relation to which your orders may be transferred or otherwise dealt with.

### Acknowledgements by You

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8. You acknowledge that:
  - (a) before you signed this agreement one of our responsible officers explained the effect of this agreement to you and that you understood the effect of this agreement; and
  - (b) if you die or become *bankrupt*, a *holder record lock* will be applied to all your *holdings* sponsored under this agreement in accordance with the *ASX Settlement Rules* (unless your legally appointed representative or trustee elects to remove those *holdings* from the *CHESS subregister*); and
  - (c) if you die, this agreement is deemed to remain in operation in respect of the legally appointed representative authorised to administer your estate for a period of up to 3 calendar months after the removal of the *holder record lock* pursuant to the *ASX Settlement Rules* (unless your legally appointed representative elects to remove the



*holdings* sponsored under this agreement from the *CHESS subregister*).

- (d) the regulatory regime which applies to us is Chapter 7 of the *Corporations Act*, the *ASX Settlement Rules* and the *Market Integrity Rules*;
- (e) information about our status can also be obtained from *ASX Settlement* and *ASIC*;
- (f) a complaint against us may be lodged by you with us, *ASIC* or *ASX Settlement*;
- (g) no external compensation arrangements, other than those listed in clauses 20 and 21A below, apply to you in relation to this agreement;
- (h) if a *transfer* is taken to be effected by us under section 9 of the *ASX Settlement Rules*, then:

- a. you may not assert or claim against *ASX Settlement* or the relevant Issuer (as defined in the *ASX Settlement Rules*) that the *transfer* was not effected by us or we were not authorised by you to effect the *transfer*; and
- b. you have no claim arising out of the *transfer* against a *Compensation Fund* that relates to a *Relevant Exchange* as described in clause 20 below, unless the *transfer* was also taken to be effected by a Market Participant of that *Relevant Exchange* or a Clearing Participant of *ASX Clear*.

9. If you are a joint holder, you also acknowledge that:

- (a) if one of the joint holders dies, all *holdings* under the joint *holder record* will be transferred into new *holdings* under a new *holder record* in the name of the surviving holders (this

agreement remains valid for the new *holdings* under the new *holder record*); and

- (b) if one of you becomes *bankrupt*, we will:
  - (i) establish a new *holder record* in the name of the *bankrupt* holder, transfer that person's interest into new *holdings* under the new *holder record*, and request *ASX Settlement* to apply a *holder record lock* to all *holdings* under that *holder record* (unless the legally appointed representative of the *bankrupt* holder elects to remove the *holdings* from the *CHESS subregister*); and
  - (ii) establish a new *holder record* in the names of the other joint holders and transfer their interest into new *holdings* under the new *holder record*.

## Security, Other Interests and Subpositions

- 10. If you tell us that *financial products* are to be lodged with *ASX Clear* as cover for written positions in *derivatives products* registered with *ASX Clear*, you authorise us to take whatever action is required by *ASX Clear* or the *ASX Settlement Rules* to give effect to that cover.
- 11. If you tell us that a charge or other interest in *financial products* has been or is to be given to a person, then you authorise us to take whatever action is required by that person in accordance with the *ASX Settlement Rules* to give effect to or record that interest.
- 12. We may take steps to create a *subposition* over your *holding* in the circumstances contemplated by clauses 10 or 11. We may also create a *subposition* if you consent. If we do this, your ability to *transfer*, *convert* or otherwise deal with the *financial products* will be restricted in accordance with the *ASX Settlement Rules*.

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## Information

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13. You must promptly give us any information or documents we ask for to enable us to:
- (a) perform our obligations or to act as your “controlling participant” or agent under this agreement; or
  - (b) comply with the requirements of *ASX Settlement* or the *ASX Settlement Rules*.
14. Information or documents you give us may be disclosed:
- (a) to any person for these purposes;
  - (b) if required by any regulatory authority (including *ASX Settlement*) or if allowed or required by law; or
  - (c) to our officers, employees, advisers and agents; or
  - (d) if you consent; or
  - (e) to enable us to enforce our rights.

## Fees and Indemnities

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15. You must pay us the following fees in connection with these sponsorship arrangements:
- (a) normal brokerage as notified to you from time to time; and
  - (b) fail fees, where applicable.
16. You indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* (including consequential or economic loss) we suffer or incur:
- (a) in connection with our performing our obligations under this agreement; or
  - (b) in connection with our acting as your “controlling participant” or agent for the purposes of *CHESS*; or
  - (c) if you do something you agree not to do, or do not do something you agree to do, under this agreement.

17. You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us even if we do not expressly ask you to pay us.

The indemnity in clause 16 is a continuing obligation, independent of your other obligations to us. It continues even after this agreement is terminated. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

## Suspension from CHESS

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18. If we are suspended from *CHESS* participation, then (subject to the assertion by our liquidator, receiver, administrator or trustee of an interest in *financial products* controlled by us) you may within 20 *business days* of *ASX Settlement* giving notice of the suspension give a notice to *ASX Settlement* requesting that your *holdings* sponsored under this agreement be removed either:
- (a) from the *CHESS subregister*; or
  - (b) from our control to the control of another “sponsoring participant” with whom you have entered into a valid sponsorship agreement pursuant to the *ASX Settlement Rules*.

If you do not give *ASX Settlement* such a notice, *ASX Settlement* may change your *CHESS* sponsor under the *ASX Settlement Rules*, in which case you will be deemed to have entered into a new sponsorship agreement with the substitute “sponsoring participant” on the same terms as this agreement.

- 18A. If you are deemed to have entered into a new sponsorship agreement with a new “controlling participant” because we are suspended from *CHESS*, the new “controlling participant” must enter into a new sponsorship agreement with you within 10 *business days* of the change of “controlling participant”.



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## Complaint Procedures

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19. If you make a claim for compensation, our ability to satisfy that claim will depend upon our financial circumstances.
20. You may make a claim on a Compensation Fund in the circumstances specified under Part 7.5, of the *Corporations Regulations*.
21. If we breach this agreement, you may refer that breach to any regulatory authority, including *ASX Settlement*.
- 21A. If we are required to lodge a Sponsorship Bond (as defined in the *ASX Settlement Rules*) you may be entitled to make a claim to *ASX Settlement* under our Sponsorship Bond.

## Termination

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22. This agreement is terminated if:
- (a) either party notifies the other in writing that it wants to terminate this agreement (in which case this agreement is terminated from the time the notice is received unless a later time is specified in the notice);
  - (b) we become insolvent;
  - (c) our participation as a broker in *CHESS* is terminated or suspended;
  - (d) you give an effective withdrawal instruction to us pursuant to clause 23B below.
23. The termination of this agreement does not affect any rights or obligations that have accrued before that time.

## Change of "Controlling Participant"

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- 23A. If you receive a *participant change notice* from us and the *participant change notice* was received by you no later than 20 *business days* prior to the date of the proposed change of "controlling participant" specified in the notice, you are under no obligation to agree to the change of "controlling participant" and may choose to

do any of the things set out in clause 23B or 23C.

- 23B. You may choose to terminate this agreement by giving withdrawal instructions (as defined in the *ASX Settlement Rules*) to the participant indicating whether you wish to:
- (a) transfer your *holding* to another "controlling participant"; or
  - (b) transfer your *holding* to one or more issuer sponsored holdings (as defined in the *ASX Settlement Rules*).
- 23C. If you do not take any action to terminate this agreement in accordance with clause 23B, and do not give any other instructions to us which would indicate that you do not agree to the change of "controlling participant" then, on the *effective date*, this agreement will have been taken to have been novated to the new "controlling participant" and will be binding on all parties as if, on the *effective date*:
- (a) the new "controlling participant" is a party to this agreement in substitution for us; and
  - (b) we are released by you from any obligations arising on or after the *effective date*.
- 23D. Novation under this section will not take effect until you have received a notice from the new "controlling participant" confirming that the new "controlling participant" consents to act as the "controlling participant" for you. The *effective date* may as a result be later than the date set out in the *participant change notice*.
- 23E. You will be taken to have consented to the events referred to in clause 23D by the doing of any act which is consistent with the novation of this agreement to the new "controlling participant" (for example by giving an instruction to the new "controlling participant"), on or after the *effective date*, and such consent will be taken to be given as of the *effective date*.



23F. This agreement continues for the benefit of us in respect of any rights and obligations accruing before the *effective date* and, to the extent that any law or provision of any agreement makes the novation in clause 23D not binding or effective on the *effective date*, then this agreement will continue for the benefit of us until such time as novation is effective, and we will hold the benefit of this agreement on trust for the new “controlling participant”.

23G. Nothing in this section will prevent the completion of *CHESS* transactions by us where the obligation to complete those transactions arises before the *effective date* and this agreement will continue to apply to the completion of those transactions, notwithstanding the novation of this agreement to the new “controlling participant” under this section.

### **ASX Settlement Rules**

24. This agreement is subject to the *ASX Settlement Rules*. You must not do anything that would prevent or hinder us from complying with our obligations under the *ASX Settlement Rules*.

25. If this agreement is inconsistent with the *ASX Settlement Rules*, the *ASX Settlement Rules* prevail to the extent of the inconsistency.

### **Miscellaneous**

#### **Notices and Other Communications**

26. Unless otherwise required or permitted by us or by the *ASX Settlement Rules*, notices and other communications must be in writing.

Written notices or other communications may be:

- (a) sent or faxed to the address or fax number last notified (which at the date of this agreement is the address or fax number in the Details section); or
- (b) left at, or sent by courier or post to, (in the case of a company) the company’s head office or principal place of

business or (in the case of an individual) the individual’s place of residence or business last known to the person sending the document.

They take effect from the time received unless a later time is specified in them. If sent by post, they are taken to be received on the second *business day* after a correctly addressed and stamped envelope is posted. If sent by courier, they are taken to be received when delivered to the correct address. If sent by fax, they are taken to be received when the sender’s fax machine indicates a successful transmission to the correct fax number.

#### **Waiver and Variation**

27. We can vary this agreement by giving you written notice of the variation. We will give you:

- (a) at least 7 *business days*’ notice of the variation if the variation is, in our reasonable opinion, to remove any inconsistency between this agreement and the *ASX Settlement Rules*; and
- (b) at least 20 *business days*’ notice in other cases.

28. Subject to clause 27, a provision of this agreement, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

#### **Overdue Interest**

29. If you do not pay us an amount when it is due, we can charge interest on the overdue amount. We do this using the method and interest rate we determine from time to time.

#### **Applicable Law**

30. This agreement is governed by the laws in force in New South Wales. You and we submit to the non-exclusive jurisdiction of the courts of New South Wales. This agreement constitutes the entire agreement of the parties about its subject matters and supersedes all previous agreements.

understandings and negotiations on that matter.

### **Trade Cancellation Powers**

31. Where we enter into a transaction in respect of your holding under this agreement and the transaction is subject to the *Exchange Rules*, we may request, agree to or effect the cancellation of the transaction without your consent in the following circumstances:

- (a) we consider cancellation appropriate, having regard to the desirability of maintaining a fair and orderly market;
- (b) where *ASIC*, a *Relevant Exchange*, *ASX Clear* or *ASX Settlement* request or direct that the transaction be cancelled; or
- (c) where the *ASX Settlement Rules*, the *Market Integrity Rules* or the *ASX Clear Rules* require or contemplate that the transaction will be cancelled.

Your obligations in relation to the settlement of a transaction which is cancelled cease to apply in respect of that cancelled transaction from the time it is cancelled (whether or not we have given you a confirmation in respect of the affected transaction).

32. You acknowledge that a *Relevant Exchange* has a range of powers under the *Exchange Rules*, including the power to amend or cancel a transaction. You agree not to make, and to release us from any right you may have to make, any claim against us for any loss incurred by you which may arise in connection with the exercise by a *Relevant Exchange* of those powers.

### **Wholesale Client Status**

33. You represent that:

- (a) you are, as at the date of this agreement, a *Wholesale Client*;
- (b) you will continue to be so for the duration of this agreement; and

(c) you will do all things necessary to maintain your status as a *Wholesale Client* for the duration of this agreement.

33. You agree to:

- (a) provide to us on a continuing basis all information and documentation that we may require or request from you for the purposes of confirming your status as a *Wholesale Client*, including, but not limited to, providing us on request with an "accountant's certificate" upon entering into this agreement and on a six monthly basis for the term of this agreement which satisfies the *Wholesale Client* requirements under the *Corporations Act*; and
- (b) promptly advise us if at any future time you cease to be a *Wholesale Client*.

34. You acknowledge that if you either advise us that you are no longer a *Wholesale Client*, or are unable to satisfy us (acting reasonably) that you are a *Wholesale Client*, we may, without consulting or further consulting you, take such action as we deem reasonable in the circumstances. We may also, if we choose, terminate this agreement without consulting or further consulting you.

### **Meaning of Words**

*ASIC* means the Australian Securities and Investments Commission.

*ASX* means ASX Limited (ABN 98 008 624 691);

*ASX Clear* means ASX Clear Pty Limited (ABN 48 001 314 503).

*ASX Clear Rules* means the operating rules of ASX Clear, as amended from time to time.

*ASX Market Integrity Rules* means the ASIC Market Integrity Rules (ASX Market) 2010, as amended from time to time.



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**ASX Settlement** means ASX Settlement Pty Limited (ACN 008 504 532) and its agents appointed under the *ASX Settlement Rules*.

**ASX Settlement Rules** means the operating rules of *ASX Settlement* as amended from time to time.

**bankrupt** means being in a state of “bankruptcy” as that term is defined in the *ASX Settlement Rules*.

**business day** has the meaning in the *ASX Settlement Rules*. Generally, it means any day other than a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and a day that *ASX Settlement* declares is not a business day.

**CHESS** stands for Clearing House Electronic Subregister System and has the meaning in the *ASX Settlement Rules*. It is a system of registering *financial products* on computer.

**CHESS subregister** has the meaning in the *ASX Settlement Rules*. Generally, it means that part of a register of *financial products* that is administered by *ASX Settlement*.

**Chi-X** means *Chi-X Australia Pty Ltd* ABN 47 129 584 667.

**Chi-X Market Integrity Rules** means the ASIC Market Integrity Rules (Chi-X Australia Market) 2011, as amended from time to time:

**Compensation Fund** means a compensation fund required to be established by a Relevant Exchange under Part 7.5 of the Corporations Act, and includes the National Guarantee Fund and the Chi-X fidelity fund.

**conversion** has the meaning in the *ASX Settlement Rules*. Generally, it means the movement of *financial products* from one *holding* on one subregister to another *holding* on another subregister without a change in legal ownership.

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

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

**costs** includes charges and expenses (including stamp duty and other government charges); and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis.

**derivatives products** means a Derivative Market Contract, other than a Futures Market Contract (each as defined in the *ASX Market Integrity Rules*).

**effective date** has the meaning in the *ASX Settlement Rules*.

**Exchange Rules** means the rules governing trading on a *Relevant Exchange*, as amended from time to time, including the *Market Integrity Rules* and the operating rules of *ASX* and *Chi-X*.

**financial products** means a Cash Market Product (as defined in the *ASX Market Integrity Rules*) and an Equity market Product (as defined in the *Chi-X Market Integrity Rules*).

**holder record** has the meaning in the *ASX Settlement Rules*. Generally, it means the details recorded by *ASX Settlement* in *CHESS* for the purpose of operating one or more *holdings*.

**holder record lock** has the meaning in the *ASX Settlement Rules*. Generally, it means the facility in *CHESS* for preventing *financial products* from being deducted from a *holding*.

**holding** has the meaning in the *ASX Settlement Rules*. Generally, it means a holding of *financial products* by a person.

**including** when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**Market Integrity Rules** means any market integrity rules made by ASIC in accordance with Part 7.2A of the Corporations Act, as amended

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from time to time, that apply to a Relevant Exchange.

*participant change notice* has the meaning in the *ASX Settlement Rules*.

*Relevant Exchange* means:

- (a) the financial markets operated by *ASX* and *Chi-X* (as the case may be); and
- (b) any other financial market (whether or not licensed under Part 7.2 of the *Corporations Act*) to which orders may be transmitted for execution, or which provides clearing or settlement services in respect of transactions on such a market (whether or not licensed under Part 7.3 of the *Corporations Act*).

*scheduled time* has the meaning given in the *ASX Settlement Rules*. The scheduled time varies depending on the act to which it relates.

*subposition* has the meaning given in the *ASX Settlement Rules*. Generally, it means an arrangement under which activity relating to the *financial products* may be restricted and access to the *financial products* given to a person other than your normal sponsor.

*transfer* has the meaning in the *ASX Settlement Rules*. Generally, it means a transfer of *financial products* to or from a *holding* on *CHESS*.

*you* or *client* means the person named in this agreement as client. If there are more than one, *you* means each of them separately and every two or more of them jointly. *You* includes your successors and assigns.

*Wholesale Client* has the meaning given to it in section 761G of the *Corporations Act*.

*withdrawal instructions* has the meaning in the *ASX Settlement Rules*. Generally, it means the instructions by a person who is sponsored on *CHESS* for the withdrawal of *financial products* from the sponsored *holdings*.

*we* or *sponsor* means UBS Securities Australia Limited (ABN 62 008 586 481) and its successors and assigns.

Certain definitions refer to the *ASX Settlement Rules*. You should read those rules for the full terms of the definition. The definition may change from time to time if the *ASX Settlement Rules* are changed.

The singular includes the plural and vice versa.

A reference to:

- a document (including the *ASX Settlement Rules*) or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it.

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**Signing page**

Signed as an agreement.

**Client's signature . . .**

**. . . if an individual**

Signed by the client:

.....  
Signature of client

**. . . if under common seal**

The common seal of the client is affixed in )  
accordance with its articles of )  
association:

.....  
Signature of office holder

.....  
Signature of office holder

.....  
Name (please print)

.....  
Name (please print)

.....  
Office held (please print)

.....  
Office held (please print)

**. . . if under power of attorney**

Signed for the client by its attorney (the  
attorney declares the attorney has had  
no notice of the revocation of the power  
of attorney)

.....  
Signature of attorney

.....  
Name (please print)

.....  
Date of power of attorney



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**... if by an authorised officer**

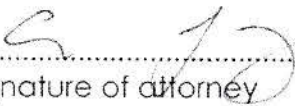
Signed by the client by its authorised officer

  
.....  
Signature of authorised officer

PAUL LEWIS  
.....  
Name (please print)

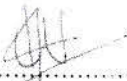
**Sponsor's signature ...**

Signed for the sponsor by its attorneys  
(the attorneys each declare it has had no  
notice of the revocation of the power of  
attorney)

  
.....  
Signature of attorney

CANAL FOLET  
.....  
Name (please print)

.....  
Date of power of attorney

  
.....  
Signature of attorney

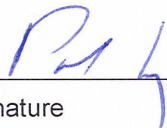

CHRIS WILLIAMS  
.....  
Name (please print)

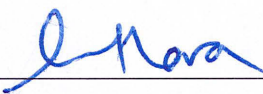
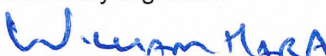
.....  
Date of power of attorney

**Executed and delivered as a Deed.**

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

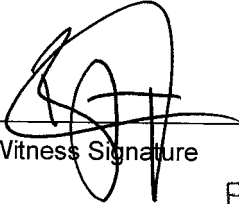
**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Jingle SPV 2 Pty Limited**:

  
\_\_\_\_\_  
Director Signature  
  
\_\_\_\_\_  
Print Name

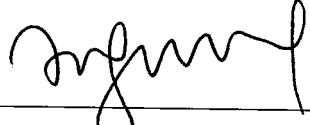
  
\_\_\_\_\_  
Director/Secretary Signature  
  
\_\_\_\_\_  
Print Name

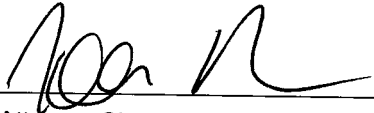


**Signed Sealed and Delivered for PT Limited**  
by its attorneys under power of attorney dated  
16 September 2014 in the presence of:

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Witness Signature  
\_\_\_\_\_  
Print Name Brian Spellman  
Senior Manager

  
\_\_\_\_\_  
Attorney Signature Esther Ang  
Senior Transaction Manager

\_\_\_\_\_  
Print Name  
  
\_\_\_\_\_  
Attorney Signature  
\_\_\_\_\_  
Print Name Nora McDonnell  
Manager

**Signed Sealed and Delivered for UBS  
Securities Australia Limited** by its attorneys  
under power of attorney dated 3 June 2015 in  
the presence of:

  
\_\_\_\_\_

Witness Signature

ALEX DIONNAM  
\_\_\_\_\_

Print Name

  
\_\_\_\_\_

Witness Signature

ALEX DIONNAM  
\_\_\_\_\_

Print Name

  
\_\_\_\_\_

Attorney Signature

Annette Spencer  
\_\_\_\_\_

Print Name

  
\_\_\_\_\_

Attorney Signature


ANTHONY SWEETMAN  
\_\_\_\_\_

Print Name

## Annexure C

This is Annexure C of 15 pages (including this page) referred to in the accompanying Form 603.

Signed on behalf of the Substantial Holders

print name	Tom Story	capacity	Authorised representative
sign here		date	2 November 2015

The copy attached to this Annexure C is a true copy of the original.



UBS AG, Australia Branch  
ABN 47 088 129 613  
AFSL No. 231087  
Level 16 Chifley Tower  
2 Chifley Square  
Sydney NSW 2000 Australia

OTC Operations  
Tel. +612-9324 3455

**Warning: This is a structured derivative. Do not invest in it unless you fully understand and are willing to assume the risks associated with it.**

Date: 29 October 2015

To: Qube Holdings Limited (ABN 14 149 723 053) (*Counterparty or Party B*)

Attention: Paul, William and Steve

E-mail 1: Paul.lewis@qube.com.au

Email 2: William.hara@qube.com.au

Email 3: Steve.castle@qube.com.au

Tel 1: Paul Lewis +612 9080 1903 / 0414 907 437

Tel 2: William Hara +612 9080 1913 / 0419 244 477

Tel 3: Steve Castle +612 9080 1906 / 0413 005 018

From: UBS AG, Australia Branch (ABN 47 088 129 613) (*UBS or Party A*)

Address: Level 16 Chifley Tower, 2 Chifley Square, Sydney, NSW 2000, Australia

Email: sh-tradecapture-sydney@ubs.com

**Subject: Amended and Restated Confirmation of an Equity Swap Transaction (UBS Ref: BKP314SYD1345240, BKP314SYD1344896)**

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Dear Sirs/Madams,

The purpose of this amended and restated Confirmation is to record that, for valuable consideration, the parties have agreed to amend the terms of this Transaction effective from 29 October 2015. This amendment confirmation amends and restates the Confirmation for this Transaction dated 29 September 2015 (**UBS Ref: BKP314SYD1345240, BKP314SYD1344896**) as follows:

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the above referenced transaction entered into between Counterparty and UBS on the Trade Date specified below (the "**Transaction**"). This communication evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates.

If you and we are parties to a master agreement that governs transactions of this type (whether in the form of the ISDA Master Agreement (Multicurrency-Cross Border) or any other form (a "Master Agreement"), then this Confirmation will supplement, form a part of, and be subject to that Master Agreement. If you and we are not parties to such a Master Agreement, then you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the 2002 ISDA Master Agreement (the "ISDA Form"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form a part of and be subject to and governed by that agreement, except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had executed an agreement in such form (but without any Schedule except for the election of: (i) New South Wales as the governing law as detailed in paragraph (f) of the Additional Provisions to this Confirmation; and (ii) Australian Dollars as the Termination Currency and such other elections and modifications detailed herein referring to the ISDA Form) on the Trade Date of the first Transaction between us (hereinafter the "Agreement"). The parties agree that the terms of each Annex to the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc. ("Protocol") apply to the agreement as if the parties had adhered to the Protocol without amendment. In the event of any inconsistency between the provisions of any such Agreement and this Confirmation, this Confirmation will prevail for the purposes of this Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**") and the 2006 ISDA Definitions (the "**Swap Definitions**", and together with the Equity Definitions, the "**Definitions**"), in each case, as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern. References herein to a "Transaction" shall be deemed references to an "Equity Swap Transaction" for the purposes of the Equity Definitions.

In the event of any inconsistency between the provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the particular Transaction to which this Confirmation relates are as follows:

#### **GENERAL TERMS**

Trade Date:	29 September 2015
Effective Date:	29 October 2015
Scheduled Termination Date:	The final Settlement Date
Voluntary Termination:	The Counterparty may upon not less than 10 Business Days written notice to UBS terminate the Transaction in whole or in part on any Business Day by specifying (i) a Settlement Date and (ii) a portion of the Number of Shares to be subject to the early Voluntary Termination, provided that such portion of the Number of Shares shall be at least equal to 25% of Number of Shares as at the relevant time
	Any Voluntary Termination shall be subject to repetition of the representations and warranties in this Agreement
Company or Issuer:	Asciano Limited ABN 26 123 652 862
Shares:	Ordinary shares of the Company (Bloomberg code: AIO AU)

Business Day:	Sydney
Business Day Convention:	Following
Exchange:	Australian Securities Exchange
Related Exchange:	All Exchanges
Upfront fee:	The amount specified in the Side Letter, payable by the Counterparty to UBS on 5 November 2015
Maturity fee:	The amount specified in the Side Letter payable by the Counterparty to UBS on the applicable Settlement Date

### **EQUITY AMOUNTS**

Equity Amount Payer:	Party A
Equity Amount Receiver:	Party B
Equity Notional Amount:	AUD 510,829,456.43
Number of Shares:	61,301,584
Initial Price:	AUD 8.33305

### **INITIAL EXCHANGE**

Initial Exchange Amount:	The Counterparty will pay to UBS the amount specified in the Side Letter
Initial Exchange Payment Date:	The date falling 3 Business Days immediately following the Effective Date unless otherwise agreed with UBS

### **FINAL EXCHANGE**

Final Exchange Amount:	UBS will pay to the Counterparty the amount specified in the Side Letter
Final Exchange Amount Payer:	Party A
Final Exchange Payment Date:	Each Settlement Date

### **FLOATING AMOUNT**

Floating Amount:	In respect of a Calculation Period, the sum of each Daily Floating Amount in respect of each day in such Calculation Period
Daily Floating Amount:	In respect of any day in a Calculation Period, an amount in AUD equal to the product of (a) the Floating Rate Notional

Amount on such day, (b) the sum of the Floating Rate and the Spread, and (iii) the quotient of 1 (as numerator) and 365 (as denominator)

Calculation Period: Each period from and including one Payment Date to but excluding the next Payment Date, provided that the initial Calculation Period shall commence on and include the Trade Date, and the final Calculation Period shall end on but exclude the final Settlement Date

Payment Date: Each 3 month anniversary of the Trade Date, subject to the Following Business Day Convention, provided that the final Payment Date shall be the final Settlement Date

Floating Rate Notional Amount: On each day during a Calculation Period, an amount in AUD equal to the Equity Notional Amount as at such date minus the Initial Exchange Amount (as adjusted to reflect any Voluntary Termination executed prior to such date), provided that the Floating Rate Notional Amount shall be deemed to be zero following payment in full of the Full Deleveraging Payment following the occurrence of a Full Deleveraging Event

Floating Rate: 3-month BBSW

Spread: The amount specified in the Side Letter

Day Count Fraction: Actual / 365

#### **SETTLEMENT TERMS**

Settlement Method Election: Not Applicable

Settlement Method: Physical Settlement

Settlement Currency: AUD

Settlement Date: The date falling 12 months following the Trade Date or, if sooner, (i) each such date as the Counterparty may specify in connection with a Voluntary Termination, or (ii) the date falling one Settlement Cycle following payment in full of the Full Deleveraging Payment following the occurrence of a Full Deleveraging Event (in accordance with the terms set out in the Side Letter)

#### **COLLATERAL**

Collateral Requirements: As specified in the Side Letter

#### **PARTIAL DELEVERAGING & RELEVERAGING**

Partial Deleveraging Event: As specified in the Side Letter

Partial Deleveraging: As specified in the Side Letter

Releveraging: As specified in the Side Letter



## **DIVIDENDS**

Dividend Amount:	<p>The Ex Amount x Number of Shares.</p> <p>"Ex Amount" means, in relation to a Dividend Amount, 100% of the net cash dividend in AUD per Share declared by the Issuer to holders of record of the Shares where the Ex-Date occurs during the Dividend Period</p> <p>"Number of Shares" means the Number of Shares as at the start (i.e. prior to the commencement of trading on the Exchange) of the Scheduled Trading Day on which the Shares commence trading ex-dividend on the Exchange.</p> <p>"Ex-Date" means, in relation to any cash dividend declared by the Issuer, the date that the Shares commence trading ex-dividend on the Exchange</p> <p>A pro-rated portion of each Dividend Amount shall be payable by UBS to Counterparty on each Dividend Payment Date</p>
Extraordinary Dividends:	<p>Applicable</p> <p>"Extraordinary Dividend" means, as determined by the Calculation Agent, (i) any payment by the Issuer to shareholders that the Issuer announces will be an extraordinary dividend or (ii) any other "special" cash dividend on the Shares which is, by its terms or declared intent, declared and paid outside the normal operations or normal dividend procedures of the Issuer</p>
Dividend Period:	<p>The period that commences on, and includes, the Trade Date and ends on, and includes, the final Settlement Date</p>
Dividend Payment Date:	<p>The later of (i) the final Settlement Date and (ii) the third Business Day following the payment date by the Issuer of the last cash dividend declared by the Issuer in respect of which the Ex-Date occurred during the Dividend Period</p>
Re-investment of Dividends:	<p>Not Applicable</p>

## **OTHER TERMS**

Method of Adjustment:	<p>Calculation Agent Adjustment. In its determinations of the existence and extent of any dilutive or concentrative effect on the theoretical value of the Shares of any Potential Adjustment Event, and any related adjustments to the terms of the Transaction, the Calculation Agent shall take into account any amounts of Local Taxes that would, in the determination of the Calculation Agent, be withheld from or paid or otherwise incurred by an Offshore Investor in connection with such Potential Adjustment Event</p> <p>As used herein "Local Taxes" shall mean taxes, duties, and similar charges imposed by the taxing authority of the</p>
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Local Jurisdiction

“Offshore Investor” shall mean a holder of Shares who is an institutional investor not resident in the Local Jurisdiction for the purposes of the tax laws and regulations of the Local Jurisdiction and, for the avoidance of doubt, whose jurisdiction of residence (i) shall be determined by the Calculation Agent and (ii) may be the jurisdiction of the other party to the Transaction.

“Local Jurisdiction” shall mean Australia

**EXTRAORDINARY EVENTS**

Consequences of Merger Events and Tender Offers :

(a) Share-for-Share :	Modified Calculation Agent Adjustment
(b) Share-for-Other :	Modified Calculation Agent Adjustment
(c) Share-for-Combined :	Modified Calculation Agent Adjustment
Determining Party:	Party A
Tender Offer:	Applicable
Composition of Combined Consideration:	Not Applicable
Nationalization, Insolvency or Delisting	Cancellation and Payment (Calculation Agent Determination)
Determining Party:	Party A
Merger Event, Tender Offer, Nationalization, Insolvency or Delisting and corporate action:	Modified Calculation Agent Adjustment, provided that the relevant event shall be deemed to occur on the earlier of the Ex-Date and the announcement date in relation to such event or on such other date as the Calculation Agent determines is commercially reasonable. All relevant terms of the Definitions (including the definitions of "Merger Date" and "Tender Offer Date" in the Equity Definitions) should be construed accordingly

**Additional Disruption Events**

Exchange Disruption:	Applicable
Trading Disruption:	Applicable
Adjustment of Aggregate Share Value:	If on any Scheduled Trading Day (a “Disrupted Day”) a Trading Disruption or Exchange Disruption occurs, including as a result of the Exchange being closed, for the purpose of the Closing Price, the previous closing market value of the Shares will be subject to a haircut of 10%. Such haircut shall be reapplied on a compounding basis on each subsequent Disrupted Day
Change in Law:	Applicable; provided that Section 12.9(a)(ii)(B) of the

Equity Definitions is replaced in its entirety as follows: "(B) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Calculation Agent determines in good faith that it has become illegal to hold, acquire or dispose of Hedge Positions relating to such Transaction"

Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable. Section 12.9(a)(v) of the Equity Definitions is replaced in its entirety by the words: "Hedging Disruption" means that the Hedging Party is unable, after using commercially reasonable efforts, to either (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity price risk (or any other relevant price risk including, but not limited to, the currency risk) of entering into and performing its obligations with respect to this Transaction, or (ii) realize, recover, receive, repatriate, remit or transfer the proceeds of Hedge Positions or this Transaction between accounts within the jurisdiction of the Hedge Positions (the "Affected Jurisdiction") or from accounts within the Affected Jurisdiction to accounts outside of the Affected Jurisdiction
Hedge Positions:	The definition of "Hedge Positions" in Section 13.2(b) of the Equity Definitions shall be amended by inserting the words "or an Affiliate thereof" after the words "a party" in the third line
Increased Cost of Hedging:	Applicable. Section 12.9(a)(vi) of the Equity Definitions is replaced as follows: "(vi) "Increased Cost of Hedging" means that the Hedging Party would incur a materially increased (as compared with the circumstances that existed on the Trade Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (A) acquire, establish, re-establish, substitute, maintain, unwind or dispose of the any transaction(s) or asset(s) it deems necessary to hedge the equity price risk (or any other relevant price risk including, but not limited to, the currency risk) of entering into and performing its obligations with respect to this Transaction or (B) realise, recover or remit the proceeds of the Hedge Positions or this Transaction between accounts within the Affected Jurisdiction or from accounts within the Affected Jurisdiction to accounts outside of the Affected Jurisdiction
Loss of Stock Borrow:	Inapplicable
Increased Cost of Stock Borrow:	Inapplicable
Hedging Party:	Party A
Determining Party:	Party A
Non-Reliance:	Applicable

Agreements and Acknowledgements  
Regarding Hedging Activities:                      Applicable

Additional Acknowledgements:                      Applicable

#### **FULL DELEVERAGING EVENTS**

Full Deleveraging Events:                              As specified in the Side Letter

#### **SETTLEMENT**

This Transaction has been entered into by a member of the UBS group ("UBS Party"). For the avoidance of doubt, any payment or delivery obligations of the UBS Party in respect of this Transaction ("Obligations") may be effected by either UBS Limited, UBS Securities LLC or UBS AG, London Branch, or UBS Securities Australia Limited (the "Settlement Agent"). UBS Party has authorised the Settlement Agent to act on its behalf in the same manner and with the same force and effect as UBS Party might or could do in connection with any such payment or delivery obligation.

#### **ACCOUNT DETAILS**

**Account for payments to Party B:**                      TBA

**Account for payments to Party A:**                      Beneficiary Bank: UBS AG Australia Bank  
Beneficiary Bank SWIFT: UBSWAU2S  
Account holder name: UBS AG Australia  
Correspondent:      UBS AG, Australia Branch  
BSB:                              946 612  
A/c:                                242624  
Swift:                              UBSWAU2S

#### **ADDITIONAL PROVISIONS**

For the purposes of this Transaction:

(a)      **Mutual Representations:** Each party will be deemed to represent to the other party on the date on which it enters into this Transaction and on the date it enters into any amendment that (in the absence of any written agreement between the parties which expressly imposes affirmative obligations to the contrary for this Transaction):-

- (i)      *Non-Reliance:* it is acting for its own account, and it has made its own independent decisions to enter into this Transaction and as to whether this Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Transaction, it being understood that information and explanations related to the terms and conditions of this Transaction will not be considered investment advice or a recommendation to enter into this Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of this Transaction;
- (ii)     *Assessment and Understanding:* it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Transaction. It is also capable of assuming, and assumes, the risks of this Transaction;

- (iii) *Status of Parties*: the other party is not acting as a fiduciary for or an adviser to it in respect of this Transaction;
  - (iv) *Disclosure Requirement*: Details of this Transaction (including the identity of the counterparty) may, (1) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including the stock exchange on which the underlying shares are listed, (2) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, each party agrees to such disclosure and releases the other party and any of its subsidiaries and affiliates from any duty of confidentiality owed to it in relation to such information;
  - (v) The counterparty confirms that the entering into of the Transaction and any related action in connection with the exercise of any rights under the Transaction by it will not cause or result in violation of any provision of applicable law and regulation; and
  - (vi) Each party's rights and obligations under this Transaction are not dependent or conditional upon Party A owning or having any legal or equitable interest in the Shares or any expectation of Party A acquiring such an interest and the fact that Party A may or may not have such an interest or an expectation of acquiring such an interest shall have no effect whatsoever on the rights and obligations of the parties under this Transaction.
- (b) **Additional Party B representations and acknowledgements**
- (i) Party B represents to Party A that at the time it enters into this Confirmation and any amendment to this Confirmation it will not violate Division 3 of Part 7.10 of the Corporations Act 2001 (Cth) in relation to the Issuer or the Shares.
  - (ii) Party B shall comply with all reporting requirements applicable to the Transaction as required under all reporting requirements applicable to it in Australia.
  - (iii) For the avoidance of doubt, if any Shares are held by or for or otherwise controlled by Party A (whether or not as part of any hedge in relation to the Transaction), Party B acknowledges and agrees that it has no right or interest in or to any of those Shares or any power in relation to them including, without limitation, any power to control, or right to be consulted, concerning disposal or trading of those Shares by Party A.
- (c) **Party B undertakings:**
- (i) Party B shall provide such financial information as UBS may reasonably request from time to time in relation to this Transaction. To the extent the financial statements of Party B are freely available to UBS via publically available sources, then the obligation of Party B to provide such information shall be deemed satisfied as of the date on which such information is made so available.
  - (ii) Party B shall promptly notify UBS of any potential Event of Default.
  - (iii) Party B acknowledges and accepts that UBS is entitled to disclose information to, and obtain information from, its various offices, branches and affiliates in connection with the Transaction, including, without limitation, information relating to (a) all assets of Party B and its affiliates held with UBS and/or any of its offices, branches, affiliates and subsidiaries, and (b) any transactions entered into by Party B or any of its affiliates with UBS and/or any of its offices, branches, affiliates and subsidiaries.

(d) **Calculation Agent:** Party A. All determinations made by the Calculation Agent hereunder shall, in the absence of manifest error, wilful default or bad faith, be final and conclusive, and the Calculation Agent shall have no liability to the Counterparty or any third party in relation to such determinations.

(e) **Offices:**

The Office of Party A for the Transaction is Australia.  
The Office of Party B for the Transaction is Sydney.

(f) **Notices:**

(i) The addresses for notices for the purpose of section 12(a) of the Agreement are set out in page 1 of this Confirmation, or as otherwise notified by a party to the other in writing. For the avoidance of doubt, either party may serve notices via email.

(ii) In the case of (i) a Margin Call request, (ii) a Margin Release request, (iii) a Full Deleveraging Notice, or (iv) a notice delivered by Party A to Party B in accordance with sub-paragraph (ii) under "(i) *Failure to Pay*" below or (v) a notice served under section (6)(a) of the Agreement in connection with a failure to pay Event of Default, notices shall be effective on the date and at the time of delivery even if the time of such delivery falls after the close of business in respect of the relevant Local Business Day.

(g) **Governing Law and Consent to Jurisdiction:**

This Agreement will be governed by, and construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State without reference to choice of law doctrine.

The following words shall be added to Section 13(b)(i) of the ISDA Form after "State of New York" in the second line of clause (2) thereof:

" , or the Supreme Court of New South Wales, if this Agreement is expressed to be governed by the laws of New South Wales, (in which case this Agreement shall also be governed by the laws of Australia applying in that State)".

(h) **FATCA – HIRE Act:**

(A) **FATCA PROTOCOL PROVISION.** "Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of the Schedule (Payer Tax Representation), if applicable, and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision

(B) **SHORT FORM HIRE ACT PROTOCOL PROVISION.** The parties agree that the definitions and provisions contained in the Attachment to the 2010 Short Form HIRE Act Protocol published by the International Swaps and Derivatives Association, Inc. on November 30, 2010 are incorporated into and apply to this Agreement as if set forth in full herein. The definition of "Indemnifiable Tax" shall not include any Dividend Equivalent Tax.

(i) **Failure to Pay:**

There shall be no grace period in respect of any payment default under section 5(a)(i) of the Agreement *provided however* that:

- (i) there shall be a 1 day grace period where Party A determines that the failure to pay is caused solely by a banking error attributable to a third party; and
- (ii) the occurrence of a failure to pay by Party B will not trigger an Event of Default until Party A serves a notice to Party B declaring the failure to pay an Event of Default.

(j) **Cross Default:**

As specified in the Side Letter

(k) **Set-off:**

As specified in the Side Letter

(l) **Definition:**

"**Side Letter**" means the letter entitled 'Confirmation Side Letter relating to Cash Settled Equity Swap Transaction' dated on or about the date of this Confirmation between Party A and Party B.

(m) **Acknowledgements**


If at any time Party A or its nominated affiliate holds any Shares as part of its Hedge Positions:

- (i) Party A agrees to use reasonable endeavours to give Party B notice of any event whereby holders of Shares may vote or exercise other rights in relation to those Shares (each a "**Voting Event**"), as soon as practicable upon becoming aware after it becomes aware of such Voting Event;
- (ii) Party A will act in accordance with the instructions of Party B in relation to any Voting Event provided that acting upon such instruction (i) does not cause Party A to breach any applicable law, regulation or rule or requirement of any governing body and (ii) would not (in the reasonable opinion of Party A) give rise to a risk of reputational harm to Party A; and
- (iii) Party A will provide Party B with, or procure to be provided to Party B, all material notices, reports and other material information provided to holders of Shares,

however, Party A cannot guarantee that it will hold Shares as part of its Hedge Positions.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us at your earliest convenience.

**UBS AG, AUSTRALIA BRANCH**

By:   
Name: *Yue Fei Wang*  
Title: *Associate Director*



By:   
Name: SCOTT HANLON  
Title: EXECUTIVE DIRECTOR

**We hereby confirm our entry into the Confirmation.**

Agreed and accepted for and on behalf of **QUBE HOLDINGS LIMITED**

By:

Name:

\*\*\*\*\*

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Structured products and OTC transactions are complex and may involve a high risk of loss. Prior to entering into a transaction or a product you should consult with your own legal, regulatory, tax, financial and accounting advisors to the extent you consider it necessary, and make your own investment, hedging and trading decisions (including decisions regarding the suitability of this transaction or product) based upon your own judgement and advice from those advisers you consider necessary.

By entering into any transaction with or purchasing any product from UBS you acknowledge and agree that UBS is acting, and will at all times act, as an independent contractor on an arm's-length basis and is not acting, and will not act, in any other capacity, including as your financial adviser or fiduciary, unless expressly agreed in writing. UBS in its capacity as principal or agent is involved in a wide range of commercial banking and investment banking activities globally from which conflicting interests or duties may arise. UBS may provide services to your affiliates or any other entity or person (a "Third Party"), and may engage in any transaction (on its own account or otherwise) with respect to you or a Third Party, or act in relation to any matter for itself or any Third Party, notwithstanding that such services, transactions or actions may be adverse to you or your affiliates, and UBS may retain for its own benefit any related remuneration or profit. You should not rely on any communication (written or oral) of UBS or its employees as investment advice or as a recommendation to enter into the proposed transaction or to purchase the proposed product.

No communication (written or oral and including this document) received from UBS will be deemed to be an assurance or guarantee as to the expected results of the proposed transaction or product.

This document is for information purposes only and should not be construed as an offer, recommendation or solicitation to conclude a transaction or to acquire a product and should not be treated as giving investment advice. The terms of an OTC derivative transaction will be subject to the



By:

Name:

Title:

**We hereby confirm our entry into the Confirmation.**

Agreed and accepted for and on behalf of **QUBE HOLDINGS LIMITED**

By:



Name:

PAUL LEWIS

\*\*\*\*\*

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Structured products and OTC transactions are complex and may involve a high risk of loss. Prior to entering into a transaction or a product you should consult with your own legal, regulatory, tax, financial and accounting advisors to the extent you consider it necessary, and make your own investment, hedging and trading decisions (including decisions regarding the suitability of this transaction or product) based upon your own judgement and advice from those advisers you consider necessary.

By entering into any transaction with or purchasing any product from UBS you acknowledge and agree that UBS is acting, and will at all times act, as an independent contractor on an arm's-length basis and is not acting, and will not act, in any other capacity, including as your financial adviser or fiduciary, unless expressly agreed in writing. UBS in its capacity as principal or agent is involved in a wide range of commercial banking and investment banking activities globally from which conflicting interests or duties may arise. UBS may provide services to your affiliates or any other entity or person (a "Third Party"), and may engage in any transaction (on its own account or otherwise) with respect to you or a Third Party, or act in relation to any matter for itself or any Third Party, notwithstanding that such services, transactions or actions may be adverse to you or your affiliates, and UBS may retain for its own benefit any related remuneration or profit. You should not rely on any communication (written or oral) of UBS or its employees as investment advice or as a recommendation to enter into the proposed transaction or to purchase the proposed product.

No communication (written or oral and including this document) received from UBS will be deemed to be an assurance or guarantee as to the expected results of the proposed transaction or product.

This document is for information purposes only and should not be construed as an offer, recommendation or solicitation to conclude a transaction or to acquire a product and should not be treated as giving investment advice. The terms of an OTC derivative transaction will be subject to the

detailed provisions of the confirmation and the terms of a structured product will be subject to the detailed provisions set out in the relevant product offer document.

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## Annexure D

This is Annexure D of 14 pages (including this page) referred to in the accompanying Form 603.

**Signed on behalf of the Substantial Holders**

print name	Tom Story	capacity	Authorised representative
sign here		date	2 November 2015

The copy attached to this Annexure D is a true copy of the original.

# Memorandum of Understanding

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Date: 29 October 2015

<b>Parties and Transaction</b>	<p>Parties:</p> <ul style="list-style-type: none"><li>(i) Global Infrastructure Management LLC (on behalf of itself and its managed funds and clients) (“<b>GIP</b>”);</li><li>(ii) Qube Holdings Limited (“<b>Qube</b>”); and</li><li>(iii) Canada Pension Plan Investment Board (“<b>CPPIB</b>”).</li></ul> <p>GIP and Qube acknowledge that Qube has acquired an economic interest in 4.77% of the issued share capital (the “<b>Consortium Economic Interest</b>”) in Asciano Limited (“<b>Asciano</b>”) via an equity swap (the “<b>Swap</b>”).</p> <p>GIP and Qube have asked that CPPIB participate as a financier in relation to the Consortium Economic Interest and the Further Interest, as further detailed below.</p> <p>The Parties intend to acquire further interests in Asciano to a strategic level of (when aggregated with all pre-existing relevant interests held by the Parties and the Consortium Economic Interest) up to the equivalent of 19.99% of the issued share capital in Asciano (the “<b>Further Interest</b>”). This could be done through further equity swaps and/or by Qube acquiring Asciano shares.</p> <p>The funding for the Consortium Economic Interest and the Further Interest is to be provided by GIP, Qube and CPPIB in the Relevant Proportions described below. In the case of CPPIB, the funding will be provided by way of one or more loans and CPPIB will not acquire any legal or beneficial interest in any Asciano shares acquired by the other Parties for the purposes of any Further Interest.</p> <p>In this MoU, the Consortium Economic Interest and any Further Interest are referred to as the “<b>Consortium Interest</b>” and the Consortium Interest and its funding are referred to as the “<b>Transaction</b>”.</p> <p>In this MoU, “<b>Original Investors</b>” refers to GIP and Qube, “<b>Financier</b>” refers to CPPIB, “<b>Investors</b>” refers to the Original Investors and any additional investors as agreed by the Investors and the Financier to be part of a consortium in relation to the acquisition of the Consortium Economic Interest, and “<b>Consortium</b>” means the Investors and the Financier (and each member of the Consortium being a “<b>Consortium Member</b>”).</p> <p>The investment structure is subject to tax advice.</p>
<b>Funding Allocations</b>	<p>It is understood by the Consortium Members that the funding requirement for the Consortium Interest (“<b>Total Funding Commitment</b>”) is uncertain.</p> <p>On this basis and as of the date of this MoU, the Consortium Members agree to work together to allocate the Total Funding Commitment among themselves in the following proportions:</p> <ul style="list-style-type: none"><li>- GIP: 41.14%</li><li>- Qube: 31.44%</li><li>- <u>CPPIB: 27.42%</u></li></ul> <p>Total: 100%</p> <p>each of the above percentages being the “<b>Relevant Proportions</b>”.</p>

	<p>The Consortium Members have entered into binding funding arrangements for the acquisition of the Further Interest (in the form of equity or loans, at the discretion of the Consortium Members) proportionate to their Relevant Proportions. In the case of GIP and the Financier, the funding will be provided by way of loan.</p> <p>To the extent any component of the Transaction is undertaken by entities not owned in the Relevant Proportions or not funded in the Relevant Proportions, the Consortium Members will enter into separate arrangements amongst themselves to equalize the blended price at which the Consortium Interest was acquired and using a common agreed funding rate based upon actual interest amounts between all Consortium Members for the funding cost of the Transaction. For the component of the Consortium Interest acquired through equity swaps, the separate arrangements between the Consortium Members will ensure that the total return achieved, or loss incurred, on the economic interests obtained in that way will be shared in accordance with the Relevant Proportions (after allowing for the return or loss on any component of the Consortium Interest not obtained by way of equity swaps and for the agreed funding rate between all Consortium Members for the Transaction).</p> <p>For the avoidance of doubt, the above equalization arrangements will not apply to any pre-existing holdings of shares in Asciano held by any Consortium Member as at 28 September 2015.</p> <p>References to “pro rata” in this MoU (including in relation to costs) are references to the Relevant Proportions (as adjusted pursuant to the following paragraph), unless otherwise agreed between the Consortium Members in writing.</p> <p>Acknowledging that the Total Funding Commitment required to acquire the Consortium Interest will be subject to some uncertainty, the Consortium Members intend the following:</p> <ul style="list-style-type: none"> <li>(i) each Consortium Member shall have the right to provide (or procure that an Affiliate provides) funding (whether equity or debt) on a pro-rata basis to maintain its Relevant Proportion;</li> <li>(ii) if any Consortium Member(s) (or their respective Affiliate(s)) do(es) not wish to provide funding required to maintain its Relevant Proportion, the remaining Consortium Member(s) may provide such shortfall on a pro-rata basis; and</li> <li>(iii) should there remain a shortfall to the required Total Funding Commitment after (i) and (ii), then the Consortium Members may seek a new investor to provide funding for such shortfall provided that any new investor to the Consortium will require the prior written consent of the Consortium Members.</li> </ul> <p>Any new investor (including, unless the existing Consortium Members agree otherwise, an Affiliate of an existing Consortium Member) must accept the terms of this MoU.</p> <p>The Consortium Members acknowledge that the funding structure may be further adjusted by agreement among the Consortium Members as necessary in order to satisfy any regulatory or other requirement (including any foreign investment related considerations).</p>
<b>Mutual Disclosure</b>	<p>Each Consortium Member shall disclose on a timely basis (and update such disclosure as necessary) to the other Consortium Members its (and its controlled Affiliates’) relevant interests in Asciano.</p>

	In addition each Consortium Member shall furnish to the other Consortium Members such information as is reasonably required to complete any substantial shareholder notice (or equivalent) that any Consortium Member has an obligation to file.
<b>Transaction Costs and Fees</b>	<p>The Consortium Members will agree an indicative budget for the Transaction to cover expected Consortium costs and expenses (“<b>Budget</b>”), which will include amounts that have been incurred by GIP on behalf of the Consortium Members up to the date of this MoU. Any change to the Budget shall require unanimous consent of the Consortium Members.</p> <p>The Consortium Members will be severally responsible for their pro-rata share of Consortium costs and expenses.</p> <p>Each Consortium Member will be responsible for its own internal and external costs associated with its participation in the Consortium, including with respect to any tax and legal counsel engaged for the negotiation of any Consortium Member level documentation. For the avoidance of doubt, each Consortium Member will bear its own costs of legal and tax advice in respect of structuring its investment into Asciano or funding of the Transaction, as appropriate.</p> <p>Additionally, Consortium Members will also be responsible for all of their internal resource costs, including travel costs and accommodation.</p>
<b>Consortium Members’ Intentions</b>	<p>Subject to successfully acquiring a Consortium Interest equivalent to (when aggregated with all pre-existing relevant interests held by the Parties) an appropriate agreed percentage of the issued share capital of Asciano, the Consortium Members intend to evaluate a number of strategic options in relation to Asciano including, but not limited to the Consortium Members:</p> <ul style="list-style-type: none"> <li>(i) not voting any Asciano shares held by each of them in favour of the current scheme of arrangement (the “<b>Scheme</b>”) proposed by Asciano that involves Brookfield acquiring all the issued share capital of Asciano;</li> <li>(ii) entering into discussions with Brookfield and / or Asciano in relation to an alternative transaction to the current Scheme involving the possible carve-up of Asciano's assets (conditional on, among other things, due diligence access to Asciano); and/or</li> <li>(iii) holding a strategic stake in Asciano for a period of time, which may include seeking board representation,</li> </ul> <p>(the “<b>Strategic Options</b>”).</p>
<b>Conduct generally</b>	<p>Following the evaluation of the Strategic Options, the Parties will take all necessary steps acting in good faith to expeditiously progress the Consortium’s preferred Strategic Option. The Consortium Members will use reasonable endeavours to implement the preferred Strategic Option in a mutually acceptable tax and stamp duty efficient manner.</p> <p>In the event that there is a Party that is frustrating the process or does not demonstrate good faith in its conduct (“<b>Uncooperative Party</b>”), the remaining Parties (the “<b>Cooperative Parties</b>”) can request in writing that the Uncooperative Party remedy the situation. Failure to do so within a reasonable timeframe (having regard to the short timeframes and exigencies of this transaction), determined in the sole opinion of the Cooperative Parties acting reasonably, will constitute a material breach of this MoU for the purposes of the “Material breach by a party” section set out below. The Cooperative Parties cannot terminate this MoU under those provisions if the Uncooperative Party is complying with its obligations under, or acting in a manner consistent with, this MoU.</p>

<p><b>Conduct in relation to the Scheme</b></p>	<p>The current intention of the Consortium Members is not to vote any Asciano shares held by the Consortium Members in favour of the current Scheme.</p>
<p><b>Conduct in relation to any potential discussions with Brookfield and / or Asciano</b></p>	<p>If any Party is approached by Brookfield and / or Asciano, or if the Consortium decides to approach Brookfield and / or Asciano, to discuss an alternative transaction to the current Scheme involving the possible carve-up of Asciano's assets, the Parties will (subject to any required consent of Consortium Members being obtained for such discussions or negotiations in accordance with the "Exclusivity" provision set out below) work together in good faith and keep each other fully informed in exploring whether an alternative transaction to the Scheme achieves a beneficial outcome for all Parties and is the preferred transaction, taking into account each Party's relative ownership outcomes and acquisition cost.</p> <p>In pursuing any potential discussions or negotiations with Brookfield and / or Asciano, the Consortium Members' interest is to carve up Asciano to enable Qube to primarily participate in the ultimate ownership of certain port related assets and GIP and CPPIB to primarily participate in the ultimate ownership of Asciano's other assets. Any transaction is proposed to be structured on the basis that the Patrick container terminals and the interest in AAT would be acquired by Qube first and the other ports assets would remain with Asciano (which would be acquired by GIP and CPPIB) whilst any regulatory approvals are sought.</p> <p>In the event all the Consortium Members agree to put forward a proposal to Asciano in relation to an alternative transaction to the current Scheme involving the possible carve-up of Asciano's assets, any approach to Asciano seeking due diligence will be at an agreed implied offer price (the "<b>Acquisition Price</b>").</p> <p>In the event that the Consortium is granted due diligence access following such a proposal, then Qube's Relevant Proportion will not be varied unless a Relevant Proportion Change Event (as defined below) occurs in relation to either the Patrick or BAPS businesses. Neither GIP's nor CPPIB's Relevant Proportion will be varied unless a Relevant Proportion Change Event occurs in relation to the Pacific National business.</p> <p>Costs and benefits of any transaction are to be borne and shared by the Consortium Members pro-rata based on their respective Relevant Proportions. This will include transaction costs (including any break fees and golden parachutes but excluding stamp duty and costs and expenses relevant only to a particular Consortium Member), target free cash flow generated between 30 June 2015 and transaction close, the mark to market of the interest rate component of any debt not refinanced (net of any new debt establishment costs for the Party not taking on existing debt), any debt break costs and other items affecting the closing net debt position of Asciano, and other corporate assets, liabilities and savings that cannot be reasonably allocated to a particular business. Stamp duty will be borne in the respective Relevant Proportions but adjusted so that GIP's and CPPIB's share is \$50 million less than their share would have been before the adjustment reflecting the higher estimated stamp duty attributable to the Patrick businesses being acquired.</p> <p>The Parties will discuss in good faith any changes to the Acquisition Price with a majority of two out of the three Consortium Members able to determine any changes to the Acquisition Price, in which case each Consortium Member must fund its Relevant Proportion of any increase (or decrease).</p> <p>Qube agrees to enter into a deed poll in favour of Asciano to issue shares and use reasonable commercial endeavours to secure the additional debt funding that is required to fund its Relevant Proportion of any Consortium proposal to Asciano. The number of Qube's shares that are offered to finance its Relevant Proportion of such a proposal will be determined by Qube (in consultation with GIP and CPPIB) to promote the success of the transaction.</p> <p>GIP and CPPIB will use reasonable commercial endeavours to procure funding</p>



	required to fund their respective Relevant Proportions of any such proposal.
<b>Relevant Proportion Change Event</b>	<p>A Relevant Proportion Change Event means an event, change, condition, matter, circumstance or thing occurring or identified after the date of this MoU which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred, or are reasonably likely to occur, would be considered reasonably likely to have:</p> <ul style="list-style-type: none"> <li>(i) the effect of a diminution in value of the consolidated net assets of the business, taken as a whole, by at least the Applicable Percentage of the consolidated net assets of the business as at 30 June 2015; or</li> <li>(ii) the effect of a diminution in the forecast FY16 consolidated underlying EBIT (adjusted for one-off items and inclusive of income from associates) of the business, taken as a whole, by at least the Applicable Percentage compared to the average broker consensus FY16 EBIT (as published in the Asciano Independent Expert's Report released on 30 September 2015),</li> </ul> <p>other than: (A) those events, changes, conditions, matters, circumstances fairly disclosed by Asciano in an announcement to ASX, documents lodged by Asciano with ASIC or materials published on Asciano's website between 1 January 2014 and the date of this MoU; or (B) information that a Party is aware of as at the date of this MoU.</p> <p>The Applicable Percentage in respect of the Patrick business will be 10% and in respect of the BAPS business will be 15%. The Applicable Percentage in respect of Pacific National business will be 10%.</p>
<b>Termination</b>	<p><b>Material breach by a Party</b></p> <p>In the event of an un-remedied material breach by any Party of an obligation under this MoU ("<b>Defaulting Party</b>"), then any Party not in breach can:</p> <ul style="list-style-type: none"> <li>(i) terminate this MoU in respect of the Defaulting Party; and</li> <li>(ii) exercise a call option (the "<b>Call Option</b>") to acquire 100% of the Defaulting Party's direct or indirect interest in Asciano at the higher of: (A) the weighted average entry cost; or (B) 5% less than the VWAP of Asciano shares for the 5 trading days prior to the date of exercise of the Call Option, such Call Option to expire 30 days after valid termination of this MoU.</li> </ul> <p>In all circumstances where the termination of this MoU was due to the un-remedied breach by a Defaulting Party of an obligation (including where this MoU has been terminated on the basis of a party being an Uncooperative Party), that Defaulting Party must not sell its shares in Asciano to any party other than a Party to this MoU for so long as a Consortium Member has a proposal on foot to acquire all the issued shares in Asciano under which the Defaulting Party is able to sell its shares in Asciano, but ending 6 months following valid termination of this MoU (unless the Asciano shares are acquired pursuant to a Court approved scheme of arrangement or compulsory acquisition following a takeover bid).</p> <p><b>Relevant Proportion Change Event</b></p> <p>In the event a Relevant Proportion Change Event is demonstrated by a Party or a Party is unable to procure finance (having used reasonable commercial endeavours), then the Parties shall discuss in good faith and either:</p> <ul style="list-style-type: none"> <li>(i) agree on a variation to that Party's Relevant Proportion or the Acquisition Price; or</li> </ul>

- (ii) seek to procure alternative or additional funding or co-investment from third parties (or other sources).

If the Parties are unable to agree on a variation to the relevant Party's Relevant Proportion or the Acquisition Price, or the relevant Party is unable procure such alternative or additional funding or co-investment, then the Party or Parties that have either not demonstrated the Relevant Proportion Change Event, or not failed to procure finance (the "**Continuing Parties**") shall each be entitled to:

- (i) exercise a call option to acquire 100% of the relevant Party's direct or indirect interest in Asciano (the "**Call Option**") at the higher of: (a) the VWAP of Asciano shares for the 5 trading days prior to the date of exercise of the Call Option; (b) the relevant Party's weighted average entry cost; and (c) the highest price paid by any of those Parties or any third party that is successful in a transaction to acquire all the issued shares in Asciano within 3 months of the Call Option exercise, such Call Option to expire 30 days after a Party validly gives notice of the failure to agree or procure alternative or additional funding or co-investment; and
- (i) terminate this MoU in respect of the Party who is not a Continuing Party.

#### **Dissenting Party**

In the event the majority of the Parties agree to an increase in the Acquisition Price, but there is a dissenting Party that does not agree to the increase of its proportional amount (the "**Dissenting Party**"), then the non-dissenting Parties (the "**Non-Dissenting Parties**") shall discuss in good faith and may agree to increase their Relevant Proportions to fund any increase.

If:

- (i) the Non-Dissenting Parties are unable to agree;
- (ii) the Dissenting Party still does not agree to an increase in its proportional amount; and
- (iii) the Non-Dissenting Parties increase the Acquisition Price to Asciano, then each of the Non-Dissenting Parties shall be entitled to:
  - a. exercise a call option to acquire 100% of the Dissenting Party's direct or indirect interest in Asciano (the "**Call Option**") at the higher of: (I) the VWAP of Asciano shares for the 5 trading days prior to the date of exercise of the Call Option; and (II) the highest price to be paid by those Non-Dissenting Parties or any third party that is ultimately successful in a transaction to acquire all the issued shares in Asciano within 3 months of the Call Option exercise, such Call Option to expire 30 days after a Party validly gives notice that all three conditions referred to above have been satisfied; and
  - b. terminate this MoU in respect of the Dissenting Party.

If more than one Party wishes to acquire the relevant Asciano shares pursuant to a Call Option referred to the above, they will be allocated on a pro rata basis.

Each Call Option referred to above shall be interpreted to apply, as applicable:

- (i) in respect of an Investor, to the Asciano shares or interests held by that Investor; and
- (ii) in respect of the Financier, to any loans that have been provided to Investors (or their Affiliates) for the purpose of those Investors (or their Affiliates) acquiring Asciano shares.

	<p>To the extent that a Party has exercised its right to acquire Asciano shares pursuant to a Call Option, the Party whose Asciano shares have been acquired pursuant to the Call Option will appoint one or more individuals nominated by the acquiring Party as its corporate representative under section 250D of the Corporations Act for the purpose of exercising all of the powers of that Party without restriction in respect of any shareholder meeting of Asciano.</p> <p>A Non-Dissenting Party or Parties referred to above that acquires any of the Patrick terminal or BAPS assets of Asciano must, for a period of 12 months after such acquisition:</p> <ul style="list-style-type: none"> <li>(i) not dispose of those assets at less than that part of the price that would have been payable for those assets at the Dissenting Party's Relevant Proportion amount at the highest Acquisition Price agreed by a majority of the Parties immediately prior to the Dissenting Party's withdrawal or termination of participation in this MoU; and</li> <li>(ii) provide the Dissenting Party with an opportunity to participate in any tender process pursuant to which the relevant assets are to be sold.</li> </ul> <p><b>General</b></p> <p>The parties will, use reasonable endeavours to preserve the value of any franking credits that may be utilised by a Party to any Call Option referred to above or in the Withdrawal section below including, without limitation, by the use of a deferred sale and purchase arrangement as an alternative to the Call Option.</p>
<p><b>Withdrawal</b></p>	<p>Up until the time that the evaluation of strategic options referred to in "Consortium Members' Intentions" above has been concluded and the Consortium Members have agreed to the Strategic Option to be taken, a Consortium Member may withdraw from the Consortium provided that it has given each of the other Consortium Members:</p> <ul style="list-style-type: none"> <li>(i) a minimum period of 5 business days' notice (or such shorter period as is agreed among the Consortium Members) of intended withdrawal;</li> <li>(ii) in respect of an Investor, an option to unconditionally acquire from the withdrawing Investor any Asciano shares or interest that have been acquired using funding that has been provided by the withdrawing Investor (on settlement terms, including deposit and security for performance arrangements, to be agreed); and</li> <li>(iii) in respect of the Financier, an option to acquire from the Financier any loans that have been provided to Investors (or their Affiliates) for the purpose of those Investors (or their Affiliates) acquiring Asciano shares.</li> </ul> <p>The options set above in paragraphs (ii) and (iii) above are each referred to as a "<b>Call Option</b>". Any acquisition pursuant to a Call Option must be undertaken on the basis that the relevant Asciano shares or interest acquired using funding that has been provided by the relevant withdrawing Consortium Member will be valued at the higher of:</p> <ul style="list-style-type: none"> <li>(i) the VWAP of Asciano shares for the 5 trading days prior to the date of exercise of the Call Option;</li> <li>(ii) the withdrawing Consortium Member's weighted average entry cost; and</li> <li>(iii) the highest price paid by any of the Consortium Members or any third party that is successful in a transaction to acquire all the issued shares in Asciano within 3 months of the Call Option exercise, such Call Option to</li> </ul>

	<p>expire 30 days after a Consortium Member validly gives notice of withdrawal.</p> <p>If more than one Consortium Member wishes to acquire the relevant Asciano shares, interests or loans pursuant to a Call Option, they will be allocated on a pro rata basis.</p> <p>To the extent that a Consortium Member has exercised its right to acquire Asciano shares pursuant to a Call Option, the withdrawing Consortium Member will appoint one or more individuals nominated by the acquiring Consortium Member as its corporate representative under section 250D of the Corporations Act for the purpose of exercising all of the powers of that withdrawing Consortium Member without restriction in respect of any shareholder meeting of Asciano.</p>
<p><b>Consequences of Termination / Withdrawal</b></p>	<p>Notwithstanding anything else to the contrary in this MoU, following termination of this MoU in respect of a Consortium Member, or withdrawal by a Consortium Member in accordance with the Withdrawal section above, the following provisions apply in respect of the relevant Consortium Member (the “<b>Exiting Party</b>”):</p> <ul style="list-style-type: none"> <li>(i) the Exiting Party will remain responsible for its Relevant Proportion of the Total Funding Commitment incurred up to the date of termination or withdrawal (as applicable);</li> <li>(ii) notwithstanding (i), where the Exiting Party provided loans to one or more other Consortium Members (or their Affiliates) for the purpose of those Consortium Members (or their Affiliates) acquiring Asciano shares, the Exiting Party may (subject to the terms of those loans) require repayment of those loans;</li> <li>(iii) the Exiting Party may, following expiry of any applicable Call Option right, sell Asciano shares (to the extent still held and not acquired pursuant to a Call Option) into any transaction proposed by a third party or on-market;</li> <li>(iv) the remaining Consortium Members will be responsible for all Consortium costs and expenses related to the Transaction from the date of withdrawal or termination (as applicable);</li> <li>(v) the Exiting Party will remain responsible for its pro-rata share of Consortium costs and expenses incurred up to the date of withdrawal; and</li> <li>(vi) the Exiting Party will remain subject to the Exclusivity section below to the extent applicable.</li> </ul>
<p><b>Exclusivity</b></p>	<p>Subject to the matters set out below and unless the consent of all the other Consortium Members has been obtained, each Consortium Member commits not to work, directly or indirectly, with any third party (including, without limitation, Brookfield Infrastructure Partners Limited in its own capacity and as general partner of Brookfield Infrastructure Partners L.P., its nominated co-investors and any of their respective affiliates or advisors acting on behalf of any of them, collectively “<b>Brookfield</b>”) that is pursuing any competing transaction, and will not (and will ensure that its Affiliates do not) directly or indirectly have or acquire an interest in, or support (through funding or otherwise), any competing transaction (on its own or with any third party, including, without limitation, Brookfield), including any proposal to acquire any legal, equitable or economic interest in Asciano shares or any assets or undertaking of Asciano (including any transaction involving the monetisation of any Asciano business) or any other transaction that may be in competition with, or otherwise adverse to, any proposal by the Consortium to pursue the Transaction or any of the Strategic Options referred to in "Consortium Members' Intentions" above, until the later of:</p> <ul style="list-style-type: none"> <li>(i) termination of the MoU in respect of a Party; and</li> </ul>

	<p>(ii) to the extent that the Consortium has decided to pursue a Strategic Option involving an alternative transaction to the Scheme involving a possible carve up of Asciano's assets, all Consortium Members have ceased to pursue that Strategic Option,</p> <p>up to a maximum period of 12 months after the date of this MoU (the "<b>Exclusivity End Date</b>").</p> <p>The Consortium Members agree that this Exclusivity provision will not restrict a Consortium Member from holding discussions or negotiations, directly or indirectly, with any third party other than Brookfield who may become a new Investor, provided that the Consortium Member has complied with its obligations under this MoU, including the minimum notice and Call Option requirements set out in the "Withdrawal" provision above.</p> <p>Each of the Consortium Members agrees to promptly notify each other Consortium Member of any approach or proposal by a third party that relates to any competing transaction or any other activity in respect of which participation by that Consortium Member may involve a breach of this Exclusivity Provision.</p> <p>Prior to the Exclusivity End Date:</p> <p>(i) Qube will not engage in discussions with any third party in relation to any other potential container terminal transaction in Australia; and</p> <p>(ii) GIP and CPPIB will not engage in discussions with any third party in relation to any other potential above rail transaction in Australia.</p> <p>If this MoU is terminated due to a material breach by Qube, Qube will not engage in discussions in relation to any other potential container terminal transaction in Australia for 12 months following the date of termination of this MoU without the consent of GIP and CPPIB (such consent not to be unreasonably withheld or delayed).</p> <p>The Consortium Members agree that this Exclusivity provision is reasonable having regard to the commitment required by each Consortium Member to pursue the Transaction jointly.</p>
<b>Confidentiality</b>	<p>Without the prior consent of the Consortium Members, this MoU (including the identities of the Consortium Members), any matters relating to the Transaction and any definitive documentation setting out the agreements contained herein are strictly confidential and may not be disclosed to any other persons except:</p> <p>(i) on a need to know basis and where such parties are bound by confidentiality obligations, to:</p> <ol style="list-style-type: none"> <li>a. the Consortium Members' professional advisers and related bodies corporate and related trusts; or</li> <li>b. managed funds and clients of GIP;</li> </ol> <p>(ii) as otherwise required by law, binding regulations (including but not limited to any relevant statutory reporting obligations) or any regulatory body; or</p> <p>(iii) to the extent such information is or becomes generally available other than as a result of disclosure by a Party in breach of this MoU.</p> <p>All press releases and public announcements of any form will need to be unanimously agreed by all Consortium Members. No commercially sensitive information shall be disclosed by any member of the Consortium except as outlined above.</p>
<b>Legal Effect</b>	<p>This MoU is intended to be legally binding and may be legally enforced by the Parties hereto (including by way of specific performance). The obligations of the</p>

	<p>Parties under this MoU are several and not joint and several.</p> <p>This MoU is not intended to, and does not, create or imply any agency or trust between the Parties and no party owes any other party any duty of care or other legal, equitable or fiduciary or other duty, except as expressly set out in this MoU or as otherwise agreed hereafter in writing.</p> <p>Any obligation placed upon a Consortium Member in this MoU shall, where such obligation properly falls upon an Affiliate of that Consortium Member, import an obligation upon the Consortium Member to procure that its Affiliate acknowledges and performs such obligation.</p> <p>Notwithstanding anything else to the contrary in this MoU, if this MoU is terminated in respect of a Party, or a Party validly withdraws from this MoU, such Party will cease to be bound by this MoU, other than, to the extent applicable, the sections of this MoU titled Funding Allocations, Transaction Costs and Fees, Termination, Withdrawal, Consequences of Termination / Withdrawal, Exclusivity, Confidentiality, Legal Effect, Information and Governing Law and Submission to Arbitration (by which the Party will remain bound).</p>
<b>Information</b>	<p>All information relating to this Transaction that has been provided by Consortium Members and advisers (e.g. accounting, tax etc) shall remain the property of the Consortium (including information provided by a Consortium Member who has withdrawn). The Consortium shall be free to utilise the information for the purpose of the Transaction.</p>
<b>Governing Law and Submission to Arbitration</b>	<p>This MoU, any matters relating to the Transaction, and any non-contractual obligations arising from any of the foregoing will be governed by and construed in accordance with the laws of New South Wales, Australia.</p> <p>Any dispute, controversy or claim arising out of or in connection with this MoU, including any question regarding its existence, validity or termination, shall be referred to and finally settled by arbitration under the Rules of the London Court of International Arbitration (the "LCIA"). The arbitration tribunal shall be composed of three arbitrators appointed by the LCIA. The place of the arbitration proceedings shall be Sydney. The language of the arbitration proceedings shall be English. The arbitral proceedings shall be confidential. The tribunal's findings and any award in any arbitration hereunder shall be final and binding on the Parties and shall not be capable of challenge (save in the case of a challenge as to the tribunal's substantive jurisdiction or because of a serious irregularity affecting the tribunal, the proceedings or the award) and, subject to any applicable legislation, may be enforced in any court of competent jurisdiction by the prevailing Party.</p> <p>By selecting the LCIA Rules to govern the arbitral process, the Parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.</p>
<b>Counterparts</b>	<p>This MoU may be entered into in any number of counterparts, each of which when signed will be an original, but all of which will together constitute one and the same agreement.</p>

For Global Infrastructure Management LLC

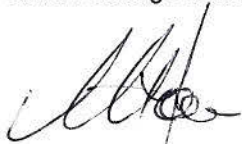


Name: MARIL LEVITT

Title: CHIEF OPERATING OFFICER

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For Qube Holdings Limited

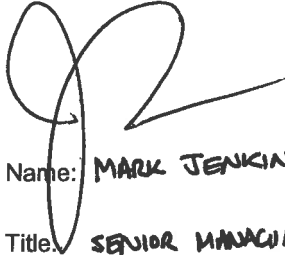
A handwritten signature in black ink, appearing to read 'Maurice James', written in a cursive style.

Name: MAURICE JAMES

Title: MANAGING DIRECTOR



For Canada Pension Plan Investment Board

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke extending to the right.

Name: MARK JENKINS

Title: SENIOR MANAGING DIRECTOR &  
GLOBAL HEAD OF PRIVATE INVESTMENTS